

**ADMINISTRATIVE RULES SUBCOMMITTEE  
OF THE  
ARKANSAS LEGISLATIVE COUNCIL**

**Wednesday, June 17, 2020**

**8:00 a.m.**

**Room A, MAC**

**Little Rock, Arkansas**

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- A. Call to Order.**
- B. Reports of the Executive Subcommittee.**
- C. Reports on Administrative Directives Pursuant to Act 1258 of 2015, for the quarter ending March 31, 2020.**
  - 1. Department of Corrections (Mr. Solomon Graves)**
  - 2. Parole Board (Ms. Brooke Cummings)**
- D. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309.**
  - 1. DEPARTMENT OF AGRICULTURE, ARKANSAS LIVESTOCK AND POULTRY COMMISSION (Mr. Patrick Fisk, Mr. Wade Hodge)**
    - a. SUBJECT: Garbage Feeding**

**DESCRIPTION:** The Arkansas Department of Agriculture’s Livestock and Poultry Commission proposes changes to its Garbage Feeding (Swine) Rule.

The Commission’s current rule authorizes the Commission to issue a permit for the feeding of garbage to swine. The proposed amendment will ban the feeding of garbage, or any animal or vegetable wastes resulting from handling, preparation, cooking and consumption of foods, including parts of animal carcasses, to swine. The Commission met December 12, 2019, and approved the proposed changes, which include:

- Prohibiting the feeding of garbage to swine and allowing swine to have access to garbage and garbage dumps;
- Authorizing the State Veterinarian to quarantine swine that have been fed garbage; and
- Allowing persons to feed their own household garbage to swine that are pets.

Feeding garbage to swine is a direct path for introducing diseases to swine. The spread of African Swine Fever (ASFV) has been directly linked to garbage feeding. ASFV is a serious, highly contagious, viral disease of swine that can spread very rapidly in swine populations by direct or indirect contact. It can persist for long periods in uncooked swine products, facilitating its introduction into new areas. This virus can also become endemic in feral hogs, and transmission cycles between these animals and ticks can complicate or even prevent eradication. ASFV isolates vary in virulence from highly pathogenic strains that cause near 100% mortality to low-virulence isolates that can be difficult to diagnose. There is no vaccine or treatment.

Industry has prohibited garbage feeding in commercial operations, and twenty-two (22) states have banned the practice of private owners feeding garbage to swine. No garbage feeding permits have been issued by the Commission to swine operations in several years.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on April 18, 2020. The Commission received no public comments.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 2-33-107(c), the Arkansas Livestock and Poultry Commission shall have the authority to make, modify, and enforce such rules and orders, not inconsistent with law, as it shall from time to time deem necessary to effectively carry out the functions performable by it.

2. **DEPARTMENT OF AGRICULTURE, STATE PLANT BOARD (Mr. Wade Hodge, items a, b; Mr. Mark Stoll, item b)**

a. **SUBJECT: Reciprocity and Temporary Licensure Rule**

**DESCRIPTION:** The State Plant Board proposes its Rules on Reciprocal, Temporary, and Provisional Licensure. The purpose of the rules is to comply with laws passed during the 2019 legislative session.

The Board met on December 3, 2019, to consider this new rule in response to laws passed during the 2019 legislative session that require rules for reciprocity and temporary licensure. Specifically, Act 1011 of 2019

requires occupational licensing entities to promulgate rules providing for reciprocity and temporary licensure. The rules are being proposed to cover multiple occupational licenses issued by the Board.

The new rules are based on model rules drafted by the Attorney General's Office. The reciprocity and temporary licensure provisions allow individuals holding similar licenses in other states to practice in this state while their credentials are being vetted to see if they hold a substantially equivalent occupational license in good standing in another state, territory, or district of the United States. The Board issues multiple occupational licenses. Proposing multiple rules, one for each of the occupational licenses issued by the Board, could be cumbersome, time-consuming, and inefficient. Instead, the Board is proposing rules in one document that will contain the reciprocity and temporary licensure provisions for each occupational license it issues.

Act 820 of 2019 provides for occupational licensing entities to promulgate a rule regarding portability of licenses for military members and spouses. However, the Act also states that if no rule is adopted under the Act, automatic licensure will be provided for military members and spouses covered by the Act. The Board will proceed under the automatic licensure provisions of Act 820. Therefore, these proposed rules do not specifically address military members and spouses.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on April 25, 2020. The Board received no public comments.

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

**Section VI** – Was it the Board's intention, with respect to Pest Control Agents, to omit sections regarding "Temporary and Provisional License" and "License for person from a jurisdiction that does not have license occupation" as they were included for each of the other occupational licenses in the rules? **RESPONSE:** I believe the pest control agents were omitted because they are really not licensed. They are registered to work under a licensed company and work under the supervision of a licensed applicator. They cannot stand alone.

The proposed effective date is August 1, 2020.

**FINANCIAL IMPACT:** The agency states that the proposed rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 17-1-108(c), an occupational licensing entity shall by rule adopt the least restrictive requirements for an occupational license for an individual who demonstrates that he or she holds an occupational license that is substantially similar to practice in the field of his or her occupation or profession in another state, territory, or district of the United States; holds his or her occupational license in good standing; has not had his or her occupational license revoked for an act of bad faith or a violation of law, rule, or ethics; is not holding a suspended or probationary occupational license in any state, territory, or district of the United States; is sufficiently competent in his or her field; and pays any occupational license fee required by law or rule. An occupational licensing entity shall comply with the requirements under Ark. Code Ann. § 17-1-108(c) by adopting the least restrictive rule that allows for reciprocity or licensure by endorsement. *See* Ark. Code Ann. § 17-1-108(d)(1)(A). The proposed rules implement Act 426 of 2019, sponsored by Representative Bruce Cozart, which created the Red Tape Reduction Expedited Temporary and Provisional Licensure Act and authorized occupational licensing entities to grant expedited temporary and provisional licensing for certain individuals, and Act 1011 of 2019, sponsored by Representative Jim Dotson, which amended the law concerning licensing, registration, and certification for certain professions and established a system of endorsement, recognition, and reciprocity for licensing.

b. **SUBJECT: Produce Safety Rule and Enforcement Response Rule**

**DESCRIPTION:** The purpose of the Arkansas State Plant Board’s proposed Produce Safety rule (“Rule”) is to adopt U.S. Food and Drug Administration (“FDA”) standards for the safe growing, harvesting, packing, and holding of fruits and vegetables grown for human consumption. The Department of Agriculture also requests approval of the accompanying Produce Safety Enforcement Response Rule.

Pursuant to the FDA Food Safety Modernization Act (“Act”), the FDA has delegated enforcement of the Produce Safety Rule to states that have implemented state programs.

The Rule incorporates FDA minimum standards for the safe growing, harvesting, packing, and holding of fruits and vegetables grown for human consumption. The FDA Produce Safety Rule went into effect on January 26, 2016. The FDA has delegated program enforcement to the Department.

Historically, Department programs have focused efforts on produce quality as opposed to safety. This has been accomplished through inspections, done on a fee-for-service basis, at state shipping points. In

preparation for its expanded role, the Department has conducted nine initial inspections and multiple farm inventories to prepare for enforcement of the Rule. None of the inspections or inventories will result in enforcement action.

The Rule:

- Incorporates the Federal Produce Safety Rule.
- Provides an enforcement mechanism for the Department.
- Provides clear direction for which commodities are covered and which are exempt.

The Rule will apply to all farms with food sales averaging more than \$25,000 a year over a three-year period. It does not apply to farmers of commodities rarely consumed raw, certain food grains, and produce grown for the farmer's personal consumption. The Rule provides an exemption for produce that receives commercial processing that adequately reduces the presence of microorganisms that are a public health concern and allows modified requirements for eligible farms (farms with sales less than \$500,000 to qualified single food consumers and food retail establishments that are either in-state or within 275 miles of the farm).

The Rule expands the Department's role as the primary regulatory for produce safety beyond mere inspection and detection of diseases, insect pests, and noxious weeds to the enforcement of minimum standards for, among other things, the safe growing, harvesting, and packaging of produce (*i.e.*, prevention). Further, the Rule will expand the Department's authority to include regulation of the use, treatment, and testing of agricultural water to ensure that all agricultural water is safe and of adequate sanitary quality for its intended use.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on April 25, 2020. The Board received no public comments.

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

(1) Produce Safety, Incorporation by Reference – Typically, when incorporating by reference, an agency will specify the date or version of the regulations being incorporated so as to avoid any potential delegation issues or APA issues in the changing of rules without going through the promulgation process. Is the Board comfortable with simply referencing the “most current revision”? **RESPONSE:** This is an area preempted by federal law. State rules can only be exempt from the federal law, or portions thereof, if a variance is granted by the federal government. Therefore, if our rule conflicts with the Federal Food, Drug, and Cosmetic

Act as amended without an approved waiver then the State is in violation of federal law. The primary reason for this rule being implemented is to establish state-specific penalties for violation of federal rules. I've consulted with the Attorney General's Office and have been told they have no problem with it and that other agencies have similar rules.

(2) Produce Safety, Definitions, Covered Farm –

(a) Should there be a designation of the second paragraph as “(b),” as referenced in the first paragraph? **RESPONSE:** Clarification has been made to eliminate a reference to “paragraph b.”

(b) Should the reference for the definition of “produce” be to the definition contained in the rules since it is contained therein, rather than to the federal regulation? **RESPONSE:** Clarification has been made to eliminate the confusion.

(c) What does the term “part” refer to for purposes of the rule? **RESPONSE:** Clarification has been made to change the language to Part 112, Subpart R.

(3) Enforcement Response Rules, II.F. – Should the definition for “Covered produce farm” mirror that of “Covered farm” in the Produce Safety Rule? **RESPONSE:** The enforcement response rules state: “Any farm engaged in the growing, harvesting, packing, or holding of produce for human consumption which is subject to the requirements of the FDA Food Safety Modernization Act – Produce Safety Rule (21 CFR Part 112).” This is an amalgamation of the definitions “covered farm” and “covered activity.” The rule only applies to covered activities on covered farms. It also references the federal regulation, which the rule incorporates by reference.

The proposed effective date is August 1, 2020.

**FINANCIAL IMPACT:** The agency states that the proposed rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 2-16-207(c)(1), the State Plant Board shall make rules for carrying out the provisions and requirements of the Arkansas Plant Act of 1917, Ark. Code Ann. §§ 2-16-201 through 2-16-214, including rules under which the inspectors and other employees of the Department of Agriculture shall inspect places, plants and plant products, and things and substances used or connected herewith; investigate, control, eradicate, and prevent the dissemination of insect pests, diseases, and noxious weeds; and supervise or cause the treatment, cutting, and destruction of infected or infested plants and plant products. In a lawful proceeding respecting licensing, as defined in the Arkansas Administrative Procedure Act, § 25-15-201 et

seq., in addition to or in lieu of any other lawful disciplinary action, the State Plant Board may assess a civil penalty of not more than one thousand dollars (\$1,000) for each violation of any statute, rule, or order enforceable by the Board. *See* Ark. Code Ann. § 2-16-203(b)(1)(A)(i). The Board shall by rule establish a schedule designating the minimum and maximum civil penalty that may be assessed under Ark. Code Ann. § 2-16-203 for violation of each statute, rule, or order over which it has regulatory control, and it may promulgate any other rule necessary to carry out the intent of the statute. *See* Ark. Code Ann. § 2-16-203(b)(2)(A), (B).

3. **DEPARTMENT OF AGRICULTURE, STATE BOARD OF REGISTRATION FOR PROFESSIONAL SOIL CLASSIFIERS** (Mr. Edgar Mersiovsky, Mr. Wade Hodge)

a. **SUBJECT: Rules of the Arkansas State Board of Registration for Professional Soil Classifiers**

**DESCRIPTION:** The Arkansas State Board of Registration for Professional Soil Classifiers proposes changes to its rules. The purpose of the amendments is to comply with laws passed during the 2019 legislative session.

The Board met on September 27, 2019, to consider rule changes in response to laws passed during the 2019 session that require rules for reciprocity and temporary licensure, portability of occupational licenses for military members and spouses, and criminal background checks for individuals seeking occupational licenses. The acts include:

- Act 990 of 2019, which requires occupational licensing entities to promulgate a rule regarding criminal background checks.
- Act 820 of 2019, which requires occupational licensing entities to promulgate a rule regarding portability of licenses for military members and spouses.
- Act 1011 of 2019, which requires occupational licensing entities to promulgate rules providing for reciprocity and temporary licensure.

The new additions to the Board's rules were based on model rules drafted by the Attorney General's Office. The reciprocity and temporary licensure provisions allow individuals holding similar licenses in other states to practice in this state while their credentials are being vetted to see if they are substantially similar to Arkansas's requirements. The criminal background rule allows an individual to petition the Board for a determination as to whether their criminal conviction disqualifies them from licensure. The military licensure rule requires the Board to grant automatic licensure to active duty military service members, returning military veterans, and their spouses, if they hold a substantially equivalent

occupational license in good standing in another state, territory, or district of the United States. The new rule additions will help to reduce any barriers individuals might face in obtaining a license in this state or when returning to the workforce.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on April 18, 2020. The Board received no public comments.

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

(1) Section VIII.A.1.a. – Should subsections (ii), (iii), and (iv), be (b), (c), and (d), as they seem to be separate, additional requirements rather than going to whether the license is substantially similar? **RESPONSE:** This rule tracks the outline of the model rule drafted by the Attorney General’s Office.

(2) Section X.B.3. – Should the reference therein be to B.(1) or (2), instead of A.? **RESPONSE:** Yes, you are correct, the reference should be to B.1 or 2.

(3) Section XI.A.1. – Should the statutory reference be to Ark. Code Ann. § “17-3-103” as now codified? **RESPONSE:** Yes.

(4) Section XI.A.3. – What is contemplated by the Board as “a reasonable amount of time”? **RESPONSE:** It depends on whether the individual has a conviction that is a permanent disqualification pursuant to § 17-3-103(e). If so, staff can respond immediately following receipt of the background check. If the conviction is one for which a waiver may be requested, then it will depend on how long it takes for the individual to provide, or for the staff to gather, the information specified in § 17-3-103(b). Once that information is assembled, it is contemplated that a response could follow the Board’s next regularly scheduled quarterly meeting.

(5) Section XI.A.4. – Is it the Board’s position that a pre-licensure determination is not an adjudication under the Administrative Procedure Act subject to subsequent review? **RESPONSE:** Yes.

(6) Section XI.B.1. – Should the statutory reference be to Ark. Code Ann. § “17-3-102(a)” as now codified? **RESPONSE:** Yes.

(7) Section XI.B.5. – Should the reference be to “Administrative Procedure Act,” per Ark. Code Ann. § 25-15-201? **RESPONSE:** Yes.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 17-47-202, the Arkansas State Board of Registration for Professional Soil Classifiers shall have the power to administer Title 17, Chapter 47, of the Arkansas Code, concerning soil classifiers, and adopt and amend all bylaws and rules of procedure to administer and carry out the provisions of the chapter and for the conduct of its affairs and functions, consistent with the chapter and the Arkansas Constitution and laws of the state, which may be reasonably necessary for the proper performance of its duties and the regulation of its proceedings, meetings, records, examinations, and the conduct thereof. *See* Ark. Code Ann. § 17-42-202(1), (2). The proposed changes include those made in light of Act 820 of 2019, sponsored by Senator Missy Irvin, which amended the law concerning the occupational licensure of active duty service members, returning military veterans, and their spouses, provided automatic licensure, and required review and approval of rules submitted; Act 990 of 2019, sponsored by Senator John Cooper, which amended the laws regarding criminal background checks for professions and occupations to obtain consistency regarding criminal background checks and disqualifying offenses for licensure; and Act 1011 of 2019, sponsored by Representative Jim Dotson, which amended the law concerning licensing, registration, and certification for certain professions and established a system of endorsement, recognition, and reciprocity for licensure.

4. **DEPARTMENT OF AGRICULTURE, VETERINARY MEDICAL EXAMINING BOARD (Mr. Wade Hodge)**

a. **SUBJECT: Fees (092.00.1-2)**

**DESCRIPTION:** The Arkansas Veterinary Medical Examining Board proposes changes to its Fees rule in response to Acts 169 and 820 of 2019. Act 169 established a certification for a veterinary technologist. Act 820 established a process for automatic or expedited licensure for certain members of the military and their spouses. The Board also waived renewal fees for active duty military members, updated old information, and made technical changes for consistency purposes throughout the rule. The proposed amendments were approved by the Board on June 20, 2019. The Board has authority to establish fees pursuant to Ark. Code Ann. § 17-101-203(3).

The amended rule:

- Includes veterinary technologists in the same fee section as veterinary technicians.
- Waives the application fee for anyone who is applying for a license or certificate pursuant to Act 820 of 2019.
- Waives the renewal fee for anyone who is on active duty with any branch of the military for up to three years, or for the duration of a national emergency, whichever is longer.
- Updates old information and makes technical corrections.

In addition to amending the rule in response to Acts 169 and 820 of 2019, updates needed to be made to the rule. The section of the rule specific to veterinarians references the National Board of Veterinary Medical Examiners, which has changed its name to the International Council for Veterinary Assessment. The section of the rule specific to veterinary technicians/technologists references the National Board Examination, which is now called the Veterinary Technician National Examination (“VTNE”). The amended rule reflects both name changes, as well as clarifies that the American Association of Veterinary State Boards is the administrator of the VTNE. No changes were made to fee amounts.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on March 14, 2020. The Board received no public comments.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rule has no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 17-101-203(3), the Veterinary Medical Examining Board shall have the power to establish annually a schedule of license and permit fees based on the Board’s financial requirements for the ensuing year. Revisions to the rule include those made in light of Act 169 of 2019, sponsored by Representative DeAnn Vaught, which amended the laws concerning veterinary medicine and established a veterinary technologist certification and a veterinary technician specialist certification, and Act 820 of 2019, sponsored by Senator Missy Irvin, which amended the law concerning the occupational licensure of active duty service members, returning military veterans, and their spouses, provided automatic licensure, and required review and approval of rules submitted.

b. **SUBJECT: Continuing Education (092.00.1-3)**

**DESCRIPTION:** The Veterinary Medical Examining Board proposes changes to its rule entitled Continuing Education (092.00.1-3). Act 169 of 2019 establishes a certification for a veterinary technologist. In addition to outlining the continuing education requirements for veterinary technologists, the Board also updated the rule, making it easier to understand and easier for license and certificate holders to obtain their continuing education requirements. The proposed amendments were approved by the Board on June 20, 2019.

The amended rule:

- Streamlines topic requirements for continuing education.
- Increases the number of hours that can be obtained online.
- Specifies which educational programs are accepted by the Board without additional approval.
- Includes veterinary technologists in the same section as veterinary technicians.
- Increases the number of annual continuing education hours required for veterinary technicians and technologists.
- Requires continuing education records to be kept for three years.

For veterinarians, the existing rule places limitations on subject material and how hours can be earned. In the proposed amendment, twenty (20) hours will still be required for annual renewal, but topic requirements have been streamlined and half the hours can now be obtained online, regardless of topic. Alternative medicine topics like chiropractic and acupuncture are now included under medicine and surgery; a two (2)-hour requirement has been added for controlled substances; eight (8) hours can be earned through visitation with a colleague.

For veterinary technicians and technologists, the annual number of hours required for certificate renewal was increased from six (6) to twelve (12) at the request of the sponsor of the Act. Eight (8) hours must be in medicine and surgery and up to four (4) hours can cover non-scientific topics. Half of the hours can be obtained online.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on March 14, 2020. The Board provided the following summary of the comments that it received and its response thereto:

Six (6) comments were received against adding a two (2) hour requirement for continuing education covering controlled substances. One (1) comment was received against eliminating the two (2) hours of continuing education for attending exhibit halls at conferences. One (1)

positive comment was received regarding the addition of allowing more hours to be obtained online.

**Agency Response:** Based on the public comments received, the Arkansas Veterinary Medical Examining Board voted at its meeting on April 30, 2020, to remove the two (2) hour requirement for continuing education covering controlled substances, as well as reinstall the allowance of two (2) hours of continuing education to be earned at exhibit halls of conferences.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rule has no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 17-101-203(7), the Veterinary Medical Examining Board has the power to promulgate and enforce rules necessary to establish recognized standards for the practice of veterinary medicine and to carry out the provisions of the Arkansas Veterinary Medical Practice Act (“Act”), Ark. Code Ann. §§ 17-101-101 through 17-101-317. A veterinarian, veterinary technician, or veterinary technologist under the Act is required to attend an educational program in the twelve (12) months preceding each renewal date. *See* Ark. Code Ann. § 17-101-310(a)(1). The rule includes revisions made in light of Act 169 of 2019, sponsored by Representative DeAnn Vaught, which amended the laws concerning veterinary medicine and established a veterinary technologist certification and a veterinary technician specialist certification.

c. **SUBJECT: Veterinary Technology – Levels of Supervision (092.00.1-14)**

**DESCRIPTION:** Act 169 of 2019 mandated that the Arkansas Veterinary Medical Examining Board promulgate a rule to establish the appropriate level of supervision under which a certified veterinary technician or technologist can perform veterinary technology. The proposed new rule was approved by the Board on July 23, 2019.

The new rule establishes a list of the job duties that a certified veterinary technician or technologist may be allowed to perform under the immediate, direct, or indirect supervision of a licensed veterinarian. Establishing the list of duties requiring indirect supervision by a veterinarian will help veterinarians in rural areas better utilize veterinary technicians or technologists when the veterinarians have to be away from their clinics on farm calls.

The new rule allows veterinarians to better utilize their veterinary technicians or technologists in everyday practice by outlining the job duties that can be performed under immediate, direct, or indirect supervision. The job duties listed under indirect supervision will be particularly helpful to veterinarians in rural areas who spend a lot of time out on farm calls and away from their clinics. Veterinary technicians or technologists can now be used to perform certain job duties when the veterinarian is unable to be physically present. This was a focus of Act 169 of 2019, and the new rule helps to accomplish that goal.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on March 14, 2020. The Board provided the following summary of the comments that it received and its response thereto:

Two (2) comments were received regarding where to find the definitions of immediate, direct, and indirect supervision. Two (2) positive comments were received about the overall addition of this rule. One (1) comment was received with multiple concerns. The commenter felt that the rule did not specify that the individual must be a certified veterinary technician/technologist, they felt that the rule would allow a technician/technologist to perform diagnostic imaging without training or oversight by a veterinarian and, finally, they felt that a technician/technologist performing ultrasonography should be required to meet the standards of the American College of Veterinary Radiology.

**Agency Response:** The Arkansas Veterinary Medical Examining Board reviewed the comments at its meeting on April 30, 2020, and voted to make no changes to the rule.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the proposed rule has no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 17-101-306(e), the Veterinary Medical Examining Board shall promulgate rules to establish the appropriate level of supervision under which a veterinary technician or veterinary technologist can perform veterinary technology. The proposed rule implements Act 169 of 2019, sponsored by Representative DeAnn Vaught, which amended the laws concerning veterinary medicine and established a veterinary technologist certification and a veterinary technician specialist certification.

d. **SUBJECT: Military Automatic Licensure (092.00.1-15)**

**DESCRIPTION:** The Veterinary Medical Examining Board proposes a new rule in response to Act 820 of 2019, which mandates that the Board promulgate a rule to establish a process by which the Board will issue automatic licensure to certain members of the military and their spouses. The proposed new rule was approved by the Board on September 11, 2019.

The new rule:

- Explains what the term “returning military veteran” means.
- Explains who the individuals are who qualify for automatic licensure.
- Explains what items are needed from the individual before automatic licensure can be granted.

The new rule requires the Board to grant automatic licensure to active duty military service members, returning military veterans, and their spouses, if they hold a substantially equivalent occupational license in good standing in another state, territory, or district of the United States. The new rule will help to reduce any barriers these individuals might face in obtaining a license to practice veterinary medicine or a certificate to practice veterinary technology when relocating to Arkansas.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on March 14, 2020. The Board provided the following summary of the comment that it received and its response thereto:

One (1) comment was received that included multiple concerns. The main concern was that “automatic licensure” was not defined in the rule. Other concerns included a preference in using the word “shall” instead of “must” throughout the rule, and that the language was too vague in subsection 27. B.(1) and (2), so more specific direction needed to be given.

**Agency Response:** Based on the public comment received, the Arkansas Veterinary Medical Examining Board voted at its meeting on April 30, 2020, to include the definition of automatic licensure in the rule.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the proposed rule has no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 17-101-203(7), the Veterinary Medical Examining Board shall have the power to promulgate and enforce rules necessary to establish recognized standards for the practice of veterinary medicine and to carry out the

provisions of the Arkansas Veterinary Medical Practice Act (“Act”), Ark. Code Ann. §§ 17-101-101 through 17-101-317. Under the Act, the Board further has the power to issue, renew, deny, suspend, or revoke licenses or certificates, or otherwise discipline veterinarians or veterinary technicians. *See* Ark. Code Ann. § 17-101-203(1). The proposed rule implements the provisions of Act 820 of 2019, sponsored by Senator Missy Irvin, which amended the law concerning the occupational licensure of active duty service members, returning military veterans, and their spouses; provided automatic licensure; and required review and approval of rules submitted.

e. **SUBJECT: Pre-Licensure Criminal Background Check and Waiver Request (092.00.1-16)**

**DESCRIPTION:** The Veterinary Medical Examining Board proposes a new rule in response to Act 990 of 2019, which mandated that the Board promulgate a rule to establish a process for an individual to petition the Board for a determination about whether their criminal conviction disqualifies them from licensure and, if so, whether they can obtain a waiver from the Board. The proposed new rule was approved by the Board on September 11, 2019.

The new rule:

- Establishes a petition process for a pre-licensure criminal background check.
- Establishes a waiver process for individuals with criminal convictions.
- Specifies that some criminal convictions are permanently disqualifying from licensure.

The new rule allows an individual to petition the Board for a determination as to whether their criminal conviction disqualifies them from licensure. If the individual is disqualified from licensure based upon their criminal conviction, the new rule allows the individual to request a waiver from the Board, unless the conviction is one that Act 990 identifies as permanently disqualifying. The new rule aids in reducing barriers for individuals with criminal convictions who are trying to re-enter the workforce.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on March 14, 2020. The Board received no public comments.

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

(1) Section 28.A. – Should the statutory reference be to Ark. Code Ann. § “17-3-103” as now codified? **RESPONSE:** Yes.

(2) Section 28.C. – What is contemplated by the Board as “a reasonable amount of time”? **RESPONSE:** It depends on whether the individual has a conviction that is a permanent disqualification pursuant to § 17-3-103(e). If so, staff can respond immediately following receipt of the background check. If the conviction is one for which a waiver may be requested, then it will depend on how long it takes for the individual to provide, or for the staff to gather, the information specified in § 17-3-103(b). Once that information is assembled, it is contemplated that a response could follow the Board’s next regularly scheduled quarterly meeting.

(3) Section 28.F. – Is it the Board’s position that a pre-licensure determination is not an adjudication under the Administrative Procedure Act subject to subsequent review? **RESPONSE:** Yes.

(4) Section 29.A. – Should the statutory reference be to Ark. Code Ann. § 17-3-102(a)” as now codified? **RESPONSE:** Yes.

(5) Section 29.E. – Should the reference be to “Administrative Procedure Act,” per Ark. Code Ann. § 25-15-201? **RESPONSE:** Yes.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the proposed rule has no financial impact.

**LEGAL AUTHORIZATION:** The proposed rule implements Act 990 of 2019, sponsored by Senator John Cooper, which amended the law regarding criminal background checks for professions and occupations to obtain consistency regarding criminal background checks and disqualifying offenses for licensure. Arkansas Code Annotated § 17-3-103(a)(1) permits an individual with a criminal record to petition a licensing entity at any time for a determination of whether the criminal record of the individual will disqualify the individual from licensure and whether or not he or she could obtain a waiver under Ark. Code Ann. § 17-3-102(b). Pursuant to Ark. Code Ann. § 17-3-104(a), a licensing entity shall adopt or amend rules necessary for the implementation of Title 17, Chapter 3, of the Arkansas Code, concerning occupational criminal background checks.

**f. SUBJECT: Reciprocity and Temporary Permits (092.00.1-17)**

**DESCRIPTION:** The Veterinary Medical Examining Board proposes a new rule in response to Acts 426 and 1011 of 2019, which mandated that the Board adopt a rule to establish the least restrictive requirements that

allow for reciprocal licensure, as well as a procedure for granting temporary permits prior to licensure. The proposed new rule was approved by the Board on September 11, 2019.

The new rule:

- Establishes a process for reciprocal licensure for veterinarians.
- Specifies when a temporary permit will be issued.
- Instructs veterinary technicians and technologists to follow the process outlined in Ark. Code Ann. § 17-101-306.

The Board has, for a long time, had a process in place under Ark. Code Ann. § 17-101-303 to license veterinarians by endorsement. One of the minimum requirements is that the veterinarian must have been in active practice in another state for the previous five years in order to qualify for licensure by endorsement. The new rule, which establishes a process for reciprocity, allows the Board to use the least restrictive requirements to license a veterinarian who holds a substantially similar license in good standing in another state. Veterinarians who previously would not have qualified for licensure by endorsement can now apply for reciprocal licensure under the new rule. The Board already had the authority under Ark. Code Ann. § 17-101-304 to issue temporary permits. The new rule simply specifies at what point in the application process a temporary permit will be issued.

The proposed rule directs veterinary technicians and technologists who are seeking reciprocal licensure to follow the process outlined in Ark. Code Ann. § 17-101-306. Act 169 of 2019 amended this section to address known barriers to certification for veterinary technicians and technologists.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on March 14, 2020. The Board received no public comments.

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

With respect to the provisions outlining temporary permits, does this section apply only to those seeking reciprocal licensing? Am I correct that this is a separate type of temporary permit from that available under Ark. Code Ann. § 17-101-304, which contemplates a temporary permit pending examination? In other words, per Section 31.C., if an applicant does not meet the requirements for reciprocal licensure, s/he could seek a temporary permit under § 17-101-304, pending examination?

**RESPONSE:** It could apply to both. If the applicant does not meet the requirements for reciprocity, they can still receive a temporary permit

pending examination, as provided for in both 17-101-304 and Rule 31.A. In fact, a temporary permit can be issued *while* the application is being evaluated for reciprocity. However, Section 31 of the Rule can also apply to an applicant not seeking reciprocity, but just a temporary permit.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the proposed rule has no financial impact.

**LEGAL AUTHORIZATION:** The Veterinary Medical Examining Board shall have the power to examine and determine the qualifications and fitness of applicants for a license to practice general veterinary medicine or any specialty area thereof, and the certification of veterinary technicians in Arkansas, and issue, renew, deny, suspend, or revoke licenses or certificates, or otherwise discipline veterinarians or veterinary technicians. *See* Ark. Code Ann. § 17-101-203(1). Pursuant to Ark. Code Ann. § 17-1-108(d)(1)(A), an occupational licensing entity shall comply with the requirements of Ark. Code Ann. § 17-1-108(c), requiring the adoption of the least restrictive requirements for occupational licensing for certain individuals, by adopting the least restrictive rule that allows for reciprocity or licensure by endorsement. The proposed rule implements Act 169 of 2019, sponsored by Representative DeAnn Vaught, which amended the laws concerning veterinary medicine and established a veterinary technologist certification and a veterinary technician specialist certification; Act 426 of 2019, sponsored by Representative Bruce Cozart, which created the Red Tape Reduction Expedited Temporary and Provisional Licensure Act and authorized occupational licensing entities to grant expedited temporary and provisional licensing for certain individuals; and Act 1011 of 2019, sponsored by Representative Jim Dotson, which amended the law concerning licensing, registration, and certification for certain professions and established a system of endorsement, recognition, and reciprocity for licensing.

**g. SUBJECT: Rules of the Arkansas Veterinary Medical Examining Board**

**DESCRIPTION:** The Veterinary Medical Examining Board proposes changes to its rules to comply with Act 315 of 2019 and to make a few technical corrections. The word “person” was originally used in the rule when referring to someone applying for a Poultry Specialty license. The word “veterinarian” is in the proposed amendments because that is a defined term within the statute and only a veterinarian can apply for a Poultry Science license. For consistency purposes, the word “registration” and “permit” have been removed from the rule because the Board only

issues licenses and certificates. Finally, the original rule only referred to “his” address, so it has been amended to include “his or her” address.

The amended rule:

- Replaces the word “regulation” with “rule.”
- Clarifies that the Board’s principal office is its physical address.
- Makes technical corrections.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on March 14, 2020. The Board received no public comments.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rule has no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 17-101-203(7), the Veterinary Medical Examining Board has the power to promulgate and enforce rules necessary to establish recognized standards for the practice of veterinary medicine and to carry out the provisions of the Arkansas Veterinary Medical Practice Act, Ark. Code Ann. §§ 17-101-101 through 17-101-317.

5. **DEPARTMENT OF COMMERCE, ARKANSAS ECONOMIC DEVELOPMENT COMMISSION (Ms. Renee Doty, Mr. Jim Hudson)**

a. **SUBJECT: Equity Investment Incentive Act of 2007**

**DESCRIPTION:** The Arkansas Economic Development Commission is proposing an amendment to its Equity Investment Incentive Act of 2007 rule. This rule implements requirements of Act 537 of 2019 by extending the time period that a taxpayer, who receives a tax credit issued by this program, has to sell the credit - from one year to any time before the tax credit is exhausted or expires.

**PUBLIC COMMENT:** A public hearing was held in this matter on April 6, 2020. The public comment period expired on April 16, 2020. The Arkansas Economic Development Commission received no public comments.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses thereto:

**QUESTION 1:** Section III(1) of the rule references “targeted businesses” as defined in Ark. Code Ann. § 15-4-2703(43). In the latest version of the code, this term is defined in Ark. Code Ann. § 15-4-2703(39). Please clarify. **RESPONSE:** You are correct. I did not go back and update the new code site. It is 15-4-2703(39).

**QUESTION 2:** Section III(2)(B)(i) of the rule references Ark. Code Ann. § 15-4-2703(43)(A)(i)-(iv). This section does not appear to exist in the current version of the code. Please clarify. **RESPONSE:** You are correct. I didn’t go back and update the new code that applied to the section. The correct code should be 15-4-2703(39)(A)-(F).

**QUESTION 3:** Ark. Code Ann. § 26-51-815(d) is referenced in Section III(2)(B)(iv) of the rule. It is unclear whether this cite is correct. If it is correct, please cite relevant portions of the statute which give the certifications standards for business incubators. **RESPONSE:** You are correct. The code changed from our latest rule version. It would now be 26-51-815(d)(2)(D) This defines a qualified technology incubator: “Qualified technology incubator” means a business incubator certified by the Director of the Arkansas Economic Development Commission with the advice of the Board of Directors of the Division of Science and Technology of the Arkansas Economic Development Commission as being a facility operated in cooperation with an Arkansas college or university to foster the growth of technology-based enterprises.

**QUESTION 4:** Ark. Code Ann. § 15-4-1026 is referenced in Section IX of the rule. This section appears to be repealed in 2017. Please clarify. **RESPONSE:** This should have changed from the repeal of the AR Capital Development Company Act of 426 of 2017. These rules have not been updated since 2015. The reference to the code in the rules should be 15-4-3305(f).

**QUESTION 5:** Ark. Code Ann. § 15-4-3306 states that, “The Arkansas Economic Development Commission and the Arkansas Development Finance Authority shall promulgate jointly rules to implement this subchapter.” Is this a joint promulgation? If not, does AEDC have authority to individually promulgate this rule? **RESPONSE:** I worked with the Director of ADFA on these rules. I offered to take point in drafting. They approved the draft before I sent to the Governor. Director Scoggins is aware I filed the proposed rules and the date of the public hearing.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency indicated that the amended rules do not have a financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Ark. Code Ann. § 15-4-3306, The Arkansas Economic Development Commission and the Arkansas Development Finance Authority shall promulgate jointly rules to implement the Equity Investment Incentive Act of 2007. Act 537 of 2019, sponsored by Representative Les Eaves, extended the time allowed for a taxpayer receiving a tax credit under this program to sell the credit, from one year to any time before the tax credit is exhausted or expires. *See* Act 537 of 2019.

**b. SUBJECT: Digital Product and Motion Picture Development Act Rule**

**DESCRIPTION:** The Arkansas Economic Development Commission (AEDC) is promulgating revised rules for administering the Digital Product and Motion Picture Industry Development Act (codified at Ark. Code Ann. § 15-4-2001 et seq.), as authorized by authority granted under Ark. Code Ann. §15-4-2010. The revised rules incorporate the following amendments to the program, as required by Act 367 of 2019, as pertains to:

- Revises the financial incentive to a discretionary incentive offered by the Executive Director of AEDC;
- Executive Director may offer a discretionary incentive rebate of up to twenty percent (20%) of qualified production costs;
- Allows an additional employment rebate of ten percent (10%) for a state-certified production company for employing full-time Arkansas residents at the discretion of the Executive Director;
- Upon approval of the application, the production company and the Executive Director shall sign a financial incentive agreement;
- The amount of the incentive rebate may not exceed the amount agreed upon in the signed financial incentive agreement; and
- Makes technical corrections and clarifies definitions.

**PUBLIC COMMENT:** A public hearing was held in this matter on April 17, 2020. The public comment period expired on April 18, 2020. The Arkansas Economic Development Commission received no public comments.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** AEDC indicated that the amended rule does not have a financial impact. The agency listed an estimated \$320 for legal advertising and copying in relation to the rulemaking process as a cost for the current fiscal year.

**LEGAL AUTHORIZATION:** AEDC has authority to promulgate rules necessary to implement the programs and services offered by the commission. *See* Ark. Code Ann. § 15-4-209(b)(5). The Digital Product and Motion Picture Industry Development Act of 2009 provided financial incentives to foster the long-term development of the digital medium and traditional film industry in Arkansas. *See* Ark. Code Ann. § 15-4-2001 *et seq.* AEDC is designated as the agency to administer financial agreements under the Act (Ark. Code Ann. § 15-4-2004), authorized to offer production and post-production rebates (Ark. Code Ann. §§ 15-4-2005 and 15-4-2006), and authorized to promulgate appropriate rules to carry out the intent and purposes of the subchapter concerning the Act and to prevent abuse (Ark. Code Ann. § 15-4-2010).

The proposed amendments to AEDC's rules implement Act 367 of 2019. Act 367 of 2019, sponsored by Representative Carlton Wing, amended the Digital Product and Motion Picture Industry Development Act of 2009 by: (1) specifying that rebates under the Act are at the discretion of the Executive Director of AEDC, (2) extending the sunset date of the Act to June 30, 2029, and (3) limiting the amount of the rebate to the amount specified in the approved financial incentive agreement. *See* Act 367 of 2019.

c. **SUBJECT: Donations or Sales of Equipment to Educational Institutions Tax Credit Program**

**DESCRIPTION:** The Arkansas Economic Development Commission (AEDC) is jointly promulgating new rules for administering the Donations or Sales of Equipment to Education Institutions Tax Credit Program, with the Arkansas Department of Finance and Administration, and the Arkansas Department of Education, as authorized by authority granted under Ark. Code Ann. § 26-51-1105.

The new rules define the process by which AEDC administers the program. The program, which is codified at Ark. Code Ann. § 26-51-1101 *et seq.*, encourages the donation of machinery and equipment to accredited educational institutions for use in qualified educational programs or qualified research programs by providing an income tax credit incentive to a taxpayer that donates. The program was developed under Act 469 of 1985, however no rules for the program were developed. The agencies involved have jointly developed the proposed program rules, which also incorporate changes required by Act 203 of 2019. The proposed rule:

- Establishes the application process to receive approval for the tax credit incentive;
- Requires a taxpayer with an approved application to sign a financial incentive agreement with AEDC prior to making the donation or sale to a qualified educational institution or qualified research program;

- Defines the income tax credit that may be granted as thirty-three percent (33%) of the donation;
- States the documentation of the donation that a taxpayer must provide to the Executive Director of AEDC to receive the tax credit incentive;
- The documentation submitted to AEDC must meet all the terms and obligations of the signed financial incentive agreement before a tax credit will be issued; and
- Defines the process for receiving the income tax credit.

**PUBLIC COMMENT:** A public hearing was held in this matter on April 17, 2020. The public comment period expired on April 18, 2020. The Arkansas Economic Development Commission received no public comments.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses thereto:

**QUESTION 1:** The definition of “machinery and equipment” contained in Section II(4) of the rule contains the words “and regulations” which does not appear in the definition contained in Ark. Code Ann. § 26-51-1101(3). Could you please correct or explain this discrepancy?

**RESPONSE:** Corrected

**QUESTION 2:** The words “and Technical” appear between “Career” and “Education” in Ark. Code Ann. § 26-51-1101(5), but do not appear in the same definition under Section II(6). Similarly, the definition contains the “Department of Education,” whereas the code contains “Division of Elementary and Secondary Education.” Could you please correct or explain this discrepancy? **RESPONSE:** Corrected

**QUESTION 3:** The definition of “state-of-the-art-machinery and equipment” mirrors the definition in Ark. Code Ann. § 26-51-1101(10), but for the usage of the term “is” instead of “are” in two places. Could you please correct or explain this discrepancy? **REPSONSE:** Corrected

**QUESTION 4:** Ark. Code Ann. § 26-51-1102(a)(1) appears to contemplate a tax credit for “donations or sales, or both,” whereas Section IV(A) only contemplates a tax credit for “donations and sales.” Could you please correct or explain this discrepancy? **RESPONSE:** Corrected

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** AEDC indicated that the amended rule does not have a financial impact. The agency listed an estimated \$310 for legal advertising and copying in relation to the rulemaking process, as a cost for the current fiscal year.

**LEGAL AUTHORIZATION:** The Secretary of the Department of Finance and Administration, the Director of the Division of Higher Education, the Director of the Division of Career and Technical Education, the Secretary of the Department of Education, and the Director of the Arkansas Economic Development Commission are granted authority to jointly promulgate rules to carry out the purposes of subchapter 11 concerning donations and sales of equipment to educational institutions. *See Ark. Code Ann. § 26-51-1105.*

Act 203 of 2019, sponsored by Senator Mathew Pitsch, amended the income tax credit allowed for donations or sales of machinery and equipment to certain educational institutions. Changes included a tax credit for cash donation by a taxpayer to a qualified educational institution, and a new section on application for credit approval.

**6. DEPARTMENT OF COMMERCE, OFFICE OF SKILLS DEVELOPMENT (Mr. Cody Waits)**

**a. SUBJECT: Secondary Center Rule Changes to Comply with Act 179 of 2019**

**DESCRIPTION:** The Office of Skills Development proposes changes to the Rules for Secondary Technical Centers. Changes include updates in language to reflect government transformation due to the Office of Skills Development transitioning from the Arkansas Department of Career Education to a division of the Arkansas Department of Commerce. Additional revisions below have been updated to reflect changes made under Act 179 of 2019.

*Section I – Application Approval*

- B. 1. – Revised the rule to highlight the change in location for the application from the Department of Education, Division of Career and Technical Education, to the Office of Skills Development website.
- B. 2. – Revised the process for secondary career centers to receive funding approval for approved programs. Division of Career and Technical Education approves the program, but funding approval resides with the Office of Skills Development and therefore does not require additional approval from Deputy Director of CTE. This eliminates duplication of efforts and provides a more efficient process.
- B.3. – Changed the name to reflect changes made under government transformation.
- D. – Removed the language related to a regional technical center as this is outdated and no longer relevant.

*Section II – Finance*

- A.1. – This change is made to reflect the rules change under Act 179 that required us to promulgate rules for establishing a tiered system of determining the amount of vocational center aid under subdivision (b)(2)(b)(1) of this section for each secondary vocational area center and the method of distribution of the vocational center aid under subdivision (b)(2)(b)(1) of this section.
- A. 2. – Struck due to the passage of Act 179.
- A.3. – See A.2.
- A.2. (new) – See A.1.

*Section IV – Operations*

- A.1. – There are no longer training fees associated with the disbursement of vocational center aid due to passage of Act 179.
- B.2. – Removal of the 175 endorsement is no longer relevant to the operations of a secondary career center.
- D.3. – This section has been deleted due to the changes in D.1.

*Section V – Definitions*

- Struck the definition for capacity, regional technical center, training fees, and revised the definition for vocational center aid to reflect changes made under Act 179.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on April 13, 2020. The Office received no public comments.

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

(1) Pursuant to the newly codified Ark. Code Ann. § 6-20-2305(b)(2)(B)(ii), as amended by Act 179 of 2019, the “Division of Career and Technical Education shall promulgate rules” relating to the tiered funding structure. Can you explain how it is that the Office of Skills Development under the Department of Commerce is now doing so?

**RESPONSE:** Act 179 was passed prior to transformation so during the code revision process this language must have been inserted since the vocational center aid fund is Public School Funds. The Office of Skills Development under the Department of Career Education was given the authority to provide oversight to the operations and finances of the secondary technical centers and has continued to operate this way in coordination with the Department of Education as the disbursing agent for the funds.

(2) Section II.A.2. – It could be argued that Act 179 contemplates that the rules promulgated actually set forth the tiered system for determining the

amount of aid and the method for distribution. Is the OSD comfortable that the rules as proposed comply with the provisions of the Act?

**RESPONSE:** Yes, this allows us to respond quickly when evaluating the funding levels for each tier and also evaluate the programs that fall within each tier in a more efficient and effective method. It will also give OSD the ability to revise the funding within each tier and/or move programs between tiers should circumstances change.

(3) Section II.B.1. – Is the reference herein to the instant rules? If so, should it contain the new title as proposed? **RESPONSE:** Yes, this reference is the rules we are discussing.

(4) In the summary of changes, there is referenced a change to Section IV.B.3., but I see no changes indicated in that section. Is the summary correct? **RESPONSE:** This may have been a mistake as I believe that section should have been referring to the deletion of IV.D.3 which leads into the 5<sup>th</sup> question around why that section was deleted.

(5) Section IV.D.3. – What is the reason for the deletion of this section? **RESPONSE:** It was deleted because it was summarized in section IV.D.1.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

**LEGAL AUTHORIZATION:** Beginning with the 2020-2021 school year, secondary vocational area center funding shall be established by a tiered funding structure for distributing vocational center aid for each full-time equivalent student, as defined by the Division of Career and Technical Education (“Division”). *See* Ark. Code Ann. § 6-20-2305(b)(2)(B)(i)(a). The vocational center aid under Ark. Code Ann. § 6-20-2305(b)(2)(B)(i)(a) shall be determined by the Division and approved by the Career Education and Workforce Development Board. *See* Ark. Code Ann. § 6-20-2305(b)(2)(B)(i)(b). Pursuant to Ark. Code Ann. § 6-20-2305(b)(2)(B)(ii), the Division shall promulgate rules for a tiered system of determining the amount of vocational center aid under subdivision (b)(2)(B)(i) of the statute for each secondary vocational area center and the method of distribution of the vocational center aid under subdivision (b)(2)(B)(i) of the statute. The proposed changes include those made in light of Act 179 of 2019, sponsored by Senator Kim Hammer, which revised the method of funding secondary vocational area centers.

7. **DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION (DESE) (Mr. Taylor Dugan, items a-f; Ms. Mary Claire Hyatt, items g, h, j; Ms. Courtney Salas-Ford, items l, m; and Ms. Lori Freno, items i, k)**

a. **SUBJECT: DESE Rules Governing Home Schools**

**DESCRIPTION:** The Division of Elementary and Secondary Education proposes changes to its Rules Governing Home Schools. Act 429 of 2019 prohibits districts from charging home school or private school students for an endorsed concurrent credit course unless the district also charges public school students for the course. Act 430 of 2019 requires public schools to adopt policies that allow private school and home school students to enroll in academic courses, provided that their enrollment will not create a financial loss for the district. Act 430 additionally requires that a public school include provisions that apply to private school or home-schooled students, such as grade-level prerequisites, attendance, testing, coursework, grades, and conduct and requires that these provisions be consistent with policies that apply to public school students.

Changes made after public comment include grammatical corrections and updates to Sections 5.03 and 5.06.

**PUBLIC COMMENT:** A public hearing was held on October 28, 2019. The public comment period expired on November 19, 2019. The Division provided the following summary of the public comments received and its responses thereto:

**Commenter Name: Lucas Harder Arkansas School Board Association (10/28/2019)**

**Comment:**

3.03.3: "Department" should be "Division."

3.05.1: This should actually be 3.06.1.

3.05.2: This should actually be 3.06.2.

4.01: There is an "e" missing from the "well" in "as well as."

5.03.3: This section is missing the new final "4" so that it would read "5.03.4."

~~9~~8.02.1: The reference to "8.05" should actually be changed to "9.05."

~~9~~8.03.2.3: The reference to "8.01.2" should actually be 9.01.2."

