

EXHIBIT E

DEPARTMENT OF HEALTH, HEALTH SYSTEMS LICENSING AND REGULATION, COSMETOLOGY

SUBJECT: Pertaining to Cosmetology in Arkansas

DESCRIPTION: This establishes minimum standards for postsecondary education in schools of cosmetology in Arkansas. The following changes are proposed:

1. Change the definition of postsecondary school (Rule 2.20) from the previous version so that only students with a high school diploma or its equivalent can be enrolled.
2. Add language to Rule 3.2 requiring that schools wishing to enroll both secondary and postsecondary students obtain both licenses and have a process in place to ensure that only students with a high school diploma receive Title IV funding.
3. Add the word “appropriate” to Rule 5.1(a)(5) to make it clear that the correct license must be held to operate a school or salon.
4. Add the following requirements to Rules 7.3 and 7.5 for applications for postsecondary schools of cosmetology (public and private):
 - Proof that each student enrolled has a high school diploma or its equivalent.
 - Proof that the school adopts and discloses to the students the complaint process outlined in Rule 11.
5. Add a section on the educational requirements for enrollment in a postsecondary school to Rule 7.11.

PUBLIC COMMENT: This rule was implemented under the emergency provisions of the Administrative Procedure Act. The effective date for the emergency rule was June 1, 2015. The emergency rule expires September 29, 2015.

This rule is also being promulgated as a permanent rule. A public hearing was held on June 22, 2015. The public comment period for the permanent promulgation expired June 22, 2015. The Department received no public comments. The effective date for the final, permanent rule is September 30, 2015.

Isaac Linam, an attorney with the Bureau of Legislative Research, asked the following question:

QUESTION: Acts 2013, No. 1198, amended Ark. Code Ann. § 17-26-205 to add an additional subsection (d). Subsection (d)(2) of that code section states that, in the Department’s rules setting a standard educational curriculum for schools of cosmetology, the “standard educational curriculum shall distinguish between secondary and postsecondary educational requirements for the schools of cosmetology”. However, in your rules, particularly sections 7.13-7.16, I don’t see any distinguishing “between secondary and postsecondary educational requirements”. Rather, they seemed to be lumped together. Can you explain?

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RESPONSE: Our rules distinguish between secondary and post-secondary requirements for enrollment. Specifically, a post-secondary school's enrollment cannot be made up of more than 50% of students who do not have a high school diploma or equivalent. *See* Rule 2.20 and Rule 7.5(A)(11). This requirement stems from the Federal Post-Secondary requirement. It is our position that there should not be any curriculum distinctions between post-secondary and secondary schools, because all licensed cosmetologists in the state should meet the same minimum requirements and therefore have the same curriculum.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: This rule implements Acts 2013, No. 1198. Ark. Code Ann. § 17-26-205 requires the Department to “promulgate rules setting a standard educational curriculum for schools of cosmetology. Ark. Code Ann. § 17-26-205 further provides that the curriculum “shall distinguish between secondary and postsecondary educational requirements”.

Ark. Code Ann. § 17-26-209 provides that the Department “shall promulgate a fee schedule by rule”.

34 CFR pt. 600 establishes the federal regulatory requirements institutions of higher education must meet for eligibility for financial assistance under the Higher Education Act of 1965. 34 CFR § 600.9 provides the requirements an institution must fulfill to be considered legally authorized by the state.

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Arkansas Department of Health
DIVISION Health Systems Licensing and Regulation/Cosmetology
DIVISION DIRECTOR Donnie Smith
CONTACT PERSON Kelli Kersey
ADDRESS 4815 West Markham, Little Rock, AR 72205
PHONE NO. 501-682-2171 FAX NO. 501-682-5640 E-MAIL kelli.kersey@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Robert Brech
PRESENTER E-MAIL robert.brech@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

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

1. What is the short title of this rule? Rules and Regulations Pertaining to Cosmetology in Arkansas
2. What is the subject of the proposed rule? To establish minimum standards for postsecondary education in Schools of Cosmetology 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. 34 C.F.R. 600.9
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? June 1, 2015 (federal deadline of July 1, 2015)

When does the emergency rule expire? September 29, 2015

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes No

5. Is this a new rule? Yes No
If yes, please provide a brief summary explaining the regulation. _____

Does this repeal an existing rule? Yes No
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes No
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Act 1198 of 2013 (A.C.A. 17-26-205)

7. What is the purpose of this proposed rule? Why is it necessary? To establish minimum standards for postsecondary education in Schools of Cosmetology in Arkansas.

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).
<http://www.healthy.arkansas.gov/programsServices/hsLicensingRegulation/Cosmetology/Pages/default.aspx>

9. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: June 22, 2015

Time: 9:00 a.m.

Place: Arkansas Department of Health, Room 2512

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

June 22, 2015 at 4:30 p.m.

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

Emergency: September 30, 2015

12. Do you expect this rule to be controversial? Yes No

If yes, please explain. _____

13. 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.

School Owners, For

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Health
DIVISION Health Systems Licensing and Regulation
PERSON COMPLETING THIS STATEMENT Kelli Kersey
TELEPHONE NO. 501-682-2171 **FAX NO.** 501-682-5640 **EMAIL:** kelli.kersey@arkansas.gov

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

SHORT TITLE OF THIS RULE Rules and Regulations Pertaining to Cosmetology 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

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>

Next Fiscal Year

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>

Total 0

Total 0

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

Current Fiscal Year

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

Total 0

Next Fiscal Year

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

Total 0

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

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.



Arkansas Department of Health

4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000

Governor Asa Hutchinson

Nathaniel Smith, MD, MPH, Director and State Health Officer

SUMMARY OF AMENDMENTS TO THE RULES AND REGULATIONS FOR COSMETOLOGY IN ARKANSAS

The Rules and Regulations for Cosmetology in Arkansas are being changed to:

1. Change the definition of postsecondary school (Rule 2.20) from the previous version so that only students with a high school diploma or its equivalent can be enrolled.
2. Add language to Rule 3.2 requiring that schools wishing to enroll both secondary and postsecondary students obtain both licenses and have a process in place to ensure that only students with a high school diploma receive Title IV funding.
3. Add the word “appropriate” to Rule 5.1(a)(5) to make it clear that the correct license must be held to operate a school or salon.
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