

DEPARTMENT OF HEALTH, STATE BOARD OF HEALTH

SUBJECT: Rules for Orthotic, Prosthetic, and Pedorthic Providers

DESCRIPTION:

Background

Pursuant to A.C.A. § 17-107-101 et seq., the Department has authority to promulgate the Rules for Orthotic, Prosthetic, and Pedorthic Providers in Arkansas. These rules protect the health and safety of individuals receiving orthotic, prosthetic, or pedorthic services in Arkansas.

Key Points

The proposed rule:

- Updates licensure requirements.
- Makes changes to comply with Acts 135, 445, 725 and 881 of 2021.

Discussion

The Rules for Orthotic, Prosthetic, and Pedorthic Providers in Arkansas are duly adopted and promulgated by the Arkansas Board of Health pursuant to the authority expressly conferred by the laws of the State of Arkansas including, without limitation, the Arkansas Orthotics, Prosthetics, and Pedorthics Practice Act, specifically Ark. Code Ann. § 17-107-101 et seq.

There were four legislative acts – Act 135, Act 445, Act 725 and Act 811 – which required modification to the Rules for Orthotic, Prosthetic, and Pedorthic Providers in Arkansas.

The following changes are proposed:

- Modification for the automatic licensure requirements for uniformed service members for Act 135.
- Modifies the licensure requirements for Orthotic Assistants, Orthotic Prosthetic Assistants and Prosthetic Assistants from Act 445.
- Provision of waiver of initial fees associated with professional and occupational license for Act 725.
- Allows individuals to work and earn a paycheck while also fulfilling licensing requirements for Act 811.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on March 2, 2022. The agency indicated that it received no public comments.

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

1. Section 6.D.3 requires an applicant for certification to practice as an assistant to have 2 years' experience in the field "as an assistant." Is this language mistakenly carried over from Act 445's phrasing "the field in which the individual is seeking licensure as an assistant," or must the applicant have experience as an assistant to receive a license to practice as an assistant? **RESPONSE:** Applicant required to have minimum 3 years of experience in the field in which the person is seeking license as an assistant or 2 years' experience in the field of orthotics and/or prosthetics as an assistant and has a minimum of 3 semester hours of higher learning. Revisions for OPP Section 6 attached.
2. Section 6.G.2 defines apprenticeship as a program that meets the federal guidelines as existing on 3/1/2021 and is approved by the U.S. Office of Apprenticeship. Act 811 defines apprenticeship as a program that meets the federal guidelines as existing on 3/1/2021 "and existing programs currently implementing work requirements as approved by the United States Office of Apprenticeship as meeting the requirements of an apprenticeship." Is it the Department's position that U.S. Office of Apprenticeship approval is a separate requirement and not an alternative means of meeting the Act's definition? **RESPONSE:** Correct. No revisions needed.
3. Section 6.G.2.b requires documentation that a program meets the federal requirements and has approval by the U.S. Office of Apprenticeship or the Arkansas Department of Workforce Services. Why is the Department of Workforce Services included here but not in the definition of apprenticeship? **RESPONSE:** It is our understanding that some state entities act as the approving arm for the U.S. Office of Apprenticeship. It is also our understanding that DWS is that entity in Arkansas. We wanted flexibility in receipt of documentation approving the apprenticeship program.

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 the authority to promulgate rules prescribing "[p]rocedures for the issuance, renewal, inactivation, restoration, suspension, and revocation of a license or certification" for an orthotist, pedorthist, or prosthetist. Ark. Code Ann. § 17-107-204(a)(1). These proposed rules implement Acts 135, 445, 725, and 811 of 2021.

Act 135, sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created by* Act 135.

Act 445, sponsored by Senator Missy Irvin, modified the application process for certification to practice as an orthotic assistant, orthotic/prosthetic assistant, or prosthetic assistant.

Act 725, sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

Act 811, sponsored by Representative Joshua Bryant, created the Earn and Learn Act and allowed individuals to work and earn a paycheck while also fulfilling licensing requirements and gaining the skills to fill the needs of an expanding workforce. Temporary language contained within the Act required all licensing entities covered by the Act to promulgate rules as necessary for its implementation. *See* Act 811, § 2.

ARKANSAS
STATE BOARD OF HEALTH

**RULES FOR ORTHOTIC, PROSTHETIC, AND
PEDORTHIC PROVIDERS IN ARKANSAS**



Promulgated under the Authority of Ark. Code Ann. § 17-107-101 et seq.

~~Revision effective date: February 15, 2021~~

ARKANSAS DEPARTMENT OF HEALTH
HEALTH FACILITY SERVICES

JOSÉ ROMERO, MD, **FAAP, FIDSA, FPIDS, FAAAS**
SECRETARY OF HEALTH

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SECTION 1: AUTHORITY.

These Rules are promulgated under the authority of the Arkansas Orthotics, Prosthetics and Pedorthics Practice Act of 2007, Ark. Code Ann. § 17-107-101 et seq., as amended.