~~9~~8.04.1.2: The reference to "8.04.3" should be to "9.04.3."

8.05.1: The new "9" is missing from the front of the subsection marker.

**(12/10/2019)**

1.02: 6-18-232 was placed on the wrong side of the et seq that should follow 6-15-501. I would recommend changing "Act 429 of 2019, and Act 430 of 2019" to read "and Acts 429 and 430 of 2019."

3.02: I would recommend changing “policy” to read “academic calendar” to more closely match the language in 6-10-106(f).

5.03.1: I would recommend breaking this into two separate items so that it would read:

5.03.1 Electronically:

5.03.1.1 Through the Division of Elementary and Secondary Education’s online process, which is located on the Division’s Home School webpage; or

5.03.1.2 By email;

5.03.1.3~~5~~: The final five here should be a four.

~~5.06.6~~: This language is still required by A.C.A. § 6-15-503(a)(3)(F)(i).

~~5.06.7~~: This language is still required by A.C.A. § 6-15-503(a)(3)(G).

~~5.07~~: This language is still required by A.C.A. § 6-15-503(a)(3)(F)(ii).

~~5.08~~~~6~~: The six here should be a seven but should actually remain 5.08 as 5.07 is still required by law.

~~5.09~~~~7~~: The seven here should be an eight but should actually remain 5.09 as 5.07 is still required by law.

~~7.06~~: “Private school or” should be removed as no other place in the rules refers to the enrollment of courses by private school students.

~~98.09~~: There is a reference to 8.08 here that should be to 9.08.

**Division Response:** All comments considered, and non-substantive corrections made. Removed sections 5.06.6 and 5.07 and substituted 5.06.7, “Any other information that may be required under Ark. Code Ann. § 6-15-503,” to refer to those sections that are still required.

**Commenter Name: Dr. Fred Worth, Henderson State University (11/05/19)**

**Comment:** Thank you for the opportunity to submit comments on the proposed rules and regulations for the new homeschool laws in Arkansas. I don’t have any huge issues but there are two topics that need attention.

The proposed rules say that homeschoolers have to bring a notarized copy of their Notice of Intent when applying for a driver’s license. It is my understanding that state law no longer requires this. As such, that ought to be changed.

In section seven, there is some wording that is ambiguous regarding a waiver from the requirements of the section. It needs to be made clear that the waiver cannot be to allow the school to charge the student for taking a concurrent enrollment class if the school doesn’t charge the public school students.

**Division Response:** Act 617 of 2019 does not require the home-schooled student to bring the signed, notarized notice of intent when applying for a driver’s license. However, it is still required by A.C.A. § 6-15-503(a). Therefore, sections 5.06.6 and 5.07 have been removed and substituted by 5.06.7. “Any other information that may be required under Ark. Code

Ann. § 6-15-503” to refer to those sections that are still required. Non-substantive change made.

Added “may seek a waiver from Sections 7.01 – 7.03” under Section 7.04 to clarify that schools may not seek a waiver and charge home school students for taking a concurrent enrollment class if the school doesn’t charge the public school students. Non-substantive change made.

**Commenter Name: Sherri Norwood (11/13/19)**

**Comment:** I am a homeschooling parent in Siloam Springs and have been homeschooling for 17 years. I’ve read the proposed Rules Governing Home Schools and have the following comments:

Why are sections 5.06.6 and 5.07 included? It was my understanding that a notarized Notice of Intent is no longer required to get a driver’s license. And section 5.07 is confusing. Even if a notarized intent is required to seek a driver’s license, the intent form has never had to be notarized prior to submission to the school district. Please clarify these points to align with current Arkansas law.

I’m concerned about Section 7.04. Under what circumstances would a waiver request be approved? If a district can seek a waiver, then what’s to keep the rules enforceable? All of the provisions are important, in particular section 7.05.3. Section 7.04.1 seems to be a blanket invitation not to abide by the rules set forth.

Our family has benefited from a wonderful relationship with Siloam Springs School District and are grateful for their willingness to work with homeschoolers.

**Division Response:** Comments considered, please see response to Dr. Fred Worth’s comment above.

**Commenter Name: Cindy Petty (11/5/2019)**

**Comment:** I agree with these points made by the Family Council.

1. The rules still say that home schoolers have to bring a notarized copy of their Notice of Intent when they apply for a driver’s license. However, state law no longer requires this.
2. The rules change some of the language about filing the Notice of Intent electronically via email or the department’s website. Although the proposed rules would still let home schoolers file their NOI electronically, the rules need to reflect the fact that home schoolers can file their Notice of Intent electronically by any means they want—not just through the Department of Education’s website or via email.

3. The rules say that public schools cannot charge a home schooler to take a concurrent credit course for high school and college credit if the school doesn't require other students to pay a fee to take the course. This tracks with state law. However, Section 7 of the rules contains vague language that says public schools can request a waiver from the requirements found in Section 7. We would like to see the rules changed to make it clear that public schools cannot request a waiver when it comes to charging home schoolers a fee to take concurrent credit courses.

**Division Response:** Comments considered on comments 1 and 3, please see response to Dr. Fred Worth's comments above.

Comment 2. Added "5.03.3 By fax" and updated:

5.03.1 Electronically, including without limitation:

5.03.1.1 Through the Division of Elementary and Secondary Education's online process, which is located on the Division's Home School webpage; or ~~including without limitation by email;~~

5.03.1.2 ~~Including without limitation b~~By email:

Non-substantive change made.

**Commenter Name: Tanya Smith (11/5/19)**

**Comment:** I am writing to comment on the proposed rules and regulations that affect homeschool students and families in Arkansas. Here are some issues with the rules that I believe need to be addressed:

1. The rules still say that homeschoolers have to bring a notarized copy of their Notice of Intent when they apply for a driver's license. However, state law no longer requires this. The rules should reflect the law.

2. The rules change some of the language about filing the Notice of Intent electronically via email or the department's website. Although the proposed rules would still let homeschoolers file their NOI electronically, the rules need to reflect the fact that homeschoolers can file their Notice of Intent electronically by any means they want—not just through the Department of Education's website or via email.

3. The rules say that public schools cannot charge a homeschooler to take a concurrent credit course for high school and college credit if the school doesn't require other students to pay a fee to take the course. This tracks with state law. However, Section 7 of the rules contains vague language that says public schools can request a waiver from the requirements found in Section 7. The rules should be changed to make it clear that public schools cannot request a waiver when it comes to charging homeschoolers a fee to take concurrent credit courses. Homeschool families are already paying property taxes that go toward education that should more than cover concurrent enrollment by homeschool families. A waiver to

unfairly charge a fee to homeschool students is unnecessary and not in line with the state law.

**Division Response:** Comments considered. Please see response above to Ms. Cindy Petty's comments.

**Commenter Name: David and Robyn Porter**

**Comment:** We were made aware that the Department of Education had proposed new rules regarding homeschooled students. One rule involves allowing public schools to get a waiver in order to charge homeschoolers to pay to participate in a course. Our understanding is that current Arkansas law says public schools cannot charge homeschoolers for a course if the school doesn't require other students to pay a fee. Would you consider updating Section 7 to remove the vague language that says public schools CAN request a waiver and charge homeschoolers? Money is tight for everyone, including us, and we would like for our kids to be able to participate in a course if they wanted to.

**Division Response:** Added "may seek a waiver from Sections 7.01 – 7.03" under Section 7.04 to clarify that schools may not seek a waiver and charge home school students for taking a concurrent enrollment class if the school doesn't charge the public school students. Non substantive change made.

**Commenter Name: Lisa Crook, Director, Education Alliance (11/18/19)**

**Comment:** Below are public comments concerning the State Board of Education's proposed rules related to home schooling.

1. On Page 262-3: To avoid confusion, 5.02 should be revised to read that a current year Notice of Intent paper form shall be made available at each Arkansas school district and from the Division of Elementary and Secondary Education. This will ensure that the division continues making updated paper copies of the Notice of Intent form available to home schoolers each year and that the local school districts use this form rather than a different form or outdated version of the Notice of Intent form.

2. On Pages 262-3 and 262-4: The changes proposed in 5.03.1 remove the words "without limitation" from the rules concerning the manner in which the Notice of Intent may be submitted. This change fails to track with state law. Arkansas Code Section 6-15-503(a)(B)(ii)(4) says "A written notice under this subsection may be given: Electronically, including without limitation by email." This means that there are no limitations on the manner in which a Notice of Intent may be submitted electronically. To reflect this provision in the law, 5.03.1 and 5.03.2 should be revised to clarify that the Notice of Intent may be submitted electronically, including without limitation via the DESE webpage or via email.

3. On Pages 262-4 and 262-5: The proposed rules fail to amend 5.06.6 and 5.07 concerning driver's license applications by home schooled students. Act 617 of 2019 changed the requirements for students seeking a driver's license. As a result, Arkansas law no longer requires home schooled students to present a notarized copy of their notice of intent when applying for a driver's license.

4. On Page 262-7: The language in 6.08 mandating that home schoolers have a teacher of record is not found in the existing home school statute or in Act 429 or Act 430 passed this year. If the State Board of Education insists on including the language from 6.08 in the rules, the language should be placed in Section 7. Section 6 addresses situations in which a student enrolled in a home school decides to stop home schooling and enrolls or re-enrolls in a public school as a full-time student. Section 7 addresses situations in which a home-schooled student enrolls in an individual course at a public school. The language in 6.08 presumably is intended to address situations in which a home-schooled student is enrolled in an individual course at a public school. It therefore makes more sense for this language to appear in Section 7.

5. On Page 262-8: The proposed rules in 7.04 concerning an application for a waiver from Section 7's requirements fail to clarify that the waiver only applies to whether or not a school district must let home-schooled or private school students enroll in academic courses in general. A school may not seek a waiver from the requirements in 7.05.3 concerning charging students a fee to participate in endorsed concurrent enrollment courses. Act 430 of 2019 gives schools the option of seeking a waiver from its general requirements about enrolling non-public school students in public school courses. It does not apply to the provisions found in Act 429 of 2019 that prohibit a public school from charging a home-schooled or private school student a fee to take an endorsed concurrent enrollment course if the public school students enrolled in the course are not charged a fee.

6. On Page 262-8: The address for the Division of Learning Services in 7.04.1 does not match the address publicly listed on the DESE website, which reads: Arkansas Department of Education, Division of Elementary and Secondary Education, Learning Services, Four Capitol Mall, Mail Slot 6, Little Rock, AR 72201.

**Division Response:**

(1) Added "currently."

(2) Added "5.03.3 By fax" and updated:

5.03.1 Electronically, including without limitation:

5.03.1.1 Through the Division of Elementary and

Secondary Education's online process, which is located on

the Division’s Home School webpage; or including without limitation by email;

5.03.1.2 Including without limitation bBy email:

(3) Act 617 of 2019 does not require the home-schooled student to bring the signed, notarized notice of intent when applying for a driver’s license. However, it is still required by A.C.A. § 6- 15-503(a). Therefore, sections 5.06.6 and 5.07 have been removed and substituted by 5.06.7, “Any other information that may be required under Ark. Code Ann. § 6-15-503,” to refer to those sections that are still required.

(4) Moved to section 7.08.

(5) Added “may seek a waiver from Sections 7.01 – 7.03” under Section 7.04 to clarify that schools may not seek a waiver and charge home school students for taking a concurrent enrollment class if the school doesn’t charge the public school students.

(6) Corrected to be the Division of Elementary and Secondary Education. Non-substantive change made.

**Commenter Name: Lisa Crook, Director, Education Alliance (4/21/2020)**

**Comment:** To better track with state law, 5.03.1 of the proposed rules governing home schools should be rewritten as follows:

5.03.1 Electronically, including without limitation:

5.03.1.1 Through the Division of Elementary and Secondary Education’s online process, which is located on the Division’s Home School webpage; or including without limitation by email;

5.03.1.2 Including without limitation bBy email:

Here is why this change matters: Arkansas Code § 6-15-503(a)(4) says, “A written notice [of intent to home school] under this subsection may be given . . . Electronically, including without limitation by email.” The Code indicates there is no limitation on the manner in which a notice of intent may be given electronically. This is the provision in the Code that makes it possible for the division to accept notice of intent forms online via the division’s website. The proposed rules as currently written could be misinterpreted as meaning there is no limitation on the way in which a notice of intent may be emailed. Adjusting the proposed rules as suggested above will avoid possible confusion and more accurately reflect state law.

**Division Response:** Comment considered. Non-substantive change made. Updated:

5.03.1 Electronically, including without limitation:

5.03.1.1 Through the Division of Elementary and Secondary Education’s online process, which is located on the Division’s Home School webpage; or including without limitation by email;

5.03.1.2 Including without limitation bBy email:

**Commenter Name: Scott A. Woodruff, Senior Counsel, Home School Legal Defense Association**

**Comment:** On behalf of over 580 Arkansas homeschool families who are members of Home School Legal Defense Association, I submit the following comments and request the following changes to proposed home school regulations now under consideration.

Rule 5.03.1: Rule 5.03.1 is proposed to be amended to strike out the phrase “including without limitation.” This phrase is an important part of the legislative structure and it needs to be retained. The phrase “without limitation” serves an important purpose. It serves to cover contingencies that may not currently be within contemplation. It is intended to give the broadest possible treatment to the subject. By way of contrast, in proposed Rule 7.02.1, the Department has faithfully followed the legislative framework and included the phrase. It says: “7.02.1.1 Include provisions that apply to a home-schooled student enrolled in an academic course at a public school including without limitation provisions regarding:...” Since the Department included the phrase “without limitation” in its proposed Rule 7.02.1.1, it is clear that the Department has no objection to the language itself. It is intended to cover the widest possible array of contingencies. If the “without limitation” phrase is deleted from Rule 5.03.1, as the proposed rule in its current form would do, it is foreseeable that some method of transmitting the notice of intent will be excluded under some set of contingencies we may not currently contemplate. As merely one concrete example, filing via fax is allowed under Arkansas Code § 6-15-503(a)(4)(A), because it is an electronic method of filing. Filing by fax currently falls under the “without limitation” provision. But the proposed rule would outlaw filing by fax because the proposed rule strikes out “without limitation.” The Department’s proposed rule would, in effect, prohibit one method of transmission—and perhaps others. But no type of transmission is prohibited under current law. A prohibition thus created would be a violation of Arkansas Code § 6-15-503(e), which forbids the Department from imposing mandates not established by statute. Fidelity to the legislative language requires that the phrase “without limitation” be retained in any rule implementing the statute.

Rules 5.06.6, 5.06.7, and 5.07: There is a need to change these rules to bring harmony where there is currently a discord. Under Arkansas Code § 6-15-503(a)(3)(F)(i) and (ii), the notice of intent to homeschool must state whether the student plans to seek a driver’s license. If so, the parent’s signature must be notarized. However, this statute has been amended by implication by House Bill 1867 of the 92d General Assembly (Act 617). Prior to its enactment, driver’s license candidates were required to submit certain information about their secondary education—

including home schooling. Under that scheme, it made perfectly good sense for the notice of intent to home school to include a reference to plans for seeking a driver's license. However, HB 1867 abolished all requirements for all students to provide information about their secondary education—including students receiving home schooling—in connection with obtaining a driver's license. The legislature did not, however, explicitly remove the part of the home school law requiring notice of a home school student's intent to seek a driver's license, Arkansas Code § 6-15-503(a)(3)(F)(i) and (ii). That requirement, however, no longer serves any purpose whatsoever. There is a principle of statutory construction that a latter enactment takes precedence over an earlier one. There is also a principle known as amendment by implication. And the golden standard for statutory construction is to implement the will of the legislature. HB 1867 takes precedence because it was enacted later than Arkansas Code § 6-15-503(a)(3)(F)(i) and (ii). Furthermore, the legislature amended Arkansas Code § 6-15-503(a)(3)(F)(i) and (ii) by implication by enacting HB 1867. And finally, it is clear beyond any doubt that the legislature no longer wishes homeschool students to be required to indicate their plans for a driver's license, nor wishes such plans to trigger the requirement for a notarization. Following the enactment of HB 1867, the Department revised the form it makes available to families who wish to file a notice of intent to homeschool. As revised, the form contains no question about plans to seek a driver's license.

**Division Response:** Added “5.03.3 By fax” and updated:

5.03.1 Electronically, including without limitation:

5.03.1.1 Through the Division of Elementary and Secondary Education's online process, which is located on the Division's Home School webpage; or ~~including without limitation by email;~~

5.03.1.2 ~~Including without limitation b~~By email:

Act 617 of 2019 does not require the home-schooled student to bring the signed, notarized notice of intent when applying for a driver's license. However, it is still required by A.C.A. § 6-15-503(a). Therefore, sections 5.06.6 and 5.07 have been removed and substituted by 5.06.7, “Any other information that may be required under Ark. Code Ann. § 6-15-503,” to refer to those sections that are still required. Comments considered. Non-substantive changes made.

**Commenter Name: Anne Coletti (11/21/19)**

**Comment:** The rules imply all home-schooled athletes must wait 365 days for athletic participation, which is not the case. The law was clarified so that anyone homeschooled had ALREADY been sitting out the 365. Rep. Davis sponsored clarification legislation just last session. The new rules should reflect this.

**Division Response:** Comment considered. Language is taken directly from Ark. Code Ann. § 6-15-509. Could be referring to Act 656 of 2019, which addresses home school students participating in private school athletics. No change made.

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

(1) Section 3.03.3 – Should the reference be to the “Division” of Higher Education in accord with Ark. Code Ann. § 6-16-1202(2)(C), as amended by Act 910 of 2019, § 1352? **RESPONSE:** Division added. Non-substantive change made.

(2) Section 7.02.2 – This section contains a reference to “private school” when the remainder of the rules speak only to home-schooled students. Was this intended? **RESPONSE:** “Private School” is included in Acts 429 and 430, but being removed for Home School Rules. Non-substantive change made.

(3) Section 7.04.1 – Should the request for waiver be mailed to the Division of Elementary and Secondary Education, per Section 7.04? **RESPONSE:** Yes, it should be the Division of Elementary and Secondary Education. Non-substantive change made.

(4) Section 7.06 – Reference to “private school” student? **RESPONSE:** “Private School” is included in Acts 429 and 430, but being removed for Home School Rules. Non-substantive change made.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

**LEGAL AUTHORIZATION:** Revisions to the amended rules include those made in light of Act 429 of 2019, sponsored by Representative Mark Lowery, which prohibited a public school district or an open-enrollment public charter school from charging a private school or a home school student for the cost of an endorsed concurrent enrollment course unless a public school district or open-enrollment public charter school student is also charged for the course, as well as Act 430 of 2019, also sponsored by Representative Mark Lowery, which required a public school district and an open-enrollment public charter school to allow a private-school or a home-school student to enroll in an academic course and allowed a public school district and an open-enrollment public charter school to seek a waiver from the requirement to allow a private-school or a home-school student to enroll in an academic course. Pursuant to Arkansas Code

Annotated § 6-15-502(b), the State Board of Education is empowered to make such reasonable rules required for the proper administration of Title 6, Chapter 15, Subchapter 5 of the Arkansas Code, concerning home schools, that are not inconsistent with the intent of the subchapter.

**b. SUBJECT: DESE Rules Governing Educator Licensure**

**DESCRIPTION:** The Division of Elementary and Secondary Education proposes amendments to its Rules Governing Educator Licensure. Act 628 of 2019, which allows the State Board of Education to reinstate a revoked educator’s license under certain circumstances, requires the State Board to promulgate rules setting forth the criteria for reinstatement. Act 540 of 2019 removes the pedagogy assessment requirement for standard educator licensure. It is replaced with a pedagogy demonstration requirement as part of program requirements. Act 83 of 2019 expands the requirements to other teachers engaged in literacy instruction and their prep programs.

Updates to the rules include the following:

Table of Contents Page: Change was made from “Undergraduate Programs” to Institute of Higher Education to clarify that included other programs such as graduate programs.

Reinstatement of a Revoked License: This section is added to incorporate Act 628 of 2019.

*Chapter 1*

- 1-1.05 This was removed for clarification and since it is after January 1, 2019.
- 1-2.18 Clinical Experiences – Added for clarification from the prior definition of field clinical experiences. The definition is to help clarify what can be classified as “Clinical Experience.”
- 1-2-19 Clinical Internship – To clarify what is defined as the “Clinical Internship.” (Usually thought of what is considered student teaching.)
- 1-2.29 Educator preparation program completer – To clear up confusion of when someone is considered to have completed an educator preparation program.
- 1-2.41 Micro-credential – Not in law but wanted a definition to clarify as they are referenced throughout the rules.
- 1-2.45 Preservice teacher – Definition added for clarity and taken from Ark. Code Ann. § 6-17- 410(j)(1).
- 1-2.46 Primary Partnership – Needed to be defined for administrator’s license and has been in previous rules. The Division used to call primary partnerships and secondary

partnerships formal and informal. The formal being the primary partnership and informal the secondary partnership.

- 1-2.52 Secondary Partnership – Same as above.
- 1-2.59 State-Recognized Partnership – Same as above.

### *Chapter 2*

The Division will be putting designation on the license, so we added “designation” as not to confuse it with an endorsement. Ark. Code Ann. § 6-17-402(2)(c)(1).

### *Chapter 3*

- 3-1.03.1.2 Included for Ark. Code Ann. § 6-17-429.
- 3-1.03.1.7 Not in law but Educator Preparation Programs wanted it added for preservice teachers.
- 3-1.03.3 Not in law but is to clarify that educator preparation programs partner with schools to provide clinical experiences with schools. The Primary Partnership will be schools an Educator Preparation Program can partner with. The Secondary Partnership is for the schools outside of the Primary Partnership.
- 3-1.03.4.1.1 Clarification.
- 3-1.05 To clarify preservice teacher must get a background check. Ark. Code Ann. § 6-17-410(a)(1)(A)(i).
- 3-2.01.1 Clarification.
- 3-4.02.2 Clarification. Ensure that the programs are working with Districts and that it is a mutually beneficial relationship.

### *Chapter 4*

- 4-1.01.4.4 Dyslexia clarify that they had to do one hour. Ark. Code Ann. § 6-41-608.
- 4-5.01.4 This change was to include accredited private school to allow more options.
- 4-5.01.8.1 Clarify because not all universities call the class SPED 101.
- 4-8.01.3.1 Waive the TOEFL for out-of-country applicants if they have completed master’s degree at an accredited college or university in the United States.
- 4-9.03.4 Adds Library Media as an ancillary license.
- 4-10-02.4 Clarification that someone who completed a program more than 10 years ago would have to meet current requirements.
- 4-11.03.3 Give more options for Master Professional Educator Designation.
- 4-11.02.3.3.3 Further clarifies what would be required for micro credentials.

### *Chapter 5*

- 5-2.02.3.1.2 This section clarifies that an educator has to complete 36 hours of Professional Development or the amount needed if they are short the 36 hours.
- 5-2.03 Ark. Code Ann. § 6-17-429 and Act 83 of 2019.
- 5-4. Reinstatement of a revoked license. Act 628 of 2019.
- 5-6.02 Ark. Code Ann. § 6-15-1004(a)(1) clarified that an educator would have to complete four things in order to get a license absent an approved exam. Those four things being a score within minus two (-2) standard error of measurement (SEM) of the State-approved score content area exam, a DESE-approved stacked micro-credential, have three years of relevant teaching experience in their content area, and meet the definition of effective teacher under the rules. It would also have to be approved by State Board. Ark. Code Ann. § 6-15-1004(a)(1) allows the State Board to promulgate rules on which assessments to use and Ark. Code Ann. § 6-15-1004(a)(2) allows other methods when there is no assessment. This section allows the State Board to determine and accept what an identified assessment may be in certain circumstances.

### *Chapter 6*

No changes except for grammatical or changing ADE to DESE.

### *Chapter 7*

- 7-2.02.2 Ark. Code Ann. § 6-17-402. Wanting to clarify who qualifies for Emergency Teaching Permit.
- 7-6.05 Clarify that long-term substitutes complete background checks.

*Changes made after the public comment period include the following:*

- Deleted “and is eligible to be recommended for a license” from 1-2.29 “Educator Preparation Program Completer” to be in line with Title II definition.
- Added “if under 62” for clarification: 4-45.02.2 Documentation from the Arkansas Teacher Retirement System of retirement under Ark. Code Ann. §§ 24-7-701, 24-7-702, or 24-7-704 if under 62; and
- 4-3.04 The ~~Department~~ Division may recommend to the State Board that a person’s Arkansas Standard License issued by reciprocity be revoked, suspended, surrendered or placed on probation if the out-of-state license is revoked, suspended, or placed on probation, as applicable, by the issuing state for any

reason that a Standard License may be revoked, suspended, or placed on probation in Arkansas. Added surrendered for clarity.

- 4-5.01.4 An offer of employment in a position as a teacher of record at an educational entity or accredited private school in Arkansas teaching a minimum of three (3) hours per day in the appropriate licensure area(s). Added accredited private school in Arkansas for clarity.
- 4-9.01.6 Added “that includes 60 hours of graduate level coursework in the area, from an accredited state approved college or university” to clarify what is required. The universities in Arkansas that offer a School Psychology program are in line with the National Association of School Psychologists. Therefore, this addition will be in line with what those universities are requiring.
- 4-11.01 ~~Effective on January 1, 2019,~~ an applicant holding an Arkansas Early Career Professional Educator ~~license~~ Designation in good standing may apply for the designation of Career Professional Educator by completing the appropriate online application, ~~including the non-refundable application fee (unless simultaneously applying to convert a provisional license to a standard license or for renewal of a standard license),~~ and providing the following with the online application:. Deleted “including the non-refundable application fee (unless simultaneously applying to convert a provisional license to a standard license or for renewal of a standard license).”
- 5-2.05.1 “A standard Arkansas educator’s license will be renewed with a Career, Lead or Master Professional Educator designation upon application.” For clarification.
- ~~5-56.02~~ Clarified that an educator would have to complete four things in order to get a license absent an approved exam. Those four things being a score within minus two (-2) standard error of measurement (SEM) of the State-approved score content area exam, a DESE-approved stacked micro-credential, have three years of relevant teaching experience in their content area, and meet the definition of effective teacher under the rules. It would also have to be approved by State Board. Ark. Code Ann. § 6-15-1004(a)(1) allows the State Board to promulgate rules on which assessments to use and Ark. Code Ann. § 6-15-1004(a)(2) allows other methods when there is no assessment. This section allows the State Board to determine and accept what an identified assessment may be in certain circumstances.

- 5-6.06 The Division shall grant active duty service members, returning military veterans, and their spouses automatic licensure pursuant to Act 820 of 2019.
- 6-1.01.4 Documentation of at least three (3) years of P-12 experience as an educator. ~~who holds a valid Standard License (not including an Ancillary License).~~ Deleted: who holds a valid Standard License (not including an Ancillary License).

**PUBLIC COMMENT:** A portion of these rules, specifically, the provisions relating to the reinstatement of a revoked license, were reviewed and approved by the Executive Subcommittee at its meeting on August 22, 2019, for emergency promulgation. With respect to the permanent promulgation of the rules in their entirety, a public hearing was held on November 18, 2019. The public comment period expired on December 3, 2019. The Division provided a summary of the public comments received and its responses thereto, which due to its length is attached separately.

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

- (1) Section 3-1.03.1.4 – Arkansas Code Annotated § 6-15-1705 appears to continue to reference “parental involvement.” Should the statute referenced be Ark. Code Ann. § 6-15-1703, which was amended by Act 666 of 2019, to require professional development training in family and community engagement, which training must be verified before an initial teaching license shall be issued in accord with Ark. Code Ann. § 6-17-709, as amended by Act 666? **RESPONSE:** Comment considered. Non-substantive change made.
- (2) Section 3-1.03.1.7 – The summary provided states that the provision for “human trafficking awareness” is not in law, but that EPPs wanted it included; however, doesn’t Act 666 of 2019 require the Division to verify that an applicant for an initial teaching license has obtained the required professional development concerning that area? **RESPONSE:** Comment considered. Not required by law but added by rule. No change made.
- (3) Section 3-1.05 – Should the references be to the *Division* of Arkansas State Police, in accord with Ark. Code Ann. § 6-17-410(a)(1)(A)(i), as amended by Act 910 of 2019, § 1383? **RESPONSE:** Comment considered. Non-substantive change made.
- (4) Section 3-2.01 – Should the term “educator preparation” follow “IHE based” before program to be clear as to the program? **RESPONSE:** Comment considered. Non-substantive change made.

(5) Section 3-2.01.4 – Should the “and” be removed? Can an EPP be accredited and comply and “if not accredited . . . be identified?”

**RESPONSE:** Comment considered. Non-substantive change made.

(6) Section 4-11.01.1 – Is something missing, or is there an extra “and”? The markup reflects that the section will read that the applicant may apply, providing: “Documentation of three (3) years of licensed teaching experience, which may include teaching with a provisional license and in good standing; and”? This seems unclear to me.

**RESPONSE:** Comment considered. Non-substantive change made. Corrected for clarity. “Documentation of three (3) years of licensed teaching experience, which may include teaching with a provisional license that is in good standing; and.”

(7) Section 4-11.03.3 – Are the subsections under this section misnumbered after 4-11.03.3.1? **RESPONSE:** Comment considered. Non-substantive change made.

(8) Section 5-1.04 – Is the markup of this section correct? Should there be a comma, rather than a period, after “renewal” in the underlined change? If not, the second portion of the section reads incomplete?

**RESPONSE:** Comment considered. Non-substantive change made.

(9) Section 5-2.02.3.3 – Section contains a reference to “Department Division.” **RESPONSE:** Comment considered. Non-substantive change made.

(10) Section 5-4.05 – Is there a word missing at the end? “Actions”? **RESPONSE:** Comment considered. Non-substantive change made.

(11) Section 5-6.03 – This section appears premised on Ark. Code Ann. § 6-15-1004(a)(2), which appears to provide that if no assessment for a new licensure area for subject matter content is available, the Division may request that the State Board approve an alternative method of demonstrating subject matter content. The rule, however, states that the Division may use “a current Principles of Learning and Teaching exam” or may request the State Board approve an alternative method. Is there a reason that the rule does not mirror the statute? (Also, the rule contains a reference to “Department Division.”) **RESPONSE:** The Principles of Learning and Teaching exam is an alternative assessment approved by the State Board so it is one assessment that can be used to demonstrate subject matter content. Ark. Code Ann. § 6-15-1004(a)(1) allows the State Board to promulgate rules on which assessments to use and Ark. Code Ann. § 6-15-1004(a)(2) allows other methods when there is no assessment. This

section allows the State Board to determine and accept what an identified assessment may be. Comment considered. No change made.

(12) Section 7-7.03 – Does this section end on page 70? Page 71 is blank, but the section lacks a period on page 70. **RESPONSE:** Comment considered. Non-substantive change made.

(13) In the Division’s summary of the rule and the Division’s questionnaire, it states that changes were made to the rules based on Acts 83 and 757 of 2019. Can you please be more precise as to (a) which sections of those acts were incorporated and (b) which sections of the rules those changes can be found? **RESPONSE:** Act 83 can be found in Chapter 5-2.03. Act 757 amended Ark. Code. Ann. § 6-17-402, which allows the State Board to create rules for licensure. Section 34 of Act 757 changed Ark. Code Ann. § 6-17-402(j) from “Early Childhood” to “Elementary Education (K-6).” Included it to distinguish “Early Childhood” as P-4, while Elementary Education (K-6) is K-6.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 6-17-402(b), the State Board of Education shall promulgate rules for the issuance, licensure, relicensure, and continuance of licensure of teachers in the public schools of this state that (1) require at a minimum that each in-state applicant for teacher licensure completes an educator preparation program approved by the Division of Elementary and Secondary Education and demonstrates licensure content area knowledge and knowledge of teaching methods and (2) require at a minimum that each in-state applicant for an administrator’s license demonstrates knowledge of state-adopted competencies and standards for educational leaders. The proposed changes to the rules include revisions made in light of Act 83 of 2019, sponsored by Senator Jane English, which required school-level improvement, professional development, curriculum, and graduate studies plans to be in accordance with the science of reading; Act 540 of 2019, sponsored by Representative Fred Allen, which amended provisions regarding the assessments a person must pass in order to obtain a teaching license; Act 628 of 2019, sponsored by Senator Breanne Davis, which allowed for the reinstatement of a revoked teaching license under certain conditions; Act 666 of 2019, sponsored by Representative DeAnn Vaught, which amended provisions of the Arkansas Code concerning educator professional development; and Act 757 of 2019, sponsored by Representative Bruce Cozart, which amended and updated various provisions of the Arkansas Code concerning public education.

c. **SUBJECT: DESE Rules Governing the Code of Ethics for Arkansas Educators**

**DESCRIPTION:** The Division of Elementary and Secondary Education proposes changes to its Rules Governing the Code of Ethics for Arkansas Educators. Act 475 of 2019 amends the definition of “educator,” adding the language of “at the time of alleged violation, . . . even if the license expires during the pendency of the ethics complaint process” and “a person employed under an emergency teaching permit.” This clarifies that the Professional Licensure Standards Board has jurisdiction if an educator lets his or her license expire during an ethics investigation. A change was also made as a result of Act 628 of 2019, regarding the reinstatement of a revoked teaching license.

Following the public comment period, grammatical changes were made and changes for clarification.

**PUBLIC COMMENT:** A public hearing was held on November 18, 2019. The public comment period expired on December 3, 2019. The Division provided the following summary of the public comment that it received and its response thereto:

**Commenter Name: Lucas Harder, Arkansas School Boards Association (10/28/19)**

2.02: The references to the “Administrative Procedure Act” has an extra “s” at the end of “Procedure.”

5.03: I would recommend moving this to be 5.05 and move the current 5.04 and 5.05 up so that the definitions continue to be in alphabetical order and the “DESE” here should be referring to the “Division” instead of the “Department.”

5.28: There is a “the” missing after the “be” at “cannot be basis.”

5.39: “Mean” should be “means.”

11.03: While the “and” was correctly struck between items 2 and 3, there is a missing conjunction for the list between item 3 and the new item 4.

**Division Response:** Comments considered. All non-substantive changes made.

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

(1) Section 5.15 – Where the rule provides for “an impartial Arkansas licensed attorney,” does this mean an Arkansas attorney who holds a license (which could include a license from another state) or does it mean an attorney licensed by the State of Arkansas? **RESPONSE:** This section refers to an attorney that is licensed by the State of Arkansas to be able to serve as a hearing officer.

(2) Section 5.33 – Are the changes to this section premised upon Act 628 of 2019? Also, should it read “An Educator whose license” rather than “licensed”? **RESPONSE:** This section is based on Act 628 of 2019. It should be “license” instead of “licensed.” Non-substantive change made.

(3) Standard 6 – While not a proposed change, is the title of the rules referenced as “Arkansas Department of Education Rules Governing Testing Improprieties” changing? Is this a reference to what will be the “Division of Elementary and Secondary Education Rules Governing Test Security, Testing Violations, and Alleged Testing Improprieties,” rules that are currently pending legislative review and approval? **RESPONSE:** Yes. Updated the Code of Ethics draft to reflect this change. Non-substantive change made.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 6-17-422(h)(3)(A)(i), the Professional Licensure Standards Board shall establish a code of ethics for administrators and teachers, including those employed under a waiver from licensure as a teacher of record or as an administrator, in educational environments for students in prekindergarten through grade twelve (preK-12), including procedures and recommendations for enforcement as provided in subdivision (h)(3) of the statute. The Board shall further establish procedures for receiving and investigating an ethics complaint, enforcing the code of ethics, granting and conducting hearings, and publicizing notifications equivalent to the recommendations for enforcement of the code of ethics. *See* Ark. Code Ann. § 6-17-428(b)(1)(A). Proposed revisions to the rules include those made in light of Act 475 of 2019, sponsored by Senator James Sturch, which amended provisions of the Arkansas Code concerning ethical violations by Arkansas educators, and Act 628 of 2019, sponsored by Senator Breanne Davis, which allowed for the reinstatement of a revoked teaching license under certain conditions.

d. **SUBJECT: DESE Rules Governing Eligibility and Financial Incentives for National Board for Professional Teaching Standards (NBPTS)**

**DESCRIPTION:** The Division of Elementary and Secondary Education proposes amendments to its Rules Governing Eligibility and Financial Incentives for National Board for Professional Teaching Standards (“NBPTS”). Changes to the rules are for clarification. Definitions of “Accredited Teacher Preparation Program” and “Public School” were added. Candidates must submit all NBPTS components within the first year of the candidacy cycle to receive state funding. An applicant applying for initial candidacy must not have received prior state funding to be eligible. The time frame in which a candidate may ask for reimbursement if they paid for the first component is changed from 60 days to 14 days after the release of NBPTS scores. If the candidate is reimbursed and wants to receive state funding for the remaining components, they must submit all remaining NBPTS components within the second year of the candidacy cycle. Payments will be made annually by June 30.

Following the public comment period, Section 4.4 was changed from the originally proposed 30 days to 14 days after the release of scores from NBPTS. The Division has a deadline of getting the information to the State Board no later than the February board meeting. This is so candidates can meet the NBPTS deadlines of purchasing components by the end of February. The “14 days after the release of NBPTS scores” will give enough time for the Advisory Committee to review and submit their recommendations to the State Board.

**PUBLIC COMMENT:** A public hearing was held on December 9, 2019. The public comment period expired on December 17, 2019. The Division provided the following summary of the sole public comment received and its response thereto:

**Commenter Name: Lucas Harder, Arkansas School Boards Association (10/28/2019)**

1.01: As “Division” is not previously written out in entirety or defined in Section 3 of the Rules, I would recommend either writing out the full Division title with a parenthetical “Division” or adding a definition at a new 3.05 if my recommendation for 3.02 is taken.

3.02: I would recommend making this 3.13 so that the definitions are in alphabetical order.

**Division Response:** Moved the definitions so they would be in alphabetical order and included a definition for Division. Comment considered. Non-substantive change made.

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

(1) I see that throughout the rules, the term “bonus” has been either removed or replaced by the term “payment.” What is the reasoning behind this change when Ark. Code Ann. §§ 6-17-412 and 6-17-413 clearly refer to and use the term “bonus”? *See, e.g.*, Ark. Code Ann. § 6-17-412(a) (defining “starting bonus” and “yearly bonus”); Ark. Code Ann. § 6-17-413 (using the term “bonuses” in the title of the statute); Ark. Code Ann. § 6-17-413(a)(3)(A) (directing the Division to pay a “yearly incentive bonus”); and multiple other references. **RESPONSE:** As a result of audit findings from the Internal Revenue Service and subsequent guidance from the Arkansas Department of Finance and Administration (DFA), the Division of Elementary and Secondary Education (DESE) was instructed to amend the process for disbursing payments, including bonuses and stipends, directly to Arkansas educators. Funds for payments must be disbursed by DESE to the educator’s employing school district who will then make the payment to the educator after deducting appropriate taxes, retirement, and withholdings. Categorizing a payment as a “bonus” or “stipend” has potential tax, withholding, and contract implications that could negatively affect educators and/or school districts. Using the term “payment” allows districts the flexibility to determine the most appropriate payment method for the district and educator. Comment considered. No change made.

(2) Section 4.1.2 – What is the basis for the additional requirement that the applicant be applying for initial candidacy when Ark. Code Ann. § 6-17-413(a)(1)(B) appears to only require that the teacher (1) have completed at least three years of teaching in the Arkansas public school system before applying and (2) shall not have previously received state funding for participation in any certification area in the National Board program, both requirements that are already included in the rules? **RESPONSE:** “And must be applying for initial candidacy;” was added to clarify that funding is for initial certification and not for renewal. Comment considered. No change made.

(3) Section 4.2.3 – (a) What is the reasoning behind this requirement? (b) What happens if a candidate fails to submit all NBPTS components within the first year candidacy cycle? **RESPONSE:** The Division is required to submit the information to NBPTS, and this requirement clarifies that if the candidate receives state funding and does not meet this requirement, they have to repay the funds. Comment considered. No change made.

(4) Section 4.4 – Why the change from 60 days to 30 days for receipt of the application under this provision? **RESPONSE:** The Division has a deadline of getting the information to the State Board no later than the February board meeting. This is so candidates can meet the NBPTS deadlines of purchasing components by the end of February. Changed from 60 days to “14 days after the release of NBPTS scores” to give enough time for the Advisory Committee to review and submit their recommendations to the State Board. Comment considered. Non-substantive change made.

(5) Section 4.4 – (a) What is the reasoning behind the requirement that the candidate submit all remaining NBPTS components within the second year candidacy cycle? (b) What happens if a candidate fails to do so? **RESPONSE:** The Division is required to submit the information to NBPTS. This requirement clarifies that if the candidate receives state funding and does not meet this requirement, they have to repay the funds. Comment considered. No change made.

(6) Section 5.1.1 – Should the “if” in “if at the time of” be “and,” in accord with Ark. Code Ann. § 6-17-413(a)(3)(A)? **RESPONSE:** Took the strikethrough off the “and” and added a comma before. Comment considered. Non-substantive change made.

(7) What is the rationale for the addition of the term “gross” in Section 5.1.2 and throughout where that term does not appear to have been used in Ark. Code Ann. § 6-17-413? **RESPONSE:** As a result of audit findings from the Internal Revenue Service and subsequent guidance from the Arkansas Department of Finance and Administration (DFA), the Division of Elementary and Secondary Education (DESE) was instructed to amend the process for disbursing payments, including bonuses and stipends, directly to Arkansas educators. Funds for payments must be disbursed by DESE to the educator’s employing school district who will then make the payment to the educator after deducting appropriate taxes, retirement, and withholdings. Categorizing a payment as a “bonus” or “stipend” has potential tax, withholding, and contract implications that could negatively affect educators and/or school districts. Using the term “gross” signifies that taxes, benefits, and retirement will be withheld from the payment, resulting in the educator receiving a net lesser amount. Comment considered. No change made.

(8) Section 5.3 – I do not understand the last sentence in this section. (a) What does it mean? (b) What is an “annual profile”? (c) What is the “date determined by the Division under Sections 5.1 and 5.2” as the only date I see is when the certification process was begun or certification or recertification was obtained? **RESPONSE:** The “annual profile” is

what each NBCT completes in order to be able to receive their NBCT bonus. It serves as an application. It's to make sure they meet such definitions as "classroom teacher" or they have the same position. Removed "under Sections 5.1 and 5.2." and should not have been included in the first draft. The date determined will be made annually in a Commissioner's Memo. Comment considered. No change made.

(9) Section 8.3 – "[R]ules" rather than "rule"? **RESPONSE:** Comment considered. Non-substantive change made.

(10) Chart – Why is this being removed from the rules? **RESPONSE:** Removed chart because it caused confusion. The chart will still be updated and posted on the Division's website and will be updated regularly. Comment considered. No change made.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 6-17-413(a)(2)(A), the State Board of Education ("State Board") shall promulgate rules for the selection process of teacher participants in the program of the National Board for Professional Teaching Standards ("National Board"). The State Board is further authorized to promulgate rules to establish a support program for teachers selected to participate in the program of the National Board. *See* Ark. Code Ann. § 6-17-413(a)(4).

e. **SUBJECT: DESE Rules Governing Scoliosis Screening**

**DESCRIPTION:** The Division of Elementary and Secondary Education proposes changes to its Rules Governing Scoliosis Screening. Act 843 of 2019 required the Arkansas Department of Education to promulgate rules that were previously promulgated by the State Board of Health. Therefore, in coordination with the Department of Health, these rules are virtually identical to the Department of Health's previous rules for scoliosis screening. The Department of Health's staff approved this draft on November 25, 2019, and it was presented to the Board of Health at the January meeting.

Following the public comment period, grammatical changes were made throughout, as well as the alphabetizing of definitions. Section 4.02 was clarified by copying language from Act 843.

**PUBLIC COMMENT:** A public hearing was held on February 12, 2020. The public comment period expired on March 9, 2020. The Division

provided the following summary of the public comments received and its responses thereto:

**Commenter Name: Lucas Harder, Arkansas School Boards Association (10/28/2019)**

3.01: The term used at 4.02 is “Certified Scoliosis Screening Instructor” so I would recommend changing this definition to match. It would also be possible to include the abbreviation here in the definition so that only the abbreviation has to be used later in the Rules.

**Division Response:** Non-substantive change made.

3.02: For consistency with other rules, the “five” here is missing a following parenthetical Arabic numeral.

**Division Response:** Number added. Non-substantive change made.

3.06: There does not appear to be a 3.05. If 3.07 is moved up to 3.02 as recommended below, then this can remain as 3.06; otherwise, this should be 3.05.

**Division Response:** Numbers corrected. Non-substantive change made.

3:06: For consistency with other rules, there are a couple of places here where there is a number that is missing a following parenthetical Arabic numeral.

**Division Response:** Numbers added. Non-substantive change made.

3.07: I would recommend moving this up to 3.02 so that the definitions are in alphabetical order. If this is not moved, it should become 3.06 due to there not appearing to be a 3.05.

**Division Response:** Moved definition to 3.02 so the definitions would be in alphabetical order. Non-substantive change made.

4.01: For consistency with other rules, “Seven” is missing a parenthetical Arabic numeral afterwards.

**Division Response:** Non-substantive change made.

4.02: For consistency with other rules, the “five” here is missing a following parenthetical Arabic numeral.

**Division Response:** Non-substantive change made.

4.03: For consistency with other rules, this should read: Girls shall receive a scoliosis screening in grades six (6) and eight (8). Boys shall receive a scoliosis screening in grade eight (8).

**Division Response:** Non-substantive changes made.

4.05: The first sentence here reads more like an instruction manual than a requirement. I would recommend changing it to read: A child with an

abnormal screening, scoliometer reading of greater than or equal to seven degrees ( $\geq 7^\circ$ ), or both shall be referred to a licensed physician. A child with a scoliometer reading of greater than eight degrees ( $> 8^\circ$ ) should be referred to an orthopedist in addition to a referral to a licensed physician.  
**Division Response:** Amended language for suggestion. Non-substantive change made.

4.05.1-3: These should be 4.06.1 through 4.06.3.

**Division Response:** Corrected numbers. Non-substantive change made.

4.056.3: Due to the possibility of a referral to an orthopedist under 4.05, I would recommend changing this to read “Discuss the need for referral to a licensed physician or orthopedist.”

**Division Response:** Added language. Non-substantive change made.

4.07: Due to the possibility of a referral to an orthopedist under 4.05, I would recommend adding “or orthopedist” to the end of this subsection.

**Division Response:** Added “orthopedist.” Non-substantive change made.

4.08: This subsection appears to be covering three distinct issues so I would recommend splitting it into three different subsections and would recommend having them read as follows: 4.08 The School shall reschedule the screening for students who were not screened due to the student’s absence to occur within ninety (90) days after the missed screening.

**Division Response:** Comment considered. Non-substantive change made.

4.09: The reason for a student’s exclusion from the screening shall be documented. The reasons may include, but are not limited to, the student possessing a waiver under Section 4.11 of these Rules.

**Division Response:** Comment considered. Non-substantive change made.

4.10: The School shall recontact the parents of students who failed the screening and were referred to a licensed physician or an orthopedist, but then missed that appointment. This contact shall be made by letter, telephone call, or in person at least one additional time to discuss the importance of follow-up.

**Division Response:** Comment considered. Non-substantive change made.

4.09: I would recommend changing “its” to “the child’s”.

**Division Response:** Comment considered. Non-substantive change made from previous comment.

4.09: The quotation mark at the end of this subsection is unnecessary as there is no opening quotation mark in the subsection.

**Division Response:** Comment considered. Non-substantive change made.

5.00: For consistency with other Rules, there are a couple of places here where there is a number that is missing a following parenthetical Arabic numeral.

**Division Response:** Comment considered. Non-substantive change made.

6.02.1: There is an extra period here following the “1.”

**Division Response:** Comment considered. Non-substantive change made.

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

(1) 4.02 – Missing period at end? **RESPONSE:** Non-substantive change made.

(2) 4.09 – (a) Extraneous quotation marks at end? **RESPONSE:** Non-substantive change made.

(b) Is there a reason the language does not correspond with the changes made by Act 843 of 2019, recently codified at Ark. Code Ann. § 20-15-803(b)(1) as: “A child is not to be screened if his or her parent or guardian objects to the screening in writing, stating as the basis of the objection that it is contrary to the parent’s or guardian’s religious beliefs.”?

**RESPONSE:** Changed language and copied specifically from Act 843 to correspond. Non-substantive change made.

(3) 6.01 – Should “Department of Education” be “Division of Elementary and Secondary Education” in that Ark. Code Ann. § 20-15-803, as recently codified, provides that it is the Division that is responsible for the rules, in coordination with the State Board of Health?

**RESPONSE:** Added “Division of Secondary and Elementary Education.” Non-substantive change made.

(4) 6.02 – Same as question (3). **RESPONSE:** Non-substantive change made.

