## ADMINISTRATIVE RULES & REGULATIONS SUBCOMMITTEE OF THE ARKANSAS LEGISLATIVE COUNCIL

#### Room A, MAC

#### Little Rock, Arkansas

**Tuesday, March 15, 2016**

**9:00 a.m.**

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Sen. David J. Sanders, Co- Chair Rep. Andy Davis, Co-Chair Rep. Mary P. “Prissy” Hickerson, Alternate

Sen. Bruce Maloch, Vice-Chair Rep. Lane Jean, Vice-Chair Rep. Charles Armstrong, Alternate

Sen. David Johnson Rep. Kelley Linck Rep. Bill Gossage, Alternate

Sen. Jonathan Dismang Rep. Jeff Wardlaw Rep. John Baine, Alternate

Sen. Ronald Caldwell Rep. Nate Bell Rep. David Hillman, Alternate

Sen. Jane English Rep. Chris Richey Rep. Deborah Ferguson, Alternate

Sen. Bobby J. Pierce Rep. Joe Jett Rep. Rebecca Petty, Alternate

Sen. Jim Hendren Rep. Lanny Fite Rep. Clarke Tucker, Alternate

Sen. Bill Sample, ex-officio Rep. David L. Branscum, ex-officio Rep. Ken Henderson, Alternate

Sen. Terry Rice, ex-officio Rep. Mark Lowery, ex-officio Rep. Tim Lemons, Alternate

Sen. Eddie Joe Williams, Alternate Rep. John T. Vines, Alternate Rep. Bob Johnson, Alternate

Sen. Eddie Cheatham, Alternate Rep. Dave Wallace, Alternate

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**A. Call to Order.**

**B. Report of the Executive Committee Concerning Emergency Rule Filings.**

**C. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309.**

**1. DEPARTMENT OF CAREER EDUCATION, CAREER AND TECHNICAL EDUCATION (Charisse Childers, Kathi Turner)**

**a. SUBJECT:** **Revised Policies & Procedures for Career & Technical Education**

**DESCRIPTION:** This revises the definition of program of study to reflect the federal definition of a program of study as defined by the Carl. D. Perkins Career and Technical Education Act of 2006 – Perkins IV. It also revises the qualifications for teacher licensure and permit areas to more align with the Department of Education guidelines for licensure.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on January 18, 2016. The Department received no comments.

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

1. While the Career Education and Workforce Development Board and the Department are both charged with authority and responsibility that “shall include general control and supervision of all programs of vocational, technical, and occupational education in secondary institutions,” the Board is charged with “[p]rescribing standardized standards for programs and teachers,” “[a]pproving applied courses of related academic instruction,” and “other items relative to program quality and operation.” Has the Board approved the proposed rule changes? **RESPONSE:** Yes, the rules have gone before the Career Education and Workforce Development Board for approval and were approved.

The proposed effective date is pending legislative review and approval.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Ark. Code Ann. § 25-30-102(b)(1), the Career Education and Workforce Development Board (“the Board”) has general supervision of all programs regarding vocational, technical, and occupational education. The Board’s responsibilities include, “without limitation . . . [p]rescribing standardized standards for programs and teachers”; “[a]pproving applied courses of related academic instruction”; and “other items relative to program quality and operation.” Ark. Code Ann. § 25-30-102(c)(1). The authority and responsibility of both the Board and the Department of Career Education shall include the general control and supervision of all programs of vocational, technical, and occupational education in secondary institutions. *See* Ark. Code Ann. § 25-30-107(b)(1). Changes to the rules were further made in order to comply with the state provisions established by section 122(c)(1)(A) of the Perkins Career and Technical Education Act, codified at 20 U.S.C.A. § 2342(c)(1)(A).

**2. DEPARTMENT OF EDUCATION (Jennifer Davis, items a and c; Lori Freno, item b)**

**a. SUBJECT:** **Ethical Guidelines and Prohibitions for Educational Administrators, Employees, Board Members and Other Parties**

**DESCRIPTION:** A summary of the proposed rules follows:

Section 1.02. Amends the purpose section for these rules to reflect that the rules are being updated pursuant to Act 846 of 2015.

Section 3.07.1.3. Amends strikethrough language during the last update to the rule. It was accidentally left in the final rules when it should have been deleted.

Section 10.03.2. Raises the threshold for total transactions requiring commissioner review and approval from $5,000 to $10,000.

Section 11.03. Expands the limitation to all family members of an administrator (from only immediate family members) who cannot be initially employed as a disbursing officer without commissioner’s approval.

Section 12.02.2. Raises the threshold for total transactions requiring commissioner review and approval from $5,000 to $10,000.

**PUBLIC COMMENT:** A public hearing was held on January 4, 2016. The public comment period expired on January 12, 2016. The Department received no comments.

The proposed effective date is April 1, 2016.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** This rule implements Act 846 of 2015.

Pursuant to Arkansas Code Annotated § 6-24-119, the Department has the authority to promulgate rules and regulations regarding the ethical guidelines and prohibitions for administrators, employees and board members.

**b. SUBJECT:** **School District Requirements for Personnel Policies, Salaries, and Documents to be Posted to District Website**

**DESCRIPTION:** The changes follow:

Section 3.01. Revises the number of days of professional development to be included in a basic contract from 10 days to no less than 6 days in accordance with Act 44 of 2015.

Section 3.01.1. Adds to the definition of “basic contract,” the language set forth in Act 1177 of 2015 which addresses teachers employed in a C-Step Program or the Arkansas National Guard Youth Challenge Program.