SECTION 2: PURPOSE

In addition to the purposes provided by the Act, these Rules are promulgated to protect the health and safety of individuals receiving orthotic, prosthetic, or pedorthic services in Arkansas.

SECTION 3: DEFINITIONS

- A. **Act** means the Arkansas Orthotics, Prosthetics and Pedorthics Practice Act of 2007, as may be amended, and codified at Ark. Code Ann. § 17-107-101 et seq.
- ~~B.~~ **Advisory Board** or **board** means the Arkansas Orthotics, Prosthetics and Pedorthics Advisory Board.
- ~~B.C.~~ Automatic Licensure means granting the occupational licensure without an individual having met occupational licensure requirements provided under the Arkansas Code or by other provisions in these Rules.
- ~~C.D.~~ **Board for Certification in Pedorthics** has merged and is now known as the American Board for Certification in Orthotics, Prosthetics, and Pedorthics, Inc.
- ~~D.E.~~ **Automatic Licensure** means granting the occupational licensure without an individual having met occupational licensure requirements provided by the rules of the occupational licensing entity.
- ~~E.F.~~ **Board of Health** means the Arkansas State Board of Health.
- ~~F.G.~~ **Department** means the Arkansas Department of Health.
- ~~G.H.~~ **Custom Fabricated and Fitted Devices.**
1. Custom fabricated and fitted device means an orthosis, prosthesis, or pedorthic device which is fabricated to original measurements or a mold for use by a patient in accordance with a prescription from a health care practitioner authorized by law to write such prescriptions and which requires substantial clinical and technical judgment in its design and fitting.
 2. Custom fitted device means a prefabricated orthosis, prosthesis, or pedorthic device sized or modified for use by the patient in accordance with a prescription from a health care practitioner authorized by law to write such prescriptions and which requires substantial clinical judgment and substantive alteration for appropriate use.
 3. Custom fabricated devices and custom fabricated and fitted devices must be dispensed by a licensed health care practitioner or by a person licensed under these rules in accordance with a prescription from a licensed health care practitioner.
- ~~H.I.~~ **Off-the-shelf device** means a prefabricated prosthesis or orthosis sized or modified for use by the patient in accordance with a prescription from a health care practitioner authorized by law to write such prescriptions and which does not require substantial clinical judgment and substantive alteration for appropriate use.
1. The sale of over-the-counter and off-the-shelf devices by non-licensed persons is not prohibited by these rules.

~~1.J.~~ **Orthosis** means an external device that is:

~~2.1.~~ Intended to restore physiological function or cosmesis to a patient; and

~~3.2.~~ Custom-designed, fabricated, assembled, fitted, or adjusted for the patient using the device prior to or concurrent with the delivery of the device to the patient.

~~4.3.~~ Orthosis does not include a cane, crutch, corset, dental appliance, elastic hose, elastic support, fabric support, generic arch support, low-temperature plastic splint, soft cervical collar, truss, or other similar device that:

- a) Is carried in stock and sold without therapeutic modification by a corset shop, department store, drug store, surgical supply facility, or similar retail entity; and
- b) Has no significant impact on the neuromuscular, musculoskeletal, or neuromusculoskeletal functions of the body.

K. **Orthotics** means the science and practice of providing or managing the provision of an orthosis based on clinical assessment, technical judgment, and an order from a healthcare practitioner authorized by law to write an order for an orthosis.

L. **Orthotic assistant** means an individual who is licensed under this chapter to assist an orthotist or an orthotist/prosthetist with patient care services and fabrication of orthoses or pedorthic devices under the supervision of an orthotist or an orthotist/prosthetist.

M. **Orthotic education program** means a course of instruction in orthotics:

1. Accredited by the Commission on Accreditation of Allied Health Education Programs; and
2. Approved by the Advisory Board.

N. **Orthotic resident** means an individual who has completed an orthotic education program and is continuing his or her clinical education in an orthotic residency program:

1. Accredited by the National Commission on Orthotic and Prosthetic Education; and
2. Approved by the Advisory Board.

- O. **Orthotic/prosthetic assistant** means an individual who is licensed under this chapter to assist both an orthotist and a prosthetist with patient care services and fabrication of prostheses, orthoses, or pedorthic devices under the supervision of an orthotist, an orthotist/prosthetist, or a prosthetist as appropriate.
- P. **Orthotist** means an individual who is licensed under this chapter to practice orthotics and pedorthics.
- Q. **Orthotist/prosthetist** means an individual who is licensed to practice orthotics, pedorthics, and prosthetics.
- R. **Over-the-Counter** means a prefabricated, mass-produced device that is prepackaged and requires no professional advice or judgment in either size selection or use, including fabric or elastic supports, corsets, generic arch supports and elastic hoses.
- S. **Pedorthic device** means therapeutic footwear, foot orthoses for use at the ankle or below, or footwear modified for therapeutic purposes as ordered by a licensed health care practitioner authorized by law to write an order for a pedorthic device.
“Pedorthic device” does not include:
1. Nontherapeutic accommodative inlays or nontherapeutic accommodative footwear regardless of method of manufacture;
 2. Shoes modified or made for nontherapeutic purposes;
 3. Unmodified shoes; or
 4. Prefabricated foot care products;
- T. **Pedorthic education program** means a course of instruction in pedorthics:
1. Accredited by the American Board for Certification in Orthotics, Prosthetics, and Pedorthics, Inc.; and
 2. Approved by the Advisory Board.
- U. **Pedorthics** means the science and practice of providing or managing the provision of a pedorthic device based on clinical assessment, technical judgment, and an order from a health care practitioner authorized by law to write an order for a pedorthic device;
- V. **Pedorthist** means an individual who is licensed under this chapter to practice pedorthics.
- W. **Prefabricated device** means a mass-produced device that:

