

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

**Wednesday, July 22, 2020
9:00 a.m.
Room A, MAC
Little Rock, Arkansas**

- A. Call to Order.**
- B. Reports of the Executive Subcommittee.**
- C. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309.**
 - 1. DEPARTMENT OF AGRICULTURE, ARKANSAS STATE BOARD OF REGISTRATION FOR FORESTERS (Mr. Wade Hodge, Ms. Rebecca Montgomery)**
 - a. SUBJECT: Rules of the Arkansas State Board of Registration for Foresters**

DESCRIPTION: The purpose of proposed revisions to the rules of the Arkansas State Board Registration for Foresters is to comply with laws passed during the 2019 legislative session.

The Board met on October 3, 2019, to consider rule changes in response to laws passed during the 2019 session that require rules for portability of occupational licenses for military members and spouses and criminal background checks for individuals seeking occupational licenses.

The acts prompting the proposed revisions include:

- Act 990 of 2019, which required occupational licensing entities to promulgate a rule regarding criminal background checks.
- Act 820 of 2019, which required occupational licensing entities to promulgate a rule regarding portability of licenses for military members and spouses.

The new additions to the Board's rules were based on model rules drafted by the Attorney General's Office. 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.

Acts 426 and 1011 of 2019 required occupational licensing entities to promulgate rules regarding temporary licensure and reciprocity. However, the Board was specifically exempt from these Acts because of the procedures the Board already has in place. Therefore, the Board is not proposing any changes regarding temporary licensure and reciprocity.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on May 16, 2020. The Board provided the following summary of the sole comment that it received and its response thereto:

One comment was received, which was neither for nor against, but merely suggested a clarification. Brian Lockhardt commented regarding Section VI.B.5.1, which states that “[a]t least three (3) of the five references must be registered foresters.” The commenter suggested a clarification of who is a registered forester. However, “registered forester” is defined by statute and therefore no further clarification is needed in the rule.

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

(1) It appears from the text of the rules that automatic licensure will be given to active duty service members, returning military veterans, and spouses. Can you please confirm that the rules do not require the initial review set forth in Act 820 of 2019? **RESPONSE:** The proposed rule will give automatic licensure. Therefore, initial review is not required.

(2) Section VI.B.7.1. – Should the holder be in good standing, as set forth in Ark. Code Ann. § 17-1-106(b)(1) and Section VI.B.7.4.v.? **RESPONSE:** Yes, all automatic and reciprocal licensure should only be granted to those with licenses in good standing.

(3) Section VI.C.4 – (a) Is the penalty referenced in the rule that penalty set forth in Ark. Code Ann. § 17-31-307(g)? (b) Is the agency comfortable with the amount of the penalty not being set forth in the rule as the other fees are? **RESPONSE:** (a) Yes. (b) The agency is comfortable with the rule as written, since Board rules are published on Board website, so the potential for confusion is minimal.

(4) Section VII.F. – Is it the Board’s position that the decision made in response to a pre-licensure criminal background check petition is not an adjudication under the Administrative Procedure Act? **RESPONSE:** That is correct.

(5) Section VIII.A. – I believe the citation to the statute, as now codified, is Ark. Code Ann. § 17-3-102(a). **RESPONSE:** Yes, the citation should be to 17-3-102(a).

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 § 17-31-204(a), the Arkansas State Board of Registration for Foresters shall have the power to make, adopt, alter, amend, and promulgate all bylaws and rules consistent with the Constitution and laws of this state, which may be reasonably necessary for the proper performance of its duties and the regulation of the proceedings before it. Further authority for the rulemaking can be found in Ark. Code Ann. § 17-3-104(a), which provides that 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. 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, and 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.

2. **DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION** (Ms. Courtney Salas-Ford, item a; Ms. Jennifer Dedman, items b-d)

a. **SUBJECT:** DESE Rules Governing Student Discipline and School Safety

DESCRIPTION: The Division of Elementary and Secondary Education proposes the following amendments to its Rules Governing Student Discipline and School Safety:

- Incorporate provisions of Acts 557, 640, 709, and 1029 of 2019
- Change the previous guidelines to rules

- Add definitions from applicable statutes
- Clarify the requirements for school district student discipline policies
- Add provisions regarding the use of corporal punishment
- Add requirements for anti-bullying policies
- Replace Arkansas Department of Education with the Division of Elementary and Secondary Education.

After review by the DESE School Safety Committee, the following changes were made:

- Struck section 4.02.6
- Added the term “substantial” to Section 4.09.1
- Pluralized “school safety line” in Section 5.04.7
- Added reference to § 6-17-113 in Section 5.06.1.1

PUBLIC COMMENT: A public hearing was held on February 12, 2020. The public comment period expired on March 7, 2020. The Division provided the following summary of the public comments that it received and its responses thereto:

Lucas Harder, Arkansas School Boards Association

Comment:

4.10: There appears to be an unnecessary “h” in the longhand of “ten.”

5.04.2: The “not less than” language was removed from the statute by Act 640 of 2019 when the language was moved from 6-18-503 to 6-18-502; this is an important distinction as “not less than one year” would allow the superintendent and board to perform a permanent expulsion of a student for a firearm offense while removing the “not less than” language sets the maximum penalty a district may set as a one year expulsion.

5.04.7: The official update to the Arkansas Code has placed this as 6-18-111.

5.06.1.2: The language here has the potential to conflict with 6-18-513(d)(1) and (2) as it does not provide an exception for the reporting of law enforcement contact with a student due to a child maltreatment investigation of the student’s parents when the law enforcement officer has an order prohibiting the contact.

Agency Response: Corrections made to 4.10, 5.04.2, 5.04.7, and 5.06.1.2.

Name: Debbie Jones, Ed.D., Superintendent, Bentonville School District

Comment:

4.02: The definition of bullying is incomplete – missing the word repeated. This is the definition from stopbullying.gov – Notice it includes the word “repeated.” Bullying is unwanted, aggressive behavior among school aged children that involves a real or perceived power imbalance. The behavior is repeated, or has the potential to be repeated, over time. Both kids who are bullied and who bully others may have serious, lasting problems. In order to be considered bullying, the behavior must be aggressive and include: An Imbalance of Power: Kids who bully use their power—such as physical strength, access to embarrassing information, or popularity—to control or harm others. Power imbalances can change over time and in different situations, even if they involve the same people. Repetition: Bullying behaviors happen more than once or have the potential to happen more than once.

5.04.9: It expands requirements for schools that are not currently in law by saying we have to continue engagement and access during SUSPENSION. There is not anything in the law that says we have to continue to provide access to education during periods of suspension.

5.11: The language in this rule can mislead teachers into thinking they don’t have responsibility for classroom discipline. Where is the student going to go? The student can return to class, but the teacher should hold the conference, not the principal or principal designee.

5.11.4.6: This language should require teacher showing documentation of attempts to contact parent.

Agency Response: Although the definition offered on stopbullying.gov does state that bullying is “unwanted, aggressive behavior that is repeated, or has the potential to be repeated, over time,” adding this requirement would be inconsistent with Arkansas law, 6-18-514. No changes made. 5.04.9 is in law at 6-18-502(c)(6). 5.11 is in law at 6-18-511. Revision made to 5.11.4.6.

Name: Tammy Tucker, Ed.D., Associate Superintendent for Administrative Services, Fayetteville School District

Comment:

5.11.4: If a teacher removes a student from class two (2) times during any nine week grading period or its equivalent, the principal or the principal’s designee may not return the student to the teacher’s class unless a conference is held for the purpose of determining the causes of the problem and possible solutions, with the following individuals present:

5.11.4.1 The principal or the principal’s designee;

5.11.4.2 The teacher;

- 5.11.4.3 The school counselor;
- 5.11.4.4 The parents, guardians, or persons in loco parentis; and
- 5.11.4.5 The student, if appropriate.
- 5.11.4.6 The failure of the parents, guardians, or persons in loco parentis to attend the conference provided for in this subsection shall not prevent the conference from being held nor prevent any action from being taken as a result of that conference.

It is not unusual for young students to display a series of inappropriate behavioral choices when issues in their personal lives arise (e.g., death of a pet, fight or arrest of a parent, homelessness, etc.). Typically, a brief “time out” is all that is needed to redirect them and get them ready to learn again. A formal conference is not always necessary in such events. Couple this with a teacher’s right to submit a grievance if these rules are not specifically followed, could create much time wasted by administrators. Also, if a teacher does not particularly get along well with a student, the decision to remove from class may not always be the most appropriate choice!

Agency Response: 5.11.4 has been in law at 6-18-511(d) since 1999.

Name: Jacob Smith, Director of Federal Programs and Student Services, Jacksonville North Pulaski School District

Comment:

Section 6 outlines excellent due process standards that are consistent with recent bullying legislation. Few districts have standardized investigation techniques or knowledge of disciplinary due processes. In the attached document [submitted to the Division], I include Section 7 – Due Process. This section mirrors the procedures in Section 6.

The special needs funding rules make it clear that only the placement committee may place a student in the alternative learning environment. I recommended the removal of language that contradicts that rule.

Commissioner’s Memo RT-19-039 issues each of the infraction codes and the definitions to be used when reporting discipline. These rules should also be reflected in the rules. I added these rules to my attached proposal.

We often have students enroll from other districts who were up for expulsion but the expulsion was nefariously withdrawn. We have found out that the neighbor district had rescinded an expulsion recommendation with the agreement that the student would enroll somewhere else. This is unsafe and jeopardizes the welfare of students in neighboring districts. I added language to eliminate this unfortunate practice.

4.09: This is a good definition. This definition should also be applied to 5.13.2, which has no definition.

5.03.22 – 5.03.30: These definitions come from Com Memo RT-19-039. It would benefit all districts and DESE to use common language.

5.04.1: Ritter and Anderson conducted research using seven years of Arkansas discipline data. They found a great deal of inequity. A first step to addressing this inequity is for each district to clearly define consequences. Most Arkansas schools indicate “Minimum Warning, Maximum Expulsion.” This practice does not meet the intent of the rule or law. It will take time and effort to break down variations and nuances of each rule and punishment but it is worth it.

5.04.1: Discretion is important but it is grossly overused. Under our current rules, school administrators excessively use discretion, which leads to inequity.

5.04.1.1 – 5.04.1.5: Before you can have clear progressive discipline you must have clear rules. The current rules that [come] from Com Memo RT-19-039 are a pretty good start. The challenge comes with rules such as insubordination and disorderly conduct. Both of these rules are somewhat nebulous. They are also inequitably administered to students of color. There are levels of insubordination and disorderly conduct. Sound rules should reflect the different levels. Sound progressive discipline policies should also reflect the student’s age and prior offenses. Ritter and Anderson conducted research using seven years of Arkansas discipline data. They found a great deal of inequity. A first step to addressing this inequity is for each district to clearly define consequences. Most Arkansas schools indicate “Minimum Warning, Maximum Expulsion.” This practice does not meet the intent of the rule or law. It will take time and effort to break down variations and nuances of each rule and punishment but it is worth it.

5.04.2.3: The practice of handshake agreements to avoid expulsion needs to end. Expulsion is serious and should be reserved for the preservation of student safety and order. However, allowing students to withdraw to avoid pending expulsion proceedings endangers the students in the receiving district.

5.04.2.4: The practice of handshake agreements to avoid expulsion needs to end. Expulsion is serious and should be reserved for the preservation of student safety and order. However, allowing students to withdraw to avoid pending expulsion proceedings endangers the students in the receiving district.

5.04.12: This is an important rule. Com Memo LS-20-026 seems to condemn the use of ALE for students with a disability. That

commissioner's memo contradicts the 504 team's duty to educate the student in the least restrictive environment. Committees are required by section 504 to consider proximity to the student's domicile when making a placement decision. I think it would serve everyone well to flesh this rule out even more.

5.04.12: Campus administrators are often former teachers with limited knowledge of due process law. These proposed rules are founded in the *Goss v. Lopez* Supreme Court case. It is common for students in Arkansas to be punished without a statement from the alleged offender or an investigation. These rules will help communicate the importance of due process to school officials and protect all parties.

5.05.4.7: This is a common practice in school districts. The practice needs to be explicitly affirmed or rejected.

5.11.3.3: Campus administrators are often former teachers with limited knowledge of due process law. These proposed rules are founded in the *Goss v. Lopez* Supreme Court case. It is common for students in Arkansas to be punished without a statement from the alleged offender or an investigation. These rules will help communicate the importance of due process to school officials and protect all parties.

5.11.3.5: These rules provide needed guidance to affirm the principal's duty to support teachers. Principals also have a duty to protect students from provocation or isolation. This rule balances these responsibilities.

5.13: The discipline reporting system in eSchool is finicky. Many districts do not report discipline accurately. Ritter and Anderson commented on the perceived manipulation of discipline data reporting.

5.13.2.2: This change would allow the application of the previous definition of "substantial disruption." Currently, there is no applicable definition of serious disruption. Consequently, 5.13.2.2 is unenforceable.

5.13.4: Campus administrators are often former teachers with limited knowledge of due process law. These proposed rules are founded in the *Goss v. Lopez* Supreme Court case. It is common for students in Arkansas to be punished without a statement from the alleged offender or an investigation. These rules will help communicate the importance of due process to school officials and protect all parties.

5.21: The practice of handshake agreements to avoid expulsion needs to end. Expulsion is serious and should be reserved for the preservation of student safety and order. However, allowing students to withdraw to

avoid pending expulsion proceedings endangers the students in the receiving district.

7.10: Section 6 outlines due process steps that should be observed for all infractions. These rules mirror the rules for investigating and reporting bullying.

Agency Response: Comments considered and will be included in further discussion and research. Due process procedures, prescribed penalties, and other discretionary issues should be included in local district policies. Discipline infraction codes are included in the SIS Manual. No changes made to these rules.

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

(1) 4.10 – I believe “then” may have been intended to be “ten.”

RESPONSE: Correction made.

(2) 5.01 – Am I reading this section correctly that a school district does not have to file an actual hard copy of its written student discipline policies with the Division, but that the posting online of the policies constitutes filing with the Division? If yes, is the Division comfortable that posting alone is in accord with Ark. Code Ann. § 6-18-503(a)(1)(A), requiring that each school district “shall file the policies with the Division”? **RESPONSE:** Yes; districts are required to post all student handbooks and discipline policies on the district website no later than August 1, which constitutes filing with the Division for purposes of compliance with 6-18-503.

(3) 5.04.2 – Is there a reason the Division chose to add the terms “not less than” where Ark. Code Ann. § 6-18-502(c)(2) simply provides for “expulsion from school for a period of one (1) year”? Is it the Division’s position that more than a year could be imposed? **RESPONSE:** Correction made.

(4) 5.04.7 – I believe that as just recently codified, the statutory reference is to § 6-18-111. **RESPONSE:** Correction made.

(5) 5.06.1 – Is there a reason that the remaining provisions of the statute, Ark. Code Ann. § 6-18-513(b)(2-3), (c), (d), and (e), were not also included? **RESPONSE:** Revisions made.

(6) 5.08 – Along the lines of question (2), do hard copies of any amendments to the policies have to be filed with the Division? **RESPONSE:** Districts must notify the Division of any amendments made to policies and post the revisions on the district’s website.

(7) 5.11.3 – Should the citation to Section 5.12 of the rules be to Section 5.11? **RESPONSE:** Correction made.

(8) 6.09.3 – Is there a reason that the language contained in Ark. Code Ann. § 6-18-514(k)(3) applying the date restriction to the agreements or contracts of “in effect on July 24, 2019” was not included in the rule? **RESPONSE:** Correction 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 § 6-18-502(a), the Division of Elementary and Secondary Education shall establish rules for the development of school district student discipline policies. The proposed changes to the rules include those made in light of Act 557 of 2019, sponsored by Senator Joyce Elliott, which prohibited the use of corporal punishment on a child with a disability; Act 640 of 2019, sponsored by Representative Stephen Meeks, which amended provisions of the Arkansas Code concerning student attendance and discipline; Act 709 of 2019, sponsored by Representative Don Glover, which required a public school district that expels a student to offer to the expelled student digital learning courses or alternative educational services for which the student may receive credit; and Act 1029 of 2019, sponsored by Representative Jimmy Gazaway, which amended the anti-bullying policy, required a school board member to receive information regarding school safety and student discipline, and required a bullying and cyberbullying prevention professional development program.

b. **SUBJECT: DESE Rules Governing College and Career Readiness Planning Programs**

DESCRIPTION: The Division of Elementary and Secondary Education proposes changes to its Rules Governing College and Career Readiness Planning Programs. The purpose of the rules is to establish guidelines for the implementation of the Arkansas College and Career Readiness Planning Program and postsecondary preparatory programs in Arkansas. The rules have been amended to incorporate the changes of Act 1083 of 2019, which changed “National School Lunch categorical funding” to “Enhanced Student Achievement Funding.” The definition of “college and career readiness assessment” at Section 3.02 has also been updated to reflect the definition in statute. Other changes have been made to replace references to the Department or ADE with DESE or Division language and to eliminate a repealed statutory reference.

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.

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 § 6-16-601(b)(1), the State Board of Education shall promulgate rules under which school districts, institutions of higher education, or a partnership of a school district and an institution of higher education, may operate postsecondary preparatory programs in Arkansas. The rules shall include without limitation the number and location of sites for postsecondary preparatory programs, if necessary; the minimum and maximum class sizes for postsecondary preparatory programs; that a school district may use Enhanced Student Achievement Funding received under § 6-20-2305 to operate and support a postsecondary preparatory program; and the forms and procedures necessary to implement Title 6, Chapter 16, Subchapter 6, of the Arkansas Code, concerning postsecondary preparatory programs. *See* Ark. Code Ann. § 6-16-601(b)(2). The proposed changes include those made in light of Act 1083 of 2019, sponsored by Senator Alan Clark, which amended the name of national school lunch state categorical funding.

c. **SUBJECT: DESE Rules Governing Federal Program Complaint Resolution**

DESCRIPTION: The Division of Elementary and Secondary Education proposes changes to its Rules Governing Federal Program Complaint Resolution. These rules are necessary to comply with federal laws governing federal programs' funding for schools and educational programs. These rules set forth the procedures for filing, investigating, and resolving complaints against local education agencies or the state education agency arising from the listed federal programs under 20 U.S.C. §§ 1232c, 7844, 7881, and 7883.

The changes to these rules amend the names of the title programs to update them to the current names under the Every Student Succeeds Act (ESSA). Language concerning the Arkansas Department of Education has been updated to the Division of Elementary and Secondary Education. No other changes have been made.

Following the public comment period, a change was made at Section 4.03.1 to correct an inconsistency with Section 4.01. For private school equity complaints, the complaint is necessarily against the LEA rather than the state agency.

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:

Lucas Harder, Arkansas School Boards Association

Comment: 1.02: “Annotated” could be changed to “Ann.” to standardize it with other rules.

Agency Response: The change was made.

Comment: 2.09: As it is abbreviated both before and afterwards in this same section, there is no need to write out the complete name of the Division here.

Agency Response: The change was made.

Comment: 3.01: As it is previously abbreviated, there is no need to write out the full name of the Division here.

Agency Response: The change was made.

Comment: 3.10: As it is previously abbreviated and abbreviated later in the same section, there is no need to write out the full name of the Division.

Agency Response: The change was made.

Comment: 4.03.1: I believe that this should be a statement that the LEA has violated a requirement as 4.01 states that the private school’s complaint is against an LEA’s action or inaction.

Agency Response: The change was made.

Comment: 4.05: Forty-five is not written longhand here and it should be, along with the parenthetical numerals, to match the occurrences of other double-digit numbers.

Agency Response: The change was made.

Comment: 4.06: As it is abbreviated both before and afterwards in this same section, there is no need to write out the complete name of the Division here.

Agency Response: The change was made.

Comment: Forty-five is not written longhand here and it should be, along with the parenthetical numerals, to match the occurrences of other double-digit numbers.

Agency Response: The change was made.

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

Section 1.03 – Could you please direct me to where the titles of each of the programs set forth in the rule can be found?

When I looked at 34 CFR § 299.11(b), I found the following programs listed:

- (1) Part A of title I (Improving Basic Programs Operated by Local Educational Agencies).
- (2) Part C of title I (Education of Migratory Children).
- (3) Part D of title I (Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At Risk).
- (4) Part A of title II (Supporting Effective Instruction).
- (5) Part A, subpart 1 of title III (English Language Acquisition, Language Enhancement, and Academic Achievement), except for section 3112.
- (6) Part A of title IV (Student Support and Academic Enrichment Grants).
- (7) Part B of title IV (21st Century Community Learning Centers).
- (8) Part B, subpart 2 of title V (Rural and Low-Income School Program).
- (9) Subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, Education for Homeless Children and Youth Program.

I have also looked at the US Code cites provided. Some of these programs above and in 20 USC § 7881 match those in the rule, but I may be looking at the wrong provisions because I could not find all of them.

RESPONSE: Comment considered. No change made. The title of each program is the name of that subpart contained within the relevant subchapter of 20 U.S.C. Chapter 70, as amended by the Every Student Succeeds Act. For example, Title I (subchapter), Part A (subpart) covers 20 U.S.C. §§ 6311-6322 and the name of Part A is “Improving Basic Programs Operated by Local Education Agencies.” McKinney-Vento is addressed through separate guidance and as such is not part of this rule.

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 34 C.F.R. § 299.11(a), a State Educational Agency (“SEA”) shall adopt written procedures, consistent with state law, for (1) receiving and resolving any complaint

from an organization or individual that the SEA or an agency or consortium of agencies is violating a federal statute or regulation that applies to an applicable program listed in 34 C.F.R. § 299.11(b); (2) reviewing an appeal from a decision of an agency or consortium of agencies with respect to a complaint; and (3) conducting an independent on-site investigation of a complaint if the SEA determines that an on-site investigation is necessary. Further authority for the rulemaking can be found in Arkansas Code Annotated § 6-11-105, which provides in relevant part that the State Board of Education shall have general supervision of, and shall take 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).

The agency states that the rules are required to comply with the following federal laws: 20 U.S.C. §§ 1232c, 7844, 7881, and 7883.

d. SUBJECT: DESE Rules Governing Parental Involvement Plans and Family and Community Engagement

DESCRIPTION: The Division of Elementary and Secondary Education proposes changes to its Rules Governing Parental Involvement Plans and Family and Community Engagement. The purpose of the rules is to set out requirements for parental involvement plans. The rules seek to improve family and community engagement by outlining legal requirements for district parental improvement plans and school and district responsibilities in carrying out plans to involve families and communities in the school and district. The rules also set forth requirements related to the Division’s monitoring of parental involvement plans.

The amendments to the rules incorporate the changes of Act 757 of 2019, § 15, by changing the date from October 1 to August 1 in Sections 3.01.2, 3.02.3, and 3.02.4 of the rules. Changes have also been made to update language concerning the Department of Education to Division of Elementary and Secondary Education.

PUBLIC COMMENT: A public hearing was held on April 13, 2020. The public comment period expired on April 20, 2020. The Division received no 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 § 6-15-1011, the State Board of Education shall promulgate rules necessary for the implementation of the Arkansas Public Education Act of 1997 (“Act”), Ark. Code Ann. §§ 6-15-1001 through 6-15-1011. The Act provides that all public schools will have a plan of parental involvement, allowing parents to be involved in the education of their children, and that the plans will address communication with parents, volunteering, learning activities that support classroom instruction, participation in school decisions, and collaboration with the community. *See* Ark. Code Ann. § 6-15-1005(f)(1), (2). The proposed changes include those made in light of Act 757 of 2019, sponsored by Representative Bruce Cozart, which amended and updated various provisions of the Arkansas Code concerning public education.

3. **STATE BOARD OF ELECTION COMMISSIONERS (Mr. Chris Madison)**

a. **SUBJECT: Rules for County Election Commissioners Training**

DESCRIPTION: The State Board of Elections met on August 19, 2019 and approved changes to the “Rules for County Election Commissioners Training.”

