

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

Thursday, February 15, 2024

10:00 a.m.

Room A, MAC

Little Rock, Arkansas

- A. Call to Order**
 - B. Reports from the Executive Subcommittee Concerning Emergency Rules**
 - C. Reports from ALC Subcommittees Concerning the Review of Rules**
 - D. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309**
- 1. DEPARTMENT OF AGRICULTURE (Robert Murphy, Corey Seats)**

- a. SUBJECT: Prescribed Burning Rule**

DESCRIPTION: The Department of Agriculture proposes its Prescribed Burning Rule. The agency provided the following summary of the rule:

Act 695 of 2023, codified at Ark. Code Ann. § 15-30-101 et seq., requires the Department to establish qualifications for a “qualified prescribed burner,” an individual who has successfully completed a prescribed burner training program approved by the Department or the Arkansas Game and Fish Commission (AGFC). The Department and AGFC also have authority to approve out of state training for qualification in Arkansas. Ark. Code Ann. § 15-30-107 directs the Department to promulgate rules on the requirements for becoming a qualified prescribed burner.

The proposed rule:

- Establishes requirements for becoming a qualified prescribed burner.
- Details requirements for both maintaining qualification and revocation of qualification.
- Establishes a Review Committee that will:
 - Design a qualified prescribed burner training.
 - Review training and experience requirements of applicants from other jurisdictions
 - Develop required refresher training for maintaining qualification.
- Provides for membership of the Review Committee.

Following the expiration of the public comment period, Section VI was added to the proposed rule, which concerns the 100 acre tract criteria. Per the agency, the additional language is for clarification and is not deemed a substantive change. Further, the Department clarified the language in Section IV(A)(1) of the proposed rule, which concerns revocation of qualification.

PUBLIC COMMENT: A public hearing was held on November 28, 2023. The public comment period expired November 27, 2023. The Department provided the following summary of the comments it received and its responses thereto:

Commenter's Name: Mike Kelly, Landowner, Valley Springs, AR

COMMENT: The Act was touted to our North Central Prescribed Burn Association as granting us landowners liability protection if we conduct a burn under and in accordance with a prescribed burn plan. However, the rules need to clarify that a burn conducted in accordance with a Qualified Prescribed Burn shall be protected from liability. A claimant should have to prove negligence and that the burn was not conducted in accordance with a qualified prescribed plan. A landowner who follows a Qualified Prescribed Burn Plan is prima facie not negligent. Otherwise, the act actually not only does not provide protection to those of us who follow safe burn practices, it imposes the extra expense and burden to find and have our plans approved by a Qualified Prescribed Burner if one can be found and we can afford to hire one. Big Timber may well have one on payroll, but small landowners do not. **RESPONSE:** This request goes beyond the authority given to the Department in the legislation.

Commenter's Name: Mike Kelly, Landowner, Valley Springs, AR

COMMENT: The act only covers forestlands whereas many prescribed burn plans for habitat improvement involve fields of nonnative grasses. The rules need clarify that coverage. **RESPONSE:** This request goes beyond the authority given to the Department in the legislation.

Commenter's Name: Mike Kelly, Landowner, Valley Springs, AR

COMMENT: I have attended the AGFC Learn to Burn I and II classes and have conducted prescribed burns in accordance with prescribed burn plans. Am I now a Qualified Prescribed Burner? Who as of date are Qualified Prescribed Burners? Is there a current list? **RESPONSE:** If the current version of the rule is adopted, anyone who has attended Arkansas's Prescribed Fire as a Management Tool Workshop will be a Qualified Prescribed burner. There are also mechanisms in the rule for someone who has completed both the Arkansas Game and Fish Commission's Learn to Burn Workshops to obtain their qualification.

Commenter's Name: Mike Kelly, Landowner, Valley Springs, AR

COMMENT: The rules do not clarify these matters but should. "Any landowner who follows a prescription set out in a Qualified Prescribed Burn Plan shall be presumed to have used all due caution and met an accepted standard of care to prevent injury to any other person or property." This language or something similar should be adopted as part of the rules. **RESPONSE:** This request goes beyond the authority given to the Department in the legislation.