1. Is prepackaged, carried in stock, and sold off the shelf or over the counter by a corset shop, department store, drug store, surgical supply facility, or similar retail entity; and
 2. Does not require clinical assessment, technical judgment, or therapeutic modification for appropriate use by the customer.
 3. “Prefabricated device” may include a cane, a crutch, a corset, an elastic hose, an elastic support, a fabric support, a generic arch support, a low-temperature plastic splint, a soft cervical collar, a truss, or other similar device.
- X. **Prosthesis** means an external device that is:
1. Intended to replace an absent external body part for the purpose of restoring physiological function or cosmesis to a patient; and
 2. Custom-designed, fabricated, assembled, fitted, or adjusted for the patient using the device prior to or concurrent with being delivered to the patient.
 3. “Prosthesis” does not include an artificial eye, an artificial ear, a dental appliance, a cosmetic device, such as artificial eyelashes or wigs, an artificial facial device, or other device that does not have a significant impact on the neuromuscular, musculoskeletal, or neuromusculoskeletal functions of the body.
- Y. **Prosthetic assistant** means an individual who is licensed under this chapter to assist a prosthetist or orthotist/prosthetist with patient care services and fabrication of prostheses under the supervision of a prosthetist or an orthotist/prosthetist.
- Z. **Prosthetic education program** means a course of instruction in prosthetics:
1. Accredited by the Commission on Accreditation of Allied Health Education Programs; and
 2. Approved by the Advisory Board.
- AA. **Prosthetic resident** means an individual who has completed a prosthetic education program and is continuing his or her clinical education in a prosthetic residency program:
1. Accredited by the National Commission on Orthotic and Prosthetic Education; and
 2. Approved by the Advisory Board.
- BB. **Prosthetics** means the science and practice of providing or managing the provision

of a prosthesis based on clinical assessment, technical judgment, and an order from a health care practitioner authorized to write an order for a prosthesis.

- CC. **Prosthetist** means an individual who is licensed under this chapter to practice prosthetics.
- DD. **Returning military veteran** means a former member of the United States Armed Forces who was discharged from active duty under circumstances other than dishonorable.
- EE. **Therapeutic Footwear.** The following actions with respect to therapeutic footwear and medical devices for the foot and ankle must be performed by a licensed health care practitioner who is acting within his or her lawful scope of practice:
1. Modifications or additions to the interior or exterior of footwear for therapeutic purposes, including but not limited to heel lifts, outflare heels, Thomas heels, full sole lifts, wedged soles, rocker bottom soles, metatarsal bars, metatarsal raises or inserts that have fillers as part of their construction, toe fillers, and partial foot fillers;
 2. Permanent or temporary attachment of an orthosis to the footwear;
 3. Addition or modification of a removable or attached therapeutic foot device inside the shoe which was fabricated based on a cast, impression, mold, scan, imprint or tracing;
 4. Creation of an image of a person's foot or ankle through the use of a mold, cast, scanning device, digital appliance, tracing, pressure sensitive device or other similar device; and
 - 5. Analysis, evaluation, measurement, assessment, or screening of a foot for the purpose of making a therapeutic recommendation.
- FF. **Uniformed Service Member** means an active or reserve component member of the United States Air Force, United States Army, United States Coast Guard, United States Marine Corps, United States Navy, United States Space Force, or National Guard; an active component member of the National Oceanic and Atmospheric Administration Commissioned Officer Corps; or an active or reserve component member of the United States Commissioned Corps of the Public Health Service.
- GG. **Uniformed Service Veteran** means a former member of the United States Uniformed services discharged under conditions other than dishonorable.

SECTION 4: RESTRICTIONS ON THE PRACTICE OF ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

- A. A licensed orthotist, prosthetist or pedorthist may provide care or services only if the care or services are provided pursuant to an order from a licensed health care practitioner authorized to issue such an order.
- B. A licensed orthotist, prosthetist, or pedorthist must provide services from a facility which has appropriate clinical and laboratory space and equipment to allow that licensee to provide orthotic, prosthetic, or pedorthic care.
- C. The scope of practice of a licensed orthotist, prosthetist, or pedorthist does not include the right to diagnose a medical problem or condition or the right to give medical advice as to the nature, cause, or treatment for the problem or condition for which the orthosis, prosthesis, or pedorthic device is being dispensed. However, the scope of practice of a licensed orthotist, prosthetist, or pedorthist does include the right to provide information or demonstration or training, regarding the proper use and care of the device and to make adjustments to the device as needed.
- D. Assistant orthotist/prosthetist must practice within a one (1) hour radius of the supervising practitioner.
- E. A licensed orthotist, prosthetist, or pedorthist may utilize one or more non-licensed persons to assist in the provision of services, but the non-licensed person shall be limited to the performance of minor repairs on devices which have been previously dispensed to a patient.