The primary purpose of the changes is to bring the rule into compliance with changes in Arkansas law made by the 2019 General Assembly. One such change is the new prohibition against a CBEC member serving as the chair or secretary of a county political party. *See* Act 966 of 2019. The legislature also enacted a provision that allows any person to disqualify a county election commissioner who is the spouse of another county election commissioner, or is the chairman or spouse of a chairman of a county political party, from serving as an election official if an objection is filed within 10 days of posting the list of election officials. *See* Act 258 of 2019. The amendment establishes a new provision to ensure that, in the event two spouses serve on the CBEC together, only one can be disqualified under Act 258 of 2019. This change is necessary to ensure that the CBEC maintains a quorum to conduct the election.

Because the rule is being revisited, the SBEC took the opportunity to clarify the currently existing concept of an “Advanced Training.” The amendment provides an explanation of what an Advanced Training is, establishing limits on when an Advanced Training may be offered, and adds further restrictions on who is eligible to attend such a training. This preserves the concept of an Advanced Training, which is useful when an experienced commissioner is unable to attend SBEC training in a timely manner. The SBEC has used this in the past to train experienced CBEC members when a special election is called prior to the primary. This

clarification continues allowing experienced officials to receive training remotely under limited circumstances when appropriate. It ensures officials are eligible to conduct the election in a timely manner and saves state resources. Further, the clarification continues ensuring a legal preference for in-person trainings, which are generally more effective.

The SBEC has made one policy change in this amendment. Under the existing rule, county election commissioners are eligible to receive one hundred dollars (\$100) for attending commissioner training. In the past, the SBEC has had several commissioners who were trained and then resigned from the commission prior to serving in an election. This has the double negative impact of requiring the SBEC to offer individual or very small group trainings to the replacement commissioners on a compressed timeline and then to pay the replacement commissioners a second stipend for their training. This amendment would allow county commissioners to be reimbursed for their mileage immediately upon attending training, but it would require the commissioners to actually serve until the preferential primary in order to receive the additional one hundred dollars (\$100) in compensation. The goal of the policy change is to both limit unnecessary expenditures and encourage newly appointed commissioners to remain in office through at least one major election.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on May 18, 2020. The State Board of Election Commissioners received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rule amendments have a financial impact. Specifically, the board anticipated a savings of \$500 to \$1000 for the current fiscal year and provided the following explanation: The change will ensure that a county election commissioner who is trained for the Preferential Primary but resigns prior to the primary will not be given a stipend for attending training. This will save the State of Arkansas \$100 for each commissioner who leaves office between training and serving as a commissioner. Based on past elections, it is anticipated that between five and ten commissioners fall into this category every election cycle.

LEGAL AUTHORIZATION: The State Board of Election Commissioners has authority to adopt all necessary rules regarding the statewide training for election officials and county election commissioners. *See* Ark. Code Ann. §§ 7-4-101(f)(2) and (f)(3). In addition, the board has authority to administer reimbursement of election expenses to counties in accordance with Ark. Code Ann. § 7-7-201(a) for

primary elections, statewide special elections, and non-partisan general elections. *See* Ark. Code Ann. § 7-4-101(f)(11).

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

Act 258 of 2019, sponsored by Representative Michelle Gray, amended the law concerning service as a poll worker and concerning the prevention of conflicts of interest in elections. Pursuant to the Act, a person shall not serve as an election official if: (1) the person is married or related within the second degree of consanguinity to a candidate running for office, (2) the spouse of a member of a county board of election commissioners, or (3) a county party chairman or his or her spouse. *See* Act 258 of 2019, codified as Ark Code Ann. § 7-5-202(a)(2)(A).

Act 966 of 2019, sponsored by Representative Karilyn Brown, provided that a chair or secretary of a county political party shall not serve as a member of the county board of election commissioners. *See* Act 966 of 2019, codified as Ark. Code Ann. § 7-4-102(a)(1)(B).

b. SUBJECT: Rules for Poll Worker & County Clerk Training

DESCRIPTION: The State Board of Election Commissioners (SBEC) met on August 19, 2019 and approved changes to the “Rules for Poll Workers and County Clerk Training.”

The primary purpose of these changes is to bring the rule into compliance with changes in Arkansas law made in the 2019 General Assembly. One such change allows any person to disqualify a poll worker who is the spouse of a county election commissioner, or the chairman or spouse of a chairman of a county political party, if an objection is filed within 10 days of posting the election officials’ list in the county clerk’s office. *See* Act 258 of 2019. This amendment updates the section governing the qualifications of poll workers to reflect these changes. The other legislative change requiring amendment of the rule is the requirement that all poll workers be trained within 12 months of any election in which they serve. *See* Act 966 of 2019.

Because the rule was being revisited, the SBEC took the opportunity to clarify a few existing provisions within the rule. The first of these is an update of the language articulating the requirement that a poll worker must reside in the precinct they are serving. It clarifies how these requirements apply to vote centers or polling sites serving multiple precincts. This amendment is only a clarification and does not constitute a substantive policy change.

The second update clarifies the existing concept of an “Advanced Training” by adding an explanation of what an Advanced Training is. It establishes limits on when an Advanced Training may be offered and clarifies who is eligible to attend such a training. This preserves the concept of an Advanced Training which is useful when an experienced certified trainer is unable to attend SBEC training in a timely manner. Advanced Trainings have been used in the past to train experienced trainers when a special election is called prior to the primary. This clarification continues allowing experienced officials to receive training remotely. It ensures officials are eligible to conduct the election in a timely manner and saves state resources. Further, the clarification continues ensuring a legal preference for in-person trainings which are generally more effective.

Thirdly, the amendment also further clarifies that counties are required to provide their poll workers with the materials provided by the SBEC including all multimedia training resources. This is not a substantive change, but it is intended to ensure that the counties show the PowerPoint and training videos the SBEC provides.

The final policy change is made at the request of large population counties that train a significant number of poll workers. The existing rule limits reimbursement to the county to only two trainers and only allows each trainer to conduct a maximum of two training sessions. The existing rule allowed the SBEC to waive the limitation on the number of trainers but not the number of training sessions for which the individual trainers could be compensated. This amendment permits the SBEC to waive the limitation on the number of training sessions for which the trainer may be reimbursed which will allow the county to use its best personnel to conduct the county’s poll worker training with smaller groups of poll workers. The goal of these changes is to provide fairness regarding larger counties for which two training sessions is wholly insufficient and ensure the quality of the training by discouraging counties from attempting to train larger groups than is practical.

The amendment also establishes the procedural requirement that the county must request reimbursement for additional trainers or training sessions in writing explaining why the additional funding is justified.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on May 18, 2020. The State Board of Election Commissioners received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rule amendments have a financial impact. Specifically, the board estimated an additional cost of \$3,300 for the current fiscal year to state, county and municipal government.

The board provided the following explanation of the additional cost: The SBEC is legally required to coordinate the training of poll workers in Arkansas. It does this by certifying at least two certified poll worker trainers in each county, which are then responsible for conducting training for their county's poll workers. By rule, the trainers are entitled to a 50-dollar payment for each training they conduct. A training is generally around 4 hours in length. The current rule caps the number of training sessions which a trainer can be compensated for at two sessions. A county can apply for a waiver to certify additional trainers but there is no provision under the current rule to allow a trainer to be paid for more than two training sessions. The result is, in a large county that uses their most experienced certified trainers, they will have to make up the cost difference or the trainers will not be compensated for the additional training sessions.

Under this proposed revision to the rule, the SBEC would have the discretion to allow certified trainers in a large county to be compensated for more than two training sessions, if the county files a written request explaining why the additional training sessions are justified. The SBEC calculates that, based on poll workers in the 2018 primary, if every county with more than 110 poll workers were to request additional funding pursuant to this amendment, the additional cost would be no more than \$3,300 every two years.

LEGAL AUTHORIZATION: The State Board of Election Commissioners has authority to adopt all necessary rules regarding the statewide training for election officials and county election commissioners. *See* Ark. Code Ann. §§ 7-4-101(f)(2) and (f)(3). In addition, the board has authority to administer reimbursement of election expenses to counties in accordance with Ark. Code Ann. § 7-7-201(a) for primary elections, statewide special elections, and non-partisan general elections. *See* Ark. Code Ann. § 7-4-101(f)(11).

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

Act 258 of 2019, sponsored by Representative Michelle Gray, amended the law concerning service as a poll worker and concerning the prevention of conflicts of interest in elections. Pursuant to the Act, a person shall not serve as an election official if: (1) the person is married or related within the second degree of consanguinity to a candidate running for office,

(2) the spouse of a member of a county board of election commissioners, or (3) a county party chairman or his or her spouse. *See* Act 258 of 2019, codified as Ark Code Ann. § 7-5-202(a)(2)(A). An objection must be filed within 10 days of the posting of the required notice identifying election officials. *See* Act 258 of 2019, codified as Ark. Code Ann. § 7-5-202(a)(2)(B).

Act 966 of 2019, sponsored by Representative Karilyn Brown, provided that a chair or secretary of a county political party shall not serve as a member of the county board of election commissioners. *See* Act 966 of 2019, codified as Ark. Code Ann. § 7-4-102(a)(1)(B). In addition, all election officials at a polling site are required to have completed training pursuant to Ark Code Ann. § 7-4-109 within twelve (12) months before the election. *See* Act 966 of 2019, codified as Ark. Code Ann. § 7-4-107(b)(2)(C)(i).

4. DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY (Mr. Micheal Grappe)

a. SUBJECT: Rule 19, Rules of the Arkansas Plan of Implementation for Air Pollution Control

DESCRIPTION: The Division of Environmental Quality proposes changes to the current Arkansas Pollution Control and Ecology Commission Regulation 19. The purpose of amending Regulation No. 19 is to include changes in certain titles—”Regulation” to “Rule” and “Department” to “Division”—in order to bring Arkansas Pollution Control and Ecology Commission Regulation No. 19 in line with Act 315 of 2019 and the Transformation and Efficiencies Act of 2019. Because all instances of “regulation” were changed to “rule” when referring to rules promulgated by Arkansas entities, definitions for Rule 8, Rule 18, and Rule 26 were added. These definitions ensure continuity of references to these rules, which have not yet been revised to change the term “regulation” to “rule.” There are no substantive changes included in this proposed amendment.

PUBLIC COMMENT: A public hearing was held on March 6, 2020. The public comment period expired on March 20, 2020. The Division received no 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 § 8-4-202(a), the Arkansas Pollution Control and Ecology Commission is 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 of Environmental Quality and the Commission under the Arkansas Water and Air Pollution Control Act, Arkansas Code Annotated §§ 8-4-101 through 8-4-318.

5. **DEPARTMENT OF HEALTH, SECTION OF EMERGENCY MEDICAL SERVICES (Mr. Greg Brown, Ms. Christy Kresse, Ms. Laura Shue)**

a. **SUBJECT: Rules for Emergency Medical Services**

DESCRIPTION: The proposed rules amend the Rules for Emergency Medical Services as follows:

- Remove the word “regulation” from the entire document (Act 315);
- Remove outdated terms in definitions;
- Encounter Form definition clarification to include electronic or hard copy submission;
- Data submission requirement changed to fifteen (15) days from the date of the call from the last day of the subsequent month;
- General standard of primary responder(s) clarification – In the event of a disaster or an extenuating circumstance, an air ambulance service may be considered a primary responder if ground ambulance services may be unable to reach patients by ground;
- Define “Advanced Response Agency” with general standards for agency license and permit of vehicle;
- Require Emergency Vehicle Operator (EVO) criminal history backgrounds;
- Revise Continuing Education Renewal Hours at Local Level: AR Trauma, Pediatric, Stroke, Cardiology, Documentation, Ethics, and Professionalism;
- Requirement to maintain national certification for Emergency Medical Services Providers (EMSP) state licensure renewal (Act 958);
- Temporary license for ninety (90) days and expedited licensing for military members and spouses (Acts 426 and 820);
- EMSP Initial Instructor requirement of forty (40) hour EMSP instructor course or bachelor’s degree in education;
- EMS education programs for EMT and AEMT are extended to licensed advanced life support ambulance services sponsored by a Private Career License;
- Surrender of unwanted controlled substances must be in accordance with the Drug Enforcement Agency’s regulations;

- Equipment list updated by removing quantities, using drug classification, and the requirement of 12 EKG lead capability.

PUBLIC COMMENT: A public hearing was held on this rule on May 4, 2020. The public comment period expired on May 4, 2020. The agency provided the following summary of the public comments it received and its responses to those comments.

Commenter's Name: Ken Kelley, Arkansas Ambulance Association

COMMENT 1 SUMMARY: Ken Kelly wanted to thank the Arkansas Department of Health, Section of EMS, for their work on the process. The Arkansas Ambulance Association had a chance to review the proposed changes internally as well as with key partners and has no major comments and to say thank you.

RESPONSE: Thank you, Mr. Kelley.

COMMENT 2: Mass Casualty definition - the only comment I have is to maybe remove the word *vastly*. That is kind of like the word *serious*. What is serious to one may not be serious to another.

RESPONSE: Thank you, Mr. Kelley. [No changes were made to the proposed rule as a result of this comment.]

Commenter's Name: Allan Ussery, Southern Paramedic

COMMENT: Encounter Form definition- it says the division of EMS must approve the encounter forms. Can we have better criteria of what they will approve? There is no clarification on what you want or don't want on it. So, if I have a perfect encounter form, you guys can deny it for no reason.

Mass Casualty Incident definition- it is fine what you have defined in there but shouldn't the Rules and Regs state that you should coordinate through Trauma Comm to get a MAC channel so that everybody can communicate on the right channel. This was brought up back in August. If we have a resource like Trauma Comm, why are we not putting it in the Rules to utilize something like this in a mass casualty incident.

RESPONSE: Thank you, Mr. Ussery, in this meeting, we will not get into a lot of discussion with your proposal, but it will be considered. We will have a response in due course in timeline with the statute. [No changes were made to the proposed rule as a result of this comment.]

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

1. Where do the topics added to the continuing education requirements come from? (Pages 56, 58, and 60 of the markup.) **RESPONSE:** The topics are decided by the Branch Chief, Section Chief, and Licensure Administrator of the Section of EMS and then presented to the EMS Advisory Council’s Training Committee for approval.
2. Is there specific authority for requiring emergency vehicle operators to undergo 10 hours of refresher training every two years? **RESPONSE:** No.
3. Section IX(H)(4)(b) states, “The Department shall grant automatic licensure to an individual who holds a substantially equivalent license in another U.S. jurisdiction” Must that individual hold that license in good standing, as required by Act 820? **RESPONSE:** Yes.
4. What is the source for the requirement that an EMS provisional instructor submit a letter of recommendation from the training site representative of an accredited EMS education program with his or her application? (Page 86 of the markup.) **RESPONSE:** The EMS curriculum must be taught by an accredited EMS training site that is sponsored by a higher education institution. To ensure a provisional instructor has the ability to meet the provisional teaching requirements, a letter of recommendation from the training site is required.
5. Where do the provisions of Section XVI(A), Regulatory Administration, come from? **RESPONSE:** This was moved from Section IV.B.7.
6. Is there specific statutory authority that allows the Department to revoke or suspend a license or place a licensee on probation, as mentioned in Section XVI(B)?

RESPONSE: The general authority is granted by the EMS act and the authority granted to the Board of Health for review and approval. The statutory authority governing EMS is very generalized. See the Emergency Medical Services Act at Ark. Code 20-13-201 et. seq. Section 20-13-208 – Board of Health Powers and Duties, generally confers power on the Board of Health to regulate EMS. “The State Board of Health shall have the responsibility and authority to hold public hearings and promulgate and implement rules and standards which it deems necessary to carry out the provisions of this subchapter.” Section 20-13-209 – Department of Health Powers and duties, confers power on the Department of Health to “administer this subchapter”; to enforce the rules

and standards promulgated by the State Board of Health” for the administration and enforcement of this subchapter; to “certify emergency medical services personnel through use of a national competency examination by qualified examiners upon the completion of required curriculum”; to “issue initial and renewal licenses to any qualified applicant that provides EMS or advanced life support rescue services....”.

Other statutory authority for EMS licensure or regulation are the EMS Do Not Resuscitate Act (20-13-901 et. seq.); Section 20-13-1001 et. seq. regarding licensure of Ambulance services and Section 20-13-1101 requiring criminal background checks for EMS licensure applicants and setting forth certain disqualifying offenses.

Also, under the Board of Health’s general authority, section 20-7-101(a), every firm, person, or corporation violating any of the provisions of this act or any of the orders or rules made and promulgated in pursuance hereof shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment not exceeding one (1) month, or both. Under Section 20-7-101 (b), every firm, person, or corporation who violates any of the rules issued or promulgated by the State Board of Health or who violates any condition of a license, permit, certificate, or any other type of registration issued by the board may be assessed a civil penalty by the board. The penalty shall not exceed one thousand dollars (\$1,000) for each violation. Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessments. However, no civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing on the violation.

7. There is a word or phrase missing from the third bullet point under Section XVI(B)(1)(a)’s list of offenses. (Page 94 of the markup.) Could you clarify the language in that bullet point? **RESPONSE:** The phrase was accidentally marked through. It should read “Violating any provisions of the Arkansas Department of Health’s Emergency Medical Services Rules, as well as federal, state, or local laws, rules affecting, but not limited to the practice of EMS.”

8. Is there specific authority for Section XVI(C), dealing with criteria for denial of EMSP licensure? **RESPONSE:** No, the statute giving the State Board of Health power to regulate licensure is general and does not go into granular detail of regulating licensure.

9. Is there specific authority for the portions of Section XVI(D) dealing with probation and reapplication? **RESPONSE:** No, the statute giving the

State Board of Health power to regulate licensure is general and does not go into granular detail of regulating licensure.

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, all initial licensure applicants are currently required to have a current NREMT certification to obtain EMSP licensure for all levels. Act 958 requires Emergency Medical Service Providers to maintain or regain national certification for state licensure, providing continuity for more standard licensing. EMSP will be assessed a recertification fee by NREMT bi-annually upon renewal. The fees for each level of licensure are as follows: EMT - \$20; AEMT - \$20; and Paramedic - \$25.

The agency indicated that there will be no additional cost to state, county, or municipal government as a result of this rule.

LEGAL AUTHORIZATION: The State Board of Health has the authority to promulgate rules “which it deems necessary to carry out the provisions of” the Arkansas Emergency Medical Services Act. Ark. Code Ann. § 20-13-208. The Arkansas Department of Health is tasked with administering the Act, certifying emergency medical services personnel, and issuing and renewing licenses to such personnel. Ark. Code Ann. § 20-13-209. These rule revisions implement provisions of Acts 426, 820, 958, and 990 of 2019.

Act 426, 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. Act 426 requires occupational licensing entities to promulgate rules adopting “the least restrictive requirements for occupational licensure for” certain individuals. *See* Act 426, § 3(b).

Act 820, sponsored by Senator Missy Irvin, amended the law concerning the occupational licensure of active duty service members, returning military veterans, and their spouses and provided automatic licensure.

Act 958, sponsored by Representative Mark Perry, amended the Arkansas Emergency Medical Services Act to ensure that persons licensed to provide emergency medical services or advanced life support rescue services maintain continual national emergency medical services certification.

Act 990, 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 gives licensing entities authority to adopt or amend rules necessary for its implementation. *See Ark. Code Ann. § 17-2-104(a), as amended by Act 990.*

6. **DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, STATE BOARD OF ACUPUNCTURE & RELATED TECHNIQUES** (Ms. Maria Sailing, Mr. Matt Gilmore)

a. **SUBJECT: Rules of the Arkansas State Board of Acupuncture & Related Techniques**

DESCRIPTION: The Arkansas State Board of Acupuncture and Related Techniques is revising its rules to add provisions regarding: reciprocal licensure (Act 1011 of 2019), license reinstatements (Ark. Code Ann. § 17-1-107), temporary licensure (Act 1011 of 2019), licensure for individuals who come from states that do not license acupuncturists (Act 1011 of 2019), pre-license criminal background check and waiver provision (Act 990 of 2019), automatic licensure for certain military service members and their spouses (Act 820 of 2019), removal of all references to “regulations” (Act 315 of 2019), clarification of the required nationally-approved examination(s), and removal of obsolete and unnecessary provisions.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on May 28, 2020. The board 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 thereto:

QUESTION 1: Should the code section cited in Title III, A.3(b), A.3(c)(2), I(a); Title IV, A.1(b) and Title VI. A of the rule read “17-3-102,” as opposed to 17-2-102? **RESPONSE:** I have fixed the cites you note in Comment 1 and have attached an updated markup and clean versions.

QUESTION 2: On Title III, H(c), what does the board consider to be a reasonable time? **RESPONSE:** I would not think it would take long, assuming the petitioner supplies sufficient documentation. This language is part of the AG’s model language for Act 990 and has been approved by ADH and the Governor’s Office.

The proposed effective date is September 1, 2020.

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

LEGAL AUTHORIZATION: The Arkansas State Board of Acupuncture and Related Techniques has authority to adopt, publish, and from time to time, revise rules consistent with the law as may be necessary to enable the board to carry into effect the provisions of Title 17, Chapter 102 of the Arkansas Code concerning acupuncturists. *See* Ark. Code Ann. § 17-102-206(b)(5). In addition, the board has authority to adopt standards for applicants wishing to take the licensing examination and conduct examinations or contract with persons or entities to conduct examinations of applicant. *See* Ark. Code Ann. § 17-102-206(b)(7). The board also has fee-making authority for fees specified in Ark. Code Ann. § 17-102-304(d).

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 820 of 2019, sponsored by Senator Missy Irvin, provides for automatic licensure of active duty service members, returning military veterans and their spouses, in circumstances where the individual is a holder in good standing of a substantially equivalent occupational license issued by another state, territory, or district of the United States. *See* Ark. Code Ann. § 17-1-106(b)(1). An occupational licensing entity may, however, submit proposed rules recommending an expedited process and procedure for licensure, to the Administrative Rules Subcommittee of the Legislative Council. *See* Ark. Code Ann. § 17-1-106(c). An occupational licensing entity shall be required to provide automatic licensure if the proposed rules are not approved as required under subsection (d)(2) of this section. *See* Ark. Code Ann. § 17-1-106(b)(2).

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. An individual with a criminal record may 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). *See* Ark. Code Ann. § 17-3-103(a)(1). 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. *See* Ark. Code Ann. § 17-3-104(a).

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.

7. DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, STATE MEDICAL BOARD (Mr. Kevin O'Dwyer, Mr. Matt Gilmore)

a. SUBJECT: Rule 6 – Rules Governing the Licensing and Practice of Occupational Therapists

DESCRIPTION: The State Medical Board is proposing amendments to Rule 6. The proposed amendments explain the rules governing the licensing and practice of occupational therapists.

PUBLIC COMMENT: A public hearing was held on June 4, 2020. The public comment period expired on June 4, 2020. The State Medical Board indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 17-88-201(a), the Arkansas State Medical Board shall administer the provisions of Chapter 88 of Title 17 of the Arkansas Code concerning Occupational Therapists. With the advice and assistance of the Arkansas State Occupational Therapy Examining Committee, the board shall pass upon the qualification of applicants for licensure, regulate and supervise all examinations, determine the applicants who successfully pass the examination, and license applicants who meet the qualifications provided in this chapter. *See* Ark. Code Ann. § 17-88-201(b). In addition, the

board shall adopt and put into effect reasonable rules to carry this chapter into effect. *See* Ark. Code Ann. § 17-88-201(c)(1).

The proposed rules implement Act 315 of 2019. 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. *See* Act 315 of 2019, § 1(a)(4).

b. SUBJECT: Rule 24 – Proposed Amendments to Rule 24 Governing Physician Assistants

DESCRIPTION: The State Medical Board is proposing amendments to Rule 24 governing physician assistants. Pursuant to Act 263 of 2019, the State Medical Board is amending Rule 24 to update references to the accreditation organizations related to physician assistants.