6.02.1 and 6.02.2. Adds language set forth in Act 1087 of 2015 clarifying that the minimum teacher compensation schedule under Ark. Code Ann. §6-17-2403(b) does not apply to part-time teachers or paraprofessionals employed by a school district to work in an adult education program; rather, that compensation schedule shall be established by the Department of Career Education and approved by the State Board of Career Education.

Post-public comment non-substantive changes:

7.06 and 7.07. Adds language set forth in Act 993 of 2015 regarding additional compensation for teachers in grades 7-12 who volunteer to teach more students per day than permitted under the Standards for Accreditation of Arkansas Public Schools and School Districts, including teachers who use their conference period for this purpose.

**PUBLIC COMMENT:** A public hearing was held on January 4, 2016. The public comment period expired on January 12, 2016. The Department received the following comment:

COMMENT: Lucas Harder, Arkansas School Boards Association.

He questioned whether language should be added to Section 7 to reflect language in Ark. Code Ann. § 6-17-812 (Act 993 of 2015) allowing teachers to volunteer to teach over 150 students per day.

RESPONSE: Comment considered. Non-substantive changes were made to Section 7 (addition of sections 7.06 and 7.07) as a result of this comment.

The proposed effective date is April 1, 2016.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** This rule implements portions of Acts 44, 993, 1087, and 1177 of 2015. The State Board of Education has general supervision of the public schools of the state and shall take such action as it may deem necessary to promote the physical welfare of school children and the organization and efficiency of the public schools. *See* Ark. Code Ann. § 6-11-105(a). The state board shall adopt rules and regulations for its meetings and proceedings as it deems advisable. Ark. Code Ann. § 6-11-105(d).

**c. SUBJECT:** **Education Service Cooperatives**

**DESCRIPTION:** A summary follows:

Section 1.2. The purpose section for these rules is amended to reflect that the rules are being updated pursuant to Act 846 of 2015.

Section 23.3. This changes the distribution method of the assets of a dissolved service cooperative from a school district’s third quarter average daily membership to the district’s three-quarter average daily membership.

Section 23.4. This corrects a mis-numbered section number.

**PUBLIC COMMENT:** A public hearing was held on January 4, 2016. The public comment period expired on January 12, 2016. The Department received no comments.

The proposed effective date is April 1, 2016.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** This rule implements portions of Act 846 of 2015. Pursuant to Arkansas Code Annotated § 6-13-1013, the Department has the authority to “develop such policies, rules, and regulations as may be needed for the proper administration of this subchapter consistent with the need to support and assist education service cooperatives in the delivery of services to school district.”

**3. DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES (Tami Harlan)**

**a. SUBJECT:** **Notice of Rule Making 002-15 (CPT) and 003-15 (HCPCS) Conversion Notices**

**DESCRIPTION:** To comply with federal regulation 45 CFR Subpart J, Section 162.1002, these Notices of Rulemaking informs providers of the implementation of the annual Current Procedure Codes, (CPT), and the annual Healthcare Common Procedure Codes Systems, (HCPCS). These data sets are created and published by the American Medical Association and the Centers for Medicare and Medicaid on an annual basis. This rule is necessary for consistency with the utilization of procedure codes used by Medicare and other third party payers of medical claims. These data sets are standardized and are used nationally for claims processing. This emergency notice will help expedite claims processing. Payable procedure codes will be added to the provider fee schedules and policy manuals will be updated as necessary. This will ensure that additional claims system testing will not be needed before implementation, resulting in subsequent delays and further lost efficiency of time. It will also help to put 2016 CPT/HCPCS planning, programming, testing, and promulgation processes back on its regular timelines.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on February 9, 2016. The Department received no comments.

This rule was originally filed as an emergency regulation and was approved by the Executive Subcommittee on January 4, 2015. The proposed effective date of the permanent promulgation of this rule is pending legislative review and approval.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** The cost to implement the rule is $163,287 for the current fiscal year ($48,627 in general revenue and $114,660 in federal funds) and $304,913 for the next fiscal year ($92,175 in general revenue and $212,738 in federal funds). This is a required code conversion. Failure to implement these code changes would result in Arkansas Medicaid being out of compliance with HIPAA requirements.

**LEGAL AUTHORIZATION:** Arkansas Code Annotated § 20-76-201 (12) gives the Department the general authority to “make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter and that are not inconsistent therewith.”

**b. SUBJECT:** **Notice of Rule Making 005-15; Coverage of Vaccine Current Procedure Terminology (CPT) Procedure Codes 90620 and 90621**

**DESCRIPTION:** To comply with the Advisory Committee on Immunization Practices (ACIP) and the Centers for Disease Control (CDC) recommendations that adolescents and young adults be vaccinated with the two MenB vaccines which were recently licensed by the Federal Food and Drug Administration (FDA). Both MenB vaccines were licensed based on statutory regulations for accelerated approval. This criterion was based on serious or life-threatening diseases based on safety and demonstration that the vaccines effectiveness will benefit children and young adults.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on February 9, 2016. The Department received no comments.

The proposed effective date is April 1, 2016.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** The cost to implement this rule is $87,100 ($25,938 in general revenue and $61,162 in federal funds) for the current fiscal year and $87,100 ($26,330 in general revenue and $60,770 in federal funds) for the next fiscal year. The majority of the financial impact of this rule change is for the new vaccine coverage under the Vaccines for Children (VFC) and the State Children’s Health Insurance Program (SCHIP) programs. A small portion of the impact is related to the new vaccines for the 19 to 25 population.

