

DEPARTMENT OF HEALTH, ARKANSAS STATE BOARD OF NURSING

SUBJECT: Chapter One – General Provisions

DESCRIPTION: The Department of Health’s Arkansas State Board of Nursing proposes the following amendments to its Chapter One – General Provisions:

In accordance with Act 449 of 2021, “in consultation with” replaces the language “under the supervision of,” and definitions of “Consultation,” “Medical Procedure,” “Peri-obstetrical,” and “Perioperative” were added; and with Act 607 of 2021, “and treatment of the male partners for sexually transmitted disease” language was added. For clarification, we added “registered” to Collaborative Practice Agreement definition, removed “obstetric” from Consulting Physician definition, and “Executive” was removed from Director Title. In accordance with Act 651 of 2021, definition of “Co-Prescribe” was added; with Act 412 and 607 of 2021, definition of “Full Practice Authority” was added; with Act 1101 of 2021, current ASBN fees replaced the language “relating to examination, licensing, endorsement, certification for prescriptive authority, temporary permits, license renewals, and other reasonable services as determined by the Board.” To align with current policy, we removed the language “Personal checks for initial licensure are accepted from in state residents only” and “by a secretary” and “Tapes may be erased after corresponding minutes have been approved”; and with Act 725 of 2021, a section was added for waiver of initial licensure fees.

PUBLIC COMMENT: A public hearing was held on December 1, 2021. The public comment period expired on December 6, 2021. The Board provided the following summary of the comments that it received and its responses thereto:

Randall M. Clark, MD, FASA, President of the American Society of Anesthesiologists (Email dated 12/3/21)

Comment: On behalf of ASA, we would strongly encourage and request the Board to include the following language within its definition of “consultation”:

In consultation, the consulting party shall remain immediately available for consultation during the delivery of anesthesia for diagnosis, consultation, and treatment of medical conditions.

Response: Comment taken under advisement.

Martha Hill, Mitchell Williams Law (Public Comment Hearing on 12/1/21 and email dated 12/4/21)

Comment: As we stated at the hearing, the rules promulgated in connection with Act 449 need to be explicit utilizing the complete standard stated in Act 449. We believe that an additional paragraph of definitions for your proposed rules may be appropriate to reflect the language of the statute, including all of the subparts OR that a new paragraph regarding the definition of “immediately available” should be constructed reflecting all of the language of Act 449 and the legislative intent.

Response: Mr. Dawson thanked Ms. Hill for attending the public hearing and for her comments.

Dr. Grady Crosland, MD, Officer with the Arkansas Society of Anesthesiologists (Public Comment Hearing on 12/1/21)

Comment: Dr. Crosland stated “Immediate availability needs to be spelled out.” He agrees with the language as indicated in the previous comment made by Martha Hill reflecting all of the language of Act 449 and the legislative intent.

Response: Mr. Dawson thanked Dr. Crosland for attending the public hearing and for his comments.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) Section V.F.1. – I see that you have incorporated your fee schedule into the rules to comport with Act 1101 of 2021. Just to confirm, you have neither added any new fees nor increased any fees? Are these simply the fees that existed prior to this revision of the rule? **RESPONSE:** There wasn’t any changes to any fee amounts other than deleting a couple of fees that no longer applied.

(2) I see that you received a few comments requesting that additional language concerning “in consultation with,” specifically relating to “immediately available,” be included in the proposed changes. What is the reasoning behind the Board’s decision not to include the additional language regarding “consultation” set forth in Ark. Code Ann. § 17-87-102(7)(C)(i), as amended by Act 449 of 2021, §1, in the Board’s definition in its rules? **RESPONSE:** We have always operated under the legal opinion that if something is in statute, we are not required to repeat it in rule. However we did add this information in the Rules, Chapter 4, Section VI(D)(7) as below:

The consulting individual shall remain immediately available for consultation during the delivery of anesthesia for diagnosis, consultation, and treatment of medical conditions. The hospital’s administrative staff, medical staff, and governing body shall determine the guidelines on immediately available for consultation.

These rules will be in our next set of rules that will be out for public comment hopefully next month.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rule has a financial impact. It estimates that the additional cost to implement changes to the rule in light of Act 725 is \$258,885 in special revenue for the current fiscal year and \$258,885 in special revenue for the next fiscal year.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 17-87-203(1)(A), the Arkansas State Board of Nursing shall have the power and responsibility to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87 of the Arkansas Code, concerning nurses. The proposed changes include revisions made in light of the following acts:

Act 412 of 2021, sponsored by Representative Lee Johnson, which authorized full independent practice authority for certified nurse practitioners who meet certain requirements and created the Full Independent Practice Credentialing Committee to review and approve applications for full independent practice authority for certified nurse practitioners;

Act 449 of 2021, sponsored Representative Clint Penzo, which amended the definition of “practice of certified registered nurse anesthesia” by removing supervision requirements;

Act 607 of 2021, sponsored by Representative Mary Bentley, which granted full practice authority to certified nurse midwives;

Act 651 of 2021, sponsored by Senator Cecile Bledsoe, which mandated the coprescription of an opioid antagonist under certain conditions and amended the Naloxone Access Act;

Act 725 of 2021, sponsored by Senator Ben Gilmore, which created the Workforce Expansion Act of 2021; and

Act 1101 of 2021, sponsored by Representative Justin Gonzales, which amended Arkansas law concerning administrative fees and penalties and amended the law concerning review of agency rules by the Legislative Council.