SECTION 5: NECESSITY OF LICENSURE

Upon promulgation of these Rules, no person shall practice orthotics, prosthetics, or pedorthics in Arkansas, or hold himself or herself out as being able to practice such professions, or dispense an orthosis, prosthesis, or pedorthic device, unless such person is licensed in Arkansas.

SECTION 6: QUALIFICATIONS FOR LICENSURE

- A. Orthotist – To qualify for a license to practice orthotics, a person shall:
1. Complete an orthotics education program which is accredited by the Commission on Accreditation of Allied Health Education Programs or its successor organization;
 2. Possess a baccalaureate degree or have successfully completed the number of semester hours equivalent to four (4) years of study at a four-year college or university;
 3. Successfully complete a clinical NCOPE residency in orthotics; and
 4. Successfully complete one of the following national certification examinations:
 - a) American Board for Certification in Orthotics, Prosthetics, and Pedorthics, Inc. (“ABCOPP”);
 - b) Board of Certification/Accreditation (“BOC”); or
 - c) equivalent as -determined by the Advisory Board.
- B. Prosthetist – To qualify for a license to practice prosthetics, a person shall:
1. Complete a prosthetics education program which is accredited by the Commission on Accreditation of Allied Health Education Programs or its successor organization;
 2. Possess a baccalaureate degree or have successfully completed the number of semester hours equivalent to four (4) years of study at a four-year college or university;
 3. Successfully complete a clinical NCOPE residency in prosthetics; and
 4. Successfully complete one of the following national certification examinations:
 - a) ABCOPP;
 - b) BOC; or
 - c) equivalent as determined by the Advisory Board.
- C. Pedorthist – To qualify for a license to practice pedorthics a person shall:
1. Possess a high school diploma or GED;

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2. Possess the Certified Pedorthist credential from either ABCOPP or BOC; and
 3. Successfully complete one of the following national certification examinations:
 - a) ABCOPP;
 - b) BOC; or
 - c) equivalent as determined by the Advisory Board.
- D. Assistant – An applicant for certification to practice as an orthotic assistant, prosthetic assistant, or orthotic/prosthetic assistant shall submit to the written evidence, verified by oath, that the applicant
1. Possesses a high school diploma or GED;
 - ~~2.~~ Has a minimum of three (3) years of experience in the field in which the person is seeking licensure as an assistant; ~~or and~~
 - ~~2.3.~~ Two (2) years experience in the field the of orthotics and/or prosthetics as an assistant and has a minimum of three (3) semester hours of higher education in the subject of human anatomy and physiology and medical terminology and
 - ~~4.~~ Has written documentation from a licensed prosthetist or a licensed orthotist that the applicant is qualified to perform as an assistant in the field in which the person is seeking licensure as the assistant; ~~or-~~
 - ~~5.~~ Has graduated from a master’s level orthotics, prosthetic, or orthotic/prosthetic educational program approved by the National Commission on Orthotic and Prosthetic Education and is in a residency program.
 - ~~3.6.~~ An orthotic assistant, an orthotic/prosthetic assistant, or a prosthetic assistant shall maintain certification until the completion of their residency program.
- E. Reciprocity. An applicant from another state or jurisdiction qualifies for a reciprocal license if:
1. The applicant holds a substantially similar license in another United States jurisdiction. A license from another state is substantially similar to an Arkansas license if the other state’s licensure qualifications require:
 - a) Orthotists: items (1-4) in paragraph (A) above;
 - b) Prosthetists: items (1-4) in paragraph (B) above;
 - c) Pedorthists: items (1-3) in paragraph (C) above; and

- d) Prosthetic assistants: items (1-3) in paragraph (D) above;
- 2. The applicant holds his or her license in good standing;
- 3. The applicant has not had a license revoked for:
 - a) An act of bad faith; or
 - b) A violation of law, rule, or ethics; and

4. The applicant does not hold a suspended or probationary license in a United States jurisdiction;
5. The applicant is competent in orthotics; and
6. The applicant submits a fully executed application, fee, and the following documentation:
 - a) Evidence of current and active licensure in that state.
 - b) Evidence that the other state's qualifications match those in (E)(1);
 - c) The names of all states in which the applicant is currently licensed or has been previously licensed;
 - d) Letters of good standing or other information from each state in which the applicant is currently or has ever been licensed showing that the applicant has not had his license revoked for:
 - 1) An act of bad faith; or
 - 2) A violation of law, rule, or ethics.

