

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

**Wednesday, January 26, 2022**

**9:00 a.m.**

**Room A, MAC**

**Little Rock, Arkansas**

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- A. Call to Order.**
- B. Reports of the Executive Subcommittee.**
- C. Rule Amendments Pursuant to Act 704 of 2021.**
  - 1. Department of Energy and Environment, Arkansas Pollution Control & Ecology Commission (Mr. Shane Khoury)**
- D. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309.**
  - 1. DEPARTMENT OF AGRICULTURE, ARKANSAS NATURAL RESOURCES COMMISSION (Mr. Chris Colcasure, Mr. Wade Hodge, Mr. Kolton Jones)**
    - a. SUBJECT: Rules Implementing Act 605 of 2021**

**DESCRIPTION:** The Department of Agriculture’s Arkansas Natural Resources Commission proposes its Rules Implementing Act 605 of 2021, governing retail water providers. In this year’s General Assembly, the Arkansas Legislature passed Act 605, regarding the regulation of retail water providers. Act 605 tasks retail water providers with additional responsibilities in managing and operating water systems. The responsibilities include preparation of a rate study every five years and the requirement that a majority of provider board members obtain eight hours of training. This is “one time” training; there is no direction in the Act that the training should be required annually or otherwise renewed. The Act requires the Commission to determine whether water providers are in fiscal distress and promulgate rules regarding the required training and the contents of the rate studies. If a provider is determined to be in fiscal distress, the provider is then required to develop an improvement plan with specific actions to correct its financial, technical, and managerial deficiencies.

Act 605 requires the Commission to file the final rules implementing the Act with the Secretary of State on or before January 1, 2022, or “as soon as practicable after (legislative) approval.” The Commission approved the proposed rules at a special called meeting on October 20, 2021. Act 605 requires:

- Commission rules to outline training for water providers’ board members and contents of rate studies
- The Commission to determine providers’ boards in fiscal distress and monitor those boards
- The Commission to consult with an advisory board for development of training
- Provider boards to conduct a rate study every five years
- The Commission to promulgate rules by January 1, 2022, or as soon as practicable after legislative approval

The proposed rules for rate studies are based on the guidelines of the American Water Works Association and the Water Environment Federation, as Act 605 requires. The proposed rules require water providers to obtain the required training and to prepare rate studies designed to determine whether the provider’s current rates are adequate to cover the provider’s costs of operations and maintenance.

The rules for rate studies require the use of a ratio known as a debt service coverage ratio (“DSCR”) as a benchmarking tool to determine the provider’s fiscal status. The DSCR compares the provider’s operating income to its debt service, which provides a measure of whether the provider can produce enough cash to cover its debt obligations. A DSCR of 1.0 means an entity has exactly enough money from operating revenues to pay off its annual debt service once it has paid all operating expenses. The rules require that a provider maintain at least a 1.05 DSCR to provide a small but necessary margin between income and debt service. Providers that fail to maintain a 1.05 DSCR are found to be in fiscal distress.

The DSCR provides an efficient and proven way to analyze the fiscal health of water providers. That benefits the Department of Agriculture because it creates uniformity in the information required of providers, which allows the Department to more effectively review the fiscal status of water providers, no matter their varying sizes or location throughout the state. In the meantime, staff will organize meetings with the advisory training board and develop contents of the required training. Information regarding the training can be placed on the Department website.

**PUBLIC COMMENT:** A public hearing was held on December 15, 2021. The public comment period expired on December 9, 2021. The Commission provided the following summary of the comments that it received and its responses thereto:

**Andy Anderson on behalf of Ozark Mountain Public Water**

**Authority:**

The commenter asked specific questions about whether Act 605 applies to Ozark Mountain Public Water Authority, and if it does, how specific practices of Ozark Mountain Public Water Authority might satisfy the requirements of Act 605 and the proposed rules.

**Response:** Act 605 applies only to providers of retail water service. Our understanding of the operation of Ozark Mountain Public Water Authority is that it produces and sells treated water to other water providers that then sell the water for consumption. If this is correct, then the Act would not be applicable to Ozark Mountain PWA.

**Friday, Eldredge & Clark, LLP, provided the following comments:**

1. Proposed changes to clarify, amend, and add to the contents of Section II, specifically the definitions of “Major Development Project,” “Revenues,” “Total Debt Service,” and “System.”

**Response:**

- The proposed change to the definition of “Major Development Project” exceeds the scope of the Act’s definition of “Major Development Project,” and as such, the proposed change was not included in the Commission’s proposed rule.
- The proposed changes to the definitions of “revenues” and “total debt service” were not considered to be necessary, and as such, were not included in the Commission’s proposed rule.
- The proposed addition of a definition of “System” was considered to be a helpful clarification of the Commission’s proposed rule. The definition was included in the proposed rule.

2. Proposed changes to clarify the contents of Section III of the proposed rule. The commenter’s proposed clarification replaces the words “water system” with “System,” which is necessary to reference the added definition of the term “System,” as also proposed by the commenter and discussed above.

**Response:** The proposed clarification was included in the proposed rule.

3. Proposed clarification in Section III that the Refurbishment and Replacement Account required by Ark. Code Ann. § 14-234-802(e) could be satisfied by an existing depreciation or replacement account and does not have to be a newly created account, and the commenter proposed to clarify that the amount required in the Refurbishment and Replacement Account shall be based on gross operating revenues of a System.

**Response:** The proposed clarifications were included in the proposed rule.

4. Proposed changes to the contents of Section IV(2) of the proposed rule, proposing to limit the definition of “Major Development Project” to the definition in the rule as opposed to the definition in Act 605.

**Response:** The commenter’s proposed definition of Major Development Project was not included in the rule, and therefore this proposed change was not included either.

5. Proposed addition to the contents of Section IV(3)(a) of the proposed rule, requiring a certification from providers of rate studies that the rate study complies with Ark. Code Ann. § 14-234-801 et seq. and the proposed rules.

**Response:** The proposed addition was included in the proposed rule.

6. Proposed addition to the contents of Section IV(4) of the proposed rule, clarifying that rate studies for combined water and sewer systems shall analyze the total system as a joint and integrated undertaking and not as separate facilities.

**Response:** The proposed change clarifies when rate studies are required to analyze the total combined system as opposed to just the water system. As such, the proposed change was included in the proposed rule.

7. Proposed addition to the contents of Section V(2)(f) of the proposed rule, proposing the change to match the commenter’s proposed change to the definition of “Total Debt Service.”

**Response:** The commenter’s proposed change to the definition of “Total Debt Service” was not included in the Commission’s proposed rule, and as such, this change is unnecessary.

**Dennis Sternberg on behalf of Arkansas Rural Water Association provided the following comments:**

1. Disagreeing with the proposed rule requiring an Asset Management Plan.

**Response:** Act 605, codified in Ark. Code Ann. § 14-234-801(d)(1), requires the Commission to “determine by rule the requirements of the rate study, including without limitation a review of the provider’s refurbishment and replacement account and *asset management plan*.”

2. Disagreeing with the proposed rule’s requirement that rate studies analyze the provider’s total combined system for entities that operate with a combined water and sewer system. Mr. Sternberg argues that the Act only applies to water providers and not sewer providers.

**Response:** Act 605 requires the Commission to determine whether water providers are in fiscal distress. To do so, the Commission needs to evaluate the providers’ revenue compared to debt service. However, many water providers operate joint and inseparable water and wastewater systems. It is likely not possible to accurately determine whether costs or

revenue have been appropriately assigned to the correct system in a rate study unless the Commission can review the rate study as it applies to the total system.

3. Expressed his belief that the intent of Act 605 as it pertains to training for provider board members was not to set the guidelines of the American Water Works Association and the Water Environment Federation as the guidelines for training.

**Response:** The proposed rule does not limit the training to the guidelines of the American Water Works Association and the Water Environment Federation. However, based on this comment, a change was included in the proposed rule to clarify that the advisory committee set protocol for the training and include in the protocol training for board members of providers obtaining rate studies under these proposed rules and Act 605.

4. Asked if there would be a list of approved Board Training organizations posted and commented that Arkansas Rural Water Association is requesting to be considered for providing training.

**Response:** While we anticipate Arkansas Rural Water to be a significant resource for training, we do not see the necessity of having trainers listed in the rule. This information can be provided on the Department website.

5. Mr. Sternberg commented on Ark. Code Ann. § 14-234-804(c)(1), which requires the creation of a nonvoting advisory committee to a municipal board if the municipal board services customers outside the municipal boundaries of the municipal provider and the number of those customers outside the municipal boundaries exceeds 20% of the total customer base. Mr. Sternberg asked who selects the two advisory board members.

**Response:** This section is self-executing and does not require Commission rules. Selection of the board member would be by the Municipal Provider.

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

In Section V.1.b. of the rules, is the citation to “ACA 14-234-802(c)(1)(C)(iii)(C)” correct? I do not see that subsection in the codified sections of Act 605. Is this perhaps a reference to § 14-234-802(c)(2)(B)(ii)–(iii)? **RESPONSE:** You are correct. We have made the adjustments in the attached documents. We also noticed that the word “within” had been inadvertently omitted so the referenced sentence now reads “Fails to implement the rates contained in the completed rate study required within one (1) or two (2) years as provided under Ark. Code Ann. § 14-234-802(c)(2)(B)(ii)-(iii); or.”

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the proposed rules have a financial impact that will be the cost of rate studies, implementation of rate studies, and cost of required training. With respect to the total estimated cost by fiscal year to any private individual, entity, and business subject to the proposed rules, as well as to state, county, and municipal government to implement the rules, the Commission states that any financial impact is unknown at this time and will depend on the costs of rate studies. It avers that some rate studies can be obtained at no cost or covered by grant funds and that, since the law just became effective in July 2021, there is not enough historical data upon which to base an estimate.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 14-234-806, as amended by Act 605 of 2021, the Arkansas Natural Resources Commission shall promulgate rules necessary to implement Title 14, Chapter 234, Subchapter 8 of the Arkansas Code, concerning oversight of retail water providers. The proposed rules implement Act 605, sponsored by Senator Alan Clark, which amended the law concerning retail water providers and related service.

**2. DEPARTMENT OF AGRICULTURE, STATE PLANT BOARD  
(Mr. Wade Hodge, Ms. Brandi Reynolds)**

**a. SUBJECT: Abandoned Pesticide Disposal Fee**

**DESCRIPTION:** The Department of Agriculture’s State Plant Board proposes amendments to its Abandoned Pesticide Disposal Fee, as provided for in its Rules Under the Arkansas Pesticide Control Act. The Arkansas Pesticide Control Act requires pesticide manufacturers to register all pesticide products annually with the Arkansas Department of Agriculture (“Department”). That Act required pesticide manufacturers to pay an annual \$50 pesticide disposal fee for each registered pesticide. The Act was amended by Act 364 of 2021, which provided that the State Plant Board would, by rule, establish the amount of the annual disposal fee, not to exceed \$100 per product. The proposed rule amendment sets the annual disposal fee at \$70 per product beginning July 1, 2022. Therefore, this is not a new fee, but the amount of the fee is now established in rule instead of in statute.

The rule amendment was drafted based upon the recommendation of the Abandoned Pesticide Advisory Board, which is comprised of members from the Arkansas Department of Agriculture, the Arkansas Department of Energy and Environment, Arkansas Farm Bureau, the University of

Arkansas Cooperative Extension Service, and the United States Natural Resources Conservation Service. The Abandoned Pesticide Advisory Board also solicited input from pesticide manufacturers, all of whom were supportive of the fee change.

