



Arkansas Department of Health

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Governor Asa Hutchinson

José R. Romero, MD, Secretary of Health

September 1, 2021

Senator Kim Hammer, Co-Chair
 Representative Les Eaves, Co-Chair
 Administrative Rules Subcommittee
 Arkansas Legislative Council
 Via Email whittakerj@blr.arkansas.gov

Dear Co-Chairs,

Pursuant to Ark. Code Ann. § 25-15-216(b)(4), as amended by Act 595 of 2021, please consider the following Arkansas Department of Health (Department) update on rulemaking resulting from Acts of 2021.

The Department and the State Board of Health (Board) have identified several Acts that require amendments to various rules. Any necessary rule amendments are drafted for approval to be placed on the upcoming Board meeting agendas. The Board meets quarterly in January, April, July, and October of each year. To the extent that any necessary proposed rule amendments were not addressed previously at the July 22, 2021, meeting, the proposals are on the planned agenda for the October 28, 2021, meeting. Any remaining required proposed rule amendments will be reviewed at the January 2022 Board meeting.

After receiving the Governor's office approval, the Department and the Board will continue the rule promulgation process outlined in the Administrative Procedure Act, including the public notice and comment period, followed by the Legislative review and approval process under Ark. Code Ann. § 10-3-309. Out of the 185 pieces of health-related legislation enacted in 2021, the acts identified as potentially requiring the Board of Health to amend its rules include the following:

Act 62 requires prescribers or dispensers in the prescription drug monitoring program to provide physical copies of prescriptions upon request.

Act 90 creates the Every Mom Matters Act, requires materials and resources, requires the Department to audit records and revoke an abortion facility's license if certain requirements are not met. Portions of the Act are not effective until January 1, 2023.

Act 132 removes the requirement that a dead body be embalmed or refrigerated if the body will be cremated within 48 hours.

Act 135 requires the Board to modify all rules regarding the automatic occupational licensure requirements for uniformed services members, returning uniformed services veterans, and their spouses.

Act 136 clarifies the criminal offenses that would cause the denial, suspension, or revocation of a massage therapy license.

Act 268 updates the Arkansas Code regarding control of sources of ionizing radiation to comply with federal Nuclear Regulatory Commission regulations.

Act 306 exempts sale of cottage food through the internet from the definition of "Food Service Establishment."

Act 309 is the Arkansas Unborn Child Protection Act, which abolishes abortion in Arkansas. Challenged in federal court.

Act 345 defines "qualified researcher" and removes an unnecessary step in approving research for the Arkansas Cancer Registry.

Act 445 modifies the application process for certification to practice as an orthotic assistant, orthotic/prosthetic assistant, or prosthetic assistant.

Act 498 is the Right to Know and See Act, which requires physicians to perform an ultrasound and show the image to the pregnant woman prior to performing an abortion. The Department is required to quarterly inspect the records to ensure compliance with this act.

Act 514 affects the Arkansas Controlled Substances list because a prescription drug approved by the FDA is excluded from Schedule VI unless the Secretary of Health objects.

Act 560 requires rules regarding informed consent for chemical abortions in the Informed Consent for Chemical Abortion Act. Providers who perform chemical abortions must submit reports to the Department, which prepares the forms and collects the data.

Act 562 is the Abortion-Inducing Drugs Safety Act, which sets out requirements for physicians to prescribe, administer, and dispense abortion-inducing drugs.

Act 598 adds required Hepatitis C screening of pregnant mothers.

Act 630 requires the submission of federal criminal records checks electronically for Arkansas residents.

Act 707 requires rules to implement the process to study collected data and evaluate non-hospital emergency medical care and initial time-critical diagnoses and procedures.

Act 725 provides an initial fee waiver for the potential occupational-licensed individuals listed in the Act.

Act 740 amends definition of abortion and requires facilities to have transfer agreements with acute care hospitals.

Act 746 allows licensure of individuals who fulfill the requirements to practice an occupation or profession and who hold a Federal Form I-766 U.S. Citizenship and Immigration Services – issued Employment Authorization Document, known as a “work permit.”

Act 748 removes the term “permanently disqualifying offenses” in criminal background checks.

Act 761 requires more providers to have criminal background check including personal care providers.