Commenter's Name: Thomas Baldrige, Landowner, Arkansas

COMMENT: I have had several concerns regarding this bill and the rules associated with them. As you may know, I made arguments opposing certain aspects of this bill in both the Senate and House committee meetings. During testimony in the House committee, Representative Beaty went on record noting the issues I had would be addressed in the rules making process. One of the issues was clarifying the 100 acre notation establishing it as a 100 acre burn unit. I was told the rules committee would address this and was informed they attempted to but were told by council they could not. I'm not sure where the disconnect in communication and authority is but this should be clarified. In its current form it is not clear if 100 acres is an hourly, daily, monthly, yearly, or lifetime limit. Everyone I asked regarding this had a different answer and opinion. Some espoused it was per tract, per day, or several other options. Then there was discussion on a fire being extinguished, which also is bad language, prior to starting another fire in a burn unit. It would be better to say something like contained because some fires smolder for weeks but are safely contained. **RESPONSE:** The Department added language clarifying the 100 acre tract criteria.

Commenter's Name: Thomas Baldrige, Landowner, Arkansas

COMMENT: Arkansas Code 5-38-310 was included in the rules. This is a criminal violation for "Arson and other burning - unlawful burning" and some opine it has always been applicable to anyone conducting a prescribed burn. The connection of this code is in direct opposition to the intent of this bill. In fact, this code is one of the reasons the bill was written. One part of that code notes "(b) The escape of fire to adjoining timber, brush, or grassland is prima facie evidence that a necessary precaution was not taken." Thus, establishing negligence and a violation of the law. Anyone who has conducted prescribed burns for a period of time has had a fire escape the burn unit even while meeting industry standards and taking all appropriate precautions. This section and other portions of the unlawful burning law conflict with the intent and desire of the bill in reducing liability and moving away from current standards of assumed guilt. It is my understanding this code was written in the early 1930's and is very dated. Addressing unlawful burning is different than lawful prescribed burning being conducted by a qualified prescribed

burner. Representative Beaty even addressed this issue during his comments in the House Committee. He noted the intent of the bill was to move away from this standard and to establish a negligence standard where one was not presumed guilty. That code should be removed from the rules and it should be noted in the rules that anyone conducting a prescribed burn in compliance with a burn plan written by a qualified burner is prima facie evidence establishing they are not negligent. With the addition of that code we are back to where we started before the bill and have not achieved the goals and intent of reducing liability to a negligence standard. Writing this bill and noting its intent, we have established training, education, funding, certification, and so that complies with industry standards so a certified prescribed burner, operating under a written burn plan, should have reduced liability. It should establish they are not negligent if that individual is operating under these guidelines, standards, and law. We really need to put a hurdle between this bill and the archaic criminal codes that imply negligence. After all, that was the mantra of this bill even being introduced. We were told if we would simply comply with industry standards, get trained, get certified, and conduct burns according to a burn plan we would reduce liability and would have a standard of negligence as the threshold for litigation. That standard would even hold if something bad happened despite meeting all these objectives. The presumption should be if a person is compliant with the bill and acting accordingly, they would not be negligent. Adding this code in the rules is detrimental to the intent and goals of the bill. I respectfully request you consider these points and consult with all the professionals involved in this process. I also wanted more clarity regarding training but I have had multiple conversations with AGFC and Arkansas Forestry Commission employees who were on the committee and are responsible for this new training. While the current rules leave a lot to be desired, I applaud their efforts on what they have verbally communicated to me regarding training, curriculum, access, the number of annual classes, locations of classes, as well as their achievement of obtaining a grant to cover many, if not all, of these expenses.

RESPONSE: The legislation does not give the Department the authority to give anyone immunity from criminal prosecution. Violation of the criminal code is but one condition where a qualification “may” be revoked. The Department clarified the language in IV(A)(1).

Commenter’s Name: Thomas Baldridge, Landowner, Arkansas

COMMENT: In summary what I would like to see amended in the rules is: (A) 100 acres is defined as a 100 burn unit; and (B) eliminate Arkansas Code 5-38-310 from the rules and add something like, prescribed burner(s), their agents, and the author of the Burn Plan are shall not be negligent and shall not be held criminally or civilly liable unless the individuals deviate from standards set forth in Act 695. Whatever you decide will be something we have to live with for years to come and will

likely be used in court. I think this deserves careful consideration so that we don't neglect the intent of the bill. **RESPONSE:** These requests were addressed in Responses 1 and 2.