**LEGAL AUTHORIZATION:** Arkansas Code Annotated § 20-76-201 (12) gives the Department the general authority to “make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter and that are not inconsistent therewith.”

**4. DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES, OFFICE OF LONG TERM CARE (Frank Gobell)**

**a. SUBJECT:** **Arkansas Long Term Care Facility Nursing Assistant Training Program**

**DESCRIPTION:** Current regulations require that instructors in Certified Nurse Aide training programs be nurses licensed by the State of Arkansas. However, some training programs that are located near the state border have difficulty filling positions. Arkansas is a member of a compact with other states that permits nurses in those compact states to practice nursing in Arkansas. The amendment to the regulations will also permit those individuals to act as instructors in Certified Nurse Aide training programs in Arkansas.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on January 1, 2016. The Department received no comments.

The proposed effective date is pending legislative review and approval.

**CONTROVERSY:** This rule change does not have a financial impact because it allows nurses that are licensed in other states to be nurse aide training program instructors.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** Arkansas Code Annotated § 20-10-705 specifically authorizes the Office of Long-Term Care to “promulgate regulations necessary to implement an aide training program for all long-term care facilities in this state, to prescribe in-service training programs, and to enforce compliance with those programs.”

**b. SUBJECT:** **Licensure of Nursing Home Administrators in Arkansas**

**DESCRIPTION:** Act 1066 of 2015 requires licensing agencies to create reduced requirements to allow license holders that have allowed their licenses to lapse to re-license. The Office of Long Term Care licenses nursing facility administrators. Presently, a lapsed license requires an individual to complete the same requirements as a new applicant for licensure. The amendment to this rule complies with Act 1066 of 2015. It defines a lapse as the failure to pay the requisite renewal fee or to meet continuing education requirements for renewal within the last five years immediately preceding the application for renewal; requires that the applicant obtain twenty hours of continuing education credits; and requires the applicant to pay the applicable re-license fees. These proposed conditions ensures that the individual, who has previously been licensed, is familiar with the latest regulatory requirements while providing a means to re-license with requirements that are substantially reduced as compared to current requirements.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on January 1, 2016. The Department received no comments from the public.

Michael Harry, an attorney with the Bureau of Legislative Research, asked the following question:

In Section H Subsection 4 it states that the applicant must complete 20 clock hours of CE or 6 semester hours, where did those time requirements come from? Are they required for all professionals in this field?

I’m specifically referring to Act 1066 page 2, line 27 where it creates subsection (d)(2).  That subsection states “(2) The licensing entity may require the person to participate in continuing education or training if the continuing education or training is required for all professionals in the field to maintain the license, registration, or certification.

RESPONSE: Frank GoBell, DHS

Regarding the Continuing Education (CE) requirements, the amount was established approximately thirty (30) years ago, based in part upon recommendations of the [National Association of Long Term Care Administrator Boards](http://www.nabweb.org/continuing-education) (the NAB), which develops the national standards for long-term care administrators, and in part from stakeholders in the long-term care field in Arkansas.

No, those are not additional requirements – in fact, the opposite.  Act 1066 of 2015 requires state agencies to create reduced requirements for reinstatement of a license under limited conditions.  The section of the Act quoted below clarifies that, even with the reduced requirements in general, the licensing authority can still require the same CEs as is required for someone who is applying for licensure or renewal of a license.  While the Office of Long Term Care was not involved in Act 1066, I would surmise that this was done to ensure that someone being re-licensed under the reduced requirements would nevertheless be up-to-date on the latest information in the practice area to protect the public.

The proposed effective date is pending legislative review and approval.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** This does not have a financial impact because it changes the procedures for a lapsed nursing facility administrator license to be re-licensed.

**LEGAL AUTHORIZATION:** This rule implements Act 1066 of 2015 that addressed the requirements for an individual with a license that had lapsed to be re-instated.

Arkansas Code Annotated § 20-10-203 gives the Office of Long-Term Care authority to promulgate such rules and regulations necessary to regulate the licensure of long-term care facility administrators.

**5. STATE MEDICAL BOARD (Kevin Odwyer)**

**a. SUBJECT:** **Regulation 39: Reinstatement of Arkansas Medical License**

**DESCRIPTION:** This regulation permits relicensure of licensees without the licensee having to participate in apprenticeship, education, or training as a prerequisite.

**PUBLIC COMMENT:** A public hearing was held on February 4, 2016, and the public comment period expired on that date. No public comments were submitted.

Jessica Sutton, an attorney with the Bureau of Legislative Research, asked the following question: This rule states that it is for physicians who have not participated in any patient care for two years.  Is it at least 2 years, or less than 2 years?  Why the 2 year period?  How is the process different if more or less than 2 years? **RESPONSE:** This section was subsequently deleted.

The proposed effective date is April 1, 2016.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** These rules implement Act 1066 of 2015, which amends the law concerning reinstatement of licenses and certification. A licensing entity shall by rule adopt reduced requirements for reinstatement of a license, registration, or certification for a person who demonstrates that he or she: (1) was previously licensed, registered, or certified to practice in the field of his or her profession at any time in this state; (2) held his or her license in good standing at the time of licensing; (3) did not have his or her license revoked for an act of bad faith or a violation of law, rule, or ethics; (4) is not holding a suspended or probationary license in any state; and (5) is sufficiently competent in his or her field. Ark. Code Ann. § 17-1-107(b)(1).