Current law requires all pesticide manufacturers to register their products annually with the Department and pay a pesticide disposal fee for each product registered. The fees are used to collect, transport, and dispose of unwanted pesticides in Arkansas. Act 364 of 2021 provided that the State Plant Board shall establish by rule the amount of the annual pesticide disposal fee not to exceed \$100 per product. The proposed rule amendment sets the annual pesticide disposal fee at \$70. A fee increase is needed to keep pace with the rising costs of pesticide disposal.

Revenues from the fee are used for the collection, transportation, and disposal of unwanted pesticides through a third-party contractor. Average Department annual revenue from the fee is approximately \$400,000 per year. The Department has disposed of over 5.2 million pounds of unwanted pesticides since 2005.

The Department has historically performed an average of fifteen abandoned pesticide collection events per year. However, due to increased third-party disposal costs, the Department has reduced the number of collections to ten per year. Increasing the annual pesticide disposal fee to \$70 per product will enable the Department to return to fifteen collection events per-year.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on December 13, 2021. The Board received no comments.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rule has a financial impact that will be the increased collection of fees. It estimates that the total cost by fiscal year to any private individual, entity, and business subject to the amended rule will be \$70.00 per pesticide for the current fiscal year and \$70.00 per pesticide for the next fiscal year, explaining:

Approximately 8,000 products requiring the fee are registered annually. Under the proposed rule, pesticide manufacturers will pay a \$70 disposal fee for each product registered with the Department. Currently, there are approximately 653 companies registering one (1) or more products, thirty six (36) of which register fifty (50) or more products. The fee is currently \$50, so a

company registering fifty (50) products pays \$2,500. With the fee increasing to \$70, that same company would pay \$3,500 yearly.

**LEGAL AUTHORIZATION:** The proposed changes include those made in light of Act 364 of 2021, sponsored by Representative David Hillman, which amended the Abandoned Agricultural Pesticide Disposal Act; clarified the responsibilities of the Department of Agriculture and the State Plant Board; and amended the amount of the abandoned pesticide disposal fee. Pursuant to Arkansas Code Annotated § 8-7-1206(a)(1), as amended by Act 364, § 1, moneys received into the Abandoned Agricultural Pesticide and Plant Regulator Disposal Trust Fund shall be from gifts, grants, or funds from entities other than the State Plant Board and from a fee not to exceed one hundred dollars (\$100) established by rule by the State Plant Board per registered pesticide per registrant per year for the specific purpose of funding the disposal of abandoned pesticides.

3. **DEPARTMENT OF COMMERCE, STATE INSURANCE DEPARTMENT**  
(Ms. Amanda Rose, Mr. Mel Anderson)

a. **SUBJECT: Proposed Rule 31: Pre-License Education for Insurance Producers and Adjusters**

**DESCRIPTION:** The purpose of the proposed rule is to add pre-license education requirements for insurance producers and adjusters, in compliance with Act 397.

Applicants for Arkansas resident insurance producer licenses have been required to complete pre-license education before taking the Arkansas insurance examination for over a decade. License applicants may choose from several approved education providers to complete the course requirements. This proposed rule requires new applicants for an Arkansas resident adjuster license to complete pre-license education courses similar to those courses required for insurance producers. Current licensed adjusters will not be required to take the pre-licensing courses. The required courses will include hours covering general adjusting principles, state laws, and ethics.

The proposed rule:

- Requires adjuster applicants to complete a minimum of 20 hours of pre-licensing education before taking their Arkansas adjuster examination.
- Identifies subject matter and length of time that must be included in pre-license education courses offered by providers.

- Clarifies that electronic signatures may be used for all pre-licensing education forms that must be submitted to the Department.

**PUBLIC COMMENT:** A public hearing was held on this rule on November 18, 2021. The public comment period expired on November 18, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency indicated that this rule has a financial impact.

Per the agency, the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed rule is \$250 per new applicant for the current fiscal year and \$250 per new applicant for the next fiscal year. The agency indicated that applicants for an adjuster license will be required to complete a minimum of 20 hours of approved pre-license education courses from an approved provider.

**LEGAL AUTHORIZATION:** The Insurance Commissioner may “promulgate rules necessary for the effective regulation of the business of insurance” and “make reasonable rules necessary for or as an aid to the effectuation of any provision of the Arkansas Insurance Code.” Ark. Code Ann. § 23-61-108(a)(1), (b)(1). This rule implements Act 397 of 2021. The Act, sponsored by Representative Mark Lowery, removed the prelicensure educational requirements exemption for an insurance adjuster and required a nonresident insurance producer, adjuster, or consultant to maintain a license in good standing in the licensee’s home state.

**b. SUBJECT: Rule 65: Credit for Reinsurance**

**DESCRIPTION:** In the 2021 legislative session, Arkansas’s General Assembly passed an update to the Arkansas Credit for Reinsurance Law, specifically Ark. Code Ann. §§ 23-62-305 to -309 (Act 672 of 2021). This law is based on a model issued by the National Association of Insurance Commissioners (“NAIC”) and an accreditation standard for all states.

This proposed amendment to the Insurance Department’s Rule 65 is authorized by Ark. Code Ann. § 23-62-308 and is intended to implement the new law and will also be a national accreditation standard in 2022.

**PUBLIC COMMENT:** A public hearing was held on this rule on December 10, 2021. The public comment period expired on December 10, 2021. The agency provided the following public comment summary:

The hearing on this Proposed Amended Rule (“Credit for Reinsurance”) was held on Friday, December 10. We received two public comments – one from the Reinsurance Association of America and one from Lloyd’s America, Inc. Both entities support the amendment. [The public comment letters can be found as an attachment on the paperclip for the January 26, 2022 meeting of the Administrative Rules Subcommittee.]

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

**1.** Section 9(C)(4)(e) contains a definition of “solvent scheme of arrangement.” Is there a statutory basis for this definition or does it come from somewhere else? **RESPONSE:** The phrase “solvent scheme of arrangement” is the NAIC model language. It is also found in Ark. Code Ann. § 23-62-305. I did not find a definition of the phrase.

**2.** Section 9(D)(2) states, “Upon removal of a Reciprocal Jurisdiction from this list credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed . . . .” However, Ark. Code Ann. § 23-62-305(f)(2)(C)(ii) states that “credit for reinsurance ceded to an assuming insurer that has its home office or is domiciled in that jurisdiction shall be allowed . . . .” Is there a reason this language was not included in the proposed rule? **RESPONSE:** This Rule is a national accreditation standard, so we stick to the model language as much as we can. A Rule does not trump a statute, so our practices are not likely to change.

**3.** Section 9(G) addresses the Commissioner’s responsibilities before denying statement credit, imposing a requirement to post security, or adopting any similar requirement that will have substantially the same regulatory effect as security. Are these provisions required by statute, or is the Department relying on discretionary rulemaking authority for this subsection? **RESPONSE:** This is also model language, but we do have statutes that give the Commissioner broad authority and implied powers. See Ark. Code Ann. § 23-61-103.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The State Insurance Commissioner has specific authority to “adopt rules implementing” the Arkansas Credit for Reinsurance Law. Ark. Code Ann. § 23-62-308(a). These rules implement Act 672 of 2021, sponsored by Representative Mark Lowery, which modified the Arkansas Credit for Reinsurance Law. The Act contains the following language regarding rulemaking:

The Insurance Commissioner may adopt rules under § 23-62-308(b) to implement [Ark. Code Ann. § 23-62-305, regarding credit allowed a domestic ceding insurer] and specify additional requirements relating to: (i) The valuation of assets or reserve credits; (ii) The amount and forms of security supporting reinsurance arrangements as described in § 23-62-308(b); and (iii) The circumstances in which credit of a noncomplying assuming insurer shall be reduced or eliminated.

Act 672, § 1(a)(1)(B), *codified at* Ark. Code Ann. § 23-62-305(a)(1)(B).

4. **DEPARTMENT OF COMMERCE, DIVISION OF WORKFORCE SERVICES** (Mr. Derwin Taylor, Ms. Tammy Richardson)

a. **SUBJECT: Amendment to Transitional Employment Assistance (TEA)/Work Pays Policy**

**DESCRIPTION:** The Department of Commerce’s Division of Workforce Services proposes amendments to its Arkansas Work Pays rules and its Work Pays Application. The Work Pays section of the Transitional Employment Assistance (“TEA”) Policy is being revised in order to incorporate eligibility policy and the language related to Electronic Benefits Transfer (“EBT”) restrictions on the Work Pays Application.

Specific revisions to the policy include:

Policy 10000

- Incorporated former Policy 10220 (Time Limits)

Policy 10100

- Incorporated former Policy 10102.1 (Prior TEA Receipt)

Policy 10101

- Added language regarding Act 1205 of 2015, drug testing of applicants and recipients

Policy 10102.1

- Former Policy 10102.1 (Prior TEA Receipt) incorporated into Policy 10100
- Section revised to discuss employment eligibility requirement

Policy 10102.2

- Prior 10102.2 (Income) moved to 10102.3
- Section revised to add language regarding automated system

Policy 10102.3

- Language revised to combine income (previously 10102.2) and work hours requirement

Policy 10102.4

- Prior 10102.4 (Resources) moved to new 10102.3
- Language added regarding Drug Screening Questionnaire requirement

Policy 10102.5

- Language added regarding scheduling the initial interview

Policy 10102.6

- Language added regarding re-scheduling the initial interview

Policy 10103

- Language added to require adequate notice of denial during initial eligibility determination

Policy 10104

- Deleted former Policy 10104, defunct procedure
- Added new language on drug testing requirements

Policy 10104.1

- Added language regarding exemptions from drug screenings and testing

Policy 10104.2

- Added language regarding cooperation with drug testing

Policy 10104.3

- Added language regarding substance abuse evaluation/drug treatment referral

Policy 10104.4

- Added language regarding compliance with drug abuse treatment plan of action

Policy 10104.5

- Added language regarding good cause for noncompliance with drug treatment/recovery support

Policy 10105

- Formerly Policy 10104

- Incorporated former Policy 10310
- Language added regarding biweekly contact

Policy 10106

- Formerly Policy 10105
- Added procedure for Drug Assessment Questionnaire

Policy 10200

- Incorporated language from Policy 10400
- Language added outlining requirements for 6 month and yearly re-evaluations

Policy 10220

- Moved language to Policy 10000

Policy 10230

- Deleted defunct procedure

Policy 10230.1

- Deleted defunct procedure

Policy 10300

- Hourly work requirement information moved to 10102.3
- Career Advancement Plan information moved to 10102.5
- Examples and FPL calculations added
- Language added to clarify significant change to budget

Policy 10310

- Moved to Policy 10105

Policy 10320

- Additional policy reference included

Policy 10320.1

- Work activities identified as core

Policy 10320.2

- Listed work activities re-grouped as core and non-core

Policy 10400

- Moved to Policy 10200

Policy 10430

- Policy references added for each supportive service listed

Policy 10501

- Reference to ANSWER system replaced with generic term

Policy 10502

- Language added to list types of acceptable verification
- Language added to describe the three different payment types that may be authorized

Policy 10503

- Deleted section on extracts due to automated system changes

Policy 10504

- Language revised to correct grammar and improve flow of text

Policy 10600

- Language added to remove name of automated system
- Language added to clarify eligibility for bonuses

Policy 10600.3

- Header revised to reflect correct description of bonus

Policy 10600.4

- Language added to require advance notice before closure
- Language added that temporary fluctuations in salary are not part of income calculations

Policy 10700

- Revision made in order to update two reasons for noncompliance

Policy 10720

- Typo corrected
- Language added to clarify that good cause months are considered noncompliance

Policy 10730

- Language added to clarify procedure for sending an advance notice and scheduling a home visit
- Language added to clarify payment may be reduced or cancelled

Policy 10740

- Language added to clarify the procedure on sending sanction notices
- Language added to explain sanction levels and home visit requirement

#### Policy 10750

- Language added about lifting the child support sanction

#### Policy 10760

- Incorporated former Policy 10106 (Case Closure)
- Language added to clarify procedure when a participant does not waive right to 10-day notice
- Language added regarding closure due to noncompliance with drug screening requirements

#### Policy 10800

- Language added to clarify when the six-month does not apply
- Note added to explain insufficient hours

Revisions to the Work Pays Application were made in accordance with Public Law 112-96 of February 2012, which amended Section 408 of the Social Security Act, 42 U.S.C. § 608(a), and enacted a state requirement to prevent unauthorized spending of benefits. Specific revisions to the Work Pays Application include:

- Application revised to streamline for online use, incorporate references to Division of Workforce Services (“DWS”) and DWS’s compliance with civil rights regulations. In addition, capture information for all adults included in case, capture information for two parent households, capture information for all children in the household under the care and custody of the adult(s) in the case.
- Section 4: Question deleted based on Act 566 of 2017 (“HOPE ACT”). Felony drug convictions no longer impact eligibility.
- PRA amended to include language regarding illegal use of EBT card.