F. Military

1. This Rule applies to a:

- a) uniformed service member stationed in the State of Arkansas;
- b) uniformed service veteran who resides in or establishes residency in the State of Arkansas;
- c) The spouse of (1) or (2) including a:
 - 1) uniformed service member who is assigned a tour of duty that excludes the spouse from accompanying the uniformed service member and the spouse relocates to Arkansas;
 - 2) uniformed service member who is killed or succumb to his or her injuries or illness in the line of duty if the spouse establishes residency in Arkansas.

2. Automatic license may be granted to persons listed in Section F above if:

- a) The person is a holder in good standing of occupational licensure with similar scope of practice issued by another state, territory, or district of the United States and;
- b) The person pays the licensure fee in §17-107-204.

3. Credit toward initial licensure

- a) Relevant and applicable uniformed service education, training, or service-issued credential shall be accepted toward initial licensure for a uniformed service member or a uniformed service veteran who makes an application within one (1) year of his or her discharge from uniformed service.

4. Expiration Dates and Continuing Education

a) A license expiration date shall be extended for a deployed uniformed service member or spouse for one hundred eighty (180) days following the date of the uniformed service member's return from deployment.

b) A uniformed service member or spouse shall be exempt from continuing education requirements in Section 14 of these Rules for one hundred eighty (180) days following the date of the uniformed service member's return from deployment.

~~F.c) Any uniformed service member or spouse exercising the exemption shall provide evidence of completion of continuing education evidence of before renewal or grant of a subsequent license.~~

~~1. The following individuals are eligible for immediate licensing consideration based on military service or affiliation:~~

~~a) An active duty military service member stationed in the State of Arkansas;~~

~~b) A returning military veteran applying for licensure within one (1) year of his or her discharge from active duty; or~~

~~e) The spouse of a person under paragraphs (F)(1)(a) or (F)(1)(b) above.~~

G. Apprenticeship

1. An applicant shall receive a Pedorthist, Orthotist Assistant, Prosthetist Assistant, or Orthotist/Prosthetist Assistant license if the meet the criteria set forth below:

2. As used in this Rule, "apprenticeship" means a program that meets the federal guidelines set out in 29 C.F.R. Part 29, as existing on March 1, 2021, and approved by the United States Office of Apprenticeship as meeting the requirements of an apprenticeship.

a) An applicant for licensure under this Rule shall provide satisfactory proof of completion of apprenticeship via official documentation from the apprenticeship program. This documentation may be in the form of a certificate, diploma, or similar official credential, or letter on official program letterhead.

b) An applicant for licensure under this Rule shall provide satisfactory documentation that the completed apprenticeship program meets the federal guidelines set out in 29 C.F.R. Part 29, as existing on March 1, 2021, and that the program has been approved by the United States Office of Apprenticeship or the Arkansas Department of Workforce Services .

c) An applicant for licensure under this Rule shall meet all the other non-educational requirements for licensure under these Rules, including section 6.

d) If an applicant is denied a license for failing to meet the criteria in (a)-(c), the applicant shall be provided the reason for denial in writing

~~2. — Such applicant shall submit:~~

~~a) — Payment of the initial licensure fee;~~

~~b) — Evidence that the individual holds a substantially equivalent license in another state; and~~

~~e) — Evidence that the applicant:~~

~~1) — is qualified military under paragraph (F)(1)(a), (F)(1)(b)~~

~~2) — or (F)(1)(c) above; and~~

~~meets qualifications under paragraph (E).~~

~~3) —~~

G.H. Pre-Licensure Criminal Background Check

1. Pursuant to Act 990 of 2019, an individual may petition for a pre-licensure determination of whether the individual's criminal record will disqualify the individual from licensure and whether a waiver may be obtained.
2. The individual must obtain the pre-licensure criminal background check petition form from the Board.
3. The Board will respond with a decision in writing to a completed petition within a reasonable time.
4. The Board's response will state the reasons for the decision.
5. All decisions of the Board in response to the petition will be determined by the information provided by the individual.
6. Any and all decisions made by the Board in response to a pre-licensure criminal background check petition are not subject to appeal.
7. The Board will keep and maintain a copy of the petition and response, which will be reviewed during the formal application process.
8. Waiver Request
 - a) If an individual has been convicted of a crime listed in A.C.A. § 17-3-102(a), the Board may waive disqualification of a potential applicant or revocation of a license based on the conviction if a request for a waiver is made by:
 - 1) An affected applicant for a license; or
 - 2) An individual holding a license subject to revocation.
 - b) The Board may grant a waiver upon consideration of the following, without limitation:
 - 1) The age at which the offense was committed;
 - 2) The circumstances surrounding the offense;
 - 3) The length of time since the offense was committed;
 - 4) Subsequent work history since the offense was committed;

- 5) Employment references since the offense was committed;
 - 6) Character references since the offense was committed;
 - 7) Relevance of the offense to the occupational license; and
 - 8) Other evidence demonstrating that licensure of the applicant does not pose a threat to the health or safety of the public.
- c) A request for a waiver, if made by an applicant, must be in writing and accompany the completed application and fees. A request for waiver, if made by a licensee, must be in writing.
 - d) The Board will respond with a decision in writing and will state the reasons for the decision.
 - e) Appeals under this section will be subject to the Administrative Procedures Act §25-15-201 et seq.