**6. STATE BOARD OF NURSING (Sue Tedford, Fred Knight)**

**a. SUBJECT:** **Revisions to Nursing Rules: Chapters: 1, 2, 3, 4, 7 and 9**

**DESCRIPTION:** In compliance with Arkansas statutes and following the passage of Acts 529, 824, 833, 1156 and 1208 of the 2015 Legislative Session, mark-up copies of the proposed changes to the Board of Nursing Rules – Chapter 1- General Provisions; Chapter 2- Licensure: RN, LPN, and LPTN; Chapter 3- Registered Nurse Practitioner; Chapter 4- Advanced Practice Registered Nurse, Chapter 7- Rules of Procedure, and Chapter 9- Glucagon Administration, have been provided.

Following is a summary of the proposed changes:

**Chapter 1**- General Provisions –In Section IV, the title of the Advanced Practice Registered Nurse is being updated from Advanced Practice Nurse and the title of Certified Nurse Practitioner is being changed from Advanced Nurse Practitioner for consistency of current titles of these nursing titles.

In Section IV, the definition of unencumbered license is being updated to reflect the more accurate explanation which is “free of disciplinary limitations” and deleting “or pending actions” which is inaccurate.

In Section V, F (3), the current acceptable methods of payment of fees include credit card but excludes cash.

**Chapter 2** - Licensure- The changes to Section II, F.1. and F.2., are being made in order to specify that only “official” transcripts are acceptable and that examination results are no longer mailed to applicants but are made available to them and their nursing programs.

In Section VI, A, then word “exam” is extended to examination to be more specific.

In Section XI, the method involved for a licensee whose name has changed has been updated to reflect current processing which adds the requirement to submit a name change form and removing the requirement for the submission of the paper or plastic license cards (since those are no longer proof of nursing licensure and proof of licensure is now found on-line).

**Chapter 3-** Registered Nurse Practitioner- The proposed changes to Chapter 3 Section IV are being made in order to align with current ASBN procedures which adds the requirement to submit a name change form and removing the requirement for the submission of the old paper or plastic license cards (since those are no longer proof of nursing licensure and proof of licensure is now found on-line).

**Chapter 4 -** Advanced Practice Registered Nurse- The proposed changes to Section I are made for purposes of compliance with Act 1156. This act altered the numbering for reference back to statute, A.C.A. § 17-87-102

The changes in Section III, F (7) are made as a result of the continuing education requirements for prescribers which are found in A.C.A. § 20-7-704. Removing “Effective January 1, 2010” at the beginning of the paragraph then inserting “Effective January 1, 2017, two (2) of the five (5) hours must contact information related to maintaining professional boundaries and the prescribing rules, regulations and laws that apply to APRNs in the State of Arkansas.”

The changes in Section III, I and J are made in order to clarify the requirements of a retired APRN license.

The change in Section III, J (6) is a technical correction, changing the “E.” where an “F.” should be at the appropriate paragraph.

In Section V, the method involved for a licensee whose name has changed has been updated to reflect current processing which adds the requirement to submit a name change form and removing the requirement for the submission of the paper or plastic license cards (since those are no longer proof of nursing licensure and proof of licensure is now found on-line).

The changes in Section VIII, A (5), are made with the purpose to comply with A.C.A. § 17-87-310 (a) (2), clarifying that a collaborative practice agreement must be with a practicing physician who has training within the scope, specialty or expertise of the advanced practice registered nurse.

The changes in Section VIII, A (5) e., are made with the purpose to comply with A.C.A. § 17-87-310 (b) (2), giving the advanced practice registered nurse authorization to prescribe hydrocodone combination products.

The addition of Section VIII, A (7), is made with the purpose to comply with A.C.A. § 20-7-704, clarifying that APRNs issued a certificate of prescriptive authority after December 31, 2015 shall obtain a minimum of three (3) hours of prescribing education which includes information on maintaining professional boundaries and the prescribing rules, regulations and laws that apply to APRNs in the State of Arkansas within six (6) months of issuance of the prescriptive authority certificate.

The changes in Section VIII D (2), Section VIII D (3) a., and Section VIII D (4) c., are made with the purpose to comply with A.C.A. § 17-87-310 (b) (2), clarifying the prescriptive authority for controlled substances by APRNs to extend to drugs listed in Schedules III through V and only hydrocodone combination products from Schedule II of the Controlled Substances Act.

The changes in Section VIII D (6-8) are made for purposes of compliance with A.C.A. § 20-7-705, which states “A licensing board that licenses individuals with prescriptive authority shall adopt rules that are at least as stringent as the rules of the Arkansas State Medical Board concerning use of narcotics for the treatment of pain not associated with malignant or terminal illness.” The three additional requirements are reflective of Regulation 2 of the Arkansas Medical Board.

The changes in Section VIII F (1), are made with the purpose to comply with A.C.A. § 17-87-310 (b) (2), clarifying that APRNs who have an active prescriptive authority certificate may also receive legend drug samples and therapeutic devices appropriate to their area of practice, including controlled substances contained in Schedules III through V and only hydrocodone combination products from Schedule II of the Controlled Substance Act, which have been prepared, packaged, or fabricated by a pharmaceutical manufacturer in accordance with the Arkansas pharmacy laws and rules.

The language contained in Section VIII I (6) regarding an APRNs contact hours is moved to J – Reactivation of Prescriptive Authority.

Section VIII J was added for the purpose of being compliant with A.C.A. § 20-7-704. This section sets out the terms for reactivation of prescriptive authority for an APRN which is consistent with renewal of prescriptive authority.

In compliance with A.C.A. § 20-7-604 (h)(2) and A.C.A. § 20-7-615, Section VIII K lists criteria of the Prescription Drug Monitoring Program for APRNs.

