

DEPARTMENT OF HEALTH

SUBJECT: Rules and Regulations for Cosmetology in Arkansas

DESCRIPTION: Revision to the Rules and Regulations for Cosmetology in Arkansas include updates to antiquated language and reformatting to make the rules easier to read.

The revision also includes new language regarding inspections to allow timing flexibility by the agency and also addresses processes for those with multiple repeat violations.

The revision includes new language for change of ownership and name change processes, standards for cleaning, disinfecting and sterilization, course instruction and content standards, requirement to protect the privacy of client medical information received by licensees prior to performing a treatment, scope of treatment allowed by licensed cosmetologist and aesthetician, and additional clarifications regarding physical facilities and equipment.

PUBLIC COMMENT: Public hearings were held on September 14, 2015 and December 10, 2015. The public comment period expired on December 10, 2015. The Department received the following comments:

COMMENT: Gabriel Black;

I have reviewed the revisions posted online and would like to comment on the revisions concerning reciprocity. It has become increasingly difficult to find licensed cosmetologists in our area. The cost and length of time of the reciprocity process has all but completely stagnated our results. The majority of the delays are in the time of release and transfer of records from the Texas Cosmetology Board with the additional process of scheduling and completing the Arkansas Law Examination. Together these make the process into not only week-long but in some cases month-long endeavors for our applicants and are usually enough to deter them from seeking employment with our salon. I am writing to you in hopes to make you aware of the seriousness of our situation and how we believe that some change, adjustment, or simplification of the rules and regulations could not only be beneficial but a necessity to our survival and the development of cosmetology in this part of the state. Considering our unique position would it be possible to include a streamlining of the process or perhaps a bi-state consideration to give some relief to the process of attracting cosmetologist to attain an Arkansas Cosmetology License in Texarkana, AR? Please give us any consideration that you can it would be greatly appreciated. Are there any steps or requirements on my part that I can do to help with this also?

RESPONSE: The reciprocity requirements are set forth in the Cosmetology Act, Ark. Code Ann. § 17-26-315. To change these requirements in the Regulations, there must be a change in the Statute first.

COMMENT: Tracy Akard;

After reviewing the rules and regs, I have a concern: Pg 10 Rule 4 section A; The removal of the sentence. Certified hours mean that tuition has either been paid in full or the person has signed a promissory note that is acceptable to the school. I understand the sentence prior to that states that hours must be certified to be eligible for the examination. However, I was in a court case where a student owed me \$6000 at 1200 hours. I have hours must be paid to certified hours in my contract, in my catalog, etc. BUT the judge told us after looking up the rules and regs from Arkansas state board of health; we did apply the law in implementing that regulations at our school. It is very important. I have enclosed a copy of this case to show the validity of what I as saying. I am going to stand firm on requesting we don't strike that language!!

RESPONSE: Based on the comments received, this language is being added back into the Rule. This is not a substantive change, as it only clarifies what a "certified hour" is under the Regulations.

COMMENT: Carla Jones:

I received an email from Tracy Akard concerning the striking of the language of RULE NO. 4 EXAMINATIONS. In the Rule (4.1) A. It states that: Certified hours mean that tuition has either been paid in full or the person has signed a promissory note that is acceptable to the school. Tracy along with other school owners are concerned because this language better serves them as a school owner when students do not or will not pay tuition owed or sign a promissory note and they end up in court. My question is what if anything, can the school owners do in order to have this language remain in the rules and regulations?

RESPONSE: Same as Response to Tracy Akard.

COMMENT: Kevin Vickners:

1. Medical Rules and Regulation 22
2. Change Rule 11 pertaining to aestheticians to be more directly related to the same rules as Arkansas medical board- if you are an aesthetician and you plan on touching a laser on someone skin, keep in mind you are practicing medicine you need a doctors order first, you need to work for a physician, you cannot do it on your own or there will be consequence's.
3. No fine listed for using lasers, a fine should be added to the scheduled fee.
4. Add language to Rule 1.3 stating inspections can be made anywhere aestheticians are employed.

