

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

**Tuesday, August 24, 2021
9:00 a.m.
Room A, MAC
Little Rock, Arkansas**

- A. Call to Order.**
- B. Reports of the Executive Subcommittee.**
- C. Reports on Administrative Directives Pursuant to Act 1258 of 2015, for the quarter ending June 30, 2021.**
 - 1. Department of Corrections**
 - 2. Parole Board**
- D. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309.**
 - 1. DEPARTMENT OF COMMERCE, DIVISION OF WORKFORCE SERVICES (Ms. Charisse Childers, Mr. Charles Lyford, Mr. Dara Hall)**
 - a. SUBJECT: ARS Policy and Procedure Manual**

DESCRIPTION: The Division of Workforce Services proposes changes to the Arkansas Rehabilitation Services (“ARS”) Policy and Procedure Manual. The proposed amendments focus on three areas of the manual: fee schedules for medical providers, the agency’s small-business program, and performance indicators for vocational rehabilitation. The fee-schedule provisions, as amended, will allow for payment using Medicare rates, Arkansas Workers’ Compensation rates, a percentage of the provider’s bill, or a contract between ARS and the provider.

The small-business program will be amended to clarify that the program administrator reviews business plans for overall feasibility, not for financial contributions by ARS. That decision is left to the vocational-rehabilitation counselor for the person submitting the plan.

There is also a new appendix that addresses the performance indicators used by the federal Rehabilitation Services Administration to assess

agencies such as ARS. The appendix describes each indicator and defines the process that ARS follows to track and evaluate the indicators.

PUBLIC COMMENT: Public hearings were held on March 11, 2021, and March 25, 2021, in Little Rock and Fayetteville, respectively. The public comment period expired on March 30, 2021. The agency provided the following summary of the sole comment received and its response thereto:

Christy Lamas, Arkansas Rehabilitation Services

Summary of Comment: The proposed rule states that the fee schedule for medical procedures and devices will apply to assistive technology, with the result that ARS would purchase the technology using the sequence of rates found in 1) Medicare, 2) Arkansas Workers' Compensation, or 3) 50% of the total billed price. However, not all assistive technology is medical in nature. For non-medical assistive technology, ARS should obtain bids or quotes.

Agency's Response to Comment: The commenter is correct that the proposed fee schedules for medical procedures and devices should not apply to all assistive technology. Competitive bids or quotes are better suited to determining a price for non-medical devices. Changes were made to the Proposed Rule as a result of this comment.

Sections VI-49 to VI-50 of the Policy and Procedure Manual, regarding procedures for assistive technology, were revised to separately address medical and non-medical assistive technology. For medical assistive technology, ARS will apply the sequence of rates found in 1) Medicare, 2) Arkansas Workers' Compensation, or 3) 50% of the total billed price. Competitive bids or quotes will be used for non-medical assistive technology.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states the amended rules have a financial impact. It avers that the costs to implement the federal rule or regulation is simply the operating costs already appropriated to ARS. With respect to the total estimated cost by fiscal year to any private individual, entity, and business subject to the amended rules, the agency states that, with regard to the medical fee schedules, medical providers that serve individuals receiving vocational rehabilitation through ARS may be affected; however, it states, any cost would be minimal and is not conducive to an estimate. Regarding the total estimated cost by fiscal year to state, county, and municipal government to implement the rule, the agency states that implementation costs are simply the operating costs already appropriated to ARS.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 20-79-204(b)(1), the deputy director of Arkansas Rehabilitation Services shall, with the approval of the Secretary of the Department of Commerce, prepare rules for promulgation by the appropriate division of the Department, for rehabilitation services and such other rules as he or she finds necessary to carry out the purposes of the Rehabilitation Act of Arkansas, Ark. Code Ann. §§ 20-79-201 through 20-79-216. Additionally, the agency states that the proposed rules are required to comply with federal statutes, rules, or regulations, including the Rehabilitation Act of 1973, as amended; 34 C.F.R. § 361.50; and 34 C.F.R. § 361.20.

b. **SUBJECT:** Rule 5

DESCRIPTION: The Division of Workforce Services proposes changes to its Rule 5. Rule 5 of the Arkansas Division of Workforce Services currently requires Arkansas employers to post a printed notice informing their employees that the employer is an employer under the law and that, in the event of their unemployment, employees may be eligible for unemployment benefits. The Rule then sets out requirements for the posting of the notice.

