

**DEPARTMENT OF HEALTH, HEALTH FACILITY SERVICES**

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**SUBJECT:** Rules for Hospice in Arkansas

**DESCRIPTION:** The Rules for Hospice in Arkansas have been amended as follows:

- Update document throughout to remove term “regulations”
- Add definition of “attending APRN” as requested by the Arkansas Hospice and Palliative Care Association
- Strike unnecessary authority citations
- Update language regarding TB prevention for consistency across all healthcare facilities
- Expand dietary counseling to include RNs and nutritionists
- 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 provided the following summary of the public comments it received and its responses to those comments:

**Commenter’s Name:** Hospice and Palliative Care Association

**SUMMARY OF COMMENT:** Add APRN definition. **RESPONSE:** Added.

**Commenter’s Name:** Sam Sellers, Hospice and Palliative Care Association

**SUMMARY OF COMMENT:** Asks that rules specify what an Attending APRN is allowed to do; suggests adding to definition that attending physician also includes attending APRN with exception of certify/recertify for hospice care eligibility.

**RESPONSE:** Request after Board of Health approved draft. Planning for future revisions to add general qualifications rather than practitioner types.

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

**QUESTION:** The proposed rules add a severability clause in Section 35. However, there is already a severability clause in Section 33. Could you explain why the second severability clause is necessary? (Also, page 35-1 labels the new severability clause “Section 21” instead of “Section 35.”) **RESPONSE:** We missed the existing severability clause in section 33. We’ll eliminate section 33 and renumber the two remaining sections.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency indicated that these rules do not have a financial impact.

**LEGAL AUTHORIZATION:** The Arkansas Department of Health has the authority to regulate hospice care in Arkansas through the State Hospice Office, “to be administered in a division of the department to be designated by the Secretary of the Department of Health.” Ark. Code Ann. § 20-7-117(a), (b)(1)(B). Through the State Hospice Office, the Department may “[i]mplement rules, regulations, and standards for hospice care” that agree with national standards and federal law. Ark. Code Ann. § 20-7-117(b)(1)(B). The Department has designated the Division of Health Facilities Services as the division to administer hospice regulation. See <https://www.healthy.arkansas.gov/programs-services/topics/health-facility-services>.

**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) 280-4374      **FAX NO.** (501) 661-2165      **E-MAIL** rebecca.bennett@arkansas.gov  
**NAME OF PRESENTER AT COMMITTEE MEETING** Laura Shuc, JD, General Counsel  
**PRESENTER E-MAIL** laura.shuc@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 Hospice in Arkansas

2. What is the subject of the proposed rule? standards for licensed Hospice Agencies

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."

Moved authority citation from Section 3 to Section 2 "authority"; added the definition of attending APRN; updated TB prevention language; and included qualifications for dietary counselors, 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.

20-7-117; 20-7-123; and 20-38-101 et seq.

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

Last amended in 2010, this revision adds a definition of attending APRN in order to extend service availability.

TB guidelines were updated in accordance with the Health Department's update of TB standards across all facility guidelines and in line with CDC recommendations.

Dietary counseling guidelines were updated to allow more involvement by nutritionists.

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: 10:00 am

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.

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas Department of Health

**DIVISION** Health Facility Services

**PERSON COMPLETING THIS STATEMENT** \_\_\_\_\_

**TELEPHONE NO.** (501) 280-4374 **FAX NO.** (501) 661-2165 **EMAIL:** \_\_\_\_\_

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 Hospice 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/INDEX**  
**Rules for Hospice in Arkansas**  
**092519**

| Section, page, and change   | Source of specific authority with page & line or reason for change                          |
|---|---|
| Throughout document   | Act 315 of 2019   |
| Section 3 Purpose<br>Strike authority citation – properly in Section 2<br>p. 2-1  | Strike authority citation – unnecessary see Section 2 for authority citations               |
| Section 4 Definitions<br>4(C) Add definition of “attending APN”<br>p. 4-2.        | Requested by Arkansas Hospice and Palliative Care Association.                              |
| Section 5 Requirements & Codes<br>5(B)(1)(a)<br>p. 5-1                            | Strike authority citation – unnecessary – see Section 2 for authority citations             |
| Section 8 Administration  |   |
| Section 8(l)(2) updated TB prevention language<br>p. 8-3                          | Uniform TB prevention across all healthcare facilities                                      |
| Section 15 Counseling   |   |
| 15(B),<br>Dietary counseling – expand to include RNs and nutritionists<br>p. 15-1 | Requested by Arkansas Hospice and Palliative Care Association.<br>Mirrors federal language. |
| Section 31 Severability   | Add severability clause   |
|   |   |

## Summary of Public Comments Hospice Rules

| # | Received             | Commenter  | Comment   | Agency Response   |
|---|----------------------|--|---|---|
| 1 | 2013<br>2014<br>2017 | Hospice and Palliative<br>Care Association<br>(HPCAA)                | Add APRN definition   | added   |
| 2 | 011020               | Hospice and Palliative<br>Care Association<br>(HPCAA)<br>Sam Sellers | Asks that rules specify what an Attending APRN is allowed to do; suggests adding to definition that attending physician also includes attending APRN with exception of certify/recertify for hospice care eligibility | Request after Board of Health approved draft. Planning for future revisions to add general qualifications rather than practitioner types. |
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