Changes made to the policy, after the public comment period, include the following:

#### Policy 10000, #6

- The Markup was corrected to reverse the accidental deletion of the following language: “Months from other states do not count.”

#### Policy 10104.3, last paragraph

- The word “eligible” was inserted behind the word “otherwise.”
- Typos corrected to remove “es” from the word “businesses.”

Changes made to the Work Pays application, after the public comment period, include the following:

Section I: Applicant Information

- The term “sex” was changed to “gender.”
- Additional eligibility information requested for adult applicants.

Section II: Children Information

- The term “sex” was changed to “gender.”
- Additional eligibility information requested for children in the household.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on November 30, 2021. The Division received no comments.

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

(1) Section 10100 – For number 5, the markup appears to strikeout “states do not count”; however, the clean copy shows that the language is to remain in the rule. Which is correct? **RESPONSE:** The clean copy is correct; months from other states do not count. The markup deletion was meant to be the number “7” at the end of the sentence. Correction made to markup.

(2) Section 10101 – This section deletes the provision that a Work Pays application will be mailed to all TEA participants whose case was closed the prior month due to employment. What was the reasoning behind this change? **RESPONSE:** The deleted procedure was outdated. Central Office does not mass mail applications. Instead, all TEA participants receive a Work Pays application – not just those whose TEA cases recently closed due to employment. (Policy 10000, paragraph 2)

(3) Section 10101 – This section contains reference to Act 1205 of 2015 as it relates to required drug screenings; however, it appears that Act 1205 established a pilot program that was to expire after two years and that Act 314 of 2017 actually made the pilot program permanent. Is the reference to Act 1205 correct? **RESPONSE:** Yes. The policy purposely references the original Act that resulted in TANF eligibility changes, effective January 2016. Because the Act was relative to TANF as a whole, and not exclusively Work Pays, the language mirrors DHS TEA Policy 2363 and the language used on the actual TANF Drug Assessment Tool.

(4) Section 10104 – Another reference to Act 1205. Should this be Act 314 of 2017? **RESPONSE:** No, for reasons cited above.

(5) Section 10104 – The rule appears to provide that drug screenings will be used to determine whether there is a “reasonable cause” to believe the

applicant is engaging in drug use. However, Ark. Code Ann. § 20-76-705(1)(B) employs the term “reasonable suspicion” and Section 10104.2 of the rules also uses “reasonable suspicion.” Is there a reason that DWS has used a different term from that used in the statute in this section? **RESPONSE:** Yes. This particular term was used to remain consistent with DHS TEA Policy 2363 in regard to TANF eligibility and reflects language used in A.C.A. § 20-76-704.

(6) Section 10104.1 – This section refers to the “Career Pathways Program”; however, Ark. Code Ann. § 20-76-703(b)(2) refers to “Career Pathways Initiative.” Is there a reason that DWS has used a different title than that used in the statute? **RESPONSE:** In this section of policy, the term is used in order to remain consistent with DHS TEA Policy 2364, #3. The term “program” is often used interchangeably when referencing the Career Pathways Initiative, as in Acts 1705 of 2005 and A.C.A. § 20-76-445.

(7) Section 10104.2 – This section provides that if an eligible applicant refuses or fails to cooperate with the drug-testing process, the case will be closed. It continues that if the individual reappplies and is eligible, s/he must submit to a drug test. However, Ark. Code Ann. § 20-76-705(1)(C) specifically provides that a refusal to take a drug test shall result in a lack of eligibility for six months. I see no mention of this six-month bar from eligibility. Is there a reason that this was not included? **RESPONSE:** The six-month period of ineligibility was a standard adopted for the pilot. When the program became permanent, the language regarding 6-months of ineligibility was not included in the Act. As such, Policy 10104.2 is consistent with DHS TEA Policy 2365:

- For TEA: Refusal to cooperate with drug testing results in a reduction of TEA benefits and assignment of a protective payee.
- For Work Pays: Refusal to cooperate with drug testing results in case closure/denial. There is no assignment of a protective payee in Work Pays due to program-specific eligibility requirements listed in Policy 10100.

**FOLLOW UP QUESTION:** It sounds like that the agency is of the opinion that this statute concerning drug screening and testing programs has no application here, but Ark. Code Ann. § 20-76-705(1) provides that a requirement upon initial application for Temporary Assistance for Needy Families Program or a current recipient of program benefits at annual redetermination shall be screened, and if the applicant or recipient refuses, it shall result in a lack of eligibility for six months. Are you saying that this statute somehow does not apply to the Work Pays program? Is so, why does it not apply? What is the agency’s position as to when this statute would apply? **RESPONSE:** Allow me to clarify that DHS wrote and promulgated the drug testing/screening policy, as they had eligibility

for TEA and Work Pays at the time the law was written. Now, DWS has now incorporated the policy into our manual.

As it relates to TANF on a federal level, the following apply:

- (1) TANF assistance is only for eligible children in the home. As such, an adult must apply on behalf of the children and cannot get assistance for him/herself.
- (2) If all TANF eligibility requirements are met, the eligible children in the home cannot be denied benefits.

As it relates to drug testing/screening, the TANF eligibility requirement is that the adult must comply with drug screening/testing.

- If an adult takes a drug test, he or she has complied with the eligibility requirement – regardless of the test results.
- If an adult refuses/fails to take a drug test, he or she has not complied with this requirement.

In consideration that TANF assistance is not for adults and in consideration that eligible children in the home cannot be denied TANF assistance if eligibility requirements are met, the 6-month ineligibility period is in conflict with federal TANF eligibility rules/guidelines. As such, DHS wrote the policy without including the 6-month ineligibility period for both TEA and for Work Pays.

- TEA Policy: The adult who takes a drug test and receives a positive result complied with the drug testing/screening requirement. If all other eligibility requirements are met, the children must still receive cash assistance. However, in TEA, the drug-positive adult is removed from the case. A protective payee is appointed to receive the cash assistance on behalf of the children in the home. This procedure allows adherence to TANF rules and guidelines.
- Work Pays Policy: The adult who takes a drug test and receives a positive result complied with the drug testing/screening requirement. Because Work Pays is NOT cash assistance, there is no provision for protective payees. The case gets closed.

(8) Section 10104.3 – In the final paragraph, second bullet point, it appears that there is a stray “otherwise” and extra “es” on “business.”

**RESPONSE:** On both the clean and markup, wording has been corrected to “otherwise eligible” and “es” has been removed from the word “business.”

(9) Section 10760 – Is the markup correct for Section 10760? It does not appear to match your clean copy, *i.e.*, the mark-up shows a list of 1-5, but the clean copy still contains a list of 1-7. **RESPONSE:** A list of 1-7

shows on both the markup and clean versions we have on file. Those pages have been attached for review.

(10) Application – The markup shows the entire application stricken, but does not contain a new document. Is there an application replacing the stricken one? Is it the one in your clean copy? **RESPONSE:** Yes, the entire application is being deleted and replaced because it is a DHS document. The markup is the current DHS application, whereas the clean copy is the DWS application.

(11) Arkansas Code Annotated § 20-76-444(j)(2) provides that the rules promulgated by DWS for the Arkansas Work Pays Program “shall be subject to review and recommendation by the Arkansas Workforce Development Board.” Did the Board review the rules? **RESPONSE:** Yes, the full Board reviewed the rules on 7/20/2021, prior to submission to the Governor.

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 § 20-76-444(j)(1), the Division of Workforce Services shall promulgate rules establishing the Arkansas Work Pays Program. The rules shall be subject to review and recommendation by the Arkansas Workforce Development Board. *See* Ark. Code Ann. § 20-76-444(j)(2).

The agency states that the rule is required to comply with a federal statute, rule, or regulation, namely, § 408 of the Social Security Act, 42 U.S.C. § 608(a)(12).

5. **ARKANSAS ETHICS COMMISSION** (Ms. Jill Barham, Mr. Drew Blankenship)

a. **SUBJECT:** Rules on Political Committees

**DESCRIPTION:** The purpose of these proposed amendments is to bring the Rules on Political Committees into conformity with the legislation passed during the 93<sup>rd</sup> General Assembly of the Arkansas Legislature. Likewise, there is a small grammatical change that was recommended by the Bureau of Legislative Research in the context of the codifications of the Code of Arkansas Rules.

**PUBLIC COMMENT:** A public hearing was held on this proposed rule on November 19, 2021. The public comment period expired on November 17, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Arkansas Ethics Commission has the authority to “promulgate reasonable rules to implement and administer the requirements of” Ark. Code Ann. §§ 7-6-201 to -231. *See* Ark. Code Ann. § 7-6-217(g)(1). The commission also has the authority to impose fines between \$50 and \$3,500 “for negligent or intentional violation of this subchapter” and to “adopt rules governing the imposition of such fines[.]” *See* Ark. Code Ann. § 7-6-218(b)(4)(B)(i). These rules implement Acts 254 and 737 of 2021, both of which amend this subchapter.

Act 254, sponsored by Senator Jonathan Dismang, amended the law concerning campaign finance, contributions and reporting; reenacted the requirement to file an additional statement of financial interest; and amended portions of Initiated Act 1 of 1990 and Initiated Act 1 of 1996. Act 737, sponsored by Representative Brian Evans, amended the law concerning campaign finance; repealed the provisions concerning carryover funds; and amended portions of Initiated Act 1 of 1990 and Initiated Act 1 of 1996.

b. **SUBJECT:** Rules on Campaign Finance & Disclosure

**DESCRIPTION:** The purpose of these changes is to bring the Rules on Campaign Finance and Disclosure into conformity with the changes made during the 93<sup>rd</sup> General Assembly. The Rules on Campaign Finance and Disclosure are used as a resource when running for public office, so it is important that the rules are updated as soon as possible to help candidates for public office in Arkansas during the 2022 campaign cycle.