PUBLIC COMMENT: A public hearing was held in this matter on June 4, 2020. The public comment period expired on June 4, 2020. The State Medical Board provided the following summary of comments received:

The Arkansas State Medical Board conducted a public hearing on June 4, 2020 and approved the proposed Amendment to Rule 24 – Rules Governing Physicians Assistants. No one spoke against the proposal and the comment period has expired, but Edward Williams, PA spoke in favor of Rule 24 stating that this along with other rule changes would support making the physician assistant more accessible to the public.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 17-105-118, the Arkansas State Medical Board shall administer the provisions of the Chapter 105 of Title 17 concerning physician assistants, under such procedures as it considers advisable and may adopt rules that are reasonable and necessary to implement the provisions of the chapter. Additionally, it is the intent of the General Assembly that the board on behalf of the General Assembly shall make rules clarifying any ambiguities or related matters concerning this chapter, which may not have been specifically addressed. *See* Ark. Code Ann. § 17-105-118. The Arkansas State Medical Board has authority to promulgate and put into effect such rules as are necessary to carry out the purposes of the Arkansas Medical Practices Act. *See* Ark. Code Ann. § 17-95-303(2).

The proposed rules implement Act 263 of 2019. Act 263 of 2019, sponsored by Senator Cecile Bledsoe, provided that licensed physician assistants must complete an education program accredited by the Accreditation Review Commission on Education for the Physician Assistant or by its successor agency.

c. **SUBJECT: Rules 37 – Arkansas Graduate Registered Physician Act**

DESCRIPTION: The State Medical Board is proposing amendments to Rule 37 concerning the Arkansas Graduate Registered Physicians Act.

PUBLIC COMMENT: A public hearing was held on June 4, 2020. The public comment period expired on June 4, 2020. The State Medical Board indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas State Medical Board has authority to promulgate rules that are reasonable and necessary to implement the Arkansas Graduate Registered Physician Act. *See* Ark. Code Ann. § 17-95-914.

The proposed rules implement Act 990 of 2019, sponsored by Senator John Cooper, which amended the laws to obtain consistency regarding criminal background checks for professions and occupations, and disqualifying offenses for licensure. In addition, licensing entities were prohibited from using vague or generic terms, including without limitation the phrase “moral turpitude” or “good character,” as a basis to deny licensure. The Act required licensing entities to promulgate rules to implement the Act. *See* Act 990 of 2019, § 2.

d. **SUBJECT: Rules 44 – Pre-Licensure Criminal Background Check**

DESCRIPTION: The State Medical Board is proposing a new rule concerning prelicensure criminal background checks 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 on June 4, 2020. The public comment period expired on June 4, 2020. The State Medical Board indicated that it received no public comments.

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: Pursuant to the Arkansas Medical Practices Act, the Arkansas State Medical Board has authority to make and adopt all rules not inconsistent with the laws of this state or the United States, and necessary or convenient to perform the duties and to transact business required by law. *See* Ark. Code Ann. § 17-95-303(1). In addition, the board may promulgate and put into effect such rules as are necessary to carry out the purposes of the Arkansas Medical Practices Act. *See* Ark. Code Ann. § 17-95-303(2).

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. An individual with a criminal record may 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). *See* Ark. Code Ann. § 17-3-103(a)(1). 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. *See* Ark. Code Ann. § 17-3-104(a).

8. **DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSION, STATE BOARD OF PHARMACY (Mr. John Kirtley, Mr. Luke Daniel, Mr. Matt Gilmore)**

a. **SUBJECT: Rule 1 – General Operations**

DESCRIPTION: The State Board of Pharmacy is proposing changes to Rule 1 concerning General Operations. Proposed changes will add new language outlining expedited licensing for qualified individuals in accordance with Act 820 of 2019. Proposed changes to this rule are also being made to match statutory language updated by Act 990 of 2019 to remove references to the terms “good moral character and temperate habits” along with other clean up language for clarification.

PUBLIC COMMENT: A public hearing was held on June 15, 2020. The public comment period expired on June 15, 2020. The Arkansas State Board of Pharmacy received no public comments.

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

QUESTION 1: Under the military licensure provision, there appears to be a numbering discrepancy. Should the provision in (a)(3) refer to (a)(1) and (a)(2), as opposed to the markup reflecting (b)(1) and (b)(2)?

RESPONSE: A revised markup was submitted correcting the scribing error.

QUESTION 2: Similarly, should the provision in (b)(3) refer to (b)(1) and (b)(2), as opposed to the markup reflecting (c)(1) and (c)(2)? (There does not appear to be a section c.). **RESPONSE:** A revised markup was submitted correcting the scribing error.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 17-92-205(a), the Arkansas State Board of Pharmacy has authority to make reasonable rules, not inconsistent with law, to carry out the purposes and intentions of this chapter and the pharmacy laws of this state that the board deems necessary to preserve and protect public health. Additionally, the board shall by rule establish standards for the administration of medications by licensed pharmacists, including, but not limited to, the completion of a course in the administration of medication. *See* Ark. Code Ann. § 17-92-205(b).

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 820 of 2019, sponsored by Senator Missy Irvin, provides for automatic licensure of active duty service members, returning military veterans and their spouses, in circumstances where the individual is a holder in good standing of a substantially equivalent occupational license issued by another state, territory, or district of the United States. *See* Ark.

Code Ann. § 17-1-106(b)(1). An occupational licensing entity may, however, submit proposed rules recommending an expedited process and procedure for licensure, to the Administrative Rules Subcommittee of the Legislative Council. *See* Ark. Code Ann. § 17-1-106(c). An occupational licensing entity shall be required to provide automatic licensure if the proposed rules are not approved as required under subsection (d)(2) of this section. *See* Ark. Code Ann. § 17-1-106(b)(2).

Act 990 of 2019, sponsored by Senator John Cooper, amended the law to obtain consistency regarding criminal background checks for professions and occupations, and disqualifying offenses for licensure. In addition, licensing entities were prohibited from using vague or generic terms, including without limitation the phrase “moral turpitude” or “good character,” as a basis to deny licensure. The Act required licensing entities to promulgate rules to implement the Act. *See* Act 990 of 2019, § 2.

b. SUBJECT: Rule 2 – Pharmacists

DESCRIPTION: The State Board of Pharmacy is proposing changes to Rule 2 concerning pharmacists. Proposed changes will remove language regarding Armed Forces Certificates for Pharmacists, as new language is being added to Rule 1 to cover all permit types in accordance with Act 820 of 2019. Proposed changes will also remove references to the terms “good moral character and temperate habits” in accordance with Act 990 of 2019, along with other minor clean up language.

PUBLIC COMMENT: A public hearing was held on June 15, 2020. The public comment period expired on June 15, 2020. The Arkansas State Board of Pharmacy received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 17-92-205(a), the Arkansas State Board of Pharmacy has authority to make reasonable rules, not inconsistent with law, to carry out the purposes and intentions of this chapter and the pharmacy laws of this state that the board deems necessary to preserve and protect public health. Additionally, the board shall by rule establish standards for the administration of medications by licensed pharmacists, including, but not limited to, the completion of a course in the administration of medication. *See* Ark. Code Ann. § 17-92-205(b).

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 820 of 2019, sponsored by Senator Missy Irvin, provides for automatic licensure of active duty service members, returning military veterans and their spouses, in circumstances where the individual is a holder in good standing of a substantially equivalent occupational license issued by another state, territory, or district of the United States. *See* Ark. Code Ann. § 17-1-106(b)(1). An occupational licensing entity may, however, submit proposed rules recommending an expedited process and procedure for licensure, to the Administrative Rules Subcommittee of the Legislative Council. *See* Ark. Code Ann. § 17-1-106(c). An occupational licensing entity shall be required to provide automatic licensure if the proposed rules are not approved as required under subsection (d)(2) of this section. *See* Ark. Code Ann. § 17-1-106(b)(2).

Act 990 of 2019, sponsored by Senator John Cooper, amended the law to obtain consistency regarding criminal background checks for professions and occupations, and disqualifying offenses for licensure. In addition, licensing entities were prohibited from using vague or generic terms, including without limitation the phrase “moral turpitude” or “good character,” as a basis to deny licensure. The Act required licensing entities to promulgate rules to implement the Act. *See* Act 990 of 2019, § 2.

c. **SUBJECT: Rule 3 – Pharmacy Technicians**

DESCRIPTION: The State Board of Pharmacy is proposing changes to Rule 3 concerning pharmacy technicians. Proposed changes will remove references to the terms “good moral character and temperate habits” in accordance with Act 990 of 2019.

PUBLIC COMMENT: A public hearing was held on June 15, 2020. The public comment period expired on June 15, 2020. The Arkansas State Board of Pharmacy received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 17-92-205(a), the Arkansas State Board of Pharmacy has authority to make reasonable rules, not inconsistent with law, to carry out the purposes and intentions of this chapter and the pharmacy laws of this state that the board deems necessary to preserve and protect public health. Ark. Code Ann. § 17-92-301(a)(3) anticipates that a pharmacy technician may perform limited functions under this chapter and rules promulgated hereunder. *See* Ark. Code Ann. § 17-92-301(a).

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 990 of 2019, sponsored by Senator John Cooper, amended the law to obtain consistency regarding criminal background checks for professions and occupations, and disqualifying offenses for licensure. In addition, licensing entities were prohibited from using vague or generic terms, including without limitation the phrase “moral turpitude” or “good character,” as a basis to deny licensure. The Act required licensing entities to promulgate rules to implement the Act. *See* Act 990 of 2019, § 2.

d. **SUBJECT: Rule 11 – Criminal Background Checks**

DESCRIPTION: The State Board of Pharmacy is proposing changes to Rule 11 concerning criminal background checks. Proposed changes to this rule are being made to match statutory language in Ark. Code Ann. § 17-92-317, updated by Act 990 of 2019, regarding eligibility for licensure or registration. Proposed changes will also add language regarding pre-licensure criminal background checks pursuant to Act 990 of 2019 (Ark. Code Ann. § 17-3-103). Proposed changes will remove outdated language regarding criminal background checks and update terms to “offense” rather than “crime” as reflected in statutes.

PUBLIC COMMENT: A public hearing was held on June 15, 2020. The public comment period expired on June 15, 2020. The Arkansas State Board of Pharmacy received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 17-92-205(a), the Arkansas State Board of Pharmacy has authority to make reasonable rules, not inconsistent with law, to carry out the purposes and intentions of this chapter and the pharmacy laws of this state that the board deems necessary to preserve and protect public health. In addition, the board has authority to adopt rules to fully implement the provisions of Ark. Code Ann. § 17-92-317 concerning criminal background checks. *See* Ark. Code Ann. § 17-92-317(k).

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 990 of 2019, which was sponsored by Senator John Cooper, amended the law to obtain consistency regarding criminal background checks for professions and occupations, and disqualifying offenses for licensure. An individual with a criminal record may 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). *See* Ark. Code Ann. § 17-3-103(a)(1). Licensing entities were required to adopt or amend rules necessary for the implementation of Title 17, Chapter 3, of the Arkansas Code, concerning occupational criminal background checks. *See* Ark. Code Ann. § 17-3-104(a).

9. **DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, STATE BOARD OF PHYSICAL THERAPY** (Ms. Nancy Worthen, Mr. Matt Gilmore)

a. **SUBJECT:** Arkansas State Board of Physical Therapy Rules

DESCRIPTION: The Arkansas State Board of Physical Therapy is proposing amendments to its rules. The amended rule provides for automatic licensure for active duty military, returning veterans, and spouses; standardizing licensing fees; pre-licensure criminal background checks; and a waiver process for applicants with disqualifying criminal convictions. The amended rule also includes the following changes:

- Changes the title to remove “Regulation” in accordance with Act 315 of 2019
- Creates new language for reciprocal licensure for active duty military members, returning veterans, and spouses, as mandated by Act 820 of 2019 (AG’s office model language)
- Creates a new section for pre-licensure background check procedure, as mandated by Act 990 of 2019 (AG’s model language)
- Creates a waiver process for individuals seeking licensure with disqualifying felony convictions (AG’s model language), as required by Act 990 of 2019
- Standardizes fee structure. Currently, the rule allows fees “not to exceed” a certain amount. This change sets fees at a fixed amount. Fees are not being raised, but a compact fee of \$50.00 is being added. The law was passed in 2019 for the Board to join the compact. This means that PTs/PTAs that join the compact will pay a lower fee to the Board
- Requires a background check in accordance with Ark. Code Ann. § 17-93-303 for Physical Therapist applicants or Ark. Code Ann. § 17-93-304 for Physical Therapist Assistant applicants
- Changes “endorsement” to “reciprocity” as required by Acts 426 and 1011 of 2019 and cleans up language regarding reciprocity
- Revises temporary license required by Act 1011 of 2019
- Adds language regarding reinstatement
- Strikes the section VII3D, Duty of a Sanctioned Professional
- Various language clean-up as shown in the markup

PUBLIC COMMENT: A public hearing was held in this matter on April 30, 2020. The public comment period expired on May 29, 2020. The State Board of Physical Therapy 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 Physical Therapy has authority to adopt reasonable rules and require the payment of license fees adequate to carry out the purposes of Title 1, Chapter 93 of the Arkansas Code. *See* Ark. Code Ann. § 17-93-202(b)(1). 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 426 of 2019, sponsored by Representative Bruce Cozart, authorizes occupational licensing entities to grant expedited temporary and provisional licensing for certain individuals. *See* Act 426 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 law regarding criminal background checks for professions and occupations to obtain consistency regarding criminal background checks and disqualifying offenses for licensure. An individual with a criminal record may 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). *See* Ark. Code Ann. § 17-3-103(a)(1). 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. *See* Ark. Code Ann. § 17-3-104(a).

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.

10. **DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, STATE BOARD OF EXAMINERS IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY (Mr. Matt Gilmore)**

a. **SUBJECT: Arkansas Board of Examiners in Speech-Language Pathology and Audiology Rules**

DESCRIPTION: The Arkansas Board of Examiners in Speech-Language Pathology and Audiology is amending its rules concerning licensure and regulation of speech-language pathology and audiology. Changes are being made to the rules in response to new legislation and in order to amend portions of the rule to better serve consumers. The agency provided the following summary of substantive changes made in the proposed rules:

- Provides automatic licensure to certain military applicants, pursuant to Act 820 of 2019
- Delegates to the Board’s Director, the authority to issue licenses
- Lowers licensure fee
- Removes the 30-day grace period for licensure
- In compliance with Act 990, and using the Attorney General’s model language, adds provisions for a pre-licensure criminal background checks and waiver requests
- Amends the Board’s current license reinstatement provision to comply with Ark. Code Ann. § 17-1-107
- Updates the Code of Ethics
- Requires that first time hearing aid users under the age of 18 receive medical evaluation and clearance from an otolaryngologist within 6 months prior to being fitted with a hearing aid.
- Updates telepractice provisions to comply with most recent changes to the Telemedicine Act and the Medical Board’s Rules
- Clarifies licensure requirements for speech-language pathology assistants who work in public schools
- “Housekeeping matters,” such as replacing “regulation” with rule pursuant to Act 315 of 2019, deleting obsolete requirement, and updating/clarifying terminology

The board submitted a revised markup after the expiration of the public comment period, along with the following summary of changes:

- ABESPA voted to separately promulgate the substantive changes to Section 12. Telepractice. The Board is proceeding with one change to Section 12.1.H. pursuant to Act 315.
- ABESPA voted not to make changes to Section 13. Rules Governing Registration of Speech-Language Pathology Assistants, except for changes required by Acts 315 and 910. The Board received comments that suggested extensive revisions to this section, so the Chair has appointed a committee to study substantive revisions to Section 13 and make recommendations to the Board.
- The Board voted not to make the changes in Section 2.5. Due to the COVID-19 crisis, the Board believes that now is not the time to implement a significant change in the licensure process.
- In Section 7.2, the Board added “language” between “speech” and “pathology” and the end of the sentence.
- In Section 7.3, the Board added “speech-language pathology assistant” in the first line.
- The Board replaced the following phrase, which was accidentally omitted from Section 2.11: Application must be made within thirty days of beginning the professional experience.
- The previous draft contained numbering/lettering errors in Section 8. Code of Ethics, and these errors have been corrected

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 Speech-Language Pathology and Audiology provided the following summary of public comments received and its responses thereto:

Commenter	#	Comment	Board Response
Anonymous, submitted by Rachel Glade, president of ArkSHA	1	COMMENT: The Medicaid therapy manual and ABESPA rules and regs differ with ABESPA being more stringent. I have no problems with the more stringent regulations, however, there is one difference (below) that we may be able to come together on. Medicaid 203.000 B: When therapy services are provided by a licensed therapy assistant or speech-language pathology assistant who is supervised by a licensed therapist or speech-language pathologist, the supervising therapist or speech-language pathologist must observe a therapy session with a child and review the treatment plan and progress notes at a minimum of every 30	The Board Chair will appoint a committee to study SLPA registration and standards and to make recommendations to the Board. This comment will be submitted to the committee for consideration.

Commenter	#	Comment	Board Response
		<p>calendar days.</p> <p>RULE PROVISION: Section 13;.12. A. (middle of paragraph) [p. 33 of markup]: Supervision days and time of day (morning/afternoon) must be alternated to ensure that all patients/clients receive direct contact with the speech-language pathologist at least once every two (2) weeks.</p>	
	2	<p>COMMENT: Also, 13.12 D could be updated by eliminating “pager” and maybe adding online platforms.</p> <p>RULE PROVISION [p. 34 of markup]: D. A supervising speech-language pathologist must be able to be reached by personal contact, phone, pager, or other immediate means at all times when direct patient/client care is being rendered.</p>	<p>The Board Chair will appoint a committee to study SLPA registration and standards and to make recommendations to the Board. This comment will be submitted to the committee for consideration.</p>
Madi Littlefield	3	<p>COMMENT: I am a second year SLP graduate student graduating in May. The removal of the 30 day grace period is concerning to me as someone who is hoping to start my clinical fellowship as soon as possible. As a soon to be SLP-CF, I will be unable to submit my provisional license application until I have a job with a supervisor, due to needing to fill out the CF plan and have my supervisor sign. If the 30 day grace period is removed, I would be unable to start practicing until I received my provisional license back instead of being able to work during the process. While I do support removing the 30 day grace period to ensure that practicing SLP-CCCs do not practice without a license, I feel as though there should be an exception for SLP-CFs who are obtaining a provisional license for the first time.</p>	<p>Due to the COVID-19 crisis, the Board believes that now is not the time to implement a significant change in the licensure process. Therefore, the board will retain the 30-day grace period.</p> <p>The Board will also add back in the following phrase, which was accidentally omitted from Section 2.11: Application must be made within thirty days of beginning the professional experience.</p>

Commenter	#	Comment	Board Response
		<p>RULE PROVISION: See Section 2.5 on p. 4 of the markup.</p>	
<p>Natalie Benafield</p>	<p>4</p>	<p>COMMENT: I am the graduate program coordinator at UCA for the Speech Pathology Master’s Program. I’m seeking clarification on Section 2.5. I am unsure if the deletion of the “30 day grace period” will affect students graduating with their master’s degrees. For example, we have told our graduates that they must apply for their PROVISIONAL LICENSE within 30 days of beginning their CFY. So do they now need to apply BEFORE they graduate? The section on Provisional Licensure does not specific when they should apply for their provisional license.</p> <p>RULE PROVISION: See Section 2.5 on p. 4 of the markup.</p>	<p>Due to the COVID-19 crisis, the Board believes that now is not the time to implement a significant change in the licensure process. Therefore, the board will retain the 30-day grace period.</p> <p>The Board will also add back in the following phrase, which was accidentally omitted from Section 2.11: Application must be made within thirty days of beginning the professional experience.</p>

Commenter	#	Comment	Board Response
Shelly Wier, ADE	5	<p>COMMENT: Did you know this section (below) is being removed from the ABESPA rules? What's the status of the annual interagency agreement with ABESPA re: use of SLPAs?</p> <p>RULE PROVISION: [p. 28 of markup] 13.3 This document also provides for the Arkansas Department of Education (ADE), in accordance with its statutory, general supervision authority over public agencies which provide educational services to children with disabilities birth to twenty one years of age, in conjunction with the Department of Human Services (DHS), Developmental Disabilities Services (DDS), to regulate speech language pathology assistants and aides performing duties in such programs. ABESPA approved the 1999 ADE guidelines for registration, training, scope of responsibilities, supervision, and review of these individuals. Any proposed revisions to the guidelines will be submitted to ABESPA for approval. The ADE will provide ABESPA, upon request, any reports and/or records with regard to these individuals in the performance of their duties as may be necessary to ensure compliance with established standards.</p> <p>ADDITIONAL NOTE FROM STAFF: Board Chair Elizabeth Williams called Ms. Wier and explained that ABESPA's rules cannot bind ADE and that the Board is not making any substantive changes to the provisions re ADE and SLPA's.</p>	<p>The Board voted not to make this change at this time. The interagency agreement is no longer necessary since Sharon Ross retired and the board now has a contract with another person who serves as SLPA Coordinator.</p>

Commenter	#	Comment	Board Response
	6	<p>COMMENT: This (below) isn't being edited. I just don't understand it. Does this just mean ABESPA can revoke ADE's role in approving and monitoring SLPAs in the schools when/if it wants to?</p> <p>RULE PROVISION: [p. 28 of markup]: 13.6 For all purposes, ABESPA retains regulatory authority for speech-language pathology services, unless specifically exempted by statute. The Board may at any time, for good cause, revoke all exceptions and exemptions, granted in these rules; and at such time may require registration of all SLP-Assistants and SLP-Aides through ABESPA.</p> <p>ADDITIONAL NOTE FROM STAFF: Board Chair Elizabeth Williams called Ms. Wier and explained that ABESPA's rules cannot bind ADE and that the Board is not making any substantive changes to the provisions re ADE and SLPA's.</p>	<p>No. ABESPA has no authority over ADE/DESE. Furthermore, there is a specific exemption in Ark. Code Ann. § 17-100-104: Nothing in this chapter shall be construed as preventing or restricting: ... (4)(A) A person from performing speech-language pathology or audiology services solely within the confines or under the jurisdiction of a public school system if that person holds a valid and current certificate as a speech therapist or speech-language pathologist issued by the Division of Elementary and Secondary Education.</p>
	7	<p>COMMENT: Why only "since January 1, 1993?"</p> <p>RULE PROVISION: [p. 5 of markup] 2.8 The Board will accept proof of ASHA Certificate of Clinical Competence granted since January 1, 1993, as evidence of the required degree (Section 2.7).</p>	<p>This date was updated in 1993 - the previous date was January 1, 1971.</p>

Commenter	#	Comment	Board Response
	8	<p>COMMENT: I understand the need to expedite the licensure process, but this dilutes the Board’s responsibilities. The Director isn’t an SLP or audiologist.</p> <p>RULE PROVISION: [p. 8 of markup] 3.2 A quorum of the Board as required by Ark. Code Ann. §17-100-203 shall deliberate on each application for licensure. Action on the application shall require a majority vote of the members present. <u>To expedite the licensure process, the Board delegates to its Director the authority to issue licenses to applicants who meet the requirements of the Board’s statutes and rules. When necessary, the Director may refer certain applications to the Board for decision.</u></p>	<p>The Board does not agree with the commenter’s opinion. The Board believes that licenses should be issued as soon as possible without applicants having to wait on a board meeting. Board members are available to answer questions and for clarification if necessary. Furthermore, most board directors are not licensees of the boards they work for.</p>
	9	<p>COMMENT: Shouldn’t “speech-language pathology assistant” be added to 7.3 as well?</p> <p>RULE PROVISION: [p. 10 of markup] 7.3 Charges against a licensed speech-language pathologist or audiologist shall be in the form of a written statement describing the specific violations of ethical practice, or of the provisions of the Act, or of these Rules and <u>Regulations.</u></p>	<p>The board agrees and will add “speech-language pathology assistant.”</p>
	10	<p>COMMENTS: I thought “aides” were under AR Dept of Ed’s oversight... nonexistent to ABESPA, non-licensed. Also, “support personnel” represents both aides and assistants. Redundant?</p> <p>RULE PROVISION: [p. 12 of markup, under 8.1 Principle of Ethics I.] D. Individuals shall not misrepresent the credentials of <u>aides</u>, assistants, technicians, or support personnel, <u>students, research interns, Clinical Fellows, or any others under their supervision,</u> and <u>they</u> shall inform those they serve professionally of the name,</p>	<p>The language is being updated to match ASHA’s Rules of Ethics. Under Ark. Code Ann. 17-100-202, ABESPA is required to “promulgate rules regarding the use of speech-language pathology support personnel by practitioners of speech-language pathology.” The Board believes it has the statutory authority to promulgate this rule and is</p>

