

**DEPARTMENT OF HEALTH, CENTER FOR HEALTH PROTECTION**

**SUBJECT: Nursing Home Resident and Employee Immunization Act**

**DESCRIPTION:** This revises the Rules and Regulations Pertaining to Immunization Reporting. This concerns reporting information to the statewide immunization registry under Ark. Code Ann §§ 20-15-1301 – 1305.

Currently, ADH supplies about 47,000 doses of flu vaccine and 3,000 doses of pneumococcal vaccine to about 250 nursing homes each year. The department anticipates that nursing homes will now be requesting about 3,000 doses of PCV13 for residents as this is a new ACIP recommendation and which will further increase costs.

Other changes include:

1. Updating the formatting to meet current requirements.
2. Updating exemptions to reflect “philosophical” vs. “religious.”
3. Aligning exemption options with Ark. Code Ann. § 20-10-1305 which provides that employees only have the option for a medical exemption.
4. Aligning the data requirements for the Nursing Home Log to capture all the federal documentation requirements for vaccines administered.
5. Adding the federal requirement to provide Vaccine Information Statements explaining risks and benefits before vaccine administration.

**PUBLIC COMMENT:** A public hearing was held on September 3, 2015. The Public Comment period expired on September 3, 2015. The Department did not receive any public comments.

The proposed effective date is February 10, 2016.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** Nursing homes will purchase influenza and pneumococcal vaccines for residents and employees who have a third-party pay source. The impact to nursing homes will depend on what each facility has contracted to receive from third-party payors and the demographics of nursing home clientele and employees. The cost savings to ADH based on current vaccine pricing is \$1,347,790 and that would be divided across the 250 nursing homes currently receiving vaccine from ADH. Nursing homes can request influenza and pneumococcal vaccines from the Department of Health for residents and employees when there is no other pay source for the vaccine.

Under this new law, state funding will no longer be required to purchase vaccine for nursing home residents and employees when a third-party pay source is available.

Currently ADH supplies about 47,000 doses of flu vaccine and 3,000 doses of pneumococcal vaccine to about 250 nursing homes each year. The department anticipates that nursing homes will now be requesting about 3,000 doses of PCV13 for residents as this is a new ACIP recommendation and which will further increase costs. Based on current pricing of state-purchased vaccine, implementation of this new law would be a cost savings of \$1,347,790 per year for ADH.

**LEGAL AUTHORIZATION:**

Ark. Code Ann. § 20-10-1304 (a)(1)(A) authorizes the Department to promulgate rules and regulations to provide for the immunization against the influenza and pneumococcal disease.



## **Arkansas Department of Health**

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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 Rules and Regulations for Nursing Home Resident and Employee Immunization Law**

It is proposed to revise the Rules and Regulations Pertaining to Immunization Reporting pursuant to the procedures of the Administrative Procedures Act process, as amended, by the authority of Act 434 of 1967 as amended. These requirements apply to reporting information to the statewide immunization registry under the authority of Ark. Code. Ann §§20-15-1301 – 1305.

Currently, ADH supplies about 47,000 doses of flu vaccine and 3,000 doses of pneumococcal vaccine to about 250 nursing homes each year. It is anticipated that nursing homes will now be requesting about 3,000 doses of PCV13 for residents as this is a new ACIP recommendation and which will further increase costs. Based on current pricing of state-purchased vaccine, implementation of this new law would be a cost savings of \$1,347,790 per year for ADH.

Other changes to the Rules and Regulations include:

1. Updating the formatting to meet current requirements.
2. Updating exemptions to reflect "philosophical" vs. "religious".
3. Aligning exemption options with A.C.A. §20-10-1305 which provides that employees only have the option for a medical exemption.
4. Aligning the data requirements for the Nursing Home Log to capture all the federal documentation requirements for vaccines administered.
5. Adding the federal requirement to provide Vaccine Information Statements explaining risks and benefits before vaccine administration.

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

DEPARTMENT/AGENCY Arkansas Department of Health  
Center for Health Protection/Immunization and Communicable Disease  
DIVISION Section  
DIVISION DIRECTOR Renee Mallory  
CONTACT PERSON Hilda Dupwe  
ADDRESS 4815 West Markham, MS48, Little Rock, AR 72205  
PHONE NO. 501-661-2493 FAX NO. 501-661-2300 E-MAIL Hilda.Dupwe@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, 5<sup>th</sup> Floor**  
**Little Rock, AR 72201**

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1. What is the short title of this rule? Nursing Home Resident and Employee Immunization Act

2. What is the subject of the proposed rule? Immunization requirements for nursing residents and employees

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 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 1524 of 1999; §A.C.A. 20-10-1304(d)(1)

7. What is the purpose of this proposed rule? Why is it necessary? To remove the requirement that the Arkansas Department of Health pay for vaccine when there is a third-party payor available.

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: September 3, 2015

Time: 10:00 a.m.

Place: Arkansas Department of Health, Room 2508

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

8:00 a.m. on September 3, 2015

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

February 10, 2016

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

If yes, please explain.

See attached Interim Study Proposal 2015-047 calling for a study on immunization requirements for adult employees of a private hospital, medical facility, or private employer and to make recommendations for future legislation.

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.

Office of Long-Term Care

Arkansas Health Care Association

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**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas Department of Health  
**DIVISION** Immunization and Communicable Disease Section  
**PERSON COMPLETING THIS STATEMENT** Hilda Dupwe  
**TELEPHONE NO.** 501-661-2493 **FAX NO.** 501-661-2300 **EMAIL:** Hilda.Dupwe@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** Nursing Home Resident and Employee Immunization Law

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 \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
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**

\$ 0 \_\_\_\_\_

\$ 0 \_\_\_\_\_

Nursing Homes will purchase influenza and pneumococcal vaccines for residents and employees who have a third-party pay source. The impact to nursing homes will depend on what each facility has contracted to receive from third-party payors and the demographics of nursing home clientele and employees. The cost savings to ADH based on current vaccine pricing is \$1,347,790 and that would be divided across the 250 nursing homes currently receiving vaccine from ADH.

Nursing Homes can request influenza and pneumococcal vaccines from the Arkansas Department of Health for residents and employees when there is no other pay source for the vaccine.

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**

\$ 0 \_\_\_\_\_

\$ 0 \_\_\_\_\_

Under this new law, state funding will no longer be required to purchase vaccine for nursing home residents and employees when a third-party pay source is available. Currently, ADH supplies about 47,000 doses of flu vaccine and 3,000 doses of pneumococcal vaccine to about 250 nursing homes each year. It is anticipated that nursing homes will now be requesting about 3,000 doses of PCV13 for residents as this is a new ACIP recommendation and which will further increase costs. Based on current pricing of state-purchased vaccine, implementation of this new law would be a cost savings of \$1,347,790 per year for ADH.

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.