Section XII, Prescribing for Chronic Nonmalignant Pain, was added to Chapter 4 in order to comply with A.C.A. § 20-7-702 and A.C.A. § 20-7-707. This section defines chronic nonmalignant pain, discusses patient treatment and evaluation and the exceptions to these requirements.

**Chapter 7-** Rules of Procedure- The proposed changes to Section IV, Disciplinary Proceedings A (6) (n), corrects the terminology concerning the Standard Precautions for preventing contact with blood or other potentially infectious material.

**Chapter 9-** Insulin and Glucagon Administration – The proposed changes to Section I, Purpose and Authority are added to align with the terminology found in A.C.A. § 17-87-103.

The change in Section II A is a clarification of the definition of an emergency situation.

The change in Section II C is the addition of a definition of insulin.

The change in Section II F is a clarification of the type of diabetes that children in public schools may experience.

The change in Section II G is added to align with the terminology found in A.C.A. § 17-87-103.

In compliance with A.C.A. § 6-18-711, Section III A-D was added to the rules. This section identifies the parameters in which a trained volunteer may administer insulin. This section also identifies minimum staffing levels for the school.

Section II E-G was modified in order to comply with A.C.A. § 17-87-103.

Section II H and I were added to ensure the safety of the children receiving insulin or glucagon.

Section II J and Section IV Protection from Liability is added to align with the terminology found in A.C.A. § 17-87-103.

Section V Training of Volunteers, A-C updates the training required of the volunteer in order to administer insulin.

Section VI Records is updated to reflect the changes found in A.C.A. § 17-87-103.

**PUBLIC COMMENT:** A public hearing was held on January 19, 2016. The public comment period expired on February 12, 2016. Public comments were as follows:

**CHAPTER 4 COMMENTS**

**Arkansas Medical Board**

**COMMENT:** Add “which were reclassified from Schedule III to Schedule II as of October 6, 2014” to all references to hydrocodone combination products. **RESPONSE:** The changes will be made.

**COMMENT:** Change Section VII, A(7) from “two” hours of prescribing education to “three” hours and add the content “maintaining professional boundaries.” **RESPONSE:** The changes will be made.

**COMMENT:** Section XII, A. Reword the definition of Tramadol for clarity and add “a morphine equivalent dose of more than fifteen mg (15 mg) per day.” **RESPONSE:** The changes will be made.

**Dr. Ann Riggs, Reynolds Department of Geriatrics, UAMS**

**COMMENT:** In reference to Section VIII, K(2), Dr. Riggs stated “I am most concerned on how this will affect the practice of APRNs in the long-term care and post-acute care settings. These patients should basically be viewed as “inpatient status” as they are under the care of one physician or APRN; and moreover, all medications are dispensed from a central pharmacy under contract by the nursing homes. In addition, all medications are reviewed on a monthly basis by the consultant pharmacist. The policy that before prescribing a schedule II drug, a PMP must be performed may hinder patient care especially on the weekend or after hours. This may lead to undertreatment of pain and other symptoms in a very vulnerable population. Perhaps this policy should be applied to the outpatient population only.” **RESPONSE:** Section VIII, K(2) will be deleted and replaced with: “APRNs with prescriptive authority who have been found guilty, by the Board of Nursing, of violating a law or rule involving prescription drugs shall review a current report (run within the past 30 days) from the Prescription Drug Monitoring Program prior to prescribing an opioid. Review of this report shall be documented in the patient’s medical record.”

**CHAPTER 9 COMMENTS**

**Michelle Burk, RN, BSN, District Head Nurse, Arkansas Arts Academy**

**COMMENT:** I am very opposed to licensed or classified personnel administering insulin unless they have completed an accredited nursing program and become an LPN or RN. As the district head nurse, if the proposed insulin rules are voted in as is, I will be **required** to delegate the responsibility of administering insulin to unlicensed persons who will most probably have **NO** previous experience with administering insulin. In other words, an unlicensed, inexperienced person will be administering insulin – a highly complex medication with the possibility of fatality. This is a huge liability both for the school, for myself, and ultimately for the child. When I worked in an acute care hospital setting, it was a requirement that insulin dosages be **DOUBLE-CHECKED BY TWO REGISTERED NURSES**. If it is so critical a medication dosage that it must be double-checked and confirmed by two RN’s, I absolutely **CANNOT SUPPORT** putting this responsibility on a lay person’s shoulders. **RESPONSE:** This provision was added pursuant to Act 833 of 2015. To modify this provision would require statutory change. Section IV states that a school district, school district employee, or an agent of a school district, including a healthcare professional who trained volunteer school personnel designated as care providers and care providers, shall not be liable for any damages resulting from his or her actions or inactions under these rules or ACA § 17-87-103.

**Rebecca Van Winkle, RN, Pangburn School District**

**COMMENT:** I would like to add my input into the proposed nursing rules regarding the administration of insulin and glucagon administration. I have an LPN who works with me in the school district and need to clarify Section 3, D, which states the trained volunteer may administer insulin/glucagon only when the licensed registered nurse is unavailable. Is this meant to state that the LPN may not administer glucagon/insulin without the registered nurse available as well? Further down into Section 3, states that the school nurse may administer the glucagon/insulin. Does this include the LPN?

I personally am not a fan of trained volunteers administering these medications, trained or not. You can train specific volunteers to assist in an emergency, but I believe these medications should be only administered by the parent or licensed nurses due to the liability to the nurse that trained the staff and the school. I feel that the amount of times that this scenario arises for the non-licensed personnel is minimal and critical steps could be omitted due to some information retention loss between training sessions.