Commenter	#	Comment	Board Response
		role, and professional credentials of persons providing services.	comfortable with the language as presented.
	11	<p>COMMENT: Same as previous comment.</p> <p>RULE PROVISION: [p. 12 of markup, under 8.1 Principle of Ethics I.] <u>E. Individuals who hold an Arkansas license may delegate tasks related to the provision of clinical services to aides, assistants, technicians, support personnel, or any other persons only if those persons are adequately prepared and are appropriately supervised. The responsibility for the welfare of those being served remains with the licensed individual.</u></p>	<p>The language is being updated to match ASHA’s Rules of Ethics. Under Ark. Code Ann. 17-100-202, ABESPA is required to “promulgate rules regarding the use of speech-language pathology support personnel by practitioners of speech-language pathology.” The Board believes it has the statutory authority to promulgate this rule and is comfortable with the language as presented.</p>
	12	<p>COMMENT: Same as previous comment.</p> <p>RULE PROVISION: [p. 12 of markup, under 8.1 Principle of Ethics I.] <u>F. Individuals who hold an Arkansas license shall not delegate tasks that require the unique skills, knowledge, judgment, or credentials that are within the scope of their profession to aides, assistants, technicians, support personnel, or any nonprofessionals over whom they have supervisory responsibility.</u></p>	<p>The language is being updated to match ASHA’s Rules of Ethics. Under Ark. Code Ann. 17-100-202, ABESPA is required to “promulgate rules regarding the use of speech-language pathology support personnel by practitioners of speech-language pathology.” The Board believes it has the statutory authority to promulgate this rule and is comfortable with the language as presented.</p>

Commenter	#	Comment	Board Response
	13	<p>COMMENT: If “aides” is added previously, shouldn’t it be added here as well?</p> <p>RULE PROVISION: [p. 17 of markup, under 8.1 Principle of Ethics IV.] <u>F.G. Individuals shall not discriminate in their relationship with colleagues, assistants, students, support personnel, and members of allied other professions and disciplines on the basis of race, or ethnicity, sex, gender/identity, gender/expression, age, religion, national origin, sexual orientation, culture, language, dialect, socioeconomic status, or disability.</u></p>	<p>The language is being updated to match ASHA’s Rules of Ethics and the Board is comfortable with the language as written.</p>
	14	<p>COMMENT: Same as previous comment.</p> <p>RULE PROVISION: [p. 17 of markup, under 8.4 Principle of Ethics IV.] <u>M. Individuals shall not engage in sexual activities with individuals (other than a spouse or other individual with whom a prior consensual relationship exists) over whom they exercise professional authority or power, including persons receiving services, assistants, students, or research participants.</u></p>	<p>The language is being updated to match ASHA’s Rules of Ethics and the Board is comfortable with the language as written.</p>

Commenter	#	Comment	Board Response
	15	<p>COMMENT: Determining the type of service delivery most appropriate for clients is part of Content Area I (g): “Principles and procedures in habilitation and rehabilitation of communication disorders....” and should be added/included as such. Expansion of service delivery options in recent years has created a need for professional development regarding their selection and implementation.</p> <p>RULE PROVISION: [p. 19 of markup] CONTENT AREA II: (Must relate to the practice of Speech-Language Pathology and/or Audiology)</p> <p>...</p> <p>(b) service <u>Service</u> delivery such as telepractice, group versus individual services, use of support staff, service to underserved populations;</p>	<p>The Board is comfortable with service delivery remaining in Content Area II for now but is open to discussions on future changes.</p>
	16	<p>COMMENT: insert “randomly”</p> <p>RULE PROVISION: [p. 19 of markup] 9.3 Annually, the Board will select licensees for audit.</p>	<p>The Board may choose to audit licensees both randomly and if a licensee’s CPE report is suspect.</p>
	17	<p>COMMENTS: Shouldn’t A. read “live” webinars since pre-recorded sessions are considered self-study (B)?</p> <p>RULE PROVISION: [p. 20 of markup] 9.6 The Board will accept, but not be limited to the following activities, that fall within Content Areas I and II: A. Attending scientific or educational lectures, workshops, teleseminars <u>webinars</u>, seminars, college courses, interactive videos, or online courses. B. Independent study of journals, books, videotapes, audiotapes, or online courses.</p>	<p>The Board is comfortable with the language as it is. The distinction is irrelevant since all methods described are acceptable.</p>
	18	<p>COMMENTS: “....stated for assistants [add] providing services in person/on-site.”</p> <p>RULE PROVISION: [p. 27 of markup]</p>	<p>The Board has decided to separately promulgate substantive changes to Section 12. Telepractice. This comment will be</p>

Commenter	#	Comment	Board Response
		B. Supervision rules shall remain the same as those stated for assistants.	considered by the Board at that time.
	19	<p>COMMENTS: How does “in person” work for out-of-state distant providers? Most are providing evaluations via telepractice.</p> <p>RULE PROVISION: [p. 27 of markup] <u>C. For purposes of this rule, a professional relationship, at a minimum requires that:</u> <u>i. (a) The provider performs an “in person” evaluation of the patient adequate to establish a recommended treatment, OR</u></p>	The Board has decided to separately promulgate substantive changes to Section 12. Telepractice. This comment will be considered by the Board at that time.
	20	<p>COMMENTS: This conflicts with 12.4.</p> <p>RULE PROVISION: [p. 28 of markup] D. DIRECT SUPERVISION - Direct supervision means on-site, in-view observation and guidance by a speech-language pathologist while an assigned clinical activity is performed by speech language pathology assistant or speech-language pathology aide. [Emphasis added in comment.]</p> <p>12.4 Supervision A. Supervision of assistants may be done through telepractice as long as client confidentiality can be maintained. B. Supervision rules shall remain the same as those stated for assistants.</p>	The Board Chair will appoint a committee to study SLPA registration and standards and to make recommendations to the Board. This comment will be submitted to the committee for consideration.

Commenter	#	Comment	Board Response
	21	<p>COMMENT: You might want to add “and/or education service cooperatives” after “public school systems” since a lot of 3-5 services are provided via the co-ops and fall under DESE.</p> <p>RULE PROVISION: [p. 29 of markup] <u>A. Individuals desiring to register as a speech-language pathology assistant under Act 826 of 1995, § 2, codified at Ark. Code Ann. § 17-100-202(b)(2) must submit an application for registration to ABESPA, except that, individuals who desire to perform the duties of a speech-language pathology assistant in Arkansas public school systems will register with the Division of Elementary and Secondary Education-ADE who desire to perform the duties of a speech language pathology assistant in a public agency, or a community program licensed by DHS, DDS, which provides educational services to children with disabilities birth to twenty one years of age under the general supervision of the ADE.</u> Further, Section 13.9, subsections B, C, and D shall not apply to those individuals. Therefore, if an assistant is working in a public <u>agency school</u> only, the assistant will register with the <u>Division of Elementary and Secondary Education</u>ADE.</p>	<p>Ark. Code Ann. 17-100-104(4)(A) only exempts from licensure individuals who work in a public school system. The requested language would have to be added to the statute before it could be added to the rule.</p>
	22	<p>COMMENT: Same as previous comment.</p> <p>RULE PROVISION: [p. 29 of markup] <u>B. If an assistant is working in a public agency school and another agency, the assistant will register with the Division of Elementary and Secondary Education and ABESPA. In this instance, ABESPA will collaborate with ADE to determine approval.</u></p>	<p>Ark. Code Ann. 17-100-104(4)(A) only exempts from licensure individuals who work in a public school system. The requested language would have to be added to the statute before it could be added to the rule.</p>

Commenter	#	Comment	Board Response
	23	<p>COMMENT: FYI: Currently only applicants from out-of-state SLP Assistant programs typically have acquired clinical practicum hours. Even AR Bachelor's programs in SLP (except maybe Harding starting this Fall) do not require clinical practicum hours so no AR Bachelor's grads would be qualified to apply as an assistant, which defeats the purpose of allowing their use in AR to begin with. SLP students in AR don't acquire clinical practicum hours until grad school.</p> <p>RULE PROVISION: [p. 29 of markup] (c) <u>D</u>ocumentation of thirty (30) clinical practicum hours as a SLP-Assistant trainee signed by the Chair of the speech-language pathology department at the educational institution that provided this training. This requirement is applicable only to individuals without a bachelor's degree in speech-language pathology.</p>	<p>The Board Chair will appoint a committee to study SLPA registration and standards and to make recommendations to the Board. This comment will be submitted to the committee for consideration.</p>
	24	<p>COMMENT: Number of clients to be served may be more valuable than number of practice sites.</p> <p>RULE PROVISION: [p. 30 of markup] (d) <u>A</u>a list of facilities in which the SLP-Assistant will be utilized. The location of work settings must be kept current. Any change must be reported in writing to ABESPA within twenty-one (21) days. Based on information received, the Board may limit the number of practice sites.</p>	<p>The Board Chair will appoint a committee to study SLPA registration and standards and to make recommendations to the Board. This comment will be submitted to the committee for consideration.</p>

Commenter	#	Comment	Board Response
	25	<p>COMMENT: 1) Again, an AR bachelor’s degree in SLP/CSD does not include any clinical practicum hours. 2) Harding is working on it (and maybe SAU), but otherwise there are no accredited institutions for Associate’s degrees for SLP Assistants in AR right now.</p> <p>My suggestion: Remove the required clinical practicum hours. OJT with a supervising SLP is just as valuable and more specific to duties to be assigned.</p> <p>RULE PROVISION: [p. 30 of markup] A. A speech-language pathology assistant must: ... 2. Complete a speech-language pathology assistant training program culminating in an Associate Degree from an institution accredited by the Arkansas Department <u>Division</u> of Higher Education. Programs must meet the specified curriculum content and fieldwork experience listed below. Applicants from out of state will be reviewed on a case-by-case basis to ensure equivalency.</p>	<p>The Board Chair will appoint a committee to study SLPA registration and standards and to make recommendations to the Board. This comment will be submitted to the committee for consideration.</p>
	26	<p>COMMENT: ASHA is launching SLPA certification this Fall. https://www.ashaassistants.org/pathways-speech-language-pathology-assistant</p> <p>RULE PROVISION: [p. 30 of markup] The curriculum must be consistent with the ASHA-approved Criteria for the Registration of Speech-Language Pathology Assistants (Section III-A)</p>	<p>This comment does not seem to require a response, but the Board is aware.</p>

Commenter	#	Comment	Board Response
	27	<p>COMMENT: See previous comments.</p> <p>RULE PROVISION: [p. 31 of markup] *Fieldwork Experience The minimum of 100 hours of fieldwork experience must provide the student with opportunities for carrying out speech-language pathology assistant responsibilities. This training must be supervised by a speech-language pathologist who holds a current and valid license from ABESPA or the ASHA Certificate of Clinical Competence (CCC) in Speech-Language Pathology. These experiences are not intended to develop independent practice.</p>	<p>The Board Chair will appoint a committee to study SLPA registration and standards and to make recommendations to the Board. This comment will be submitted to the committee for consideration.</p>
	28	<p>COMMENT: See previous comment re: moving service delivery models to Content Area I.</p> <p>RULE PROVISION: [p. 32 of markup] Content Area II for Assistants ... (b) Service delivery models</p>	<p>The Board is comfortable with service delivery remaining in Content Area II for now but is open to discussions on future changes.</p>
Rachel Glade, Ph.D., CCC-SLP, LSL Cert. AVT President of ArkSHA	29	<p>COMMENT: One area of concern for us is that the telepractice rules may be too restrictive in requiring an established professional relationship and not providing some leeway for out-of-state practitioners, especially in emergency situations like COVID. Is there a way to consider addressing this concern?</p> <p>ADDITIONAL NOTE FROM STAFF: Board Chair Elizabeth Williams called Ms. Glade for clarification on her comment. Ms. Glade said she doesn't want to limit the telehealth provider. She also said she may supplement her comment.</p>	<p>The Board has decided to separately promulgate changes to Section 12. Telepractice. This comment will be considered by the Board at that time.</p>

Commenter	#	Comment	Board Response
	30	COMMENT: What will be needed to apply for a provisional license? There may be delays in graduation and will likely be delays for Praxis testing (especially for the 2018-2020 cohort that is graduating this year). We noticed there is a plan to remove the 30-day grace period for licensure. What does this mean for 2020 graduates?	<p>Due to the COVID-19 crisis, the Board believes that now is not the time to implement a significant change in the licensure process. Therefore, the board will retain the 30-day grace period.</p> <p>The Board will also add back in the following phrase, which was accidentally omitted from Section 2.11: Application must be made within thirty days of beginning the professional experience.</p>
Donna Smiley Ark. Children's Hospital	31	COMMENT: I have read through the proposed revisions and do not see any big issues. I do think that in section 12.1 with the deletion of C, that the following items will have to be re-lettered. BUT otherwise, I am comfortable with the revisions. Thanks to everyone who contributed to this much needed update of our rules.	The Board decided to separately promulgate substantive changes to Section 12 and is not deleting subsection 12.1.C at this time, but the Board appreciates your thanks.
Gretchen Hicks, Board SLPA Coordinator, and other SLP's at Easter Seals	32	COMMENT re Section 1.9: Should leave something about having access to amendments - or is this only talking about applicants and is access to amendments for licensed folks?	Amendments are included in the Board's statutes and rules, and everyone will have access.
	33	COMMENT re Section 2.5: 2.5 Delete on of the "Practice" s	The Board voted not to proceed with the change in 2.5 that lead to the typo referenced in the comment.
	34	COMMENT re Section 7: This section is very similar with few changes to original	No response required.

Commenter	#	Comment	Board Response
	35	COMMENT re Section 8.1.C [this provision has been correctly re-numbered as 8.1.C.]: How are these things different? “Sex” “sexual orientation” “gender” “identity/gender expression”	These terms are not defined in the proposed rule. The language is being updated to match ASHA’s Rules of Ethics and will be given their commonly understood meaning.
	36	COMMENT re Section 8.A.1.G [this provision has been correctly re-numbered as 8.1.G.]: How does the SLP ensure these training/skills??	The language is being updated to match ASHA’s Rules of Ethics. An SLP must use her training, experience, and professional judgment.
	37	COMMENT re Section 8.A.1.L [this provision has been correctly re-numbered as 8.1.M.]: How does one determine if a clinical judgment is evidence- based? Wording might need to be adjusted on this? clinical judgment???	The language is being adopted to match ASHA’s Rules of Ethics an SLP must use her training, experience, and professional judgment.
	38	COMMENT re Sections 8.A.1.N. and O. [these provisions have been correctly re-numbered as 8.1.O. and 8.1.P.]: How are the diff [sic]?	The Board assumes the commenter is asking how these two provisions differ from each other. The language is being adopted to match ASHA’s Rules of Ethics 8.A.1.N. protects the confidentiality of records of the activities specified, while 8.A.1.O. protects personal information.
	39	COMMENT re Section 8.A.1.N. [this provision has been correctly re-numbered as 8.1.O.]: “records shall be allowed only when doing so is necessary to protect the welfare of the person or of the community, is legally authorized, or is otherwise required by law.”-----maybe clarify for -IEP teams or does IDEA law cover this.	The language is being updated to match ASHA’s Rules of Ethics. The Board considered this comment and made no change.

Commenter	#	Comment	Board Response
	40	<p>COMMENT re Section 8.A.1.S. [this provision has been correctly re-numbered as 8.1.T.]:</p> <p>“Individuals shall provide reasonable notice and information about alternatives for obtaining care in the event that they can no longer provide professional services.” Can you clarify “reasonable notice”? Ex. SLP in another state sent to ethics board due to only giving 1 month notice? 1 month seems reasonable but not how it was interpreted by person turning in.</p>	<p>The language is being adopted to match ASHA’s Rules of Ethics. The licensee must use her best professional judgment to decide what constitutes “reasonable notice” based on the situation presented.</p>
	41	<p>COMMENT re Section 8.2.Q. [this provision has been correctly re-numbered as 8.2.A.]:</p> <p>“Individuals who hold an Arkansas license shall engage in only those aspects of the professions that are within the scope of their professional practice and competency” What defines competency for different areas in scope? For example. SLPs say they cannot work with aug [sic] communication because they aren’t competent, but they could and should be able to be competent because it is under scope of practice and mandated in public school where SLP working. Some SLPs use competency for to excuse not providing service for difficult kids.</p>	<p>As noted in Board Rule 1, section 11. Scope of Practice, there is “a broad range of services offered within” the scope of practice of speech-language pathology and of audiology. Section 11 further notes that, “[i]t is recognized, however, that levels of experience, skill and proficiency with respect to the activities identified within the scope of practice will vary among the individual providers.” ABESPA expects each licensee to use her professional judgment, experience, and training to determine and accurately represent her competency.</p>
	42	<p>COMMENT re Section 8.A.4.K. [this provision has been correctly re-numbered as 8.4.K.]:</p> <p>CAN YOU MANDATE THIS?</p>	<p>Yes</p>
	43	<p>COMMENT re Section 8:</p> <p>Ethics sections are very long, wordy, and in some cases redundant. Did these statements come from ASHA? If not, where? May need to be looked over and vetted by several other professionals.</p>	<p>The language is being updated to match ASHA’s Rules of Ethics. The Board considered this comment and made no change.</p>

Commenter	#	Comment	Board Response
	44	COMMENT re Section 12: Commenters provided six comments regarding the proposed changes on section 12. Telepractice.	The Board has decided to separately promulgate changes to Section 12. Telepractice. These comments will be considered by the Board at that time.
Gretchen Hicks, Board SLPA Coordinator	45	COMMENTS re Section 13: Commenter suggested extensive revisions to Section 13. Rules Governing Registration of Speech-Language Pathology Assistants.	The Board Chair will appoint a committee to study SLPA registration and standards and to make recommendations to the Board. This comment will be submitted to the committee for consideration.
Rachel Glade, Ph.D., CCC-SLP, LSL Cert. AVT President of ArkSHA	46	COMMENTS re Section 12. Commenter updated previous comments to request additional changes to Section 12. Telepractice.	The Board has decided to separately promulgate changes to Section 12. Telepractice. These comments will be considered by the Board at that time.
Emily Earnest, MA, CCC-A Audiologist President Elect Arkansas Academy of Audiology	47	COMMENT: Commenter submitted a letter of support for the licensure or registration of Audiology Assistants in the state of Arkansas	The Board does not have the statutory authority to regulate Audiology Assistants.
Gretchen Hicks, Board SLPA Coordinator, and other SLP's at Easter Seals	48	COMMENT: [re 8.1.E] responsibility for the welfare of those being served remains with the licensed individual. WOW Add or address this elsewhere only if personnel are adequately prepared/trained and are appropriately supervised	The Board does not understand this comment.

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

QUESTION 1: Could you please provide a breakdown of the estimated costs to private individuals, entities and businesses listed in Item 5 of the financial impact statement? **RESPONSE:** The Board of Examiners in Speech-Language Pathology and Audiology is in the process of promulgating new rules. One of the changes that is being proposed is a reduction in fees for our constituents.

The new fee structure will include the following reductions:

	<u>Old Fees</u>	<u>Proposed Fees</u>	<u>Proposed Savings</u>
Application fees	\$140.00	\$100.00	\$40.00
Standard renewal fees	\$80.00	\$60.00	\$20.00
Dually licensed renewal fees	\$120.00	\$85.00	\$35.00

Late renewal penalties will also undergo a reduction. Those reductions are as follows:

	<u>Old Fee</u>	<u>Proposed Fees</u>	<u>Proposed Savings</u>
One month late renewing	\$180.00	\$160.00	\$20.00
Two months late renewing	\$280.00	\$160.00	\$120.00
Three months late renewing	\$380.00	\$160.00	\$220.00
Four months late renewing	\$480.00	\$160.00	\$320.00
Five months or later renewing	\$580.00	\$420.00	\$160.00
If renewing 6 to 12 months late	\$580.00	\$320.00	\$260.00
If renewing 13 months late	\$580.00	\$360.00	\$220.00

QUESTION 2: On Item 6 of the financial impact statement, the board lists a total estimated cost of \$62,560 for the next fiscal year. Could you please provide some background/explanation of how the board calculated this amount? **RESPONSE:** The Board is reducing general licensure fees for speech pathologists and audiologists by \$20.00. This will be the largest impact. The reduction in the general licensure (speech pathologists and audiologists) would result in a reduction of approximately \$58,750.00 (that would be the \$80 to \$60). Calculated using an approximation of about 3000 licensees, but this number does vary some, so \$58,750.00 + \$3810 (estimate for fines and new licenses) = \$62,560.

The proposed effective date of this rule is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the amended rules have a financial impact. Specifically, any new applicant to the Board for

licensure will experience a reduction in the application fee. All licensees will experience a reduction in the renewal fees and late fees associated with late renewal. The total estimated cost to state, county and municipal government to implement this rule for the next fiscal year is estimated to be \$62,560.00.

LEGAL AUTHORIZATION: The Board of Examiners in Speech Pathology and Audiology is authorized to adopt rules relating to professional conduct commensurate with the policy of Ark. Code Ann. § 17-100-101 *et seq.*, including, but not limited to, rules which establish ethical standards of practice necessary to the enforcement and orderly administration of this chapter. In addition, the board is authorized to promulgate rules regarding the use of speech-pathology support personnel by practitioners of speech-language pathology. *See* Ark. Code Ann. § 17-100-202(b)(1) and (b)(2).

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 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 certain individuals. *See* Act 820, § 2(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, § 2.

11. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF AGING, ADULT, AND BEHAVIORAL HEALTH SERVICES** (Mr. Mark White, Ms. Patricia Gann)

a. **SUBJECT:** Arkansas Long Term Care Ombudsman Program Policies

DESCRIPTION:

Statement of Necessity

The federal Department of Health and Human Services, Administration on Aging (AoA), issued a final rule for State Long-Term Care Ombudsman programs, effective July 1, 2016, to implement provisions of the Older American Act of 1965 regarding States' Long-Term Care Ombudsman programs. The final rule filing provides that the federal regulation was necessary because the federal agency had not promulgated regulations regarding state implementation of the Long-Term Care Ombudsman program. This federal regulation was intended to eliminate variation in interpretation of the Act's provisions among the states. Arkansas's ombudsman has complied with the requirements of the Act even though the federal regulation regarding states' implementation was not yet in effect.

In order to comply with this new federal regulation, the Office of the State Ombudsman, Division of Aging, Adult, and Behavioral Health Services (DAABHS), has worked with the AoA to establish ombudsman policies. The AoA has approved these policies, and DAABHS is now bringing this promulgation.

Rule Summary

This rule, entitled, "Ombudsman Policies," is being promulgated for the first time. These policies address:

- An introduction to the office;
- Definitions of important terms;
- Program administration, including the State Ombudsman's role within the Department of Human Services;
- Responsibilities of the Area Agency on Aging, providers, regional ombudsmen, and representatives;
- Grievance processes;
- Criteria for designations within the ombudsman process as well as removal or suspension of awarded designation;
- Service components, delivery, monitoring, and evaluation;
- An outline of organizational and individual conflicts of interest;
- Information on legal counsel;

- Prohibition of willful interference and retaliation along with reporting procedures;
- Authority of the Long Term Care Office to access residents, facilities, and records;
- Policy on confidentiality, monitoring, disclosure, and maintenance;
- Procedure to initiate complaints and how they will be investigated and resolved.

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: Page 1 – typo in line for Chapter 300 “Designation and Certification and Grievance Processes” **RESPONSE:** We will edit this accordingly. Please see the revised rule.