(5) End of 6.02 – Missing period after “evaluation”? **RESPONSE:** Non-substantive change made.

(6) I may be missing it, but other than some language similar to the latter present in Section 4.02, I’m not seeing the language found in Ark. Code

Ann. § 20-15-803(b)(2) that the rules shall provide that “[a] school is not required to hire personnel on a full-time, part-time, or consultant basis to conduct the screening, but shall utilize school health personnel, volunteers, and other school employees who are not classroom teachers and who meet the qualifications prescribed by the rules”? **RESPONSE:** Copied language from statute and included at the end of Section 4.02. Non-substantive change made.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 20-15-803(a), the Division of Elementary and Secondary Education, in coordination with the State Board of Health, shall promulgate rules as soon as possible to implement Title 20, Chapter 15, Subchapter 8, of the Arkansas Code, concerning scoliosis. The rules shall provide that a child is not to be screened if his or her parent or guardian objects to the screening in writing, stating as the basis of the objection that it is contrary to the parent’s or guardian’s religious beliefs; and a school is not required to hire personnel on a full-time, part-time, or consultant basis to conduct the screening, but shall utilize school health personnel, volunteers, and other school employees who are not classroom teachers and who meet the qualifications prescribed by the rules. *See* Ark. Code Ann. § 20-15-803(b)(1), (2). The proposed rules implement Act 843 of 2019, sponsored by Representative Lee Johnson, which amended the law concerning the rules involving scoliosis screening in schools.

f. **SUBJECT: DESE Rules Governing Background Checks**

**DESCRIPTION:** The Division of Elementary and Secondary Education proposes changes to its Rules Governing Background Checks premised on Acts 536 and 1040 of 2019. Act 536 clarifies that a sealed, expunged, or pardoned conviction shall not disqualify a person if the conviction is sealed and does not involve the physical or sexual injury, mistreatment, or abuse of another. It also updates disqualifying offense sections of the Arkansas Code. Act 1040 requires classified staff to obtain a new background check once every five (5) years.

Following the public comment period, grammatical corrections were made, as well as changes for clarification.

**PUBLIC COMMENT:** A public hearing was held on February 12, 2020. The public comment period expired on March 9, 2020. The Division

provided the following summary of the comments received and its responses thereto:

**Commenter Name: Lucas Harder, Arkansas School Boards Association (10/28/2019)**

2.02: I would recommend adding 6-17-415 to the list of statutes that require the background check as part of employment to bring the definition into alignment with the changes to Section 4.06.6 of the Rules.

**Division Response:** Comment considered. Non-substantive change made.

2.04: “Arkansas Division of Education” should be “Division of Elementary and Secondary Education.”

**Division Response:** Comment considered. Non-substantive change made.

2.18: There is an extra “d” at the end of “license” at “educator whose license has.”

**Division Response:** Comment considered. Non-substantive change made.

3.01.9: “Department of Legislative Audit” should be “Arkansas Legislative Audit.”

**Division Response:** Comment considered. Non-substantive change made.

4.02.4: This should be changed to “Commissioner of Elementary and Secondary Education.”

**Division Response:** Comment considered. Non-substantive change made.

4.03.4: This should be changed to “Commissioner of Elementary and Secondary Education.”

**Division Response:** Comment considered. Non-substantive change made.

4.06.6: I would recommend adding a 4.06.6.2 here that sets forth the requirement for the educational entity to pay for the follow-up background checks from A.C.A. § 6-17-415 so that there is not any possible confusion with Section 4.06.5.

**Division Response:** Act 1040 requires that classified employees complete a background check once every five years and if the school district’s Board of Directors votes to pay for the cost of the background checks then that is up to their discretion. Ark. Code Ann. § 6-17-414(a)(1)(B)(ii) states that “Unless the employing educational entity’s board of directors has taken action to pay for the cost of criminal background checks

required by this section, the employment applicant shall be responsible for the payment of any fee associated with the criminal records checks.” Although this is for initial employment, it draws a distinction between districts voting to pay for the background checks or the costs being paid by the employee. The Division has given districts guidance under Commissioner’s Memo COM-20-017. Comment considered. Non-substantive change made.

8.04: I would recommend changing “will be fifteen” to “will have fifteen” or “will be provided fifteen.”

**Division Response:** Comment considered. Non-substantive change made.

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

(1) 1.04 – Should there be an “or” after “suspending,”? **RESPONSE:** Comment considered. Non-substantive change made.

(2) 2.18 – Should “licensed” be “license”? **RESPONSE:** Comment considered. Non-substantive change made.

(3) 3.01.2 – It appears that this section is premised upon Ark. Code Ann. § 6-17-410(d)(1)(A)(v), as amended by Act 536, § 3. If that is the case, should “in Ark. Code Ann. § 6-17-410(c)” follow “for any offense” as set forth in the statute? **RESPONSE:** Comment considered. Non-substantive change made.

(4) 3.05.1 – What is the reasoning for the deletion of “permanently” if this section is premised on Ark. Code Ann. § 6-17-410(d)(2)(A), which still retains the term? **RESPONSE:** Added “or allow an educator the ability to apply for reinstatement pursuant to Act 628 of 2019.” Act 628 allows an educator to petition the State Board for reinstatement after 10 years has passed since the revocation as long as the educator meets certain criteria. Comment considered. Non-substantive change made.

(5) 4.06.6 – Why is the stricken language being removed, where that language is still retained in Ark. Code Ann. § 6-17-415(b)(1)? It seems the language remains necessary because the amendment by Act 1040, § 2, on which the amended language to the rule appears to be based, appears to limit the requirement of once (1) every five (5) years to only those districts under (b)(1). *See* Ark. Code Ann. § 6-17-415(b)(3) (providing that “[a] public school district under subdivision (b)(1) of this section shall require that an existing nonlicensed employee complete a criminal records background check and Child Maltreatment Central Registry check at least one (1) time every five (5) years”). **RESPONSE:** Act 1040 requires that

classified employees complete a background check once every five years and if the school district's Board of Directors votes to pay for the cost of the background check then that is up to their discretion. Ark. Code Ann. § 6-17-414(a)(1)(B)(ii) states that "Unless the employing educational entity's board of directors has taken action to pay for the cost of criminal background checks required by this section, the employment applicant shall be responsible for the payment of any fee associated with the criminal records checks." Although this is for initial employment, it draws a distinction between districts voting to pay for the background checks or the cost being paid by the employee. The Division has given districts guidance under Commissioner's Memo COM-20-017 and clarified that classified employees shall complete a background check once every five years. Comment considered. Non-substantive change made.

**FOLLOW UP QUESTION:** After receiving the revised mark-up following public comment, I see that the language in Section 4.06.06 has been changed further. The rule now appears to provide that an educational entity may decide to pay the full cost of the background checks, and it seems to require that a school district require the checks at least one time every five years. If this section is applicable to existing nonlicensed employees (as opposed to the initial employment of nonlicensed personnel), is the Division comfortable that it comports with Ark. Code Ann. s 6-17-415, which appears to (1) allow discretion to school districts in whether to require background checks of "existing nonlicensed employees" and to (2) provide that any district voting to require such checks "shall pay" the full cost of the checks and require them at least once every five years? **RESPONSE:** Yes, the Division's interpretation of Ark. Code. Ann. 6-17-415 would require that all classified employees get a background check at least one time every five years and that (b)(1) gives school districts the option to vote on whether to pay for the costs of the check or not. If the school board does not vote, then the cost of the once-every-five-year check would be on the employee.

(6) 4.06.6.1 – Should "employee's" be "employees"? **RESPONSE:** Comment considered. Non-substantive change made.

(7) 5.02.3 – Is the Division comfortable that the rule's provisions providing only notice when an employee is *not* eligible for employment comport with Ark. Code Ann. § 6-17-415(b)(2)(B), as amended by Act 1040, § 2, which provides that the Division "shall inform the board of directors of the educational entity *whether or not* the affected applicant is eligible"? (Emphasis added.) **RESPONSE:** The Arkansas Educator Licensure (AELS) is updated daily on the employability of an applicant's background checks. If an applicant is approved for employment, then districts and applicants can check the website. The main concern is if an applicant is denied. If the applicant is denied and ineligible for

employment, then AELS will be updated and the District will receive written notice. The Division has given districts guidance under Commissioner's Memo COM-20-017 on checking AELS. Ark. Code Ann. § 6-17- 414(c) provides that the Division may provide information on an applicant's eligibility in an electronic format. Comment considered. No change made.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 6-17-410(i), the State Board of Education shall adopt the necessary rules to fully implement the provisions of the statute, which concerns applying for, renewing an application for, revocation of, suspension of, and probation for, teacher licensure, as well as criminal records checks and Child Maltreatment Central Registry checks. Likewise, the State Board shall adopt the necessary rules to implement Ark. Code Ann. § 6-17-414, which concerns a criminal record check as a condition for initial employment of nonlicensed personnel. *See* Ark. Code Ann. § 6-17-414(i). The proposed changes incorporate those made in light of Act 536 of 2019, sponsored by Representative Stephen Meeks, which amended laws governing background checks for licensed and classified school personnel; Act 628 of 2019, sponsored by Senator Breanne Davis, which allowed for the reinstatement of a revoked teaching license under certain conditions; and Act 1040 of 2019, sponsored by Representative Jim Wooten, which required the Division of Elementary and Secondary Education to inform an educational entity to which an individual is applying whether the individual is eligible for employment based on the results of the individual's background checks.

**g. SUBJECT: DESE Rules Governing Documents Posted to School District and Education Service Cooperative Websites**

**DESCRIPTION:** The Division of Elementary and Secondary Education proposes changes to the rules, which explain all of the requirements to post documents to school districts' websites. Amendments to these rules are necessary, in part, as a result of Acts 1039 and 869 of 2017, as well as Acts 190, 83, 676, and 757 of 2019. Changes were made to reflect requirements of the new Standards for Accreditation and to remove duplicative language about personnel policies, salary schedules, and minimum salaries. Information was added to these rules to reflect various website requirements contained in law.

The changes include the following:

- Title changed to reflect the change in name of the Division of Elementary and Secondary Education from the Arkansas Department of Education. Throughout, changes are made to reflect the change in name of the Division of Elementary and Secondary Education from the Arkansas Department of Education. Stylistic changes are also made throughout.
- Title also changed to reflect that the sections related to personnel policies, salary schedules, and minimum salaries have been removed.
- Sections 3.00 Definitions, 4.00 Licensed Personnel Policies and Salary Schedules, 5.00 Classified Personnel Policies and Salary Schedules, Section 6.00 Licensed Employee Minimum Salary, 7.00 Additional Pay, and 8.00 Classified Employee Minimum Salary were deleted because they were duplicative of law.
- Section 9.00 Data to be Accessible on Website was deleted so that the information could be reorganized in the new structure of the rule. New Sections 3.00 through 10.00 were added to have all website requirements that exist in law and rule in one place.
- New Section 3.00 is added to explain where the information must be posted on the website.
- New Section 4.00 outlines all policy, data, and informational documents required to be posted to school district websites.
- New Section 5.00 outlines all financial documents required to be posted to the district website.
- New Section 6.00 contains all of the personnel policy and salary schedule information related to the availability of the information on district websites that was originally contained in Sections 3.00 through 8.00.
- New Section 7.00 outlines all dyslexia information required to be posted to the district website.
- New Section 8.00 outlines all probationary status information required to be posted to the district website.
- New Section 9.00 outlines all school board information required to be posted on the district website.
- New Section 10.00 outlines all information required to be posted on the education service cooperative website.

Changes made after the public comment period include:

- Section 1.01 is changed to add Ark. Code Ann. §§ 6-15-208, 6-18-702, and 6-18-2005 to the regulatory authority.
- Section 2.01 is changed to clarify that the Rules apply to traditional public school districts, open-enrollment charter schools, and education service cooperatives.
- Section 5.01.6 is removed as duplicative of Section 5.01.2.4.
- Stylistic and grammatical changes made throughout.

**PUBLIC COMMENT:** A public hearing was held on March 11, 2020. The public comment period expired on March 27, 2020. The Division provided the following summary of the public comments that it received and its responses thereto:

**Commenter Name: Lucas Harder, Arkansas School Boards Association (10/3/19)**

**Comment (1):** In the Title, “Secondary” has an extra “e” before the final “r.” In Section 4.05: There appears to be a “a” missing from before “public school.” In Section 5.01.5.1: I would recommend adding “Employee” to the start of this section.

**Division Response:** The title is changed to correct the typo. Section 4.05 is changed to add the missing “a” before “public school.” No change made to Section 5.01.5.1. Non-substantive changes made.

**Comment (2):** In 1.02, now 1.01, ACA § 6-15-209 should probably be 6-15-208. ACA § 6-18-702 and ACA § 6-18-2005 appear to be missing from the list.

**Division Response:** Ark. Code Ann. §§ 6-15-208, 6-18-702, and 6-18-2005 are added to the regulatory authority. Non-substantive change made.

**Comment (3):** Section 2.01: I recommend adding “school” in front of “district” where necessary here. Section 3.00: For clarification for the average reader, I would recommend making this section be a definition for “school district” to note that it also applies to an open-enrollment charter school to the extent that the charter school does not have a waiver. Also, there are places in the document that just use “district,” others that use “school district,” and still others that use “public school district.”

**Division Response:** Section 2.01 is changed to add “school” before “district.” Section 2.01 is also changed to include “open-enrollment public charter schools” before “education service cooperatives” to clarify that these rules also apply to charter schools to the extent that the school does not have a waiver. Changes made throughout to change “school district” to “district.” Non-substantive changes made.

**Comment (4):** Section 3.01: For clarity, I would recommend changing this to read, “All information required to be posted on the school district’s website shall be easily accessible from the school district’s website homepage through an easily identifiable direct link titled ‘State-Required Information’ that directs to a page on the school district’s website where the information may be found.”

**Division Response:** Comment considered. No change made.

**Comment (5):** Section 3.02: I would recommend changing this to read, “The school district shall subdivide the information required by these

Rules on the district's State-Required Information page by the categories of information.”

**Division Response:** Comment considered. No change made.

**Commenter Name: Shelley Smith, Mountain View School District (4/27/20)**

**Comment (1):** I wish to express my opposition to the changes. This information needs to remain PUBLIC. Personnel policies and financial statements should be clearly visible for anyone to view for a number of reasons: (1) the public should be able to freely research this as it is their tax money funding public schools, (2) parents of students and prospective students should know the rules that govern staff in every school, (3) teachers and staff should be able to view the personnel policies and finances of other schools so that they can research them when they need to, either to compare to their own or under a circumstance such as if they are applying for employment in that district, I am thinking of teachers moving from another state who will want to know in advance what kinds of policies we have at our schools and in Arkansas, (4) personnel need a simple and direct way to access policies at their own schools, also, how will this information be made available to them if it is not on the website, and (5) removing transparency appears to be, at the very least, bad optics.

**Division Response:** The following information is still required to be posted on the website: student handbooks (4.01.3), school calendar (4.01.4), written policies for the fiscal operation of the district (5.01.1), current comprehensive financial data reports including local and state revenue sources, administrator and teacher salary and benefit expenditure data, district balances, and the district budget (5.01.2), a financial breakdown of the monthly expenses of the district (5.01.3), salary schedules for all employees, including extended contract and supplementary pay amounts (5.01.4), all current contract information with district employees (5.01.5), the annual budget (5.01.6), and licensed and classified personnel policies and salary schedules (6.01). Further, the detailed information on personnel policies, salary schedules, and minimum salaries still in law (Ark. Code Ann. § 6-17-201 et seq., § 6-17-2301 et seq., § 6-17-2401 et seq, and § 6-17-2201 et seq.) and districts must still follow the law, even though the detailed portions are being removed from the Rules. No change made.

**Commenter Name: Charles Warren, Fort Smith Public Schools (4/27/20)**

**Comment (1):** It appears 5.01.6 is a duplication of 5.01.2.4 (and 5.01.2.4.1). Districts won't have a current budget by August 1st. The 5.01.6 is not necessary and contrary to the current statute. The issue is resolved with 5.01.2.4, so 5.01.6 should be stricken.

**Division Response:** Section 5.01.6 is duplicative of Section 5.01.2.4, so it has been stricken. Section 5.01.7 has been changed to reflect a change in numbering. Non-substantive change made.

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

(1) Section 4.01.4 – What is the authority requiring the posting of the school calendar? **RESPONSE:** Ark. Code Ann. § 6-10-106(f) requires districts to adopt an academic calendar and that requirement is echoed in Standard 1-A.5 of the Standards for Accreditation. The school calendar is required to be included in personnel policies that are required to be posted to the district’s website under State-Required Information by Ark. Code Ann. §§ 6-17-2301 and 6-17-201. In the interest of being able to better monitor Standard 1-A.5, the posting of the school calendar has been added to these Rules. It is also included in the proposed changes to the Standards for Accreditation that are pending review by ALC. No change made. [Note from Bureau Staff: The Standards for Accreditation received legislative review and approval on May 15, 2020.]

(2) Section 4.06 – What is the authority requiring the posting of any waivers? **RESPONSE:** Ark. Code Ann. § 6-15-103(d) gives the Division broad authority to promulgate rules to implement the section. This requirement is a rule that implements § 6-15-103(a). The requirement is also reiterated in the Division’s proposed Rules Governing Act 1240 waivers, promulgated under the same authority. No change made.

(3) Section 5.01 – What is the basis for the August 1 deadline? **RESPONSE:** Ark. Code Ann. § 6-11-129 is the authority for this section, and although the statute mandates the posting of this information, it does not contain a deadline. Standard 3-A.1 requires each public school district board of directors to adopt and update written policies for the fiscal operation of the district and post them to the district’s website by August 1. In an effort to coordinate the deadlines of information to be posted to the website, and in an effort to make monitoring the website efficient, the deadline for Section 5.01 is August 1. No change made.

(4) Section 6.02 – What is the basis for the August 1 deadline set forth in the rule, when both Ark. Code Ann. § 6-17-201(d)(2)(A) and § 6-17-2301(d)(2) provide that “[b]y September 15 of each year” the website address shall be provided? **RESPONSE:** Ark. Code Ann. § 6-17-201(a)(2)(A) and § 6-17-2301(d)(2) state that by September 15 of each year a school district shall provide the Division of Elementary and Secondary Education with the web address at which its current personnel policies . . . may be found. The deadline in statute is the deadline by which the district must provide the web address to the Division, not the

deadline by which the district must post the information. Section 6.02 requires the district to post those policies by August 1. The two can be read consistently—the policies must be posted by August 1, but the districts are not required to provide the web address to the Division until September 1. Additionally, Standard 3-A.1 of the Standards for Accreditation requires the policies to be posted by August 1. Teachers and the community have an interest in accessing these policies prior to September 15, when the school year has been in session for nearly a month. No change made.

(5) Additionally, could you please direct me to the specific sections that were premised upon each of the Acts mentioned in the summary, Acts 1039 and 869 of 2017, and Acts 190, 83, 676, and 757 of 2019?

**RESPONSE:** Act 1039 of 2017 is addressed in Section 7.02. Act 869 of 2017 is addressed in Section 4.02. Act 757 of 2019 made changes to the same law that Act 869 of 2017 did. Both Acts are addressed in Section 4.02. Act 676 of 2019 is addressed in Section 4.05. Act 190 of 2019 is addressed in Section 4.01.6. Act 83 of 2019 is addressed in Section 4.01.1. No change made.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

**LEGAL AUTHORIZATION:** The State Board of Education shall have general supervision of the public schools of the state and shall take such other action as it may deem necessary to promote the organization and efficiency of the public schools of the state. *See* Ark. Code Ann. § 6-11-105(a)(1), (a)(7)(B). Changes to the rules include those made in light of Act 83 of 2019, sponsored by Senator Jane English, which required school-level improvement, professional development, curriculum, and graduate studies plans to be in accordance with the science of reading; Act 190 of 2019, sponsored by Senator Breanne Davis, which repealed the Public School Student Services Act and created the School Counseling Improvement Act of 2019; Act 676 of 2019, sponsored by Representative Justin Boyd, which required public and private schools to report certain information regarding the number and percentage of students who have exemptions from or have not provided proof of required vaccinations; Act 757 of 2019, sponsored by Representative Bruce Cozart, which amended and updated various provisions of the Arkansas Code concerning public education; Act 869 of 2017, sponsored by then-Representative Charlotte Douglas, which amended provisions of the Arkansas Code concerning public school accountability; and Act 1039 of 2017, sponsored by Senator Joyce Elliott, which amended provisions of the Arkansas Code concerning dyslexia screening and intervention in public schools.

**h. SUBJECT: DESE Rules Governing Act 1240 Waivers**

**DESCRIPTION:** The Division of Elementary and Secondary Education proposes its Rules Governing Act 1240 Waivers. These new rules are promulgated pursuant to Ark. Code Ann. § 6-15-103 and incorporate changes to law made by Acts 641 and 815 of 2019. The new rules explain how a traditional public school district may petition the State Board of Education for all or some of the waivers granted to an open-enrollment public charter school.

Section 3.00 of the rules outlines the petition process for requesting a 1240 waiver and explains the prohibited waivers.

Section 4.00 of the rules outlines the hearing process for presentation to the State Board of Education.

Section 5.00 of the rules outlines the process for State Board of Education review of existing 1240 waivers and the Board’s authority to revoke those waivers.

Section 6.00 of the rules details the process for renewing a 1240 waiver when the law changes or the waiver expires.

Following the public comment period, a definition of “State Board” was added and stylistic and grammatical changes were made throughout.

**PUBLIC COMMENT:** A public hearing was held on April 13, 2020. The public comment period expired on April 20, 2020. The Division provided the following summary of the public comments that it received and its responses thereto:

**Commenter Name:** Lucas Harder, Arkansas School Boards Association (10/3/19)

**Comment (1):** I would recommend adding the following definitions so that the items could be shortened in the rest of the document: “Standard” for the Standards for Accreditation, “State Board” as there are some places where the document uses “State Board of Education,” others “State Board,” and sometimes just “Board.”

**Division Response:** Section 2.02 has been added to provide a definition of “State Board.” No other changes. Non-substantive change made.

**Comment (2):** Section 3.01.1: I would recommend changing this to read, “Before a school district may request a waiver, the school district board of directors must adopt a resolution authorizing the request for the waiver(s).” In Section 3.03.4, in alignment with my recommended

changes to 3.01.1, I would recommend changing this to read, “A signed copy of the resolution adopted by the school district’s board of directors authorizing the district to request the waiver(s).” Section 6.05.2.6: In alignment with my recommended changes to 3.01.1 and 3.03.4, I would recommend changing this to read, “A signed copy of the resolution adopted by the school district’s board of directors authorizing the district to request the waiver(s) extension.”

**Division Response:** Recommended language adopted in Section 3.01.1, Section 3.03.4, and Section 6.05.2.6. Non-substantive changes made.

**Comment (3):** Section 3.02.1: I would recommend changing this to read, “Waivers requested for the sole purpose to avoid violations of the Standards for Accreditation shall not be granted.”

**Division Response:** Recommended language adopted. Non-substantive change made.

**Comment (4):** Section 3.04.8: There appears to be an extra section symbol here. Section 5.01.1.1: “Required” should be “requires.” Section 6.02: There is a “a” missing from before “Standard.” In Section 6.05.4, there appears to be an object missing here so I would recommend changing this to read with “The district’s Extension Request must” or “The Extension Request from the district must.” In Section 6.05.4.1, there is an extra “5” at the very end of the reference to 6.05.4.

**Division Response:** Changes made to correct errors. Non-substantive changes made.

**Comment (5):** Section 4.02: For consistency with other rules, I would recommend changing this to “by the chair of the State Board.”

**Division Response:** Comment considered. No change made.

**Comment (6):** Section 4.03.2: I would recommend changing this to read, “A district that does not provide materials as required by Section 4.03.1 of these Rules or that wishes to present documents in addition to those the district submitted under Section 4.03.1 of these Rules may only use the desired presentation or additional documents with the permission of the State Board.”

**Division Response:** Comment considered. No change made.

**Comment (7):** Section 6.01: To make it clear that the expiration of the waiver is based on the date the repeal of the statute/rule is effective rather than potentially on the date the repeal is voted upon, I would recommend changing this to read “expires on the date the repeal becomes effective.”

**Division Response:** Recommended language adopted. Non-substantive change made.

**Comment (8):** Section 6.05.1: I would recommend changing this to read “The Extension Request Form shall be available on the Division’s website” to more closely match the language in 3.04.1.

**Division Response:** Recommended language adopted. Non-substantive change made.

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

(1) Section 3.03 – Is there a reason that “[a] copy of the waivers granted to the open-enrollment public charter school” was not also included, as set forth in Ark. Code Ann. § 6-15-103(b)(2)? **RESPONSE:** The Division has a complete list of all waivers granted to open-enrollment public charter schools that can be used to verify that an open-enrollment public charter school has requested the waiver, so there is no need for applicants to include a copy with the petition. No change made.

(2) Section 3.05 – On what authority does the Division rely for excluding such waiver requests? **RESPONSE:** Act 1240 waivers can only be granted if an open-enrollment public charter school already holds the waiver. Open-enrollment public charter schools are prohibited from obtaining waivers in the areas listed in Section 3.05 by the DESE Rules Governing Public Charter Schools and Ark. Code Ann. § 6-23-401. No change made.

(3) It appears that the numbering is off between Sections 3.05 and 3.06. **RESPONSE:** The numbering has been changed. Non-substantive change made.

(4) Section 3.05 (pertaining to recess) – Is there a reason that the rule permits a “district” to request a recess waiver, where Ark. Code Ann. § 6-16-102(a)(5)(E)(i) provides that a “public elementary school” may? **RESPONSE:** Individual schools cannot make 1240 waiver requests. All 1240 waiver requests must be made by districts. The Act 1240 waiver pathway specifically states that “a public school district may petition the State Board of Education.” A district can specify a particular school in its waiver request. If a public elementary school wishes to waive the requirements of recess, the district can make the request for a waiver for a particular school. No change made.

(5) Section 5.00 – On what authority does the Division rely for the review and modification or revocation of waivers once granted? Is the Division comfortable that such a review does not conflict with Ark. Code Ann. § 6-15-103(c)(3) that provides a granted waiver “shall be valid for the duration approved by the Board”? **RESPONSE:** The Division relies on the broad authority granted by Ark. Code Ann. § 6-15-103(d), which allows the

Division to promulgate rules to implement the section. Just like waivers for open-enrollment public charter schools and district conversion charter schools, these Rules allow waivers to be reviewed, modified, or revoked. The purpose is to give flexibility for the State Board to modify or revoke a waiver if the waiver is not (1) serving the purpose outlined in the petition, (2) causing an academic or fiscal detriment to the district, or (3) otherwise being misused. This follows the same process in place for other waiver pathways. No change made.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency states that the proposed rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 6-15-103(d), the Division of Elementary and Secondary Education may promulgate rules to implement the statute, concerning school district waivers. The rules incorporate changes to law made by Act 641 of 2019, sponsored by Representative Jana Della Rosa, which allowed for extended learning opportunities through unstructured social time, required a certain amount of time for recess, and considered supervision during unstructured social time as instructional; and Act 815 of 2019, sponsored by Senator James Sturch, which amended provisions of the Arkansas Code with respect to open-enrollment public charter school and traditional public school waivers and amended provisions concerning schools of innovation.

i. **SUBJECT: DESE Rules Governing the Arkansas Teacher of the Year Program**

**DESCRIPTION:** The Division of Elementary and Secondary Education proposes changes to its Rules Governing the Arkansas Teacher of the Year Program. The proposed changes incorporate Act 251 of 2019, which expanded eligibility for the Teacher of the Year program to any licensed educator who is engaged in student contact for more than seventy percent (70%) of the educator’s contract time. Previously, the law limited eligibility to “classroom” teachers and expressly barred guidance counselors and library media specialists. The proposed rules also contain editorial changes.

Public comment resulted in non-substantive, editorial changes.

**PUBLIC COMMENT:** A public hearing was held on April 13, 2020. The public comment period expired on April 20, 2020. The Division provided the following summary of the public comments that it received and its responses thereto:

**Commenter Name: Lucas Harder, Arkansas School Boards Association**

**Comment (1):** I would recommend moving the defined terms so that they are in alphabetical order. Also, in Section ~~3-04~~ 3.03, because Ark. Code Ann. §§ 6-13-604 through 607 were previously repealed, I would recommend changing this to read “6-13-608 et seq.”

**Agency Response:** Comment considered. Non-substantive changes made.

**Comment (2):** There is a comma missing from between “benefits” and “and.” “Simple” should be “simply.”

**Agency Response:** Comment considered. Non-substantive changes made.

**Comment (3):** There is an “i” missing from between the “b” and the “l” in “responsibilities.”

**Agency Response:** Comment considered. Non-substantive change made.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 6-17-2503(a)(1), the Division of Elementary and Secondary Education shall develop a process for selecting the Arkansas Teacher of the Year. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-17-2505(d), which provides that the State Board of Education may promulgate rules to administer the statute, concerning the Division’s responsibility to reimburse a school district when its Arkansas Teacher of the Year is on paid administrative leave. The proposed changes include those made in light of Act 251 of 2019, sponsored by Representative DeAnn Vaught, which amended the Arkansas Teacher of the Year Act.

**j. SUBJECT: DESE Rules Governing Immunization Requirements in Arkansas Public Schools**

**DESCRIPTION:** The Division of Elementary and Secondary Education proposes changes to its Rules Governing Immunization Requirements in Arkansas Public Schools. The changes include the following:

- Title changed to reflect the change in name of the Division of Elementary and Secondary Education from the Arkansas Department of Education. Throughout, changes are made to reflect the change in name of the Division of Elementary and Secondary Education from the Arkansas Department of Education. Stylistic changes are also made throughout.

- Changes to formatting and wording made throughout to make the rules easier to read and navigate.
- Sections 7.02 and 7.03 added to reflect changes in law made by Act 676 of 2019.

Following the public comment period, duplicative language was stricken in Section 5.04.1, and grammatical changes were made throughout.

**PUBLIC COMMENT:** A public hearing was held on April 13, 2020. The public comment period expired on April 20, 2020. The Division provided the following summary of the public comments that it received and its responses thereto:

**Commenter Name: Lucas Harder, Arkansas School Boards Association (12/13/19)**

**Comment (1):** Section 3.01.8: I believe that this subsection and 3.01.9 should be flipped so that the types of hepatitis are in alphabetical order and Hepatitis A appears earlier in the required immunizations.

**Division Response:** Comment considered. No change made.

**Comment (2):** Section 3.03.1.1.3: The “03” here should be “02.” In Section 3.02.2.8, there is a “have received” missing from between “must” and “at.”

**Division Response:** Change made. Non-substantive change made.

**Comment (3):** Section 3.02.1.4.1: I believe that this subsection is no longer required to be included as anyone who would have received these immunizations is well past the kindergarten starting age and would be covered by subsection 3.02.2.4.1.

**Division Response:** Comment considered. No change made.

**Comment (4):** Section 5.04.1: The language on the form being available is not appearing to have been struck, which would make it duplicative with the new subsection 5.04.1.1.

**Division Response:** Yes, the language has been changed. Non-substantive change made.

**Commenter Name: Beth McDaniel, Greenwood School District (4/20/20)**

**Comment (1):** Please support 3.02.2.2, 3.02.2.7.2, and 3.04.2 requiring students that are 11 years old and 16 years old to have their Tdap, and MCV4 before they complete their registration for the school year. Staff and administration hours are lost, and attendance is lost due to students missing after the school year begins to get their immunizations.

**Division Response:** Comment considered. No change made.

**Commenter Name: Ronda Wagner, Benton School District (4/20/20)**

**Comment (1):** Please consider changing the following: 3.02.2.2 Tdap each student must have one dose to enroll in Sixth grade. Strike as of 11 by September 1 of each year. Leave the rest. In Section 3.02.2.7.2 MCV4, each student must have a second dose to enroll in eleventh grade unless first dose was administered at age 16 or older. In Section 3.04.2, strike by October 1 for Tdap and meningococcal at age 11 and 16. The rationale is to have all immunizations prior to beginning of the school year. Staff hours are wasted by both nursing and administration and seat time is decreased as students miss to obtain required immunizations.

**Division Response:** Comment considered. No change made.

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

(1) Section 5.04.1 – Should the last sentence be stricken as duplicative of Section 5.04.1.1? **RESPONSE:** Yes, the language has been changed. Non-substantive change made.

(2) Did the State Board of Education consult with the State Board of Health, as provided in Ark. Code Ann. § 6-18-702(c)(2)(A)? **RESPONSE:** Yes. Prior to being released for public comment, the rules were reviewed by the Department of Health. Once the rules were released for public comment, they were reviewed by the State Board of Health at the Board's April 23, 2020 meeting.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 6-18-702(c)(2)(A), the State Board of Education, after having consulted with the State Board of Health, shall promulgate appropriate rules for the enforcement of the statute, concerning immunizations, by school district boards of directors, superintendents, and principals, regarding kindergarten through grade twelve (K-12). The proposed changes include those made in light of Act 676 of 2019, sponsored by Representative Justin Boyd, which required public and private schools to report certain information regarding the number and percentage of students who have exemptions from or have not provided proof of required vaccinations.

k. **SUBJECT: DESE Rules Governing Public School Student Services (REPEAL)**

**DESCRIPTION:** The Division of Elementary and Secondary Education proposes the repeal of its Rules Governing Public School Student Services, as a result of Act 190 of 2019, which repealed the Public School Services Act and wholly replaced it with the School Counseling Improvement Act of 2019. The student services plan under the Public School Services Act had become an outdated document focused on compliance. The new law requires districts to have a comprehensive school counseling program, as well as a plan to ensure that comprehensive supports are provided to students. The new law also outlines the role of counselors and requires that 90% of a counselor’s time during student contact days is spent providing services to students.

The School Counseling Improvement Act does not provide specific rulemaking authority to the Division of Elementary and Secondary Education. DESE’s Division of Learning Services issued a guidance to assist school districts with the implementation of the new law.

There were no public comments concerning the repeal of these rules. There was an inquiry, however, as to the location of the DESE guidance referred to above. Guidance can be found on DESE’s website at <http://dese.ade.arkansas.gov/divisions/learning-services/guidance-and-school-counseling/professional-school-counseling-resources>. Guidance documents are under the header Act 190 Guidance Documents. Additional comprehensive school counseling supports can be found at <http://dese.ade.arkansas.gov/divisions/learning-services/guidance-and-school-counseling>.

**PUBLIC COMMENT:** A public hearing was held on April 13, 2020. The public comment period expired on April 20, 2020. The Division received no public comments.

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

In the last sentence of the rule summary provided, it states that “a guidance” was issued. Is that in the form of a memorandum or some different form? **RESPONSE:** Guidance is provided on the Division website at

[http://dese.ade.arkansas.gov/public/userfiles/Learning\\_Services/Guidance\\_School\\_Counseling/ACT\\_190\\_The\\_Comprehensive\\_School\\_Counseling\\_Act\\_of\\_2019RV.pdf](http://dese.ade.arkansas.gov/public/userfiles/Learning_Services/Guidance_School_Counseling/ACT_190_The_Comprehensive_School_Counseling_Act_of_2019RV.pdf).

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency states that the repealed rules have no financial impact.

**LEGAL AUTHORIZATION:** The State Board of Education had been authorized to adopt rules to carry out the intent of the Public School Services Act, previously codified at Ark. Code Ann. §§ 6-18-1001 through 6-18-1009. *See* Ark. Code Ann. § 6-18-1003, repealed by Act 190 of 2019, § 3. The repeal of these rules effectuates Act 190 of 2019, sponsored by Senator Breanne Davis, which repealed the Public School Services Act and created the School Counseling Improvement Act of 2019.

I. **SUBJECT: DESE Rules Governing Student Special Needs Funding**

**DESCRIPTION:** The Division of Elementary and Secondary Education proposes changes to its Rules Governing Student Special Needs Funding. Amendments to the rules are necessary to incorporate changes from Acts 936 and 1044 of 2017, Act 243 of 2018, and Acts 532 and 1083 of 2019, and include the following:

- Unnecessary definitions were removed.
- Section 5.00, English Language Learner (ELL), Special Needs Funding, was updated to include current state and federal legal requirements.
- References to National School Lunch (NSL) funding were changed to Enhanced Student Achievement (ESA) Funding pursuant to Act 1083 of 2019.
- Allowable expenditures for ESA funding were revised pursuant to Act 532 of 2019.
- Section 6.14, regarding the ESA Matching Grant Program, was added pursuant to Act 243 of 2018.
- References to ACSIP were removed or revised.
- References to Department were replaced with Division.

**PUBLIC COMMENT:** A public hearing was held on April 13, 2020. The public comment period expired on April 20, 2020. The Division provided a summary of the public comments that it received and its responses thereto, which due to its length is attached separately.

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

(1) Sections 3.06 and 3.07 – In the new 3.06, the model components were renamed from “Coordinated School Health” to “Whole School, Whole Community, Whole Child”; however, the new section 3.07, which appears to set forth the components, continues to refer to “Coordinated School Health.” Is this correct? **RESPONSE:** Yes; while we continue to refer to

the program as the Coordinated School Health Program, we use the Whole School, Whole Community, Whole Child model to guide the Program.

(2) Sections 3.23.1 and 3.23.2 – Should these sections, and those subsections therein, be underlined as “new” language from that currently in the rules? **RESPONSE:** Yes; added.

(3) Section 6.00 – Is there a reason that the term “enhanced student achievement state categorical funding” has been used throughout when Ark. Code Ann. § 6-20-2305 uses the term “enhanced student achievement funding”? **RESPONSE:** The extended term has always been used to mirror that used in adequacy recommendations.

(4) Section 6.14.3 – Does the distribution of funding set forth in the rules track that set forth in Act 243 of 2018, § 31, and Act 877 of 2019, § 29, which provide that funds shall be distributed “on a dollar for dollar matching basis of school district expenditures . . . on a pro rata basis until the funds are exhausted”? The rule seems to read that funding will be paid on a pro-rata basis only if the total of statewide expenditures exceeds the amount of funding allowed by the Act. **RESPONSE:** Yes; there would be no need for pro rata distribution if total expenditures do not exceed available funding. No distributions are made until all expenditures are received.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 6-20-2304(a), the State Board of Education shall have the authority, acting pursuant to its rulemaking powers, to adopt rules for the implementation of the provisions of the Public School Funding Act of 2003, Ark. Code Ann. §§ 6-20-2301 through 6-20-2309. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-20-2305, concerning school funding. *See* Ark. Code Ann. § 6-20-2305(b)(4)(B)(iii)(a) (providing that the Division of Elementary and Secondary Education shall establish rules to implement the transitional Enhanced Student Achievement Funding provided in Ark. Code Ann. § 6-20-2305(b)(4)(B)(ii)); Ark. Code Ann. § 6-20-2305(b)(4)(B)(v)(b) (providing that the State Board shall establish rules to be used by the Division to determine: (1) the amount of growth necessary to qualify as significant growth; (2) the expected increase in the number of national school lunch students based on the expected increase in enrolled students; and (3) which public school districts have experienced a significant growth in enrolled students as necessary to qualify for funding under Ark.

Code Ann. § 6-20-2305(b)(4)(B)(v)); Ark. Code Ann. § 6-20-2305(b)(4)(C)(i)(a) (providing that the State Board shall establish by rule a list of approved programs and purposes for which funds allocated under Ark. Code Ann. § 6-20-2305(b)(4) may be expended). Further, special language contained in Act 877 of 2019, an act for the Department of Education – Public School Fund – grants and aid to local school districts and special programs appropriation for the 2019-2020 fiscal year, provides that the Department of Education shall adopt rules as necessary to implement Section 29 of the Act, concerning the set aside and use of monies for school district expenditures for evidence-based programs to improve academic achievement of identified Enhanced Student Achievement Funding eligible students. *See* Act 877 of 2019, § 29. *See also* Act 243 of 2018, § 31.

Changes to the rules include those made in light of Act 532 of 2019, sponsored by Representative Jon Eubanks, which amended provisions of the Arkansas Code with respect to public school funding; Act 1083 of 2019, sponsored by Senator Alan Clark, which amended the name of national school lunch state categorical funding; Act 936 of 2017, sponsored by Senator Jane English, which amended provisions of the Arkansas Code concerning public school education; and Act 1044 of 2017 and Act 243 of 2018, both acts making appropriations.

**m. SUBJECT: DESE Rules Governing the Succeed Scholarship Program**

**DESCRIPTION:** The Division of Elementary and Secondary Education proposes changes to its Rules Governing the Succeed Scholarship Program. Amendments to the rules were necessary as a result of Acts 327, 637, and 894 of 2017, and Acts 548 and 1078 of 2019, and include the following:

- Definitions were added for “foster care,” “foster parent,” “IEP,” and “individualized service plan.”
- Section 4.01.1.1.2 was added to reflect that a resident superintendent may waive the student eligibility requirement that the student have attended public school for one year.
- Section 4.01.2 was amended to add eligibility for students in foster care, students who have been medically diagnosed by a licensed physician as a child with a disability, and students who have an individualized service plan.
- Section 4.04 was added to include the twenty (20) scholarship maximum for students in foster care.
- Section 4.05 was added to incorporate the change that students in foster care may continue to receive the scholarship even after achieving permanency through adoption, reunification, or permanent guardianship.

- Section 5.02.1 was amended to include the provision that a private school may participate in the program prior to receiving accreditation if all applicable conditions are met.
- Section 5.04.3 was added to list the information an eligible private school must provide in order to participate in the program.
- Revisions were made to the application, transfer, funding, and recertification processes to ensure a smoother and more efficient operation of the program.

**PUBLIC COMMENT:** A public hearing was held on April 13, 2020. The public comment period expired on April 20, 2020. The Division provided the following summary of the public comments that it received and its responses thereto:

**Commenter Name: Lucas Harder, ASBA**

3.04-3.05: I would recommend flipping these two sections so that the definitions are in alphabetical order.

3.09: This definition is not used anywhere in the Rules.

5.02.1.1: This should end in a colon instead of a semicolon.

4.05: I would recommend adding “enrollment in home school” as a reason that the student would no longer be eligible for the scholarship as the student would then be attending a school that was not on the approved private school list.

5.04.3.1: The “m” is missing from “norm.”

**Agency Response:** Corrections made to 3.04, 3.05, 4.05, 5.02.1.1, and 5.04.3.1.

**Commenter Name: Jennifer Wells, APSRC**

2018 should be 2019.

4.01: Recommend adding “or a current foster-care placement” after “disability.”

Recommend moving 4.01.4 up to 4.01.1.1.3 and add an “or” after 4.01.1.1.1.2, because they are the same provisional subject matter.

4.01.3 & 4.02: Recommend adding “if applicable.” Not all students will necessarily have a current school district.

**Agency Response:** Corrections made to current year and 4.01.

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

(1) Section 3.05 – Can you tell me from where the definition for “individualized service plan” came? **RESPONSE:** This definition was derived from the IDEA regulations, 34 CFR 300.138(b).

**FOLLOW-UP QUESTION:** Can you tell me how this differs from the “Individualized Education Program,” as it appears that both are developed by the public school or school district?. **RESPONSE:** Under IDEA, only

a public school can draft an ISP. The difference between the two is that an IEP, developed by the public school, details the services that must be provided to the public school student in order to provide a free appropriate public education, while the ISP, also developed by a public school, details what services the public school chooses to offer to the private school student.

(2) Section 5.04.3 – Should the “format prescribed” be “deidentified” as referenced in the relevant statutory provisions? *See* Ark. Code Ann. § 6-41-903(d)(1)(B), (d)(2)(B), (d)(3)(B), (d)(4)(A). **RESPONSE:** Yes; corrected.

(3) Section 5.04.3.12 – Should the report also contain the demographic data of all students who have applied for the Scholarship Program and the geographic location in the state of the students participating, as provided in Ark. Code Ann. § 6-41-903(d)(4)(A)(v)? **RESPONSE:** Demographic data is only available for students who receive a scholarship. A private school would not have access to data for students who apply but are not approved.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 6-41-906(a), the State Board of Education shall adopt rules and develop notices and other documentation necessary to administer the Succeed Scholarship Program that are in the best interest of students. The proposed changes include those made in light of Act 548 of 2019, sponsored by Representative Mark Lowery, which deemed a student with an individualized service plan eligible for participation in the Succeed Scholarship Program; Act 1078 of 2019, sponsored by Senator Kim Hammer, which expanded the eligibility requirements for students participating in the Succeed Scholarship Program; Act 327 of 2017, sponsored by Representative Carlton Wing, which expanded the number of private schools eligible to participate in the Succeed Scholarship Program; Act 637 of 2017, sponsored by Representative Mark Lowery, which allowed the superintendent of a student’s resident school district to waive the requirement that the student attend public school for one (1) academic year to be eligible for a Succeed Scholarship; and Act 894 of 2017, sponsored by now-Senator Hammer, which made foster children eligible for a scholarship in the Succeed Scholarship Program.

8. **DEPARTMENT OF EDUCATION, DIVISION OF HIGHER EDUCATION**  
**(Dr. Maria Markham, Mr. Nick Fuller)**

a. **SUBJECT: State Teacher Education Program**

**DESCRIPTION:** The Division of Higher Education’s State Teacher Education Program rules are being amended due to changes made during the 2019 Regular Session by Act 603. The Act added eligibility for the program to individuals who successfully completed an alternative educator preparation program. Previously, the Teacher Education Program was only available to individuals who graduated from a teacher education program.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on April 20, 2020. The Division received no public comments.

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

(1) **Rule 3.III.** – What is the reasoning behind alternative-educator-preparation individuals being placed fourth in priority? **RESPONSE:** This was to allow the repayment for individuals who receive their license through the alternative educator prep, but still prioritize individuals who follow the traditional educator degree path.

(2) **Rule 4.I.A.** – Should this section also contain a reference to one who has successfully completed an alternative educator preparation program after 2004, as set forth in Ark. Code Ann. § 6-81-1606(a)(1), as amended by Act 603 of 2019, § 2? **RESPONSE:** This has been added. Thank you.

(3) **Rule 4.I.B.** – Should this section also contain a reference to one who has successfully completed an alternative educator preparation program after 2004, as set forth in Ark. Code Ann. § 6-81-1606(a)(2)(B)(ii), as amended by Act 603 of 2019, § 2? **RESPONSE:** Corrected. Again, thank you.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency states that the amended rules have a financial impact. Specifically, the total estimated cost by fiscal year to state, county, and municipal government to implement the rules is \$3,000,000 for the current fiscal year and \$3,000,000 for the next fiscal year. The agency states that the projected cost of the State Teacher Education Program is not expected to significantly change with the

amendment of these rules, but the amount listed is the total projected cost of the scholarship program. This scholarship is funded through general revenue.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 6-81-1606(c), the Division of Higher Education shall promulgate rules necessary for the implementation of the State Teacher Education Program, Ark. Code Ann. §§ 6-81-1601 through 6-81-1606. Changes to the rules include those made in light of Act 603 of 2019, sponsored by Representative Grant Hodges, which considered an individual who earns a teaching license upon the successful completion of an alternative educator preparation program an eligible applicant under the State Teacher Education Program.