The proposed amendments to Rule 5 change the word “Regulation” to “Rule” throughout. Further, the proposed amendments will add the requirement for employers to give an employee a copy of a notice, the form of which is set out in Appendix A to Rule 5, upon an employee’s separation from employment. The notice informs employees of the availability of unemployment benefits and directs them where to go to receive information on where to request information or apply for benefits. There is no penalty for non-compliance. This amendment incorporates the provisions of Rule 30, which was adopted by the Director as an emergency rulemaking. Rule 30 was adopted pursuant to requirements of federal law and expired on December 31, 2020. The proposed amendments to Rule 5 allow the employer discretion in the method of delivery of the notice, but the notice must be given to an employee upon separation from employment.

PUBLIC COMMENT: A public hearing was held on May 14, 2021. The public comment period expired on June 14, 2021. The Division provided the following summary of the sole comment received and its response thereto:

Jamie Soule-Vinova, Thomson Reuters

We pulled a proposal from the Secretary of State’s filings website that is amending rule 5 of the Division of Workforce Services Rules. The title of the rule is “Identification of Covered Workers”; however, the title we have

for this rule on Westlaw is “Posting of Notice to Workers” and Rule 4 is titled “Identification of Covered Workers.” It seems the content being promulgated does belong to Rule 5, so I just wanted to confirm whether the title is going to be duplicated for both Rules 4 and 5 (as it currently appears within the content on the agency website) or if it will remain as “Posting of Notice to Workers” (as listed in the table of contents on the agency website)? **Agency Response:** The Arkansas Division of Workforce Services (ADWS) appreciates your comment on the proposed Rule 5 change. The title will not be duplicative of the Rule 4 title; that was a typographical error on the website and inadvertently used on the Arkansas Secretary of State’s filings website. The proposed title for the new Rule 5 will be “Posting and Providing Notice to Workers.” The comment period for the proposed changes to Rule 5 ended yesterday but if you have any additional questions feel free to contact me and I will try and assist you.

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

It appears that Rule 5(A)(2) will require that the notice in Appendix A be provided to the employee in a method of delivery at the employer’s discretion upon the employee’s separation from employment.

Subsection (B) then provides that “[t]he notices” shall be maintained in locations readily accessible to the employer’s workers. Does that mean that employers will also be required to post the notice in Appendix A?

RESPONSE: No. The Notice that subsection B applies to is the same one that all employers must post under Rule 5(A)(1). Rule 5(A)(2) is after the employee has separated from employment. The employer could even have closed their Arkansas location so there would be no posted notice to view for former employees. You only have to provide the Rule 5(A)(2) notice to former employees upon their separation not post the notice.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact. With respect to the total estimated cost by fiscal year to any private individual, entity, and business subject to the amended rule, the Division avers that the only cost to employers will be paper copies of the notice, if they choose to issue paper copies. In that event, the Division explains, the amount of cost is unknown and should be de minimus.

LEGAL AUTHORIZATION: It is the duty of the Director of the Division of Workforce Services to administer the Division of Workforce Services Law, Ark. Code Ann. §§ 11-10-101 through 11-10-1018. *See* Ark. Code Ann. § 11-10-306(a). Pursuant to Ark. Code Ann. § 11-10-306(b)(1), the Director shall have the power and authority to adopt,

amend, or rescind such rules, employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he or she deems necessary or suitable to that end. *See also* Ark. Code Ann. § 11-10-307 (authorizing the adoption, amendment, or rescindment of general and special rules by the Director of the Division after public hearing or opportunity to be heard thereon, on which proper notice has been given).

2. **DEPARTMENT OF EDUCATION, DIVISION OF CAREER AND TECHNICAL EDUCATION (Ms. Courtney Salas-Ford)**

a. **SUBJECT: Policies and Procedures for Career and Technical Education**

DESCRIPTION: The Department of Education’s Division of Career and Technical Education proposes its Policies and Procedures for Career and Technical Education, as well as the repeal of the rules of the same title that were previously promulgated by the former Department of Career Education. Two pieces of legislation offered the opportunity to amend the Policies and Procedures. At the federal level, the Carl D. Perkins Strengthening Career and Technical Education for the 21st Century Act (2018), commonly referred to as Perkins V, was enacted through the Arkansas Perkins V State Plan approved by the U.S. Department of Education and State Board of Education. At the state level, the Arkansas Transformation and Efficiencies Act (2019), commonly referred to as Transformation, moved the Division of Career and Technical Education (“DCTE” or “Division”) under the Arkansas Department of Education (“ADE”). In the past, these policies and procedures were promulgated through the Department of Career Education.