Act 762 revises the automatic barriers to licensure.

Act 767 revises the definition of “originating site,” for telehealth purposes.

Act 787 amends abortion reporting requirements including rape or incest.

Act 790 allows EMS to provide emergency care and transport to police dogs.

Act 811 provides for the licensure of individuals who have completed an established apprenticeship program, for licenses that do not require a bachelor’s degree or higher to work and earn a paycheck while also fulfilling licensing requirements.

Act 817 provides that home health agencies currently licensed by the Department do not need a new permit of approval to expand service area.

Act 827 allows EMS to administer certain drugs to a patient that has certain conditions, allows participation in care coordination by EMS, and ensures appropriate transport of a patient with specific health conditions.

Act 829 revises the definition of “professional relationship,” for telehealth purposes.

Act 887 adds definition of fentanyl to the controlled substances list.

Act 900 amends the Cosmetology Technical Advisory Committee to include members of the permanent and semipermanent cosmetic industry and the body art industry and establishes procedures for licensure and regulation of the procedures.

Act 949 requires licensure for any clinic or facility that performs an abortion and prohibits a hospital from performing an abortion unless to save the life of a pregnant woman during a medical emergency.

Act 957 allows for registered hair washers to work without a license under the supervision of a cosmetologist.

Act 968 modifies the definition of continuing education to include volunteer services provided under the Volunteer Health Care Act.

Act 1040 is the Food Freedom Act, which expands categories of cottage foods as well as some labeling requirements.

Act 1101 requires any fees not included in the Arkansas Code to be included in rules.

Act 1112 allows for an initial physician's assessment for medical marijuana certification to be performed by telehealth

The Board of Health Rules that were presented and approved at the July 22, 2021, meeting with amendments resulting from the above Acts include the following:

Rules for Control of Sources on Ionizing Radiation

Rules Pertaining to Retail Food Establishments

Rules Pertaining to the Arkansas Prescription Drug Monitoring Program

Rules and Forms for the Administration of Vital Records

The above rules are being approved by the Governor's Office and following the Administrative Procedure Act process to provide public notice and public comment prior to review and approval by the legislative committees.

The Board of Health previously approved potential amendments to the Rules Pertaining to the Arkansas Cancer Registry, to help formulate the language in Act 345 of 2021, which resulted in further amendments to the Rules that were reviewed by the legislative Public Health Committee in August of 2021 and will be presented to the ALC-Rules Subcommittee in September of 2021.

The Board of Health Rules with amendments resulting from the above Acts that are on the agenda for review at the October 28, 2021, Board meeting include the following:

Rules Governing the Advisory Board for Interpreters Between Hearing Individuals and Individuals who are Deaf, Deafblind, Hard of Hearing, or Oral Deaf

Rules for Cosmetology, Body Art, Permanent and Semi-Permanent Cosmetics

Rules Governing the Practice of Licensed Lay Midwifery

Rules Pertaining to Septic Tank Cleaners

Rules for Emergency Medical Services

Rules for Massage Therapy

Rules Governing Medical Marijuana Registration, Testing, and Labeling

Rules Pertaining to Onsite Wastewater Systems

Rules Pertaining to Radiologic Technology Licensure

Rules Pertaining to Plumbers License Fee, Expiration, Renewal, Journeyman Plumber, Master Plumber and Restricted Plumber Qualifications

The Board of Health Rules that are currently under revision for amendments resulting from the above Acts that will be placed on the October 28, 2021, or January 2022 Board agenda include the following:

Rules Pertaining to Controlled Substances

Controlled Substances List

Rules Pertaining to General Sanitation

Rules for Home Health Agencies

Rules for Hospitals and Related Institutions

Rules for Lead-Based Paint Activities

Rules for Orthotic, Prosthetic, and Pedorthic

Rules for Perfusionists

Rules for Private Care Agencies

Rules for Water Operator Licensing

The Department and the Board of Health have not drafted any new rules and are not planning to repeal any rules because of 2021 Acts at this time. The Department of Health will continue to provide monthly updates on rulemaking resulting from Acts of 2021. If there are changes or additional updates identified, the ADH will provide further information in these monthly updates submitted to the ALC-Administrative Rules Subcommittee. Please let me know if you have questions or need additional information.

Sincerely,



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