**b. SUBJECT: Arkansas Governor’s Scholars Program**

**DESCRIPTION:** The Division of Higher Education’s Arkansas Governor’s Scholars Program rules are being amended due to changes made during the 2019 Regular Session by Act 834. This amendment would allow for a student in their final year of the award to take less than the full-time fifteen (15)-hours-per-semester requirement and still receive a pro-rated portion of the scholarship. This would allow a student to take only the courses needed for degree completion without having to take unnecessary courses to be eligible for the scholarship.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on April 20, 2020. The Division received no public comments.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency states that the amended rules have a financial impact. Specifically, the total estimated cost by fiscal year to state, county, and municipal government to implement the rules is \$20,000,000 for both the current fiscal year and next fiscal year. The projected cost of the Arkansas Governor’s Scholars Program is not expected to significantly change with the amendment of these rules. The amount estimated is the total projected cost of the scholarship program. The scholarship is funded through general revenue.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 6-82-304, the Division of Higher Education shall administer the Arkansas Governor’s Scholars Program and shall have the following authority and responsibility with respect to the program to: prepare application forms or such other forms as the Division shall deem necessary to properly administer and carry out the purposes of Title 6,

Chapter 82, Subchapter 3 of the Arkansas Code; establish and consult as necessary with an advisory committee representing the public and private sectors of postsecondary education and secondary schools in determining guidelines and rules for the administration of the program; select recipients of scholarships awarded pursuant to the provisions of Title 6, Chapter 82, Subchapter 3; establish the procedures for payment of scholarships to recipients; set a termination date for the acceptance of applications; review and evaluate the operation of the program with regard to eligibility criteria and size of the scholarship award to ensure that the program's operation meets the intent of the legislation; determine the necessary procedures for the awarding of scholarships if the number of eligible applicants exceeds the available funds or available awards; and approve a scholarship hold for a student for a period of twenty-four (24) months or less for reasons set forth in statute, without limitation. Changes to the rules include those made in light of Act 834 of 2019, sponsored by Representative Gayle McKenzie, which allowed recipients of Arkansas Governor's Scholarships, Arkansas Governor's Distinguished Scholarships, and the Arkansas Academic Challenge Scholarship to continue to receive the scholarships while enrolled part-time.

c. **SUBJECT: Arkansas Academic Challenge Scholarship**

**DESCRIPTION:** The Division of Higher Education's Arkansas Academic Challenge Scholarship rules are being amended due to changes made during the 2019 Regular Session by Acts 549, 755, and 834 of 2019. The changes made by each act include:

- Act 549 amended the eligibility section of the Academic Challenge program. Currently, a student is required to achieve a composite score of 19 on the ACT to be eligible for the scholarship. This amendment changes the requirement to a superscore of 19. This change would allow a student to use scores from multiple tests to become eligible for the program.
- Act 755 allowed a student who receives the Governor's Distinguished Scholarship to also be awarded an Academic Challenge Scholarship. The total award amount may not exceed the maximum of the Governor's Distinguished award, which is \$10,000 per year. This change allows ADHE to maximize the use of lottery funds to help offset the increased need for funds for the Governor's Distinguished Scholars program.
- Act 834 allowed for a student receiving the Academic Challenge Scholarship in their fourth year to receive a pro-rated award as a part-time student if the student's degree plan does not require a full-time enrollment during the final year to complete. This change eliminates the need for a student to take additional unnecessary classes to remain eligible for the scholarship.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on April 20, 2020. The Division received no public comments.

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

(1) *Definitions*, (26) – I believe there may be extraneous numbers, 30 and 31, in the text of the definition. **RESPONSE:** Yes, this has been corrected.

(2) *Add'l Eligibility Reqs. for Traditional Students*, (2)(A) – This section appears premised on Ark. Code Ann. § 6-85-207(2)(A); however, that statute appears unchanged after the 2019 Regular Session. On what authority is the Division premising this change? **RESPONSE:** This was to be in line with the other changes for the allowance of superscoring. It didn't seem right to not allow the superscore for individuals with disabilities as well.

(3) *Add'l Eligibility Reqs. for Traditional Students*, (3)(B) – Should the reference to Division of Workforce Services include “Adult Education Section” as referenced in Ark. Code Ann. § 6-85-207(3)(B), as amended by Act 910 of 2019, § 2163? **RESPONSE:** Corrected.

(4) *Add'l Eligibility Reqs. for a Nontraditional Student*, (1)(B) – Should the reference to Division of Workforce Services include “Adult Education Section” as referenced in Ark. Code Ann. § 6-85-208(1)(B)(i), as amended by Act 910 of 2019, § 2164? **RESPONSE:** Corrected.

(5) *Continuing Eligibility*, (a)(5?) (there appear to be two section (1)s) – What is the reasoning behind this proposed change? Would it possibly affect students studying abroad through another program or perhaps jointly with another program? **RESPONSE:** Corrected the numbering. This was added for clarification that students can't split the scholarship between two (2) institutions if they take a portion of hours at one school and the rest at another school. This is how the program has operated up to this point, but there were some questions asked about it, so this was added for clarification.

(6) *Scholarship Award Amounts*, (e)(1)(D)(i) and (ii) – Should the references to Division of Workforce Services include “Adult Education Section” as referenced in Ark. Code Ann. § 6-85-212(e)(1)(D)(i) and (ii), as amended by Act 910 of 2019, § 2175? **RESPONSE:** Corrected.

(7) Pursuant to Act 549 of 2019, §§ 2 and 4, now codified at Ark. Code Ann. §§ 6-85-207(1)(B) and 6-85-208(1)(B)(ii), the Division “shall

promulgate rules in consultation with ACT, Inc. to determine the mechanism for calculating and disseminating an applicant's superscore on the ACT." Are these rules forthcoming? Will they be promulgated separately from these currently proposed changes? **RESPONSE:** They will be done separately.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency states that the amended rules will have a financial impact. Specifically, the additional cost of the state rule is estimated to be \$3,000,000 to \$5,000,000 in lottery proceeds for both the current and next fiscal years. The total estimated cost by fiscal year to state, county, and municipal government to implement the rule is estimated to be \$95,000,000 for both the current and next fiscal years. The agency states that the projected cost of the Academic Challenge Scholarship program is not expected to significantly change with the amendments to the rules. The amount stated is the total projected cost of the scholarship program, and the scholarship is funded through general revenue and net lottery proceeds.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 6-85-205(a), the Division of Higher Education shall develop and promulgate rules for the administration of the Arkansas Academic Challenge Scholarship Program consistent with the purposes and requirements of Title 6, Chapter 85, Subchapter 2 of the Arkansas Code, concerning the Arkansas Academic Challenge Scholarship Program—Part 2. The rules shall pertain to: student eligibility criteria based on the subchapter; the method for selecting scholarship recipients and for determining continuing eligibility; the procedures for making payment to an approved institution of higher education where the recipient is enrolled; and other administrative procedures that may be necessary for the implementation and operation of the program. *See* Ark. Code Ann. § 6-85-205(b).

Proposed changes to the rules include those made in light of Act 549 of 2019, sponsored by Representative Fred Allen, which amended eligibility requirements regarding an applicant for the Arkansas Academic Challenge Scholarship to include the applicant's superscore on the ACT; Act 755 of 2019, sponsored by Representative Andy Davis, which amended the law concerning use of higher education funds, amended the law concerning private resident and correspondence schools, and amended the Arkansas Academic Challenge Scholarship eligibility requirements; and Act 834 of 2019, sponsored by Representative Gayle McKenzie, which allowed recipients of Arkansas Governor's Scholarships, Arkansas Governor's Distinguished Scholarships, and the Arkansas Academic Challenge

Scholarship to continue to receive the scholarships while enrolled part-time.

9. **DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY** (Ms. Becky Keogh, items a, b; Mr. Micheal Grappe, items a-c; Mr. Shane Houry, items a, b)

a. **SUBJECT: Rule 5: Liquid Animal Waste Management Systems**

**SUBJECT:** APC&EC Rule No. 5: Liquid Animal Waste Management Systems

**DESCRIPTION:** Revisions are being proposed to the Arkansas Pollution Control and Ecology Commission’s Rule No. 5: Liquid Animal Waste Management Systems in order to implement the Governor’s directive to make permanent the current moratorium on confined animal operations of a certain size in the Buffalo National River Watershed. The Commission’s authority for amending Rule No. 5 is found in Arkansas Code Annotated § 8-1-203(b)(1)(A).

The proposed changes to the rule include making the moratorium on large confined animal operations in the Buffalo National River Watershed permanent in accordance with the Governor’s request; incorporating statutory changes passed by the General Assembly that amended the name of ADEQ and references to rules, particularly Acts 910 and 315 of 2019; and making minor stylistic revisions.

**PUBLIC COMMENT:** A public hearing was held on August 23, 2019. The public comment period expired on September 3, 2019. The APC&EC voted to reopen the public comment period, and that comment period expired on January 23, 2020. The Division provided a summary of the public comments received and its responses thereto, which due to its length is attached separately.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rule has no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 8-1-203(b)(1)(A), the Arkansas Pollution Control and Ecology Commission has the power and duty to promulgate rules implementing the substantive statutes charged to the Division of Environmental Quality. The Commission is further given and charged with the power and duty to promulgate rules, including water quality standards and the classification

of the waters of the state and moratoriums or suspensions of the processing of types or categories of permits, implementing the substantive statutes charged to the Division for administration. See Ark. Code Ann. § 8-4-201(b)(1)(A). The Commission is likewise given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules implementing or effectuating the powers and duties of the Division and the Commission under the Arkansas Water and Air Pollution Control Act (“Act”), codified at Ark. Code Ann. §§ 8-4-101 through 8-4-318. See Ark. Code Ann. § 8-4-202(a). Under this Act, the Division is given and charged with the power and duty to issue, continue in effect, revoke, modify, or deny permits under such conditions as it may prescribe “[t]o prevent, control, or abate pollution” and “[f]or the discharge of sewage, industrial waste, or other wastes into the waters of the state, including the disposal of pollutants into wells.” Ark. Code Ann. § 8-4-203(a)(1), (2).

**b. SUBJECT: Rule 6: State Administration of the National Pollutant Discharge Elimination System (NPDES)**

**DESCRIPTION:** Revisions are being proposed to the Arkansas Pollution Control and Ecology Commission’s Rule No. 6: Rules for State Administration of the National Pollutant Discharge Elimination System (NPDES) to adopt federal revisions to the NPDES program, incorporate statutory revisions made by the Arkansas General Assembly, clarify several provisions, implement the Governor’s directive to make the current moratorium on confined animal operations in the Buffalo National River Watershed permanent, and make stylistic and formatting corrections throughout the rule. Rule No. 6 establishes the parameters for the State water pollution control permitting program in lieu of the federal NPDES program and pursuant to the federal Clean Water Act, 33 U.S.C. § 1251 et seq. The state legislative acts prompting the regulatory amendments are Acts 94 and 575 of 2015 and Acts 315 and 910 of 2019. The federal regulatory changes prompting the amendments are 40 C.F.R. §§ 122.21(e)(3), 122.44(i)(1)(iv), 136.1(c), 125(I) and (J), 423, 122, 123, 127, and 401.17. The Arkansas Pollution Control and Ecology Commission’s authority for amending Rule No. 6 is found in Ark. Code Ann. §§ 8-6-207(b)(1), 8-4-202(a), and 8-1-203(b)(1)(A).

Proposed changes to Rule No. 6 include:

- *Incorporation of Updates to Federal Regulations.* Amendments to Rule 6.104 to incorporate changes made to federal regulations;
- *Incorporation of Updates to Arkansas Law.* Acts 94 and 575 of 2015 were enacted by the Arkansas General Assembly and require revisions to Rule 6.205 concerning Trust Fund permitting requirements; Acts 315 and 910 of 2019 were enacted by the Arkansas General Assembly and require

revisions to Rule No. 6 concerning the name of ADEQ and the use of “rule” in lieu of “regulation”;

- *Amendments to Provide Clarification and Minor Corrections.*

Clarification of sections of the rule that were otherwise unclear, and minor corrections to make the rule more illustrative of the legislative and regulatory intent;

- *Amendments to Chapter 4.* To add 6.403 and 6.404 to insert permitting language from Reg. 2;

- *Amendments to Rule 6.602.* To amend the current Rule 6.602 to make permanent the moratorium on confined animal operations of a certain size in the Buffalo National River Watershed;

- *Regulatory Amendments for Consistency with Statutory Changes.* To amend other chapters of the rule for consistency with the statutory changes made by the General Assembly and federal regulations, primarily concerning terminology and program name changes; and

- *Stylistic and Formatting Corrections.* To make minor, non-substantive stylistic and formatting corrections throughout the rule.

**PUBLIC COMMENT:** A public hearing was held on August 23, 2019. The public comment period expired on September 3, 2019. The APC&EC voted to reopen the public comment period, and that comment period expired on January 23, 2020. The Division provided a summary of the public comments received and its responses thereto, which due to its length is attached separately.

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

(1) Section 6.205 – The materials submitted with the proposed changes indicate that Act 94 of 2015 required revisions to the rule; however, it appears from Act 575 of 2015 that the provisions added by Act 94 were limited by the language “[u]ntil January 1, 2016.” Indeed, it appears that the changes made to statute by Act 94 were never incorporated into the rule, and the language that was to be changed by Act 94 is being stricken. Can you please specify then what revisions to the rule are being made as a result of Act 94? **RESPONSE:** The limiting language is from Act 575, but the language that is limited is from Act 94. Both Acts became effective on July 22, 2015. Since both acts became effective at the same time, DEQ treated them as a single change to the law.

(2) Section 6.205 – Is the language being stricken in subsections “P” and “Q” due to the limiting language of Act 575 that allowed the reduction or waiver “[u]ntil January 1, 2016”? **RESPONSE:** Yes.

(3) Section 6.205 – It appears that the language being stricken in subsection “R” is still present in Ark. Code Ann. § 8-4-203(8). Can you

reconcile for me why it is being removed from the rule? **RESPONSE:** Ark. Code Ann. § 8-4-203(8) states, “The division shall not directly operate or be responsible for the operation of a nonmunicipal domestic sewage treatment works.” DEQ believes that Ark. Code Ann. § 8-4-203(8) does not require clarification through regulations.

Section 6.205 concerns “Trust Fund Permitting Requirements” for non-municipal domestic sewage treatment works. The proposed language for this section is, “The Division shall not issue, modify, renew, or transfer a NPDES permit for a non-municipal domestic sewage treatment works without the permit applicant first complying with Ark. Code Ann. § 8-4-203(b).”

Based on the proposed changes for Section 6.205, retaining subsection “R” would be redundant because it is in the statute and including “R” in Rule 6 was unnecessary in the first instance.

(4) Section 6.701 – What is the rationale for the addition of a repealer? I only ask because it would seem any repeal of a rule would still be required to go through the legislative review and approval process of Ark. Code Ann. § 10-3-309 before it could become effective. **RESPONSE:** The “repealer” language was intended to make it clear that when a new rule was enacted, that it would supersede existing rules that were in conflict. DEQ’s intention is to run any repeal of a rule concurrently with the superseding rule and to make it clear in the petition that the new rule would replace the old rule. However, since each rule would move through the process separately, DEQ was concerned that a hiccup in the process could result in conflicting rules being “effective” at the same time.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rule has no financial impact.

With respect to the total estimated cost by fiscal year to any private individual, entity and business subject to the amended rule, the agency provided the following response:

Implementing the revised federal rules and clarification/correction of various sections of this regulation is not expected to cause an increase in costs to private entities because permittees were expected to comply with these requirements prior to incorporation. Implementing the revised state rule should result in reduced costs to nonmunicipal domestic sewage treatment works permittees. Changes to the general permit process are expected to reduce costs to facilities.

The agency further states that there is no additional cost to state, county, and municipal government to implement the changes to this rule.

**LEGAL AUTHORIZATION:** The Arkansas Pollution Control and Ecology Commission (“Commission”) is given and charged with the power and duty to promulgate rules, including water quality standards and the classification of the waters of the state and moratoriums or suspensions of the processing of types or categories of permits, implementing the substantive statutes charged to the Division of Environmental Quality (“Division”) for administration. *See* Ark. Code Ann. § 8-4-201(b)(1)(A). *See also* Ark. Code Ann. § 8-1-203(b)(1)(A) (setting forth generally the powers and responsibilities of the Commission, including the promulgation of rules implementing the substantive statutes charged to the Division for administration) and Ark. Code Ann. § 8-6-207(b)(1)(A) (bestowing said power and duty under the Arkansas Solid Waste Management Act, codified at Ark. Code Ann. §§ 8-6-201 through 8-6-223). The Commission is likewise given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules implementing or effectuating the powers and duties of the Division and the Commission under the Arkansas Water and Air Pollution Control Act (“Act”), codified at Ark. Code Ann. §§ 8-4-101 through 8-4-318. *See* Ark. Code Ann. § 8-4-202(a). Under this Act, the Division is given and charged with the power and duty to issue, continue in effect, revoke, modify, or deny permits under such conditions as it may prescribe “[t]o prevent, control, or abate pollution” and “[f]or the discharge of sewage, industrial waste, or other wastes into the waters of the state, including the disposal of pollutants into wells.” Ark. Code Ann. § 8-4-203(a)(1), (2).

Per the agency, the amended rules are required to comply with federal law, specifically, 40 C.F.R. §§ 122.21(e)(3), 122.44(i)(1)(iv), 125 Subparts I and J, 127, and 136.1(c), and Regulation 6.602.

c. **SUBJECT: Rule 27: Licensing of Operators of Solid Waste Management Facilities and Training and Certification Requirements for Environmental Officers**

**DESCRIPTION:** The instant rulemaking concerns the amendment of the Arkansas Pollution Control and Ecology Commission’s Rule No. 27: Licensing of Operators of Solid Waste Management Facilities and Illegal Dumps Control Officers, in order to promulgate the mandated necessary rules for the Division of Environmental Quality’s administration of the Environmental Compliance Resource Program and the licensing of environmental officers. The Commission’s authority to amend Rule No. 27 to address these changes is found in Arkansas Code Annotated §§ 8-6-2006 and 8-6-2007(a). The rulemaking is further proposed to comply with Arkansas law that repeals the duties and powers of illegal dumps control

officers; to incorporate statutory changes from Act 1067 of 2019 passed by the Arkansas General Assembly; and to promulgate necessary forms to be used by environmental officers.

**PUBLIC COMMENT:** A public hearing was held on March 9, 2020. The public comment period expired on March 23, 2020. The Division provided the following summary of the public comment that it received and its response thereto:

**Commenter: Michael J. Daniels, Vice Chairperson, Southern Environmental Enforcement Network (SEEN)**

I was provided a copy of proposed changes to APC&EC Rule 27. I observed a reference to SEEN on page 17 of proposed changes. SEEN is listed as one of the approved providers of training to “operators.” Based upon my appreciation of who an “operator” is, this may not be correct. SEEN is more qualified to provide training to a person who is an “Environmental Officer.”

**Agency Response:** DEQ agrees and has made the change to the Revised Mark-up Draft that was suggested. The Southern Environmental Enforcement Network (SEEN) has been removed as one of the approved providers of training for “operators.”

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

(1) Rule 27.102 – I just thought that I would mention that this section appears to still contain the term “regulations.” **RESPONSE:** DEQ agrees and has made the changes to Rule 27.102 of the Revised Mark-Up Draft to remove the word “regulations.”

(2) Rule 27.103, Definitions –

(a) Is there a reason that the definition for “Environmental violations” does not also include all of the language set forth in Ark. Code Ann. § 8-6-2003(4)? **RESPONSE:** The definition of environmental violation in Rule 27.103 was changed from the definition set forth in Ark. Code Ann. § 8-6-2003 to clarify and simplify the definition. The purpose of this Act is to address conduct prohibited under § 8-6-2005 for illegal dumping of solid waste, the creation/furtherance of an illegal dump site, and illegal dumping of solid waste as it is addressed for waste tires in our Tire Act, § 8-9-401 et seq. Based on the wording of § 8-6-2004–2005, the language in § 8-6-2003(4)(B) can only address the “conduct prohibited in 8-6-2005,” or violations of the Tire Act. DEQ is enforcing violations of illegal dumping of solid waste in violation of § 8-6-2005 and the Tire Act, but § 8-6-2004 doesn’t state this clearly. To avoid redundancy and to clarify the rule’s application to illegal dumping violations and the Tire Act, DEQ drafted

this portion of the rule that does not strictly mirror the wording of 8-6-2003(4).

(b) Should the initial reference to “§ 8-6-2005” be “§ 8-6-2005(1)” since subsections (2) and (3) of that statute are also enumerated? **RESPONSE:** DEQ agrees and has made the first reference to “§ 8-6-2005” be “§ 8-6-2005(1) in the Revised Mark-up Draft.

The proposed effective date is July 9, 2020.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

However, with respect to the total estimated cost by fiscal year to any private individual, entity, and business subject to the amended rules, the agency avers a cost of \$50 for the current fiscal year and \$25 for the next. It states: Solid waste operators’ cost will not change. The changes to the rule eliminate illegal dumps control officers who previously paid \$50.00 for licensing. Now, environmental officers, who were previously licensed as illegal dumps control officers, will be certified for an initial \$50.00 fee and a \$25.00 renewal fee each year.

With respect to the total estimated cost by fiscal year to state, county, and municipal government to implement the rules, the agency avers a cost of \$50 for the current fiscal year and \$25 for the next. It states: Solid waste operators’ cost, which may include cost to government employees, will not change. The changes to the rule eliminate illegal dumps control officers who previously paid \$50.00 for licensing. Now, environmental officers, who were previously licensed as illegal dumps control officers and who may include government employees, will be certified for an initial \$50.00 fee and a \$25.00 renewal fee each year.

**LEGAL AUTHORIZATION:** The proposed rules implement changes brought about by Act 1067 of 2019, sponsored by Representative Danny Watson, which created the Environmental Compliance Resource Act. Pursuant to Arkansas Code Annotated § 8-6-2006, the Arkansas Pollution Control and Ecology Commission shall promulgate rules for the administration of the Environmental Compliance Resource Program under the Environmental Compliance Resource Act (“Act”), Ark. Code Ann. §§ 8-6-2001 through 8-6-2019. The Division of Environmental Quality is charged with developing, implementing, and administering an Environmental Compliance Resource Program as provided under the Act and pursuant to the rules promulgated by the Commission. *See* Ark. Code Ann. § 8-6-2007(a).

10. **DEPARTMENT OF FINANCE AND ADMINISTRATION, ALCOHOLIC BEVERAGE CONTROL DIVISION** (Ms. Doralee Chandler, Mr. Chip Leibovich)

a. **SUBJECT: Oversight of Medical Marijuana Cultivation Facilities, Processors and Dispensaries**

**DESCRIPTION:** These rules govern the oversight of medical marijuana processing facilities in Arkansas by governing the requirements for record keeping, security, personnel, storage, and processing marijuana in a consistent manner with the existing rules governing cultivation and dispensary facilities. Included in the proposed rules are amendments in the existing rules to allow for consistency between dispensaries and cultivators for maintenance/contractors being in the facility at the request of the industry while requiring the use of security procedures that were already required. The amended rule also allows for patients with physical restrictions to bring someone into the dispensary waiting area for assistance purposes to reduce premises liability on the dispensaries.

**PUBLIC COMMENT:** A public hearing was held on this rule on March 18, 2020. The public comment period expired on March 16, 2020. The agency provided the following summary of the public comments it received and its responses to those comments:

Public comments were received from licensed cultivators and processors that increasing the retention of all video surveillance system access logs and records and all surveillance recordings from 90 days to three years would be cost prohibitive to the industry due to the vast number of cameras maintained at the facility. Documentation was presented to the Board that cultivation facilities maintaining a minimum of 104 cameras would incur expenses annually in excess of \$900,000. It was consistently expressed that the cost for 360 days retention would be \$301,892; 180 days retention at \$158,596; and 120 days retention at \$103,580. Documentation was also presented that the cost to dispensaries with a minimum of 32 cameras would be over \$225,000.

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

**QUESTION #1:** Why did the Division change the definition of a “batch” from 5 to 10 pounds? **RESPONSE:** The definition of batch contained in the Arkansas Department of Health rules governing registration, labeling & testing of medical marijuana is set at 10 pounds. In order to be consistent with the batch sizing laboratory testing must follow we are increasing our batch amounts to 10 pounds.

**QUESTION #2:** Is there a specific source for the § 7.2(b) requirement that a dispensary's cultivation facility must be connected to the dispensary? **RESPONSE:** ABC is seeking clarification of the rule as it has consistently required the dispensary operations (cultivation/dispensing) to be under one roof per the existing rules. Dispensary means an entity, per definition, not multiple entities and all dispensaries are required to enclose and operate a secured facility. The intention of the existing rules is that there is one facility – one permitted premises. The distance requirements from a school, day care, church or development disability facility is measured from the front door of the facility not facilities further solidifying the intent of one permitted location under one roof with one front door. The language that has been added is to make clear the requirement that a dispensary must cultivate on their permitted premises and not have a separate cultivation location. If they wanted a separate cultivation locations/facility then they should have applied for and received a cultivation permit.

**QUESTION #3:** Where do the hand-washing requirements in § 9.5(c)(ii) and § 10.6(c)(ii) come from? **RESPONSE:** The hand washing requirements themselves were already contained in the rules previously approved and the added language was to provide clarification/guidance on when those requirements come in to operation and should be completed.

**QUESTION #4:** Is there specific statutory authority for the new rule (§ 10.4(a)(i)(1)) allowing a person in need of physical assistance to bring a guest into a dispensary waiting area? **RESPONSE:** There is no specific statutory authority for this provision. This provision came as an industry request due to premise liability concerns created by employees of the facility helping disabled individuals in and out of the location.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency indicated that this rule has a financial impact. Per the agency, licensed facilities will incur costs to comply with the requirements, but the amount of those costs is unknown at this time. The agency indicated that there will be no estimated cost to state, county, or municipal government as a result of this rule.

**LEGAL AUTHORIZATION:** The Alcoholic Beverage Control Division has authority to adopt rules governing oversight, recordkeeping, security, and personnel requirements for transporters, distributors, processors, dispensaries, and cultivation facilities. Ark. Const. amend. 98, §§ 8(e)(1)-(4), 24(h)(2)(A)-(D). It may also promulgate rules regarding “manufacture, processing, packaging, and dispensing of usable marijuana to qualifying patients and designated caregivers; license suspension procedures and penalties for violating the Amendment or rules; inspection

procedures; and advertising restrictions. Ark. Const. amend. 98, §§ 8(e)(5)-(8), 24(h)(2)(A)-(I). In addition, the Division has authority to promulgate rules regarding “[a]ny other matters necessary to the division’s fair, impartial, stringent, and comprehensive administration of its duties under” the Amendment. Ark. Const. amend. 98, §§ 8(e)(10), 24(h)(2)(J).

The proposed changes implement Act 642 of 2017, Act 928 of 2019, and Act 989 of 2019. Act 642 of 2017, sponsored by Representative Douglas House, added a licensure procedure for transporters, distributors, and processors to the Arkansas Medical Marijuana Amendment of 2016. Act 928 of 2019, sponsored by Senator Cecile Bledsoe, added restrictions regarding advertising of medical marijuana and use of certain symbols. Act 989 of 2019, also sponsored by Senator Bledsoe, banned use of medical marijuana in food and drink except in certain circumstances.

11. **DEPARTMENT OF HEALTH, CENTER FOR PUBLIC HEALTH PRACTICE** (Ms. Laura Shue, Ms. Lynda Lehing)

a. **SUBJECT: Rules for the Administration of Vital Records**

**DESCRIPTION:** These amendments to the Rules for the Administration of Vital Records address the change in the death medical certification and registration process as required by Act 975 of 2019; the reporting of an abortion that results in a live birth as required by Act 801 of 2019; and the removal of the term “regulation” as required by Act 315 of 2019.

**PUBLIC COMMENT:** A public hearing was held on this rule on September 10, 2019. The public comment period expired on October 7, 2019. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency indicated that this rule does not have a financial impact.

**LEGAL AUTHORIZATION:** “The State Board of Health may adopt, amend, and repeal rules for the purpose of carrying out” the Vital Statistics Act. Ark. Code Ann. § 20-18-202. Some of these changes implement Act 975 of 2019, sponsored by Representative Mark Perry, which amended the Vital Statistics Act by amending the death certificate registration process for the signature of the medical certificate of death. See Ark. Code Ann. § 20-18-601(c)(1)(A), *as amended by Act 975*.

Other changes implement Act 493 of 2019, sponsored by Representative Robin Lundstrum, which created the Cherish Act and prohibited abortions

after eighteen weeks' gestation except in a medical emergency. The Act set forth certain reporting requirements for a physician who "performs or induces an abortion on an unborn human whose gestational age is greater than eighteen (18) weeks," *See* Ark. Code Ann. § 20-16-2004(c)(1), *as created by* Act 493, and it required the Department of Health to create certain forms "[w]ithin thirty (30) days of the effective date of this subchapter[.]" Ark. Code Ann. § 20-16-2005(a), *as created by* Act 493.

Still other changes implement Act 801 of 2019, sponsored by Senator Gary Stubblefield, which amended laws concerning abortion facilities and abortion reporting and amended the born-alive infant protection laws. Specifically, if an abortion performed in a hospital results in a live birth, Act 801 requires the attending physician to report that abortion resulting in a live birth to the Department of Health. *See* Ark. Code Ann. § 20-16-604(e)(2)(D), *as amended by* Act 801.

**12. DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, STATE BOARD OF EXAMINERS OF ALCOHOLISM & DRUG ABUSE COUNSELORS (Ms. Pam Fite)**

**a. SUBJECT: Rules Governing Alcoholism & Drug Abuse Counselors**

**DESCRIPTION:** This rule change simplifies the verification process for an applicant to confirm that they have three (3) years of clinically supervised work experience in the field of substance abuse and mental health before obtaining a license. The agency provided the following summary of amendments:

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. Acts 426 and 1011 of 2019 mandate that boards amend their rules to provide the least restrictive means of obtaining licensure by reciprocity for those individuals who have substantially similar licenses from another jurisdiction.

3. Pursuant to Act 820 of 2019, the Board will grant automatic licensure to an active military service member stationed in the State of Arkansas, a returning military veteran applying for licensure within one (1) year of his or her discharge, or the spouse of a person in the above category.

**PUBLIC COMMENT:** A public hearing was not held in this matter. The public comment period expired on May 15, 2020. The State Board of Examiners of Alcoholism & Drug Abuse Counselors received no public comments.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that the proposed rules do not have a financial impact.

**LEGAL AUTHORIZATION:** The State Board of Examiners of Alcoholism and Drug Abuse Counselors has authority to administer and enforce the provisions of the subchapter concerning licensure of these professionals, and also, to adopt rules consistent with its provision. *See* Ark. Code Ann. § 17-27-406(a). In amending these rules, the Board is implementing the following Acts of the 2019 Regular Session:

Act 426 of 2019, sponsored by Representative Bruce Cozart, created the Red Tape Reduction Expedited Temporary and Provisional Licensure Act and authorized occupational licensing entities to grant expedited temporary and provisional licensing for certain individuals. The Act required occupational licensing entities to promulgate rules adopting “the least restrictive requirements” for occupational licensure for certain individuals. *See* Act 426 of 2019, § 3(b).

Act 820 of 2019, sponsored by Senator Missy Irvin, amended the law concerning the occupational licensure of active duty service members, returning military veterans, and their spouses to provide for automatic licensure. The Act required occupational licensing agencies to grant automatic occupational licensure to these individuals if they hold a substantially equivalent occupational license in good standing issued by another state, territory or district of the United States. *See* Act 820 of 2019, § 2(b).

Act 990 of 2019, sponsored by Senator John Cooper, amended the laws regarding criminal background checks for professions and occupations to obtain consistency regarding criminal background checks and disqualifying offenses for licensure. The Act required licensing entities to promulgate rules to implement the Act. *See* Act 990 of 2019, § 2.

Act 1011 of 2019, sponsored by Representative Jim Dotson, amended the law concerning licensing, registration, and certification for certain professions and established a system of endorsement, recognition, and reciprocity for licensing, registration, and certification for certain professions. *See* Act 1011 of 2019.

13. **DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, STATE BOARD OF ATHLETIC TRAINING** (Ms. Nancy Worthen)

a. **SUBJECT:** Arkansas State Board of Athletic Training Rules

**DESCRIPTION:** The Arkansas State Board of Athletic Training is proposing amendments to its rules. The agency provided the following summary of the proposed changes:

- Changes title to remove “regulation” in accordance with Act 315 of 2019
- Section II – creates new Section C for reciprocal licensure for active duty military members, returning veterans, and spouses as mandated by Act 820 of 2019 (AG’s office model language)
- Section III – language clean up in Section B and C to remove references to forms being mailed to the Board as that is no longer required
- Section VI – standardizes fee structure; currently, the rule allows fees “not to exceed” a certain amount. This change sets them at a fixed amount. No fees will be raised or lowered as a result.
- New Section X – creates pre-licensure background check procedure as mandated by Act 990 of 2019 (AG’s office model language)
- New Section XI – creates waiver process for individuals seeking licensure with disqualifying felony convictions (AG’s office model language)
- Definitions section – removes two references to “regulation” in accordance with Act 315 of 2019; removes definition of “sanctioned recreational activity” because that has been codified at Ark. Code Ann. § 17-93-402(8)

**PUBLIC COMMENT:** A public hearing was held in this matter on April 24, 2020. The public comment period expired on April 23, 2020. The State Board of Athletic Training received no public comments.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses thereto:

**QUESTION 1:** Would Rule II(B)(5) (Licensure by reciprocity may only be granted if the state in which the applicant is currently licensed allows athletic trainers licensed in this state to be eligible for reciprocity) apply to licensure of applicants who are active duty military, returning veterans and spouses? **RESPONSE:** No, because the military reciprocity statute has a different standard under Act 820 and is in the Rules in another section.

**QUESTION 2:** In Section X concerning pre-licensure criminal background checks, it states that the individual must obtain the petition form from the Board in (B), and that the Board will respond to a

completed petition in (C). However, the rule does not address how the petition must be submitted. How would a completed application be submitted? **RESPONSE:** They will submit it in the same manner as other documents submitted to the Board. A draft petition will be submitted to the Board in the future and this draft will give them the option of email or mail and will list the address and email address.

**QUESTION 3:** The code section for pre-licensure background checks and waivers appears to be incorrectly cited as 17-2-xxx, rather than 17-3-xxx. Could you please explain this discrepancy? **RESPONSE:** [The agency submitted a revised markup with the correct statutory citation.]

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The board indicated that the amended rules do not have a financial impact.

**LEGAL AUTHORIZATION:** The Arkansas State Board of Athletic Training has authority to adopt rules necessary for the performance of its duties, including but not limited to, the imposing of fees adequate to carry out the purposes Chapter 93, subchapter 4 of Title 17 concerning athletic trainers. *See Ark. Code Ann. § 17-93-406(5)*. The proposed rules implement the following Acts of the 2019 Regular Session:

Act 315 of 2019, sponsored by Representative Jim Dotson, provided for the uniform use of the term “rule” for an agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of an agency. *See Act 315 of 2019*.

Act 820 of 2019, sponsored by Senator Missy Irvin, amended the law concerning the occupational licensure of active duty service members, returning military veterans, and their spouses to provide for automatic licensure. The Act required occupational licensing agencies to grant automatic occupational licensure to these individuals if they hold a substantially equivalent occupational license in good standing issued by another state, territory or district of the United States. *See Act 820 of 2019, § 2(b)*.

Act 990 of 2019, sponsored by Senator John Cooper, amended the laws regarding criminal background checks for professions and occupations to obtain consistency regarding criminal background checks and disqualifying offenses for licensure. The Act also provided for pre-licensure criminal background check determinations (Ark. Code Ann. § 17-3-103) and applicant waiver requests (Ark. Code Ann. § 17-3-102).

The Act required licensing entities to promulgate rules to implement the Act. See Act 990 of 2019, § 2.

14. **DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, STATE BOARD OF CHIROPRACTIC EXAMINERS (Ms. Laurie Mayhan)**

a. **SUBJECT: Licensure for Military Veterans**

**DESCRIPTION:** The Arkansas State Board of Chiropractic Examiners is proposing rules for automatic licensure of individuals who are active military or veterans. This rule is required by Act 820 of 2019, and provides for quicker licensure for those who are in the military, stationed in Arkansas, or their spouses that hold licensure in another state.

**PUBLIC COMMENT:** A public hearing was not held in this matter. The public comment period expired on March 9, 2020. The Arkansas State Board of Chiropractic Examiners provided the following summary of comments and its responses thereto:

*Commenter:* Don K. Berry, Col, USAF (Ret)

*Summary:* Two comments were received from Mr. Berry regarding this rule and those comments were both against the original language submitted for not defining automatic licensure. (Comments enclosed for reference)

*Response:* The board's counsel as well as a member from ADH and/or the Governor's Office spoke and/or met with Mr. Berry about his concerns and came to an agreement that the addition of the automatic licensure definition would suffice for him.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses thereto:

**QUESTION 1:** Could you please provide the amount of the initial licensure fee under 6(C)(1) and fee authority? **RESPONSE:** \$150 application fee

**QUESTION 2:** The rule contemplates that an applicant provide evidence that he/she holds a substantially equivalent license in another state, but does not state what specific documentation is required. What evidence or documentation is anticipated by the Board to meet this requirement? **RESPONSE:** Proof of a certificate or license from another state or territory as there shouldn't be a huge difference in licensure requirements.

**QUESTION 3:** Similarly, what documentation or evidence would an individual have to provide as evidence that he/she is a qualified applicant under 6(B)? **RESPONSE:** Documentation that would probably be requested is a DD214 or valid military ID, etc.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The board indicated that the proposed rule does not have a financial impact

**LEGAL AUTHORIZATION:** The Arkansas Chiropractic Practices Act authorizes the Arkansas State Board of Chiropractic Examiners to establish rules to enforce the requirements of Chapter 81 concerning chiropractors. *See* Ark. Code Ann. § 17-81-108. Additionally, the duties and powers of the Arkansas State Board of Chiropractic Examiners are contained in Ark. Code Ann. § 17-81-206. Under this section, the board is authorized to promulgate suitable rules for carrying out its duties under the provisions of this chapter. *See* Ark. Code Ann. § 17-81-206(b)(1).

The proposed rule implements Act 820 of 2019, sponsored by Senator Missy Irvin. The Act provided that an occupational licensing entity shall grant automatic licensure to engage in an occupation or profession to an individual who holds a substantially equivalent occupational license in good standing issued by another state, territory, or district of the United States, and is: (1) An active duty military service member stationed in Arkansas or his/her spouse; or (2) A returning military veteran applying for licensure within one (1) year of his or her discharge or his/her spouse. *See* Ark. Code Ann. §17-1-106(b).

15. **DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, ARKANSAS BOARD OF EXAMINERS IN COUNSELING (Ms. Lenora Erickson)**

a. **SUBJECT: Rules of the Arkansas Board of Examiners in Counseling**

**DESCRIPTION:** The Arkansas Board of Examiners in Counseling is proposing amendments to its rules. Changes made pursuant to Ark. Code Ann. §§ 17-27-101 *et seq.* and 25-15-204 include:

- Amendments to Section 1-14 of the Arkansas Board of Examiners in Counseling Rules to comply with statutory changes including automatic licensure for military personnel, background check requirements, and telemedicine.
- Amendments to Section 1-14 to eliminate terms or sections that may have been unnecessary or duplicated elsewhere in the rules and to update terms to more modern usages.

- Amendments to Section 3 to update Graduate Course Requirements.
- Amendments to Section 7 to update renewal date, clarify continuing education requirements, and clarify non-practicing status.
- Amendment to Section 8 to update the Board’s complaint review process.
- Amendment to Section 13 to update fees.
- Addition of Section 14, in accordance with the Administrative Procedure Act. This section is required under Ark. Code Ann. § 25-15-206 and had not previously been included in the Board’s rules.

**PUBLIC COMMENT:** A public hearing was not held in this matter. The public comment period expired on May 4, 2020. The Arkansas Board of Examiners in Counseling provided the following summary of the comments received and its responses thereto:

Name	Pg. #	Comment	Rule Language	Board Response
John Carmack	Pg. 1 mark-up	This allows for unlimited reappointment by the governor.	<del>Board members shall be ineligible for reappointment for a period of three (3) years following completion of each full, three (3) year term.</del> Board members shall be appointed for three (3) year terms.	This change was made to be consistent with the Board’s statutory language, ACA §17-27-201
John Carmack	Pg. 3 mark-up	Does this include “the board member appointed for disciplinary & review committee?”	Five (5) members shall at all times constitute a quorum.	The quorum is set by statute and is used for all Board business not just discussion of complaints so it would include the committee member.
John Carmack	Pg. 12 mark-up	3000 CCH in MFT is not consistent with AAMFT (1000 CCH post Masters)	<del>(b) Must provide evidence of three years (3000 clock hours) three thousand (3000) client contact hours of supervised full-time experience, as defined by the Board,</del> in marriage and family therapy acceptable to the <u>Board.</u>	This language is consistent with the Board’s statute, ACA §17-27-304 and does not have to be consistent with the National Association.

<b>Name</b>	<b>Pg. #</b>	<b>Comment</b>	<b>Rule Language</b>	<b>Board Response</b>
John Carmack	Pg. 18 mark-up	Rationale that other states don't require this is seems dubious, most states did not require 60 hours or 175 hours of supervision; there are several differences from state to state that give autonomy to each state...is this core domain essential to practicing as a clinician?	<u>12.Technology Assisted Counseling, (1 Graduate Credit Hour Minimum)</u>	The board believes it is important for all practitioners to receive training in this area. In light of the recent public health crisis, the board believes it is essential. Accrediting bodies have very little specific standards on the use technology.
John Carmack	Pg. 18 mark-up	Will other outside resources be allowed to count ie., Zur, Pesi etc.?	<u>12.Technology Assisted Counseling, (1 Graduate Credit Hour Minimum)</u>	No for new applicants it must be a college course.
John Carmack	Pg. 19 mark-up	Sp: identity	<u>Professional Identify,</u>	Thank you for the catch.
John Carmack	Pg. 19 mark-up	C+ or below	Grades of "C" or below will not be accepted for licensure purposes.	Thank you for the comment the Board will add the plus sign.
John Carmack	Pg. 24 mark-up	omit "semester hours" as this is stated twice	<u>One hundred (100) CCH may be gained for each three (3) graduate semester hours semester hours earned</u>	Typo in the mark-up; not repeated in the clean copy
John Carmack	Pg. 37 mark-up	Excellent addition to allow credit for the presenter...it's about time	Presenters will receive two (2) hours per one (1) hour of the initial presentation.	Thank you for your comment.
John Carmack	Pg. 37 mark-up	what is the rationale for allowing undergraduate coursework to count for Master's licensure continuing ed?	<u>Both undergraduate and graduate course work will be acceptable. 15 hours of CE credit may be counted for every 1 hour of course work.</u>	The rationale is that even undergraduate coursework takes time and effort and is more involved than an average 1 hour continuing education course.
John Carmack	Pg. 37 mark-up	Excellent	<u>Relevant professional service in leadership</u>	Thank you for the comment.

Name	Pg. #	Comment	Rule Language	Board Response
			<u>positions such as officers of the state, regional, or national professional associations or members of the Arkansas Board of Examiners in Counseling. 10 hours of CE credit may be counted.</u>	
John Carmack	Pg. 37 mark-up	Repeated twice...also found in (g) below	<u>Six (6) continuing education hours in supervision content are required each renewal period for Board approved supervisors. Three (3) of the six (6) clock hours must be from Board recognized state associations or an Arkansas university associated workshop or program.</u>	Typo in mark-up, not repeated in clean copy
John Carmack	Pg. 39 mark-up	Add “as a result of the subcommittee’s review”	<u>The following may be taken as a result of the subcommittee:</u>	The Board will add your suggestion.
John Carmack	Pg. 47 mark-up	What happened to “probation?” This allows them to practice and suspension does not?	SUSPENSION, REVOCATION, ANNULMENT OR WITHDRAWAL	Probation is an option under “other sanctions” it is just not listed in the title of the subsection.
Dustin Morrow	Pg. 15 mark-up	Will the Board continue to oversee Appraisal activities of LPCs?	(a) <del>Appraisal Specialization license standards for issue being (A) or (B) and (C)</del>	The board is seeking to remove the requirement that our licensees must have specializations to provide services they are trained to provide. This is in

Name	Pg. #	Comment	Rule Language	Board Response
				line with other helping professions.
Dustin Morrow	Pg. 13-17 mark-up	Are specializations going away?	<p><del>Section 3.6</del>  <del>Specializations</del></p> <p><del>The Board shall evaluate areas of specialization.</del></p>	The board is not in any way limiting services a trained professional can provide. The board is just not going to oversee these specializations anymore or take money from licensees to have these things added to a license. If you feel you are adequately trained to provide competent, ethical services, you can provide them. Keep your statement of intent updated with the services you are trained to provide. The only specialization the board is going to specifically address is the supervision status.
Sean Paul Jones	Pg. 15 mark-up	How does it affect appraisal?	<p><del>a. Appraisal Specialization license standards for issue being (A) or (B) and (C)</del></p>	The board is seeking to remove the requirement that our licensees must have specializations to provide services they are trained to provide. This is in line with other helping professions.
Sean Paul Jones	Pg. 15 mark-up	So, just any LPC without a Ph.D. and formal training can just go and do psyche assessments? Who will oversee that this doesn't happen/happens only if	<p><del>(a) Appraisal Specialization license standards for issue being (A) or (B) and (C)</del></p>	If a complaint is filed and someone is providing services outside of their scope of practice, they can lose their license. We are still overseeing our

Name	Pg. #	Comment	Rule Language	Board Response
		they meet the prerequisites?		licensees and the services they provide, we are just leaving it up to the licensees to provide services for which they have training, competency and are qualified to provide.
Lindsey Mason	Pg. 18 mark-up	Can you advise as to how the proposed rule revisions affect my current application for a LAC license and its proposed induction of 1 hour of Tech Assisted Counseling?	<del>a.</del> <u>12. Technology Assisted Counseling, (1 Graduate Credit Hour Minimum)</u>	Since you already have an application on file with our board, the new rules will not affect you, in reference to the core curriculum changes.
Cyndi Sewell	Pg. 22 mark-up	Can any of the 2500 CCHs in Level 2 supervision be include Indirect CCHs?	<u>CCH for the remaining twenty-five hundred (2500) hours (Level 2). A direct client contact hour is defined as face-to-face contact with a client(s) in a therapeutic engagement interaction with individuals or groups</u>	It includes direct and indirect hours. The first highlighted section is trying to explain the 1/10 (Level 1) and 1/20 (Level 2) ratios required for the different levels.
Cyndi Sewell	Pg. 22 mark-up	Are we allowed to claim up to 800 Indirect hours during Level 2?	<u>2200 hours defined as direct client contact. No more than 800 hours of indirect client contact may be counted in Level 2.</u>	Yes
Cyndi Sewell	Pg. 24 mark-up	For the indirect hours- is it an 80/20 rule where you are only able to document 20 percent indirect hours based on the total direct hours?	<del>These hours will adhere to the '80-20' rule, meaning 80 hours will go toward direct hours &amp; 20 hours will go toward indirect hours.</del>	We are not breaking it down like that. You can have 800 indirect hours and 2200 direct hours in level 2. Clarification:

Name	Pg. #	Comment	Rule Language	Board Response
				<p>3000 CCHs required to complete supervision  <u>-500 Direct CCHs Level I</u>  2500 Remaining CCHs Level II</p> <p>2500 CCHs Level II  <u>-800 Indirect CCHs Level II</u>  1700 Direct CCHs remaining to complete Level II</p>
Cyndi Sewell	Pg. 23 mark-up	Are the supervision hours required (175) only counted towards the direct client contact hours or both direct and indirect?	<u>(f) The total hours of supervised practice are 175 clock hours of supervision.</u>	Direct and Indirect
Cyndi Sewell	Pg. 22-23 mark-up	Is there a minimum time we have to be under supervision? Once we complete the 3000 hours and 175 supervision hours are we able to apply for full licensure?	<p><u>(d) Counselors or Marriage and Family Therapists licensed at the associate level must complete approximately three (3) years or 3000 Client Contact Hours (CCH) with supervision.</u></p> <p><u>(f) The total hours of supervised practice are 175 clock hours of supervision</u></p>	No-you do not have to spend a minimum amount of time in supervision or do three years. Once you complete 3000 CCH and 175 Supervision Hours you can request to move to LPC.
Matthew Eubanks	Pg. 51 mark-up	When will the new rules revisions go into effect? Seeking Licensure by Endorsement under new rules.	Section 9.1 <del>RECIPRO</del> CITY <u>LICENSURE BY ENDORSEMENT</u>	We are beginning the public comment phase for our rules revisions. This will last 30 days. Then it has to go to legislature for approval and cannot go into effect until 60 days after

Name	Pg. #	Comment	Rule Language	Board Response
				approval. If all goes as planned, our new rules will not go into effect until July 1, 2020
Terri Frank		Thank you for taking the time to create and to publish "Proposed Rules Revisions 2020." I look forward to obtaining a professional counseling license in Arkansas and serving the people of this state. Thank you again for proposing these revisions,		
Amanda Strange		Is this proposal going to permit specializations or only through 5/4?		These rules revisions would take the place of the existing rules we have and would go into effect July 1, 2020
Amanda Strange	Pg. 4 mark-up	I noticed supervision is crossed out as well for a specialization. Is this an error? I am already a licensed supervisor however I am confused as how this would not be a specialization?	<u>"Board Approved Supervisor Status" means any person holding himself/herself out to the public by any title or description of services incorporating the words Approved Supervisor Status. Any person who meets the applicable requirements set forth in Section 4.3 of these rules are approved to supervise LAC and/or LAMFT.</u>	Supervision is the only specialization the board is going to continue to oversee. If you see it marked through in the rules revisions, it is because the name is changing to Board Approved Supervisor Status in the new rules.
Leslie Salmon	Pg. 51 mark-up	Under the current rules I have been denied a professional license by	Section 9. <del>RECIPROCITY</del>	

Name	Pg. #	Comment	Rule Language	Board Response
		endorsement due to my graduate school transcripts falling short of Arkansas' requirements. I am in favor of the rule revision for licensure by endorsement. Please allow us to work here and help others without the financial and time sacrifice of going back to graduate school to take classes on subject matter that we have already mastered through years of experience as Licensed Professionals in other states.	<u>LICENSURE BY ENDORSEMENT</u>	
Julie Pasquino	Pg. 60 mark-up	Asking for clarity related to that and section 12.6 in the proposed rules change, specifically part (d). Does this mean telephone services would not be allowed?	<u>Section 12.6</u> <u>PROFESSIONAL</u> <u>RELATIONSHIP</u> <u>EXCEPTIONS</u>  <u>Under Ark. Code Ann. § 17-80-403(c),</u> <u>“Professional relationship” does not include a relationship between a licensed counselor or marriage and family therapist and a client established only by the following:</u> <u>(a) An internet questionnaire;</u> <u>(b) An email message;</u> <u>(c) Patient-generated medical history;</u> <u>(d) Audio-only communication, including without</u>	Rules Revisions Section 12 is referencing the Telemedicine Act. Section 12.6 is explaining specifically how the Telemedicine Act requires a professional relationship to be established. If a licensee attempts to <u>ESTABLISH</u> a professional relationship through a phone call or interactive audio ONLY, that is not acceptable, under the Telemedicine Act. I believe the intent of 12.6(d) is for professional relationships to be <u>ESTABLISHED</u> in person, not over the phone.