**PUBLIC COMMENT:** A public hearing was held on this proposed rule on November 19, 2021. The public comment period expired on November 17, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Arkansas Ethics Commission has the authority to “promulgate reasonable rules to implement and administer the requirements of” Ark. Code Ann. §§ 7-6-201 to -231, addressing campaign financing, and Ark. Code Ann. §§ 21-8-301 to -310, addressing the code of ethics for public officers and employees. *See* Ark. Code Ann. § 7-6-217(g)(1). The commission also has the authority to impose fines between \$50 and \$3,500 “for negligent or intentional violation of this subchapter” and to “adopt rules governing the imposition of such fines[.]” *See* Ark. Code Ann. § 7-6-218(b)(4)(B)(i).

These rules implement Acts 254, 272, 324, 384, 385, 734, 737, and 755 of 2021, all of which amended the subchapter concerning campaign financing. These rules also implement Act 540 of 2021, which amended the subchapter concerning the code of ethics.

Act 254, sponsored by Senator Jonathan Dismang, amended the law concerning campaign finance, contributions, and ethics and conflicts of interest of state and local officials; reenacted the requirement to file an additional statement of financial interest, and amended portions of Initiated Act 1 of 1990 and Initiated Act 1 of 1996.

Act 272, sponsored by Representative Joshua Bryant, amended Arkansas law concerning campaign finance, amended Arkansas law concerning carryover funds, and established a minimum amount of carryover funds for an office without an annual salary.

Act 324, sponsored by Senator Keith Ingram, amended campaign finance law, changed the use of campaign funds and carryover funds, prohibited the use of campaign funds or carryover funds to pay for an ethics violation, and amended provisions of law resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996.

Act 384, sponsored by Senator Clarke Tucker, amended campaign contribution amounts, amended the law concerning campaign practices, and amended portions of the law resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996. The Act required the Arkansas Ethics Commission to establish a maximum campaign contribution limit by rule, “calculated from a base amount of two thousand dollars (\$2,000) as of January 1, 2015[.]” Act 384, § 3(i)(1).

Act 385, also sponsored by Senator Tucker, amended Arkansas law concerning campaign contributions, amended campaign practices, and amended portions of the law resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996.

Act 540, sponsored by Senator Trent Garner, amended the law concerning the code of ethics for public officers and employees and amended the law concerning holding office if convicted of a public trust crime.

Act 734, sponsored by Representative Megan Godfrey, amended the law related to campaign finance, allowed campaign funds to pay childcare expenses, and amended portions of Initiated Act 1 of 1990 and Initiated Act 1 of 1996.

Act 737, sponsored by Representative Brian Evans, amended the law concerning campaign finance, repealed the provisions concerning carryover funds, modified the use of campaign funds, and amended portions of Initiated Act 1 of 1990 and Initiated Act 1 of 1996.

Act 755, sponsored by Representative Carol Dalby, amended the law concerning campaign signs and materials.

6. **DEPARTMENT OF FINANCE AND ADMINISTRATION, ALCOHOLIC BEVERAGE CONTROL DIVISION** (Ms. Doralee Chandler, Mr. Michael Lewis)

a. **SUBJECT: Prohibited Activities; Grounds for Cancellation, Suspension, Revocation, or Placing of Monetary Fine Against Any Permit (Title 1, Subtitle G, Rule 1.79(27))**

**DESCRIPTION:** Act 703 of 2021 authorized certain permit holders that have a restaurant to sell alcoholic beverages to consumers for off-premise consumption via delivery and to-go food orders.

**PUBLIC COMMENT:** A public hearing was held on this rule on November 17, 2021. The public comment period expired November 17, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** These rules implement Act 703 of 2021. The Act, sponsored by Senator Jane English, authorized certain permit holders to sell alcoholic beverages directly to consumers to be consumed off-premises or delivered to the consumer at a location off-premises. “The Director of the Alcoholic Beverage Control Division shall adopt rules to implement and administer” the Act. Act 703, § 2(g), *codified at* Ark. Code Ann. § 3-4-108(g).

b. **SUBJECT: Microbrewery-Restaurant Delivery (Title 2, Subtitle H, Rule 2.58.1)**

**DESCRIPTION:** Acts 158 and 1060 of the 93<sup>rd</sup> General Assembly authorized Microbrewery Restaurants to deliver alcoholic beverages directly to consumers.

**PUBLIC COMMENT:** A public hearing was held on this rule on November 17, 2021. The public comment period expired on November 17, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the authority to promulgate rules as needed to carry out any “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This rule implements Act 158 of 2021, sponsored by Senator Jane English, which authorized certain permit holders to deliver alcoholic beverages directly to a consumer.

Per the agency, this rule also implements Act 1060 of 2021. The Act, sponsored by then-Senator Lance Eads, authorized a hard cider manufacturer to deliver hard cider directly to the private residence of certain consumers.

c. **SUBJECT: Small Brewery Delivery (Title 2, Subtitle H, Rule 2.65.1)**

**DESCRIPTION:** Act 158 of 2021 authorized small breweries to deliver alcoholic beverages directly to consumers.

**PUBLIC COMMENT:** A public hearing was held on this rule on November 17, 2021. The public comment period expired on November 17, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the authority to promulgate rules as needed to carry out any “alcoholic control acts enforced in this state.” Ark. Code Ann.

§ 3-2-206(a). This rule implements Act 158 of 2021. The Act, sponsored by Senator Jane English, authorized certain permit holders to deliver alcoholic beverages directly to a consumer.

d. **SUBJECT: Hard Cider Manufacturing Delivery (Title 2, Subtitle J, Rule 2.83.1)**

**DESCRIPTION:** Act 1060 of 2021 authorized hard cider manufacturers to deliver alcoholic beverages directly to consumers.

**PUBLIC COMMENT:** A public hearing was held on this rule on November 17, 2021. The public comment period expired on November 17, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the authority to promulgate rules as needed to carry out any “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This rule implements Act 1060 of 2021. The Act, sponsored by then-Senator Lance Eads, authorized a hard cider manufacturer to deliver hard cider directly to the private residence of certain consumers.

e. **SUBJECT: To Go and Delivery (Title 3, Subtitle F, Rules 3.20 – 3.28)**

**DESCRIPTION:** Act 703 of 2021 authorized certain permit holders that have a restaurant to sell alcoholic beverages to consumers for off-premise consumption via delivery and to-go food orders. Acts 158 and 1060 of 2021 authorized certain permit holders to deliver alcoholic beverages directly to consumers. This rule establishes requirements for certain permitted establishments to sell alcohol to go and deliver alcohol.

**PUBLIC COMMENT:** A public hearing was held on this rule on November 17, 2021. The public comment period expired on November 17, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the authority to promulgate rules as needed to carry out any “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This rule implements Acts 158, 703, and 1060 of 2021. Act 158, sponsored by Senator Jane English, authorized certain permit holders to deliver alcoholic beverages directly to a consumer. Act 703, also sponsored by Senator English, authorized certain permit holders to sell alcoholic beverages directly to consumers to be consumed off-premises or delivered to the consumer at a location off premises. Act 1060, sponsored by then-Senator Lance Eads, authorized a hard cider manufacturer to deliver hard cider directly to the private residence of certain consumers.

f. **SUBJECT: Manufacturer to Sell Only to Wholesalers; Exception for Small Farm Wine and Brandy (Title 2, Subtitle C, Rule 2.12)**

**DESCRIPTION:** This rule implements Act 706, which modified Ark. Code Ann. § 3-4-602 to allow a distiller to self-distribute.

**PUBLIC COMMENT:** A public hearing was held on this rule on November 17, 2021. The public comment period expired on November 17, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the authority to promulgate rules as needed to carry out any “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This rule implements Act 706 of 2021. The Act, sponsored by Representative Craig Christiansen, amended the law regarding Arkansas distilleries and authorized self-distribution.

g. **SUBJECT: Disposition of Distiller or Liquor Manufacturer Products (Title 2, Subtitle K, Rule 2.85)**

**DESCRIPTION:** This rule allows distillers to self-distribute to licensed retailers no more than 15,000 nine-liter-equivalent cases or 35,667 gallons of spirituous liquors per year, as allowed by Act 706 of 2021.

**PUBLIC COMMENT:** A public hearing was held on this rule on November 17, 2021. The public comment period expired on November 17, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the authority to promulgate rules as needed to carry out any “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This rule implements Act 706 of 2021. The Act, sponsored by Representative Craig Christiansen, amended the law regarding Arkansas distilleries and authorized self-distribution.

**h. SUBJECT: Retailer to Purchase Only From Permitted Wholesaler (Title 3, Subtitle C, Rule 3.7)**

**DESCRIPTION:** This rule allows distillers to self-distribute to licensed retailers, as permitted by Act 706 of 2021.

**PUBLIC COMMENT:** A public hearing was held on these rules on November 17, 2021. The public comment period expired on November 17, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the authority to promulgate rules as needed to carry out any “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This rule implements Act 706 of 2021. The Act, sponsored by Representative Craig Christiansen, amended the law regarding Arkansas distilleries and authorized self-distribution.

**i. SUBJECT: Subtitle G – Excursion Train Permits (Title 3, Subtitle G, Rule 3.29-3.34)**

**DESCRIPTION:** This rule creates the permitting process for excursion trains, as allowed by Act 68 of 2021.

**PUBLIC COMMENT:** A public hearing was held on this rule on November 17, 2021. The public comment period expired November 17, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the authority to promulgate rules as needed to carry out any “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This rule implements Act 68 of 2021. The Act, sponsored by then-Senator Lance Eads, established an excursion train permit and authorized an excursion train permit holder to sell and serve alcoholic beverages. The Act required the Director to adopt rules implementing and administering excursion train permits. *See* Act 68, § 2(j), *codified at* Ark. Code Ann. § 3-4-612(j).

**j. SUBJECT: Definitions: Mead (Title 2, Subtitle B, Rule 2.10.3)**

**DESCRIPTION:** This rule sets forth a statutory definition of “mead,” as prescribed by Act 271 of 2021.

**PUBLIC COMMENT:** A public hearing was held on these rules on November 17, 2021. The public comment period expired on November 17, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the authority to promulgate rules as needed to carry out any “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This rule implements Act 271 of 2021, sponsored by Representative Joshua Bryant. The Act amended the Direct Shipment of Vinous Liquor Act, included an establishment that produces mead in the definition of “small farm winery,” allowed a small farm winery to ship mead directly to consumers in state or out of state in the same manner as small farm wine, and taxed mead in the same manner as wine.

**k. SUBJECT: Section 2.75 Direct Shipment of Vinous Liquor or Mead to Arkansas Residents (Title 2, Subtitle B, Rule 2.75)**

**DESCRIPTION:** This rule allows the direct shipment of mead to Arkansas residents, as prescribed by Act 271 of 2021.

**PUBLIC COMMENT:** A public hearing was held on this rule on November 17, 2021. The public comment period expired November 17, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the authority to promulgate rules as needed to carry out any “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This rule implements Act 271 of 2021, sponsored by Representative Joshua Bryant. The Act amended the Direct Shipment of Vinous Liquor Act, included an establishment that produces mead in the definition of “small farm winery,” allowed a small farm winery to ship mead directly to consumers in state or out of state in the same manner as small farm wine, and taxed mead in the same manner as wine.

**i. SUBJECT: Advertising for a Microbrewery-Restaurant Private Club (Title 5, Subtitle H, Rule 5.90)**

**DESCRIPTION:** This rule allows Microbrewery Private Clubs to advertise for social functions of general interest, as allowed by Act 885 of 2021.