The instant policies and procedures are being promulgated under Ark. Code Ann. § 6-11-105(12) and Act 545 of 2021, and these rules are not expected to be controversial. The Division is repealing the old rules since the new draft has clarified and added new sections. The rules update definitions to align with Perkins V, specifically, the definitions of CTE Participant, Special Populations, Concentrator, Career Planning, Course, Foundation Course, CTE Teacher Contract Length, Curriculum Content Standards, Digital Learning Providers, and Embedded Courses.

The rules outline the CTE Programs of Study and Modified Programs. DCTE is following the Perkins V definition of Program of Study. DCTE has included a Modified Program of Study to give districts the additional flexibility for their programs, but does not take the place of a Program of Study. A section was added on State Start-up Grants, which are grants provided on a competitive basis to assist with the start-up expenses of a

new program of study. They are available for purchasing new equipment and program specific supplies, required training, assessment, and software to support newly approved career focus programs of study. The rules prior to Transformation did not have much information on grants so this addition is to help aid CTE programs in the process of obtaining these grants.

The draft rules also go into more detail in regards to Equipment, Facilities, and Safety. The prior rules only had a short statement and web link about facilities. The new rules give more detail on Secondary Technical Career Centers, Teacher Licensure, and Training, and the new rules added a Work Based Learning Section and give more clarification on how programs may be approved.

Changes made after public comment include grammatical changes and updates to Tiered Support Review, as well as non-substantive changes.

PUBLIC COMMENT: A public hearing was held on June 23, 2021, and the public comment period expired on July 8, 2021. The Division provided the following summary of the public comments that it received and its responses thereto:

Lucas Harder, Arkansas School Boards Association (6/21/21)

- Page 5, Statement of Assurance:

I would recommend changing “handicap” to “disability” to match the definition of Special Population later on the same page.

I would recommend adding the IDEA to the list of assurances cited, especially as IEPs are referenced later and IDEA is included in the list of acts under the Memorandum of Administration section.

- Page 5, Special Populations:

I would recommend striking “handicap” and leaving it with “disability” for consistency.

- Page 6, Career Clusters:

I’m uncertain if the following language is supposed to read “Division of Career and Technical Education” or if the parenthetical is supposed to be “CTE” instead. Regardless, there’s a “and” missing from between “career” and “Technical”: “tool for Career Technical Education (DCTE) programs”

- Page 7, Career Fields:

I would recommend adding “A career field means” to the beginning of the first sentence as it otherwise feels as though there is something missing.

- Page 7, Career Pathway:

Again, I would recommend adding something along the lines of “A career pathway means” as the first sentence otherwise feels as though there’s no subject.

- Page 7, Course:

Again, without something along the lines of “A course means,” it feels as though there’s no subject for the sentence.

- Page 9:

I would recommend changing the following to read: “Schools that, due to local business and industry requirements or school improvement plans, need consideration for extenuating circumstances to meet the needs of the students, should submit a request should be submitted through the Arkansas Department of Education Course Approval System (CAS)”

- Page 15, Minimum Equipment List:

I would recommend changing “Equipment lists may be located at as on the Division’s” to either be “at the” or “on the.”

Page 16, TEACHER LICENSURE AND TRAINING:

While I know for certain that the URL for Educator Licensure appears to need to be updated, I would recommend checking all of the others.

- Page 18, Exceptions:

For formatting consistency, I’d recommend removing the Educator Licensure Rules Section numbers from the Emergency Teaching paragraphs.

- Page 18, Career and Technical Education Endorsements:

I would recommend removing the “1.” from here as there is no following numbers making it necessary.

- Page 22, Provisional permits:

For clarity, I would recommend amending this to read “from the date of the approved applicants.”

- Page 24, Internship Course:

I would recommend changing the first sentence to either read “may be paid or unpaid” or adding “work experience” to match the language under the career practicum.

Division Response: All comments considered, and all non-substantive changes made.

**Daniel Mulenburg, Division of Career and Technical Education
(7/8/21)**

Acknowledging that Technical Permit requirements differ from a License and based largely on industry experience, specific credentials, and training, I am suggesting the following disclaimer: DCTE reserves the right, when considering the issuance of a technical permit, to afford consideration of an applicant's related industry experience, education, skillsets, and credentials.