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			<u>limitation</u> <u>interactive audio;</u> (e) <u>Text</u> <u>messaging;</u> (f) <u>A facsimile</u> <u>machine; or</u> <u>Any combination</u> <u>thereof.</u>	
Dustin Morrow	Pg. 4 mark-up	Request to leave the definition of Appraisal Activities in section 1.9.	<del>“Appraisal activities” means selecting, administering, scoring and interpreting instruments designed to assess an individual’s aptitudes, attitudes, abilities, achievements, personal characteristics and interests, but shall not include the use of projective techniques for personality assessment unless specifically qualified to do so under another license. Documentation of all training for appraisal activities and Board approval for those activities is required for protection of the public. Appraisal Specialization License [Rule Section 3.5 (C) (6)] is required if appraising/evalua</del>	As you will see from the attached document the definition is contained in the Board’s enabling statutes therefore the Board does not have to repeat the definition in the rules. In an effort to clean up the Board’s rules, some definitions and other language, that is available within the Board’s enabling statutes, has been removed from the rules but is still very much a part of the Counseling profession. The removal of the definition from the rules does not prevent you from offering these services nor does the Board removing the specialization section of the rules. This simply means the Board will no longer require a fee to have a specialization added to a license. Any specializations will need to be listed on a licensee’s scope of practice but requires

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			<del>ting for placement of children or adults in special programs, in schools, institutions, etc. If appraisals are conducted under contracts with public schools or for the Arkansas Department of Human Services the Appraisal Specialization License must be verified prior to reimbursement to schools or individuals.</del>	nothing special from the Board. Attachment Statute 17-27-102 Definitions.
Elinor Nygren	Pg. 52 mark-up	An applicant for licensure by endorsement who has an LPC from another state and took a test that is equivalent to the NCE, NCMHCE, or the AMFTRB, may not be required to take the NCE, NCMHCE, or the AMFTRB? I'm specifically referring to applicants who were licensed in states which did not require the NCE, NCMHCE, or the AMFTRB to obtain the LPC. But instead, in order to obtain the LPC, the state required state licensing exams which were comparable to the aforementioned national exams.	<u>Waiver of the NCE, NCMHCE, or the AMFTRB may be granted when the Board has determined that another examination is equivalent, or applicant meets licensure by endorsement rules.</u>	Applications for licensure by endorsement will be reviewed on a case by case basis.
Elinor Nygren	Pg. 51 mark-up	If an applicant has been licensed as an LPC for over twenty years in another state but hasn't taken all the core	Applicants who have continually maintained full licensure status as an LPC, LMFT or	The Board has revised this section based on your comment and similar comments to

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		<p>curriculum courses because they were not offered at the time of their licensure, are they still required to have taken all the core curriculum classes to receive an LPC license in Arkansas?</p>	<p>the equivalency for a minimum of three years (36 months) may be eligible for licensure endorsement by the Board. <u>In addition to meeting applicable requirements in Section 5 and 6, the applicant must provide verification that the license issued by another board is currently in good standing. Any history of disciplinary action, sanctions or license denial will be reviewed by the board.</u></p>	<p>make it clear that applicants for licensure by endorsement will only need to provide application documents as required in Section 5 &amp; 6. The Board does not intend for the applicants for licensure by endorsement in this type of situation to have met the same core curriculum or examination requirements.</p>
Elinor Nygren		<p>If an applicant for licensure by endorsement took a state licensing exam that covered the material in core curriculum courses they didn't take, can that exam substitute for taking the course?</p>		<p>9.1(e) states the national exam may be waived.</p>
Elinor Nygren		<p>Can work experience in a particular area substitute for taking a core curriculum course? For example, if an applicant has had several years of experience working in agencies with socially and culturally diverse populations, can that substitute for the Social and Cultural Diversity course?</p>		<p>No. Not unless the applicant is applying through licensure by endorsement. Then the core curriculum deficiencies are waived if an applicant has been fully licensed in another state and in good standing for 3 or more years.</p>

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Elinor Nygren		Regarding licensure by endorsement for an applicant who has been licensed over three years as an LPC from another state: If the applicant has passed an exam given by the state they're licensed in that is comparable to the NCE, NCMHCE, or the AMFTRB, then it doesn't seem necessary to have them undergo the hardship of taking another exam to obtain an LPC in Arkansas. It doesn't seem ethically or professionally necessary and, in my opinion, is not professionally respectful		As stated in 9.1(e), the exam requirement may be waived.
Elinor Nygren		One possibility to consider would be to have a more streamlined licensure by endorsement for applicants who have held out of state licenses for five, ten or twenty years. One option would be to waive the exam and core curriculum requirements for those applicants. The breadth of experience gained in ten or twenty years of practice is probably comparable to the courses they haven't taken (and that weren't offered when they obtained their license). Additionally, since LPCs are required by the states they're licensed in to take ongoing CEUs, workshops, trainings, etc., they have stayed abreast of current trainings and		Please see the Board's response to your previously submitted comments. Thank you!

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		advancements in the field.		
Elinor Nygren		Another possibility to consider would be to waive courses that the applicant was successfully tested on in their state licensing exam, even if they didn't take that course in their graduate program		
Elinor Nygren		Another consideration would be to waive courses when an applicant held a professional position or an internship in particular curriculum areas. To use myself as an example, the "Social and Cultural Diversity" course was not offered at my Clinical Psychology Masters program in 1981. However, my internship was in a community mental health center that served social and culturally diverse populations. Then subsequently, I worked for several years in a county social service agency that also served socially and culturally diverse populations.		
Amanda Willis	Pg. 10 mark-up	It now says you must meet educational requirements (written exam) and/or oral exam. So, does the Board determine who they will give an oral exam to or are there specific guidelines as to who they will do oral exams with?	Must demonstrate professional competencies by passing written, <del>oral, and situational</del> <u>and/or oral</u> examinations as prescribed by the Board	The board is presently doing oral exams for everyone. On May 1 <sup>st</sup> they will have a discussion about the future of oral exams during this public health crisis. Under the new rules revisions, the board may require anyone

Name	Pg. #	Comment	Rule Language	Board Response
				to do an oral exam. The board is implementing a jurisprudence exam that is presently not in place because our rules revisions have not been approved yet.
Alexis Mitchell	Pg. 18 mark-up	I would like for the class to stay.	<del>Psychopharmacology (3 Graduate Credit Hour Minimum)</del>	The Psychopharmacology course is not a CACREP required course. Because Arkansas requires this course, it makes reciprocity of licensure difficult across states. This is why the board elected to remove this course from the core curriculum requirements. Many of the universities will continue to offer the course, it will just not be a requirement for licensure and can be taken as an elective.
Coralyn Liscinski	Pg. 18 mark-up	I believe it is important for mental health counselors to have a basic knowledge of psychopharmacology, and therefore do not believe it would be wise to remove that class from required classes for counselors.	<del>Psychopharmacology (3 Graduate Credit Hour Minimum)</del>	The Psychopharmacology course is not a CACREP required course. Because Arkansas requires this course, it makes reciprocity of licensure difficult across states. This is why the board elected to remove this course from the core curriculum requirements. Many of the universities will continue to offer the course, it

Name	Pg. #	Comment	Rule Language	Board Response
				will just not be a requirement for licensure and can be taken as an elective.
Todd Patten	Pg.4 mark-up	This looks really good and I appreciate your hard work. Thank you. I'm wondering if something might be added to address the role of the counselor in assessment. In the definition of counseling or counselor therapist. Some counselors are doing a lot of assessment.	<p>“Counseling/<del>Psychotherapy</del>” means assisting individuals or groups, through the counseling relationship, to develop understanding of personal problems, define goals, and plan action reflecting interests, abilities, aptitudes, and needs.</p> <p><del>Counseling/Psychotherapy is-</del><u>The terms counseling and psychotherapy are synonymous and refer to the application of mental health, psychological, or human development principles, through cognitive, affective, behavioral or systemic intervention strategies that address wellness, personal growth, or career development, as well as pathology. The terms Counseling/ Psychotherapy</u></p>	As you will see from the attached document, the definition is contained in the Board’s enabling statutes therefore the Board does not have to repeat the definition in the rules. In an effort to clean up the Board’s rules some definitions and other language that is available within the Board’s enabling statutes has been removed from the rules but is still very much a part of the Counseling profession. The removal of the definition from the rules does not prevent anyone from offering these services.

Name	Pg. #	Comment	Rule Language	Board Response
			<p><del>are used interchangeably in definitions of mental health activities in counseling textbooks</del>  <u>Counseling may also include clinical research into more effective methods for the diagnosis, treatment and prevention of the above named conditions.</u></p>	
Deanna Smith	Pg. 61 mark-up	<p>I am confused by one line in the telemedicine guidelines:  Section 12.8 SCOPE OF PRACTICE  Licensed counselors or marriage and family therapists may practice counseling via telemedicine within the definitions found in Section 1.9.  I looked back in Section 1.9 and did not see anything regarding telemedicine that wasn't crossed out during revision. I'm not sure if this is a typo or just something on which I (and likely others) would need clarification. No need to reply. Just wanted to point out confusing language.</p>	<p><del>Section 12.8</del>  <u>SCOPE OF PRACTICE</u>   <u>Licensed counselors or marriage and family therapists may practice counseling via telemedicine within the definitions found in Section 1.9.</u></p>	<p>Thank you for pointing out some confusion, this is intended to reference the definition of counseling. It means that the activities defined as counseling may be done via telemedicine.</p>
Kaitlyn Barrantes-Simpson	Pg. 13 mark-up	<p>So, technology will be considered a general specialization soon that does not require an application, training, and a fee? Even if I don't submit all of this, I can still practice teletherapy</p>	<p><del>Section 3.6</del>  <u>Specializations</u>   <u>The Board shall evaluate areas of specialization.</u>  <u>The Board will</u></p>	<p>Under the proposed rules revisions, it will not be necessary to submit an application or fee for specializations other than for supervision specialization. It is</p>

Name	Pg. #	Comment	Rule Language	Board Response
		even after the COVID-19 situation?	<del>use the national standards for the preparation of counselors, prepared by the specific professional association, as a guide in establishing the standards for counseling; i.e., Rehabilitation Counseling, Pastoral Counseling, Coaching, Career Counseling, School Counseling, Gerontological Counseling, Counseling Supervision, Drug &amp; Alcohol Addictions, Appraisal, Art, Music, Mediation, Technology-assisted Counseling or Marriage and Family Therapy, Technology-assisted Supervision, Traditional Supervision, Recreation Therapeutic Counseling, Applied Behavior Analysts, Play Therapy, Dance Therapy, Neurofeedback, Therapeutic Humor, EMDR, Animal Assisted Therapy, Eating</del>	<p>up to each individual licensee to determine the appropriate amounts of skills and training necessary to equip him/her to provide competent counseling services to the citizens of Arkansas. The licensee must also update the Statement of Intent.</p> <p>Under our current rules, you would need to submit an application, certificate of training and fee. If the COVID-19 situation is resolved before our rules revisions are approved and go into effect, you would need to submit the application, certificate and fee.</p>

Name	Pg. #	Comment	Rule Language	Board Response
			<p>Disorders, Trauma, Treatment of Sexual Abusers, Grief and / or other specified counseling areas as identified. If no national standards are available, the Board will adopt the highest Arkansas standards available.</p>	
Toni McMahon	Pg. 13 mark-up	My colleagues and I have been trying to determine whether or not to pursue the Technology-Assisted Distance Counseling specialization. Will the specialization be necessary under the rules revisions?	<p><del>Section 3.6 Specializations</del></p> <p><del>The Board shall evaluate areas of specialization. The Board will use the national standards for the preparation of counselors, prepared by the specific professional association, as a guide in establishing the standards for counseling; i.e., Rehabilitation Counseling, Pastoral Counseling, Coaching, Career Counseling, School Counseling, Gerontological Counseling, Counseling Supervision, Drug &amp; Alcohol, Addictions,</del></p>	Under the proposed rules revisions, it will not be necessary to submit an application or fee for specializations other than for supervision specialization. It is up to each individual licensee to determine the appropriate amounts of skills and training necessary to equip him/her to provide competent counseling services to the citizens of Arkansas. The licensee must also update the Statement of Intent.

Name	Pg. #	Comment	Rule Language	Board Response
			<p>Appraisal, Art, Music, Mediation, Technology-assisted Counseling or Marriage and Family Therapy, Technology-assisted Supervision, Traditional Supervision, Recreation Therapeutic Counseling, Applied Behavior Analysts, Play Therapy, Dance Therapy, Neurofeedback, Therapeutic Humor, EMDR, Animal Assisted Therapy, Eating Disorders, Trauma, Treatment of Sexual Abusers, Grief and / or other specified counseling areas as identified. If no national standards are available, the Board will adopt the highest Arkansas standards available.</p>	
Toni McMahon	Pg. 58-61 mark-up	Request to restructure section XII	<p>XII. THE PRACTICE OF <del>INTERNET OR TELEPHONE SERVICES</del> <u>TELEMEDICINE</u></p>	<p>Thank you for your thoughts on the organization of this particular section. The organization of the Telemedicine section was designed to follow the structure of the Arkansas</p>

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				Telemedicine Act and mirror that of other health related boards' formatting of the same section.
Cynthia Knighten - Torrence	Pg. 10 mark-up	Section 3.2 LAC. ( Oral Exam NO LONGER Req.?)	Must demonstrate professional competencies by passing written, <del>oral, and situational</del> <u>and/or oral</u> examinations as prescribed by the Board	The board can still require any applicant to take an oral examination.
Cynthia Knighten - Torrence	Pg. 11 mark-up	Section 3.4 LAMFT. Oral Exam NO LONGER Req.?)	Must demonstrate professional competencies by passing written, <del>oral, and situational</del> <u>and/or oral</u> examinations prescribed by the Board	The board can still require any applicant to take an oral examination.
Cynthia Knighten - Torrence	Pg. 12 mark-up	Section 3.45 (e) Master level courses substitute for Supervision hours.	(a) <del>One year of experience may be gained for 30 semester hours of graduate work beyond the Master's level, provided the hours are clearly marriage and family therapy in nature and acceptable to the Board. Hours earned may be substituted for no more than two years of supervised professional experience. The Board of Examiners in Counseling does not have the power to waive</del>	This was clarified and moved to Section 4.1(n). Here is the exact wording of that section: <u>(n) A licensee may reduce CCH/Supervision hours by completing any of the following:</u> <u>1. One hundred (100) CCH may be gained for each three (3) graduate semester hours earned beyond the master's degree, provided that the hours are clearly related to the field of counseling or marriage and family therapy and are acceptable to</u>

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			any required period of supervised experience.	the Board. Up to two thousand (2000) CCH may be gained for each sixty (60) graduate hours.
Lenora Erickson	Pg. 25 mark-up	4.2(b) Delete last sentence? No clients may be seen by the associate licensee . . . .		OK
Lenora Erickson	Pg. 26 mark-up	4.2 top of page 26, change last sentence to: No practice or service may be rendered by the supervisee without a supervision agreement on file with the board.		OK
Lenora Erickson	Pg. 28 mark-up	4.4(f) Delete the last sentence: No practice or service may be rendered by . . . .		OK
Lenora Erickson	Pg. 29 mark-up	5.4(b)-Does the end of this sentence mean we will accept work experience in place of coursework?	Add the word "supervised" before work experience	The board will add the word "supervised" before work experience.
Lenora Erickson	Pg. 38 mark-up	7.3(a)-remove first sentence: A new statement of intent must be received with the renewal fee . . .		Ok to remove
Lenora Erickson	Pg. 51 mark-up	9.1(b) and 9.1(c)DELETE-In addition to meeting applicable requirements in Section 5 and 6. Those sections reference the core curriculum requirements and national exam requirements. Do we need to add something to address people who never took a national exam or who grandfathered in to get their license in another state?	Proposed Change: <u>In addition to providing the application documentation described in Section 5 and 6 (i.e. Statement of Intent, Transcript, References, and examination scores), the applicant must provide verification that the license issued by another board</u>	Ok to use proposed change.

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			is currently in <u>good standing.</u>	
Joe Young	Pg. 1 mark-up	1.2 • If you take out the organizations who are supposed to recommend to the Governor new board members, and how will he know whom to appoint?	<del>The seven are recommended to the governor by November 1 each year by the Executive Committee of the Arkansas Counseling Association (ArCA) or the Executive Committee of the Arkansas Mental Health Counseling Association (ArMHCA). One (1) licensed Marriage and Family Therapist shall be recommended to the governor by the Board of Directors of the Arkansas Association for Marriage and Family Therapists (ArAMFT). One (1) non-licensed member shall represent the over sixty populations and is selected by the governor from the general population. Section (e) (1) (e) (+)</del>	The specifics regarding the appointments of the Board are spelled out in the Board's statutes and do not have to be repeated in the rules.
Joe Young		1.3 • How about including both the state associations as well as the national ones?	See response above.	The Board rarely reports to any of the associations but the reason for the national is for the ability of other states to see if there are

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				any sanctions on a licensee. If the state associations would like to know if one of their members has disciplinary action they are welcome to contact the Board.
Joe Young	Pg. 2 mark-up	1.4 • Why get rid of specialty licenses?	<del>and Specialization Licenses related to Counseling and Marriage and Family Therapy</del>	Other than an additional mark on the physical copy of the license the Board had no true regulation of specialization. Statutorily the only requirement regarding specializations is that an individual demonstrate competency so the Board just requires it to be on the Statement of Intent.
Joe Young	Pg. 10 mark-up	3.2b• Are you removing the requirement for LAC/LAMFT oral exams? When will jurisprudence exam replacement of orals begin?	Must demonstrate professional competencies by passing written, <del>oral, and situational</del> <u>and/or oral</u> examinations as prescribed by the Board;	Yes the Board is removing the mandatory oral exams but they may still be used on a case by case basis. The jurisprudence exam will be in place once the Board's rules have been fully enacted.
Joe Young	Pg. 11 mark-up	3.2f • How will we know if someone is using their LAC license as a permanent license? Should there be a suggested time limit and Supervision requirements?	<del>The intent of the law is for the required three years (3000 clock hours) of supervision as a Licensed Associate Counselor (LAC) to be training with the intent to become a Licensed</del>	There is no true way for the Board to efficiently monitor if someone is using their LAC as a permanent license. There are Supervision requirements and the Board does not set a suggested time limit because every person is unique and

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			<del>Professional Counselor (LPC). The intent of the law is not for the LAC license to be a permanent license. The LAC is not intended to be a permanent license.</del>	may take longer than others to complete the Supervision requirements.
Joe Young	Pg. 12 mark-up	3.5 (scratch out the 4) • Section 3.5 says, “Must meet the requirements of section 3.4, with the exception of (c)” but I don’t see (c).	Section 3.45 LICENSE DMARRIAGE AND FAMILY THERAPISTS (LMFT)	The 4 is scratched out on the clean copy of the rules and there is a (c) on 3.4 as referenced.
Joe Young	Pg. 30 mark-up	6.1• Rules state “Oral interviews may be required by the Board if deemed necessary.” What determines if it is “necessary”?	<u>Oral interviews may be required by the Board if deemed necessary.</u>	This will be determined on a case by case basis.
Joe Young	Pg. 31-32 mark-up	6.2• If you are eliminating specialty licenses, why would we need, “Subtests in specialty skill areas may be a part of updating”?	<u>The Board will adopt a prepared standardized test covering the specialized knowledge common to each license. The Board may contract with test design specialists to prepare and provide materials for such testing and to revise the examination as deemed necessary. Subtests in specialty skill</u>	The Board has this as an option for the future, but it also includes the oral interview for Supervisors.

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			<u>areas may be a part of updating.</u>	
Joe Young	Pg. 38 mark-up	7.4• This section states that “All renewal forms are available on the Board’s website “. I did not see the forms online. If you want us to go to an online system of renewing that’s fine but the rules should reflect that. This statement doesn’t reflect that it is all online now.	<u>All renewal forms are available on the Board’s website or may be requested from the Board office.</u>	All renewal forms are on the Board’s website under the Licensee tab/Renewal Forms. Some licensees do not want to renew online and prefer to send paper documents. That is why the forms are online for printing. If a licensee wants to renew online, the licensee would click the renew online link.
Joe Young	Pg. 50 mark-up	8.217i• After the Board has “impose(ed) any appropriate conditions or limitations on a license” does there need to be any rules listed for that revocation hearing?	The Section number is actually 8.3(1)(7)	The particular section you are referencing occurs after disciplinary action has already occurred.
Joe Young	Pg. 48 mark-up	8.3h• It may be 8.2 j but it isn’t 8.26.	<u>Section 8.2(6)</u>	Thank you for the catch. The Board will correct the error.
Joe Young	Pg. 52 mark-up	9.1b• Define “minimal educational requirements”.	<u>A temporary license may be granted while an applicant completes the minimal educational requirements.</u>	There are no “minimal education requirements” in the referenced section. 9.1d does have a reference and those are the education requirements in Section 3.6
Joe Young	Pg. 56 mark-up	9.4• Is there no educational guidelines for returning military, veterans, or spouses?	<u>“automatic licensure” means the granting of occupational licensure without an individual’s having met occupational licensure requirements</u>	Per Act 820 of 2019 there are no educational guidelines for these individuals who met all the criteria.

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			provided under Title 17 of the Arkansas Code or by these Rules.	
Larry P Henderso n	Pg. 1-2 mark-up	Section 1.2 There appears to be no need for the changes proposed in this section. I am concerned that these have been proposed at all.	<u>The composition of the Board shall include six (6) licensed or licensable counselors, three (3) of whom are practicing counselors and three (3) of whom are counselor educators, one (1) licensed marriage and family therapist; one (1) member from the general public who is not licensed or licensable and not actively engaged in or retired from the profession, and one (1) member who shall represent the elderly.</u>	This section was changed to be consistent with the Board's enabling statutes.
Larry P Henderso n	Pg. 3 mark-up	Section 1.4 The striking of "Counselor/Psychotherapist" is a mistake. Under Arkansas law, LPC's and LMFT's own these terms and that protects us from having these terms used by others who want to provide services but have not gained the credentials to do that that we have gained.	<del>the Counselor/Psychotherapist</del>	The Board is updating the rules to be consistent with the licenses the Board issues authorized by the Board's enabling statutes. Psychotherapist is not a license the Board is authorized to issue, the Board wants consistency with its own laws.
Larry P Henderso n	Pg. 4 mark-up	Section 1.7 To remove the statement about the bonding of the Executive Director and	<del>The Board Chairperson and the Executive Director shall be</del>	There is no need for this statement to be in the Board's rules. With

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		the Chairperson appears to be counter to State law. We do not need to be breaking State law.	<del>bonded to handle finances of the Board in compliance with state regulations.</del>	Transformation the Board is under the Department of Health and the Department now assists with all financial concerns.
Larry P Henderso n	Pg. 4-8 mark-up	Section 1.9 Definitions (b) “Psychotherapy” should remain due to legal interpretations from past history. (e) (f) Why remove the term “regulations” from “rules and regulations”? This term has historical significance and has been in use since the inception of the Board. (h) through (z) These sections should not be deleted due to the historical significance and clarification they provide	“Counseling/ <del>Psyc</del> <del>ho</del> therapy”  these rules <del>and</del> regulations	Pyschotherapy is not a term used in the Board’s enabling statute and therefore should not be used in the rules. The reason regulations is removed is because Act 990 of 2019 removed regulations from all AR boards/commissions rules. Regulation had no meaning within the AR Administrative Procedure Act. The other definitions are removed because they were either not used anywhere in the rules or they are already in the Board’s enabling statutes and therefore do not need to be repeated in the rules.
Larry P Henderso n	Pg. 9 mark-up	Exemptions Section 2.1 Clergy This section should remain in its original form in its entirety. This section was written to give added legal status for the Board to address a serious problem with the illegal and unethical behavior of some clergy in the community. We had ministers putting themselves before the	Any minister, clergy or pastoral counselor who has a private counseling or marriage and family <del>therapist</del> <u>therapy</u> practice (full time or part time) outside of ministry assignment, <del>accepts fees from any source, such as third party</del>	Thank you for your comment. The Board has worked with our AG representatives on all aspects of the rule changes and we are confident we can still pursue individuals when necessary with the change. This is also detailed in our statutes and does

Name	Pg. #	Comment	Rule Language	Board Response
		<p>public as counselors and charging fees but had little or no training as counselors. Some of these ministers were being accused of sexual activity with their clients. The Board had difficulty intervening with these persons because they were not licensed. The Attorney General's office advised us to include this information in our rules and regulations so we could pursue these illegal operators and protect the citizens of Arkansas. It needs to remain for the legal standing it gives the Board. I am a Licensed and Ordained Minister and am licensed as a counselor and therapist. I will be happy to appear before the Board to discuss the urgency of keeping this passage in the rules and regulations.</p>	<p><del>payments, clients, donations or the general public</del> must be licensed by this Board.</p>	<p>not need to be repeated here.</p>
Larry P Henderso n	Pg. 12-13 mark-up	<p>Section 3.5 I do not even understand why this is being considered for removal unless the Board is considering removal of this designation, which would be a grave error.</p>	<p><del>Section 3.5</del> <del>_____Dual</del> <del>Credential/</del> <del>Licensure</del></p> <p>For practitioners who possess both the LAC/LPC &amp; <u>and</u> LAMFT/LMFT, a single licensure certificate will be available at a reduced cost. This is not a new licensure category, only a different certificate. The Continuing</p>	<p>The main portion of this section is still maintained under Continuing Education Section 7.2(f)</p>

Name	Pg. #	Comment	Rule Language	Board Response
			<p><del>Education requirement will be 24 hours, with 3 hours minimum in Ethics. The remaining 21 hours must indicate a balance between counseling and marriage &amp; family continuing education.</del></p>	
Larry P Henderso n	Pg. 13-17 mark-up	<p>Section 3.6 This section should not be removed. Specializations serve the purpose of protecting the citizens of Arkansas. To remove these specializations would mean the Board loses some of its leverage to enforce regulations against the unethical therapist/counselor who claims to perform certain types or approaches of counseling without having to prove they are trained/capable of delivering such services (such as hypnotherapy, Pastoral counseling, Addictions, etc)</p> <p>What Board member would want a family member being “hypnotized” by a person who did not have appropriate training and certification to perform that task?</p> <p>The list of Specializations needs to be retained to support the documentation and certification of the Specializations. Once again, this protects the</p>	<p><del>Section 3.6</del> <del>Specializat</del> <del>ions</del></p>	<p>The board is seeking to remove the requirement that our licensees must have specializations to provide services they are trained to provide. This is in line with other helping professions. This in no way limits the Board’s ability to protect the safety, health and welfare of the public. Licensees must still include these areas on their Statements of Intent and the Board can still review complaints against licensees if they are practicing outside their scope.</p>

Name	Pg. #	Comment	Rule Language	Board Response
		citizens of the State of Arkansas and assures them the Board is watching out for them.		
Larry P Henderso n	Pg. 55 mark-up	<p style="text-align: center;">Section 9.3 Other Professionals and Agencies</p> <p>(d) Obviously the choice to delete this section on training by Pastoral Counselor agencies and organizations shows that the level of Clinical Training provided by these agencies is not understood nor appreciated by members of the Board.</p> <p>I speak with first-hand knowledge on this topic. When my credentials for license were reviewed by the Board in 1992, I was told by the Board Chair that my training and education exceeded by far anything most people ever had who came before the Board. My Master's degree required 124 hours (70 of which were in psychology and counseling). The Doctor's degree with thesis had over 70 hours in counseling. I had over 2000 hours of supervised work. The requirement for the LPC at that time was a 36 hour Master's degree. My training and supervision was done with Pastoral Counseling organizations and at the University of Louisville School of Psychiatry. To attempt to remove</p>	<p><del>(1) Clergy who are credentialed as member, fellow, or diplomat by the American Association of Pastoral Counselors (AAPC), Association for Clinical Pastoral Education (ACPE) or other Board-approved credentialing organizations will be accepted as meeting the Board definition of equivalent training for Licensed Associate or Professional Counselor or Marriage and Family Therapist</del></p>	<p>The Board appreciates your comment and acknowledges the excellent training you received however, the standards of licensure have changed significantly and this language is no longer applicable.</p>

Name	Pg. #	Comment	Rule Language	Board Response
		this from the rules and regulations is an affront to those of us who have pursued an excellent path of education.		
Danette Horne	Pg. 1 mark-up	On page 1, I noticed that the board composition changed from 3 counselor educators or supervisors to 3 counselor educators. I was wondering why supervisors was removed and how you are defining counselor educators (e.g., I am an adjunct at times for the U of A, some of my colleagues are educators online to out of state schools, etc.).	<u>The composition of the Board shall include six (6) licensed or licensable counselors, three (3) of whom are practicing counselors and three (3) of whom are counselor educators, one (1) licensed marriage and family therapist; one (1) member from the general public who is not licensed or licensable and not actively engaged in or retired from the profession, and one (1) member who shall represent the elderly.</u>	This is information that was changed to be consistent with the Board's enabling statute. The Board does not select the members, that is entirely up to the Governor's office.
Danette Horne	Pg. 53 mark-up	Section 9.1, g on page 53. Because I work in a college setting, many of my supervisees are able to start work right away while working to obtain their license because they have not had to hold a license in an educational setting. We require all of our counselors to become licensed as soon as possible; however, they have traditionally been able to count their supervision with me and the hours obtained once	<del>Acceptability of supervision, gained prior to application, under other Licensing Boards or in exempt positions, will be determined in accordance with the following</del>	This section only applied to individuals who were already licensed in another state, not those seeking licensure for the first time. The Board's intent was never to allow supervision hours prior to graduation from a masters program or application for licensure.

Name	Pg. #	Comment	Rule Language	Board Response
		they become licensed because I am a licensed supervisor. It looks like g) is removing their ability to do so. Is that correct? If so, I would definitely like to keep this rule if possible.		
Danette Horne	Pg. 61-66 mark-up	Lastly, a question I am getting from supervisees has to do with the use of Technology. For those who did not have the technology education provided in their programs, what sort of continuing education do they need to have in order to use Telemedicine. I have a specialization, but I know that is going away.	<del>COPIED FROM WWW.NBCC.ORG THE PRACTICE OF INTERNET COUNSELING</del>	The Board does not endorse any specific continuing education programs. There are several programs available if a licensee wishes to become trained in the use of technology. The Board only requires that they keep proof of completion of the program and update their Statement of Intent.
Amy Broadwater	Pg. 53 mark-up	on page 53 section g, does that mean that any supervised hours I have undertaken for the last 3 years in PhD school will not count towards my licensure?	<del>Acceptability of supervision, gained prior to application, under other Licensing Boards or in exempt positions, will be determined in accordance with the following</del>	This section only applied to individuals who are licensed in another state. It did not apply to individuals seeking licensure for the first time. If you have a license in another state and apply through licensure by endorsement the Board will evaluate all information you send in.
M. Kaye Ramsey	Pg. 2 mark-up Section 1.3	Please <b><i>DO NOT change will to may. Suggest inserting: SHALL which in Black's Law Dictionary means, "has a duty to."</i></b>	The Board <del>will</del> <u>may</u> periodically release names of new licensees and the names of those licensees whose licenses have been suspended or	Thank you for your comment. This information is always a public record, the Board just uses its discretion as to whether or not to

Name	Pg. #	Comment	Rule Language	Board Response
			revoked, and those who are appealing a suspension or a revocation	post it in a list anywhere.
M. Kaye Ramsey	Pg. 4 mark-up Section 1.9 Definitions Paragraph (b)	<p>Agree with removing “<b>Psychotherapy</b>” term and leaving “<b>Counseling.</b>”</p> <p>Please review, however, beginning 4<sup>th</sup> line in this paragraph: the <b>usage of these 2 terms: “The terms counseling and psychotherapy</b> are synonymous and refer....</p> <p>If previously removing the word/term “<b>Psychotherapy</b>” then does word need be left later in discussion?</p>	<p>“Counseling/<del>Psychotherapy</del>”</p> <p><u>The terms counseling and psychotherapy are synonymous</u></p>	The Board feels the word “psychotherapy” is still used in practice and therefore only referencing it in relation to the term “counseling” is appropriate.
M. Kaye Ramsey	Pg. 6 mark-up Section 1.9 Definitions: section (h)	<p><b>Privileged Communication</b> definition</p> <p>However, I opine, the omission of <b>Privileged Communication</b> as defined in this statute, appears to be a mistake. It is highly imperative for the public to understand <b>what IS</b> privileged communication, how it affects counseling and processes and that communication in a session is <b>protected</b>.</p>	(a) <del>“Privileged Communication” shall mean any communication between client and counselor given in confidence and not intended to be disclosed to third persons other than those to whom disclosure is made in the furtherance of the rendition of professional services to the client.</del>	As you are aware the term privilege communication is defined in the Board’s statutes therefore it is not required to be repeated in the Board’s rules. Furthermore the Board has a separate section in the rules for this information.
M. Kaye Ramsey	Pg. 10 mark-up Section 3.42	<b>Is it appropriate to change the Rules and not also the Statute?</b>	Must demonstrate professional competencies by passing written, <del>oral, and situational</del> <u>and/or oral</u> examinations	The role of the rules is to further the statutes. The statute clearly states “or” therefore since the Board has not been using situational exams there is no

Name	Pg. #	Comment	Rule Language	Board Response
			prescribed by the Board	need to address them in the rules. Also statutes can only be changed every other year, rules may be changed at any time.
M. Kaye Ramsey	Pg. 11 mark-up Section 3.23	The rules would be served in a positive manner to Define <b><i>“evidence” and acceptable.</i></b>	Must provide evidence of <del>three years (3000 clock hours)</del> <u>three thousand (3000) client contact hours</u> of supervised full-time experience, <del>as defined by the Board,</del> in professional counseling acceptable to the <u>Board.</u>	The Board has considered your suggestion however the Board does not feel it necessary to define these terms. You had a unique situation which the Board handled in an appropriate manner.
M. Kaye Ramsey	Pg. 18 mark-up Section 3.76	<b><i>Highly disagree with deleting requirement: Psychopharmacology course requirement.</i></b>	<del>Psychopharmacology (3 Graduate Credit Hour Minimum)</del>	Removal of this required course makes it easier for individuals who were not educated in AR to obtain an AR license as this is not a course found in the national standards. AR universities can still require it but it will no longer be a Board requirement.
M. Kaye Ramsey	Pg. 21 mark-up Section 3.8.	Appears to be incorrect code per current statute	<u>If an individual has been convicted of an offense listed in A.C.A. §17-2-102(a), except those permanently disqualifying offenses found in A.C.A. §17-2-102(e).</u>	As the official code revisions have not been finalized this section may have to be corrected at a later date. The Act in which this section was created uses the code section as stated. Once there is a finalized code revision the Board will ensure the correct reference is used.

Name	Pg. #	Comment	Rule Language	Board Response
M. Kaye Ramsey	Pg. 22 mark-up Section 4.1(e)	In my clinical training and education as well as in clinical practice, <i>psychological test are administrated by the clinician to the client and both parties are present.</i> This is NOT considered an indirect service but face to face activity. Further, it is unethical to give a test to a client unmonitored. I am not sure why this is listed as an indirect activity. If the statement means, “computer generated test or testing” and this is considered an indirect activity, then this statement needs to be amended to be clearer to the reader.	<u>The LAC and LAMFT are required to have a minimum of 3000 hours of client contact, 2200 hours defined as direct client contact. No more than 800 hours of indirect client contact may be counted in Level 2. Indirect Client Contact means consultation, case management, paperwork, staffing, billing and test administration when the clinician is not working face-to-face with the individuals or groups, but the services are related to the direct care of the individual or groups.</u>	This board licenses counselors and therapists. The direct client contact must be counseling in nature, not testing in nature.
M. Kaye Ramsey	Pg. 23 mark-up Section 4.1 (j)	Understanding that these rules are a general update; however, given the current COVID 19 virus condition especially social distancing consideration, which is affecting both clinical practice as well as supervision, supervision amendment best be made with a statement to this effect	<u>Technology assisted supervision cannot exceed 50% of supervision hours. Technology assisted supervision may be counted in both levels.</u>	As you stated these are general updates, the Board is constantly monitoring the public health crisis and making temporary adjustments as needed.
M. Kaye Ramsey	Pg. 24 mark-up Section 4.1: (1)	Exception need be made in extraordinary situations	<u>The LAC/LAMFT may petition the Board to take the NCMHCE with</u>	The Board evaluates all situations and makes concessions whenever

Name	Pg. #	Comment	Rule Language	Board Response
			<del>recommendation of the contracted supervisor upon the completion of 2000 client contact hours. When approved, the applicant may apply to NBCC and take the NCMHCE. The passing score will be the national cut off score. A pass score on the NCMHCE will be equated to 500 Client Contact Hours (CCH) and applied to the total hours required for completion of supervision.</del>	appropriate within the Board's authority.
M. Kaye Ramsey	Pg. 31 mark-up Section 6.1 (d) 4.	Is there an actual provision in statute 17-27-306 for the Jurisprudent Exam with NBCC? NO Does this need to be changes?	4. The Arkansas Board of Examiners in Counseling Jurisprudence Exam with NBCC	ACA 17-27-306 does not specify any particular type of examination it is the general guidelines. The Jurisprudence Exam is a written exam and will be taking the place of oral interviews.
M. Kaye Ramsey	Pg. 34 mark-up Section 6.4 (f)	<b>Exchange Oral Examination for Oral Interview</b>	<del>Situational Examination, Oral Examination or both</del>	Thank you for the catch, the Board will make the change.
M. Kaye Ramsey	Pg. 34 mark-up Section 6.5 Fee	No content in fee section 6.5? <b>NOT Marked out?</b> Intentional?	<del>Section 6.6</del> <u>6.5</u> FEES	The term fee should have been marked out as well. The entire section was deleted.
M. Kaye Ramsey	Pg. 35-6 mark-up Renewal Fees	See section 7.2 as is similar and title <b>IS marked out</b>	<del>Section 7.2</del> <u>RENEWAL FEES</u>	We are deleting that particular section but all the pertinent information is

Name	Pg. #	Comment	Rule Language	Board Response
				contained in Section 7.1
M. Kaye Ramsey	Pg. 37 mark-up Section 7.2 (h) Continuing Education	<p><b>There are a variety of trainings available.</b> Some titles do not directly specify connected topic(s). Content may be directly related to specialization but not title topics. Some May or may not clearly state a direct specific specialization thus recommend wording: <b>related to...</b></p>	Any licensee with a specialization claimed on the Statement of Intent must have CE hours closely related to a specific specialization.	The Board feels licensees are able to determine what is and is not related to any claimed specialization.
M. Kaye Ramsey	Pg. 38 mark-up Section 7.3: Statement of Intent	<p><b>Propose change is new statement of intent be completed, unless a new specialty be added, on a <u>four (4) year interval not a 2 year interval.</u></b></p> <p>If a new specialty has been added by clinician then formal education credits, CEU and /or supporting supervision can also be added for validation of new specialty. (Same for subsection d in this section related to change in scope of practice). Additional time (4 not 2 years) will allow persons to develop, educate and/or consult in a new area of practice.</p>	A new Statement of Intent ( <del>Scope of Practice</del> ) must be received with the renewal fee and continuing education documentation for any license to be renewed	The Board is making a slight change to this section and only requiring a new Statement of Intent be submitted if any change is made, there will be no expectation that a new Statement be turned in at every renewal.
M. Kaye Ramsey	Pg. 54 mark-up Section 9.3	Suggest in this section, that area of specific licensure be separated by title	Section 9.3 OTHER PROFESSIONALS AND AGENCIES	Thank you for the suggestion
M. Kaye Ramsey	Pg. 57 mark-up HIPPA Additio	Section XI: Client [add <b>Privilege</b> ] Communications and	<del>XI.COUNSELOR/ PSYCHOTHERAPIST AND MARRIAGE</del>	Thank you for the suggestion however the Board feels this

Name	Pg. #	Comment	Rule Language	Board Response
	<p><b>n</b>  <b>Suggestion and Change of Title Suggestion</b></p>	<p>Access to Medical Records  [Partial Quote with addition from p. 57]  The client(s) of persons licensed by this board has the ability to claim or assert privilege to refuse disclosure of records from the record set [HIPPA: 45 CFR 164.501] and to prevent an “<i>individual’s</i> (i.e., clients) <i>personal representative</i> from obtaining medical records. Medical records regarding counseling may include the following: records for the purpose of diagnoses and treatment, physical, mental or emotional condition(s), and addiction treatment (i.e., any of 10 various related substances or unknown substances as well as non-substance related disorders including gambling or related addictive behavioral disorders).</p>	<p><del>AND FAMILY THERAPIST-CLIENT COMMUNICATIONS AND MEDICAL RECORDS</del>  <u>CLIENT COMMUNICATIONS AND MEDICAL RECORDS</u>  The client of persons licensed by this Board has a privilege to refuse to disclose and to prevent any other person from disclosing his/<u>her</u> medical records or confidential communications made for the purpose of diagnosis or treatment of his/<u>her</u> physical, mental or emotional condition, including alcohol or drug addiction, among <u>himself/herself</u>, the licensee, and persons who are participating in the diagnosis or treatment under the direction of the licensee, including members of the client’s family. See Rules 501, 502 and 503,</p>	<p>section is sufficient as written.</p>

Name	Pg. #	Comment	Rule Language	Board Response
			<p>Arkansas Rules of Evidence. The licensee is presumed to have authority to claim the privilege on behalf of the patient. The privilege is subject to the exceptions listed in Rule 503(d). The following communications are not protected by the privilege:</p> <p>Communications relevant to an issue in proceedings to hospitalize the client are not privileged.</p> <p>Communications made in the course of a court ordered examination of the client are not privileged unless the court orders otherwise.</p> <p>Medical records or communications relevant to an issue of the physical, mental, or emotional condition of the patient in any proceeding in which he or she relies upon the condition as an element of his or her claim or</p>	

Name	Pg. #	Comment	Rule Language	Board Response
			<p>defense, or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of his or her claim or defense.</p> <p>The licensee may be required to furnish medical records, and communications in the context of formal discovery procedures.</p>	
Stephen Attebery	Pg. 13-17 mark-up	Is the board moving away from specific rules on specializations? I recently took a training on telehealth/tele counseling. If the new changes go into effect, would I not need to apply for the specialization but just have documentation on my own that I have gotten the adequate training.	<del>Section 3.6</del> <del>Specializations</del>	Yes. The board is seeking to remove the requirement that our licensees must have specializations to provide services they are trained to provide. This is in line with other helping professions. Licensees must still include these areas on their Statements of Intent and practice within their training and scope of practice.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The board indicated that the amended rules have a financial impact. Specifically, the board explained that some fees are decreasing, which will have a positive impact on licensees by making licensure more affordable. The board provided the following list, which shows both the current fees and the proposed decreased fees.

	<b>Current Fees</b>	<b>Proposed Decreased Fees</b>
Application Fee Initial LAC/LPC/LAMFT/LMFT License	\$200	\$100
Application for Board Approved Supervisor Status Fee	\$50	\$50
Application Extension Fee	\$50	\$50
New License Fee LAC to LPC or LAMFT to LMFT	\$100	\$50
Associates (LAC/LAMFT) Pro-rated	\$250	\$200
Professionals (LPC or LMFT) Pro-rated	\$300	\$250
Dual license LAC/LAMFT Pro-rated	\$400	\$350
Dual license LPC/LMFT Pro-rated	\$450	\$400
Biennial license renewal – Associates (LAC/LAMFT)	\$250	\$200
Biennial license renewal – Professionals (LPC of LMFT)	\$300	\$250
Biennial Dual license renewal fee: LAC/LAMFT	\$400	\$350
Biennial Dual license renewal fee: LPC/LMFT	\$450	\$400
Late renewal fee – per month	\$100	\$100
Biennial Non-practicing status renewal fee	\$50	\$50

**LEGAL AUTHORIZATION:** The Arkansas Board of Examiners in Counseling has authority to: (1) adopt rules and procedures as it deems necessary for the performance of its duties, (2) adopt the Code of Ethics of the American Counseling Association and any revisions or additions deemed appropriate by the board to govern appropriate practice or behavior, (3) adopt the Code of Ethics of the American Association for Marriage and Family Therapy to govern licensed marriage and family therapists and licensed associate marriage and family therapists, and (4) charge an application fee determined by the board. *See* Ark. Code Ann. § 17-27-203. The board has authority to license and renew licensure of the following professionals: licensed professional counselors (Ark. Code Ann. § 17-27-301), licensed associate counselors (Ark. Code Ann. § 17-27-302), licensed marriage and family therapists (Ark. Code Ann. §§ 17-27-303 and 17-27-304), and licensed associate marriage and family therapists (Ark. Code Ann. § 17-27-305). As part of the licensure process, the board is authorized to administer an examination (Ark. Code Ann. § 17-27-306), renew licensure including a biannual fee (Ark. Code Ann. § 17-27-307), grant reciprocity of licensure (Ark. Code Ann. § 17-27-308), suspend or revoke licensure (Ark. Code Ann. § 17-27-309), and conduct criminal background checks (Ark. Code Ann. § 17-27-313).

The proposed rules implement the following Acts of the 2019 Regular Session:

Act 315 of 2019, sponsored by Representative Jim Dotson, provided for the uniform use of the term “rule” for an agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of an agency. *See* Act 315 of 2019.

Act 820 of 2019, sponsored by Senator Missy Irvin, provided that an occupational licensing entity shall grant automatic licensure to engage in an occupation or profession to an individual who holds a substantially equivalent occupational license in good standing issued by another state, territory, or district of the United States, and is: (1) An active duty military service member stationed in Arkansas or his/her spouse; or (2) A returning military veteran applying for licensure within one (1) year of his or her discharge or his/her spouse. *See* Act 820 of 2019, codified as Ark. Code Ann. § 17-1-106(b).

Act 990 of 2019, sponsored by Senator John Cooper, amended the laws regarding criminal background checks for professions and occupations to obtain consistency regarding criminal background checks and disqualifying offenses for licensure. The Act also provided for pre-licensure criminal background check determinations (Ark. Code Ann. § 17-3-103) and applicant waiver requests (Ark. Code Ann. § 17-3-102). The Act required licensing entities to promulgate rules to implement the Act. *See* Act 990 of 2019, § 2.

16. **DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, STATE BOARD OF DENTAL EXAMINERS** (Mr. Kevin O’Dwyer)

a. **SUBJECT:** Article XXIII – Pre-Licensure Criminal Background Check

**DESCRIPTION:** The Arkansas State Board of Dental Examiners is proposing amendments to its rules. Proposed Article XXIII states that an individual may petition for pre-licensure determination for whether the individual’s criminal record will disqualify the individual from licensure, and whether a waiver may be obtained.

**PUBLIC COMMENT:** A public hearing was held in this matter on May 8, 2020. The public comment period expired on May 8, 2020. The State Board of Dental Examiners received no public comments.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following question and received the following response thereto:

**QUESTION:** In the Waiver Request portion of the rule, the rule cites Ark. Code Ann. § 17-2-102(a), whereas the correct section appears to be Ark. Code. Ann. § 17-3-102(a). Could you please clarify or submit a revised version? **RESPONSE:** A revised version of the rule with the correct citation was submitted.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The board indicated that the amended rule does not have a financial impact.