**PUBLIC COMMENT:** A public hearing was held on this rule on November 17, 2021. The public comment period expire on November 17, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the authority to promulgate rules as needed to carry out any “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This rule implements Act 885 of 2021, sponsored by Representative Mark Perry, which amended the law regarding advertising by microbrewery-restaurant private clubs.

**m. SUBJECT: Advertising for a Microbrewery-Restaurant Private Club in a Dry Area (Title 5, Subtitle H, Rule 5.91)**

**DESCRIPTION:** This rule implements Act 885 of 2021, which created the ability of Microbrewery Private Clubs to advertise for social functions of general interest.

**PUBLIC COMMENT:** A public hearing was held on this rule on November 17, 2021. The public comment period expired on November 17, 2021. The agency indicated that it received no public comments. The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the authority to promulgate rules as needed to carry out any “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This rule implements Act 885 of 2021, sponsored by Representative Mark Perry, which amended the law regarding advertising by microbrewery-restaurant private clubs.

n. **SUBJECT: Types of Permits for Which Application May Be Made (Title 1, Subtitle C, Rule 1.19(39))**

**DESCRIPTION:** Act 409 of 2021 changed the placement of the word “solely” within Ark. Code Ann. § 3-6-104(a). This change is reflective of that Act and comports with the new placement.

**PUBLIC COMMENT:** A public hearing was held on this rule on November 17, 2021. The public comment period expired on November 17, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the authority to promulgate rules as needed to carry out any “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This rule implements Act 409 of 2021, sponsored by Representative Craig Christiansen, which clarified the Native Brandy Law.

7. **DEPARTMENT OF HEALTH, ARKANSAS STATE BOARD OF ACUPUNCTURE AND RELATED TECHNIQUES** (Mr. Russell Burns, Mr. Matt Gilmore)

a. **SUBJECT:** State Board of Acupuncture & Related Techniques Rule

**DESCRIPTION:** These amendments clarify and update procedures for licensees and comply with acts passed by the Legislature in the 2021 General Session.

Title III (A.3)(b) – adds language that explicitly states licensure eligibility for individuals who hold work permits per Act 746 of 2021 (AG’s Office model language).

Title III (C.2)(a) – adds language regarding fee waiver for eligible individuals listed in Act 725 of 2021 (AG’s Office model language).

Title III (G) – language update, licensure extension, and continuing education requirement waiver language updated/added per Act 135 of 2021 (AG’s Office model language).

Title III (I)(a) – removes reference to “permanently disqualifying offenses” per Act 748 of 2021 (AG’s Office model language).

**PUBLIC COMMENT:** No public hearing was held on this proposed rule. The public comment period expired on November 30, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency indicated that this rule has a financial impact.

Per the agency, the total estimated cost by fiscal year to any private individual, entity or business subject to the rule is unknown. The agency indicated that there will be a positive financial impact for applicants eligible for fee waiver under Act 725 of 2021 and a potential loss of fee revenue to the agency. However, the agency also indicated that it is unable to forecast exact values due to a lack of statistical information.

**LEGAL AUTHORIZATION:** The State Board of Acupuncture and Related Techniques has the power to adopt rules “consistent with the law as may be necessary to enable the [Board] to carry into effect the provisions of” Ark. Code Ann. Title 17, Chapter 102, governing acupuncturists. These rules implement Acts 135, 725, 746, and 748 of 2021.

Act 135, sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, “[a]n occupational licensing entity shall grant automatic occupational licensure to” certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created by* Act 135.

Act 725, sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act’s implementation. *See* Ark. Code Ann. § 17-5-105(2).

Act 746, sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals holding federal work permits. Temporary language contained within Act 746 required all occupational or professional licensing entities to promulgate rules necessary to implement the Act. *See* Act 746, § 2(a).

Act 748, sponsored by Representative Bruce Cozart, amended occupational criminal background checks.

**8. DEPARTMENT OF HEALTH, ARKANSAS STATE BOARD OF ATHLETIC TRAINING (Mr. Russell Burns, Mr. Matt Gilmore)**

**a. SUBJECT: State Board of Athletic Training Rule**

**DESCRIPTION:** These amendments clarify and update procedures for licensees and comply with acts passed by the Legislature in the 2021 General Session.

**Summary of Changes**

Section II, C – language update, licensure extension, and continuing education requirement waiver language updated/added per Act 135 of 2021 (AG’s Office model language).

Section II – creates new subsection D that explicitly states licensure eligibility for individuals who hold work permits per Act 746 of 2021 (AG’s Office model language).

Section VI – adds language regarding fee waiver for eligible individuals listed in Act 725 of 2021 (AG’s Office model language).

Section VII – updates subsection C and creates new sections D and E relating to complaints. This clarifies how a licensee is notified of a complaint, how long the licensee has to respond, and how founded complaints are disseminated to the general public.

Section VIII – updates supervision requirements of Athletic Trainers per Act 348 of 2021.

Section X – small statutory section update.

Section XI – removes reference to “permanently disqualifying offences” per Act 748 of 2021 (AG’s Office model language).

Definitions – updates Definitions 5 and 6 in accordance with Act 348 of 2021.

**PUBLIC COMMENT:** No public hearing was held on this proposed rule. The public comment period expired on November 30, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency indicated that this rule has a financial impact.

Per the agency, the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed rule is unknown. The agency indicated that there will be a positive financial impact for applicants eligible for fee waiver under Act 725 of 2021 and a potential loss of fee revenue to the agency. However, the agency also indicated that it is unable to forecast exact values due to a lack of statistical information.

**LEGAL AUTHORIZATION:** The Arkansas State Board of Athletic Training has the power to issue athletic trainer’s licenses. Ark. Code Ann. § 17-93-406(3). The Board also has the power to promulgate rules as necessary “for the performance of its duties[.]” *See* Ark. Code Ann. § 17-93-406(5). This rule implements Acts 135, 348, 725, 746, and 748 of 2021.

Act 135, sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021 and required automatic or expedited licensure for certain individuals.

Act 348, sponsored by Representative Lee Johnson, amended the Arkansas Athletic Trainers Act and authorized athletic trainers to practice under the direct supervision of a physician.

Act 725, sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

Act 746, sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals holding a federal work permit. Temporary language contained within the Act required licensing entities to promulgate rules necessary to implement the Act. *See* Act 746, § 2(a).

Act 748, sponsored by Representative Bruce Cozart, amended occupational criminal background checks.

**9. DEPARTMENT OF HEALTH, ARKANSAS BOARD OF EXAMINERS IN COUNSELING (Ms. Lenora Erickson, Mr. Matt Gilmore)**

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

**DESCRIPTION:** This rule amendment contains the following changes:

- Section 1.9 – revision to the definition of “counseling” and “marriage and family therapy” to clarify that both include clinical research, diagnosis and treatment
- Section 3.1 – changes reference from Act 990 of 2019 to the statutory code section
- Section 3.3 & 3.5 – removes the term “full time” from supervision experience for licensed professional counselors and licensed marriage and family therapists
- Section 3.7 – removes reference to “permanently disqualifying offenses” in regards to criminal background checks pursuant to Act 748 of 2021
- Section 4.1 – clarifies the number of supervision hours that may be obtained virtually for LPC’s in Level 1 supervision
- Section 5.4 – removes unnecessary language regarding Board decisions on licensee applications
- Section 5.6 – clarifies that application extensions must be made prior to the expiration of the application
- Section 6.2 – removes outdated information regarding the AR Jurisprudence Exam

- Section 7.1 – clarifies the day on which renewal late fees are assessed
- Section 7.2 – clarifies the required number of continuing education required for renewal including the hours per month and the inclusion of volunteer services under the AR Volunteer Health Care Act pursuant to Act 968 of 2021
- Section 7.4 – clarifies extenuating circumstances for non-practicing status and removes the requirement for additional approval from the Board
- Section 8.1 – revises Board’s current complaint process to clarify the role of the complaint committee and the possible actions the Board may take based on the complaint committee’s recommendation
- Section 8.2 – revises language concerning administrative hearings. Existing language is removed and reference is made to the Arkansas Administrative Procedure Act (“APA”) under which all Board hearings are held. The language being removed has caused confusion with non-government attorneys representing licensees in disciplinary hearings, therefore the Board is removing the language and directing to the APA for guidance. Deleting this language does not alter the due process rights of any licensee.
- Section 8.3 – amends existing language to reflect the Board’s statutory language regarding sanctions and clarifies the Board’s emergency action authority
- Section 9.3 – amends existing language to clarify the supervision requirements for Licensed Psychological Examiners who seek to become licensed as counselors
- Section 9.4 – amends existing language for licensure of military personnel in accordance with Act 135 of 2021
- Rule 10 – amends existing language regarding professional ethics to ensure that the Board does not adopt ethical standards which conflict with Arkansas law and adds reference to the Arkansas Medical Ethics and Diversity Act
- Section 12.1 – revises definition of “originating site” for purposes of telemedicine pursuant to Act 767 of 2021
- Section 12.6 – revises definition of “professional relationship” for purposes of telemedicine pursuant to Act 829 of 2021
- Section 12.7 – adds information regarding group therapy for children 18 and younger via telemedicine pursuant to Act 767 of 2021
- Section 13.1 – adds language regarding the initial application fee waiver for those individuals listed in Act 725 of 2021

**PUBLIC COMMENT:** No public hearing was held on this proposed rule. The public comment period expired on December 6, 2021. The agency provided the following public comment summary:

Commenter's Name: Betsy A. Dedrick

**COMMENT:** Regarding section 7.2. The language is confusing at least to me. Here is the confusing piece “one (1) clock hours of continued professional education (CE) and/or training per month in the twenty-four (24) months prior to renewal.”

Does this mean licensed clinicians can only count one per month, or must submit one per month? Is this really an average or truly we must submit at least one CEU per month in order to renew our license?

Thank you for the clarification. My concern is that most CEs are offered in conferences, book reviews, more complex research articles, etc. These types of activities have multiple CEs associated with them and I am not sure how submitting multiple CEs for one event would count given the proposed language.

**RESPONSE:** Thank you for taking the time to read our rule revisions. The wording was added so that people who get their first license at a monthly pro-rated fee, not an entire two year license, understand that they only need one CE per month they have been licensed. Someone who has only had a license for 13 months will only need 13 CEs, not 24. It is not necessary to submit one CE per month. You can submit 24 hours in one month if that is how you accrue the CEs.

12/4/21 - Board discussed this and made a motion to revise language concerning section 7.2 of rules.

Commenter's Name: Mark Coffman

**COMMENT:** With regard to proposed rule changes:  
Requesting Clarrification [*sic*].  
Section 7.2. Cont. Educ.

(a) “no license will be renewed without evidence of satisfactory [*sic*] completion of “THE EQUIVALENT OF ONE (1)” clock hours of continued professional education (CE) and/or training, “PER MONTH” in the 24 months prior to renewal. ....

I request Clarrification [*sic*] of the “PER MONTH” statement. Does this mean one (1) hour per actual calendar [*sic*] month must occur? Or, 24 hours in a 24 month cycle?

A person attending a 10 hour conference and getting 10 hours of CE's, for example. Do they need to keep logging 1 hour per month of CE, even if

they've attended another Conference offering an additional 10 hours? They would then be required to submit the 20 conference hours of CE's plus one (1) for each month, meaning they would log 40 hours of CE.