I. Initial Licensure Fee Waiver

1. Pursuant to Act 725 of 2021, an applicant may receive a waiver of the initial licensure fee, if eligible. Eligible applicants are applicants who:
 - a) Are receiving assistance through the Arkansas, or current state of residence equivalent, Medicaid Program, the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants, and Children (SSNP), the Temporary Assistance for Needy Families Program (TEA), or the Lifeline Assistance Program (LAP);
 - b) Were approved for unemployment within the last twelve (12) months; or
 - c) Have an income that does not exceed two hundred percent (200%) of the federal poverty income guidelines.
2. Applicants shall provide documentation showing their receipt of benefits from the appropriate State Agency.
 - a) For Medicaid, SNAP, SSNP, TEA, or LAP, documentation from the Arkansas Department of Human Services (DHS), or current state of residence equivalent agency;
 - b) For unemployment benefits approval in the last twelve (12) months, the Arkansas Department of Workforce Services, or current state of residence equivalent agency; or

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c) For proof of income, copies of all United States Internal Revenue Service Forms indicating applicant's total personal income for the most recent tax year e.g., "W2," "1099," etc.

3. Applicants shall attest that the documentation provided under (b) is a true and correct copy and fraudulent or fraudulently obtained documentation shall be grounds for denial or revocation of license.

e)4.

SECTION 7: PROCEDURES FOR LICENSURE

- A. An applicant shall obtain a current application packet from the Advisory Board, respond truthfully and completely to every question or request for information contained in the application form, and submit it, along with all documents and fees required, to the Department. It is the intent of this Rule that all steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all materials be filed simultaneously.
- B. An applicant shall complete the application with the supporting documentation proscribed to the Arkansas Department of Health.
- C. An applicant shall disclose the fact of and the circumstances surrounding any of the following:
 - 1. Conviction of a crime; or plea of guilty, nolo contendere, or a finding of guilt of a felony listed under § 17-3-102 in any country, state, or municipality, except minor traffic violations;
 - 2. The denial of certification or licensure application by any other state or country, or the discipline of the certificate holder or licensee in any state or country;
 - 3. Loss, restriction, or voluntary surrender of certification or licensure privileges; and
 - 4. Any judgment or settlement in a civil suit in which the applicant was a party defendant, including malpractice, unethical conduct, breach of contract, or any other civil action remedy recognized by the country's or state's statutory, common law, or case law.
- D. When necessary, all required documents shall be translated into English and such translation, together with the original document, shall be certified as to authenticity by the issuing source. Both versions must be submitted simultaneously.
- E. Application review, approval, denial, and interview decisions shall be made by the Advisory Board.
- F. The requirement for licensure under these Rules shall not apply to:
 - A person who is an employee of any bureau, division, or agency of the federal government while in the discharge of the employee's official duties;
 - 1. A student enrolled in an educational program at a college or university which will enable that student to obtain a license to practice orthotics, prosthetics, or pedorthics upon graduation from the program;

RULES FOR ORTHOTIC, PROSTHETIC, AND PEDORTHIC PROVIDERS IN ARKANSAS 2021

2. A resident continuing such resident's clinical education in a residency accredited by the National Commission on Orthotic and Prosthetic Education; and
 3. A student in a qualified work experience program or internship in pedorthics.
- G. Licensee shall notify the Advisory Board within thirty (30) days of any:
1. Extension of the discipline of practice,
 2. Name and address changes.

SECTION 8: FEES

- A. License fee for initial licensure and renewal of licensure for the practice of orthotics, prosthetics, or pedorthics, shall be three hundred dollars (\$300) every two (2) years.
- B. License fee for initial licensure and renewal of licensure as an orthotic assistant, an orthotic/prosthetic assistant or a prosthetic assistant shall be one hundred dollars (\$100.00) every two (2) years.
- C. Late Renewal \$100.00.
- D. Reinstatement \$300.00.
- E. Reinstatement for Assistant \$100.00.
- F. All fees are non-refundable.

SECTION 9: RENEWAL OF LICENSURE

- A. Licenses are valid through December 31st of the expiration year.
- B. Renewal notifications will be sent by the Department Health Facility Services Section of the Arkansas Department of Health, to the last address on file with the Advisory Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.
- C. A license issued pursuant to these rules is renewable by the expiration date. To be eligible for renewal an individual must submit an application on or before the expiration date the following:
 - 1. A completed renewal application form; and
 - 2. The renewal fee as required.
- D. To be eligible for renewal an individual must have completed the continuing education requirements and must attest to such completion on the renewal application. An individual who fails to obtain continuing education hours will be ineligible for renewal. **A Uniformed Service Member may be granted additional time to complete. See Section 6.F.4.**
- E. Any licensee who fails to renew his or her license as provided in this section may be reinstated by the board on payment of the renewal fee plus a late fee unless waived by the Board.
- F. Reinstatement of a license that has expired as a result of failure to timely renew may be accomplished upon meeting the following conditions:
 - 1. Payment of all past due renewal fees;
 - 2. Payment of the late renewal fee; and
 - 3. Compliance with continuing education requirements.

