



Arkansas Department of Health

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Governor Asa Hutchinson

Renee Mallory, RN, BSN, Interim Secretary of Health

Jennifer Dillaha, MD, Director

Senator Kim Hammer, Co-Chair
Representative Les Eaves, Co-Chair
Administrative Rules Subcommittee
Arkansas Legislative Council
Via Rebecca Miller-Rice Email miller-ricer@blr.arkansas.gov

Dear Co-Chairs,

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

1. **Rules Governing the Advisory Board for Interpreters between Hearing Individuals and Individuals who are deaf, deafblind, hard of hearing, or oral deaf**

Describe why the agency has been unable to comply with the deadline

The Board of Health approved the proposed amendments at its October 28, 2021, quarterly meeting. Notice of the Public Comment period was published on April 18, 2022, and the period ended on May 18, 2022. The delay getting the public notice published was tied to a new Section taking over administration of this program, and internal protocols. There was some additional discussion with the Board regarding potential changes to levels of licensure, but ultimately decided to hold off on those changes pending further discussion.

Provide an update on the current status of the necessary rule changes

Expecting to be placed on the July Public Health and ALC-Rules agendas.

Describe the steps the agency is taking to address the failure to comply with the deadline

We have removed a redundant step in the internal review and encouraged all ADH staff to meet legislative deadlines in the future.

Provide an anticipated date for when the final version of the new, amended, or repealed rule will be filed for adoption with the Secretary of State

Anticipating July or August 2022.

2. Rules for Massage Therapy

Describe why the agency has been unable to comply with the deadline

The Board of Health approved the proposed amendments at its October 28, 2021, quarterly meeting. Notice of the Public Comment period was published on April 22, 2022, and the period ended May 23, 2022. Act 811 “Earn and Learn” provided for and required apprenticeships licensure in most Title 17 Occupations. This Act provided a significant shift from the current regulatory framework in Massage Therapy. This shift could be characterized as “controversial” within the occupational industry. Accordingly, ADH had several meetings of the Massage Therapeutic Technical Advisory Committee, and discussion and voluminous communication with other stakeholders, prior to Board of Health adoption. This communication and input continued after adoption and through the public comment period and the public hearing.

Provide an update on the current status of the necessary rule changes

Expecting to be placed on the July Public Health and ALC-Rules agendas.

Describe the steps the agency is taking to address the failure to comply with the deadline

ADH encouraged all ADH staff to meet legislative deadlines in the future and encourages all stakeholders to be involved in the legislative process prior to and during a session to flesh out concerns about any pending legislation prior to enactment.

Provide an anticipated date for when the final version of the new, amended, or repealed rule will be filed for adoption with the Secretary of State

Anticipating July or August 2022.

3. Rules Governing Medical Marijuana registration, Testing, and Labeling

Describe why the agency has been unable to comply with the deadline

The Board of Health approved the proposed amendments at its October 28, 2021, quarterly meeting. Notice of the Public Comment period was published on March 18, 2022, and the period ended on April 20, 2022. This is the first update since the original Rules were promulgated in 2017. At the time of the original promulgation, the Arkansas Medical Marijuana (MMJ) Program only consisted of the text of Amendment 98. Since that time, it has become a robust industry to include cultivators, dispensaries, and processors – which were not even contemplated in the original MMJ Rules- and approximately 80,000 patient cardholders. The current revision is a substantial update because of input from all stakeholders before, during, and

after the public comment period. Further, during the promulgation process, a lawsuit was filed in February of 2022 concerning Act 1112 of 2021 and ADH's interpretation of the same.

Provide an update on the current status of the necessary rule changes

The Public Comment Report is pending, and we expect to go back to the Board of Health with substantive changes based on public comments.

Describe the steps the agency is taking to address the failure to comply with the deadline

ADH encouraged all ADH staff to meet all legislative deadlines, and ADH also encourages all stakeholders to provide timely input to help move the lengthy promulgation process along.

Provide an anticipated date for when the final version of the new, amended, or repealed rule will be filed for adoption with the Secretary of State

Once changes are approved, it will undergo a new public comment period and then be placed on the agendas for the Public Health Committee, ALC-Marijuana Oversight Subcommittee, and ALC-Rules Subcommittee for review and approval in 2022. Pending litigation may affect the final rule filing.

4. Rules for Abortion Facilities

Describe why the agency has been unable to comply with the deadline

The Board of Health approved the proposed amendments at its October 28, 2021, quarterly meeting. Notice of the Public Comment period was published on February 13, 2022, and the period ended on March 17, 2022.

ADH received public comments, and the public comment report and agency response is pending. Due to the volume of legislative acts and various court challenges addressing this particular area, the response is lengthy, after much consideration and input gathered from various subject-matter experts.

Provide an update on the current status of the necessary rule changes

Expecting to be placed on the July or August Public Health and ALC-Rules agendas.

Describe the steps the agency is taking to address the failure to comply with the deadline

ADH encouraged all ADH staff to meet all legislative deadlines.

Provide an anticipated date for when the final version of the new, amended, or repealed rule will be filed for adoption with the Secretary of State

Anticipating July or August 2022 but pending litigation may affect the final rule filing.

5. Rules for Hospice

Describe why the agency has been unable to comply with the deadline

The Board of Health approved the proposed amendments at its October 28, 2021, quarterly meeting. Notice of the Public Comment period was published on April 24, 2022, and the period ended on June 1, 2022.

This Rule along with other Health Facility Service Rules required additional input and advice from applicable legislative sponsors, particularly as it relates to Act 311 of 2021.

Provide an update on the current status of the necessary rule changes

Expecting to be placed on the July or August Public Health and ALC-Rules agendas.