**LEGAL AUTHORIZATION:** The Arkansas State Board of Dental Examiners has authority to promulgate rules in order to carry out the intent and purposes of Chapter 82 of Title 17 of the Arkansas Code Annotated (concerning Dentists, Dental Hygienists, and Dental Assistants). *See* Ark. Code Ann. § 17-82-208(a). The proposed rule implements Act 990 of 2019. Act 990 of 2019, sponsored by Senator John Cooper, amended the laws regarding criminal background checks for professions and occupations to obtain consistency regarding criminal background checks and disqualifying offenses for licensure. The Act also provided for prelicensure criminal background check determinations (Ark. Code Ann. § 17-3-103) and applicant waiver requests (Ark. Code Ann. § 17-3-102). The Act required licensing entities to promulgate rules to implement the Act. *See* Act 990 of 2019, § 2.

b. **SUBJECT: Article XI – Dental Hygienists Functions**

**DESCRIPTION:** The Arkansas State Board of Dental Examiners is proposing amendments to its rules. Proposed Article XI will clarify how long a dental hygienist can see patients without the dentist in the office, and also remove the requirements for “good moral character” pursuant to Act 990 of 2019.

This rule was amended to clarify how many days for a given period of time, a hygienist could work in the office without the dentist being present. This rule was amended as a result of complaints the Board received indicating that the current rule was being abused and that hygienists were working unsupervised for long periods of time. The intent of the rule was to ensure that a hygienist may only work two days without a dentist being present. The change clarifies that and closes a loophole. The need for the rule is to ensure patient safety by having a dentist available for any issues that arise and to protect a hygienist from being utilized in a way that exceeds his/her scope of practice.

**PUBLIC COMMENT:** A public hearing was held in this matter on May 8, 2020. The public comment period expired on May 8, 2020. The State

Board of Dental Examiners provided the following summary of comments received and its responses thereto:

*Commenter:* Cara Jones, D.D.S.

*Commenter's Agency:* Arkansas State Board of Dental Examiners

*Summary of Comments:* Dr. Jones wanted extra requirements and would like amendments. Some patients might not know that they were seeing a Hygienist versus a Dentist.

*Agency's Response to Comment:* Discussed possible future amendments and passed rule as written.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following question and received the following response thereto:

**QUESTION:** It appears that the provisions of C(3)(a) and (b) may conflict as to how long a hygienist may render services without a dentist being present. Could you please clarify? **RESPONSE:** A revised markup was submitted by the agency, wherein c(3)(a) was removed and the section was renumbered.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The board indicated the amended rule does not have a financial impact.

**LEGAL AUTHORIZATION:** The Arkansas State Board of Dental Examiners has the power to promulgate rules in order to carry out the intent and purposes of Chapter 82 of Title 17 of the Arkansas Code Annotated (concerning Dentists, Dental Hygienists, and Dental Assistants). *See* Ark. Code Ann. § 17-82-208(a). With respect to dental hygienists, the board has rule-making authority to prescribe those acts, services procedures, and practices which may be performed by dental hygienists at the direction and under the direct supervision of a licensed dentist. The board is also authorized to impose requirements and restrictions on the performance thereof by dental hygienists as it shall deem proper and necessary to protect and promote the public health and welfare of the citizens of this state. *See* Ark. Code Ann. § 17-82-208(c).

- c. **SUBJECT:** Article XIII – Analgesia, Conscious Sedation, Deep Sedation, and General Anesthesia Rules for Dentist in an Ambulatory Facility

**DESCRIPTION:** The Arkansas State Board of Dental Examiners is proposing amendments to its rules, specifically, to Section F of Article XIII, concerning on-site facility inspection and evaluation/re-evaluation for moderate sedation, deep sedation and general anesthesia facilities.

These changes are being made to align rules with the current recommended educational requirements for Moderate Sedation Parenteral (American Dental Association), and to meet the current equipment recommendations for monitoring patients (American Association of Oral Maxillofacial Surgeons).

**PUBLIC COMMENT:** A public hearing was held in this matter on May 8, 2020. The public comment period expired on May 8, 2020. The State Board of Dental Examiners received no public comments.

The proposed effective date of this rule is pending legislative review and approval.

**FINANCIAL IMPACT:** The board indicated the amended rule does not have a financial impact.

**LEGAL AUTHORIZATION:** The Arkansas State Board of Dental Examiners has authority to promulgate rules in order to carry out the intent and purposes of Chapter 82 of Title 17 of the Arkansas Code Annotated (concerning Dentists, Dental Hygienists, and Dental Assistants). *See* Ark. Code Ann. § 17-82-208(a). A dentist receiving a permit to administer general anesthesia or sedation may administer it in compliance with the rules of the Arkansas State Board of Dental Examiners. *See* Ark. Code Ann. § 17-82-502. Any dentist who desires to administer general anesthesia or sedation as defined by the rules of the Arkansas State Board of Dental Examiners and the State of Arkansas shall apply in writing for a permit from the board, shall submit to an on-site inspection by the board as defined and described in the rules of the board, and shall transmit with the application a fee reasonably calculated by the board to cover the costs and expenses of administering the on-site inspection and otherwise administering this subchapter. *See* Ark. Code Ann. § 17-82-503(a). At the same time each year that a dentist renews his or her license to practice dentistry, a dentist must renew his or her permit to administer general anesthesia and sedation with the board on forms prepared and furnished by the board. *See* Ark. Code Ann. § 17-82-504(b). Failure to renew a permit will terminate the authority of a dentist to administer general anesthesia or sedation. *See* Ark. Code Ann. § 17-82-504(d).

17. **DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, DIETETICS LICENSING BOARD** (Ms. Kimberly Jablonski)

a. **SUBJECT:** Arkansas Dietetics Licensing Board Rules

**DESCRIPTION:** The Arkansas Dietetics Licensing Board is promulgating rules which provide guidance on licensure, renewals, continuing education requirements, standards of professional responsibility, as well as disciplinary procedures.

The proposed rules are necessary as new rules because during review under Act 781 of 2017, the current board members were made aware that the board rules have not previously been through the promulgation process. All rules, with the exception of rules promulgated under Act 820 and 990 of 2019, rules promulgated under the Declaratory Order in connection with Ark. Code Ann. § 25-15-206, and the Telemedicine rule in connection to Ark. Code Ann. § 17-80-401 *et seq.*, have been in use by the board for years. Revisions were made to Renewal of Licenses to be consistent with statutory language. Changes for clarification and format reasons have been made which differ from the version of rules that were presented under the Act 781 of 2017 review.

**PUBLIC COMMENT:** A public hearing was not held in this matter. The public comment period expired on May 13, 2020. The board provided the following summary of the comments received and its responses thereto:

Commenter	Comment	Response
Marilou Brodie	Under VIII C, PLD renewal for another 18 months. This is outdated. When the first Rules were begun, a dietitian could take the RD test twice a year. So, in an 18 month period, 3 tries at the test were offered if needed. Currently once an applicant has finished all education and 900 hours of professional training, they are able to take the test within a shorter timeframe closer to 4-6 weeks. Few applicants request PLD status, usually they have a job in hand and are waiting on the testing date, they then with a positive outcome on the test, ask for switch to RD status rather than PLD. For another 18 months as PLD with direct supervision of all activities appears to be unnecessary and outdated. I don't believe anyone has renewed PLD (could be wrong) but an employer RD, who would be willing to provide direct supervision for another 18 months would in my opinion be rare.	This language is consistent with the Board's enabling statutes and could only be changed legislatively.

Marilou Brodie	Does the Section VI, Prohibitions cover all the exemptions in the old Section 4 in that short summary sentence.?	This language is the same as what is in the un-promulgated rules Section 8 minus the beginning after 1 year of the enactment. There was no need for that language anymore
Marilou Brodie	Section XVII, the Practice of Telemedicine is much needed. For those currently doing practice by Telemedicine, these new Rules when in effect need to be highlighted on the website or in the Q/A section.	Thank you for the suggestion.
Carole Garner	Section V. Definitions: To be consistent with A.C.A. 517-83-103, three definitions need to be added to the proposed rule: Dietetic Technician; Nutrition Assessment; Nutrition Counseling	As you stated these are in A.C.A. §17-83-103 and therefore do not have to be repeated in the rules.
Carole Garner	Section VII. Qualifications for Issuance of License Section E. Licensure for Military Service Members and Spouses 2. and 3b-c. In item 2. After ‘substantially equivalent licensure in another U.S. jurisdiction’ add ‘or is currently registered by the CDR as a registered dietitian’	Based on your comment the Board has added your suggestion.
Carole Garner	In item 3b. Change the ‘and’ at the end of 3b to ‘or’.	The statute requires all three items under item 3
Carole Garner	In item 3c. Correct the typo ‘...under section D2 above.’to ‘... under section 82 above.’	The reference is to section E.2 which is right about item 3 in regards to the types of military individuals.
Carole Garner	To date, there are 3 states {Arizona, California, Colorado} that do not license dietitians. It would not be fair to an applicant who already holds the CDR registered dietitian credential to be denied a license in Arkansas if she/he comes from one of those states. Those states have a large number of military bases with members who could be coming to our state”	Thank you for your comment. The Board has added this military language in accordance with Act 820 of 2019.

The proposed effective date is August 1, 2020.

**FINANCIAL IMPACT:** The board states that the proposed rules do not have a financial impact. Specifically, the board explains that although the proposed rules are considered new, there is no change in cost to any private individual, private entity, private business, state government, county government, or municipal government because the fee amounts remain the same as the board has been using for several years.

**LEGAL AUTHORIZATION:** The powers and duties of the Arkansas Dietetics Licensing Board are defined in Ark. Code Ann. § 17-83-203. The Arkansas Dietetics Board is authorized to: (1) Establish an examination procedure, utilizing the examination approved by the board; (2) Establish a license reciprocity agreement with other states; (3) Annually compile names and certain other information concerning all persons licensed under this chapter to be available upon request and cost; (4) Establish mechanisms for appeal and decisions regarding applications and granting of licenses, including judicial review in accordance with the Administrative Procedure Act; (5) Compile an annual report; (6) Receive and process complaints; (7) Impose penalties; (8) Establish fees and publish financial records; (9) Require each applicant to present satisfactory evidence that he or she has completed the continuing education requirements in a manner specified by the board at the time of license renewal each year; (10) Establish continuing education requirements; and (11) Notify applicants for licensing of the requirements. *See* Ark. Code Ann. §§ 17-83-203(a) and 17-83-203(c). Additionally, the Board has authority to establish, charge, and collect for: (1) The filing of a licensure application; (2) The original issuance of a license; (3) A renewal of a license; and (4) Replacement of a license or renewal lost or destroyed. *See* Ark. Code Ann. § 17-83-203(b).

The board has rule-making authority to: (1) make such rules not inconsistent with law as may be necessary to regulate its proceedings and (2) promulgate rules necessary to implement Chapter 83 of Title 17 regarding Dietitians.

In promulgating these rules, the Board is implementing the following Acts of the 2019 Regular Session: Act 820 of 2019, sponsored by Senator Missy Irvin (regarding automatic occupational licensure of active duty service members, returning military veterans, and their spouses); and Act 990 of 2019, sponsored by Senator John Cooper (regarding criminal background checks for professions and occupations to obtain consistency regarding criminal background checks and disqualifying offenses for licensure). *See* Acts 820 and 990 of 2019.

**18. DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, STATE BOARD OF NURSING (Ms. Sue Tedford, Mr. David Dawson, Mr. Matt Gilmore)**

**a. SUBJECT: Arkansas State Board of Nursing Rules**

**DESCRIPTION:** The Arkansas State Board of Nursing proposes to make changes to six (6) chapters of its *Rules*. An explanation of the necessity for each change is described below:

<b>SECTION</b>	<b>CHANGE</b>	<b>REASON FOR CHANGE</b>
Ch. 1, pg. 1-5, Section IV, Definitions	Definition of “Professional Boundaries” added	Clarification
Ch. 1, pg. 1-8, Section IV, E, Default or Delinquent Student Loans and Scholarships	Stops licensure suspension or revocation for nonpayment of student loans	Act 250 of 2019
Ch. 2, pg. 2-2, Section II, I, Deferred Action for Childhood Arrivals (DACA)	Authorizes ASBN to license recipients of DACA	Act 837 of 2019
Ch.2, pg. 2-14 to 2-15, Section XIII, Minor Aesthetic Procedures	Language added to define and clarify a nurse’s role and required training for minor aesthetic procedures	In collaboration with the Arkansas Medical Board, ASBN is being proactive with this public protection issue
Ch. 4, pg. 4-3, Section III, F, Renewals	Eliminates unnecessary references to the word “regulation” in statute and rule	Act 315 of 2019
Ch. 4, pg. 4-6, Section VI, D., 4, Additional Standards for CRNAs	Allows a podiatrist to be a collaborating physician and requires an APRN to be employed by the podiatrist	Act 308 of 2019
Ch. 4, pg. 4-7, Section VIII, C, Professional Certification Programs	Eliminates the necessity of notifying a certified body of disciplinary action unless an APRN’s ability to practice is restricted	Determined it was not necessary for public protection, no action is taken by the certification program
Ch. 4, pg. 4-7 to 4-8, Section VIII, A, 5, Prescriptive Authority	Allows a podiatrist to be a collaborating physician and requires an APRN to be employed by the podiatrist	Act 308 of 2019

Ch. 4, pg. 4-8, Section VIII, A, 7, Prescriptive Authority	Eliminates unnecessary references to the word “regulation” in statute and rule	Act 315 of 2019
Ch. 4, pg. 4-8 to 4-9, Section VIII, D, Prescribing Privileges	APRNs may prescribe schedule II medications with the following restrictions: *opioid- 5 days or less; and *stimulants if the initial prescription was issued by a physician, used to treat the same condition, and the physician evaluates the patient at least every 6 months	Act 593 of 2019
Ch. 4, pg. 4-9, Section VIII, A,4,a, Prescriptive Authority	Allows a podiatrist to be a collaborating physician and requires an APRN to be employed by a podiatrist	Act 308 of 2019
Ch.4, pg. 4-9, Section VIII, D, 4, c, Prescribing Privileges	APRNs may prescribe schedule II medications with the following restrictions: *opioid- 5 days or less; and *stimulants if the initial prescription was issued by a physician, used to treat the same condition, and the physician evaluates the patient at least every 6 months	Act 593 of 2019
Ch. 4, pg.4-11, Section VIII, J, 2, Renewals	Eliminates unnecessary references to the word “regulation” in statute and rule	Act 315 of 2019
Ch. 4, pg. 4-15, Section XIII, D, Minimum Standards for Establishing a Patient Relationship	Lists exclusions to the minimum standards for establishing a patient relationship	Mirroring the Arkansas Medical Board
Ch.6, pg. 6-4, Section II, D, Facilities	Eliminates unnecessary references to the word “regulation” in statute and rule	Act 315 of 2019

Ch.8, pg. 8-7, Section XIV, C, d, Program Requirements	Eliminates unnecessary references to the word “regulation” in statute and rule	Act 315 of 2019
Ch. 10, pg. 10-1, Section I, C, Qualifications for Admission	Articulates the responsibility of an ATD participant to acknowledge a drug or alcohol abuse problem or addiction, to mirror statute	To align with statute regarding the alternative to discipline program

**PUBLIC COMMENT:** A public hearing was held in this matter on March 12, 2020. The public comment period expired on March 25, 2020. The Arkansas State Board of Nursing provided the following summary of comments received and its responses thereto:

Chapter 1

No comments received

Chapter 2

No comments received

Chapter 4

**Commenters:** 3/6/20, conference call with Leonie DeClerk, Pipere Bretell, Theresa Whited (ARNA)

**Articulation of Comment:** Referencing Chapter 4 Section VIII D, Why remove D(3)(b) The APRN shall not prescribe hydrocodone combination products for acute pain in excess of seven (7) days? Covered by new rule based on statute “The APRN shall not prescribe Schedule II opioids for acute pain for more than a five (5) day period.” In the proposed rule “The APRN shall not prescribe Schedule II opioids for acute pain for more than a five (5) day period. If additional Schedule II opioids are needed for management of acute pain, the patient shall be referred to the collaborating physician.” Change the word referred to either consult or collaborate. The proposed effective date is pending legislative review and approval.

**Agency Response to Comments:** HCP is a Schedule II opioid and new statute supersedes the 7 day rule.

**Commenter:** 2/20/20, e-mail from David Wroten, Executive VP, AR Medical Society

**Articulation of Comments:** “In reviewing Chapter 4, we recognize that the board is simply trying to incorporate the most recent statute into the prescribing rules. However, we believe that the wording needs to be clearer to avoid an unintentional misreading of the amended statute. Chapter 4. Page 4-8, Section VIII. A(5)(f) – Not all Schedule II drugs are

authorized. You might consider adding, “subject to the provisions of paragraph (or subsection) D”. Section D(3)(a, c and d), when viewed in light of paragraph A(5)(f), could mislead some APRNs to assume that all Schedule II products are allowed except for the two restrictions on acute pain and stimulants). For example one might misread the proposed rule to mean that it is now allowable to prescribe all opioids, with no limits, for non-acute pain. That is untrue except for the combination products. We would suggest adding language similar to, “Opioids, other than the combination products, cannot be prescribed for anything other than acute pain, i.e., not for chronic pain. Prescribing for all other Schedule II drugs other than opioids and stimulants (there are a few) is not authorized.”

**Agency Response to Comments:** Wording changed.

**Commenter:** 3/24/20, email for Debra A. Jeffs, PhD., RN, NPD-BC, FAAN, AR Children’s

**Articulation of Comments:** In Section VI, D. Additional Standards for CRNAs, No. 4, I wondered about the CRNA giving verbal orders from the supervising physician, etc. It sounds like the nurse is receiving a verbal or written order from the CRNA who received a verbal order from the physician. How does “Read Back” work in that situation. With the desire to reduce verbal orders to avoid errors, will this recommendation be reconsidered?

Section VIII Prescriptive Authority, D. Prescribing Privileges, No. 3, c. describes APRNs not prescribing Schedule II opioids and No. 4, c. addressed not prescribing Schedule I controlled substances. What are the implications related to prescribing medical marijuana?

Section XIII, D., No. 3 specifically lists 2 types of sexually transmitted diseases. Why not broaden the language to STDs and omit naming, especially during a time when syphilis is on the rise and is unnamed?

**Agency Response to Comments:** No current proposed change related to comment; Schedule I not identified in rule APRNs cannot certify individuals for medical marijuana; Following CDC recommendations

#### Chapter 6

No comments received

#### Chapter 8

No comments received

#### Chapter 10

No comments received

**NOTE:** Initial proposed rules contained language related to aesthetic practice. These have been pulled down in order to thoroughly consider the large number of comments.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that this rule does not have a financial impact.

**LEGAL AUTHORIZATION:** The Arkansas State Board of Nursing has authority to promulgate whatever rules it deems necessary for the implementation of Chapter 87 of Title 17 of the Arkansas Code concerning nurses. *See* Ark. Code Ann. § 17-87-203(1)(A). The board also has authority to promulgate rules limiting the amount of Schedule II narcotics that may be prescribed and dispensed by licensees of the board. *See* Ark. Code Ann. § 17-87-203(21).

The proposed rules implement the following Acts of the 2019 Regular Session:

Act 250 of 2019, sponsored by Representative Austin McCollum, created the Keep Arkansas Working Act to ensure that default or delinquent student loans or scholarships do not result in suspension or revocation of a license. *See* Act 250 of 2019, codified as Ark. Code Ann. § 17-2-101 *et seq.*

Act 308 of 2019, sponsored by Justin Boyd, authorized a podiatrist to have a collaborative practice agreement with an advanced practice registered nurse. *See* Act 308 of 2019, codified as Ark. Code Ann. § 17-87-310(a)(2).

Act 315 of 2019, sponsored by Representative Jim Dotson, provided for the uniform use of the term “rule” for an agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of an agency. *See* Act 315 of 2019.

Act 593 of 2019, sponsored by Justin Gonzales, amended the prescriptive authority of an advanced practice registered nurse to include drugs listed in Schedule II under certain circumstances. The Act required the Arkansas State Board of Nursing to promptly adopt rules applicable to an advanced practice registered nurse, which are consistent with the Arkansas State Medical Board’s rules governing the prescription of dangerous drugs and controlled substances. *See* Act 593 of 2019, codified as Ark. Code Ann. § 17-87-310(b)(2)(B).

Act 837 of 2019, sponsored by Representative Megan Godfrey, authorized the Arkansas State Board of Nursing to license recipients of the Deferred Action for Childhood Arrivals policy. The Act required the board to promulgate rules under this section. *See* Act 837 of 2019, codified as Ark. Code Ann. § 17-87-313.

19. **DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, STATE BOARD OF OPTOMETRY (Mr. Kevin O’Dwyer)**

a. **SUBJECT: Chapter I, Article IV – Reciprocity, Licensure by Endorsement, Military Personnel**

**DESCRIPTION:** The Arkansas State Board of Optometry is proposing amendments to its rules. The proposed amendment to Chapter 1, Article IV – Reciprocity, Licensure by Endorsement, Military Personnel, defines and explains licensure requirements for active military members.

**PUBLIC COMMENT:** A public hearing was held in this matter on April 23, 2020. The public comment period expired on April 16, 2020. The State Board of Optometry received no public comments.

The proposed effective date of this rule is pending legislative review and approval.

**FINANCIAL IMPACT:** The board indicated that the proposed rule does not have a financial impact.

**LEGAL AUTHORIZATION:** The State Board of Optometry has authority to make rules for the administration and enforcement of Chapter 90 of Title 17 concerning optometrists. *See* Ark. Code Ann.17-90-204(a). Requirements for licensure by endorsement of optometrists are contained in Ark. Code Ann. § 17-90-302. The proposed rule implements Act 820 of 2019. Act 820 of 2019, sponsored by Senator Missy Irvin, amended the law concerning the occupational licensure of active duty service members, returning military veterans, and their spouses to provide for automatic licensure. The Act required occupational licensing agencies to grant automatic occupational licensure to these individuals if they hold a substantially equivalent occupational license in good standing issued by another state, territory or district of the United States. *See* Act 820 of 2019, § 2(b).

b. **SUBJECT: Chapter IX, Article I – Pre-Licensure Criminal Background Check**

**DESCRIPTION:** The Arkansas State Board of Optometry is proposing a new rule entitled, Chapter IV, Article I – Pre-licensure Criminal Background Checks. The proposed rule will be utilized to determine if an individual’s criminal record will disqualify the individual from licensure and whether a waiver may be obtained.

**PUBLIC COMMENT:** A public hearing was held in this matter on April 23, 2020. The public comment period expired on April 16, 2020. The State Board of Optometry provided the following summary of comments received and its responses thereto:

*Commenter:* Vicki Farmer  
*Commenter’s Agency:* Arkansas Optometric Association  
*Summary of Comments:* Vicki Farmer had questions regarding where Chapter IX, Article I – Pre-Licensure Criminal Background Check was published.  
*Agency’s Response to Comment:* Kevin O’Dwyer responded that it was published in the Daily Record.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following question and received the following response:

**QUESTION:** In the Waiver Request portion of the rule, the rule cites Ark. Code Ann. § 17-2-102(a), whereas the correct section appears to be Ark. Code Ann. § 17-3-102(a). Could you please clarify or submit a revised version? **RESPONSE:** A revised version of the rule with the correct citation was submitted.

The proposed effective date of this rule is pending legislative review and approval.

**FINANCIAL IMPACT:** The board indicated that the proposed rule does not have a financial impact.

**LEGAL AUTHORIZATION:** The State Board of Optometry has authority to make rules for the administration and enforcement of Chapter 90 of Title 17 concerning optometrists. *See* Ark. Code Ann.17-90-204(1). The proposed rule implements Act 990 of 2019. Act 990 of 2019, sponsored by Senator John Cooper, amended the laws regarding criminal background checks for professions and occupations to obtain consistency regarding criminal background checks and disqualifying offenses for licensure. The Act also provided for prelicensure criminal background check determinations (Ark. Code Ann. § 17-3-103) and applicant waiver

requests (Ark. Code Ann. § 17-3-102). The Act required licensing entities to promulgate rules to implement the Act. *See* Act 990 of 2019, § 2.

20. **DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, ARKANSAS PSYCHOLOGY BOARD**  
(Ms. Susan Cooper, Mr. Joe West)

a. **SUBJECT: Arkansas Psychology Board Rules**

**DESCRIPTION:** The Arkansas Psychology Board is proposing amendments to its rules. These amendments include: changes to the examination procedure, including elimination of the oral examination; clarification of continuing education requirements; updates to provisional licensure status and procedure; providing standards for practice of telepsychology; updating licensure and supervision standards; clarifying requirements for interjurisdictional practice by out-of-state licensed psychologists; automatic licensure of active duty military, returning veterans, and spouses; reducing certain licensing fees; pre-licensure criminal background checks; and a waiver process for applicants with disqualifying criminal convictions. The amendments also include some cleanups including removing references to organizations that no longer exist, cleaning up archaic and obsolete language, and removing references to the word “regulation” as required by Act 315 of 2019.

The Board provided the following summary of proposed changes to the rules:

- Section 1.3 – removes references to Board newsletter which is no longer published. Also updates language to comply with Act 315 of 2019
- Sections 2.1, 2.2, 3.4, 4.2, 7.1, 11.4, 14.2, 15.2, 16, 17, and 18 – language updates to comply with Act 315 of 2019
- Section 4.1 – language clean-up to list proper statutory reference
- Section 5.4 – updating requirements for pre-doctoral internships and post-doctoral supervision
- Section 5.5, 10.2, 11.3, 11.8, 14.3 – creates pre-licensure criminal background check and waiver of disqualifying offense processes and updates language to comply with Act 990 of 2019
- Section 5.6 – updates requirements for one-time consultation by a psychologist licensed in another state. Also updates language to comply with Acts 315 and 990 of 2019
- Sections 6.1, 7.3, 7.4, and 7.5 – updates to provisional licensure status pursuant to Act 887 of 2019; also updates language in 7.5 to comply with Act 990 of 2019
- Section 6.2 – language clean-up to update terminology and comply with Act 315 of 2019

- Section 6.3 – language clean-up to update terminology and comply with Acts 315 and 887 of 2019
- Section 7.7 – removing obsolete language and compliance with Act 315 of 2019
- Section 8 – changes to examination process by removing oral examination component, updates re-application process, and clarifies Board’s authority to offer additional examinations
- Section 9.1 – updates and clarifies Continuing Education requirements for licenses
- Section 10.3 – creates reciprocity process pursuant to Act 820 of 2019; has had language update from initial submission
- Section 11.6 – language updates to comply with Acts 315 and 990 of 2019
- Section 13 – deletes four (4) fees currently assessed by the Board; also language clean-up in 13.7 to mirror language in 9.2 (update from initial submission)
- Section 19 – creates a new section on Telepsychology consistent with the Telemedicine Act (Ark. Code Ann. § 17-80-401 et seq.); previously promulgated as Emergency Rule on March 20, 2020.

The Board also provided the following summary of post-comment rule revisions:

- Based upon public comments, the Board voted to restore Section 5.3 to its current form. This is not a substantive change because the Psychological Examiner license has been sunset. This section is being retained purely for informational/archival purposes.
- The Board voted to add the definition of automatic licensure to section 10.3. The definition comes directly from Act 820 of 2019, and this section has been drafted to comply with that legislation. It does not change any process from the originally submitted rules but was added at the advice of legal counsel for clarification purposes based on comments ADH received.
- The Board changed language in Section 13.7 to mirror language in Section 9.2. This is not a substantive change because this is a pure language clean-up; Section 9.2 had been the controlling language for the Board and staff.
- All references to Act 990 of 2019 have had the code references updated from 17-2-101, et. seq. to 17-3-101, et. seq.

**PUBLIC COMMENT:** A public hearing was held on May 8, 2020. The public comment period expired on May 6, 2020. The Arkansas Psychology Board provided the following summary of comments received and its responses thereto:

**1. Commenter's Name: Multiple (see footnote)<sup>1</sup>**

Commenter's Business/Agency: LPE and LPEI licensees of the AR Psychology Board

Summary of Comment: The LPE and LPEI licensees concern was that removal of licensing requirements from the rules would hinder them regarding licensing in other states, employment opportunities, and reimbursement from insurance providers.

Agency's response to Comment: The board was sympathetic to the concerns.

Were any changes made to the Proposed Rule as a result of this Comment? If so, please describe.

The board voted to restore language related to LPE and LPEI licensing requirements, Section 5.3, to its current form. This is not a substantive change because the Psychological Examiner license has been sunset. This section is being retained purely for informational/archival purposes.

**2. Commenter's Name: Letitia Olsen, Lisa Thompson, Ladeana Bell, Julie Howard, Carl Reding, Edward Kleitsch.**

Commenter's Business/Agency: Various Licensees of Arkansas Psychology Board

Summary of Comment: Continuing Education requirements.

1. In-person training versus on-line training.
2. Section 9.1.A.(1)(i) on home study programs.
3. Number of CE hours allowed for various types of activities.
4. Professional qualifications of presenters at CE activities.
5. Number of CE hours allowed for workplace training preparation

Agency's response to Comment:

The board was sympathetic to the concerns.

Were any changes made to the Proposed Rule as a result of this Comment? If so, please describe.

No changes were made due to concerns. The CE requirement is less restrictive and allows all CE's to be obtained electronically. The home-study requirement specifically targets reading of books and journals and is limited to 10 hours of CE. The Rules advise training to be via APA or other state and nationally recognized organizations. The hours required are distributed among a variety of professional activities.

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<sup>1</sup> Kathleen Foster, Keisha Hankins, Kim Lawrence, Ladeana Bell, Lauren McKnight, Leslie Johnson, Letitia Olson, Linda Van Blaricom, Lisa Patterson Thomas, Marcia Fuller, Maureen Ryan, Maureen Skinner, Melissa Tiernan, Misty Juola, Nancy Golden, Rachael Howell, Rebecca Dennison, Red Sunset93, Regina Ev, Robert Crouch, Ruth Czirr, Sam Boyd, Sandy Pierce Parks, Sarah Beall, Sarah Hunt, Sarah Umphries, Serena McKnight, Shari Cook, Shari Wilding, Susan Barad, Tammie Orlicek, Tammy Walters, Tiffanie Bufford, Tom Umphress, Yousef Fahoum, Adrienne Reeves, Alice Keener, Allie Wakefield, Amber Waite, Amy Lamb, Anita Cooper, Bob Parker, Brenda McCone, Carol Holloway.docx, Cassie Ingram, Christina Adams, Christine Lin, Debbie Bandimere, Deresa Holler, George DeRoeck, Gracie Gonner, Hayden Shepherd, Hillary Childers, Holly Scott, Jenny Shreve, Jon Priest, Joyce Babin, Karen Beller, Karen Infield, Karlyn Jay, Carl Reddig, Edward Kleitsch, Julie Howard, Joyce Fowler

**3. Commenter's name: Dr. Joyce Fowler**

Commenter's Business/Agency: Licensee of the Arkansas Psychology Board

Summary of Comment: Language cleanup in Section 13.7 to match Section 9.2.

Agency's response to Comment: The board understood the discrepancy in language.

Were any changes made to the Proposed Rule as a result of this Comment? If so, please describe.

The board changed the language in Section 13.7 to mirror language in Section 9.2. This is not a substantive change because this is a pure language clean-up. Section 9.2 had been the controlling language for the Board and staff.

**4. Commenter's name: Rachel Howell**

Commenter's Business/Agency: Licensee of the Arkansas Psychology Board

Summary of Comment: Objection to end of newsletter.

Agency's response to Comment: The board understood the concern.

Were any changes made to the Proposed Rule as a result of this Comment? If so, please describe.

The board changed voted to make no changes. The newsletter has been discontinued for some time and the website has been used as the source of information since then.

**5. Commenter's name: Dr. Carl Reddig**

Commenter's Business/Agency: Licensee of the Arkansas Psychology Board

Summary of Comment: Objection to removal of Oral examinations requirement and removal of "regulation" from rules.

Agency's response to Comment: The board understands the concern.

Were any changes made to the Proposed Rule as a result of this Comment? If so, please describe.

There were no changes to the Rules based upon this concern. Many states do not require Oral examinations, so not requiring one will provide easier access to interjurisdictional licensing in Arkansas. The removal of the use of the word "regulations" was mandated by Act 315 of 2019.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses thereto:

**QUESTION 1:** Could you please explain how you calculated the \$6,626 total estimated cost listed in your financial impact statement? Is this amount a cost or a savings to the identified individuals? **RESPONSE:**

The calculation is the amount received in FY19 for License Verifications and for EPPP administrative charges. The EPPP administrative cost

removal is a savings to the Arkansas license applicants and the License Verification cost removal is a savings to the various individuals/entities that need to verify Arkansas Psychology Board licensees.

**QUESTION 2:** The language which was removed in Section 5.3 in the first markup, was added back in the second markup. Is this what the board intended? If so, could you please explain the reason for the change?

**RESPONSE:** Based upon public comments, the Board voted to restore Section 5.3 to its current form due to concerns raised by LPE and LPEI licensees. Although the board no longer licenses master's level Examiners, that language describes licensing qualifications for grandfathered licensees. This is not a substantive change because the Psychological Examiner license has been sunset. This section is being retained purely for informational/archival purposes.

**QUESTION 3:** The language which was removed in Section 5.3.5D in the first markup was added back in the second markup. Is this what the board intended? If so, could you please explain what happened?

**RESPONSE:** Since the language in 5.3 is reinstated, it is important to also clarify that the Examiner license is no longer issued.

**QUESTION 4:** In Section 5.4.F.(2)(g), direct patient contact hours are increased to 500 from 375. Could you please provide some background on this change? **RESPONSE:** Cleanup/clarification. The rule has always been 25% and the number of hours has always been 2,000. The 2009 rules have a miscalculation.

**QUESTION 5:** It appears that there are a number of changes made to the rules based upon changes in national guidelines and standards. Could you please identify these changes and the standards that were used in making the changes? **RESPONSE:** The only change, to my knowledge, that is based upon national standards may be:

Section 8-changes to examination process by removing oral examination component, updates re-application process, and clarifies Board's authority to offer additional examinations.

The board voted to eliminate the requirement for an Oral Examination based on our board's past experiences and on what other states have done. In some state the Oral Examination has not been defensible legally due to the potential for non-objectivity. The rule change still allows the board to administer a legally defensible exam in the future.

**QUESTION 6:** Section 6.3.B.(4) appears to quote Ark. Code Ann. 17-97-102. However, I was unable to find that language in that section. Could you please point me to where I may find it? **RESPONSE:** 6.3. B.

(4) is a clarification that as per A.C.A. §17-97-102, individuals licensed as a psychological examiner can only practice psychoeducational evaluation and diagnosis without supervision. Other psychological services can only be provided by an individual licensed as a psychological examiner under the supervision of a licensed psychologist.

**QUESTION 7:** Could you please provide a revised summary of the rule, which encompasses changes made after the public comment period?

**RESPONSE:** A revised summary was provided.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The board indicated the proposed rules have a financial impact. The board estimated a total cost of \$6,262 for the current fiscal year but \$0 cost for the next fiscal year. The board provided the following explanation: Applicants for the psychology licensure examination, licensees seeking to change their name on their license, and those seeking to verify licensees' licensure status currently pay fees that the Board is seeking to abolish. If the rule change passes, it will be a positive change for those affected individuals and companies.

**LEGAL AUTHORIZATION:** The Arkansas Psychology Board is authorized to examine and pass upon the qualifications of the applicants for the practice of psychology. *See* Ark. Code Ann. § 17-97-203(4). The Board may from time to time, adopt rules that comply with national guidelines and standards as it may deem necessary for the performance of its duties. *See* Ark. Code Ann. § 17-97-203(3). Additionally, the Board is authorized to adopt rules that apply to: provisional licensure (Ark. Code Ann. § 17-97-305(b)(1) and (b)(3)); annual registration and fees (Ark. Code Ann. § 17-97-308(a)); continuing education programs (Ark. Code Ann. § 17-97-308(e)); and criminal background checks (Ark. Code Ann. § 17-97-312(k)). In addition, state licensing and certification boards for healthcare professionals such as the Arkansas Psychology Board, have authority to amend their rules to comply with the Telemedicine Act. *See* Ark. Code Ann. § 17-80-406.

Concerning fees and penalties, the Arkansas Psychology Board may establish various fees and penalties for services related to provision of temporary permits, printed materials, handling returned checks, costs incurred in processing delinquent payments, and other reasonable services as may be determined by the board and the Department of Health is authorized to collect such fees and penalties. *See* Ark. Code Ann. § 17-97-204(a). Statutory limits to certain fees are contained in Ark. Code Ann. § 17-97-204(c).

The proposed rules implement the following acts of the 2019 Regular Session:

Act 820 of 2019, sponsored by Senator Missy Irvin, provided that an occupational licensing entity shall grant automatic licensure to engage in an occupation or profession to an individual who holds a substantially equivalent occupational license in good standing issued by another state, territory, or district of the United States, and is: (1) An active duty military service member stationed in Arkansas or his/her spouse; or (2) A returning military veteran applying for licensure within one (1) year of his or her discharge or his/her spouse. *See* Act 820 of 2019, codified as Ark. Code Ann. § 17-1-106(b).

Act 887 of 2019, sponsored by Senator Missy Irvin, amended the provisional license requirement for psychologists and psychological examiners by allowing the board to accept satisfactory substitute education in lieu of the education under Ark. Code Ann. § 17-97-302(b)(1)(B). *See* Act 887 of 2019, codified as Ark. Code Ann. § 17-97-305(b)(5).

Act 990 of 2019, sponsored by Senator John Cooper, amended the law regarding criminal background checks for professions and occupations to obtain consistency regarding criminal background checks and disqualifying offenses for licensure. The Act required licensing entities to promulgate rules to implement the Act. *See* Act 990 of 2019, § 2.

**21. DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, SOCIAL WORK LICENSING BOARD (Ms. Ruthie Bain, Mr. Matt Gilmore)**

**a. SUBJECT: Rules of the Arkansas Social Work Licensing Board**

**DESCRIPTION:** The Social Work Licensing Board is proposing changes to its rules concerning board meetings, application procedures, provisional licensure, examination, endorsement, supervision, fees, continuing education, ethics and standards of practice, unprofessional conduct, disciplinary procedures, social work corporations, and telemedicine. The agency provided the following summary of changes:

*Changes as Required by Legislation*

- References to ‘regulation’ or ‘regulations’ was respectively changed to ‘rule’ or ‘rules.’
- Updated processes to meet the requirements of Ark. Code Ann. § 17-1-106 for military and military spouses.
- ‘Reciprocity’ was changed to ‘endorsement’ to match Act 623 of 2019.

- In accordance with Act 623 of 2019, rules were updated to reflect what would be required for substantial equivalency.
- Pursuant to Act 990 of 2019, pre-licensure background check was added.
- A section was added on reinstatement of a license.
- A section was added on telemedicine as required by Ark. Code Ann. § 17-103-109.

*Changes for Clarification Only*

- For consistency, the headings with “Section” were changed to “Ark. Code Ann. §.”
- In various places, the wording for “Chairman” or “Chairperson” was changed to “Chair.”
- Many changes are to update for newer technology. In several places, changes were made to allow online notification in place of mail notification. Allows for electronic submission of forms rather than requiring the original to be mailed.
- Elimination of terms or sections that may have been unnecessary or duplicated elsewhere in the rules.
- Supervision section was updated for clarity and to add use of technology for supervision.
- Fees have not changed. Previous omissions, which are in the law, were added and the fee for the mailing list was eliminated.
- The requirement for social work continuing education hours has been lowered from 48 hours every two years to 30 hours every two years. This is more in line with other states.
- Previously, the Board did not have a standard practice for extension requests. We have added a section on requirements for an extension request, which clearly shows what must be done ahead of time to ensure that practice is not occurring after expiration of the license.
- Minor wording clarifications on the Continuing Education section to reflect the number of hours being reduced and clarifying common questions. Added acceptance of live and interactive online courses as acceptable for fulfilling the continuing education requirements.
- Added “inappropriate relationship” under client relationships. Previous version only has sexual relationship which may be misinterpreted.

**PUBLIC COMMENT:** A public hearing was not held in this matter. The public comment period expired on May 1, 2020. The Arkansas Social Work Licensing Board provided the following summary of comments received and its responses thereto:

*Telemedicine*

**Commenter:** Cara Sanner, ASWB. ARKANSAS SW OFFERING SERVICES OUTSIDE OF STATE – Possible wording to be added to the Telemedicine rules.

**Comment:** *Out-of-State Clients - Licensees who want to offer telemedicine services outside the state are advised to check with the state board in which the client resides for information about telemedicine health regulations outside of Arkansas.*

OR

*All licensees of this board providing services to clients outside the state of Arkansas shall comply with the laws and rules of that jurisdiction.*

**OUT-OF-STATE SW PROVIDING SERVICES TO CLIENT IN ARKANSAS**

*The provision of social work services to a client within this State through any means, including, without limitation, electronic means or by telephone, regardless of the location of the social worker, constitutes the practice of social work and is subject to the provisions of A.C.A. §17-103-309 and any rule pursuant to XIV.*

OR

*All practitioners providing counseling, social work or marriage and family therapy services via electronic service delivery to persons physically present in Arkansas shall be licensed in Arkansas.*

**Response:** The Board choose to leave as is.

CEUs

**Commenter:** Ruthie Bain, Director, Academic Hours.

**Comment:** Each academic hour equals 15 CEU hours. What if the course is online? Is it limited to the 15 hours online allowed? We get a lot of questions on this. Some parts of the online course are interactive but there is not a way to count how many.

**Response:** The online academic course will be counted as face-to-face hours for social work continuing education purposes. No changes to proposed rule.

Supervision

**Commenter:** Angela Diponio, LMSW, question about current supervision and the new 3-year requirement for the LCSW.

**Response:** I let her know that there would be an effective date that it starts, and it would not affect her current supervision.

**Commenter:** Tina Capone, LMSW, question about current supervision and the new 3-year requirement.

**Response:** I let her know that there would be an effective date that it starts, and it would not affect her current supervision.

**Commenters:** Pamela Morrow and Milinda Houlette. Same question basically. **Response:** Understanding of or regarding supervision for all social workers. This is section A. of Supervision and separate from B., which is specific supervision for LCSW license. We have only changed the wording. *Example below*

A. Supervision of All Licensed Social Workers: ~~Supervision for Licensed Social Workers (LSW) and Licensed Master Social Workers (LMSW) may be provided within or without the agency. It is recommended that the social work practice be supervised by a social worker. Once licensed as an LSW or LMSW, including provisional license, the LSW or LMSW must obtain supervision from a licensed social worker or other qualified professional from a related field. The supervision may be within or outside the agency.~~

1. The social work practice of an LSW should shall be supervised by an LMSW, an LCSW, or other qualified professional from a related field on a minimum of a weekly basis. ~~The supervision should be provided at a minimum on a weekly basis.~~

**Commenter:** Pamela Morrow

**Comment:** I was hoping to get clarification regarding the below. Working as a supervisor in a hospital setting, I wanted to see if below means that all of our LMSWs are required to have one hour of supervision weekly, regardless if they are seeking their LCSW or not? Can you tell me what positions fall into the nonclinical position? Is this referring to outpatient therapy positions? Also, it says this supervision can be by an LMSW or LCSW, is that accurate? Or, can you in general, offer clarification of what the below is referring to?

*A. The social work practice of an LSW should shall be supervised by an LMSW, an LCSW, or other qualified professional from a related field on a minimum of a weekly basis. The supervision should be provided at a minimum on a weekly basis. 2. The social work practice of an LMSW should shall be supervised by an LMSW, an LCSW or other qualified professional from a related field on a minimum of a weekly basis. The supervision should be provided at a minimum on a weekly basis. 3. While supervision of the social work practice of the LCSW is not mandatory, the LCSW should have available, as needed, consultation provided by an LCSW or other qualified professional from a related field. 4. An LSW or LMSW, including provisional licensees, working in a nonclinical position does not require direct supervision but must report to a supervisor. 5. The supervision required under this section is independent from any additional supervision requirements placed upon the licensee by his or her employer.*

**Agency's First Response:** The section you have highlighted is for those who are not in a clinical setting job. We don't have specific jobs defined but an example would be someone who is doing more administrative work. We have two examples from previous Board Members. One is the Exec. Director of a large agency in NWA. She is a LMSW but does all administrative work and still uses her social work skills. She does not see clients for therapy and does not work in an agency where there is clinical practice. Her supervision is provided by her Board that she reports to. They are made up of many positions including members of the medical

field. Please note this says by a LMSW, LCSW or other professional from a related field. This section just says on a minimum of a weekly basis. We dropped the one hour from this section. The other example is a professor who has her LSW but also her doctorate in social work. She is not actually practicing social work by treating clients in any form or fashion. She does report to higher ups at the University, and they are the ones that provide on the job supervision.

This section of supervision is separate from the supervision for LCSW licensure. That supervision does have to be by a LCSW. It is the next section of the rule.

**Morrow's Response:** Thank you for the examples! Based on these examples I would consider my team to be clinical, however I am still unsure about the requirement for supervision for non LCSW seeking LMSWs. I have a team of 35 Social Workers (LCSWs and LMSWs) working in a variety of roles. Some of the LMSWs are seeking their LCSW and receiving the required supervision. I have other LMSWs who are not seeking their LCSW and while I am their manager and supervise, I am not able to provide a structured weekly supervision. Do you know if there is further guidance offered regarding what meets this need?

**Agency's Second Response:** The Board felt that the information provided was sufficient.

**Commenter:** Milinda Houlette

**Comment:** In the proposed revision of the Arkansas Social Work Licensing Rules, the following modification of requirements for supervision of LSWs was stated: "The social work practice of an LSW shall be supervised by an LMSW, an LCSW, or other qualified professional from a related field on a minimum of a weekly basis."

I would like to address this. I have now been an LSW since November 2008 and active in working as a geriatric social worker since June 2010. In all the positions that I have held in these ten years, not only was it not feasible for my supervisor to meet with me weekly, in many instances, it was not possible. In one position, my supervisor, an LMSW, was in Mississippi and only met with me physically once a year unless there was a crisis. She monitored my charting and signed off that my work was being observed and approved.

Training and meetings to discuss concerns with my supervisors have been welcome. However, there have been many instances where this meeting was an inconvenience for myself as well as my supervisor, and this was the session being held monthly. If the supervision is modified to be mandated to weekly meetings, I predict that there will be no LSW positions available in the state of Arkansas. Already, it is very difficult for those of us who are LSWs to find employment under our licensure in this state and when privately I have inquired as to why this occurs, I have been

informed in every instance that they ‘do not wish to have the problem of supervision.’

Much of the focus of the Arkansas Social Work Licensing Board seems to focus upon the LCSWs, Although, by no means are we who are LSWs anywhere near the training or responsibility of the LCSWs, we continue to serve as working and participating members of the social work community in Arkansas. As in the United States military, we LSWs are the ‘grunts’, the enlisted personnel who appear to be non-essential and yet who are the backbone of the social work community, providing the foundation for the remainder of the social work community. I hope that the Arkansas Social Work Licensing Board will reconsider this change to the bylaws that will possibly cause our positions to be endangered or terminated.

**Response:** Please note that the changes to the supervision of an LSW is basically some clarifications. The Rules, since at least 2006, have been “the supervision should be provided at a minimum on a weekly basis”. We are just combining it into one sentence. Your comment will be seen by the Board before the final draft is submitted.

*For the Reduction of CEU Hours*

**Commenter:** Bonnie Wallace, looks good, all for reducing hours from 48 to 30. **Response:** Thanked for positive comment.

**Commenter:** Chukwuma Ekeh, Supports decrease of CEU hours.

**Response:** Thanked for comment.

**Commenter:** Bonnie Wallace, LSW. Thanked for reducing hours.

**Response:** Thanked for comment. (2) comments

**Commenter:** Lisa Look, LCSW. Absolute support of reducing the CEU’s.

**Response:** Thanked for comment.

**Commenter:** Paul Goblisch, LCSW. Supports rules and favor the 30 hours of CEU’s.

**Response:** This reflects other states requirements as well.

*General*

**Commenter:** Paul Schandavel, LCSW, Looks like common sense.

**Response:** Thanked for comment.

**Commenter:** Sydney Foster, LMSW, full support.

**Response:** Thanked for comment.

**Commenter:** Laverne Bell-Tolliver, LCSW, supports.

**Response:** Thanked for comment.

**Commenter:** NASW-AR Supports changes.

**Response:** Thanked them for their support.

**Commenter:** Chantal Carter, LMSW, appreciates the inclusion of telemedicine and reduction of CEU hours.

**Response:** Thanked for comment.

*New Request*

**Commenter:** Marti Rouby, LCSW. Please consider a Retired license.

**Response:** The Board has considered this in the past and decided against it. Some states do have one. In most that do, practice is not allowed. If practice is allowed it is limited to so many hours. In the past, the Board has felt that if the person was allowed to practice, they should keep up with current CEU's.