SECTION 10: INACTIVATION & REACTIVATION

- A. Inactive status:
1. An individual licensed or certified under this chapter may place his or her license or certification on inactive status by notifying the Advisory Board in writing.
 2. The holder of an inactive license or certification is excused from payment of renewal fees and shall not practice in his or her area of licensure or certification in this state.
- B. A person who holds an active license may apply for inactive status in the following manner:
1. Obtain, complete, and submit to the Advisory Board an affidavit of retirement form; and
 2. Submit any supporting documentation which may be required to the Advisory Board's administrative office.
- C. A licensee whose certificate has been inactivated may re-enter active status by doing the following:
1. Submit an application and pay the renewal fee; and
 2. Submit verification of successful completion of continuing education hours for the period of inactivity.
- D. Any person who engages in practice while his or her license or certification is inactive shall be considered to be practicing without a license, which shall be grounds for discipline under § 17- 107-310.

SECTION 11: SUSPENSION AND REVOCATION AND DISCIPLINARY ACTION

Licenses are subject to denial, suspension, restriction and revocation as provided by the Act. See Ark. Code Ann. § 17-107-310.

SECTION 12: HEARINGS

Individuals may appeal a disciplinary action within ten (10) calendar days of notice of the action. A request for appeal shall be made in writing to the Advisory Board. Mail or deliver notice to: OPP Advisory Board 5800 West 10th Street Suite 400 72204. Hearings will be conducted according to the Arkansas Administrative Act, Ark. Code Ann § 25-15-201 et seq.

SECTION 13: ADVERTISING

Advertising shall not be false, fraudulent, deceptive, or misleading.

SECTION 14: CONTINUING EDUCATION

- A. Required hours:
1. Orthotists and prosthetists must biennially complete thirty (30) hours of continuing education in courses applicable to his/ her profession. A person who is licensed in more than one (1) profession under these rules shall biennially complete forty (40) hours of continuing education in courses applicable to the professions in which he/she is licensed.
 2. Pedorthotists must complete 22 hours biennially.
 3. Assistants must complete 15 hours if employed in one discipline or 20 hours if employed in both, biennially.
 4. At least six (6) hours of the continuing education each year shall be offered to licensees from providers in the state of Arkansas.
- B. Acceptable continuing education shall consist of courses provided, approved, or sponsored by:
1. The American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc.;
 2. The Board for Orthotist/Prosthetist Certification;
 3. The Pedorthic Footwear Association;
 4. Any other entity whose education programs have been approved by the Advisory Board.
- C. Each licensee must maintain proof of attendance and completion of all continuing education requirements. This documentation must be retained for a period of four (4) years from the end of the calendar year in which the continuing education was required. This documentation must be produced for inspection and verification, if requested in writing by the Advisory Board during its verification process.
- D. Each licensee must, within thirty (30) days of a request from the Advisory Board, provide evidence of continuing education activities. Certificates verifying the individual's attendance or documents from course providers are such evidence.
- E. Violations: Any person who falsely attests to attendance and completion of the required hours of continuing education may be subject to disciplinary action.
- F. Continuing Education completion timeframe may be extended for a Uniformed Service Member. (See Section 6.F.4.)

SECTION 15: SEVERABILITY

If any provision of these Rules or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of these Rules which can give effect without the invalid provisions or applications and to this end the provision hereto are declared severable.

Addendum A: Code of Ethics

1) PREAMBLE. The purpose of a code of ethics is to acknowledge a professions acceptance of the responsibility and trust conferred upon it by society and to recognize the internal obligations inherent in that trust. The following paragraphs delineate the standards governing the conduct of Orthotic, Prosthetic and Pedorthic Providers in their professional interactions with patients, colleagues, other health professionals and the general public. Realizing that no code can encompass all ethical responsibilities of the Orthotic, Prosthetic and Pedorthic Providers, this enumeration of obligations in the code of ethics is not comprehensive and does not constitute a denial of the existence of other obligations, equally imperative, and not specifically mentioned herein. This code of ethics shall be binding on all Orthotic, Prosthetic and Pedorthic Providers in Arkansas.

a. CANON 1

Orthotic, Prosthetic and Pedorthic Providers must uphold the dignity and honor of the profession, accept its disciplines and expose without hesitation illegal, unethical and incompetent conduct.

INTERPRETIVE STATEMENTS

Orthotic, Prosthetic and Pedorthic Providers are part of a collaborative effort to deliver proper health care to the patient under the Orthotic, Prosthetic and Pedorthic Provider's care.

The Orthotic, Prosthetic and Pedorthic Provider has a personal, as well as a professional, obligation to protect and safeguard the patients from illegal and/or unethical actions or the incompetence of any person.

The Orthotic, Prosthetic and Pedorthic Provider must maintain personal integrity and establish the appropriate means to fully protect his freedom of conscience for the delivery of services to the patient.