Describe the steps the agency is taking to address the failure to comply with the deadline

ADH encouraged all ADH staff to meet all legislative deadlines.

Provide an anticipated date for when the final version of the new, amended, or repealed rule will be filed for adoption with the Secretary of State

Anticipating July or August 2022.

6. Rules for Home Health Agencies

Describe why the agency has been unable to comply with the deadline

The Board of Health approved the proposed amendments at its October 28, 2021, quarterly meeting. Notice of the Public Comment period was published on February 13, 2022, and the period ended on March 17, 2022.

These amendments included language required by Act 817 of 2021, which allowed for expansion of Home Health Agencies without an additional Permit of Approval/Certificate of Need. This Act engendered significant input during the process from all stakeholders, requiring multiple communications and meeting before, during, and after public comment period. It also required further sponsor input and review of committee and chamber video from the General Session.

Provide an update on the current status of the necessary rule changes

The public comment report was submitted on May 20, 2022, and we are expecting to be placed on the July or August Public Health and ALC-Rules agendas.

Describe the steps the agency is taking to address the failure to comply with the deadline

ADH encouraged all ADH staff to meet all legislative deadlines.

Provide an anticipated date for when the final version of the new, amended, or repealed rule will be filed for adoption with the Secretary of State

Anticipating July or August 2022.

7. Rules for Cosmetology, Body Art, permanent and Semi-Permanent Cosmetics

Describe why the agency has been unable to comply with the deadline

The Board of Health approved proposed amendments at its January 27, 2022, quarterly meeting. Most of the amendments in these Rules are a result of Act 900 of 2021, which moved Body Art including tattooing and piercing from Title 20 to Title 17 and placed the regulatory framework under the Cosmetology Technical Advisory Committee (CTAC). Further, Act 900 required identification and appointment of additional members from the body art industry to CTAC prior to amendment of the Rules. Act 900 also created new licensure types – permanent and semi-permanent cosmetics. This substantive shift in the regulatory framework has required multiple additional meetings of CTAC in addition to its regular meetings. This change also engendered voluminous communication from industry professionals and stakeholders immediately upon passage of Act 900. That input continues.

Provide an update on the current status of the necessary rule changes

Public Comment Period is scheduled to begin July 1.

Describe the steps the agency is taking to address the failure to comply with the deadline

ADH encouraged all ADH staff to meet all legislative deadlines. ADH advised the sponsor of Act 900 of the ongoing input to the rules.

Provide an anticipated date for when the final version of the new, amended, or repealed rule will be filed for adoption with the Secretary of State

Anticipating Fall of 2022.

8. Rules for Water Operator Licensing

Describe why the agency has been unable to comply with the deadline

The Board of Health approved proposed amendments at its January 27, 2022, quarterly meeting. The Public Comment period ends on June 7, 2022. Act 811 “Earn and Learn” provided for and required apprenticeships licensure in most Title 17 Occupations. This Act engendered concerns

and input within the occupational industry during the promulgation process, prior to the public comment period, which required additional communication and discussion with ADH.

Provide an update on the current status of the necessary rule changes

The public comment report is pending and expect this to be on the July Public Health and ALC-Rules agendas.

Describe the steps the agency is taking to address the failure to comply with the deadline

ADH encouraged all ADH staff to meet all legislative deadlines.

Provide an anticipated date for when the final version of the new, amended, or repealed rule will be filed for adoption with the Secretary of State

Anticipating July or August 2022.

9. Rules for Sanitarians

Describe why the agency has been unable to comply with the deadline

The Board of Health approved proposed amendments at its April 28, 2022, quarterly meeting. The Public Comment period ended on May 18. Initially, ADH did not believe that any occupational licensing legislation effected Sanitarians. During further review and promulgation of other Rules, ADH rethought that analysis and made applicable amendments to these Rules.

Provide an update on the current status of the necessary rule changes

The Public Comment report is pending, and ADH may go back to the Board of Health with changes.

Describe the steps the agency is taking to address the failure to comply with the deadline

ADH encouraged relevant ADH staff to meet all legislative deadlines.

Provide an anticipated date for when the final version of the new, amended, or repealed rule will be filed for adoption with the Secretary of State

Anticipating Fall of 2022.

10. Rules for Volunteer License Health Care Professional Immunity

Describe why the agency has been unable to comply with the deadline

The proposed rules have been prepared and are ready to be presented to the Board of Health at its July 28, 2022, quarterly meeting. These Rules are a result of an update and combination of similar Code Sections (Ark. Code Ann. §16-6-201, Ark. Code Ann. §20-8-801, et seq., and Ark.

Code Ann. §17-95-106) rule requirements regarding volunteer and charitable immunity. This was the first necessary update to these Rules since 1999. The purpose of this substantive update was to make the Rules streamlined for ease of reading and more efficient administration to include online registrations. During the course of this process Act 968 of 2021 was passed require re-review and update to the revision drafts.

Provide an update on the current status of the necessary rule changes

The Rules require review and approval by the Board of Health at its July 28, 2022, meeting and Governor approval prior to the public comment period and filing with ALC. After the public comment period and report, ADH will ask to present to Public Health and ALC-Rules for review and approval.

Describe the steps the agency is taking to address the failure to comply with the deadline

These revisions resulted in combining three different, but substantially related, registration programs related to volunteer immunity and required coordination with the new section that would be administering the program. This efficiency required thoughtful consideration and took time to create.

Provide an anticipated date for when the final version of the new, amended, or repealed rule will be filed for adoption with the Secretary of State

Anticipating Fall of 2022.

Please let me know if you have questions or need additional information.

Sincerely,



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