**Commenter:** Stephen Velasquez asked about expanding the verbiage regarding "G. Licensure for Active Duty Service Member, Returning Military Veterans, and their Spouses, might include "Reserve Component Service Members". For example, sometimes, a reserve component service member is put on active duty, but technically still belongs to the reserve component. It would be a shame if they were not able to take advantage of this great opportunity the board is affording.

**Response:** We are following Act 820 revised on 2/20/2020 and the Model Language they use. I am attaching a copy of the Act. This would need to be addressed during the General session which will occur in 2021. You may wish to reach out to the sponsors of the Bill to see if they will consider adding your request. Their names are listed at the top. I will take your comment before the Board at our next meeting. At the current time our proposed Rules are for the current law.

**Commenter:** Becky Williams, request to include 'community organizing and advocacy' under Continuing Education Guidelines, A. Definition: 1. Social Work Continuing Education (SWCE) has been defined as those formalized activities that are directed at developing and enhancing an individual's social work knowledge base and service delivery skills in the applicable areas of social planning, administration, education, research or direct service with individuals, couples, families, and groups. These activities may include short academic courses, audit courses in colleges and universities, independent study, internet courses, workshops, seminars, conferences, and lectures oriented toward enhancement of social work practice, values, skills, and knowledge.

**Response:** We believe community organizing and advocacy would fall under planning, administration and service delivery skills.

**Williams' Response:** She does not agree but did not have more to add.

The Board reviewed these items on Monday, May 11, 2020 at the regularly scheduled Board meeting. The Board voted to submit the proposed rules as originally submitted on March 27, 2020. No changes were made to the proposed rules as a result of the comments. A few minor corrections were made to the marked-up copy due to spacing, spelling errors or mistakes on strikethroughs or underlines.

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

**QUESTION 1:** Regarding Section IV on Examination, what nationally recognized examination service does the board currently use to administer the licensure examination? **RESPONSE:** The Association of Social Work Boards (ASWB [www.aswb.org](http://www.aswb.org))

**QUESTION 2:** Regarding Section IV (E), could you please provide a copy of the rules of the nationally recognized examination service regarding the ninety-nine day wait period? **RESPONSE:** It should be ninety days, not ninety-nine. <https://members.aswb.org/wp-content/uploads/2018/07/Policy-Manual-Section-II-The-Examinations.pdf> II The Examinations 2.1 Procedures, Policy: 9. No candidate may test more frequently than every 90 days. Exceptions may be made on a case-by-case basis in the following circumstances:

a. when there has been serious, documented malfunction with administration of the examination

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b. when a candidate requests to take an examination in a different examination category. This excludes switching between the Associate and Bachelors examinations, which share the same content.

c. when a candidate's employment is in jeopardy and the candidate's raw score on the most recent examination was within five (5) test items of the passing score. The employment circumstance must be documented in writing by the employer, and the exception must be approved by the Member Board.

**QUESTION 3:** How long is an "approval period," as used in Section IV(F)? **RESPONSE:** One year

**QUESTION 4:** Regarding Section VII on Fees, the proposed rule contemplates an examination fee, which will be the same as the amount charged by the examination service.

(a) Will the board collect the fees or will the applicant pay the fee directly to the examination service? **RESPONSE:** The fee is paid directly to ASWB, the examination service.

(b) If the board will collect the fee, could you please identify legal authority to charge this type of fee? **RESPONSE:** The board does not collect the fee.

**QUESTION 5:** Could you please explain why the board chose to remove gender from Rule XI (C) on unprofessional conduct? **RESPONSE:** We should have left the word gender under Rule XI (C). [The agency submitted a revised markup.]

The proposed effective date of this rule is pending legislative review and approval.

**FINANCIAL IMPACT:** The board indicated the proposed rules have no financial impact.

**LEGAL AUTHORIZATION:** The Arkansas Social Work Licensing Board has all the powers and duties granted under Chapter 103 of Title 17 concerning social work. *See* Ark. Code Ann. § 17-103-203(a). Specifically, the board has authority to: (1) Establish the criteria and process for licensure through endorsement; (2) Make rules consistent with law as may be necessary to regulate its proceedings, (3) Establish rules defining unprofessional conduct; (4) Establish fees and publish financial records; (4) Establish continuing education requirements and notify the applicants for licensing of the requirement; (5) Require each applicant at renewal, to present satisfactory evidence that he or she has completed the continuing education requirements specified by the board in the period since the license was issued. *See* Ark. Code Ann. § 17-103-203(b)(1), (b)(4), (b)(6),(b)(7), (b)(8), and (b)(9). Concerning criminal background checks, the board has authority to adopt necessary rules to implement the provisions of Ark. Code Ann. § 17-103-307. Concerning fees, the board has authority to establish, charge, and collect the fees specified in Ark. Code Ann. § 17-103-205.

The Arkansas Social Work Licensing Board has authority to establish rules defining unprofessional conduct and set forth and publish a code of ethics and standards for practice. *See* Ark. Code Ann. § 17-103-203(b)(6). The provision of social work services to a client within this state through any means, including without limitation electronic means or by telephone, regardless of the location of the social worker, constitutes the practice of social work and is subject to the Social Work Licensing Act, Ark. Code Ann. §§ 17-103-101 through 17-103-309, and to rules adopted under the Act. *See* Ark. Code Ann § 17-103-309. Pursuant to Ark. Code Ann. § 17-80-406, state licensing and certification boards for a healthcare professional shall amend their rules where necessary to comply with the Telemedicine Act, Ark. Code Ann. §§ 17-80-401 through 17-80-407.

The proposed rules implement the following Acts of the 2019 Regular Session:

Act 315 of 2019, sponsored by Representative Jim Dotson, provides for the uniform use of the term “rule” for an agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of an agency and includes, but is not limited to, the amendment or repeal of a prior rule throughout the Arkansas Code as envisioned by defining the term in the Arkansas Administrative Procedure Act. *See* Act 315 of 2019, § 1(a)(4).

Act 623 of 2019, sponsored by Senator Greg Leding, amended the law regarding social work licensing to clarify the licensing exemption for students and changed the term “reciprocity” to “endorsement.” *See* Act 623 of 2019, §1, 2, and, 3.

Act 820 of 2019, sponsored by Senator Missy Irvin, provided that an occupational licensing entity shall grant automatic licensure to engage in an occupation or profession to an individual who holds a substantially equivalent occupational license in good standing issued by another state, territory, or district of the United States, and is: (1) An active duty military service member stationed in Arkansas or his/her spouse; or (2) A returning military veteran applying for licensure within one (1) year of his or her discharge or his/her spouse. *See* Act 820 of 2019, codified as Ark. Code Ann. § 17-1-106(b).

Act 990 of 2019, sponsored by Senator John Cooper, amended the law regarding criminal background checks for professions and occupations to obtain consistency regarding criminal background checks and disqualifying offenses for licensure. The Act required licensing entities to promulgate rules to implement the Act. *See* Act 990 of 2019, § 2.

**22. DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILDREN & FAMILY SERVICES (Ms. Christin Harper)**

**a. SUBJECT: Child Maltreatment Investigation Determinations Updates**

**DESCRIPTION:**

Statement of Necessity

This rule revision allows the Division to provide to investigative staff the legal elements that must be present to make a true determination of child maltreatment as outlined in the Arkansas Child Maltreatment Act.

### Rule Summary

Effective July 1, 2020, the Division of Children and Family Services Policy & Procedure Manual is being revised as follows:

- PUB 357: Child Maltreatment Investigation Determination Guide (formerly Child Maltreatment Assessment Protocol):

- Makes clear that the purpose of the document is to provide rules for child maltreatment investigators regarding the legal elements required to make a true finding for child maltreatment under the Child Maltreatment Act (as opposed to assessing safety of a child at a point in time).
- Clarifies the five (5) primary categories of maltreatment (i.e. Abandonment, Abuse, Neglect, Sexual Abuse, and Sexual Exploitation) and specific maltreatment types under each of those categories.
- Articulates the legal elements required for each maltreatment category (e.g. role of alleged offender in the alleged victim's life, age of victim, age of offender, and any exceptions that may apply to a particular category as outlined in the Child Maltreatment Act, etc.).
- Strikes language regarding the acceptance of child maltreatment reports and "usage" in order to narrow the scope of investigative determinations to the legal elements required by the Child Maltreatment Act.

- Technical changes to references to PUB 357 in other locations in policy and procedure documents to match the new terminology of the title and scope of the publication:

- Procedure II-B1
- Procedure II-C2
- Procedure II-D4
- Procedure XIII-A6
- Excerpt Policy II-D

- Procedure XIII-A4: Automatic Name Removal from Child Maltreatment Central Registry: Strikes notification of automatic removal only. No other changes to automatic name removal criteria or process.

- CFS-328-A Request for Name Removal from Central Registry: Adds to form CFS-328-A the existing requirement per A.C.A. § 12-18-908 that if an individual is found guilty of or pleads guilty or nolo contendere to an act of child maltreatment, then that individual does not qualify for a request to be removed from the registry even if the act is subsequently expunged.

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on May 2, 2020. The agency provided the following summary of the public comments it received and its responses to those comments:

**Commenter's Name:** Gary Glisson, Arkansas State Police, Crimes Against Children Division (with Dan Mack, Arkansas State Police, Child Abuse Hotline and Major Jeff Drew, Arkansas State Police cc'd)

**COMMENT:** I had viewed the site that was asking for public opinion regarding PUB 357 and had noted that there were several additional items included. The one that we had questions about related to Procedure II-C2.

In reading B & C it appears that the policy is indicating that if an individual contacts the county office and is unable to contact the hotline DCFS staff would take the information and make a determination if the information rises to a level of maltreatment and meets requirements to accept. Staff would notify the reporter if the report is being accepted or not and then would contact the hotline and provide the information as an accepted report.

The concern is that places DCFS staff in the position to screen calls, which I don't believe the maltreatment act permits. Additionally if staff are indicating that the information the reporter is providing is not maltreatment then that information is not documented in the system.

Thanks for your review and response to these questions.

**RESPONSE:** Yes, Procedure II-C2 was added to make technical changes based on the name change of PUB-357 and some other minor formatting issues. The content to which you are referring has always been in this procedure, so it is not a change. However, we updated the procedure per your suggestion to ensure the procedure reflects current practice more accurately.

**Commenter's Name:** Victoria Kronenwetter, Division of Children and Family Services

**COMMENT:** Good morning! I just took a peek at the 357! My brain is still percolating, but if its "open for comments" I would love to see a table of contents added/expanded (which includes the specific allegation type and page the allegation can be found on). It will save time when flipping and referencing during supervision. **RESPONSE:** Thank you for taking the time to review! We have added a detailed table of contents at the beginning of the document.

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

**QUESTION 1:** In Section 1.2, on pages 12 and 13 of the markup, are notes defining “normal physiological functions.” Where does this definition come from? **RESPONSE:** This is a standard dictionary definition recommended by our OCC Deputy Counsel at the time. While not in statute, we decided it would still be helpful to have since this is a rule upon which we can expound to provide more guidance to staff. We included the statement about consulting with physician to encourage staff to search out additional guidance if needed when applying this term.

**QUESTION 2:** The list of elements required for “presence of illegal substance in a child when a child is born” and “presence of illegal substance in a mother when a child is born” includes “A/V was under eighteen (18) years old when the alleged neglect occurred.” Considering that both of these categories of neglect occur during pregnancy/before the birth of the alleged victim, is DHS comfortable that including the age requirement will not cause confusion? This is on page 22 of the markup. **RESPONSE:** Yes, we are comfortable with including the age requirement. These are our Garrett’s Law allegations with which staff are familiar so it should not cause an issue. We would prefer to keep as is so the legal elements under these allegations track with the structure of the legal elements to consider for the remaining allegations in the document.

**QUESTION 3:** The second and third bullet points under the definition of sexual abuse read “attempt sexual intercourse” instead of “attempted.” (Section 1.4, on page 27 of the markup.) **RESPONSE:** This is an error. We corrected to read “attempted.”

**QUESTION 4:** In Section 1.4, under the heading “Defense and Affirmative Defense Exceptions,” there is an example of when affirmative defenses may or may not apply. This example paragraph includes the sentence, “However, if the teacher was no more than 3 years older than the student, then the affirmative defense would not apply.” Is this referencing a specific affirmative defense, or should it read “affirmative defenses would not apply”? **RESPONSE:** This is referencing the specific affirmative defense in the example.

**QUESTION 5:** In the Section 2 index, under the heading “Abuse,” the proposed rule lists “Abuse with physical injury and without justifiable cause.” Is this equivalent to the statutory listing of “intentional or knowing acts, with or without physical injury,” in Ark. Code Ann. § 12-18-103? **RESPONSE:** No, it is not equivalent. “Abuse with physical

injury and without justifiable cause” is taken from 12-18-103(3)(A)(vi) and “Abuse with or without physical injury” from 12-18-103(3)(A)(vii).

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that this rule does not have a financial impact.

**LEGAL AUTHORIZATION:** The Arkansas Child Maltreatment Act provides definitions of abandonment, abuse, neglect, sexual abuse, sexual exploitation, and other specific maltreatment types within each of these categories. *See* Ark. Code Ann. § 12-18-103. The Department of Human Services has the authority to promulgate rules implementing the Child Maltreatment Act. Ark. Code Ann. § 12-18-105.

23. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF COUNTY OPERATIONS (Mr. Mark White, Ms. Mary Franklin)**

- a. **SUBJECT: Medical Services Policy Sections A-100; B-300; C-200; E-400; F-100; H-400; I-300; I-500; I-600; SPA #2019-0007 to Update Income Offsets Pursuant to Acts 2017, No. 892**

**DESCRIPTION:**

Statement of Necessity

The Medical Services Policy Manual is being updated to reflect changes in coverage, service limits, and assessments due to Home and Community-Based Waiver (HCBS) reforms. Although there is no change to Medicaid eligibility, it has become necessary to update the business processes and information regarding coverage and service limits related to HCBS Waivers. Business processes are being removed throughout these sections and will no longer reside in the Medical Services Policy Manual. The State Plan has been amended and approved by CMS to detail income offsets for the post-eligibility treatment of income in long-term care.

In addition, terminology and grammar corrections have been made throughout MS section A-100.

Rule Summary

Changes to the MS A-100 section include:

- Updated terminology and grammar for clarity
- Updated division name changes (DAAS to DAABHS)

- Deleted business processes which belong in an internal business process manual
- Included a definition for “authorized representative”
- Removed contact information for Area Agencies on Aging

Changes to the MS B-300 section include:

- Updated language for clarity
- The removal of “Adult Family Home” references as a service available through ARChoices
- The addition of prevocational services for persons with physical disabilities to services available through ARChoices
- Added references to a penalty imposition for a transfer of assets for Assisted Living Facilities and ARChoices
- Removed the resource limit chart for the Medicare Savings Program from the policy manual to an appendix

Changes to the MS C-200 section include

- Updated language for clarity
- Removal of business processes to the business process manual
- The addition of when a DCO-0152 is required for Newborn coverage

Changes to the MS E-400 section include:

- Updated language for clarity
- References to Adult Family Home removed
- Business processes moved to business process manual

Changes to the MS F-100 section include:

- Updated language for clarity
- Updated division name changes (DAAS to DAABHS)
- Removal of business processes to the business process manual

Changes to the MS H-400 section include:

- The removal of “Adult Family Home” references and contribution to cost of care procedures
- Added 42 CFR § 435.725, Arkansas Act 892, and SPA language regarding reasonable limits to MS H-410 #7 Non-covered Medical Expenses
- Updated language/terminology for clarity
- Updated form number format
- Added already existing procedures to MS H-410 for clarity
- Updated division name change (DAAS to DAABHS; DMS to DPSQA, etc.)
- Removal of business processes to the business processes manual

Changes to the MS I-300 section include:

- Updated language for clarity
- Updated division name changes (DAAS to DAABHS, etc.)
- Removal of business processes to the business process manual (including the changes in the MSP DCO-0811 process)

Changes to the MS I-500 and MS I-600 sections include:

- Updated language and clarity
- Updated division name changes (DAAS to DAABHS, etc.)
- Removal of business processes to the business process manual

The State Plan (SPA 2019-0007) has been amended and approved by CMS to detail income offsets for the post-eligibility treatment of income in long-term care.

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on May 11, 2020. 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:

**QUESTION 1:** Where does the description of the Children with Special Health Care Needs program in the second paragraph of section A-166 come from? **RESPONSE:** DDS provided revisions to that section based on the current rule being promulgated titled: *Children with Chronic Health Conditions (CHC)*. This is a program under Title V of the Social Security Act. In context, this section is just informational to provide Medicaid eligibility caseworkers information to make appropriate referrals.

**QUESTION 2:** Where do the second and third bullet points under the note in section C-210 come from?

**RESPONSE:** The Newborn category is based on federal regulations found at 42 CFR § 435.117.

The second bullet point is children born to a mother receiving services under the Unborn Child category under CHIP, which covers undocumented alien pregnant women who will give birth to a US citizen child. The child isn't eligible for Newborn, but can apply and be eligible under ARKids or another category.

The third bullet point is procedural. The child is eligible for Newborn, even though they won't be living with the mother, but the form is requested so the agency will know about the child's household status and their parent or guardian.

**QUESTION 3:** Is there specific statutory authority for allowing a \$40 PNA to nursing facility residents with earned income when employment activity is prescribed by a physician for certain purposes? **RESPONSE:** 42 CFR § 435.725(c)(1) requires that the personal needs allowance be at least \$30 per month and allows the state, through a SPA approved by CMS, to set it at a higher amount. The state may set a special higher amount for specific groups such as employed individuals. The current \$40 PNA has not increased in Arkansas since the late 1990s.

**QUESTION 4:** Are the “reasonable limits” adopted in section H-410(7) taken from somewhere or were they drafted specifically for this rule? **RESPONSE:** These are what CMS approved in the State Plan Amendment that is also part of this rule amendment. 42 CFR 435.725(c)(4) allows states to set reasonable limits with CMS approval.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that this rule does not have a financial impact.

**LEGAL AUTHORIZATION:** The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b). Some of these changes implement Act 892 of 2017, sponsored by Representative Austin McCollum, which clarified the proper administration by the Department of the federal regulations pertaining to post-eligibility treatment of income of institutionalized individuals of long-term care Medicaid.

24. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES** (Mr. Mark White, Ms. Melissa Stone)

a. **SUBJECT:** Children with Chronic Health Conditions (CHC)

**DESCRIPTION:**

Statement of Necessity

The rule establishes the eligibility criteria to receive services and the types of services that will be provided under Arkansas's Children with Special Health Care Needs program, the Children with Chronic Health Conditions (CHC) program, and will enable the state to access federal funding for this purpose.

#### Rule Summary

This rule establishes the eligibility criteria to receive services under the Children with Chronic Health Conditions (CHC) program. CHC is Arkansas's Children with Special Health Care Needs program that enables the state to access federal funding to assist children with chronic illness or disability and their parent or guardian. This rule contains eligibility criteria based on residency, medical diagnoses, age, and household income. The rule excludes recipients already receiving services in other programs.

The rule establishes the types of services and supports available to recipients within certain limits. It provides a process for a parent or guardian of a child to appeal a denial of services. Finally, the rule sets out provider requirements and the billing procedures they must use.

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on April 18, 2020. 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:

**QUESTION #1:** Is there specific statutory authority for the residency requirement in section 6(A)(1)-(2)? **RESPONSE:** No, the Maternal Child Health Bureau has a Title V Children with Special Health Care Needs Program in every state and territory in the United States. The Title V Children with Special Health Care Needs Program in Arkansas established residency requirements for over 25 years for all families, including those children that are not naturalized citizens.

**QUESTION #2:** Section 6(D) indicates that a family is only eligible for assistance if the family's income does not exceed 250% of the Federal Poverty Level. Where does this number come from? **RESPONSE:** The federal program allows states the flexibility to adjust the income limits to meet the needs of children with CHC qualifying medical conditions, as funding allows. Historically, families with incomes up to 350% FPL were financially eligible for CHC. Due to usage and funding concerns at the

time we included 250%, but believe keeping it at 350% is appropriate now so the rule has been changed to reflect 350%.

**QUESTION #3:** Section 6(D)(2) lists various categories that are/are not included in the definition of “income.” Is there specific statutory or regulatory authority for these categories? **RESPONSE:** No. The CHC program modeled exclusions and inclusions of income based upon those required by Division of County Operations for Medicaid applicants.

**QUESTION #4:** Is there specific authority for the exclusions listed in section 7? **RESPONSE:** Yes, the Medicaid provider manual for Children’s Services Targeted Case Management, Sec. 214.000 Exclusions, which prevents duplication of services.

**QUESTION #5:** Where do the assistance categories listed in Section 8 come from? **RESPONSE:** The CHC assistance categories were developed by division leaders to categorize types of needs and annual spending limits per child. The needs listed in the policy are examples of, but are not limited to, those that were identified by CHC program leadership as necessary services not available to children with special needs through Medicaid, private insurance, or any other source of payment.

**QUESTION #6:** Is there specific authority for the list of items and equipment CHC will not cover (section 8(A))? **RESPONSE:** No, there is no specific statutory requirement. Past program-related data that included Early Periodic Screening Diagnosis and Treatment information was used as a guide for the section of policy.

**QUESTION #7:** In addition, I think there is a slight misquote in section 4(C). The proposed rule reads:

The Maternal and Child Health Bureau (MCHB) broadly defines CSHCN as “...those that have or are at increased risk for chronic physical, developmental, behavioral, or emotional conditions and that also require health and related services of a type or amount beyond that required by children generally.”

However, after comparing this with the MCHB’s website (specifically, <https://mchb.hrsa.gov/maternal-child-health-topics/children-and-youth-special-health-needs>), I believe the rule should read:

The Maternal and Child Health Bureau (MCHB) broadly defines CSHCN as those that “have or are at increased risk for chronic physical, developmental, behavioral or emotional conditions and who also require

health and related services of a type or amount beyond that required by children generally.”

**RESPONSE:** The definition is misquoted and should be corrected. This has been amended in section 4c.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that this rule has a financial impact.

Per the agency, the additional cost to implement the rule is \$3,886,715 for the current fiscal year (\$1,729,279 in general revenue and \$2,157,436 in federal funds) and \$3,886,715 for the next fiscal year (\$1,729,279 in general revenue and \$2,157,436 in federal funds).

The estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$1,729,279 for the current fiscal year and \$1,729,279 for the next fiscal year. This CHC policy is intended to establish the eligibility criteria and covered services and assistance under the DDS Children with Chronic Health Conditions (CHC) program. For FY2020 there is up to \$1,729,279 in state general revenue appropriated toward the direct services and potentially \$2,157,436 in federal Maternal and Child Health block grant dollars that may be applied towards the services covered by this policy through the CHC program.

Per the agency, the total estimated cost by fiscal year to any private individual, entity, and business subject to the proposed rule is unknown. CHC has a limited amount of federal and state funding to provide direct services to families each year. In an effort to serve more families, CHC is changing the service delivery model and array of covered services. Some providers will be impacted by this change of service array, but at this time CHC cannot determine what the overall impact for these providers will be. The program’s budget has not changed.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

*(1) a statement of the rule’s basis and purpose;*

This rule establishes the eligibility criteria and covered services under the DDS Children with Chronic Health Conditions (CHC) program. CHC is Arkansas’s Children with Special Health Care Needs (CSHCN) program under the Maternal and Child Health Block Grant.

*(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;*

This rule establishes the eligibility criteria and covered services under the DDS Children with Chronic Health Conditions (CHC) program. CHC is Arkansas's Children with Special Health Care Needs (CSHCN) program under the Maternal and Child Health Block Grant.

*(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;*

This rule is necessary for DHS to access federal funds under the Maternal and Child Health Block Grant.

*(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;*

There are no less costly alternatives.

*(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;*

The public comment period has not begun.

*(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*

There are no existing rules that have contributed to a need for this rule.

*(7) an agency plan for review of the rule no less than every ten 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*

If a change is made to the federal statute governing the proposed rule, we will act immediately to make sure that we are achieving the statutory objectives and meeting the costs objectives.

**LEGAL AUTHORIZATION:** The Department of Human Services has the authority to administer assigned forms of public assistance and "other welfare activities or services that may be vested in it" and to make rules as

necessary to carry out its duties. Ark. Code Ann. § 20-76-201(1), (12). This includes promulgating rules to ensure compliance with federal law in order to receive federal funding. Ark. Code Ann. § 25-10-129(b). This rule implements the federal Maternal and Child Health Services Block Grant. *See* 42 U.S.C. § 701(a)(1)(D).

25. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES** (Mr. Mark White, items a-i; Ms. Patricia Gann, item a; Ms. Janet Mann, items b-f, h, i; and Mr. Jerald Sharum, item g)

- a. **SUBJECT: SPA #2020-0011; ARChoices Medicaid Provider Manual, Personal Care Medicaid Provider Manual, and Targeted Case Management Medicaid Provider Manual**

**DESCRIPTION:**

Statement of Necessity

The Department of Human Services (DHS) proposes to amend the ARChoices and Personal Care Medicaid Provider Manuals to implement regulatory reform which will allow the Manuals to mirror the Arkansas Department of Health (ADH) requirements while at the same time reducing administrative costs for providers and eliminating duplicative requirements. These revisions will allow DHS to make needed technical changes and corrections while bringing DHS into compliance with new ADH rules.

Rule Summary

Revisions of the Personal Care Medicaid Provider Manual include the following:

- Section 220.100 of the Personal Care Manual requires an agency RN Supervisor to make an inhome visit for every beneficiary served by the agency at least once every 62 days. This requirement is based on an identical requirement contained in the Arkansas Department of Health (ADH) Rules and Regulations for Private Care Agencies in Arkansas. Act 811 of 2019 repealed the ADH requirement and replaced it with a requirement that each beneficiary be visited at least annually by a supervisor who may either be an RN or an individual with at least two years of fulltime study in an institution of higher education. DHS is proposing to eliminate the parallel requirement contained in Section 220.100 and replace it with language that mirrors the new requirements. The Act requires supervisory visits to be made at a frequency that is “based on the specific needs of the patient.”

- Section 215.200 has been updated to require that, before furnishing any personal care services to an individual, the provider must prepare a complete and accurate Individualized Service Plan with proposed hours and minutes and frequency of needed tasks consistent with the Task and Hour Standards. The service plan must be prepared, certified, and signed by a supervisor or registered nurse. Documentation of the service plan and all revisions must be kept by the personal care provider.
- Section 215.320 has been inserted to require in-person supervisory visits at least annually but at a frequency determined by a registered nurse, the personal care provider, and the beneficiary or the beneficiary's legal representative. The section states that the risk factors identified by the service plan must include any relevant medical diagnoses; the beneficiary's mental status; the presence of family or other residents in the beneficiary's home, and the frequency of their presence; and the beneficiary's physical dependency needs, including the activities of daily living (ADL) with which the beneficiary needs assistance. If the beneficiary has a significant change of condition affecting a risk factor, the registered nurse shall review the frequency of in-person visits and recommend changes as appropriate. Parts of sections 215.330, 216.000, and 220.100 were revised to provide clarity for certain requirements. The revisions include updates to monthly hours provided, qualifications and restrictions for supervisory individuals, and specifications of annual visits. The revisions include a duty to observe, document, and report. The manual requires documentation of consultation in the beneficiary's records, and includes a new subsection regarding early recognition and reporting of changes in a client's condition.
- Changes are made throughout the rule to remove the requirement that a supervisor must be an RN. (Sections 216.000, 220.100, 221.000, 222.110, 222.120)
- DHS is reducing the amount of information required to be submitted by providers to request authorization to provide personal care services. DHS proposes to require only the following information:
  - Beneficiary and provider information;
  - Identification of alternative sources of personal assistance available to the beneficiary (family or friends, AAA, VA, Medicare, or other insurance, etc.);
  - Certification that the beneficiary's service plan will not duplicate any other in-home services of which the provider is aware;
  - The total number of hours per month which the provider seeks to offer for the beneficiary;
  - The frequency of in-person supervisory visits to be made by an agency supervisor, including information on the risk factors specific to the beneficiary and a justification for the frequency; and
  - The signed approval of the beneficiary or beneficiary's representative. (Section 215.200)

DHS is also proposing changes to the Personal Care Manual regarding beneficiaries' individualized service plans:

- Revising the Manual to clarify that a service plan is effective for one year from the date of the client's last Independent Assessment;
- Eliminating the requirement that providers submit the beneficiary's individualized service plan to DHS. However, providers are required to maintain copies of all current and prior service plans for audit purposes; and
- Requiring approval of a revised service plan only if the provider requests to provide more total monthly hours than are allocated in the current prior authorization. However, providers would still be required to maintain documentation of the medical need for any revisions made to the service plan. (Sections 214.200, 214.300, 215.200, 215.330, 215.351, and 244.000 of the Personal Care Manual)
- DHS is revising Section 215.360 regarding documentation and reporting of a significant change in a beneficiary's condition. The individualized service plan must identify individualized, beneficiary-specific standards, based on the identified risk factors, for when a caregiver or supervisor must document and report any significant change in the beneficiary's condition. If a caregiver or supervisor observes a significant change of condition, they must document and report the change of condition as required by the change-reporting standards contained in the beneficiary's individualized service plan. Documentation must include the time and date the change was identified by the caregiver and a full description of the change. Within twenty-four (24) hours of a significant change of condition being reported, a registered nurse must evaluate and document an assessment of the beneficiary.

Revisions of the ARChoices Targeted Case Management Medicaid Provider Manual and the Arkansas Medicaid Provider Manual include the following:

- Section 204.000(I)(3) of the Targeted Case Management Manual and page 6 of Supplement 1 to Attachment 3.1-A of the Arkansas Medicaid State Plan are revised to loosen the educational qualifications for ARChoices Targeted Case Managers by requiring them to have a bachelor's degree from an accredited institution in a health and human services field, or two years' experience in the delivery of human services to the elderly.

Revisions of the ARChoices Medicaid Provider Manual include the following:

- Section 262.100 of the ARChoices Manual is revised to eliminate an obsolete procedure code/modifier combination, S5125 with no modifier. This combination was used in the waiver program that preceded ARChoices, and the combination is no longer in use or needed.

- Added Section 262.312 regarding use of quotients with decimals to mirror the Personal Care Provider Manual.

Revisions of the Arkansas Medicaid State Plan include the following:

- Supplement 1 to Attachment 3.1-A, Page 5 is revised to show that case management providers must now be certified by the Division of Provider Services and Quality Assurance.
- Supplement 1 to Attachment 3.1-A, Page 6 is revised to reflect the participation requirements for providers of TCM that are listed in the Targeted Case Management Medicaid Provider Manual.

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on April 20, 2020. The agency provided the following summary of the public comments it received and its responses to those comments:

**Commenter's Name:** Luke Mattingly, CEO/President, CareLink

**COMMENT #1:** The revisions do not incorporate telehealth options for RN and Qualified Supervisor interaction with participants. Current circumstances with COVID-19 highlight the need for Medicaid to incorporate technology into allowable options. **Revise the Manual to include telehealth options to augment or replace face-to-face visits.**

**RESPONSE:** Given the vulnerabilities of these beneficiaries, the division determined it is in the best interest of beneficiaries to continue face-to-face supervisory visits. Telehealth only provides limited information in relation to the beneficiary's overall health, well-being and environmental safety. Face-to-face interactions are required to fully assess all medical, functional and environmental factors that impact the beneficiary's safety and overall risk.

**COMMENT #2:** Revisions of the Personal Care Medicaid Provider Manual Section 215.200

“The provider must prepare a complete and accurate Individualized Service Plan with proposed hours and minutes and frequency of needed tasks consistent with the Task and Hour Standards.”

Providers do not receive a copy of the Task and Hour Standards from eQHealth. How can we prepare an Individualized Service Plan consistent with the Task and Hour Standards?

**RESPONSE:** The Division will review and revise the language of Section 215.200. The maximum/minimum ranges in the Task and Hour Standards are used only to calculate the aggregate number of hours of care; they are

not intended as limitations on actual performance of each individual instance of a task.

**COMMENT #3:** “DHS is reducing the amount of information required to be submitted by providers to request authorization to provide personal care services. DHS proposes to require only the following information:”

Is DHS revising the DMS-618 to include only the proposed information? If so, there isn't a shortened form to review and provide comments on. Or are providers responsible for creating their own request authorizations?

**RESPONSE:** The Division intends, based on implementation of manual revisions, to update the current DMS-618 to only include information required under the manual. 2

**COMMENT #4:** “DHS is revising Section 215.360 regarding documentation and reporting of a significant change in a beneficiary's condition.”

To whom must the caregiver and supervisor report any significant change in the beneficiary's condition? What are the next steps after a change of condition is reported? Does a change of condition trigger a new assessment?

**RESPONSE:** The reporting of any significant change in condition would be based on individual agency policy and procedures.

**COMMENT #5:** “Within 24 hours of a significant change of condition, a registered nurse must evaluate and document an assessment of the beneficiary.”

Which registered nurse must evaluate and document an assessment of the beneficiary? Provider, DHS, Optum? What kind of an assessment? What assessment tool?

**RESPONSE:** A provider agency registered nurse must evaluate and document an assessment.

The assessment would be conducted based on individual agency policy and procedure. The division will revise Section 215.360 to clarify the provider responsibility under this section.

**COMMENT #6:** The TCM SPA and TCM Section II are inconsistent on the frequency of monitoring. We would like the monitoring with service providers frequency to remain every other month as currently written in the SPA.

**RESPONSE:** The Division will review and revise the language of Section 218.300 C to be consistent with language in the SPA.

**COMMENT #7: Section 218.300 C** (Though not part of the proposed rule currently published, it makes sense to correct so the SPA and policy align.)

“Monitoring is allowed through regular contacts with service providers at least every month (should change this verbiage to every other month) to verify that appropriate services are provided in a manner that is in accordance with the service plan and assuring through contacts with the beneficiary, at least monthly, that the beneficiary continues to participate in the service plan and is satisfied with services.”

**RESPONSE:** The Division will review and revise the language of Section 218.300 C to be consistent with language in the SPA. 3

**Commenter’s Name:** Kim Steed, RN, BSN, Regional Director  
Community Care Operations, Community Care - Kindred at Home

**COMMENT #1: 215.320 (B.)** Identifying Frequency of In-Person Supervisory Visits – DHS should define “annually.” Example: if a supervisory visit is made on May 22nd, 2020; the annual supervisory visit can be made anytime – May 1-May 31st, 2021. **RESPONSE:** The Division will revise Section 215.320, B to clarify “at least annually” as, “at least every 365 days”.

**COMMENT #2: 215.360** Changes of Condition (NOTE: Added to Manual as well as to Aide training) Most providers already have the aides report beneficiary changes, so we agree with A. and B. **RESPONSE:** Thank you for your comment.

**COMMENT #3: 215.360. C.** states, “Within twenty-four (24) hours of a significant change of condition being reported, a registered nurse must evaluate and document an assessment of the beneficiary, including without limitation the reported change of condition.” Assessment is considered to be skilled and face to face. This is a non-skilled program. RN Assessments are non-reimbursable. This does not mirror Arkansas Department of Health required rules. We are attaching our Attendant Instructions on reporting changes.

**RESPONSE:** Given the vulnerabilities of these beneficiaries, the division determined it is in the best interest of beneficiaries to continue face-to-face supervisory visits. Telehealth only provides limited information in relation to the beneficiary’s overall health, well-being and environmental safety.

Face-to-face interactions are required to fully assess all medical, functional and environmental factors that impact the beneficiary's safety and overall risk.

**COMMENT #4:** "DHS is revising Section 215.360 regarding documentation and reporting of a significant change in a beneficiary's condition."

To whom must the caregiver and supervisor report any significant change in the beneficiary's condition? What are the next steps after a change of condition is reported? Does a change of condition trigger a new assessment?

**RESPONSE:** The reporting of any significant change in condition would be based on individual agency policy and procedures.

**COMMENT #5:** "Within 24 hours of a significant change of condition, a registered nurse must evaluate and document an assessment of the beneficiary."

Which registered nurse must evaluate and document an assessment of the beneficiary? Provider, DHS, Optum? What kind of an assessment? What assessment tool?

**RESPONSE:** A provider agency registered nurse must evaluate and document an assessment.

The assessment would be conducted based on individual agency policy and procedure. The division will revise Section 215.360 to clarify the provider responsibility under this section.

**COMMENT #6:** The TCM SPA and TCM Section II are inconsistent on the frequency of monitoring. We would like the monitoring with service providers frequency to remain every other month as currently written in the SPA.

**RESPONSE:** The Division will review and revise the language of Section 218.300 C to be consistent with language in the SPA.

**COMMENT #7: Section 218.300 C** (Though not part of the proposed rule currently published, it makes sense to correct so the SPA and policy align.)

"Monitoring is allowed through regular contacts with service providers at least every month (should change this verbiage to every other month) to verify that appropriate services are provided in a manner that is in

accordance with the service plan and assuring through contacts with the beneficiary, at least monthly, that the beneficiary continues to participate in the service plan and is satisfied with services.”

**RESPONSE:** The Division will review and revise the language of Section 218.300 C to be consistent with language in the SPA.

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

**QUESTION #1:** Why has DHS chosen to reduce the amount of information a provider must submit to obtain a PA (see section 215.200(B))? **RESPONSE:** The current rule requires that an individual’s physical dependency need for personal care services be based upon the results of the Arkansas Independent Assessment (ARIA). Some of the information required to be submitted by the current § 215.200(B) has become duplicative and unnecessary, as it is now collected as part of ARIA. DHS proposes to reduce the amount of information required by removing the pieces that duplicate what is obtained through ARIA, so as to reduce the administrative burden on providers.

**QUESTION #2:** Is an Individualized Service Plan, as referenced in section 215.200(E), required by statute? **RESPONSE:** The current rule requires the preparation of an Individualized Service Plan (see, e.g., §§ 215.200 and 215.300). Ark. Code Ann. §§ 20-10-806(b)(3)(A) and 20-10-2304(c)(3)(A) require a “plan of care” for each patient, and this requirement is fulfilled by the Individualized Service Plan required under both the current rule and the proposed rule.

**QUESTION #3:** What is the statutory authority for section 215.360, regarding changes of condition? **RESPONSE:** Arkansas Code Annotated §§ 20-76-201, 20-77-107, and 20-77-1709 authorize the Department to promulgate rules to implement and govern the Arkansas Medicaid Program.

**QUESTION #4.** What is the source for section 220.100(A)(3)’s requirement that an individual who personally provides personal care services to a beneficiary may not supervise another personal care aide providing personal care services to that same beneficiary? **RESPONSE:** Arkansas Code Annotated §§ 20-76-201, 20-77-107, and 20-77-1709 authorize the Department to promulgate rules to implement and govern the Arkansas Medicaid Program. Allowing two personal care aides to supervise each other while serving the same client would be a conflict of interest detrimental to the best interests of the client.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that this rule does not have a financial impact.

**LEGAL AUTHORIZATION:** The Department of Human Services has the authority to administer assigned forms of public assistance and to make rules as necessary to carry out its duties. Ark. Code Ann. § 20-76-201(1), (12). The Department is specifically tasked with establishing and maintaining an indigent medical care program. Ark. Code Ann. § 20-77-107(a)(1). This includes promulgating rules to ensure compliance with federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

b. **SUBJECT:** SPA #2019-002, Section 1004 of the SUPPORT Act

**DESCRIPTION:**

Statement of Necessity

The Centers for Medicare and Medicaid Services (CMS) has issued state guidance for a mandatory State Plan Amendment related to Drug Utilization Review (DUR) to reduce opioid-related fraud, misuse, and abuse. This change is in compliance with Section 1004 of the Substance-Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act, also referred to as the SUPPORT for Patients and Communities Act or the SUPPORT Act.

Rule Summary

CMS required states to submit the State Plan Amendment (SPA) by December 31, 2019. The effective date for this promulgation will be July 1, 2020.

The purpose of this SPA is to meet the requirements of the SUPPORT Act and to provide documentation of compliance with opioid standards applicable to Fee For Service (FFS) recipients and PASSE recipients. These requirements have already been implemented in Arkansas. This Medicaid SPA reflects what is already in practice.

The purpose of this change is to address required implementation concerning:

- Opioid prescription claim reviews at the point of sale and retrospective reviews
- The monitoring and management of antipsychotic medication in children
- Identification of processes to detect fraud and abuse
- Mandatory DUR report updates
- Requirements for Medicaid Managed Care Organizations

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on April 20, 2020. The agency indicated it did not receive any public comments.

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

**QUESTION #1:** Are the routine metabolic labs mentioned in section H.2(a) required by statute? **RESPONSE:** Continued monitoring on an outpatient basis for metabolic changes is required for antipsychotic agents for children < 18 years of age. This was announced in a June 5, 2012 memo, after the April 18<sup>th</sup>, 2012 DUR Board meeting. See June 12, 2012 REMINDER REGARDING REQUIREMENTS OF INFORMED CONSENT AND METABOLIC MONITORING FOR ORAL ANTIPSYCHOTIC AGENTS FOR CHILDREN < 18 YRS. OF AGE:

**QUESTION #2:** Is CMS approval required for these rule changes? If so, what is the status on that approval? **RESPONSE:** Yes. CMS approved on 2/20/20.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that this rule does not have a financial impact.

**LEGAL AUTHORIZATION:** The Department of Human Services has the authority to administer assigned forms of public assistance and to make rules as necessary to carry out its duties. Ark. Code Ann. § 20-76-201(1), (12). The Department is specifically tasked with establishing and maintaining an indigent medical care program. Ark. Code Ann. § 20-77-107(a)(1). This includes promulgating rules to ensure compliance with federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

- c. **SUBJECT: Technical Corrections – Removal of References to Provider Electronic Solutions (PES) Software & Updating Outdated Terminology in Arkansas Medicaid Provider Manuals**

**DESCRIPTION:**

Statement of Necessity

The Arkansas Medicaid Provider Manuals contain references to outdated programs and service names. In order to maintain accuracy in the Medicaid Provider Manuals, these outdated program and service names need to be updated to their current names. In addition, the new MMIS

Interchange system created a Provider Portal where providers can verify eligibility and submit electronic claims. This replaces the Provider Electronic Solutions (PES) software used before for this purpose. The PES software is being slowly phased out to give providers ample time to transition. This change eliminates references to PES in the provider manuals.

Since the Arkansas Administrative Procedure Act, § 25-15-201 et seq., does not contain provisions that allow state agencies to make technical changes without going through the promulgation process, the Department of Human Services is bringing this promulgation to effectuate these technical corrections.

#### Rule Summary

References to Provider Electronic Solutions (PES) software are being removed and old references to programs and services that have been replaced or renamed are being updated. The change is being made to all Medicaid provider manuals where the references appear.

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on April 26, 2020. The agency indicated that it did not receive any public comments.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that this rule has no financial impact.

**LEGAL AUTHORIZATION:** The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

d. ~~**SUBJECT: SPA #2020-0012 Personal Care Rate**~~

~~**DESCRIPTION:**~~

~~Statement of Necessity~~

~~A revision to the Arkansas Medicaid State Plan is necessary to increase rates for personal care services in the Medicaid program based upon a rate review recommendation and Arkansas minimum wage increases.~~

~~Rule Summary~~

~~Effective January 1, 2020, the Medicaid State Plan is being amended as follows:~~

~~Rates in the Personal Care program will increase by 1.4% based upon rate review of the service. The rate increase was recommended due to a regular rate review process. The State Plan Amendment to support this change will be retroactive to January 1, 2020 upon CMS approval.~~

~~**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on April 26, 2020. The agency indicated that it received multiple public comments. Due to the length of the public comment summary, it is attached separately.~~

~~Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following question and received the following response:~~

~~**QUESTION:** The rule summary mentions that CMS approval is required for retroactive application. What is the status on that approval?~~

~~**RESPONSE:** The SPA was submitted to CMS on 3/26/20. On 4/16/20, CMS requested a copy of the published notice of rulemaking. This was provided and CMS indicated that they can “process the SPA in the next few days.” Jack informed me that “days” often mean weeks with CMS. CMS officially has 90 days to approve a submission.~~

~~The proposed effective date is July 1, 2020.~~

~~**FINANCIAL IMPACT:** The agency indicated that this rule has a financial impact.~~

~~Per the agency, the additional cost to implement the rule is \$967,883 for the current fiscal year (\$278,847 in general revenue and \$689,036 in federal funds) and \$1,935,766 for the next fiscal year (\$550,338 in general revenue and \$1,385,428 in federal funds). The estimated cost by fiscal~~

year to state, county, and municipal government to implement this rule is \$278,847 for the current fiscal year and \$550,338 for the next fiscal year.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

*(1) a statement of the rule's basis and purpose;*

As required by Executive Order 19-02, the rate review process was completed in July 2019. A revision to the Arkansas Medicaid State Plan is necessary to increase rates for personal care services.

*(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;*

As required by Executive Order 19-02, the rate review process was completed in July 2019. Rates in the Personal Care program will increase by 1.4% based upon rate review of the service.

*(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;*

As required by Executive Order 19-02, the rate review process was completed in July 2019. Rates in the Personal Care program will increase by 1.4% based upon rate review of the service. The rate increase helps ensure access to care.

*(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;*

There are no less costly alternatives.

*(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;*

None at this time.

*(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*

None.

~~(7) an agency plan for review of the rule no less than every ten 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~~

~~Executive Order 19-02 requires provider rates to be reviewed no less frequently than every four years.~~

~~**LEGAL AUTHORIZATION:** The Department of Human Services has the authority to administer assigned forms of public assistance and to make rules as necessary to carry out its duties. Ark. Code Ann. § 20-76-201(1), (12). The Department is specifically tasked with establishing and maintaining an indigent medical care program. Ark. Code Ann. § 20-77-107(a)(1). This includes promulgating rules to ensure compliance with federal law in order to receive federal funding. Ark. Code Ann. § 25-10-129(b).~~

e. **SUBJECT: SPA #2020-0003 EIDT/ADDT Rate Increase**

**DESCRIPTION:**

Statement of Necessity

A revision to the Arkansas Medicaid State Plan is necessary to increase rates for day habilitation services in the Adult Developmental Day Treatment (ADDT) and Early Intervention Day Treatment (EIDT) Medicaid programs based upon a rate review recommendation and Arkansas minimum wage increase.

Rule Summary

Day habilitation service rates in Adult Developmental Day Treatment (ADDT) and Early Intervention Day Treatment (EIDT) will increase by eleven percent (11%) based upon a rate review of the service. The previous rate had not been increased since 2008. The State Plan Amendment to support this change will be retroactive to January 1, 2020 upon Centers for Medicare and Medicaid Services (CMS) approval. As a result of the increase, the following state plan pages are being revised:

- Attachment 3.1-A, page 4a: Categorically Needy
- Attachment 3.1-B, page 4b: Medically Needy
- Attachment 4.19-B, page 1f: Methods and Standards for Establishing Payment Rates

- Attachment 4.19-B, page 3a: Methods and Standards for Establishing Payment Rates.

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired April 26, 2020. 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:

**QUESTION #1:** The rule summary mentions that this rule change requires some level of CMS approval. What is the status on that approval?

**RESPONSE:** The state plan amendment was submitted to CMS March 27, 2020. CMS has until June 25, 2020, to approve or deny it. We are currently responding to CMS questions.

**QUESTION #2:** Was the word “than” correctly added to Section 4.b(3)(1) and to the third paragraph of Section 9(1)? Those sections both now read, “[R]ates are established per the most current Blue Cross/Blue Shield Fee Schedule amount less **than** 2.5% and then multiplied by 66%.” I am unfamiliar with insurance fee schedules, but the math in that sentence seems odd with the change. **RESPONSE:** The word “than” was added in error during the editing process. We have removed the word from the attached. Thank you for bringing that to our attention.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that this rule has a financial impact.

Per the agency, the additional cost to implement the rule is \$9,422,873 for the current fiscal year (\$2,714,730 in general revenue and \$6,708,143 in federal funds) and \$18,845,745 for the next fiscal year (\$5,357,845 in general revenue and \$13,487,900 in federal funds). The estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$2,714,730 for the current fiscal year and \$5,357,845 for the next fiscal year.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

*(1) a statement of the rule’s basis and purpose;*

As required by Executive Order 19-02, the rate review process for Day Habilitation was completed in July 2019. The review resulted in a recommended increase of 11% for day habilitation services provided in EIDT and ADDT programs.

*(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;*

As required by Executive Order 19-02, the rate review process for Day Habilitation was completed in July 2019. The review resulted in a recommended increase of 11% for day habilitation services provided in EIDT and ADDT programs.

*(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;*

As required by Executive Order 19-02, the rate review process for Day Habilitation was completed in July 2019. The review resulted in a recommended increase of 11% for day habilitation services provided in EIDT and ADDT programs.

*(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;*

There are no less costly alternatives.

*(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;*

None at this time.

*(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*

None.