**RESPONSE:** Thank you for taking the time to read our rule revisions. The wording was added so that people who get their first license at a monthly pro-rated fee, not an entire two year license, understand that they only need one CE per month they have been licensed. Someone who has only had a license for 13 months will only need 13 CEs, not 24. It is not necessary to submit one CE per month. You can submit 24 hours in one month if that is how you accrue the CEs. The board spent time discussing this at the board meeting on 12/4/21 and made a motion to revise the language used in this section to clarify this is for first time licensees. Please let me know if you have any further questions.

The proposed effective date is February 25, 2022.

**FINANCIAL IMPACT:** The agency indicated that this rule has a financial impact. Per the agency, the total estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$15,600 for the current fiscal year and \$31,200 for the next fiscal year. The agency provided the following explanation:

The proposed rule in response to Act 725 of 2021 may have a financial impact on state government and the above numbers are the most extreme numbers. Act 725 requires a waiver of the initial licensing fee for individuals who meet certain criteria, i.e. receiving SNAP benefits or other state aid; receiving unemployment or being below the federal poverty line. This criteria could potentially be met by all new licensees considering the number of new college graduates that make up the total for new licensure each year. The above numbers are based on the average number of new applicants each year and the cost of the license fee that could be waived.

As the Board has no true way of knowing just how many applicants will avail themselves of the waiver, there is no true way of knowing at this time just what the financial impact will actually be or if there will be one. For the current fiscal year the average number of applicants was cut in half since the rule would not be applicable until the middle of the fiscal year.

**LEGAL AUTHORIZATION:** The Board of Examiners in Counseling has the authority to “adopt rules and procedures as it deems necessary for the performance of its duties.” Ark. Code Ann. § 17-27-203(b). These rules implement Acts 135, 725, 746, 748, 767, 829, and 968 of 2021.

Act 135, sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and

Spouses Act of 2021. Under the Act, “[a]n occupational licensing entity shall grant automatic occupational licensure to” certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created by* Act 135.

Act 725, sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act’s implementation. *See* Ark. Code Ann. § 17-5-105(2).

Act 746, sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals. Temporary language contained within Act 746 required all occupational or professional licensing entities to promulgate rules necessary to implement the Act. *See* Act 746, § 2(a).

Act 748, sponsored by Representative Bruce Cozart, amended occupational criminal background checks.

Act 767, sponsored by Representative Aaron Pilkington, clarified the Telemedicine Act, specified that the home of a patient may be an originating site for telemedicine and that group meetings may be performed via telemedicine, and clarified reimbursement of telemedicine services.

Act 829, sponsored by Representative Jim Dotson, amended the Telemedicine Act and authorized additional reimbursement for telemedicine via telephone.

Act 968, also sponsored by Representative Pilkington, updated the Volunteer Health Care Act, included therapists, addiction specialists, and counselors in the Volunteer Healthcare Program, and increased continuing education credits under the Volunteer Health Care Act.

**10. DEPARTMENT OF HEALTH, ARKANSAS BOARD OF DISPENSING OPTICIANS (Ms. Jerry Himes, Mr. Matt Gilmore)**

**a. SUBJECT: Arkansas Board of Dispensing Opticians Rules**

**DESCRIPTION:** The Board is updating its existing rules to update the offenses that may receive a waiver in the criminal background process mandated by Ark. Code Ann. § 17-3-101 et seq.; to update existing rules regarding licensure for military personnel per Ark. Code Ann. § 17-4-101 et seq.; to provide for a fee waiver mandated by Ark. Code Ann. § 17-5-104; to provide for licensure of individuals with a “work permit”

mandated by Ark. Code Ann. § 17-1-109; to provide for the acceptance of federal apprenticeship programs pursuant to Ark. Code Ann. § 17-6-101 et seq.; and to remove the phrase “good moral character” per Act 990 of 2019.

**PUBLIC COMMENT:** No public hearing was held on this proposed rule. The public comment period expired on November 28, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency indicated that this rule has a financial impact.

Per the agency, the total estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$5,220 for the current fiscal year and \$10,500 for the next fiscal year. The agency provided the following explanation:

The proposed rule in response to Act 725 of 2021 may have a financial impact on state government and the above numbers are the most extreme numbers. Act 725 requires the waiver of the initial licensing fee for individuals who meet certain criteria, i.e. who receive SNAP benefits or other state aid; who have been on unemployment; or who are below the federal poverty line. This criteria could potentially be met by all new licensees considering the number of new college graduates that make up the total for new licensure each year.

The above numbers are based on the average number of new applicants each year and the cost of the license fee that could be waived. As the Board has no true way of knowing just how many applicants will avail themselves of the waiver, there is no true way of knowing at this time just what the financial impact will actually be or if there will be one. For the current fiscal year, the average number of new applicants was cut in half since the rule would not be applicable until January of 2022.

**LEGAL AUTHORIZATION:** The Board of Dispensing Opticians has authority to adopt rules implementing Title 17, Chapter 89 of the Arkansas Code, governing ophthalmic dispensers. Ark. Code Ann. § 17-89-203(9). This rule implements Acts 135, 725, 746, 748, and 811 of 2021.

Act 135, sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, “[a]n occupational licensing entity shall grant automatic occupational licensure to” certain specified individuals. See Ark. Code Ann. § 17-4-105, *as created by* Act 135.

Act 725, sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

Act 746, sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals holding federal work permits. Temporary language contained within Act 746 required all occupational or professional licensing entities to promulgate rules necessary to implement the Act. *See* Act 746, § 2(a).

Act 748, sponsored by Representative Bruce Cozart, amended occupational criminal background checks.

Act 811, sponsored by Representative Joshua Bryant, created the Earn and Learn Act and allowed individuals to work and earn a paycheck while also fulfilling licensing requirements and gaining the skills to fill the needs of an expanding workforce. Temporary language contained within the Act required all licensing entities to promulgate rules as necessary to implement the Act. *See* Act 811, § 2(a).

**11. DEPARTMENT OF HEALTH, ARKANSAS BOARD OF HEARING INSTRUMENT DISPENSERS (Ms. Stephanie Pratt, Mr. Matt Gilmore)**

**a. SUBJECT: State Board of Hearing Instrument Dispensers Rule**

**DESCRIPTION:** These amendments include:

Article II, Section 3 – updates Board quorum requirement per Act 159 of 2021

Article III, Section 5 – adds language regarding fee waiver for eligible individuals listed in Act 725 of 2021 (AG's Office model language)

Article VII, Sections 3 & 6 – small clean-up of statutory reference formatting

Article VIII – Section 2 has a language change for licensees who do not timely renew license. Currently, the licenses are considered “revoked for nonpayment.” This change would change the status to “expired,” in order to clarify the difference between a license that has not been properly renewed and a license that has been revoked as a result of disciplinary action. Section 3 has a small clean-up of statutory reference formatting.

Article XVII – language update, licensure extension, and continuing education requirement waiver language updated/added per Act 135 of 2021 (AG’s Office model language)

Article XIX, Section 1 – removes reference to “permanently disqualifying offenses” per Act 748 of 2021 (AG’s Office model language)

Article XX – new article that explicitly states licensure eligibility for individuals who hold work permits per Act 746 of 2021 (AG’s Office model language)

**PUBLIC COMMENT:** No public hearing was held on this proposed rule. The public comment period expired on December 10, 2021. The agency indicated that it received no public comments.

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

**Q.** I have finished reviewing the Board’s proposed rules and I have one question about them. Article XVII, § 3 requires evidence that an individual holds a license with a similar scope of practice in another state. Under these rules, must the individual also hold that license in good standing, as required by Act 135?

**RESPONSE:** Yes, the individual must be in “Good Standing” with the other said State.

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, there will be a positive financial impact for applicants who are eligible for a fee waiver under Act 725 of 2021. The agency indicated that it is unable to forecast exact values due to a lack of statistical information.

**LEGAL AUTHORIZATION:** The Board of Hearing Instrument Dispensers has authority to promulgate rules “necessary for the enforcement and orderly administration of” Title 17, Chapter 84 of the Arkansas Code, governing hearing instrument dispensers. *See* Ark. Code Ann. § 17-84-203(5). These rules implement Acts 135, 159, 725, 746, 748, and 811 of 2021.

Act 135, sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and

Spouses Act of 2021. Under the Act, “[a]n occupational licensing entity shall grant automatic occupational licensure to” certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created by* Act 135.

Act 159, sponsored by Senator Bart Hester, amended the composition of the Arkansas Board of Hearing Instrument Dispensers to include a nonvoting advisory member.

Act 725, sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act’s implementation. *See* Ark. Code Ann. § 17-5-105(2).

Act 746, sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals holding federal work permits. Temporary language contained within Act 746 required all occupational or professional licensing entities to promulgate rules necessary to implement the Act. *See* Act 746, § 2(a).

Act 748, sponsored by Representative Bruce Cozart, amended occupational criminal background checks.

Act 811, sponsored by Representative Joshua Bryant, created the Earn and Learn Act and allowed individuals to work and earn a paycheck while also fulfilling licensing requirements and gaining the skills to fill the needs of an expanding workforce. Temporary language contained within the Act required all licensing entities covered by the Act to promulgate rules as necessary for its implementation. *See* Act 811, § 2.

**12. DEPARTMENT OF HEALTH, ARKANSAS STATE BOARD OF NURSING (Ms. Sue Tedford, Mr. David Dawson)**

**a. SUBJECT: Chapter One – General Provisions**

**DESCRIPTION:** The Department of Health’s Arkansas State Board of Nursing proposes the following amendments to its Chapter One – General Provisions:

In accordance with Act 449 of 2021, “in consultation with” replaces the language “under the supervision of,” and definitions of “Consultation,” “Medical Procedure,” “Peri-obstetrical,” and “Perioperative” were added; and with Act 607 of 2021, “and treatment of the male partners for sexually transmitted disease” language was added. For clarification, we added “registered” to Collaborative Practice Agreement definition, removed “obstetric” from Consulting Physician definition, and “Executive” was

removed from Director Title. In accordance with Act 651 of 2021, definition of “Co-Prescribe” was added; with Act 412 and 607 of 2021, definition of “Full Practice Authority” was added; with Act 1101 of 2021, current ASBN fees replaced the language “relating to examination, licensing, endorsement, certification for prescriptive authority, temporary permits, license renewals, and other reasonable services as determined by the Board.” To align with current policy, we removed the language “Personal checks for initial licensure are accepted from in state residents only” and “by a secretary” and “Tapes may be erased after corresponding minutes have been approved”; and with Act 725 of 2021, a section was added for waiver of initial licensure fees.

**PUBLIC COMMENT:** A public hearing was held on December 1, 2021. The public comment period expired on December 6, 2021. The Board provided the following summary of the comments that it received and its responses thereto:

**Randall M. Clark, MD, FASA, President of the American Society of Anesthesiologists (Email dated 12/3/21)**

**Comment:** On behalf of ASA, we would strongly encourage and request the Board to include the following language within its definition of “consultation”:

*In consultation, the consulting party shall remain immediately available for consultation during the delivery of anesthesia for diagnosis, consultation, and treatment of medical conditions.*

**Response:** Comment taken under advisement.

**Martha Hill, Mitchell Williams Law (Public Comment Hearing on 12/1/21 and email dated 12/4/21)**

**Comment:** As we stated at the hearing, the rules promulgated in connection with Act 449 need to be explicit utilizing the complete standard stated in Act 449. We believe that an additional paragraph of definitions for your proposed rules may be appropriate to reflect the language of the statute, including all of the subparts OR that a new paragraph regarding the definition of “immediately available” should be constructed reflecting all of the language of Act 449 and the legislative intent.