COMMENT 2: Page 4 – Home and Community Based Services – is it possible to add older adults as a targeted population in this definition? **RESPONSE:** Medicaid has defined “Home and Community Based Services” as opportunities for Medicaid beneficiaries to receive services in their own home or community rather than institutions or other isolated settings. These programs serve a variety of targeted populations.

COMMENT 3: Page 11 – Section 204 (C)(3) Is the OSLTCO-approved monitoring tool one that that SLTCO provides to AAAs? Or Does the AAA have to develop a monitoring tool and submit to the SLTCO for approval? **RESPONSE:** The monitoring tool has been created by the SLTCO and approved by the ACL.

COMMENT 4: Page 12 – Section 204 (D) (1) – Please clarify which AAA staff are to attend OSLTCO-sponsored trainings and meetings. Is this the regional ombudsman, their supervisor, or someone from upper management? **RESPONSE:** The AAA staff that attends the OSLTCO-sponsored trainings and meetings is the regional Ombudsman representative. Section 204(D)(1) is revised to state: “Promote the attendance of the AAA regional ombudsman representative to attend OSLTCO-sponsored trainings and meetings pertaining to the Program.”

COMMENT 5: Page 19 – Section 305 (E)(2) What is considered a reasonable time to fill a vacant Ombudsman Representative staff position? Who determines the reasonable time frame? **RESPONSE:** We will revise the wording to state: “Failure to fill a vacant Ombudsman Representative staff position within 45 days of vacancy” based on the DHS

Administrative Procedures Manual Chapter 801. This is the same policy as the state unit on aging when fulfilling the State Ombudsman position.

COMMENT 6: Page 20 – Section 307 (A) Typo – “An provider agency”
RESPONSE: We will make this correction. Please see the revised rule.

Commenter’s Name: Holly Johnson, Senior Assistant Attorney General, Medicaid Fraud Control Unit, Office of Arkansas Attorney General Leslie Rutledge

COMMENT 1: Pursuant to the directions outlined for public comments in the March 22, 2020, Arkansas Long Term Care Ombudsman Program Policies Memorandum, the Medicaid Fraud Control Unit offers the following response to the proposed rule revisions:

Under Section 203, State Long-Term Care Ombudsman (SLTCO) Responsibilities, Part E.9., I just wanted to note that the State Attorney General’s Office is such an entity based on its statutory authority to ensure the well-being of long-term care facility residents.

RESPONSE: The rule has been revised to add the State Attorney General’s Office to the list in Section 203(E)(9).

COMMENT 2: Under Section 305, Withdrawal of Designation of Ombudsman Programs, what constitutes a “reasonable time” (days, e.g.) under part E.2. pertaining to the failure to fill a vacant ombudsman representative staff position? **RESPONSE:** We will revise this to say: “Failure to fill a vacant Ombudsman Representative staff position within 45 days of vacancy” based on the DHS Administrative Procedures Manual Chapter 801. This is the same policy as the state unit on aging when fulfilling the State Ombudsman position.

COMMENT 3: Under Section 306, Process for Withdrawal of Designation of an Ombudsman Program Provider Agency, what are the “reconsideration procedures” referenced in A.1.?

RESPONSE: In response to your question, we will add to Section 306(A)(1) the following:

- “a) Designation is not withdrawn until reasonable notice and opportunity for a hearing is provided;
- b) Notification of the right to appeal and the appeal procedures are included in the letter notifying the provider agency of a decision to withdraw designation; and,
- c) Hearings are conducted by the Appeals and Hearing Units of Arkansas Department of Human Services. “

COMMENT 4: Under Section 602, Legal Counsel for the OSLTCO, Part B.1., there is no time-frame for when the SLTCO or designee shall advise the Department of Human Services Secretary and the Office of Chief Counsel of the legal action or threatened legal action. Under Part B.2., there is no time-frame for when the SLTCO will submit a written request.

RESPONSE: We will add “as soon as possible” to Part B.1 and Part B.2, as follows:

Part B.1: “The SLTCO or designee shall as soon as possible...”

Part B.2: “When appropriate, the SLTCO will as soon as possible...”

COMMENT 5: Under Section 603 B., for an Ombudsman Representative to obtain legal representation, there is no time-frame under No. 1. for when the representative shall advise the SLTCO of a legal action or threatened legal action. Under B.2.a., there is no time-frame for when the SLTCO will submit a written request.

RESPONSE: We will revise the wording to include “as soon as possible,” as follows:

No. 1: “The Ombudsman Representative shall as soon as possible advise...”

B.2.a: “The SLTCO will as soon as possible submit...”

COMMENT 6: Under Section 702, Procedures for Reporting Interference or Retaliation, will the OSLTCO have a certain time-period to conduct an investigation under Part B? Will there be a time-frame for SLTCO’s written report under Part C.1.a.?

RESPONSE: In response to this input, we will make the following revisions:

Add the verbiage “within 10 days” to Part b, as follows: “The OSLTCO shall review the information provided and within 10 days conduct ...”

Add the verbiage “within 14 days” to Part C.1.a., as follows: “The SLTCO shall submit within 14 days a written report.”

COMMENT 7: Under Section 903, Disclosure of Information, Part F.1., is there a time-frame for the OSLTCO’s response once a written request is made? Under No. 4, will there be a time-frame for the release of requested information? **RESPONSE:** There is no time frame for the OSLTCO’s response once a written request is made. There is no timeframe for the release of requested information.

COMMENT 8: Under 1006 Complaint Referral, No. 2, I would recommend adding the Arkansas Attorney General’s Office to Part b given its statutory authority to ensure the well-being of residents. For example, (i.e., Arkansas Department of Health, the Office of Long-Term Care, and the Arkansas Attorney General’s Office).

RESPONSE: The rule has been revised to add “the Arkansas Attorney General’s Office” to Section 1006(A)(2)(b).

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

1. The definition of “abuse” in the proposed rules includes deprivation of goods/services that are necessary to “avoid physical harm, mental anguish, or mental illness.” The definition of “abuse” in the Older Americans Act (42 U.S.C. § 3002(1)) includes “knowing” deprivation of goods/services that are necessary to “meet essential needs or to avoid physical or psychological harm.” Is there a reason DAABHS has altered this language for the proposed rule? **RESPONSE:** The definitions contained in the federal Older Americans Act and the Arkansas Adult and Long-Term Care Facility Resident Maltreatment Act differ in a number of ways. The definitions contained in the proposed rule are an attempt to balance the federal definitions, the state definitions, and current practice and policies. The definitions contained in the proposed rule have been approved by the Administration for Community Living of the U.S. Department of Health and Human Services.

2. The proposed definition of “exploitation” omits portions of the definition found at 42 U.S.C. § 3002(18)(A). Is this because the proposed definition of “exploitation” does not expressly include “financial exploitation,” as the statutory definition does, or is there some other reason for this change? **RESPONSE:** The definitions contained in the federal Older Americans Act and the Arkansas Adult and Long-Term Care Facility Resident Maltreatment Act differ in a number of ways. The definitions contained in the proposed rule are an attempt to balance the federal definitions, the state definitions, and current practice and policies. The definitions contained in the proposed rule have been approved by the Administration for Community Living of the U.S. Department of Health and Human Services.

3. The statutory definition of “neglect” uses the phrase “goods or services that are necessary to maintain the health or safety of an older individual.” 42 U.S.C. § 3002(38)(A). The proposed rules replace this phrase with “goods or services that are necessary to avoid physical harm, mental anguish, or mental illness.” Why did the agency choose to make

this change? **RESPONSE:** The definitions contained in the federal Older Americans Act and the Arkansas Adult and Long-Term Care Facility Resident Maltreatment Act differ in a number of ways. The definitions contained in the proposed rule are an attempt to balance the federal definitions, the state definitions, and current practice and policies. The definitions contained in the proposed rule have been approved by the Administration for Community Living of the U.S. Department of Health and Human Services.

4. The proposed definition of “neglect” reads, “The failure to provide the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness, or the failure of a caregiver to provide the goods and services.” Does the agency anticipate that someone other than a caregiver could fail to provide goods/services, or is there another reason for the two separate clauses? **RESPONSE:** Yes. The definitions contained in the federal Older Americans Act and the Arkansas Adult and Long-Term Care Facility Resident Maltreatment Act differ in a number of ways. The definitions contained in the proposed rule are an attempt to balance the federal definitions, the state definitions, and current practice and policies. The definitions contained in the proposed rule have been approved by the Administration for Community Living of the U.S. Department of Health and Human Services.

5. Section 204 deals with Area Agency on Aging responsibilities. Is there specific statutory authority for these responsibilities, or are they adapted from something else? **RESPONSE:** The general statutory authority for the proposed rules is Ark. Code Ann. § 20-10-602, which gives broad authority to DHS to “establish and administer an ombudsman program” and to adopt rules necessary to administer the program. 42 U.S.C. 3058g(a)(5)(D) and 45 C.F.R. § 1324.11(e) require the state to establish policies and procedures for area agencies on aging functioning as local Ombudsman entities under the Older Americans Act.

6. Section 205(F)(2) requires that provider agencies provide Ombudsman staff/volunteers in addition to the Ombudsman Program Representative as necessary to maintain or exceed the level of services provided in the service area during the previous fiscal year. Is there specific statutory authority for this provision? **RESPONSE:** The general statutory authority for the proposed rules is Ark. Code Ann. § 20-10-602, which gives broad authority to DHS to “establish and administer an ombudsman program” and to adopt rules necessary to administer the program. This specific requirement is drawn from the federal maintenance of effort requirement, found at 42 U.S.C. § 3026(a)(9), regarding expenditures by each area agency on aging operating under the State Long-Term Care Ombudsman Program.

7. What is the source for Section 205(J)'s requirement that provider agencies provide professional development opportunities for Ombudsman Representatives? **RESPONSE:** 42 U.S.C. § 3058g(h)(4) requires the State to establish minimum training requirements for all ombudsman representatives, and 45 C.F.R. § 1324.17(a) makes the local ombudsman entity responsible for personnel management for employee and volunteer representatives.

8. Section 205(O) requires provider agencies to retain personnel records for 5 years. Where does this timeframe come from? **RESPONSE:** The timeframe is taken from current practice and policies, as well as the Arkansas General Records Retention Schedule, Section GS 04007, as promulgated by the Department of Finance and Administration.

9. Where does the 30-day timeframe for review and closure of complaints in Section 206(B)(7) come from? **RESPONSE:** The timeframe is taken from current practice and policies and non-regulatory guidance issued by the Administration for Community Living of the U.S. Department of Health and Human Services.

10. Is the annual review of regional ombudsman programs in Section 206(B)(10) required by statute? **RESPONSE:** No, but the annual review is necessitated by the annual report required by 42 U.S.C. § 3058g(h)(1) and by the monitoring requirements of 42 U.S.C. § 3058g(a)(5)(D)(i) and 45 C.F.R. § 1324.15(e).

11. Are the designation processes laid out in Sections 303 and 304 adapted from somewhere else? **RESPONSE:** The processes are taken from current practice and policies and a review of state long-term care ombudsman policies of other states that have already received federal approval.

12. Are the withdrawal of designation processes in Sections 305 and 306 adapted from somewhere else? **RESPONSE:** The processes are taken from current practice and policies and a review of state long-term care ombudsman policies of other states that have already received federal approval.

13. Where do the requirements of Section 307, regarding voluntary withdrawal of provider agencies, come from? **RESPONSE:** The requirements are taken from a review of state long-term care ombudsman policies of other states that have already received federal approval.

14. Where do the staff qualification requirements laid out in Sections 310, 311, and 312 come from? **RESPONSE:** Local ombudsman entities are required to cooperate with the State Ombudsman in the selection of these

individuals, by 45 C.F.R. § 1324.11(e)(1), and representatives and volunteers are ultimately designated by the State Long-Term Care Ombudsman per 42 U.S.C. § 3058g(a)(5)(A). Criminal background checks are required by Ark. Code Ann. § 20-38-103. The remaining requirements are taken from current practice and policies.

15. Is the provider agency hiring process detailed in Section 313 adapted from somewhere else or original to the agency? **RESPONSE:** The process is taken from a review of state long-term care ombudsman policies of other states that have already received federal approval, as well as information from the National Long-Term Care Ombudsman Resource Center.

16. What is the source for the certification requirements for formerly certified ombudsman representatives (Section 314)? **RESPONSE:** The requirements are taken from a review of state long-term care ombudsman policies of other states that have already received federal approval, as well as information from the National Long-Term Care Ombudsman Resource Center.

17. Is the grievance process in Section 318 adapted from somewhere else? If not, where do the investigation timeframes come from? Is there any specific statutory source for these requirements? **RESPONSE:** The grievance process is required by 45 C.F.R. § 1324.11(e)(7). The timeframes are adapted from a review of state long-term care ombudsman policies of other states that have already received federal approval, as well as information from the National Long-Term Care Ombudsman Resource Center.

18. Chapter 400, subsection A lists several service components that the Program shall provide to residents. Is this list taken from somewhere, or was it drafted specifically for these proposed rules? **RESPONSE:** This list is taken from current practice and policies.

19. Section 401(A) provides that the Program shall “identify, investigate, and resolve complaints made by or on behalf of residents.” Is this meant to apply to all complaints, or merely those specific types of complaints listed in 45 C.F.R. § 1324.13(a)(1)? **RESPONSE:** This language applies only to complaints authorized under 45 C.F.R. § 1324.13(a)(1). The limiting language of 1324.13(a)(1) is reflected in the remainder of the proposed rule, including the definition of “complaint” in Section 102.

20. Is there specific statutory authority for Section 404, which deals with routine visits to long-term care facilities? **RESPONSE:** Access to facilities by ombudsmen is guaranteed by Ark. Code Ann. § 20-10-603. The general statutory authority for the proposed rules is Ark. Code Ann.

§ 20-10-602, which gives broad authority to DHS to “establish and administer an ombudsman program” and to adopt rules necessary to administer the program. Additional requirements are contained in 45 C.F.R. § 1324.11(e)(2).

21. Is there specific statutory authority for Section 405(D)-(E), dealing with issue advocacy? **RESPONSE:** These provisions are authorized by 45 C.F.R. §§ 1324.11(e)(5) and 1324.13(a)(7)(iv). This function of the Ombudsman is required by 42 U.S.C. § 3058g(a)(3)(G).

22. Where do the annual plan requirements listed in Section 408(C) come from? **RESPONSE:** These requirements are taken from current practice and policies. 45 C.F.R. §§ 1324.13(c)(1)(i) & (ii) requires the submission, review, approval, and regular monitoring of a plan.

23. Section 502(B)(3) identifies “current or former employment of an individual by, or current or former involvement in the management of a long-term care facility or by the owner or operator of any long-term care facility or long-term care services or support services, or managed care organization,” as a potential conflict of interest. Is this intended to apply to any prior employment/involvement, or just employment/involvement within the past year as specified by 42 U.S.C. § 3058g(f)(1)(C)(iii)? **RESPONSE:** This language is intended to follow and not exceed the requirements of 42 U.S.C. § 3058g(f)(1)(C)(iii).

24. Section 502(B)(9)(e) identifies providing “legal services outside the scope of ombudsman duties” as a potential conflict of interest. Is there specific statutory/regulatory authority for this provision? **RESPONSE:** An attorney-client relationship is a fiduciary relationship, and such a relationship explicitly qualifies as a conflict of interest under 42 U.S.C. § 3058g(f)(1)(C)(vi).

25. What is the source for the recurrent 5-calendar-day timeframe in Sections 503 and 504? **RESPONSE:** The timeframe is adapted from a review of state long-term care ombudsman policies of other states that have already received federal approval, as well as information from the National Long-Term Care Ombudsman Resource Center.

26. Where does Section 602, addressing legal counsel for the State Long Term Care Office, come from? **RESPONSE:** The provisions of this section reflect the requirements of 42 U.S.C. § 3058g(g) and 45 C.F.R. § 1324.15(j) and current practices.

27. Where do the procedures detailed in Section 603, regarding legal counsel for representatives of the Long Term Care Office, come from?

RESPONSE: The provisions of this section reflect the requirements of 42 U.S.C. § 3058g(g) and 45 C.F.R. § 1324.15(j) and current practices.

28. Are the reporting procedures in Section 702 adapted from somewhere else? **RESPONSE:** The provisions of this section reflect the requirements of 42 U.S.C. § 3058g(j) and 45 C.F.R. § 1324.15(i), and were adapted from a review of state long-term care ombudsman policies of other states that have already received federal approval, as well as information from the National Long-Term Care Ombudsman Resource Center.

29. Are the confidentiality procedures in Section 901 adapted from somewhere else? **RESPONSE:** The provisions of this section reflect the requirements of 42 U.S.C. § 3058g(a)(5)(D)(iii) and current practices.

30. Where do the review requirements in Section 902(C)-(F) come from? **RESPONSE:** The provisions of this section reflect the requirements of 42 U.S.C. § 3058g(a)(5)(D)(i) and 45 C.F.R. § 1324.15(e), and were adapted from a review of state long-term care ombudsman policies of other states that have already received federal approval, as well as information from the National Long-Term Care Ombudsman Resource Center.

31. Where do the disclosure determination procedures in Section 903(F) come from? **RESPONSE:** The provisions of this section reflect the requirements of 45 C.F.R. § 1324.13(e)(3) and current practices.

32. Where do the record maintenance procedures in Section 904 come from? **RESPONSE:** The provisions of this section reflect the requirements of 45 C.F.R. § 1324.13(d) and were adapted from a review of state long-term care ombudsman policies of other states that have already received federal approval, as well as information from the National Long-Term Care Ombudsman Resource Center.

33. Are the complaint processing procedures in Section 1001 adapted from somewhere else? **RESPONSE:** The provisions of this section reflect the requirements of 45 C.F.R. § 1324.19(b).

34. Section 1002(C) states, “Investigation by the ombudsman representative shall proceed only with the express consent of the resident or resident representative except in systemic cases.” What is the statutory authority for this provision? **RESPONSE:** 42 U.S.C. § 3058g(a)(3)(A)(i) and 45 C.F.R. § 1324.19(b)(2)(ii)(B). The general statutory authority for the proposed rules is Ark. Code Ann. § 20-10-602, which gives broad authority to DHS to “establish and administer an ombudsman program” and to adopt rules necessary to administer the program.

35. Section 1002(F)(1) states that the State Ombudsman or designee shall refer the matter and disclose resident-identifying information to the appropriate agency/agencies if, among other things, “the ombudsman representative has reasonable cause to believe that the resident representative has taken an action, inaction, or decision that may adversely affect the health, safety, welfare, or rights of the resident.” What is the statutory authority for this provision? **RESPONSE:** 42 U.S.C. § 3058g(a)(3)(A)(ii) and 45 C.F.R. § 1324.19(b)(7)(i). The general statutory authority for the proposed rules is Ark. Code Ann. § 20-10-602, which gives broad authority to DHS to “establish and administer an ombudsman program” and to adopt rules necessary to administer the program.

36. Where do the complaint investigation procedures in Section 1002(G) come from? **RESPONSE:** The provisions of this section reflect the requirements of 42 U.S.C. § 3058g(a)(3)(A)(i) and 45 C.F.R. § 1324.19(b)(2)(ii)(B).

37. Section 1002(I) addresses case closure when residents die. Where do these procedures come from? **RESPONSE:** The provisions of this section reflect the requirements of 42 U.S.C. § 3058g(a)(3)(A)(i) and 45 C.F.R. § 1324.19(b)(2)(ii)(B).

38. Are the complaint investigation procedures in Section 1002(J)-(O) adapted from somewhere else? **RESPONSE:** The provisions of these sections reflect the requirements of 45 C.F.R. § 1324.19(b) and were adapted from a review of state long-term care ombudsman policies of other states that have already received federal approval, as well as information from the National Long-Term Care Ombudsman Resource Center.

39. Where do the complaint verification provisions of Section 1003 come from? **RESPONSE:** The provisions of this section reflect the requirements of 42 U.S.C. § 3058g(a)(3)(A)(i) and 45 C.F.R. § 1324.19(b)(2)(F).

40. Section 1004(C) lists classifications for case resolution status. Where do these classifications come from? **RESPONSE:** These classifications are taken from the National Ombudsman Reporting System (NORS), an ombudsman data collection tool provided by the Administration for Community Living of the U.S. Department of Health and Human Services.

41. What is the source for the case closure criteria in Section 1004(D)? **RESPONSE:** These criteria are taken from the National Ombudsman Reporting System (NORS), an ombudsman data collection tool provided

by the Administration for Community Living of the U.S. Department of Health and Human Services.

42. Section 1005(F) addresses procedures when a resident refuses to consent to report suspected abuse or neglect. Where do these procedures come from? **RESPONSE:** These procedures are taken from current practice and reflect the requirement of 45 C.F.R. § 1324.17(a) that the State Long-Term Care Ombudsman retains programmatic oversight over local ombudsman entities.

43. What is the source for the procedures in Section 1005(I)-(J) dealing with suspected financial exploitation of a resident? **RESPONSE:** The procedures are taken from current practice and policies and a review of state long-term care ombudsman policies of other states that have already received federal approval.

44. Section 1006(D)(2) sets out procedures for referring a resident to private attorneys. Where do these procedures come from? **RESPONSE:** These procedures are implicitly required by 42 U.S.C. § 3058g(a)(3)(C). They are taken from current practice and policies and a review of state long-term care ombudsman policies of other states that have already received federal approval, as well as information from the National Long-Term Care Ombudsman Resource Center.

45. Are the training requirements in Appendix B based on specific statutory authority? If not, are they adapted from somewhere else? **RESPONSE:** The training requirements are published by the Administration for Community Living of the U.S. Department of Health and Human Services.

46. 45 C.F.R. § 1324.13(c)(2)(iii) requires that a state agency’s training procedures “specify an annual number of hours of in-service training for all representatives of the Office.” Does Appendix B address in-service training, or has the agency addressed this somewhere else? **RESPONSE:** This requirement is addressed in the proposed rules, in Appendix B, “CERTIFICATION-CONTINUATION REQUIREMENTS,” section C.

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 Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall establish and administer an ombudsman program in accordance with the Older Americans Act . . . and all applicable federal and state laws.” Ark.

Code Ann. § 20-10-602. Federal regulations require state agencies on aging to “develop policies governing all aspects of . . . the ombudsman program whether operated directly by the State agency or under contract.” 45 C.F.R. § 1321.11(a). The Department has the authority to promulgate rules as necessary or desirable to administer assigned forms of welfare activities and services, *see* Ark. Code Ann. § 20-76-201, and it may also promulgate rules as needed to conform its programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129.

12. DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILDREN & FAMILY SERVICES (Mr. Mark White, Ms. Christin Harper)

a. SUBJECT: Private Licensed Placement Agency Resource Homes

DESCRIPTION:

Statement of Necessity

This new rule is necessary to provide guidance to Division of Children and Family Services (DCFS) staff regarding the purpose and utilization of Private Licensed Placement Agency Resource Homes.

Rule Summary

Effective October 1, 2020, the Division of Children and Family Services will implement Policy VI:P: Private Licensed Placement Agency Resource Homes to:

- Define a Private Licensed Placement Agency (PLPA) and how they operate in conjunction with DCFS and DCFS-approved resource homes;
- Establish when a placement of a child in Department of Human Services (DHS) custody in a PLPA is appropriate;
- Describe the population of children for which PLPA providers take placement;
- Outline the PLPA referral process and steps conducted when a PLPA home wishes to become a DCFS-approved home; and
- Update the table of contents to reflect the new policy and procedures.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired May 18, 2020. The agency provided the following summary of the public comments it received and its responses to those comments.

Commenter’s Name: Consevella James, Executive Director, Treatment Homes, Inc.

COMMENT 1: Please clarify the difference between the Private Licensed Placement Agency Resource Homes and the foster homes currently developed by licensed Child Placement Agencies. **RESPONSE:** There are no differences. Private Licensed Placement Agencies must be licensed as a Child Placement Agency by the Child Welfare Agency Review Board in order for them to approve a family that applies to serve as a foster home with a PLPA.