*(7) an agency plan for review of the rule no less than every ten 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*

Executive Order 19-02 requires provider rates to be reviewed no less frequently than every four years.

**LEGAL AUTHORIZATION:** The Department of Human Services has the authority to administer assigned forms of public assistance and to make rules as necessary to carry out its duties. Ark. Code Ann. § 20-76-201(1), (12). The Department is specifically tasked with establishing and maintaining an indigent medical care program. Ark. Code Ann. § 20-77-107(a)(1). This includes promulgating rules to ensure compliance with federal law in order to receive federal funding. Ark. Code Ann. § 25-10-129(b).

f. **SUBJECT: SPA #2020-0007 Durable Medical Equipment Rate Adjustment**

**DESCRIPTION:**

**Statement of Necessity**

Effective for dates of service occurring on or after April 1, 2020, the Arkansas Department of Human Services' (DHS) Division of Medical Services (DMS) will adjust the Medicaid maximum unit reimbursement rate for durable medical equipment codes, subject to Section 1903(i)(27) of the Social Security Act, as described in the State Medicaid Director (SMD) Letter 18-001. Currently, Arkansas Medicaid may have to repay \$5,062,687.67 due to DME expenditures exceeding what Medicare would have paid.

**Rule Summary**

A revision to the Arkansas Medicaid State Plan is necessary for claims with dates of service on or after April 1, 2020, to adjust the reimbursement rate maximums for codes subject to Section 1903(i)(27) of the Social Security Act. The rates will be set to comply with the Social Security Act Section 1903(i)(27). All rates are published on the agency's website (<http://medicaid.mmis.arkansas.gov>). Except as otherwise noted in the plan, state-developed fee schedule rates are the same for both governmental and private providers.

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on April 26, 2020. The agency indicated that it received no public comments on this rule.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that this rule has a financial impact.

Per the agency, this rule will result in a savings of \$1,265,673 in the current fiscal year (\$359,831 in general revenue and \$905,842 in federal funds) and \$5,062,688 in the next fiscal year (\$1,439,322 in general revenue and \$3,623,366 in federal funds). The total estimated savings by fiscal year to state, county, and municipal government as a result of this rule are \$359,831 in the current fiscal year and \$1,439,322 in the next fiscal year.

**LEGAL AUTHORIZATION:** The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

The proposed rule implements Section 1903(i)(27) of the Social Security Act, which provides that states may not receive Medicaid reimbursement for durable medical equipment, as defined in 42 U.S.C. § 1395x(n), “in excess of the aggregate amount, if any, that would be paid for such items . . . on a fee-for-service basis under” Medicare Part B. *See* 42 U.S.C. § 396b(i)(27).

**g. SUBJECT: SPA #2020-0001 Self-Direction Budget Calculation Methodology & IC Provider Manual**

**DESCRIPTION:**

Statement of Necessity

This change is necessary to address the impact on the self-direction program from increases in the minimum wage since 2008, and to tie the self-direction budget calculation methodology to the personal care rate more accurately in order to eliminate the need for further calculation changes.

The self-direction program is a waiver program that allows a beneficiary to employ caregivers of the beneficiary’s choice using Medicaid funds. A fiscal agent is paid separately to assist the beneficiary in employing caregivers. The beneficiary’s budget is set through an assessment of hours of needed care, a determination of funds available to pay for needed care

and other goods and services, and the creation of a plan of care. The cost of care is equal to the number of hours of care multiplied by the wage paid to the caregiver, plus the cost of applicable taxes.

The average number of hours in plans of care under Independent Choices is approximately 25 hours. The maximum available number of hours under Independent Choices for personal care under State Plan Medicaid is 14.75 hours. However, ARChoices beneficiaries can select to receive self-direction through the Independent Choices program and receive additional hours of care.

In 2008, the self-direction budget was capped to 57.8% of the personal care rate. This cap is promulgated in the State Plan Amendment approved by CMS and the Independent Choices Provider Manual. Today, the self-direction budget cap corresponds to a maximum hourly wage of approximately \$10.55 based on a personal care rate of \$18.24 per hour.

The 57.8% adjustment factor for the self-direction program was chosen to match the funding available for the self-direction program in 2008, given the personal care rate at the time. The personal care rate is calculated based on average wages for direct care staff, benefit loads such as unemployment taxes, and overhead loads such as administrative costs for employers to do business and employ direct care staff. The self-direction program does not have overhead costs because of the fiscal agent's involvement.

Since 2008, the minimum wage has increased substantially. In 2008, the minimum wage was \$6.25 per hour. In 2018, the minimum wage increased to \$9.25 per hour. In 2020, the minimum wage increased to \$10.00 per hour. On January 1, 2021, the minimum wage will increase to \$11.00 per hour, which is 76% higher than it was in 2008.

Increases in the minimum wage negatively impact the Independent Choices program when the minimum wage is more than the maximum allowed hourly wage plus applicable taxes. This is because the beneficiary will not be able to pay for the number of hours of care the beneficiary needs due to the increased cost of care related to the increase in the minimum wage.

For example, the current maximum allowed hourly wage for caregivers is \$10.55, but that only leaves \$0.55 per hour to cover applicable taxes because the minimum wage is \$10.00. However, taxes on even the minimum wage brings the total cost per hour to \$11.60. This means that the beneficiary would not be able to afford approximately 9.1% of the beneficiary's needed hours of care and would have no remaining funds to

afford additional goods or services allowed under the self-direction program.

The problem becomes even more pronounced when the minimum wage increases to \$11.00 per hour on January 1, 2021, because at that rate the total cost per hour increases to approximately \$12.76. This means the beneficiary would not be able to afford approximately 17.3% of the beneficiary's needed hours of care and would have no remaining funds to afford additional goods and services.

In addition to being unable to absorb the impact of minimum wage increases, the current self-direction budget calculation does not accurately reflect the difference between the self-direction program and the agency-based personal care rate. For example, the self-direction program does not have administrative overhead costs that add approximately 37% to the personal care rate calculation, but does have benefit loads for taxes of approximately 16%. Yet, the self-direction program is capped below that at 57.8% of the personal care rate.

The disjunction between the self-direction budget calculation and the personal care rate also makes it difficult for self-direction to be a meaningful alternative to agency-based personal care services because such agencies are not limited to the 57.8% of the personal care rate. Instead, agency-based personal care services can pay the full personal care rate of \$18.24.

### Rule Summary

This change will adjust the self-direction budget calculation methodology promulgated in the State Plan Amendment approved by CMS and the Independent Choices manual. Specifically, the self-direction budget calculation methodology would be changed from 57.8% of the personal care rate to 73.0% of the personal care rate.

The 73.0% percentage was calculated using the same method to calculate the personal care rate except that it is based on the current personal care rate and accounts for the lack of administrative overhead costs for self-direction beneficiaries. The link to the personal care rate will allow future adjustments due to changing economic conditions to be accounted solely through changes to the personal care rate.

At 73.0% of the current personal care rate, self-direction beneficiaries would have maximum budgets equal to the number of hours of needed care per month, multiplied by \$13.32 per hour of needed care. These funds could be used to pay for caregivers and other goods and services allowed under the Independent Choices program.

Future changes to the self-direction rate due to further increases in the minimum wage or other factors would be addressed through changes to the personal care rate.

The change will impact approximately 2,800 current beneficiaries who are in the self-direction program.

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on May 9, 2020. 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 answers:

**QUESTION #1:** Is CMS approval required for these changes? If so, what is the status on that approval? **RESPONSE:** Yes, CMS approval of the Medicaid State Plan change is required. We received CMS approval on May 5, 2020.

**QUESTION #2:** Where does the 73% hourly rate come from? **RESPONSE:** It is based on the personal care rate methodology, less 37% for overhead that is not present in the self-direction program. The overhead is covered by the contractor, which is paid separately. I am attaching the calculation methodology that may help.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that this rule has a financial impact.

Per the agency, the additional cost to implement the rule is \$7,730,368 for the current fiscal year (\$2,197,744 in general revenue and \$5,532,624 in federal funds) and \$7,730,368 for the next fiscal year (\$2,197,744 in general revenue and \$5,532,624 in federal funds). The estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$2,197,744 for the current fiscal year and \$2,197,744 for the next fiscal year.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

*(1) a statement of the rule's basis and purpose;*

This change is necessary to (1) address the impact on the self-direction program from increases in the minimum wage since 2008, and (2) tie the self-direction budget calculation methodology to the personal care rate more accurately in order to eliminate the need for further calculation changes.

*(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;*

To ensure that the program has the budget necessary to provide the hours required for the care needed for this self-direction care program.

*(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;*

Minimum wage has increased since 2008 and the program must account for this increase in 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;*

No comments received as to date.

*(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;*

No alternatives are proposed at this time.

*(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*

Not applicable.

*(7) an agency plan for review of the rule no less than every ten 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*

The agency monitors State and Federal rules and policies for opportunities to reduce and control costs.

**LEGAL AUTHORIZATION:** The Department of Human Services has the authority to administer assigned forms of public assistance and to make rules as necessary to carry out its duties. Ark. Code Ann. § 20-76-201(1), (12). The Department is specifically tasked with establishing and maintaining an indigent medical care program. Ark. Code Ann. § 20-77-107(a)(1). This includes promulgating rules to ensure compliance with federal law in order to receive federal funding. Ark. Code Ann. § 25-10-129(b).

**h. SUBJECT: SPA #2020-0008 Physicians' Evaluation & Management Code Rate Increase**

**DESCRIPTION:**

Statement of Necessity

The Arkansas Department of Human Services (DHS), Division of Medical Services (DMS), intends to revise the Arkansas Medicaid State Plan maximum unit reimbursement rate for physicians' evaluations and management services, as required by Executive Order 19-02. A rate review was completed in January 2020. DHS bases the rate increases upon a rate review recommendation.

Rule Summary

A revision to the Arkansas Medicaid State Plan is necessary, effective for claims with dates of service on or after July 1, 2020, to increase the reimbursement rate maximums for evaluation and management codes (subject to a routine rate study performed by DHS in January 2020). All rates are published on the agency's website: (<http://medicaid.mmis.arkansas.gov>).

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on May 11, 2020. The agency indicated that it received a single public comment.

**Commenter's Name:** Anna Strong, Executive Director, Arkansas Chapter, American Academy of Pediatrics

**COMMENT:**

On behalf of approximately 420 pediatrician members, the Arkansas Chapter of the American Academy of Pediatrics wishes to submit public comment for SPA 2020-0008: Physicians' Evaluation and Management Code Rate Increase. Having only received details about the SPA a few

hours ago, on the day public comment was due, our comments will be less detailed than intended.

We truly appreciate the effort that was made to provide a much-needed rate increase in the face of large cuts to the state budget due to COVID-19. While 5% is not the increase we hoped for considering it has been 15 years since the last fee-for-service rate increase, and Medicaid rates for some of pediatricians' office visit CPT codes are among the lowest in the nation and hover around 40% of private insurance rates, we support any efforts to continue to keep practice slots open for children on Medicaid and ARKids First. This is a welcome step in the right direction toward ensuring pediatric practices can provide equal access to care for all children.

Our larger concern about this SPA is what's not included in it. We appreciated Ms. Mann's invitation to provide feedback to AR Medicaid in January about the state's late 2019 analysis of primary care physician rates, and we are disappointed that most of the recommendations in our January 31, 2020 letter were not adopted.

First, we hoped to see the recommended currently-paid codes that are frequently used by pediatricians included in the list of codes receiving an increase. Some examples of these codes that are used daily in primary care settings include strep and flu PCR tests, RSV tests, updraft treatments, urinalysis, and vital/required screenings such as lead, vision, and hearing.

Second, our recommendations included suggestions for modernizing Medicaid codes to align with the American Academy of Pediatrics' Bright Futures. We advised several recommended screening codes be turned on, including services that were newly required as part of an EPSDT/well-child visit in January 1, 2020 EPSDT/ARKids First manual changes but are not being paid. An initial draft of the codes to be adjusted that was shared with us in early March 2020 included four of these screening codes, but they were not in today's version.

In short order, we expect to see established payment rates for the developmental/autism screenings (96110) and adolescent depression screenings (96127) that are now required. The well-visit's 5% increase (\$2.82) does not even cover the cost of these new services that require infrastructure and additional time to conduct. As a reminder, developmental screenings (96110) are a core measure that must be reported to CMS by 2024; we are one of only 5 states that does not reimburse for this service. And in this stressful and uncertain time, depression screenings are a must for teens.

We also hope to see payment established for recommended screenings including maternal depression screening (96161), health risk

assessments/asthma control tests (96160), and vision screening with instrument (99177). We are aware that these changes may be made through a process other than a State Plan Amendment.

Finally, we also recommended activation of codes that support complex/behavioral primary care and after-hours care that pediatricians are providing to their patients without reimbursement.

We know that our plans to meet in person to discuss the rate review were sidelined by the pandemic, so we look forward to continuing our quarterly meetings (virtually or in person) in the meantime. We expect that as state budgets normalize, we will revisit our conversation about recommendations in our January letter.

**RESPONSE:** Thank you for your comment and support of the 5% increase. DMS did review and consider each of the policy recommendations made by the ARAAP. However, due to budget and time constraint, DMS decided to focus efforts on changes that would have the most impact across provider types and specialties. We continue to review and consider the policy recommendations you made and will make changes to the Medicaid policy as appropriate. We value your support and look forward to continuing to work with you in the future.

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

**QUESTION:** Is CMS approval required for this rule? If so, what is the status on that approval? **RESPONSE:** The physicians' evaluation and management code rate increase (SPA 2020-0008) does require CMS approval. It was submitted April 14, 2020. CMS will have until July 13, 2020 to approve or deny, but they have indicated we should have the approval soon.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that this rule has a financial impact.

Per the agency, the additional cost to implement the rule is \$4,599,168 for the current fiscal year (\$1,307,543 in general revenue and \$3,291,625 in federal funds) and \$4,599,168 for the next fiscal year (\$1,307,543 in general revenue and \$3,291,625 in federal funds). The estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$1,307,543 for the current fiscal year and \$1,307,543 for the next fiscal year.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

*(1) a statement of the rule's basis and purpose;*

As required by Executive Order 19-02, the rate review process for physicians' evaluation and management services was completed in January 2020. Based upon a rate review recommendation, a revision of the Arkansas Medicaid State Plan is necessary to increase rates for physicians' evaluation and management services.

*(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;*

As required by Executive Order 19-02, the rate review process for physicians' evaluation and management services was completed in January 2020. Based upon a rate review recommendation, a revision of the Arkansas Medicaid State Plan is necessary to increase rates for physicians' evaluation and management services.

*(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;*

As required by Executive Order 19-02, the rate review process for physicians' evaluation and management services was completed in January 2020.

*(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;*

There are no less costly alternatives.

*(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;*

None at this time.

*(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*

None.

*(7) an agency plan for review of the rule no less than every ten 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*

Executive Order 19-02 requires physicians' evaluation and management services rates to be reviewed no less frequently than every four years.

**LEGAL AUTHORIZATION:** The Department of Human Services has the authority to administer assigned forms of public assistance and to make rules as necessary to carry out its duties. Ark. Code Ann. § 20-76-201(1), (12). The Department is specifically tasked with establishing and maintaining an indigent medical care program. Ark. Code Ann. § 20-77-107(a)(1). This includes promulgating rules to ensure compliance with federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

i. **SUBJECT: SPA #2020-0005 Vaccine Administration Fee Rate Increase**

**DESCRIPTION:**

Statement of Necessity

The Arkansas Department of Human Services (DHS), Division of Medical Services (DMS), intends to revise the Arkansas Medicaid State Plan rates for vaccine administration fees based on a rate review process that was completed in July 2019 as required by Executive Order 19-02. DHS bases the rate increases upon a rate review recommendation. Providers of flu immunizations and other vaccines expressed concern of growing program costs given that no rate increases occurred in over 10 years. The rate increases ensure access and availability of immunizations to members of Arkansas Medicaid.

Rule Summary

This State Plan Amendment (SPA) increases the rates in the Physicians, Nurse Practitioner, ARKids B, and Pharmacy programs to fifteen dollars and forty-five cents (\$15.45) for administration of the influenza immunization. The SPA increases rates for other Medicaid payable vaccines to thirteen dollars and fourteen cents (\$13.14).

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired May 11, 2020. The agency provided the

following summary of the public comments it received and its responses to those comments:

**Commenter's Name:** Anna Strong, Executive Director, Arkansas Chapter, American Academy of Pediatrics

**COMMENT:** On behalf of approximately 420 pediatrician members, the Arkansas Chapter of the American Academy of Pediatrics would like to provide public comment for SPA-2020-0005: Vaccine Administration Fee Rate Increase.

We are grateful to see this rate increase for childhood and flu vaccine administration move forward after several years of advocacy. While it is less than the amount we were originally anticipating that would have fully covered costs, and less than the Medicaid program's vaccine administration state cap, we hope this increase will enable most Arkansas pediatricians to continue to provide an in-office vaccine program and ensure children have timely access to needed immunizations.

We do hope that, over time, the immunization rate for childhood vaccinations will be at parity with the rate offered for flu vaccinations due to the more extensive counseling that is required with many families for childhood vaccinations.

**RESPONSE:** Thank you for your support of SPA-2020-0005: Vaccine Administration Fee Rate Increase. We utilized the Medicare fees for influenza immunization administration and for administration of all other vaccines as a basis to establish the administration fee. Medicare makes the same type of distinction in their rates. We will continue to review vaccine policies as they are updated to ensure adequate care is provided to Medicaid beneficiaries. We value your support and look forward to continuing to work with you in the future.

**Commenter's Name:** Steven C. Anderson, FASAE, CAE, IOM, President and Chief Executive Office

**COMMENT:** On behalf of our members operating approximately 1929 chain pharmacies across the state, the National Association of Chain Drug Stores ("NACDS") thanks the Arkansas Department of Human Services ("Department") for the opportunity to comment on the proposed State Plan Amendment ("SPA") to increase Medicaid payment rates for vaccines. Considering that vaccine payment rates have remained unchanged for the past 10 years while cost of business for healthcare providers have continued to climb, we commend the Department for its work to remedy this inequity by initiating the proposed increase to vaccine payment rates.

NACDS represents traditional drug stores, supermarkets and mass merchants with pharmacies. Chains operate nearly 40,000 pharmacies, and NACDS' 80 chain member companies include regional chains, with a minimum of four stores, and national companies. Chains employ nearly 3 million individuals, including 155,000 pharmacists. They fill over 3 billion prescriptions yearly, and help patients use medicines correctly and safely, while offering innovative services that improve patient health and healthcare affordability. NACDS members also include more than 900 supplier partners and over 70 international members representing 21 countries. Please visit [nacds.org](http://nacds.org).

**Vaccine services save lives.** While the prevalence of vaccine-preventable diseases in adults remains a significant public health issue in the United States, vaccines have prevented at least 10 million deaths between 2010 and 2015 alone, and many million more lives have been spared from suffering and disability associated with vaccine-preventable disease. Vaccinations reduce the rates of disease and improve overall lifespans by: controlling the spread of infectious diseases; mitigating the severity of disease; and, helping to protect unvaccinated people, including those who are contraindicated for the vaccine.

Global eradication of deadly, yet formerly common diseases, such as polio, is finally within reach thanks to widespread vaccination efforts. In addition to public health benefits, vaccines have a societal economic benefit. Vaccine-preventable diseases and deaths create an approximately \$9 billion economic burden on the healthcare system in hospital and doctor visits and loss of income each year.

**Ensuring access to vaccine services – including those available from pharmacists in community pharmacy settings – is instrumental to reducing rates of vaccine-preventable illness and disease.** As committed stewards of public health, the pharmacy community continues to play a vital role alongside other healthcare providers in providing important vaccine services in the communities they serve. Especially during the COVID-19 response when clinics, urgent care, and physician offices are stressed by increased demand, access to and coverage for pharmacy care services – including immunizations provided in community pharmacies – is essential. Moreover, at such time when the coronavirus vaccine becomes available, leveraging pharmacy providers to provide vaccine services will be exceedingly critical to extending the reach of public health to prevent further spread of this disease.

Patients visit community pharmacies 10 times more often than they visit other healthcare settings, making community pharmacies convenient healthcare destinations and community pharmacists particularly well positioned to expand access to cost-effective vaccination assessment and

delivery. As the face of neighborhood healthcare, pharmacists help states increase their vaccination rates and further reduce the incidence of vaccine preventable diseases. Given community pharmacists exceptional potential to increase immunization rates, NACDS supports policies – including the Department’s existing Medicaid program design enabling Medicaid beneficiaries to obtain recommended vaccines at their local pharmacies – that facilitate access to the convenient, accessible and cost-effective vaccination services available from pharmacy providers.

**Increasing payment rates is critical to maintaining access to vaccine services.** As mentioned above, the rates paid to Medicaid providers of vaccine services have remained stagnant for the past 10 years while providers’ operational costs have continued to increase. Ultimately, this may prove unsustainable for many vaccine providers and impede access to vaccine services for Medicaid beneficiaries. This must be remedied. Accordingly, NACDS strongly supports the Department’s proposed vaccine payment rate increases, as these rate increases are integral to ensuring ongoing access to vaccine services for Medicaid beneficiaries.

**In conclusion.** NACDS thanks you for considering our feedback on the SPA and welcomes the opportunity to discuss this matter further with the Department. As the Department strives to initiate critical recovery and reopening plans, we strongly encourage the agency to take affirmative action to authorize pharmacists to administer forthcoming FDA-authorized or FDA-approved vaccines and treatment as they become available.

Additionally, as mentioned above, immunizations are one of many patient care services that community pharmacists are well-trained and positioned to deliver to Medicaid beneficiaries. Should the Department have an interest to explore additional service areas for pharmacist delivery and reimbursement, we welcome continued conversation. Along these lines, we have included appendices that provide details on the qualifications of pharmacists as compared to other clinicians (Appendix 1), the proven clinical and economic value of pharmacy care (Appendix 2), and state opportunities for pharmacy care (Appendix 3). For follow-up, please contact NACDS’ Mary Staples, Director of State Government Affairs, at (817) 442-1155 or [mstaples@nacds.org](mailto:mstaples@nacds.org).

**RESPONSE:** Thank you for your support of SPA-2020-0005: Vaccine Administration Fee Rate Increase. We will review the additional information you provided and will continue to review vaccine policies to ensure adequate care is provided to Medicaid beneficiaries. We value your support and look forward to continuing to work with you in the future.

The agency indicated that this proposed rule received CMS approval on May 12, 2020. The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that this rule has a financial impact.

Per the agency, the additional cost to implement the rule is \$3,218,553 for the current fiscal year (\$915,035 in general revenue and \$2,303,518 in federal funds) and \$3,218,553 for the next fiscal year (\$915,035 in general revenue and \$2,303,518 in federal funds). The total estimated cost by fiscal year to state, county, and municipal government to implement the rule is \$915,035 for the current fiscal year and \$915,035 for the next fiscal year.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

*(1) a statement of the rule's basis and purpose;*

As required by Executive Order 19-02, the rate review process for influenza immunization administration fees was completed in July 2019. The State Plan Amendment effectuates a rate increase for the influenza immunization administration fee to assure access and availability of immunizations to members of Arkansas Medicaid.

*(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;*

Providers of flu immunizations and other vaccines were concerned about being able to meet growing program costs given that there has not been a rate increase in over 10 years.

*(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;*

As required by Executive Order 19-02, the rate review process for influenza immunization administration fees was completed in July 2019. The rate increase is based upon a rate review recommendation. The rate increase helps ensure access to care.

*(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;*

There are no less costly alternatives.

*(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; None at this time.*

*(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 None.*

*(7) an agency plan for review of the rule no less than every ten 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*

Executive Order 19-02 requires influenza immunization administration fees to be reviewed no less frequently than every four years.

**LEGAL AUTHORIZATION:** The Department of Human Services has the authority to administer assigned forms of public assistance and to make rules as necessary to carry out its duties. Ark. Code Ann. § 20-76-201(1), (12). The Department is specifically tasked with establishing and maintaining an indigent medical care program. Ark. Code Ann. § 20-77-107(a)(1). This includes promulgating rules to ensure compliance with federal law in order to receive federal funding. Ark. Code Ann. § 25-10-129(b).

26. **DEPARTMENT OF LABOR AND LICENSING, DIVISION OF LABOR**  
**(Ms. Denise Oxley)**

a. **SUBJECT: Administrative Rules Regarding the Arkansas Minimum Wage**

**DESCRIPTION:** The Department of Labor and Licensing is proposing amendments to its administrative rules concerning the Arkansas Minimum Wage Act. The purpose and necessity of the proposed amendments are to: 1) comply with changes from the 2019 legislative session; 2) add a statutory exemption; 3) conform the tip credit rule to the statutory language; 4) update some references to federal law; and 5) make some grammatical and stylistic changes.

The proposed amendments would accomplish the following:

1. Revise the organizational names as needed pursuant to Act 910 of 2019;
2. Replace the term “regulation” with “rule” pursuant to Act 315 of 2019;
3. Incorporate the test for determining a bona fide independent contractor, as established by Act 1055 of 2019;
4. Add a statutory exemption for an organized camp or a religious or non-profit education conference center pursuant to Ark. Code Ann. § 11-4-203(3)(R);
5. Eliminate the \$0.30 per hour cap on allowances for furnishing board, lodging, apparel and other facilities to conform to federal standard under the Fair Labor Standards Act (FLSA) pursuant to Act 853 of 2019;
6. Provide specific authorization for an employer to pay by providing a preloaded debit card in compliance with Act 853 of 2019;
7. Update tip credit language in conformity with Ark. Code Ann. § 11-4-212;
8. Amend references to statute of limitations from three (3) years to two (2) years pursuant to Act 853 of 2019;
9. Update references to federal law;
10. Make some grammatical and stylistic changes; and
11. Establish an effective date and updates the history of the rules regarding the Arkansas Minimum Wage Act.

**PUBLIC COMMENT:** A public hearing was held concerning this rule on April 10, 2020. The public comment period expired on April 15, 2020. The Department of Labor and Licensing indicated that it did not receive any public comments.

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

**QUESTION 1:** Section 010.14-101 incorporates portions of the Code of Federal Regulations (C.F.R.) and the United States Code (U.S.C.) as they existed in July 2018, but excludes later editions or amendments, and uses 2005 definitions in relation to the overtime exemptions. Could you please explain why the agency chose to use these specific definitions, as opposed to the current editions of U.S.C. & C.F.R.? **RESPONSE:** The U. S. Department of Labor and the Arkansas Department of Labor both used the same salary level test for determining whether an employee was exempt under what is commonly referred to as the “white collar” exemption for many years. The salary level test was \$455 per week and was codified in certain sections of 29 C.F.R. 541 (July 1, 2005). The U.S. Department of Labor increased the standard salary level test from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year) in a final rule published May 23, 2016 (“2016 final rule”). That rulemaking was challenged in court, and on November 22, 2016, the U.S. District Court

for the Eastern District of Texas enjoined the USDL from implementing and enforcing the rule. On August 31, 2017, the court granted summary judgment against the USDL. An appeal of that decision to the U.S. Court of Appeals for the Fifth Circuit was held in abeyance while the USDL, under the Trump administration, re-considered the rule. It was a controversial and lengthy process. Ultimately, the USDL issued a new rule effective January 1, 2020 that among other changes established a salary-level test of \$684 per week. In short, an administrator, manager or supervisor was not exempt from overtime unless he or she made a salary of \$684 per week. The other prongs of the exemption test remained the same as the 2005 rule.

The new federal regulation became effective after these rules were submitted to the Governor's Office in August 2019. At the time, there was still uncertainty as to the final federal rule. Once the final rule became effective, the department elected to proceed with this rule-making which maintains the status quo in terms of the white collar exemptions under Arkansas Minimum Wage Act (AMWA). The department recognizes the need to address this issue and ideally track the federal regulation. However, additional time is needed to evaluate the economic impact to Arkansas employers and employees. It is also important to note that AMWA covers small employers not covered by the federal law. There is a separate salary level test for such small employers under current state rule, 010.14-106(B)(1)(e), of \$360 per week. As this figure is below state minimum wage, it also needs to be revised, but no decision has been made as to the salary level to propose.

In terms of the July 1, 2018 version of the USC and the CFR otherwise, the purpose is to maintain the status quo until any changes are evaluated by the department. The department does not adopt language that references "the most current version" of the USC or the CFR to avoid a question of unlawful delegation of authority.

**QUESTION 2:** In Section 010.14.102(B)(4)(c), which cites Ark. Code Ann. § 11-4-214, the word "handicapped" was replaced by "disabled." Ark. Code Ann. § 11-4-214 specifically concerns "any person handicapped by lack of skill, age, or physical or mental deficiency or injury." Could you please explain the discrepancy in language between the rule and cited code section? **RESPONSE:** This change was to comply with the provisions of Ark. Code Ann. § 1-2-124(c). The statute is set out below.

1-2-124. Respectful language — Disabilities — Definition.

(a) (1) The General Assembly recognizes that language used in reference to individuals with disabilities shapes and reflects society's attitudes

toward people with disabilities. Many of the terms currently used demean the humanity and natural condition of having a disability. Certain terms are demeaning and create an invisible barrier to inclusion as equal community members.

(2) The General Assembly finds it necessary to clarify preferred language for new and revised laws by requiring the use of terminology that puts the person before the disability.

(b) (1) In any bill or resolution, the Bureau of Legislative Research shall avoid all references to:

- (A) “Disabled”;
- (B) “Developmentally disabled”;
- (C) “Mentally disabled”;
- (D) “Mentally ill”;
- (E) “Mentally retarded”;
- (F) “Handicapped”;
- (G) “Cripple”; and
- (H) “Crippled”.

(2) The Arkansas Code Revision Commission shall change such references in any existing statute or resolution as sections including these references are republished or otherwise amended by law.

(3) The Bureau of Legislative Research and the Arkansas Code Revision Commission shall replace the inappropriate terms in subdivision (b)(1) of this section with the following terms:

- (A) “Individuals with disabilities”;
- (B) “Individuals with developmental disabilities”;
- (C) “Individuals with mental illness”; and
- (D) “Individuals with intellectual disabilities”.

**(c) (1) In any administrative rule, a state agency shall avoid the inappropriate terms in subdivision (b)(1) of this section and shall use the terms in subdivision (b)(3) of this section.**

**(2) If a state agency identifies a use of an inappropriate term under subdivision (b)(1) of this section in a rule, the state agency shall promulgate a revision to the rule to replace the inappropriate term with a term under subdivision (b)(3) of this section.**

(3) As used in this subsection, “state agency” means any office, board, commission, department, council, bureau, or other agency of state government having authority by statute enacted by the General Assembly to promulgate or enforce administrative rules.

(d) A statute, resolution, or rule is not invalid because it does not comply with this section.  
(emphasis supplied).

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that the proposed rules do not have a financial impact.

**LEGAL AUTHORIZATION:** The Director of the Division of Labor has authority to make and revise such administrative rules, including definitions of terms, as he or she may deem appropriate to carry out the purposes of the Minimum Wage Act of the State of Arkansas (codified as Ark. Code Ann. § 11-4-201 *et seq.*), or necessary to prevent the circumvention or evasion thereof and to safeguard the minimum wage rates established. *See* Ark. Code Ann. § 11-4-209(a). The rules may include, but are not limited to, rules governing: outside or commission salespersons, learner and apprentices, part-time pay, bonuses, fringe benefits, special pay for special or extra work, permitted changes to employees or allowances for board, lodging, apparel or other facilities or services customarily furnishes by employers or employees, allowances for gratuities, and allowances for other special conditions or circumstances which may be usual in a particular employer-employee relationship. *See* Ark. Code Ann. § 11-4-209(b). The proposed rules implement the following Acts of the 2019 Regular Session:

Act 315 of 2019, sponsored by Representative Jim Dotson, provided for the uniform use of the term “rule” for an agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of an agency. *See* Act 315 of 2019.

Act 853 of 2019, sponsored by Representative Robin Lundstrum, amended several provisions of the Minimum Wage Act of the State of Arkansas. Provisions applicable to this rule are:

- (1) An employer of an employee engaged in an occupation in which the board, lodging, apparel, or other items and services are customarily and regularly furnished to the employee for his or her benefit is entitled to an allowance for the reasonable value of these items and services as part of the hourly wage rate provided in Ark. Code Ann. § 11-4-210, in an amount not to exceed the fair and reasonable cost of the items and services. The determination of reasonable cost shall be based on 29 U.S.C. § 203(m), as it existed on January 1, 2019, and 29 C.F.R. § 531. *See* Act 853 of 2019, § 2, codified as Ark. Code Ann. § 11-4-213, and
- (2) Employers were authorized to pay employees by automatic deposit or by providing a debit card preloaded with the amount of wages, so long as

at least one free withdrawal was available for the funds for each deposit of wages loaded onto the debit card. *See* Act 853 of 2019, § 6, codified as Ark. Code Ann. § 11-4-403(f).

Act 910 of 2019, sponsored by Representative Andy Davis, created the Department of Labor and Licensing as a cabinet-level department. *See* Ark. Code Ann. § 25-43-1101. The existing Department of Labor was designated as the Division of Labor, and administrative functions were transferred to the Department of Labor and Licensing by a cabinet-level transfer. *See* Ark. Code Ann. § 25-43-1102(a)(15).

Act 1055 of 2019 (Empower Independent Contractors Act of 2019), sponsored by Representative Austin McCollum, established a twenty-factor test to determine employment status as an employee or independent contractor. *See* Ark. Code Ann. § 11-1-204.

**b. SUBJECT: Administrative Rules Regarding Child Labor**

**DESCRIPTION:** The Department of Labor and Licensing is proposing amendments to the administrative rules regarding child labor. The proposed amendments would revise organizational names as needed pursuant to Act 910 of 2019.

**PUBLIC COMMENT:** A public hearing was held in this matter on April 10, 2020. The public comment period expired on April 15, 2020. The Department of Labor and Licensing received no public comments.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses thereto:

**QUESTION 1:** Section 010.14-304 (a) appears to contain a reference to “Labor Standards Division.” Should this read “Labor Standards Section” instead? **RESPONSE:** Yes. [The agency submitted a revised version of the rules.]

**QUESTION 2:** Section 010.14.-305 (a) appears to contain references to “Labor Standards Division” and “the division.” Should these read “Labor Standards Section” and “section” instead? **RESPONSE:** Yes. [The agency submitted a revised version of the rules.]

**QUESTION 3:** Sections 010.14-308(b)(3) and (4), use the pronouns “he,” “his, and “him” throughout that section. Should these read, “he/she,” “his/her,” and “him/her” instead? **RESPONSE:** Yes. [The agency submitted a revised version of the rules.]

**QUESTION 4:** Sections 010.14-308(b)(3)(A)(vi), (B)(iv), and (C)(v) appear to contain references to “Labor Standards Division.” Should these read “Labor Standards Section” instead? **RESPONSE:** Yes. [The agency submitted a revised version of the rules.]

**QUESTION 5:** 010.14-322(c) and (d) appear to contain references to the “Labor Standards Division.” Should these read “Labor Standards Section” instead? **RESPONSE:** Yes. [The agency submitted a revised version of the rules.]

**QUESTION 6:** Section 010.14-323 appears to contain a reference to “Labor Standards Division.” Should this read “Labor Standards Section” instead? (**RESPONSE:** Yes. [The agency submitted a revised version of the rules.]

**QUESTION 7:** Section 010.14-324 appears to reference the “Director of Labor.” Does this refer to the Director of the Division of Labor? The proposed effective date is July 1, 2020. **RESPONSE:** Yes. [The agency submitted a revised version of the rules.]

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that this rule has no financial impact.

**LEGAL AUTHORIZATION:** The Director of the Division of Labor has authority to adopt rules for the enforcement and administration of the subchapter concerning child labor. *See* Ark. Code Ann. § 11-6-111(b)(2). Additionally, the director has authority to promulgate rules for the implementation of Chapter 12 of Title 11 concerning employment of children in the entertainment industry *See* Ark. Code Ann. § 11-12-105(1).

Act 910 of 2019, sponsored by Representative Andy Davis, created the Department of Labor and Licensing as a cabinet-level department. *See* Ark. Code Ann. § 25-43-1101. The existing Department of Labor was designated as the Division of Labor, and administrative functions were transferred to the Department of Labor and Licensing by a cabinet-level transfer. *See* Ark. Code Ann. § 25-43-1102(a)(15).

c. **SUBJECT: Administrative Rules Regarding Organization and Procedure of the Labor Standards Section**

**DESCRIPTION:** The Arkansas Department of Labor and Licensing is amending its administrative rules regarding organization and procedure on the labor standards section. The proposed amendments: 1) revise organizational names as needed pursuant to Act 910 of 2019, 2) update

contact information, and 3) delete references to the prevailing wage law, which has been repealed.

**PUBLIC COMMENT:** A public hearing was held in this matter on April 10, 2020. The public comment period expired on April 10, 2020. The Department of Labor and Licensing received no public comments.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that this rule has no financial impact.

**LEGAL AUTHORIZATION:** Act 910 of 2019, sponsored by Representative Andy Davis, created The Department of Labor and Licensing. The existing Department of Labor was designated as the Division of Labor and transferred to the new department. *See* Act 910 of 2019. The Director of the Division of Labor has authority to make, modify, and repeal reasonable rules for the prevention of accidents or industrial or occupational diseases in every employment or place of employment and to make, modify, and repeal reasonable rules for the construction, repair, and maintenance of places of employment, places of public assembly, and public buildings which shall render them safe. *See* Ark. Code Ann. § 11-2-110(a). The director has authority to make, modify, or repeal such rules, or changes in rules, as he or she may deem necessary to carry out the provisions of this subchapter. *See* Ark. Code Ann. § 11-2-110(b). Additionally, the Director has specific authority to promulgate rules concerning minimum wage and overtime (Ark. Code Ann. § 11-4-209(a)), child labor (Ark. Code Ann. § 11-6-111(b)(2) and Ark. Code Ann. § 11-12-105(1)), and private employment agencies (Ark. Code Ann. § 11-11-204(d)).

27. **DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL & PROF. LICENSING BOARDS AND COMMISSIONS, APPRAISER LICENSING & CERTIFICATION BOARD**  
(Ms. Diana Piechocki)

a. **SUBJECT: Appraisal Management Company National Registry Fees 19-0004**

**DESCRIPTION:** The Appraiser Licensing and Certification Board of the Arkansas Department of Labor and Licensing is proposing a rule concerning Appraisal Management Company National Registry Fees. For the most part, the existing Appraisal Management Company Rules are a restatement of the Appraisal Management Company statutes. The board has taken this opportunity to correct this issue, remove duplications, and

add the requirements of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as amended by Dodd-Frank. The primary change is regarding the new National Registry Fee collected by each jurisdiction and remitted to the Appraisal Subcommittee. A summary of the rule appears below:

*Pages 1-3* The definitions are updated. The terms defined in the Appraisal Management Company statutes are eliminated.

*Page 3* Section III requires the registration of an Appraisal Management Company.

*Pages 4-6* Outlines the requirements and process to obtain an initial registration.

*Pages 7-8* Outlines the requirements and process to renew a registration.

*Pages 8-10* Defines the procedure for collection and remittance of the National Registry pass-through fees.

*Page 10* List the current Appraisal Management Company fees.

*Page 10-11* Outlines the registrant's responsibilities and duties.

*Pages 11-14* Explains the disciplinary action process.

*Pages 14-17* Details the background check and pre-licensure background check procedures.

*Pages 17-19* Covers the required compliance audits.

**PUBLIC COMMENT:** A public hearing was held in this matter on April 22, 2020. The public comment period expired on May 4, 2020. The Appraiser Licensing Certification Board received no public comments.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that the proposed rules have a financial impact. The financial impact will be to the appraisal management companies by way of a pass-through fee collected by the Arkansas Appraiser Licensing and Certification Board and remitted to the Appraisal Subcommittee. The board will not retain any fees. The board currently has one hundred twenty-four (124) appraisal management companies registered. The average number of appraisers for each company is 29 appraisers. At \$25 per appraiser, the average estimated amount is \$725 per appraisal management company. These funds will be collected and then remitted to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

**LEGAL AUTHORIZATION:** Pursuant to federal law, "each State with an appraiser certifying and licensing agency whose certifications and licenses comply with this title shall...collect from an appraisal management company that either has registered with a State appraiser certifying and licensing agency in accordance with this title, or operates as

a subsidiary of a federally regulated financial institution, an annual registry fee.” *See* 12 USCS § 3338(a)(4)(B). In the case of a company that has been in existence for more than a year, the fee is “\$25 multiplied by the number of appraisers working for or contracting with such company in such State during the previous year, but where such \$25 amount may be adjusted, up to a maximum of \$50, at the discretion of the Appraisal Subcommittee [of the Federal Financial Institutions Examination Council].” *See* 12 USCS § 3338(a)(4)(B)(i). If the company has not been in existence for more than a year, the fee is “\$25 multiplied by an appropriate number to be determined by the Appraisal Subcommittee.” *See* 12 USCS § 3338(a)(4)(B)(ii).

The Appraisal Management Company Registration Act, codified as Ark. Code Ann. § 17-14-401 et seq., defines the registration requirements for appraisal management companies in Arkansas. The Appraiser Licensing and Certification Board has authority to adopt rules to implement, administer and enforce the subchapter, including authority to prescribe: (1) Forms and procedures for submitting information to the board; (2) Standards of practice for a person registered under this subchapter; and (3) Standards for the operation of appraisal management companies. *See* Ark. Code Ann. § 17-14-404.

Pursuant to Ark. Code Ann. § 17-14-406(d)(1), the board shall collect from each appraisal management company registered under this chapter, the Appraisal Management Company National Registry fee required by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. *See* Ark. Code Ann. § 17-14-406(d)(1). The amount and method of calculation of the fee shall be established by rule of the board. *See* Ark. Code Ann. § 17-14-406(d)(2). The fees collected under this section shall be sent to the Appraisal Subcommittee regularly as required by federal law. *See* Ark. Code Ann. § 17-14-406(f).

The proposed rules implement Act 990 of 2019, which was sponsored by Senator John Cooper. The Act amended the laws regarding criminal background checks for professions and occupations to obtain consistency regarding criminal background checks and disqualifying offenses for licensure. The Act also required licensing entities to promulgate rules to implement the Act. *See* Act 990 of 2019, § 2.

28. **COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION (CAPSAFT) (Ms. Lori Freno)**

a. **SUBJECT: CAPSAFT Rules Governing the Partnership Program, Appendix “A” (Amended to Add Section 8000)**

**DESCRIPTION:** The Commission for Arkansas Public School Academic Facilities and Transportation proposes an amendment to Appendix “A” of its Rules Governing the Partnership Program. The proposed amendment to Appendix “A” of the Partnership Program Rules is to add Section 8000 to the Academic Facility Manual. Section 8000 provides minimum construction standards (requirements) and guidelines (recommendations) for safety and security in new academic facility construction.

The Commission and the Governor’s Office approved the original proposed version last fall. This version was published for public comment, and the Division received a lot of feedback from school districts and other key stakeholders. Based on this feedback, the public comment period was extended until the end of 2019. During this time, the Division met with the following key stakeholders and security experts on multiple occasions to listen to their concerns and recommendations: AAEA; Dr. Cheryl May, Chair of the Arkansas School Safety Commission; AIA; and members of the Advisory Committee, which included the chair, Jimmy Alessi, and two architects, Craig Boone, and Jeff Steiling.

Based on these discussions over a period of weeks, as well as public comments made from school districts, the proposed 8000 Safety and Security section was modified substantially. The following is a summary of the major changes:

- Headings were added and dividing red line was added to clearly indicate what is a “requirement” and what is a “guideline.”
- References to “bullet resistant” materials were limited to the guidelines.
- Several items that were originally listed as requirements were moved to guidelines, modified, clarified, or deemed necessary.

Only non-substantive, clarifying changes and edits were made after the second public comment period.

**PUBLIC COMMENT:** A public hearing was held on November 21, 2019. The public comment period, originally set to expire on November 26, 2019, was extended to December 31, 2019. Substantive revisions were made, and a second public hearing was held on April 13, 2020. The second public comment period expired on April 20, 2020. The Commission provided a summary of the public comments received and its responses thereto, which due to its length is attached separately.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rule has no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 6-20-2512, the Commission for Arkansas Public School Academic Facilities and Transportation shall promulgate rules necessary to administer the Arkansas Public School Academic Facilities Funding Act (“Act”), Ark. Code Ann. §§ 6-20-2501 through 6-20-2517, which shall promote the intent and purposes of the Act and assure the prudent and resourceful expenditure of state funds with regard to public school academic facilities throughout the state. *See also* Ark. Code Ann. § 6-20-2507 (establishing the Academic Facilities Partnership Program).

**b. SUBJECT: CAPSAFT Rules Governing Acquisition of Energy Conservation Measures**

**DESCRIPTION:** The Commission for Arkansas Public School Academic Facilities and Transportation’s proposed changes to its Rules Governing the Acquisition of Energy Conservation Measures for Public Schools incorporate provisions of Act 507 of 2019, which addressed energy cost saving measures in governmental facilities, including school districts, designed to reduce the consumption of energy, natural resources, or operating costs. Act 507 authorizes a school district to comply with rules promulgated by the Arkansas Pollution Control and Ecology Commission pursuant to the Guaranteed Energy Cost Savings Act if the district’s board of directors chooses to do so. If a district chooses to opt in, the Arkansas Energy Office of the Division of Environmental Quality will provide the district with assistance, support, and oversight throughout the process of planning, contracting for, and completing energy conservation projects. The proposed rules also change the definition of “qualified provider,” *i.e.*, contractor, to make the definition in Title 6, which concerns Education, consistent with the Guaranteed Energy Cost Savings Act, requiring pre-approval of providers by the Arkansas Energy Office. The amendments also incorporate Act 507 provisions concerning equipment warranty periods and allow an energy savings contract to exceed twenty years with the approval of the Arkansas Energy Office. The proposed rules also contain edits and update the rules to mirror current law.

Following the public comment period, non-substantive, technical corrections were made to the rules.

**PUBLIC COMMENT:** A public hearing was held on December 9, 2019. The public comment period expired on December 17, 2019. The Commission provided the following summary of the public comment received and its response thereto:

**Commenter Name:** Lucas Harder, Arkansas School Boards Association (11/18/19)

**Comment:** In the title, “RULE” should be pluralized.

**Division Response:** Comment considered. Non-substantive change made.

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

(1) Title and Section 1.0 – Should the references be to the “*Commission for Arkansas Public School Academic Facilities and Transportation*” rather than the “*Arkansas Commission on Public School Academic Facilities and Transportation*”? **RESPONSE:** Comment considered. Non-substantive change made.

(2) Section 4.4 – This section appears to be premised on Ark. Code Ann. § 19-11-1206(b)(1), as amended by Act 507 of 2019, § 4. Should the references in the last line be to the “*warranty period*” and the “*relevant energy cost savings measures*”? **RESPONSE:** Comment considered. Non-substantive change made.

(3) Section 4.5 – Should the reference be to the “Division of Environmental Quality” rather than the “Arkansas Department of Environmental Quality”? *See, e.g.* Act 910 of 2019, § 3208. **RESPONSE:** Comment considered. Non-substantive change made.

(4) Section 4.10 – It appears that this section is based on Ark. Code Ann. § 6-20-405(b). If that is the case, from where does the phrase “as stated in the contract” come? **RESPONSE:** Comment considered. Non-substantive change made.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 6-21-114(e)(2)(A), the Commission for Arkansas Public School Academic Facilities and Transportation may adopt, amend, and rescind rules as necessary or desirable for the administration of the Arkansas Public School Academic Facilities Program and any other related

program. The proposed changes include revisions made in light of Act 507 of 2019, sponsored by Representative Rick Beck, which amended certain definitions that apply to the Guaranteed Energy Cost Savings Act and energy savings contracts.

**E. Agency Updates on Delinquent Rulemaking under Act 517 of 2019.**

- 1. Department of Agriculture, Arkansas Bureau of Standards (Act 501)**
- 2. Department of Agriculture, Veterinary Medical Examining Board (Act 169)**
- 3. Department of Commerce, State Insurance Department (Acts 698, 823)**
- 4. Department of Commerce, Office of Skills Development (Act 179)**
- 5. Department of Education, Division of Elementary and Secondary Education (Acts 536, 640, 843)**
- 6. Department of Education, Division of Higher Education (Act 549)**
- 7. Department of Energy and Environment, Pollution Control and Ecology Commission (Act 1067)**
- 8. Department of Finance and Administration, Director (Act 822)**
- 9. Department of Health (Act 216)**
- 10. Department of Health, Division of Health Related Boards and Commissions, State Board of Nursing (Act 837)**
- 11. Highway Commission (Act 468)**
- 12. Department of Transformation and Shared Services, Office of State Procurement (Act 422)**

**F. Adjournment.**