The Orthotic, Prosthetic and Pedorthic Provider who demonstrates incompetence or illegal conduct as it pertains to the Code of Ethics shall be exposed to the proper authorities.

b. CANON 2

Orthotic, Prosthetic and Pedorthic Providers shall respect the patient's rights and dignity and shall uphold the doctrine of confidentiality regarding privileged patient information.

INTERPRETIVE STATEMENTS

Information about the patient's clinical situation will be kept confidential, unless otherwise required by law, in order to protect the welfare of an individual or community.

Written guidelines or protocols of an institution or department may be instrumental in deciding the manner in which confidential information is handled for release.

c. CANON 3

Orthotic, Prosthetic and Pedorthic Providers shall provide only those services for which they are qualified. Orthotic, Prosthetic and Pedorthic Providers shall not misrepresent in any manner, either directly or indirectly, their skills, training, professional credentials, identity or services.

INTERPRETIVE STATEMENTS

Orthotic, Prosthetic and Pedorthic Providers will accept responsibility for the exercise of sound judgment in the delivery of services to the patient and shall be accountable for the quality of the service provided.

Orthotic, Prosthetic and Pedorthic Providers will provide accurate information about the profession, and services they provide, as well as the Orthotic, Prosthetic and Pedorthic Provider's own qualifications.

Orthotic, Prosthetic and Pedorthic Providers shall not engage in practices beyond their competence or training.

Orthotic, Prosthetic and Pedorthic Providers shall not delegate to a less qualified person any activity, which requires the unique skill, knowledge and judgment of a formally educated Orthotic, Prosthetic and Pedorthic Provider. Services rendered by supportive personnel will be under the supervision of a formally educated Orthotic, Prosthetic and Pedorthic Provider.

d. CANON 4

Orthotic, Prosthetic and Pedorthic Providers shall strive to improve their medical knowledge and skills on a continuing basis.

INTERPRETIVE STATEMENTS

Orthotic, Prosthetic and Pedorthic Providers shall support quality didactic and clinical education.

Professional conduct will be maintained toward Orthotic, Prosthetic and Pedorthic Providers peers, students, medical staff and patients.

Orthotic, Prosthetic and Pedorthic Providers shall participate in educational activities, either by individual study or through continuing education, which will enhance their basic knowledge in order to continue to provide quality health care to the patient.

e. CANON 5

Orthotic, Prosthetic and Pedorthic Providers shall maintain and promote high standards for their practice and include education, research and scientific presentations and/or publications.

f. CANON 6

An Orthotic, Prosthetic and Pedorthic Provider shall at all times hold the well-being of the patient to be paramount and shall not act in such a way as to bring the member's interests into conflict with the patient's interests. An Orthotic, Prosthetic and Pedorthic Provider shall deliver health care services without regard to race, color, creed, national origin, sex, age, religion, sexual preference or physical and/or mental condition.

INTERPRETIVE STATEMENTS

Orthotic, Prosthetic and Pedorthic Provider's practice and adherence to ethical principles shall take preference over business practices. Orthotic, Prosthetic and Pedorthic Providers shall place service before material gain.

Orthotic, Prosthetic and Pedorthic Providers shall fully disclose to clientele other business practices that may appear as conflict of interest to clientele and/or public. These may include but are not limited to:

- 1) Consultant for fee.
 - 2) Clinical instructor (support staff for industry).
 - 3) Sales representative.
 - 4) Technical advisor.
 - 5) Lecture for fee.
 - 6) Acceptance of fees, gratuities, funding from industry.
- 2) To this end, the State Board of Health holds that each Orthotic, Prosthetic and Pedorthic Provider has the following ethical and professional responsibilities:
- a. The Orthotic, Prosthetic and Pedorthic Provider will always attempt to fairly evaluate all competing products and services, with the principal selection criteria being that of regard for patient safety and well-being.
 - b. The Orthotic, Prosthetic and Pedorthic Provider shall always base any decision on product and service selection on clinical evaluations and documented clinical and scientific data.

In conclusion, it is the responsibility of the Orthotic, Prosthetic and Pedorthic Provider to make decisions regarding the selection of clinical products with the patient as the primary concern.

CERTIFICATION

This will certify that the foregoing revisions to the Rules and Regulations for Orthotic, Prosthetic and Pedorthic Providers in Arkansas were adopted by the State Board of Health of Arkansas at a regular session of said Board held in Little Rock, Arkansas, on the 1st day of August, 2020.



José Romero, M.D., FAAP, FIDSA, FPIDS, FAAAS
Secretary of Health
Arkansas Board of Health



Date

QUESTIONNAIRE
FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY _____
DIVISION _____
DIVISION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ FAX NO. _____ E-MAIL _____
NAME OF PRESENTER AT COMMITTEE MEETING _____
PRESENTER E-MAIL _____

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. 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?

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

- 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.”

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

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

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).

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.)

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 _____
DIVISION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ FAX NO. _____ 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

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 _____

General Revenue _____

Federal Funds _____

Federal Funds _____

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total _____

Total _____

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

Current Fiscal Year

Next Fiscal Year

General Revenue _____

General Revenue _____

Federal Funds _____

Federal Funds _____

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total _____

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

\$ _____

\$ _____

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.