RESPONSE:

1. Does not apply to Rule Revision, as this regards the Rules of the State Medical Board
2. The Rules and Regulations for Cosmetology are rules and regulations of the State Board of Health. Pursuant to Ark. Code Ann. § 20-7-109, the Board of Health is prohibited from regulated the practice of medicine. We cannot regulate aestheticians working under physicians.
3. There are statutory fines set forth for the violation of any rule and regulation, they are up to \$1000 per violation per day. These provisions can be relied on if there are no more specific fines listed in the regulation.
4. There are already provisions requiring aestheticians who are not working under an exemption provision to work in a licensed salon. These salons must be inspected. However, as stated above, we cannot regulate the practice of medicine inside a physician's office or medical spa.

COMMENT: Drusella Johnson:

I would like something implemented in the manicurist about preforming aesthetic work.

RESPONSE: The Rules and Statute already prevent a manicurist from working outside the scope of his or her license, which would include performing aesthetics work.

COMMENT: Jamie Hopson and Melissa Horton:

1. Stronger Laws for medical spas -Strengthen the aesthetic industry both with the knowledge and reputation to where people aren't doing things they are not supposed to be doing, help with "medi-spas" using a doctors license when a doctor is not on the premises, help with accreditation process like LPN and RN or nurse practitioner, some sort of accreditation for years of service other than someone right out of school.
2. Levels of Accreditation(Medical /Master Esthetician)
3. No mandatory CEU in the aesthetic industry, nowhere to go train in Arkansas.
4. Hours for Cosmo and esthetics- 100 hours in esthetic training for cosmetology program is not adequate to be properly treating clients. And the Esthetics curriculum 150 hours of skincare is insufficient.
5. Does permanent cosmetic go under Cosmetology, is it kind of like the medical rules and regulations.

RESPONSE:

1. Please see responses above.

2. This would require a statutory change to create a new licensure level.
3. This would require a statutory change to make CEU's a requirement for renewal.
4. At this time, the curriculum is felt to be adequate and consistent with national standards. However, we are constantly reevaluating the curriculum and will take these comments under advisement.
5. Permanent cosmetics are regulated with Body Art.

COMMENT: Debbie McClure:

1. Why is it 50% for Post-secondary Schools of Cosmetology
2. On the inspector why is the 5 years' experience being taken out
3. Rule 5 (4) Does valid license mean they have to have an instructor license.

RESPONSE:

1. This is a typo. The previous rule change defined a post-secondary school as a school that "offers a postsecondary curriculum approved by the Department of Health and whose enrollment is made up of only students that have a high school diploma or the equivalent." The language will be changed to reflect that rule revision.
2. This was discussed during Rule Committee meetings, and was omitted at industry request.
3. This question does not apply to Rule Revision. Please contact the Cosmetology Section for clarification of any Rules and Regulations.

COMMENT: Eugene Phillips:

I wanted to know but lifetime license and 50 dollar fee?

RESPONSE: This question does not apply to rule revision. Please contact the Cosmetology Section for clarification of any Rules and Regulations.

Proposed effective date is March 1, 2016.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION:

Arkansas Code Annotated § 17-26-205 authorizes the Department of Health to implement the State Board of Health's rules in governing the practice of cosmetology. Ark. Code Ann. § 20-7-109 authorizes the State Board of Health to make all necessary rules and regulations regarding the protection of the public health and safety.

Ark. Code. Ann. § 17-26-209 authorizes the State Board of Health to create a fee schedule and collect fees.

**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
DIVISION DIRECTOR Connie Melton
CONTACT PERSON Kelli Kersey
ADDRESS 4815 West Markham, Slot 8, 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 Berch
PRESENTER E-MAIL robert.berch@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 for Cosmetology in Arkansas
2. What is the subject of the proposed rule? Complete Rule Revision updating the Rules to industry practice.
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. Ark. Code Ann. §17-26-101 et seq.

7. What is the purpose of this proposed rule? Why is it necessary? Better clarification and understanding of existing Rules and Regulations; update Rules to industry standards and practices.

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 "Rules and Regs" link; www.sos.arkansas.gov "Administrative Rules" link

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

If yes, please complete the following:

Date: December 10, 2015

Time: 10:00 a.m.

Arkansas Department of Health, 4815

W. Markham St., Room 2512, Little

Place: Rock, AR 72205

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

December 10, 2015

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

March 1, 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.

Practitioners, Salon Owner and School Owners affected by the revision-in favor

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Health
DIVISION Health Systems Licesning 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 for 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 _____
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

\$ _____

\$ _____

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.