COMMENT 2: What changes will these rule changes have on current foster homes approved by licensed Child Placement Agencies?

RESPONSE: There will not be any changes on current foster homes approved by licensed Child Placement Agencies as a result of these rule changes.

COMMENT 3: Are Private Licensed Placement Agencies subject to the current Placement and Residential Licensing Regulations? **RESPONSE:** Yes.

COMMENT 4: Please clarify: Structured Analysis Family Evaluation (SAFE) home studies (note: resource parents must reside in their residence prior to a SAFE home study being completed on the home).

RESPONSE: Before a SAFE home study can be completed, the parents must be living in the residence in which they plan to serve as a resource parent.

COMMENT 5: Are resource parents required to own or rent their place of residence prior to initiating the pre-service training process?

RESPONSE: There may be situations in which a recruited family could be assessed and approved to begin the pre-service training process but not yet reside in the home in which they plan to serve as resource family.

Commenter's Name: Lori Vandagriff, Supervisor of Child Placement Services

COMMENT 1: In a couple of places it states that PLPA resource homes are expected to take children ages 6-18 and sibling groups – I'm wondering if that means kids under 6 years are not going to be referred anymore unless part of a sibling group. **RESPONSE:** It will not prohibit DCFS from referring children under 6 years to PLPAs, but DCFS staff will be encouraged to primarily refer children ages 6-18 and sibling groups to PLPAs. However, if a PLPA would best meet the needs of a child under the age of 6, then that referral could still be made to a PLPA.

COMMENT 2: Regarding the adoption of their foster child(ren) by the resource parent it states that a' Consideration to Adopt staffing MAY

occur’ – does that mean that DCFS doesn’t have to schedule one if they don’t want to?? Would SHALL be more appropriate?? **RESPONSE:** There will be a staffing discussion among a child’s team regarding adoption considerations but there may not need to be a specific “Consideration to Adopt Staffing” for this purpose which is why a “shall” is not appropriate. For example, if during the Permanency Planning Hearing (PPH) Staffing the entire team is present and discusses the resource parents adopting their foster child, there would not need to be a separate “Consideration to Adopt Staffing” to have the same conversation again.

COMMENT 3: Completion of the CFS-367 Referral form – Will this form be emailed to the PLPA instead of phone calls or texts regarding referrals or in addition to calls and texts. **RESPONSE:** Referrals may be submitted by an array of communication modalities to include the CFS-367, phone calls, texts, and/or emails.

COMMENT 4: PLPA home transitioning to be a DCFS home – If all paperwork (including background checks) is provided to DCFS by the PLPA, will the family still have to ‘re-do’ background checks as they do now in order to be open as an adoptive home? And if a DCFS home wants to transition to a PLPA, will the same paperwork be given to the PLPA by DCFS? **RESPONSE:** Yes and yes.

COMMENT 5: 15 hours of continuing education – it states CALANDER YEAR and not YEAR FROM APPROVAL DATE – there has always seemed to be confusion over when the year begins. So if a family is opened in May 2020, and during the first year the 15 hours are not required, when would the year start and end that they need to accumulate the 15 hours?? **RESPONSE:** If a resource home is opened in May 2020, then its first set of 15 continuing education hours would be due in May 2022.

Commenter’s Name: Ralph M. Shenefelt, Senior Vice President, Health and Safety Institute

COMMENT:

I. Proposed Rule Language

a. D. Verify that the family has completed: 2) CPR and Standard First Aid Certification: First Aid and CPR training and certification will only be accepted from a certified trainer associated with the American Heart Association, the National Safety Council, or the American Red Cross.

II. Requested Amendment

a. D. Verify that the family has completed: 2) CPR and Standard First Aid Certification: First Aid and CPR training and certification will only be

accepted from a certified trainer associated with the American Heart Association, the National Safety Council, the Health & Safety Institute or the American Red Cross.

b. The Health and Safety Institute (“HSI”) is comprised of four emergency care training program brands; the American Safety and Health Institute (“ASHI”), MEDIC First Aid® EMS Safety Services and 24-7 EMS & Fire. These four brands of training programs include a range of courses covering first aid and CPR training for the community and workplace as well as both basic and advanced life support training for EMS professionals and other healthcare providers.

c. The American Heart Association®, Inc. (“AHA”), the American National Red Cross (“ARC”) and HSI are the largest providers of CPR training in the United States.^{1, 2}

d. Like the AHA and ARC, but unlike the National Safety Council (“NSC”), HSI is nationally accredited by the Commission on Accreditation of Pre-Hospital Continuing Education (“CAPCE”). CAPCE is the national accrediting body for Emergency Medical Services continuing education courses and course providers.

e. HSI’s emergency care training programs brands are currently accepted, approved or recognized as an industry credential meeting the requirements of more than 7000 US state regulatory agencies, occupational licensing boards, national associations, commissions and councils in more than 550 occupations and professions.

f. The training business units of the HSI, AHA, NSC and ARC are similar.

- i. Each corporation develops and markets commercially available, proprietary training programs, products, and services to their approved Training Centers; either directly or via distributors.
- ii. The business structures of the approved Training Centers include sole proprietorships, partnerships, corporations, LLCs, non-profits, as well as both large and small government agencies.
- iii. Instructors are authorized to certify course participants. Certification requires instructor evaluation of hands-on skills to verify skill competency.

¹ Anderson ML, et al. Rates of cardiopulmonary resuscitation training in the United States. *JAMA Intern Med.* 2014 Feb 1;174(2):194-201 doi: 10.1001/jamainternmed.2013.11320 [retrieved 05/14/2020].

² Virani S, et al. Heart Disease and Stroke Statistics- 2020 Update. A Report from the American Heart Association *Circulation.* 020; 141:00–00. Clinical Statements and Guidelines. Awareness and Treatment, pg. e318. <https://www.ahajournals.org/doi/pdf/10.1161/CIR.0000000000000757> [retrieved 05/14/2020].

g. The proposed rule language:

- i. Prevents full and free competition by unfairly fixing a bias for the proprietary CPR and first aid training programs, products and services of the AHA; its Approved Training Centers and its for-profit CPR training company³; the ARC and its Licensed Training Providers; and the NSC and its authorized Training Centers - all whom have a vested economic interest in first aid and CPR training, particularly where it is required for occupational licensing; and
- ii. Has an unfair adverse economic impact on licensees by denying the use of acceptable and potentially lower cost first aid and CPR training alternative, preventing greater choice in vendor selection, quality, and service; and
- iii. Is an unreasonable impediment to the 76 HSI Training Centers in Arkansas, most of which are small or micro businesses employing or independently contracting with nearly 239 HSI Authorized Instructors, as it discourages the expansion of existing or new HSI Training Centers and reduces job opportunities; and
- iv. Harms HSI's business and its reputation as a bona fide, nationally recognized and accredited training organization.

III. Additional Facts

a. HSI publishes and administers a set of quality assurance standards designed to monitor and improve the performance of HSI, its approved Training Centers and Authorized Instructors so that the products and services provided meet or exceed the requirements of regulatory authorities and other approvers.

b. HSI is a member of the Council on Licensure, Enforcement and Regulation (CLEAR), the international resource for professional regulation stakeholders. HSI Quality Assurance representatives are Nationally Certified Regulatory Investigators.

c. HSI is a member of the American National Standards Institute (ANSI) and ASTM International (ASTM) – both globally recognized leaders in the development and delivery of international voluntary consensus standards.

Conclusion

The AHA, ARC and HSI are the largest providers of CPR training in the United States. The proposed rule language prevents full and free

³ *Dallas-based American Heart Association to spin off a CPR training company*, July 5, 2018 Available: <https://www.dallasnews.com/business/health-care/2018/06/29/dallas-based-american-heart-association-spin-off-cpr-training-company> [retrieved 04/09/2020].

competition by unfairly fixing a bias for the proprietary CPR and first aid training programs, products and services of the AHA, ARC and NSC. The proposed rule language will have an unfair adverse economic impact on licensees, is an unreasonable and unnecessary impediment to HSI Training Centers and Authorized Instructors and harms HSI's business. Amending the proposed rule language as requested will resolve these problems, while achieving the goal of maintaining the quality measures necessary to protect public health and safety.

We support regulations that do not harm employment, competition, or innovation. We value, believe in, and promote successful completion of a valid CPR and first aid training program as an important component in protecting public safety, health, and welfare. We look forward to helping the Board protect the health and safety of the citizens of Arkansas.

RESPONSE: The agency will add "the Health & Safety Institute" to the list of approved vendors for First Aid and CPR certification.

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

1. Are PLPAs specifically referenced in the Arkansas Code, or do they fall under another category? **RESPONSE:** PLPAs are not specifically referenced in Arkansas Code. They fall under the definition for "child placement agency" and "child welfare agency" as defined in A.C.A. § 9-28-402.

2. Is there specific statutory authority for the requirement that resource parents be financially able to care for their own needs without the foster care board payment to supplement their income, or is this a DCFS policy decision?

RESPONSE: Arkansas Code Annotated § 9-28-405(a)(1) requires the Child Welfare Agency Review Board (CWARB) to promulgate and publish rules setting the minimum standards governing the granting, revocation, refusal, conversion, and suspension of licenses for a child welfare agency and the operation of a child welfare agency. The rules that the CWARB has promulgated to this effect are the Minimum Licensing Standards for Child Welfare Agencies. Minimum Licensing Standard 206.5 requires that the foster family shall provide documentation of sufficient financial resources to meet their needs. DCFS, as a child welfare agency itself, then expands upon this in the proposed rule to include the language about financially meeting their own needs without the foster care board payment to supplement their income. DCFS believes it has the statutory authority for this decision under A.C.A. § 9-28-103 and this would apply to PLPAs who accept placement of children in DHS custody.

3. Is there specific authority for the provision that PLPAs are expected to accept placement of older children/sibling groups? **RESPONSE:** DCFS believes it has the statutory authority for this decision under A.C.A. § 9-28-103.

4. What is the difference between a PLPA home and a DCFS resource home, other than the involvement of the private agency? **RESPONSE:** For PLPAs that accept placement of children in DHS custody, there are no differences. Both must meet Minimum Licensing Standards for Child Welfare Agencies and DCFS policy requirements.

5. Why must resource parents choose between being a PLPA home or being a DCFS resource home? **RESPONSE:** Minimum Licensing Standards for Child Welfare Agencies 210.1 states that a foster home shall be approved by only one (1) agency.

The proposed effective date is October 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 or supervise all child welfare activities in accordance with” the Department’s rules. Ark. Code Ann. § 20-76-201(2). The Department’s Division of Children and Family Services has the responsibility to “ensure child placements support the goal of permanency for children . . . and ensure the health, safety, and well-being of children when the division is responsible for the placement and care of a child,” *see* Ark. Code Ann. § 9-28-103(a)(6)-(7), and it also has the authority to promulgate rules necessary to carry out these duties. Ark. Code Ann. § 9-28-103(b).

13. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF COUNTY OPERATIONS** (Mr. Mark White, Ms. Mary Franklin)

a. **SUBJECT:** Medical Services Policy Manual Section E-200

DESCRIPTION:

Statement of Necessity

The change is necessary in order to comply with the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97), Helping Ensure Access for Little Ones, Toddlers, and Hopeful Youth by Keeping Insurance Delivery Stable Act (HEALTHY KIDS Act, P.L. 115-120), and the Bipartisan Budget Act of

2018 (BBA of 2018, P.L. 115-123). Also, the business processes are being removed from the Medical Services Policy Manual and relocated into a business process manual.

Rule Summary

Effective August 1, 2020, the Division of County Operations, Medical Services Policy Manual is being revised as follows:

- E-210: Clarified language and fixed grammatical errors
- E-220: Added Transitional Medicaid to the groups for which MAGI methodology is used to determine financial eligibility
- E-230: Removed example scenario
- E-240: Added clarifying language
- E-250: Removed example scenario
- E-251: Removed example scenario
- E-260: Added clarifying language
- E-261: Updated the section to comply with federal regulations
- E-262: Updated the section to comply with federal regulations
- E-263: Removed example scenarios
- E-264: Removed example scenario
- E-265: Added clarifying language and removed example scenario
- E-266: Changed caseworker to eligibility worker
- E-267: Added clarifying language
- E-268: Added clarifying language
- E-269: Changed section name from “Who is Eligible” to “Undue Hardship for Lottery/Gambling Winnings.” Deleted example scenario and updated the language in this section to cover Undue Hardship for Lottery/Gambling Winnings

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on June 14, 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:

1. Section E-261 states, “Income greater than or equal to \$80,000 to \$89,999 is countable income for two months, divided equally.” 42 U.S.C. § 1396a(e)(14)(K)(i)(II) uses the language “greater than or equal to \$80,000 but less than \$90,000.” Is DHS comfortable that the proposed language accurately indicates the applicable income range? **RESPONSE:** Yes, a specific amount is used to be clearer for staff.

2. Section E-267 excludes the Full Pregnant Women and Parent Caretaker Relative categories of assistance from the five percent gross income

disregard. Is there specific authority for these exclusions? **RESPONSE:** 42 CFR 435.100 and 42 CFR 435.116.

3. Are the undue hardship factors in Section E-268 taken from somewhere, or were they formulated for this rule? **RESPONSE:** They were formulated for this rule.

The proposed effective date is August 1, 2020.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The Department of Human Services is tasked with administering assigned forms of public assistance and other welfare activities or services that may be vested in it. Ark. Code Ann. § 20-76-201(1). The Department may “[m]ake rules and take actions as are necessary or desirable to carry out” this duty. Ark. Code Ann. § 20-76-201(12). “The appropriate division of the Department . . . is authorized to establish and maintain an indigent medical care program.” Ark. Code Ann. § 20-77-107(a)(1). The Department and its divisions are specifically authorized to promulgate rules as necessary to conform programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

14. DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES (Mr. Mark White, Ms. Janet Mann)

a. SUBJECT: Ambulance Services – SPA 2020-0009 and Transportation Provider Manual

DESCRIPTION:

Statement of Necessity

A revision to the Arkansas Medicaid State Plan is necessary to increase rates for ambulance services in the Medicaid transportation program based upon a rate review by DHS, as required by Executive Order 19-02. The revisions to the transportation manual clarify who can sign the physician certification statement, how to calculate number of miles traveled, exclusions, and billing processes.

Rule Summary

Rates in the Ambulance program will increase by eleven percent (11%) based upon rate review of the service. The rate increase was recommended upon a regular rate review process.

- Section 201.100 clarifies provider participation and enrollment requirements for ambulance transportation providers applying to be reimbursed for Advanced Life Support services.
- Section 204.000 of the transportation manual is revised to clarify who can sign the physician certification statement.
- Section 205.000 of the manual is revised to clarify that mileage is paid only for that part of the trip the patient is a passenger in the ambulance and acceptable methods of calculating the mileage.
- Section 213.200 clarifies that ambulance service to a doctor's office or clinic is not covered except as described in Section 204.000.
- Section 214.000 is revised to clarify verbiage.
- Section 216.000 is revised to clarify verbiage.
- Section 241.000 is revised to remove methodology no longer in use.
- Section 251.000 clarifies that when more than one ambulance service is provided to one beneficiary on the same date of service, then all service runs must be billed on one claim.
- Section 252.410 is revised to define Advanced Life Support ambulance services and Basic Life Support Services.
- Arkansas Medicaid State Plan is amended at Attachment 4.19-B, Page 8 to indicate the rates for services in the ambulance program will increase effective for claims with dates of service on or after July 1, 2020.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on June 12, 2020. The agency indicated that 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:

1. What is the status on CMS approval for the SPA? **RESPONSE:** The SPA was approved by CMS on June 10, 2020.

2. In Section 204.000, under Non-Repetitive Transports, the provider manual lists categories of medical personnel who are permitted to provide certification regarding a patient's condition. This list seems to substantially mirror the list found in 42 CFR § 410.40(a)(iii), which governs Medicare coverage of ambulance services. However, the CFR list includes "licensed practical nurse," "social worker," and "case manager." Is there a specific reason that the proposed rules do not allow for certification by an individual who falls into one of these three categories?

RESPONSE: You are correct in that we were trying to align more with Medicare policy. However, we were not comfortable expanding the certification to all providers at this time. We have historically required

physicians to complete the certification, but feedback from providers indicated that more flexibility was desired. We wanted to move in that direction, but after consultation with our clinical staff, decided to limit it to clinicians who could use some medical judgment and would not be limited to only repeating what was in the chart.

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, the additional cost of the rule is estimated at \$4,472,065 for the current fiscal year (\$1,271,408 in general revenue and \$3,200,657 in federal funds) and \$4,472,065 for the next fiscal year (\$1,271,408 in general revenue and \$3,200,657 in federal funds). The total estimated cost by fiscal year to state, county, and municipal government to implement the rule is estimated at \$1,271,408 for the current fiscal year and \$1,271,408 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 Ambulance Services was completed in November 2019. The review resulted in a recommended increase of 11% for ambulance services performed in the Transportation program. A revision of the Arkansas Medicaid Transportation Policy was necessary to clarify who can sign the physician certification statement; how to calculate the number of miles traveled; exclusions; and billing processes.

(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 Ambulance Services was completed in November 2019. The review resulted in a recommended increase of 11% for ambulance services performed in the Transportation program. A revision of the Arkansas Medicaid Transportation Policy was necessary to clarify who can sign the physician certification statement; how to calculate the number of miles traveled; exclusions; and billing processes.

*(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 Ambulance Services was completed in November 2019. The review resulted in a recommended increase of 11% for ambulance services performed in the Transportation program based on a comparison to surrounding states.

(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.*

Ambulance rates will be reviewed no less frequently than every four years in accordance with EO 19-02.

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). Portions of these revisions incorporate the federal regulations regarding Medicare coverage of ambulance services, including origin and destination requirements, special nonemergency transport requirements, and who may sign a certification statement. *See* 42 C.F.R. § 410.40.

~~b. — Medication Assisted Treatment Including the Following Provider Manuals: Federally Qualified Health Center 1-19, Hospital 5-19, Nurse Practitioner 3-19, Outpatient Behavioral Health Services 1-19, Physician 4-19 and Rural Health Clinic 1-19; Pharmacy 2-19; Section I-4-19; State Plan Amendment #2020-0013~~

~~15. — DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL & PROF. LICENSING BOARDS AND COMMISSIONS, AUCTIONEER'S LICENSING BOARD~~

~~a. — SUBJECT: Rules of the Arkansas Auctioneer's Licensing Board~~

16. DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL & PROF. LICENSING BOARDS AND COMMISSIONS, STATE BOARD OF BARBER EXAMINERS (Ms. Phyllis Jacobsen, Ms. Denise Oxley)

a. SUBJECT: Rules for Barbering

DESCRIPTION: This amendment to Rule Number 023.00.18-002, "Revisions to the Rules and Regulations for Barbering including Safety and Sanitation," is due to Acts of 2019 Legislation:

Act 315, Eliminate references to the word "regulations".

Act 386, To make technical corrections

Act 426, Temporary and provisional licenses

Act 820, Military licensure

Act 893, Use the word Rule and eliminate "Regulations"

Act 910, Transformation and Efficiencies Act of 2019, changing title to Director

Act 990, Pre-licensure determination for felony

Act 1011 Basic educational background for reciprocities.

These changes, along with revisions requested by the board, will effectively bring our rules into compliance.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on June 2, 2020. The State Board of Barber Examiners 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 thereto:

QUESTION 1: In reference to the addition of Rule 5(E), concerning display of the inspection report:

(a) Could you please explain what an inspection report is? **RESPONSE:** An inspection report is a report generated by a board inspector or board member pursuant to Ark. Code Ann. § 17-20-206(c) which authorizes inspections of barbershops or barber schools “at any time during business hours.”

(b) If inspection reports are the reports generated by inspection of barbershops by the board or board-authorized individuals, how often are inspections done (biannually, annually, monthly, only upon renewal, etc.)? **RESPONSE:** Barbershops and barber schools are inspected at least twice per year and more frequently if a complaint or other need arises.

(c) Is this provision added pursuant to the general rulemaking authority in Ark. Code Ann. § 17-20-206, or is there specific statutory authority for this provision elsewhere? **RESPONSE:** This provision is added pursuant to the general rulemaking authority in Ark. Code Ann. § 17-20-206. It is similar to a rule of the Cosmetology Board.

QUESTION 2: Concerning Rule 15(A)(2), what would the board consider to be “reasonable time?” **ANSWER:** The board did not define “reasonable time” for the purposes of Rule 15(A)(2), but would consider fifteen (15) business days a reasonable period of time.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Barber Examiners has authority to make and promulgate reasonable rules for the administration of Title 17, Chapter 20 of the Arkansas Code concerning barbers. *See* Ark. Code Ann. § 17-20-206(a). 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 386 of 2019, sponsored by Senator Jason Rapert, made technical corrections to Title 17 of the Arkansas Code concerning professions, occupations, and businesses. Changes were made to Ark. Code Ann. §§ 17-20-409(b) and 17-20-424(a) concerning barber schools. *See* Act 386 of 2019, §§ 4 and 5.

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 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 State Board of Barber Examiners was transferred to the newly created department. *See* Act 910 of 2019, § 5265. The position of “Executive Secretary” of the board was re-named as the “Director” of the board. *See* Act 910, § 5411.

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.

17. **DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL & PROF. LICENSING BOARDS AND COMMISSIONS, MANUFACTURED HOME COMMISSION** (Mr. Aaron Howard, Ms. Denise Oxley)

a. **SUBJECT: Rules Including General Installation & Anchoring Specifications**

DESCRIPTION: The Arkansas Manufactured Home Commission is proposing changes to its Rules Including General Installation and Anchoring Specifications. The proposed rule changes will bring the existing Rule into conformance with the applicable requirements set forth by the 2019 legislative session, and the federal requirements for a State’s Dispute Resolution Program.

In accordance with Act 315 of 2019, applicable instances of use of the word, “regulations” have been changed to “rules.” Where the word “regulations” remains in the proposed rule, it references federal regulations.

In accordance with Act 426 of 2019, Sections 303 and 304 contain subsections for reciprocity and provisional licensure.

In accordance with 24 CFR 3288, Section 404(A) and (B) now have similar language to the federal statute, making clear the criteria for receipt of consumer complaints for alleged defects and for dispute resolution.

PUBLIC COMMENT: A public hearing was held in this matter on June 2, 2020. The public comment period expired on May 28, 2020. The Arkansas Manufactured Home Commission received no public comments.

The proposed effective date of this rule is August 3, 2020.

FINANCIAL IMPACT: The commission indicated the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Manufactured Home Commission has authority to make rules concerning: **1)** setting uniform, reasonable standards for the proper initial installation of a new manufactures home, which equal or exceed installation standards promulgated under the federal standards; **2)** secondary installation of used manufactured homes; **3)** licensing and certification of manufacturers of manufactured homes or

modular homes; **4)** licensing and certification of any retailer, salesperson, and others engaged in the sale of manufactured or modular homes; **5)** licensing, training, and certification of any installer engaged in the installation of manufactured or modular homes; **6)** procedures for investigation and timely resolution of construction or installation defects in manufactured homes that are reported to the commission during the one-year period beginning on the date of installation, including violations of federal standards and violations of the rules governing installation promulgated by the commission; **7)** procedures for investigation and timely resolution of disputes among manufacturers, retailers, and installers of manufactured homes regarding responsibility for the correction or repair of construction or installation defects in manufactured homes that are reported to the commission during the one-year period beginning on the date of installation; **8)** procedures for timely inspection and certification of a percentage of the initial installations of new manufactured homes installed in the state on a sample basis to assure compliance with installation standards adopted by the commission and to comply with requirements set forth by the United States Department of Housing and Urban Development; and **9)** investigation, required corrections, and remedial actions. *See* Ark. Code Ann. §§ 20-25-106(a) and (c).

Pursuant to Ark. Code Ann. § 20-25-106(n)(1), the commission shall adopt rules necessary to comply with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq. Additionally, the commission shall also adopt rules to provide for the effective enforcement of all the Manufactured Home Construction and Safety Standards, 24 C.F.R. § 3280.1 et seq., in order to have the state plan authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., approved by the United States Secretary of Housing and Urban Development. *See* Ark. Code Ann. § 20-25-106(n)(2).