**RESPONSE:**  This provision was added pursuant to Act 833 of 2015. To modify this provision would require statutory change. According to the ASBN School Nursing Roles and Responsibilities Practice Guidelines, it is within the LPN’s scope of practice to administer medications via injection. Section IV states that a school district, school district employee, or an agent of a school district, including a healthcare professional who trained volunteer school personnel designated as care providers and care providers, shall not be liable for any damages resulting from his or her actions or inactions under these rules or ACA § 17-87-103.

**Veronica De La Garza**

**COMMENT:** Ms. De La Garza suggested the definition of Glucagon, Section II, B be changed from “raises the level of glucose . . .” to “stimulates the release of glucose . . .” **RESPONSE:** The changes will be made.

**COMMENT:** Ms. De La Garza suggested to change the definition of insulin to: “A hormone that regulates the metabolism of glucose and other nutrients. It is generally given by injection or through a subcutaneous insulin delivery system. It is prescribed by a licensed healthcare practitioner . . .” **RESPONSE:** The changes will be made.

**COMMENT:** Ms. De La Garza suggested (Section II, E) the addition of Pharmacist and Certified Diabetes Educator to the list of other healthcare professionals. **RESPONSE:** The changes will be made.

**COMMENT:** Ms. De La Garza suggested (Section V, A) to add “blood glucose monitoring” and “overview of diabetes” to the mandatory components of the training of volunteers. **RESPONSE:** The changes will be made.

**Rick Selig, American Diabetes Association**

**COMMENT:** Mr. Selig attended the public comment hearing. Mr. Selig stated that his agency prefers the term “diagnosed with diabetes” over “suffering from diabetes.” **RESPONSE:** The changes will be made.

**COMMENT:** Mr. Selig suggested leaving “unconscious” to describe part of the emergency situation. **RESPONSE:** Ms. Tedford articulated the term “unconscious” as limiting where the term “with an altered mental status” covers those students who are unconscious as well as those students with their level of consciousness altered to the point that it would be unsafe to administer anything by mouth.

**COMMENT:** Mr. Selig asked, “Are these the only health care providers who can write prescriptions in Arkansas?” relating to Ch. 9, Section II, B. **RESPONSE:** Ms. Tedford indicate the following changes will be made to this section: Advanced Practice Registered Nurse with prescriptive authority, Registered Nurse Practitioners or Physician Assistants who work under physician-approved protocols.

**COMMENT:** Mr. Selig suggested changing the title “Diabetic Nurse Educator” to “Diabetes Nurse Educator” to align with current terms. (Section II, D). **RESPONSE:** The changes will be made.

**COMMENT:** Regarding Ch. 9, Section II, F, the ADA suggested definition of “Diabetes” will be “a group of metabolic disorders characterized by hyperglycemia resulting from defects of insulin secretion, insulin action or both.” **RESPONSE:** The changes will be made.

**COMMENT:** Mr. Selig suggested removing the term “in emergency situations” in Ch. 9, Section III, E. **RESPONSE:** The changes will be made.

**COMMENT:** Mr. Selig requested that paragraphs “H” and “I” in Ch. 9, Section III, be merged as there is no reason to distinguish between routine and emergency. **RESPONSE:** Ms. Tedford explained the current writing clarifies the student shall be observed according to each student’s assigned health plan when administered a scheduled dose of insulin. However, emergency administration of insulin or glucagon are life threatening and the student deserves constant attention until medical personnel arrive.

**COMMENT:** Mr. Selig requested the word “mastery” be changed to the word “proficiency” in Ch. 9, Section V, C. **RESPONSE:** The changes will be made.

**Paula Smith, RN, Arkansas Department of Education**

**COMMENT:** Ms. Smith recommended the addition of definitions for “scheduled” and “non-scheduled” doses of insulin. **RESPONSE:** Ms. Tedford asked Ms. Smith to provide suggested definitions of those terms before the end of the public comment period.

**COMMENT:** Add the following definitions to Section II, Definition of Terms: “Scheduled dose of insulin – a dose of insulin administered at regular times during the school day.” “Non-scheduled insulin administration – an additional or corrective dose of insulin to treat hyperglycemia or to cover a rise in blood glucose levels.” **RESPONSE:** The changes will be made.

**Margo Bushmiaer, RN, Little Rock School District**

**COMMENT:** Ms. Smith asked if something could be done about students carrying their own medical supplies and equipment and sharing or using those items on fellow students. **RESPONSE:** Fred Knight, ASBN General Counsel, stated disciplinary issues regarding student actions are regulated by the schools and Department of Education.

**COMMENT:** In Section V, D, Ms. Bushmiaer suggested the addition of a delegation statement to be used as a reference for school nurses. **RESPONSE:** Ms. Tedford asked Ms. Bushmiaer to provide a written recommendation for the delegation statement before the end of the public comment period.

**COMMENT:** Ms. Bushmiaer also suggested specifying that records of volunteer training, authorization signed by guardian, and a list of designated volunteer school personnel be kept with the student’s individual health care plan. **RESPONSE:** Ms. Tedford indicated that she would discuss this matter with the Department of Education.

**COMMENT:** Add the following as #3 to Section V, D: “In accordance with the Arkansas State Board of Nursing School Nurse Practice Guidelines, the School Nurse is responsible for the supervision of healthcare provided to students while in the care of the school. The School Nurse will periodically reassess the volunteer’s proficiency in the administration of insulin and/or glucagon. Corrective action will be implemented by the school nurse when deficiencies are identified, including removing the volunteer from the student’s IHP when proficiency is not maintained.” **RESPONSE:** Will not add to Rules as this statement puts liability back on the nurse and Act 833 of 2015 specifically removes liability from the nurse.

