



Arkansas Department of Health

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Governor Sarah Huckabee Sanders

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October 30, 2023

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

Dear Co-Chairs,

First, pursuant to Ark. Code Ann. § 25-15-216(b)(4), please consider the following Arkansas Department of Health (ADH) Division of Health-Related Boards and Commissions update on rulemaking resulting from Acts of 2023. Arkansas law requires that each rule be promulgated by the specific Board or Commission, which meet at various times of the year. Various regulatory boards under the ADH Division of Health-Related Boards and Commissions are now drafting and amending rules specifically required due to legislation from the 2023 session. Please find a summary of the Boards' efforts made thus far below.

Arkansas State Board of Examiners of Speech-Language Pathology & Audiology

Act 301 of 2023 establishes the Audiology and Speech-Language Pathology Interstate Compact in Arkansas. The Board is required to adopt rules to fully implement the provisions of the statute, which concerns criminal background checks. The compact requirements are still being formed, and the compact's rules are not completed. The Board is seeking an exclusion from further reporting on this rule-making requirement at this time.

Arkansas State Board of Nursing

Act 672 of 2023 establishes nursing earn-to-learn programs and authorizes a nursing student to earn direct patient care clinical credit hours for working in a healthcare facility in certain jobs. The nursing program and the healthcare facility shall establish boundaries and expectations of the senior-level nursing student based on accreditation standards and rules of the Arkansas State Board Nursing. The Arkansas State Board of Nursing (ASBN) has drafted rule changes to comply with the Act and has submitted its draft changes for further review.

The Arkansas State Medical Board and the Arkansas State Board of Pharmacy

Act 575 of 2023 amends the Prior Authorization Transparency Act and exempts certain healthcare providers that provide certain healthcare services from prior authorization requirements. The Arkansas State Board of Pharmacy and the Arkansas State Medical Board, jointly, may establish criteria and procedures to review whether a request made under subdivision (a)(1) of the statute should be granted for the requesting party and specified health benefit plan. This specific act does not require a rule to be promulgated and currently the Arkansas State Board of Pharmacy and the Arkansas State Medical Board have worked together on joint criteria and procedures to help determine whether specific medications may require prior authorization in Arkansas. At this time, the Boards are requesting the exclusion of Act 575 of 2023 from further reporting requirements.

Second, pursuant to Ark. Code Ann. § 25-15-216 (b)(4), please also consider the following Arkansas Department of Health (ADH) and State Board of Health update on rulemaking resulting from Acts of 2023. The State Board of Health meets quarterly each year and ADH has drafted proposed amendments to rules and proposed repeal of rules to implement new laws. As evidenced below, ADH and the Board will continue the rule promulgation process outlined in the Administrative Procedure Act, including the public notice and comment period, followed by the Legislative review and approval process under Ark. Code Ann. § 10-3-309, prior to filing the final rules.

Coach Safely Act

Act 642 of 2023, the Coach Safely Act, required ADH to adopt rules within 180 days to the effective date of the Act. The proposed new rules were approved by the State Board of Health at its July 27, 2023, meeting. The proposed Rules Pertaining to Youth Injury Mitigation and Information Courses for Athletics Personnel and Coaches was filed with the Secretary of State and the Bureau of Legislative Research on October 12, 2023. Public notice was published as required and the public comment period will expire on November 14, 2023. The final rules are expected to be filed with the Secretary of State by the January 1, 2024, deadline.

Prescription Drug Monitoring

Act 67 of 2023 provided various amendments to sections of the Prescription Drug Monitoring law. In July, the Board of Health approved the proposed amendments to the Rules pertaining to the Prescription Drug Monitoring Program. The rule was filed with the Secretary of State and the Bureau of Legislative Research on October 12, 2023. Public notice was published as required and the public comment period will expire on November 14, 2023.

Newborn Infant Testing

Act 490 of 2023 provided for amendments to the core medical conditions for which screening is required. In July, the Board of Health approved the proposed rule amendments. The proposed rule was filed with the Secretary of State and the Bureau of Legislative Research on October 19, 2023. Notice was published in October and the public comment period will end in November.

Abortion Facilities

Act 162 of 2023 removed licensure from abortion facilities. The repeal of the abortion facility rules was approved by the Board of Health in July and filed with the Secretary of State and the Bureau of Legislative Research on October 27, 2023. Notice was published and the public comment period ends with a public hearing on November 30, 2023.

Rules for Orthotic, Prosthetic and Pedorthic Providers, Perfusionists, and Radiologic Technology Licensure

Act 137 of 2023 required modification to certain occupational rules, specifically amendments to the rules addressing the automatic licensure requirements for uniformed service members. The proposed revisions were approved by the Board of Health in July and filed with the Secretary of State and the Bureau of Legislative Research in October. Notice was published in October, and the public comment periods end in November 2023.

Controlled Substances List

Act 629 of 2023 amended Ark. Code Ann. § 5-64-215, Substances in Schedule VI, which are also listed in the Controlled Substances List. The Board of Health approved the initial controlled substances list at its January meeting. ADH added specific references to Act 629 of 2023 and conducted a public comment period and hearing on June 22, 2023. To the extent that the proposed changes to the list contain references to implement Act 629 of 2023, the enforcement of the Act is enjoined by a federal court as of September 7, 2023. On October 26, 2023, the Board of Health approved the remaining list of substances moving forward with the promulgation process to file the final rule with a notation that the portion of the list referencing specific changes resulting from Act 629 of 2023 was enjoined from enforcement.

In closing, the Arkansas Department of Health, the Division of Health-Related Boards and Commissions, and the State Board of Health will continue to provide updates on rulemaking. If there are changes or additional updates identified, the ADH will provide further information in these updates as submitted to the Administrative Rules Subcommittee. Please let us know if you have questions or need additional information.

Sincerely,



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