The director, with approval of the commission, has authority to establish reasonable fees for: **1)** certification, including licensing of manufactured or modular home salespersons and setting up, installing, and anchoring manufactured homes, and **2)** monitoring inspection fees in accordance with the guidelines established by the United States Secretary of Housing and Urban Development and provide for participation in the fee distribution system set out in 24 C.F.R. § 3282.307. *See* Ark. Code Ann. § 20-25-107(d).

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 426 of 2019, sponsored by Representative Bruce Cozart, authorizes occupational licensing entities to grant expedited temporary and provisional licensing for certain individuals. *See* Act 426 of 2019.

18. **DEPARTMENT OF TRANSFORMATION AND SHARED SERVICES, GEOGRAPHIC INFORMATION SYSTEMS** (Mr. Shelby Johnson, Mr. Daniel Phillips)

a. **SUBJECT: Standard of Practice No. 1**

DESCRIPTION: The Geographic Information System is proposing changes to its Standards of Practice No. 1 rule. This rule was first promulgated in 1982 and the last revision was in 2009. The purpose of this rule is to help safeguard public and private land interest by setting minimum accuracies for land boundary surveys and minimum requirements for research, investigation, monumentation, and plat preparation.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on May 1, 2020. The GIS Office provided the following summary of comments received and its responses thereto:

1. **Commenter’s Name:** Mark Ashley
Commenter’s Business/Agency: Covey Rise Engineering
Date Received: 9/25/19
Summary of Comments: The revision dates should remain so that surveyors could prove that their older plats conform to the standards that were in effect at the time of the survey.
Division’s Response to Comment: This has been reviewed by the Land Survey Advisory Board (LSAB) and determined that it would be good to keep the revision dates so that Standards of Practice compliance can be checked on older plats as needed.
Changes made to Proposed Revision as a result of this comment: Revision dates to remain in the rule.

2. **Commenter's Name:** Aaron Rasburry
Commenter's Business/Agency: Rasburry Surveying LLC
Date Received: 9/25/19
Summary of Comments: There is a lack of clarity in the proposed basis of direction language in 4.1.A.9.a.ii "When the basis of direction is derived from the Arkansas Coordinate System identify as geodetic or grid. The year of the system adjustment shall be shown with a notation specifying the geographic location...where the calculation was made."
Division's Response to Comment: This was thoroughly reviewed by Land Survey Advisory Board (LSAB) member Ivan Hoffman who developed proposed language with better clarity.
Changes made to Proposed Revision as a result of this comment:
Made language change to 4.1.A.9 to clarity. New language reads:
a. The directional reference system shall be clearly described on the plat.
i. When the direction is based on a deed or survey plat record bearing or azimuth, include document references (book and page or other instrument number) and specify which boundary line controls the basis of direction.
ii. When the basis of direction is derived from the Arkansas Plane Coordinate System, identify the year of the system adjustment and the grid zone."
3. **Commenter's Name:** Lee Kendrick
Commenter's Business/Agency: ArDOT
Date Received: 9/25/19
Summary of Comments: Regarding 4.1.A.13, "Any additional sheets shall include required seals(s) with dated signature". The point was made that it is not always appropriate to seal and date every additional sheet submitted that is not a plat.
Division's Response to Comment: Reviewed by the LSAB and no change proposed.
Changes made to Proposed Revision as a result of this comment: None.
4. **Commenter's Name:** Aaron Rasburry and Jay Young
Commenter's Business/Agency: Rasburry Surveying LLC (Aaron) and Development Consultants Inc. (Jay)
Date Received: 9/25/19
Summary of Comments: It is unclear whether the current standards require the record description or the measured description to be shown on the plat. (4.1.A.12)
Division's Response to Comment: Reviewed and discussed thoroughly with the LSAB. There are instances where showing the

record description is most appropriate and instances where showing the measured description if most appropriate on the survey plat.

Changes made to Proposed Revision as a result of this comment: Reverted proposed language in 4.1.A.12 to the more general language “Tract description.”

5. **Commenter’s Name:** J. Cody Goodwin, PE, PLS
Commenter’s Business/Agency: Goodwin Professional Services, LLC
Date Received: 3/26/2020
Summary of Comments: Recommend adding Route Surveys to the specific types of Surveys offered.
A good reference is the Louisiana Rules/Laws for this specific type of Survey. It’s not a boundary survey but it would help regulate and speak directly to this type of Survey. These are not Boundary Surveys and there is no specific rules pertaining to this type Survey that I am aware of. This would help regulate unlicensed practice by utility companies and others by writing descriptions or maps to define a certain easement that is impossible to retrace.
Division’s Response to Comment: This is a legislative pertaining to the definition of surveying and cannot be adjusted in this rule. This can only be changed by the Arkansas General Assembly.
Changes made to Proposed Revision as a result of this comment: None.

6. **Commenter’s Name:** J. Cody Goodwin, PE, PLS
Commenter’s Business/Agency: Goodwin Professional Services, LLC
Date Received: 3/26/2020
Summary of Comments: I recently performed a Survey on Red River which had major migrations through time. Section 15 requires we show the number of acres in each quarter-quarter. This would add much effort and be very confusing to tax assessors and landowners when we have to spend days proportioning accretions for the “40”. This also results in areas of “40’s” that can be extremely large.
I suggest making this optional in river boundary scenarios where the river has added accretions. This is not an issue where there has been erosion or “taking” by the river migration. Just my two cents.
Division’s Response to Comment: This is a legislative item and cannot be adjusted in this rule. This is required by A.C.A 17-48-107.
Changes made to Proposed Revision as a result of this comment: None.

7. **Commenter's Name:** J. Cody Goodwin, PE, PLS
Commenter's Business/Agency: Goodwin Professional Services, LLC
Date Received: 3/26/2020
Summary of Comments: Also, in regards to this area calculation per quarter. Some cases it is not feasible to Survey the "40" lines due to the nature of the Survey. I recommend we put the basis of the area calculations per "40".
This could be stating is based on others surveys, scaled, by record, or actual survey data.
Division's Response to Comment: This is a legislative item and cannot be adjusted in this rule (ACA 17-48-107).
Changes made to Proposed Revision as a result of this comment: None.
8. **Commenter's Name:** Keven Gregory, PS
Commenter's Business/Agency: Consolidated Land Services
Date Received: 4/02/2020
Summary of Comments: Kevin's comment regarding 3.1.C: "Could have conformity to which is more stringent or meets or exceeds both sets of standards, that way it will meet the most restrictive."
Division's Response to Comment: This is addressed in the response action to Robert Green's comment #4. The proposed ALTA language is more appropriate for section 3.1.C.
Changes made to Proposed Revision as a result of this comment: Added language form ALTA Standards to section 3.1.C.
9. **Commenter's Name:** Keven Gregory, PS
Commenter's Business/Agency: Consolidated Land Services
Date Received: 4/02/2020
Summary of Comments: In 3.2.B, Kevin's recommends changing word "mistakes" to "blunders"
Division's Response to Comment: Reviewed thoroughly with the LSAB and determined not to be significant enough to change.
Changes made to Proposed Revision as a result of this comment: None
10. **Commenter's Name:** Keven Gregory, PS
Commenter's Business/Agency: Consolidated Land Services
Date Received: 4/02/2020
Summary of Comments: Kevin's comment regarding 3.2.C.1: "If someone is not already doing what they are supposed to do, it is highly unlikely that adding another similar requirement in a different place will magically inspire conformity. Adding

additional calls in what can already be an in depth description can make the description difficult to read and interpret. Also allows the possibility of an angle point in a straight line if a lawyer uses that description in his deed without removing the call for the offset monument.

Rather than adding a requirement, enforce the one already in place.”

3.2.C.1 with proposed addition (underlined)

Location. The surveyor shall locate or confirm the prior location of permanent monuments at each boundary corner of the lot, parcel, tract or line being surveyed. When the placement of a required monument at its proper location is impractical, an offset monument may be set. The location of said offset monument shall be clearly shown on the plat, dimensioned, and incorporated into the surveyed land boundary description. The correctness or incorrectness of previously placed (existing) monuments shall be confirmed by the surveyor, and they shall be shown and referenced on the plat.

Division’s Response to Comment: Reviewed thoroughly with LSAB. Determined it is best to remove the proposed language to leave this to practitioner’s professional judgment.

Changes made to Proposed Revision as a result of this comment: Removed proposed language and reverted back to the current language.

11. **Commenter’s Name:** Keven Gregory, PS
Commenter’s Business/Agency: Consolidated Land Services
Date Received: 4/02/2020
Summary of Comments: Kevin’s comment regarding 3.2.C.2: “PK nails with or without a washer survive in the middle of the road until the 1st snow plow hits it. At least with a CPS, the head will snap off and a portion of the spindle can remain in the hole, which makes it easier to find. If you have the surrounding survey plats, you can typically discover where the unmarked monument came from.

I would prefer a rebar/cap set in the road just enough below road level that it will not be plucked by a plow and will hopefully still be readable after a few years with traffic running over it.”

Division’s Response to Comment: Reviewed with LSAB who agrees that the above practice is very prudent but may not be the best method in all scenarios. This brought to our attention that there is no language allowing for alternate monument types such as CSP’s, PK nails with washers, RR spikes, etc... Therefore, we have

developed additional language to account for these non-standard monument types.

Changes made to Proposed Revision as a result of this comment: Added “Alternate monument types may be used in asphalt, concrete, or rock surfaces where appropriate (e.g. PK/mag nail with aluminum washer, cotton picker spindle, bridge spike, RR spike, chisel marks).” to 3.2.C.2.

12. **Commenter’s Name:** Keven Gregory, PS
Commenter’s Business/Agency: Consolidated Land Services
Date Received: 4/02/2020
Summary of Comments: Kevin’s comment regarding 3.2.C.3: This is a set of rules and regulations to be followed. If something is not being mandated, it should not be in this document. This should not be a set of guidelines to be followed if convenient.

Many surveys can be completed on an assumed basis or tied to a previous survey without the need to GPS a set of coordinates on certain corners. There are also many 1/4 and Section Corners that cannot be directly observed with GPS. Mandating State Plane coordinates would be overly restrictive.

Division’s Response to Comment: Reviewed with LSAB. Determined that language should remain (even though it is not a requirement) with modifications to specify coordinate system if coordinates are listed on the survey plat.

Changes made to Proposed Revision as a result of this comment: Added “Identify the datum and the year of system adjustment for geographic coordinates. Identify the year of system adjustment and the grid zone for plane coordinates.” to the proposed language of 3.2.C.3.

13. **Commenter’s Name:** Keven Gregory, PS
Commenter’s Business/Agency: Consolidated Land Services
Date Received: 4/02/2020
Summary of Comments: Kevin’s comment regarding the “basis of acceptance” language of 4.1.A.2: This is rarely done, unless a listing of the survey plats used on the survey is sufficient to meet this requirement. A listing of plats is not always given either. **Division’s Response to Comment:** Reviewed with LSAB and modified language slightly based on Dr. Elgin’s comment.
Changes made to Proposed Revision as a result of this comment: Revised this section to read “Ties to corners, monuments, corner accessories, and other relevant reference information, which control the location of a boundary or corner,

the surveyor's basis for acceptance thereof, and the originating source of any found monument or accessory if known.”

14. **Commenter's Name:** Keven Gregory, PS
Commenter's Business/Agency: Consolidated Land Services
Date Received: 4/02/2020
Summary of Comments: Kevin's comment regarding 4.1.A.3: This can cause clutter on the plat. As long as the record filing information is included, a correlation can be made by comparing the plat with the record title instrument without putting that information on the plat.
Division's Response to Comment: This comment pertains to showing the record and measured bearing and distances on boundary lines. Reviewed with LSAB and recommend leaving this section unchanged.
Changes made to Proposed Revision as a result of this comment: None.

15. **Commenter's Name:** Keven Gregory, PS
Commenter's Business/Agency: Consolidated Land Services
Date Received: 4/02/2020
Summary of Comments: Kevin's comment regarding 4.1.A.16: Could add additional requirements as to the location of the code, seal, date, etc. (guidance from an earlier SLS e-mail) as well as the Code being in "RED".
Division's Response to Comment: This is a comment that brought about further review of this requirement. In consultation with the AG's office liaison, it was observed that modifications can be made to the "plat coding instructions" outside of this rule as needed by the division as long as surveyors were kept up to date with the changes. For this reason, I recommend changing the language to be more general, allowing modification as needed to the "plat coding instructions".
Changes made to Proposed Revision as a result of this comment: Recommend revising language to read: "The appropriate index code shall be placed on each plat per the State Surveyor's current "Survey Plat Coding Instructions""

16. **Commenter's Name:** Robert "Cotton" Green, PS
Commenter's Business/Agency: Consolidated Land Services
Date Received: 4/02/2020
Summary of Comments: Cotton recommends leaving "professional surveyor" in the introductory language.
Division's Response to Comment: Reviewed with LSAB and recommend leaving this wording out as it is redundant

Changes made to Proposed Revision as a result of this

comment: None. Retain proposed removal of “professional surveyor” from introductory language.

17. **Commenter’s Name:** Robert “Cotton” Green, PS
Commenter’s Business/Agency: Consolidated Land Services
Date Received: 4/02/2020
Summary of Comments: Cotton recommends removing the language “to the best of his or her ability” from the introductory language of 3.1.
Division’s Response to Comment: Reviewed with LSAB and recommend no change.
Changes made to Proposed Revision as a result of this comment: No change to proposed language.
18. **Commenter’s Name:** Robert “Cotton” Green, PS
Commenter’s Business/Agency: Consolidated Land Services
Date Received: 4/02/2020
Summary of Comments: Cotton recommends removing “his or her” from 3.1.A.
Division’s Response to Comment: Reviewed with LSAB and recommend no change.
Changes made to Proposed Revision as a result of this comment: No change to proposed language.
19. **Commenter’s Name:** Robert “Cotton” Green, PS
Commenter’s Business/Agency: Consolidated Land Services
Date Received: 4/02/2020
Summary of Comments: Cotton recommends modifying the language in 3.1.C for more clarity by adding in language from the ALTA/NSPS Standards, “Where conflicts between the standards set forth herein and any such jurisdictional requirements and standards of practice occur, the more stringent shall apply.”
Division’s Response to Comment: Reviewed with LSAB and determined we should adopt Mr. Green’s proposed language.
Changes made to Proposed Revision as a result of this comment: Revised this section of the rule to read: “Lot and Block subdivision surveys shall conform to the minimum accuracy standards as set forth in Section 2. Where conflicts between the standards set forth herein and any such jurisdictional requirements and standards of practice occur, the more stringent shall apply. Lot surveys and plats within such subdivisions shall be tied to sufficient monumentation within the subdivision required to verify the correctness of the survey.”

20. **Commenter's Name:** Robert "Cotton" Green, PS
Commenter's Business/Agency: Consolidated Land Services
Date Received: 4/02/2020
Summary of Comments: Mr. Green's comment regarding 3.2.A If the surveyor has field crew employees, aren't they under his direct supervision? I locate monuments etc. all the time and have field crew make the necessary ties...
Division's Response to Comment: Reviewed with LSAB and determined that no change is necessary since the proposed change to this section further clarified what is required.
Changes made to Proposed Revision as a result of this comment: No change to proposed language.
21. **Commenter's Name:** Robert "Cotton" Green, PS
Commenter's Business/Agency: Consolidated Land Services
Date Received: 4/02/2020
Summary of Comments: Cotton recommends replacing the word "mistakes" with the word "blunders" in 3.2.B. (Also see Kevin Gregory's comment #2) **Division's Response to Comment:** Reviewed with LSAB and determined that this change is not significant enough to make a change.
Changes made to Proposed Revision as a result of this comment: None.
22. **Commenter's Name:** Robert "Cotton" Green, PS
Commenter's Business/Agency: Consolidated Land Services
Date Received: 4/02/2020
Summary of Comments: Cotton recommends removing the proposed additional language in 3.2.C.1 (underlined):
- Location. The surveyor shall locate or confirm the prior location of permanent monuments at each boundary corner of the lot, parcel, tract or line being surveyed. When the placement of a required monument at its proper location is impractical, an offset monument may be set. The location of said offset monument shall be clearly shown on the plat, dimensioned, and incorporated into the surveyed land boundary description. The correctness or incorrectness of previously placed (existing) monuments shall be confirmed by the surveyor, and they shall be shown and referenced on the plat.
- Division's Response to Comment:** Reviewed with the LSAB and determined that it is best to use Mr. Green's advice and remove this proposed language and leave this up to the practitioner's professional judgment.

Changes made to Proposed Revision as a result of this comment: Removed the proposed language, reverting back to original language.

23. **Commenter's Name:** Robert "Cotton" Green, PS
Commenter's Business/Agency: Consolidated Land Services
Date Received: 4/02/2020
Summary of Comments: Cotton comment regarding Ivan Hoffman's comment #25 on 3.2.C.2: "Offset monuments should be set in addition to a nail, RR spike etc. . ."
Division's Response to Comment: Reviewed with LSAB and determined that this best left to the practitioner's judgment and not make the setting of offset monuments a requirement if a monument can be set in the road.
Changes made to Proposed Revision as a result of this comment: None.
24. **Commenter's Name:** Robert "Cotton" Green, PS
Commenter's Business/Agency: Consolidated Land Services
Date Received: 4/02/2020
Summary of Comments: Cotton's comment regarding the addition to 3.2.C.3: "Either make it a requirement or NOT."
Division's Response to Comment: Reviewed with the LSAB and it was decided to leave this language as proposed except for clarification to the reported coordinate system.
Changes made to Proposed Revision as a result of this comment: Left this language as proposed with clarification to the reported coordinate system.
25. **Commenter's Name:** Robert "Cotton" Green, PS
Commenter's Business/Agency: Consolidated Land Services
Date Received: 4/02/2020
Summary of Comments: Cotton's comment regarding 4.1.B.3: "Subdivision lot, block surveys should not be exempt from filing. (UNLESS no new monuments are re-set for the retracing survey.)"
Division's Response to Comment: This is a state statute that cannot be adjusted in this rule (A.C.A. 17-48-106 (c)). It can only be modified by the Arkansas General Assembly.
Changes made to Proposed Revision as a result of this comment: None.
26. **Commenter's Name:** Tom Webb, PS
Commenter's Business/Agency: Retired
Date Received: 4/03/2020
Summary of Comments: Comments by Thompson Webb, AR PLS 1032 on the proposed Section 3.1.B. of Standards of Practice

of the Arkansas Standards of Practice for Property Boundary Surveys and Plats. The draft section of the new standards now reads:

“The current BUREAU OF LAND MANAGEMENT (BLM) MANUAL OF SURVEYING INSTRUCTIONS shall be used as the guide for the restoration of lost or obliterated corners and subdivision of sections.” [emphasis added]

Doctors Knowles and Elgin’s manual for Arkansas surveying practice, The U.S. Public Land Survey System for Arkansas, states in section 4-1: “What are the rules or the law relative to the reestablishment of lost corners on Arkansas’ version of the USPLSS? We have explained how the current BLM Manual is not particularly applicable to our system [emphasis added] and how the 1883 pamphlet, Restoration of Lost and Obliterated Corners does speak to our system. If the current BLM manual is at best advisory... then just what is the Arkansas law relative to the reestablishment of lost corners?” The short answer is that there is no black letter law dictating the exact requirements for a retracement. But there are a number of useful references that can guide the professional surveyor through this process including: the Knowles and Elgin manual, the 1883 Restoration booklet, the applicable instructions of Surveyor General Tiffin and later Generals issued between 1815 and 1843, and state law applicable at the time of the original work (the State Constitution of 1836, for example). All of the above set forth the procedures to be used for the original USPLSS surveys in Arkansas. Use of the current BLM manual (2009) as “the guide” for retracement and restoration can lead to conflicting results, as the 1883 GLO Corner Restoration circular explains, original surveys must be retraced with reference to the instructions applicable at the time they were done or with a recognition of the fact that they were carried out when there were no controlling federal instructions, as was the case from 1856 to 1883. The choice between accepting found corner evidence as an obliterated corner or declaring the original corner “lost” and using proportional measurement to replace it is of critical importance. Yet if the “current” BLM manual was indeed being followed, a retracement survey conducted in, say, 2000, when the 1974 manual was current, and one conducted in 2005 when the 2004 manual was current, could easily result in a corner marked by conflicting monumentation. This is because the BLM in 2009 changed the standard of proof for accepting evidence of an obliterated corner from “beyond a reasonable doubt” to a lesser standard of “substantial evidence.” Obviously the professional surveyor must have much wider insight than a mere familiarity with the current

BLM manual when restoring lost or obliterated corners and subdividing sections. It is a simple fact that a 21st century professional surveyor using the current BLM manual as his or her only guide to retrace a 19th century original survey which conformed to Tiffin's instructions is unlikely to follow in the footsteps of the GLO surveyor. The 2009 BLM manual is an excellent guide to the current procedures for restoring lost original corners by proportional measure. However, proportional measure as a procedure was not promulgated by the BLM as a policy until almost a half century after the original surveys in Arkansas were completed.

Section 3.1. B. of the new standards of Practice should read:

“In restoring lost or obliterated corners and the subdividing of sections in the Public Land Survey System of Arkansas, the professional surveyor shall be guided by the applicable BUREAU OF LAND MANAGEMENT (BLM) MANUAL OF SURVEYING INSTRUCTIONS, the 1883 General Land Office booklet, RESTORATION OF LOST AND OBLITERATED CORNERS, THE U.S. PUBLIC LAND SURVEY SYSTEM FOR ARKANSAS, by Knowles and Elgin, the applicable instructions of Surveyor General Tiffin and later Surveyor Generals issued between 1815 and 1843, and state statutes applicable at the time of the original work.”

Thank you for your consideration of my comments.”

Division's Response to Comment: This was reviewed by the LSAB and it was decided to modify the language to allow the use of other applicable documents as a guide for restoring lost and obliterated section corners and subdivision of sections.

Changes made to Proposed Revision as a result of this comment: Revised Section 3.1.B. to read: “The current Bureau of Land Management (BLM) Manual of Surveying Instructions and other applicable references shall be used as the guide for the restoration of lost or obliterated corners and subdivision of sections.”

27. **Commenter's Name:** Tom Webb, PS
Commenter's Business/Agency: Retired
Date Received: 4/03/2020
Summary of Comments: Comments by Thompson Webb, AR PLS 1032, on the proposed Section 1.1 of Standards of Practice of the Arkansas Standards of Practice for Property Boundary Surveys and Plats. The draft section of the new standards now reads:

1.1 Survey

“A. ‘Land Surveying’ means any service comprising the determination of the location of land boundaries and land boundary corners; the preparation of plats showing the shapes and areas of tracts of land and their subdivision into smaller tracts; the preparation of plats showing the location of streets, roads, and right-of-way of tracts to give access to smaller tracts; and the preparation of official plats and maps of land thereof in this state (A.C.A. Section 17-48-01)

1. In these standards, land surveying is also defined to mean the setting or resetting of monuments that mark or reference the position of said corners and boundaries.”

My suggested changes and additions are as follows:

1. **Change** “1.1 Survey” to “Surveys and Surveyors” for clarity as to content.
2. **Add** additional language verbatim from A.C.A. 17- 48 – 01[except for revised numbering] to show a complete definition of Land Surveying and the Professional Surveyor’s services and responsibilities, to wit:

(2) “Professional surveyor” means a person who by reason of special knowledge of mathematics, surveying principles and methods, and legal requirements that are acquired by educational or practical experience is qualified to engage in the practice of land surveying and surveying measurement certification;

(3) “Responsible charge” means direct control of, supervision of, and legal responsibility for the surveying work performed; and

(4) “Surveying measurement certification” means providing the professional service of certification or sealing of maps, documents, digital files, or other data to verify that the maps, documents, digital files, or other data are authoritative professional determinations based on accepted methods and principles of surveying measurement or analysis representing or listing the following types of surveying measurements:

(A) The configuration or contour of the earth’s surface or the position of fixed objects on the earth’s surface;

(B) The position or elevation of a survey boundary, control monument, or reference point; and

(C) The alignment or elevation of a fixed work embraced within the practice of professional engineering.