**Connie Fetters, Nurse with ADA**

**COMMENT:** Ms. Fetters asked who would be responsible to preparing and keeping records of the health care plans for each student. **RESPONSE:** Ms. Tedford and Mr. Knight indicated that the school nurse and the schools are responsible for keeping such records.

**Kathey Haynie, RN, Arkansas School Nurses Association**

**COMMENT:** Referencing Section III, A, Ms. Haynie asked for the definition of “school related activities.” Ms. Haynie stated the necessity of obtaining and training volunteers will place a financial burden on the schools. Ms. Haynie also pointed out the fact that some parents will refuse to allow volunteers to administer insulin to their student(s). **RESPONSE:** Mr. Knight indicated “school related activities” are defined by the Department of Education. Ms. Tedford agreed that parents have the right to refuse treatment from a volunteer.

Jessica Sutton, an attorney with the Bureau of Legislative Research, asked the following questions, as follows:

(1) On page 4-7, why is the minimum of 3 hours of prescribing education required to be obtained within 6 months of issuance of the prescriptive authority certificate? Arkansas Code Annotated § 20-7-704 requires the prescribing education to be obtained within the first 2 years of being granted a license in this state. **RESPONSE:** Language was changed from “6 months” to “2 years.”

(2) On page 4-8, regarding the amendment concerning prescriptive authority for hydrocodone combination products which were reclassified from Schedule III to Schedule II as of October 6, 2014, should that clarify “if expressly authorized by the collaborative practice agreement”? **RESPONSE:** We can add it if you think it will help. We did not put it in there because the sentences are already cumbersome and we didn’t want to add to the complexity.

The rules were presented to the Public Health, Welfare and Labor Committee on March 3, 2015. A request was made to add the language “if expressly authorized by the collaborating physician” in Section VIII(A)(5)(e) for clarification. The Nursing Board agreed to make this change.

The proposed effective date is July 1, 2016.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** The Arkansas State Board of Nursing is authorized to promulgate “whatever regulations it deems necessary for the implementation of this chapter [Ark. Code Ann. § 17-87-101 *et seq*.] These rules implement Act 529 of 2015 (which amends the prescriptive authority of advanced practice registered nurses); Act 824 of 2015 (which amends the collaborative practice agreement structure of a physician and an advanced practice registered nurse); Act 833 of 2015 (which authorizes certain public school personnel to be trained in the administration of insulin and glucagon); and Act 1208 of 2015 (which enhances the Prescription Drug Monitoring Program Act and creates the Combating Prescription Drug Abuse Act).

**7. WATER WELL CONSTRUCTION COMMISSION (Deanna Ray, Todd Fugitt, Tommy Wren)**

**a. SUBJECT:** **Arkansas Water Well Construction Commission Rules and Regulations**

**DESCRIPTION:** The General Assembly created the Arkansas Water Well Construction Commission (“AWWCC”) in order to protect the general health, safety, and welfare of the public by encouraging the proper development of water wells across the state. The current rule changes submitted are a representation of the AWWCC’s desire to update its rules and regulations in accordance with the changes in the water well industry as well as to have the rules better reflect the statutory authority given to them. The updates also reflect changes required by new laws passed during the 2015 Legislative Session.

The AWWCC has the authority to implement an apprenticeship program for persons wishing to become registered water well drillers. The proposed changes require an apprentice supervisor to be a full time employee of the company hiring the apprentice as well as be within a two hour drive (previously one hour) of the job site where the apprentice is working, and to be available to the apprentice via cell phone at any time (pgs. 1, 6, 7 and 8). Additionally, the changes require that a person complete a full two years of apprenticeship (previously could apprentice for one year in some instances) prior to becoming eligible for registration (pgs. 1, 6, 7 and 8). Additionally, the AWWCC will no longer charge a fee for an apprentice to take the water well examination at the completion of the apprenticeship program (page 2).

In accordance with Act 1066 passed in 2015, the AWWCC rules were updated to reflect the changes made for reinstating a lapsed certificate of registration. Previously, the AWWCC required persons who had a certificate of registration that had lapsed for ten years or more to go through its apprenticeship program again. However, Act 1066 does not allow for this, and the rules have been updated to reflect this change (pg. 9).

Due to the increase of construction costs, the AWWCC has amended its rules to state that a contractor must now provide a $20,000 bond rather than a $10,000 bond (pgs. 4-5). This will provide additional protection to Arkansas citizens. Additionally, the AWWCC removed the requirement that a pump installer file a report for installation of pumps on domestic wells because there is no practical use for those reports (pg. 10). The AWWCC also updated its well sealing requirements to reflect accepted construction trends (pg. 21).

Two new sections were added into the rules to reflect current statutory authority. The AWWCC has the authority to confiscate a water well drilling rig in certain situations (pgs. 27-28). Until amended, the AWWCC’s rules did not reflect this authority. The second new section addresses excessive sediment and updates the protocol the AWWCC uses in determining whether a well produces excessive sediment (pgs. 28-30).

Last, minor grammatical and consistency changes were made throughout the document.

**PUBLIC COMMENT:** A public hearing was held on February 4, 2016. The public comment period expired on February 11, 2016. The Commission received no public comments.

