

**DEPARTMENT OF HEALTH, HEALTH FACILITY SERVICES**

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**SUBJECT:** Rules for Freestanding Birthing Centers in Arkansas

**DESCRIPTION:** The Rules for Freestanding Birthing Centers in Arkansas are being amended as follows:

- Strike “regulations” throughout document in accordance with Act 315 of 2019
- Add reporting requirements for patients transferred to hospital or other licensed healthcare facility in accordance with Act 977 of 2019
- Change TB screening requirements to latest CDC guidelines
- Add severability clause

**PUBLIC COMMENT:** A public hearing was held on this rule on September 3, 2020. The public comment period expired September 3, 2020. The agency indicated that it received no public comments.

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

**QUESTION:** The redline of the new TB language reads, “There shall be a plan for ensuring that each health care worker has measures for prevention of communicable disease outbreaks . . .” It seems as if something is missing between “has” and “measures.” Could you clarify this?

**RESPONSE:** The licensed facility is responsible for measures that meet CDC guidelines to insure that its health care workers are disease free. The sentence will be revised to the following for clarification:

There shall be a plan for ensuring that the health facility each health care worker has taken an annual TB skin test or is evaluated in accordance with guidelines approved by the Arkansas Department of Health (Rules and Regulations Pertaining to Communicable Disease; Section 1, Section 13 – Arkansas Department of Health Tuberculosis Program Amendment 22394 Adopted in February, 1994). measures for prevention of communicable disease outbreaks, especially Mycobacterium tuberculosis (TB). All plans for the prevention of transmission of TB shall conform to the most current CDC Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health Care Facilities.

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 Department of Health has the authority to promulgate rules “[s]etting minimum standards for the construction, maintenance, and operation of a freestanding birthing center[.]” Ark. Code Ann. § 20-9-403(a)(1). This

rule implements Act 977 of 2019, sponsored by Representative Deborah Ferguson. Act 977 required reporting to the Department of patient transfers from a lay midwife.

**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

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1. What is the short title of this rule? Rules for Freestanding Birthing Centers in Arkansas

2. What is the subject of the proposed rule? licensing standards for freestanding birthing centers 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."

Updated TB prevention language; reporting requirements for transfers of patients from the care of lay midwives during labor and delivery; option for compliance certification by licensed architect or professional engineer; and add 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. §§20-9-401 et seq., 20-7-123

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

Mandated by 2019 Acts:  
315 (strike "regulation"); and  
977 (report transfers of patients from lay midwives during labor and delivery)

Non-mandated:  
Updated TB language to Center for Disease Control standard  
Certification of plans – optional Act 889 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: 09/03/2020

Time: 3:00 pm

Place: Freeway Medical Tower, Suite 801, 5800 W. 10th St., Little Rock, AR, 72204

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

09/03/2020

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

11/01/2020

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 Freestanding Birthing Centers 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.



SUMMARY of Changes  
 Freestanding Birthing Centers  
 092419

Section, page, and change	Source of specific authority with page & line or reason for change
Throughout Document – strike “regulations”	Act 315 of 2019
§6(F) Added reporting requirement for patients transferred to hospital or other licensed healthcare facility	Act 977 of 2019
§12(C)(3) change TB screening requirements to latest CDC Guidelines	ADH recommended language for consistency across all Arkansas healthcare facilities
§21 Add severability clause	