Division’s Response to Comment: Reviewed with the LSAB and it was decided that further statutory references were not required as this is a boundary survey specific rule.

Changes made to Proposed Revision as a result of this comment: None.

28. **Commenter's Name:** Aaron Rasburry, PLS
Commenter's Business/Agency: Rasburry Surveying, Saline County Surveyor
Date Received: 4/14/2020
Summary of Comments: Section 4
12. Property description of Tract Surveyed. If tract has been previously deeded, provide deed reference information.
Division's Response to Comment: Reviewed with the LSAB and it was decided to retain the requirement to show a boundary description on the plat even if a deed is referenced.
Changes made to Proposed Revision as a result of this comment: None.

29. **Commenter's Name:** Dr. Richard Elgin, PS, PE
Commenter's Business/Agency: Archer- Elgin Engineering, Surveying and Architecture
Date Received: 04/20/2020
Summary of Comments: A.) As to Section 3.1, A., B.

The proposed standards cite the current (2009) "BLM Manual." The Manual has 10 chapters and is 494 pages in length. The only chapter in the BLM Manual that is partially applicable to Arkansas is Chapter 7, "Resurveys and Restoration." That chapter is 17 pages long. Of those 17 pages about 5 are applicable, the other 12 are useful as background material. Most of the material in the Manual is fine background information but not applicable to Arkansas. The restoration methods given are mostly not applicable to Arkansas' peculiar (and early) system.

The book written specifically for Arkansas is, of course, The U.S. Public Land Survey System for Arkansas by Drs. Dick Elgin and David Knowles. It contains 6 chapters, 9 appendices and 276 pages. All 276 pages are applicable to Arkansas, describing all aspects of our state's peculiar public land system, and presenting example calculation problems. No other state (except Missouri) has such a state-specific book on our Public Land Survey System. If reference books are going to be cited in the standards, this manual should be listed. Although I coauthored the book I receive no money for each book sale. This is not a sales pitch for David Knowles and me.

The GLO (which became the BLM) has issued instructions for original surveys since its first in 1815 (Tiffin's), and subsequent

supplements under which Arkansas was surveyed. The principal “manuals” were published in 1815, 1855, 1871, 1881, 1890, 1902, 1945, 1973 and current one in 2009. The agency also published a manual titled the “Restoration of Lost and Obliterated Corners.” There were several editions of that publication. The one most applicable to Arkansas is dated 1883.

The 1883 “Restoration of Lost and Obliterated Corners” pamphlet is included, verbatim in Chapter 5 of The U.S. Public Land Survey System for Arkansas (Elgin & Knowles), along with comments and explanations. If one is going to read and study only one book chapter most applicable to Arkansas, it would be Chapter 5 of Elgin and Knowles’ book.

In the new standards, I would recommend listing these three as references for resurveys on Arkansas’ Public Land System: 1.) The current BLM Manual. 2.) The U.S. Public Land Survey System for Arkansas by Elgin and Knowles. 3.) The GLO’s 1883 pamphlet,

“Restoration of Lost and Obliterated Corners.” Together they provide the best guidance materials for the restoration of obliterated and reestablishment of lost corners in Arkansas. However, there is no singular method for the restoration or reestablishment of corners. It requires knowledge, experience and judgment.

Division’s Response to Comment: This was reviewed by the LSAB and it was decided to modify the language to allow the use of other applicable documents as a guide for restoring lost and obliterated section corners and subdivision of sections.

Changes made to Proposed Revision as a result of this comment: Revised this section to read: “The current Bureau of Land Management (BLM) Manual of Surveying Instructions and other applicable references shall be used as the guide for the restoration of lost or obliterated corners and subdivision of sections.”

30. **Commenter’s Name:** Dr. Richard Elgin, PS, PE
Commenter’s Business/Agency: Archer- Elgin Engineering, Surveying and Architecture
Date Received: 04/20/2020
Summary of Comments: C.) As to Section 4.1, A., 2.
Division’s Response to Comment: Reviewed by the LSAB and it was decided that the current language is adequate and to keep the current language unchanged.
Changes made to Proposed Revision as a result of this comment: None.

31. **Commenter's Name:** Dr. Richard Elgin, PS, PE
Commenter's Business/Agency: Archer- Elgin Engineering, Surveying and Architecture
Date Received: 04/20/2020
Summary of Comments: B.) As to Section 3.2, C., 1.

Seems at the very end of the sentence it should read “originating source of any found monument or accessory if known.” Often we may find and use some survey marker, but its source is not known.

Division's Response to Comment: Reviewed by the LSAB and it was decided to adopt Dr. Elgin's proposed language.

Changes made to Proposed Revision as a result of this comment: Revised section to read: “Ties to corners, monuments, corner accessories, and other relevant reference information, which control the location of a boundary or corner, the surveyor's basis for acceptance thereof, and the originating source of any found monument or accessory if known.”

32. **Commenter's Name:** Dr. Richard Elgin, PS, PE
Commenter's Business/Agency: Archer- Elgin Engineering, Surveying and Architecture
Date Received: 04/20/2020
Summary of Comments: D.) As to Section 4.1, A., 9., a.

In practice it doesn't make any difference what the survey's basis of direction is, just so long as it is noted and can be reproduced. If a direction is based on some record document, that should be fine, state the record document.

In paragraph ii, it speaks to the Arkansas Coordinate System and “geodetic or grid.” The Arkansas State Plane Coordinate System uses Grid North (only). These days with GPS and the System in such prevalent use, I cannot imagine the need for a Geodetic North to Grid North conversion. In the “old days” when celestial observations were common, yes, this conversion was done. Not today.

I'd recommend allowing any basis of bearing so long as it is noted on the plat and is reproducible. State Plane Grid North is easily reproduced. Most record directions are easily reproduced so long as it is noted and the survey is monumented (which is required per the standards).

Division's Response to Comment: The LSAB studied this section carefully and decided to revise the language for simplicity and clarity based on Dr. Elgin's comment.

Changes made to Proposed Revision as a result of this

comment: Revise section to read:

“a. The directional reference system shall be clearly described on the plat.

i. When the direction is based on a deed or survey plat record bearing or azimuth, include document references (book and page or other instrument number) and specify which boundary line controls the basis of direction.

ii. When the basis of direction is derived from the Arkansas Plane Coordinate System, identify the year of the system adjustment and the grid zone.”

33. **Commenter’s Name:** Dr. Richard Elgin, PS, PE
Commenter’s Business/Agency: Archer- Elgin Engineering, Surveying and Architecture
Date Received: 04/20/2020
Summary of Comments: E.) As to Section 4.1, A., 12. This paragraph requires a “Surveyed Land Boundary Description.” I suppose this means that the surveyor must include on the resulting plat a boundary description of the parcel surveyed. This is good. In an original survey (creating a parcel), the surveyor must prepare the surveyed boundary description. In a resurvey (survey of a parcel for which a record description exists), there may be a question if a “new, surveyed” boundary description is needed or required, or, can the existing record boundary description be used in the next conveyance.

In a resurvey, the boundaries of the parcel are determined considering its record description, applicable legal principles, adjoining, monumentation, measurements, etc. Once determined, the parcel’s location is memorialized by the resulting plat and a “new” surveyed boundary description. The surveyed description will likely better fix and preserve the parcel’s location. There may be exceptions, relocated rights of way and different riparian boundary locations which would be discovered during the resurvey. Under these circumstances a “new” surveyed boundary description should be prepared. It will better fix and preserve the boundaries. But, in some resurveys, no “new” description is needed: Aliquot part of the USPLSS and Lot/Block descriptions.

In my opinion the professional surveyor should provide, in most resurveys, a new, modern, measured boundary description.

I am aware that some in the title industry may resist or not desire or not appreciate the new, surveyed boundary description. They

may elect not to use the new “modern” boundary description, but instead use the old record description in the next conveyance. Their argument is that by changing from the old, record description to the new modern one, title identity is lost. The decision to use an “old” record description and not use the “new” surveyed description (which could possibly cure some defects and would better memorialize the parcel location) is the title industry’s choice. The surveyor has done his or her duty in preparing the new description. We should provide a new, modern, surveyed description.

An option would be to place both the record boundary description and the surveyed boundary description on the plat.

Division’s Response to Comment: This was reviewed by the LSAB and it was decided to revert the language of 4.1.A.12 to from “Surveyed Land Boundary Description” to “Tract description” to remain more general and leave this up to the practitioner’s professional judgment.

Changes made to Proposed Revision as a result of this comment: Revert proposed language back to the original “Tract description” requirement of 4.1.A.12.

34. **Commenter’s Name:** Dr. Richard Elgin, PS, PE
Commenter’s Business/Agency: Archer- Elgin Engineering, Surveying and Architecture
Date Received: 04/20/2020
Summary of Comments: F.) Record Easements
Easements are not mentioned in these draft standards. As one who has helped defend surveyors, several cases have concerned easements. In general, had the surveyor provided notes on the resulting plat of survey and spoke to the existence of record easements known to the surveyor, or that no record easements were known to him/her, the surveyor may not have been a defendant or would have been easier to defend. My strong recommendation would be that the plat of survey show or speak to easements of record known to the surveyor, showing the record source of the easement. Or, if no record easements are known to the surveyor, so state. By this, no title search or “finding” requirements is placed on the surveyor; merely show or state what is known to the surveyor and of record. Of course some easements will be plottable, others not plottable, others perhaps “blanket.” For those that are vague or not plottable or blanket, so state. This would place no additional burden on the surveyor. Just state what is known. And, it would help the user of the survey to better understand the result.

Division's Response to Comment: This was reviewed beginning the LSAB and it is agreed that it is prudent for surveyors to show all known easements. However, easements are not part of the statutory survey definition. This can only be modified by the Arkansas General Assembly and beyond the scope of this review. Currently, this would fall under the practitioner's professional judgment.

Changes made to Proposed Revision as a result of this comment: None.

35. **Commenter's Name:** Dr. Richard Elgin, PS, PE
Commenter's Business/Agency: Archer- Elgin Engineering, Surveying and Architecture
Date Received: 04/20/2020
Summary of Comments: G.) A Narrative to Accompany? Precise, exacting survey standards are difficult to write. They cannot cover all exigencies that might exist. There will be exceptions to every paragraph written. Perhaps an accompanying narrative could be written which further explains some of the sections or paragraphs.
Division's Response to Comment: We conferred with the AG's Office and this would be allowed. A narrative could be helpful in the future in some circumstances.
Changes made to Proposed Revision as a result of this comment: None.
36. **Commenter's Name:** Keith Sikes, PS, CFedS
Commenter's Business/Agency: Morrison-Shipley Engineers, Inc.
Date Received: 05/01/2020
Summary of Comments: TITLE PAGE
The title should reference "land surveying" as this is being defined later within these standards, and the title should include that these "are the Minimum Standards" for which the practice of land surveying is to be conducted. Title suggestion revision being offered: "ARKANSAS MINIMUM STANDARDS FOR THE PRACTICE OF LAND SURVEYING". Would it be possible that a title "Arkansas Standards for Property Boundary Surveys and Plats" is deemed to not apply to the broader aspects of land surveying? Confer with AG that the use of "Property Boundary Surveys and Plats" and that omission of "Minimum" and "Land Surveying" will withstand legal challenge before a title is affirmed.
Division's Response to Comment: Reviewed by the LSAB and determined that title should remain the same to reflect to intent of document as a boundary specific rule.

Changes made to Proposed Revision as a result of this comment: None.

37. **Commenter's Name:** Keith Sikes, PS, CFedS
Commenter's Business/Agency: Morrison-Shipleigh Engineers, Inc.
Date Received: 05/01/2020
Summary of Comments: INTRODUCTION
The third paragraph found on the Introduction page becomes ambiguous if professional surveyor is changed to person. For consideration and following in this same paragraph, will it also be the "responsibility of any person to stay informed on current rules"? This language should be directed to professional surveyors along with what the minimum standard of care requirements are for every land survey contemplated and conducted by the surveying profession in the State of Arkansas. Suggest revising this paragraph to: These minimum standards are binding upon any professional surveyor duly licensed to offer, practice, and perform land surveying within the State of Arkansas as prescribed herein.
Division's Response to Comment: Reviewed by the LSAB and determined that this section should remain unchanged so as not to have redundancy in the language.
Changes made to Proposed Revision as a result of this comment: None.
38. **Commenter's Name:** Keith Sikes, PS, CFedS
Commenter's Business/Agency: Morrison-Shipleigh Engineers, Inc.
Date Received: 05/01/2020
Summary of Comments: Federal owned land areas within the State of Arkansas that have never passed to private ownership by Warranty, Patent, or other grant are not governed by these minimum standards and are under the jurisdiction of the U.S. Government. Confer with the BLM and Charles M. Storey, U.S.D.A. Forest Service Surveyor, for additional information pertaining to surveys conducted on Federal Lands that have never been privately owned.
Division's Response to Comment: This is something for us to discuss with the USDA but is beyond the scope of this review.
Changes made to Proposed Revision as a result of this comment: None.
39. **Commenter's Name:** Keith Sikes, PS, CFedS
Commenter's Business/Agency: Morrison-Shipleigh Engineers, Inc.
Date Received: 05/01/2020

Summary of Comments: It is also advised that mention be made that the application of these Minimum Standards are applied in context with the Standard of Care at the time a survey was originally made and monuments placed. Too many are forgetting the fundamentals and common law principals as those apply to existing monuments and may not be giving careful consideration to the conditions and equipment used at the time a record survey was completed. Therefore, placement of a new monument next to and in close proximity to an existing monument that has historically and accurately marked the corner, is becoming a regular occurrence within the State during retracement surveys, which is detrimental long established and recognized boundary corners, boundary lines, and the surveying profession.

Division's Response to Comment: We all agree with his point, but this relates to professional judgment and is beyond the scope of this rule review.

Changes made to Proposed Revision as a result of this comment: None.

40. **Commenter's Name:** Keith Sikes, PS, CFedS
Commenter's Business/Agency: Morrison-Shipleigh Engineers, Inc.
Date Received: 05/01/2020
Summary of Comments: SECTION 1 – DEFINITIONS
Boundary Surveys, Topographic Surveys, As-built Surveys, Planimetric Mapping, Elevation Certifications and Reports, and Control Surveying, or locating a monument marking a boundary or property corner should all be defined in this Section as the practice of Land Surveying and subject to compliance with these minimum standards.
Division's Response to Comment: This is beyond the scope of this rule. Anything beyond boundary surveys will have to be addressed in a separate rule if one is to be created in the future.
Changes made to Proposed Revision as a result of this comment: None.
41. **Commenter's Name:** Keith Sikes, PS, CFedS
Commenter's Business/Agency: Morrison-Shipleigh Engineers, Inc.
Date Received: 05/01/2020
Summary of Comments: I, as a licensed professional, do understand that the words, "location...of land boundary corners as currently defined, but ignorance by others is bliss and if the definition is clearly understood by the layperson, then it doesn't apply. Discovery, marking, using, and/or the determination and existence of monuments that mark property corners should be

expounded within the minimum standards and classified as “land surveying”. Whether this occurs during a survey by a licensed professional or for the determination of the location of constructing a fence or other permanent structure within a previously platted lot or surveyed tract, this is a grey area that has long been exploited by unlicensed individuals who are in reality practicing land surveying due to the definition(s) being too vague and/or misunderstood.

Division’s Response to Comment: The land surveying definition is defined by A.C.A. § 17-48-101 and cannot be adjusted in rule. Adjustments or clarifications to this definition can only be done by the Arkansas General Assembly.

Changes made to Proposed Revision as a result of this comment: None.

42. **Commenter’s Name:** Keith Sikes, PS, CFedS
Commenter’s Business/Agency: Morrison-Shipley Engineers, Inc.
Date Received: 05/01/2020
Summary of Comments: SECTION 1 - AREA DESIGNATIONS
These Area Designations and classifications were applicable when these standards were originally issued, but due municipal boundaries rapidly expanding within our State, the advancement of survey equipment and the achievable accuracies of the equipment utilized by surveyors today, these four classification are now due modification and should be amended relative to those factors. Suggest these are modified to a required accuracy based on a lot or tract areas being surveyed together with potential use. Residential and commercial properties in municipalities consisting of small areas, of course, should require a higher degree of survey measurement accuracy. Municipal populations are increasing at a more rapid pace within the State and studies indicate this will be an ongoing trend. Fringe Class Beginning surveys today are subject to be within a municipal boundary in some cases, in possibly less than a year. Because of the increase of municipal population and frequent expansion of cities, the accuracy of surveys completed outside the current City limit today should be completed at an accuracy relative to those presumptions, regardless if the surveyed property is currently 5 miles outside of a City limit boundary with a population of 2000 or more and currently being used for “agriculture.” Table in 2.1 will need to be updated to reflect revised area designations, also.
Division’s Response to Comment: Reviewed by the LSAB and determined that no update is needed at this time as the current area designations are adequate.

Changes made to Proposed Revision as a result of this comment: None.

43. **Commenter's Name:** Keith Sikes, PS, CFedS
Commenter's Business/Agency: Morrison-ShIPLEY Engineers, Inc.

Date Received: 05/01/2020

Summary of Comments: SECTION 3 – GENERAL PROCEDURES

Research, Investigation, and Procedure are three independent processes being required to perform and successfully complete a land survey. Each of these processes should be individually itemized and defined.

RESEARCH: (the following verbiage is being offered for consideration) Prior to every property survey to be conducted, the professional surveyor shall obtain available necessary information which may include: field notes and plats of the original government survey, subsequent record surveys, record corner certificates, deeds, both of the property being surveyed and of the abutters, maps and subdivision plats, city, county, and state road and highway records, and any necessary data for the thorough review of the corners and boundaries lines to be surveyed.

Additional title and Court record research may also be required to properly ascertain the boundaries of a property being surveyed.

Division's Response to Comment: We agree with his point, but it was agreed upon by the LSAB to leave this section unchanged and leave these areas to the practitioner's professional judgment.

Changes made to Proposed Revision as a result of this comment: None.

44. **Commenter's Name:** Keith Sikes, PS, CFedS
Commenter's Business/Agency: Morrison-ShIPLEY Engineers, Inc.

Date Received: 05/01/2020

Summary of Comments: INVESTIGATION: (the following verbiage is being offered for consideration)

The professional surveyor shall analyze the research data obtained and carefully determine the record title boundaries of the property to be surveyed. During field reconnaissance, the professional surveyor, or those working under his or her responsible charge, shall search thoroughly for the existence of all corner monuments and other evidence of boundary locations and occupation relative to the record description of the property being surveyed, as well as those of an abutter. Analysis of the corner and other survey field

evidence initially recovered and measured may necessitate subsequent searches for additional corner monuments and other evidence initially not found, recognized, and measured.

Division's Response to Comment: This was reviewed by the LSAB and determined that the current language is adequate.

Changes made to Proposed Revision as a result of this comment: None.

45. **Commenter's Name:** Keith Sikes, PS, CFedS
Commenter's Business/Agency: Morrison-Shipleigh Engineers, Inc.
Date Received: 05/01/2020
Summary of Comments: PROCEDURE AND FIELD WORK:
(This section should define both office and field procedures for surveys. The following verbiage is being offered for consideration)

A. Execution. (no change)

B. Measurement Techniques. All measurements made in the field, regardless of measurement method and survey equipment used, shall be collected with the knowledge that all measurements shall be published in accordance with the United States Standard, using US Survey Feet (International Feet after 2022), or meters. Field measurement data, regardless of the datum utilized, shall reference the horizontal datum and vertical plane, with the exception of geodetic surveys published with reference to True North. All field measurements shall be made and checked to be in accordance to the required Area Designation accuracies.

Division's Response to Comment: This was reviewed by the LSAB and determined that there should be no change to the language.

Changes made to Proposed Revision as a result of this comment: None.

46. **Commenter's Name:** Keith Sikes, PS, CFedS
Commenter's Business/Agency: Morrison-Shipleigh Engineers, Inc.
Date Received: 05/01/2020
Summary of Comments: C. Monumentation. (1 and 2, no change).

3. Monument Accessories. Witness and/or reference objects is to similar to witness and reference monuments, with an entirely different meaning and is not the appropriate language to be used in this specific paragraph. This language should be revised to "corner accessory" to be consistence with the USPLSS and 2009 BLM Manual of Surveying Instructions. "According to the General

Instructions of 1846, and other instructions prior to that year, Witness trees are signalized and marked as (bearing trees), but the course and distance to them, as well as the small chop, are omitted. Later, all trees used as corner accessories were marked as bearing trees, and the distance and bearing from the corner was recorded. The term “Witness Tree” became obsolete” The preceding italicized text is the definition of a Witness Corner (similar to witness object) in the U.S. Department of Interior, Glossary of BLM Surveying and Mapping Terms, 1980. Any verbiage in this paragraph should be consistent with the 2009 BLM Manual and BLM publications.

4. (no change)

5. Review and final analysis of all information shall be made by the professional surveyor before issue of and applying one’s seal and signature to a completed survey.

Division’s Response to Comment: This was reviewed by the LSAB and determined that there should be no change to the language since “reference” tree/object is adequately understood by surveyors.

Changes made to Proposed Revision as a result of this comment: None.

47. **Commenter’s Name:** Keith Sikes, PS, CFedS
Commenter’s Business/Agency: Morrison-ShIPLEY Engineers, Inc.
Date Received: 05/01/2020
Summary of Comments: Section 4 – Plats The following verbiage is being offered for consideration)
A. 2. Ties to corners, monuments, corner accessories, and other relevant record survey information, which control the location of a boundary or corner. Where existing corner monuments are not relied on and not accepted to mark a corner, the professional surveyor shall depict the bearing and distance from the monument set to mark the corner to all other existing monuments and shall note the surveyor’s basis for non-acceptance of any and each. Corner monuments marking a section or one-quarter corner and all accessories set and/or verified in conjunction with Section 3.3 shall be depicted on the plat. (Several record surveys only reference other record surveys during which a PLSS monument has been found and utilized. Record surveys should be noted, but the intend of accessories in the locust of a corner monument is to facilitate reestablishing the monument at the original location based on measurements being made at a short distance. References to record surveys only, especially those consisting of longer measurements, have proven to be much more labor intensive and costly to survey to other monuments that are many times in different sections and

unassociated with the survey project being worked on. For this reason, it is imperative the corner accessories are noted for all section on one-quarter corners utilized for all surveys).

Division's Response to Comment: This was reviewed by the LSAB and determined that we should adopt the revisions proposed by Dr. Elgin to 4.1.A.2.

Changes made to Proposed Revision as a result of this comment: Leave unchanged (other than Dr. Elgin's proposed revisions to 4.1.A.2).

The proposed effective date of this rule is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated the amended rule does not have a financial impact.

LEGAL AUTHORIZATION: The State Surveyor, acting under the supervision and direction of the Arkansas Geographic Systems Office and the Secretary of the Department of Transformation and Shared Services, has authority to prescribe reasonable rules not inconsistent with law designed to establish uniform professional surveying and mapping methods and standards in this state. *See Ark. Code Ann. 15-21-206(7)(A).*

~~19. **ARKANSAS TREASURER OF STATE**~~

~~a. **The Arkansas Achieving a Better Life Experience Program**~~

D. Agency Updates on Delinquent Rulemaking under Act 517 of 2019.

- 1. Department of Agriculture, Arkansas Bureau of Standards (Act 501)**
- 2. Department of Commerce, State Insurance Department (Acts 698, 823)**
- 3. Department of Education, Division of Elementary and Secondary Education (Act 640)**
- 4. Department of Finance and Administration, Director (Act 822)**

5. **Department of Health (Act 216)**
6. **Highway Commission (Act 468)**
7. **Department of Transformation and Shared Services, Office of State Procurement (Act 422)**

E. Adjournment.