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

1. Rule 1.2 – It appears that the Commission has stricken that portion of the rule stating that the rules have no application to wells constructed as of May 27, 1969; however, Ark. Code Ann. § 17-50-108(c)(1)(A) still so provides, with the exceptions set forth in the statute. I’m wondering if the revision leaves open the question of applicability to such wells. **RESPONSE:** A landowner has no obligation to bring any water well located on his property that was constructed May 27, 1969 or earlier into compliance with AWWCC’s rules. However, if the landowner intends to make any alterations or repairs to the well, those repairs must be done in compliance with AWWCC’s current rules. We deleted the first sentence of the rule because it wasn’t meaningful.
2. Rule 3.10.10 – The Commission has amended the rules to comply with the requirements of Act 1066 of 2015. In doing so, the Commission is requiring the payment of a $25.00 penalty of those seeking reinstatement of a license expired more than one year. According to Ark. Code Ann. § 17-50-307(c)(2), however, the Commission is to charge a penalty of $50.00 for license renewals sought after August 31. Is there a reason the Commission did not use the statutorily approved $50.00 penalty? **RESPONSE:** A $25.00 penalty was used because the rule actually pertains to the reinstatement of a “certificate of registration,” rather than a license. The rule has since been revised by the Commission to so state.
3. Rules 5.1.5 and 5.1.7 – These rules appear duplicative. Was this the intent of the Commission? **RESPONSE:** We can think of no reason why both rules are necessary. We will strike 5.1.7 and renumber. Thank you for noticing this problem.
4. Rule 8.1.1 – The rule precludes water well contractors *and* geothermal well contractors from operating a rig without a permit; however, Ark. Code Ann. § 17-50-310(c)(1) only speaks to water well contractors and makes no mention of geothermal. Is there some authority for the inclusion of geothermal? **RESPONSE:** AWWCC believes that its rig permitting authority applies to all water well contractors and includes geothermal water well contractors as a class of water well contractor. Some members of the geothermal drilling community may be confused about the application of AWWCC rules to geothermal drilling. This language was drafted to specifically include the reference to “geothermal well contractors” as a way to highlight that this group *is* bound by AWWCC’s rig permitting requirement. However, AWWCC will consider removal of this reference since it is confusing.
5. Rule 8.3.1 – Should “rig permit fee” be simply “rig permit”? **RESPONSE:** “Rig permit” is the appropriate term to use. We will make this correction.
6. Rule 8.4 – Similar to Rule 8.1.1, this rule includes geothermal wells, when the statute only speaks of water wells. Authority? **RESPONSE:** Please see the response to Question #3.
7. Section 9 – Your summary states that Section 9 is one of two new sections added to reflect current statutory authority. Are these standards and protocols measures that the AWWCC has been operating under for some time and have now opted to include? Is this section promulgated under the Commission’s general authority or is there some other statutory authority relating more specifically to excessive sediment? **RESPONSE:** One of the new sections describes AWWCC’s excessive sediment protocol. Although there is no specific statutory authority relating to excessive sediment, AWWCC rules have included the standard for excessive sediment for over a decade. AWWCC has generally followed the same procedure for sample collection in recent years. The new revision informs the regulated community of the procedure to be followed once the water sample is collected and the testing method that the AWWCC will use to determine whether excessive sediment is present in the sample.

The other section references rig confiscation. The AWWCC has had authority to confiscate rigs since 2003. This year the AWWCC decided that they wanted this authority reflected in their rules. Water well contractors are more likely to read the rules than the law, and the AWWCC wanted to broaden awareness of this remedy for dealing with unlicensed contractors.

During the comment period, the agency made certain revisions. Specifically, the AWWCC addressed typographical errors that had been present in the version originally filed. The agency also added language to Rule 3.7.1 to clarify that the increased contractor bond requirement would go into effect on August 1, 2016, at the time contractor license renewals are due. Finally, the AWWCC struck references to “geothermal well contractor” in Section 8 that it found unnecessary and confusing.

The proposed effective date is May 1, 2016.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** This rule will affect all contractors, water well drillers, and pump installers. For these purposes, the fiscal year runs from July to June.

Water well contractors must renew their licenses by July 31st of each year, and at that time, they must provide proof of bond.

Water well contractors will be required to carry higher bond insurance. Increasing the amount of the bond purchased by water well contractors will allow greater protection for consumers.

The cost to the regulated party will be approximately $100 for the current fiscal year and approximately $200 for the next fiscal year. There will be no cost to the agency to implement the rule.

**LEGAL AUTHORIZATION:** Pursuant to Ark. Code Ann. § 17-50-204(a), the Commission on Water Well Construction shall be responsible for the administration of the Arkansas Water Well Construction Act, codified at Ark. Code Ann. §§ 17-50-101 through 17-50-407, and shall adopt, and from time to time amend or repeal, necessary rules and regulations governing the installation, construction, repair, and abandonment of water wells and pumping equipment. Further, the Commission may adopt, and from time to time amend or repeal, rules and regulations governing applications for water well contractor licenses. *See* Ark. Code Ann. § 17-50-305(a)(1). It shall also establish and promulgate rules establishing the amount of water well contractor’s bonds based on a contractor’s past performance or violations of the rules and regulations of the Act, construction methods, type or class of construction, and business practices. *See* Ark. Code Ann. § 17-50-309(b). Finally, changes to the Rules were made in accordance with Act 1066 of 2015, § 1, codified at Ark. Code Ann. § 17-1-107, which amended the law concerning licensing, registration, and certification; those changes included a $25.00 penalty, as authorized by Ark. Code Ann. § 17-50-303(d), for the reinstatement of a certificate of registration expired for more than one year.

**D. Adjournment.**