Division Response: Comment considered, and non-substantive change made.

Additional non-substantive changes made for clarification. Updated Tiered Support Review List.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 25-30-107(b)(1), the authority and responsibility of the State Board of Education and the Division of Career and Technical Education shall include the general control and supervision of all programs of vocational, technical, and occupational education in secondary institutions. The State Board of Education shall promulgate rules to administer Ark. Code Ann. § 25-30-107, concerning the powers and duties of the Division. Ark. Code Ann. § 25-30-107(b)(3), as amended by Act 545 of 2021, § 26. The proposed rules implement Act 545 of 2021, sponsored by Senator Jane English, which amended provisions of the Arkansas Code concerning technical and vocational education and amended provisions of the Arkansas Code concerning alternate retirement plans.

The agency states that these rules are required to comply with a federal statute, rule, or regulation, specifically, the Carl D. Perkins Strengthening Career and Technical Education for the 21st Century Act of 2018.

3. COMMISSIONER OF STATE LANDS (Mr. Kelly Boyd, Ms. Diane Rogers)

a. SUBJECT: Commissioner of State Lands Rules 2021 Edition

DESCRIPTION: The Commissioner of State Lands's proposed Rules 2021 Edition are the same as the emergency rules submitted for review and approved on May 6, 2021, effective May 8, 2021. The Commissioner submits the emergency rules for promulgation of them as permanent rules. The rules have been revised in order to implement changes in the practice

and procedures relating to certain sales of tax-delinquent properties required by the enactment of Act 447 of 2021, effective March 24, 2021. The proposed rules provide the framework for the process of carrying out the duties of the office of the Commissioner of State Lands and upon promulgation of permanent rules, repeal and supersede all prior versions of the rules.

PUBLIC COMMENT: These rules received legislative review and approval by the Executive Subcommittee at its meeting of May 6, 2021, for emergency promulgation. With respect to the instant permanent promulgation, a public hearing was held on July 6, 2021, and the public comment period expired that same day. The Commissioner received no public comments.

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

(1) Title 1, Subtitle D, Definitions – Tax Delinquent Property Auction – The definition provides that these auctions may include bids made through the mail, as well as those by persons present at the auction. Act 447 of 2021, § 1, amending Ark. Code Ann. § 26-37-202(a)(1), seems to provide that bids for parcels at a tax-delinquent property auction may be made at the sale or may be submitted to the Commissioner “by mail or online.” Is there a reason that the definition does not appear to include bids submitted online? **RESPONSE:** Yes, the COSL is not yet prepared to accept online bids at a tax delinquent property auction. If we do in the future, we will revise the rules to set forth the procedure.

(2) Title 2, Subtitle B – Along the same lines as question (1), is there a reason that there is not a provision for online bidding at tax-delinquent property auctions as seems to be provided for in Act 447 of 2021, § 1, amending Ark. Code Ann. § 26-37-202(a)(1)? **RESPONSE:** See the response to question (1) above.

(3) Title 3, Unsold-Property Auctions – It appears from the amended rules that these auctions will be conducted solely online, and as such, registrants will be required to provide accurate credit card or debit card information, which will automatically be charged the earnest money if the bidder is successful. Does this mean that all winning bidders will also incur processing fees and/or charges for using a credit card or debit card for this automatic earnest-money payment? In other words, is there no way for a successful bidder to avoid incurring these fees? **RESPONSE:** No, there is no way to avoid those fees; however, it only applies to the \$100 Earnest Money, which will be less than \$4. The successful bidder may pay the remainder by Certified Funds, which includes other forms that will not incur the fees.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The proposed changes implement provisions of Act 447 of 2021, sponsored by Representative Mary Bentley, which amended the procedure by which the Commissioner of State Lands sells tax-delinquent land. Pursuant to Arkansas Code Annotated § 26-37-202(g), as amended by Act 447 of 2021, § 1, the Commissioner shall promulgate rules to carry out the provisions of Ark. Code Ann. § 26-37-202, concerning the procedure to sell tax-delinquent property.

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

- 1. Department of Agriculture, Arkansas Bureau of Standards (Act 501)
(REPORT BY LETTER PURSUANT TO MOTION ADOPTED AT JULY 22, 2020 MEETING)**

F. Adjournment.