**Response:** Mr. Dawson thanked Ms. Hill for attending the public hearing and for her comments.

**Dr. Grady Crosland, MD, Officer with the Arkansas Society of Anesthesiologists (Public Comment Hearing on 12/1/21)**

**Comment:** Dr. Crosland stated “Immediate availability needs to be spelled out.” He agrees with the language as indicated in the previous comment made by Martha Hill reflecting all of the language of Act 449 and the legislative intent.

**Response:** Mr. Dawson thanked Dr. Crosland for attending the public hearing and for his comments.

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

(1) Section V.F.1. – I see that you have incorporated your fee schedule into the rules to comport with Act 1101 of 2021. Just to confirm, you have neither added any new fees nor increased any fees? Are these simply the fees that existed prior to this revision of the rule? **RESPONSE:** There wasn't any changes to any fee amounts other than deleting a couple of fees that no longer applied.

(2) I see that you received a few comments requesting that additional language concerning “in consultation with,” specifically relating to “immediately available,” be included in the proposed changes. What is the reasoning behind the Board’s decision not to include the additional language regarding “consultation” set forth in Ark. Code Ann. § 17-87-102(7)(C)(i), as amended by Act 449 of 2021, §1, in the Board’s definition in its rules? **RESPONSE:** We have always operated under the legal opinion that if something is in statute, we are not required to repeat it in rule. However we did add this information in the Rules, Chapter 4, Section VI(D)(7) as below:

The consulting individual shall remain immediately available for consultation during the delivery of anesthesia for diagnosis, consultation, and treatment of medical conditions. The hospital’s administrative staff, medical staff, and governing body shall determine the guidelines on immediately available for consultation.

These rules will be in our next set of rules that will be out for public comment hopefully next month.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rule has a financial impact. It estimates that the additional cost to implement changes to the rule in light of Act 725 is \$258,885 in special revenue for the current fiscal year and \$258,885 in special revenue for the next fiscal year.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 17-87-203(1)(A), the Arkansas State Board of Nursing shall have the power and responsibility to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87 of the Arkansas Code, concerning nurses. The proposed changes include revisions made in light of the following acts:

Act 412 of 2021, sponsored by Representative Lee Johnson, which authorized full independent practice authority for certified nurse practitioners who meet certain requirements and created the Full Independent Practice Credentialing Committee to review and approve applications for full independent practice authority for certified nurse practitioners;

Act 449 of 2021, sponsored by Representative Clint Penzo, which amended the definition of “practice of certified registered nurse anesthesia” by removing supervision requirements;

Act 607 of 2021, sponsored by Representative Mary Bentley, which granted full practice authority to certified nurse midwives;

Act 651 of 2021, sponsored by Senator Cecile Bledsoe, which mandated the coprescription of an opioid antagonist under certain conditions and amended the Naloxone Access Act;

Act 725 of 2021, sponsored by Senator Ben Gilmore, which created the Workforce Expansion Act of 2021; and

Act 1101 of 2021, sponsored by Representative Justin Gonzales, which amended Arkansas law concerning administrative fees and penalties and amended the law concerning review of agency rules by the Legislative Council.

**b. SUBJECT: Chapter Five – Delegation**

**DESCRIPTION:** The Department of Health’s Arkansas State Board of Nursing proposes the following amendments to its Chapter Five – Delegation:

In accordance with Act 439 of 2021, we added administration of glucagon/insulin in a detention center; and with Act 1050 of 2021, we added administration of medication for adrenal insufficiency.

**PUBLIC COMMENT:** A public hearing was held on December 1, 2021. The public comment period expired on December 6, 2021. The Board 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 § 17-87-203(1)(A), the Arkansas State Board of Nursing shall have the power and responsibility to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87 of the Arkansas Code, concerning nurses. The proposed changes include revisions made in light of Act 439 of 2021, sponsored by Senator Breanne Davis, which added an exception from nursing licensure to allow employees of a city or county detention center to draw and measure glucagon or insulin for a person who is incarcerated or in custody; and Act 1050 of 2021, sponsored by Senator Bart Hester, which amended the law concerning the health and safety of public school students.

c. **SUBJECT: Chapter Six – Standards for Nursing Education Programs**

**DESCRIPTION:** The Department of Health’s Arkansas State Board of Nursing proposes the following amendments to its Chapter Six – Standards for Nursing Education Programs:

For clarification, “a nursing education program whose” was deleted; and for correction to agency name, “Department” was changed to “Division.” In accordance to Act 759 of 2021, ability for a consortium of nursing homes to provide a PN nursing program was added; and with Act 757 of 2021, ability for a high school to provide a PN nursing program was added.

**PUBLIC COMMENT:** A public hearing was held on December 1, 2021. The public comment period expired on December 6, 2021. The Board received no comments.

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

(1) Section I.A.1.a(4) – Should the title of the Program include the term “Licensed” as used in Ark. Code Ann. § 6-16-1005, as amended by Act 757 of 2021, § 1? **RESPONSE:** The statute uses the incorrect terminology for these programs. The correct terminology doesn’t include the term “licensed” because these programs do not license an individual. The correct terminology classifies these programs as Practical Nurse Programs.

(2) Section I.A.1.a(4) – The proposed rule provides that an institution offering the Program shall be approved by the Division of Elementary and Secondary Education (“DESE”), in consultation with the Division of Higher Education (“DHE”); however, Ark. Code Ann. § 6-16-1005(e), as amended by Act 757, § 1, seems to provide that in selecting participants,

i.e., a public school district or open-enrollment charter school, the DESE shall consider qualified applicants from various locations and of various sizes and demographics and consult with the entities outlined in § 6-16-1005(c), which includes the Department of Health, DHE, the Arkansas State Board of Nursing, the Office of Skills Development, and any other individual or entity involved in the practice of nursing and nursing education programs. Is the Board comfortable that the language of the rule comports with that of the statute? **RESPONSE:** Yes. The Rules as written provide for review and approval by ASBN of institutions providing the programs.

(3) Section I.A.1.b(1) – I noticed another reference to Arkansas Department of Higher Education. **RESPONSE:** Updated to the Division of Higher Education.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 17-87-203(1)(A), (8), the Arkansas State Board of Nursing shall have the power and responsibility to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87 of the Arkansas Code, concerning nurses, and to prescribe minimum standards and approve curricula for educational programs preparing persons for licensure as registered nurses, advanced practice registered nurses, registered nurse practitioner nurses, licensed practical nurses, and licensed psychiatric technician nurses. The proposed changes include revisions made in light of Act 757 of 2021, sponsored by Representative DeAnn Vaught, which created the Licensed Practical Nurse Pathway Pilot Program; and Act 759 of 2021, sponsored by Representative Mary Bentley, which amended the laws concerning medication assistive persons and allowed education programs for licensed practical nurses in certain facilities.

d. **SUBJECT: Chapter Seven – Rules of Procedure**

**DESCRIPTION:** The Department of Health’s Arkansas State Board of Nursing proposes the following amendment to its Chapter Seven – Rules of Procedure:

In accordance with Act 346 of 2021, the violation of performing healthcare related acts was added.

**PUBLIC COMMENT:** A public hearing was held on December 1, 2021. The public comment period expired on December 6, 2021. The Board 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 § 17-87-203(1)(A), the Arkansas State Board of Nursing shall have the power and responsibility to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87 of the Arkansas Code, concerning nurses. The proposed changes include revisions made in light of Act 346 of 2021, sponsored by Representative DeAnn Vaught, which prohibited the performance of a pelvic examination on an unconscious or anesthetized patient without the prior consent of the patient.

13. **DEPARTMENT OF HEALTH, ARKANSAS STATE BOARD OF PHARMACY** (Mr. John Kirtley, Mr. Luke Daniel)

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

**DESCRIPTION:** The Department of Health’s Arkansas State Board of Pharmacy proposes changes to its Rule 1 – General Operations. Proposed changes will update language outlining expedited licensing for qualified individuals to match requirements in Act 135 of 2021 and remove language regarding nursing home consultant permits from Act 63 of 2021.

This updated language will:

1. Further define the eligibility criteria to qualify for expedited licensure.
2. Extend license expiration and CE requirements as outlined by statutory language.
3. Remove language regarding nursing home consultant permits from Act 63 of 2021.

During the public comment period there was a request that having the wording for Active Duty vs simply using the term Uniformed could be confusing or seen as excluding members of the Uniformed Reserves so that term was eliminated as shown in a new mark-up as highlighted.

**PUBLIC COMMENT:** A public hearing was held on December 14, 2021. The public comment period expired that same day. The Board received no public comments. Because this rule recommends an

expedited process for military personnel to attain occupational licensure, this rule underwent review pursuant to Ark. Code Ann. § 17-4-109, as amended by Act 135 of 2021, by the Administrative Rules Subcommittee at its meeting of December 15, 2021.

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

Section 01-01-0010(a)(1) – The rule references “active duty” uniformed service member; however, Ark. Code Ann. § 17-4-103(4), as amended by Act 135 of 2021, § 2, defines “uniformed service member” and includes both active and reserve component members. Is there a reason the Board maintained the term “active duty” rather than simply referencing a uniformed service member? **RESPONSE:** The change was made.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 17-92-205(a)(1), the Arkansas State Board of Pharmacy shall have authority to make reasonable rules, not inconsistent with law, to carry out the purposes and intentions of Title 17, Chapter 92 of the Arkansas Code that concerns pharmacists and pharmacies and the pharmacy laws of this state that the Board deems necessary to preserve and protect the public health. The proposed changes include those made in light of the following acts:

Act 63, sponsored by Representative Justin Boyd, which eliminated the nursing home consultant pharmacist permit and the disease state management credential; and

Act 135 of 2021, sponsored by Senator Ricky Hill, which established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021 and modified the automatic occupational licensure requirements for uniformed services members, returning uniformed services veterans, and their spouses.

**b. SUBJECT: Rule 5 – Long-Term-Care Facilities**

**DESCRIPTION:** The Department of Health’s Arkansas State Board of Pharmacy proposes changes to its Rule 5 – Long-Term-Care Facilities. The updated language will remove the nursing home consultant permit (endorsement on the pharmacist license) and related CE requirements to practice in this area.

Following the public comment period, changes were made as outlined below and after Board members requested a couple of changes to using the word “facility” rather than “nursing home” in sections where it seemed to be more appropriate.