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY: Department of Health

DIVISION: Division of Health Related Board and Commissions/State Board of Nursing

DIVISION DIRECTOR: Matt Gilmore

CONTACT PERSON: Sue Tedford

ADDRESS: 1123 S. University Ave., Suite 800; Little Rock, AR 72204

PHONE NO.: (501) 686-2703 **FAX NO.:** (501) 686-2714 **E-MAIL:** sue.tedford@arkansas.gov

NAME OF PRESENTER AT COMMITTEE MEETING: Sue Tedford

PRESENTER E-MAIL: sue.tedford@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:**

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?
Chapter One- General Provisions

- 2. What is the subject of the proposed rule?
General Provisions

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

- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes ___ No X
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.
Act 725 requires waiver of fees for individuals who receive certain public benefits and are seeking initial licensure.

Act 1101 requires identifying administrative fees and penalties in 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.”**

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

Administrative Procedures Act; A.C.A. § 25-15-201, et. seq.

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

RULE	CHANGE	REASON FOR CHANGE
Ch. 1, pg. 1-1, Section II, (B)(2) The Practice of Advanced Practice Registered Nursing	“in consultation with” replaces the language “under the supervision of”	Act 449 of 2021
Ch. 1, pg. 1-1, Section II, (B)(3) The Practice of Advanced Practice Registered Nursing	“and treatment of the male partners for sexually transmitted disease” language added	Act 607 of 2021
Ch. 1, pg. 1-4, Section IV Definition of Terms	Added “registered” to Collaborative Practice Agreement definition	Clarification – omission of correct title
Ch. 1, pg. 1-4, Section IV Definition of Terms	Definition of “Consultation” added	Act 449 of 2021
Ch. 1, pg. 1-4, Section IV Definition of Terms	Removed “obstetric” from Consulting Physician definition	Clarification – may consult with any physician
Ch. 1, pg. 1-4, Section IV Definition of Terms	Definition of “Co-Prescribe” added	Act 651 of 2021
Ch. 1, pg. 1-4, Section IV Definition of Terms	Definition of “Full Practice Authority” added	Acts 412 and 607 of 2021
Ch. 1, pg. 1-7 to 1-8, Section V General Matters	“Executive” is removed from Director Title	Clarification

Ch. 1, pg. 1-7, Section V, (F)(1) Board Funds and Fees	Current ASBN fees replaced the language “relating to examination, licensing, endorsement, certification for prescriptive authority, temporary permits, license renewals, and other reasonable services as determined by the Board”	Act 1101 of 2021
Ch. 1, pg. 1-8, Section V, (F)(3) Board Funds and Fees	Language “Personal checks for initial licensure are accepted from in state residents only” removed	Alignment with current policy and Arkansas retention policy
Ch. 1, pg. 1-8, Section V, (G) Waiver of Initial Licensure Fees	Section added for waiver of initial licensure fees	Act 725 of 2021
Ch. 1, pg. 1-8, Section V, (H)(2) Records	Removed “by a secretary” and “Tapes may be erased after corresponding minutes have been approved” language.	Alignment with current policy

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.arsbn.org

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

Date: October 19, 2021

Time: 10:00 a.m.

Place: 1123 South University Avenue, Suite 312, Little Rock, AR 72204

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

October 22, 2021

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

Date pending legislative review and approval (proposed date is January 1, 2022)

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.

Attached

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

Attached

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.

Arkansas Association of Nurse Anesthetists, Arkansas Nurses Association, Arkansas Nurse Practitioner Association, Arkansas Medical Society, Arkansas Medical Board, Arkansas Nursing Educational Programs

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT/AGENCY: Department of Health

DIVISION: Division of Health Related Board and Commissions/State Board of Nursing

PERSON COMPLETING THIS STATEMENT: Sue Tedford

PHONE NO.: (501) 686-2703 **FAX NO.:** (501) 686-2714 **E-MAIL:** sue.teford@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 Chapter One – General Provisions

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes X 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 X 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 X 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;
N/A

 - (b) The reason for adoption of the more costly rule;
N/A

 - (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
N/A

 - (d) Whether the reason is within the scope of the agency’s statutory authority, and if so, please explain.
N/A
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 0
Federal Funds 0
Cash Funds 0
Special Revenue 0
Other (Identify) 0

Total 0

General Revenue 0
Federal Funds 0
Cash Funds 0
Special Revenue 0
Other (Identify) 0

Total 0

(b) What is the additional cost of the state rule? **Act 725**

Current Fiscal Year

General Revenue 0
Federal Funds 0
Cash Funds 0
Special Revenue \$258,885
Other (Identify) 0

Total \$258,885

Next Fiscal Year

General Revenue 0
Federal Funds 0
Cash Funds 0
Special Revenue \$258,885
Other (Identify) 0

Total \$258,885

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

\$ 0

Next Fiscal Year

\$ 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

\$ 0

Next Fiscal Year

\$ 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 X

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.