**PUBLIC COMMENT:** A public hearing was held on December 14, 2021. The public comment period expired that same day. The Board provided the following summary of the sole comment that it received and its response thereto:

**Ken Lancaster, Pharmacist:** During the public comment period the Board received one letter requesting non-substantive changes for a reference to services being done “for” a nursing home rather than “in” a nursing home or other facility. This request was to ensure that there is not confusion regarding the fact that there are many services performed via computer which may be done off-site. There was also clarification requested that when a consultant is working with the home that not all records are referring to “An individualized resident record” and therefore a change was made to simply say “Records” as highlighted on page 2. The final request by the commenter was to change the reference of the word “chart” to “medical records” to eliminate any confusion that current records may or may not be in a paper chart vs electronic medical records and is highlighted on page 3. Staff suggested these changes, and the commenter replied back that these suggestions looked good.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 17-92-205(a)(1), the Arkansas State Board of Pharmacy shall have authority to make reasonable rules, not inconsistent with law, to carry out the purposes and intentions of Title 17, Chapter 92 of the Arkansas Code that concerns pharmacists and pharmacies, and the pharmacy laws of this state that the Board deems necessary to preserve and protect the public health. The proposed changes include those made in light of Act 63 of 2021, sponsored by Representative Justin Boyd, which eliminated the nursing home consultant pharmacist permit and the disease state management credential.

c. **SUBJECT: Rule 9 – Pharmaceutical Care/Patient Counseling**

**DESCRIPTION:** The Department of Health’s Arkansas State Board of Pharmacy proposes changes to its Rule 9 – Pharmaceutical Care/Patient Counseling. The proposed changes will update language due to changes

in statute pursuant to Act 63 of 2021, Act 406 of 2021, and Act 407 of 2021. These changes will do the following:

1. Remove the disease state management endorsement process on the pharmacist license in accordance with Act 63 of 2021.
2. Remove language in conflict with and in addition to updated statutory language as shown in Act 406 of 2021 reflecting the ability of pharmacists to prescribe, administer, deliver, distribute, or dispense vaccines, immunizations, and medications to treat adverse reactions to administered vaccines as outlined in statute.
3. Update language to reflect that pharmacy technicians may administer vaccines and immunizations they have been trained to administer as outlined in Act 407 of 2021.

**PUBLIC COMMENT:** A public hearing was held on December 14, 2021. The public comment period expired that same day. The Board received no comments.

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

Section 09-00-0002 – What was the reasoning behind striking out the delineated authority to administer medications/immunizations?

**RESPONSE:** Our approach on this one is that the statute has been changed several times and is actually a direct delineation of exactly what is allowed. Because there is potential conflict between statute and rule each time the statute changes, we have taken the approach to refer to the statute. We have also faced a great deal of confusion with federal preemption during Covid, which is helped by only having the singular reference point rather than multiple.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 17-92-205(a)(1), the Arkansas State Board of Pharmacy shall have authority to make reasonable rules, not inconsistent with law, to carry out the purposes and intentions of Title 17, Chapter 92 of the Arkansas Code that concerns pharmacists and pharmacies and the pharmacy laws of this state that the Board deems necessary to preserve and protect the public health. The proposed changes include those made in light of the following acts:

Act 63 of 2021, sponsored by Representative Justin Boyd, which eliminated the nursing home consultant pharmacist permit and the disease state management credential;

Act 406 of 2021, sponsored by Representative Justin Boyd, which amended the definition of “practice of pharmacy” to allow pharmacists to prescribe, administer, deliver, distribute, or dispense vaccines, immunizations, and medications to treat adverse reactions to administered vaccines or immunizations to a person who is three (3) years of age or older; and

Act 407 of 2021, sponsored by Representative Justin Boyd, which authorized pharmacy technicians to administer vaccines and immunizations and amended the definition of “practice of pharmacy” to allow pharmacy technicians to administer vaccines or immunizations to a person who is three (3) years of age or older.

**14. DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES (Mr. Mark White, Ms. Elizabeth Pittman)**

**a. SUBJECT: COVID-19 Vaccinations for Home-Bound Medicaid Clients**

**DESCRIPTION:**

Statement of Necessity

The Centers for Disease Control and Prevention (CDC) and the Centers for Medicare and Medicaid Services (CMS) approved the administration of the COVID-19 vaccination in a patient’s home (or similar setting). The Department of Human Services (DHS), Division of Medical Services (DMS) will cover administration of the COVID-19 vaccination to Arkansas Medicaid clients who are home-bound.

Examples of Medicaid clients eligible for this service include those who face barriers or challenges to obtaining a COVID-19 vaccination and those who might not get vaccinated without this service being provided in their home by designated Medicaid providers. CMS created an infographic to help Medicare providers understand the scope of this service, which Medicaid providers may find helpful.

Summary

To implement this program, Medicaid will authorize Home Health services providers (Provider Type 14) and Pharmacy providers (Provider

Type 07/PV) to administer the COVID-19 vaccinations in the home (or similar setting) to eligible Medicaid clients. Home Health and Pharmacy providers will be able to administer the vaccination to current Home Health clients, as well as to those who are not currently in the Home Health Program.

DMS amends the COVID Response Manual to authorize home health providers and pharmacy providers to administer COVID-19 vaccination shots in a client's home or similar location. DMS outlines home administration requirements for those currently receiving home-based services as well as those who do not currently receive home based services. Also, DMS requires specific documentation by the provider and provides directions for billing and payment of claims. These include covered vaccines, procedure codes, and rates. The rule automatically sunsets at the end of the Federal Public Health Emergency. The information also will be issued in an Official Notice published to providers.

**PUBLIC COMMENT:** A public hearing was held on this rule on December 1, 2021. The public comment period expired on December 13, 2021. The agency indicated that it received no public comments.

This rule was filed on an emergency basis and was reviewed and approved by the Executive Subcommittee on November 9, 2021. The proposed effective date for permanent promulgation is March 1, 2022.

**FINANCIAL IMPACT:** The agency indicated that this rule has a financial impact.

Per the agency, the total cost to implement this rule is estimated at \$1,485,578 for the current fiscal year (\$421,607 in general revenue and \$1,063,971 in federal funds) and \$2,228,367 for the next fiscal year (\$632,411 in general revenue and \$1,595,956 in federal funds). The total estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$421,607 for the current fiscal year and \$632,411 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, local 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;*

The Centers for Disease Control and Prevention (CDC) and the Centers for Medicare and Medicaid Services (CMS) approved administration of the COVID-19 vaccination in a patient's home. The Department of Human Services, Division of Medical Services (DHS/DMS) will cover administration of the COVID-19 vaccination to Arkansas Medicaid clients who are home-bound.

*(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;*

The purpose is to provide home bound recipients with an opportunity to receive the COVID-19 vaccine.

*(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;*

The Centers for Disease Control and Prevention (CDC) and the Centers for Medicare and Medicaid Services (CMS) approved administration of the COVID-19 vaccination in a patient's home. The Department of Human Services, Division of Medical Services (DHS/DMS) will cover administration of the COVID-19 vaccination to Arkansas Medicaid clients who are home-bound.

*(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;*

None

*(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;*

N/A

*(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*

The Centers for Disease Control and Prevention (CDC) and the Centers for Medicare and Medicaid Services (CMS) approved administration of the COVID-19 vaccination in a patient's home. The Department of

Human Services, Division of Medical Services (DHS/DMS) will cover administration of the COVID-19 vaccination to Arkansas Medicaid clients who are home-bound.

*(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:*  
*(a) the rule is achieving the statutory objectives;*  
*(b) the benefits of the rule continue to justify its costs; and*  
*(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.*

DMS will review this rule based on the current state of the Public Health Emergency.

**LEGAL AUTHORIZATION:** The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). See Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

The federal government has approved in-home administration of COVID-19 vaccines for certain “patients that have difficulties leaving their homes or are hard-to-reach.” See CMS, *Medicare Payment for COVID-19 Vaccination Administration in the Home* (Aug. 2021), <https://www.cms.gov/files/document/vaccine-home.pdf>; CDC, *Vaccinating Homebound Persons with COVID-19 Vaccine* (Aug. 10, 2021), <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/homebound-persons.html>.

15. **DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS AND COMMISSIONS, ARKANSAS STATE BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, AND INTERIOR DESIGNERS** (Ms. Shana Bryant, Ms. Denise Oxley)

a. **SUBJECT: Administrative Rules**

**DESCRIPTION:** The Department of Labor and Licensing’s State Board of Architects, Landscape Architects, and Interior Designers proposes amendments to its Administrative Rules. The Board is striking the

reference to the term “Regulation” pursuant to Act 315 of 2019 and is adding language to deal with military spouse licensure and criminal background checks pursuant to Acts 820 and 990 of 2019 respectively. The language for the latter two will also comply with Acts 135 and 748 of 2021 respectively. It is also adding sections for a fee waiver for certain applicants with financial hardships, Act 725 of 2021, and to explicitly state that individuals who hold work permits are eligible for licensure, Act 746 of 2021, as well as updating the exam registration for Landscape Architect Certificate applicants and making changes to the fees section by removing roster fees and re-calculating late renewal fees.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on December 7, 2021. The Board received no comments.

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

(1) Section III.C.1. – I believe that the prelicensure determination is set forth in Ark. Code Ann. § 17-3-103, rather than -102. **RESPONSE:** This was a scrivener’s error and will be corrected.

(2) Section III.D.1. – I believe that the offenses are listed in Ark. Code Ann. § 17-3-102, rather than -2-102. **RESPONSE:** This was a scrivener’s error and will be corrected.

(3) Section III.D.5. – There is no “s” on “Procedure” when referring to the APA. **RESPONSE:** This was a scrivener’s error and will be corrected.

(4) Section III.E.3.c.i. – Should the reference be to a “person under 3.a. or b. above”? **RESPONSE:** This was a scrivener’s error and will be corrected.

(5) Section III.J.1.a. – This section permits a waiver of an initial licensure fee for certain applicants, including those receiving assistance through the “Arkansas, *or current state of residence equivalent*, Medicaid Program”; however, Ark. Code Ann. § 17-5-104(a)(1), as amended by Act 725 of 2021, § 2, appears to only include the Arkansas Medicaid Program. Is there a reason the rule differs from the statute? **RESPONSE:** This was a draft error and will be updated.

(6) Section III.J.2.b. – Should “Department of Workforce Services” be “Division of Workforce Services” in accord with the Transformation Act? **RESPONSE:** This was a scrivener’s error and will be corrected.

(7) Section XIII. – This section provides that the effective date of the rules is to be January 1, 2022. Just be aware that this will not be possible in light of your comment period expiration date and the need to get legislative review and approval prior to becoming effective.

**RESPONSE:** The date of January 1, 2022, was a place holder and will be corrected with the actual date of final filing.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rules have a financial impact. Concerning the total estimated cost by fiscal year to any private individual, entity, and business subject to the amended rules, the agency states that there will be an unknown positive financial impact in both the current and next fiscal years for applicants eligible for the fee waiver under Act 725 of 2021, but that it is unable to forecast the exact value due to a lack of statistical information.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 17-15-203(a)(1), the Arkansas State Board of Architects, Landscape Architects, and Interior Designers shall make such rules as may be desirable or necessary for the performance of its duties and for carrying out the purposes of the Arkansas Architectural Act, Ark. Code Ann. §§ 17-15-101 through 17-15-312; § 17-35-101 et seq., concerning interior designers; and § 17-36-101 et seq., concerning landscape architects. The proposed changes include revisions made in light of the following acts from the 93rd General Assembly:

Act 135 of 2021, sponsored by Senator Ricky Hill, which established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021, and modified the automatic occupational licensure requirements for uniformed services members, returning uniformed services veterans, and their spouses;

Act 725 of 2021, sponsored by Senator Ben Gilmore, which created the Workforce Expansion Act of 2021;

Act 746 of 2021, sponsored by Representative Clint Penzo, which authorized occupational or professional licensure for certain individuals; and

Act 748 of 2021, sponsored by Representative Bruce Cozart, which amended occupational criminal background checks.

**E. Monthly Written Agency Updates Pursuant to Act 595 of 2021.**

- F. Agency Requests to Be Excluded from Act 595 Reporting Requirements.**
  - 1. Department of Commerce, Arkansas Economic Development Commission (Act 594)**
  - 2. Department of Human Services (Act 1017)**
- G. Adjournment.**