Commenter's Name: Cameron Cooper, State Representative, District 57, Romance, AR

COMMENT: I would like to submit a public comment on the proposed rules for prescribed burning. I do not see any mention in the rules of a definition of the 100 acre burn unit clause. I feel that this could be interpreted in a variety of ways, resulting in confusion and the law not being equally applied across the board. With this ambiguity, we won't know if we can burn 100 acres a day, 100 acres a week, a month, etc. I am a member of the House Agriculture Committee, and I remember bill sponsor Rep. Beaty assuring the committee that these issues would be addressed and defined in the rules making process. **RESPONSE:** The Department added language clarifying the 100 acre tract criteria.

Commenter's Name: Cameron Cooper, State Representative, District 57, Romance, AR

COMMENT: I also have concerns with the reference to Arkansas Criminal Code 5-38-310 (unlawful burning). I believe the intent of the bill was to shield private property owners from being charged with criminal intent when engaged in prescribed burning on their land. Adding reference to criminal law brings the possibility of private property owners being charged under this criminal statute. I respectfully request that these two areas of concern be addressed in the final rule making process. If you should have any questions or concerns, feel free to reach out to me.

RESPONSE: The legislation does not give the Department the authority to give anyone immunity from criminal prosecution. Violation of the criminal code is but one condition where a qualification "may" be revoked. The Department clarified the language in IV(A)(1).

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

Q. Does Section III.A of the proposed rule, which concerns maintaining prescribed burner qualification, require a prescribed burner to be in charge on the site of a controlled burn at least once every 3 years in order to maintain qualification? **RESPONSE:** Yes, it does.

Q. Does Section IV.B of the proposed rule, which concerns revocation of qualification, provide that a single finding of negligence under Arkansas Code Annotated § 15-30-104(b) is not grounds for revocation of prescribed burner qualification?

RESPONSE: Yes, it does.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Department states that the rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 15-30-107, the Department of Agriculture shall promulgate rules on the requirements for becoming a qualified prescribed burner under the Arkansas Prescribed Burning Act. *See* Ark. Code Ann. §§ 15-30-101 to -107. The proposed changes include those made in light of Act 695 of 2023, sponsored by Senator Matt Stone, which established the Arkansas Prescribed Burning Act.

2. **DEPARTMENT OF HEALTH, ARKANSAS BOARD OF HEARING
INSTRUMENT DISPENSERS (Matt Gilmore, Kerry Krell)**

a. **SUBJECT: Licensing of Uniformed Service Members**

DESCRIPTION: The proposed amendments to the existing Board of Hearing Instrument Dispensers' rules provide for an amendment of the licensing of uniformed service members pursuant to Act 137 of 2023 to include national certification.

The following changes are proposed:

- ARTICLE VI. INTERNSHIP PROGRAM, SECTION 1: Insert reference to Ark. Code Ann. § 17-4-107.
- ARTICLE XVII. LICENSURE FOR UNIFORMED SERVICE MEMBERS, VETERANS, AND SPOUSES, SECTION 6: Insert Section 6 regarding specific items that will be accepted towards licensure qualifications or requirements when considering an application for initial licensure of an individual listed in Ark. Code Ann. § 17-4-104.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on November 21, 2023. The board indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated the amended rule does not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas Board of Hearing Instrument Dispensers has the power and duty to make rules not inconsistent with the laws of this state that are necessary for the enforcement and orderly administration of Title 17, Chapter 84 of the

Arkansas Code concerning hearing instrument dispensers. *See* Ark. Code Ann. § 17-84-203(5). Changes to the rule were made in light of Act 137 of 2023, sponsored by Senator Ricky Hill, which amended the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021; added consideration of national certifications toward initial occupational licensure and extended the application to spouses; and eliminated the one-year limit for veterans to apply service education, training, or certification toward initial occupational licensure.

3. **DEPARTMENT OF HEALTH, ARKANSAS SOCIAL WORK LICENSING BOARD** (Matt Gilmore, Kristen Allen)

a. **SUBJECT:** Rule II. Application Procedures

DESCRIPTION: The Arkansas Social Work Licensing Board is amending Rule II concerning application procedure. Pursuant to Act 137 of 2023, the proposed rule amendment will allow the board to accept relevant and applicable uniformed service education, training, national certification, or service-issued credential toward licensure qualifications or requirements when considering an application for initial licensure of an individual listed in Ark. Code Ann. § 17-4-104.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on November 20, 2023. The agency provided the following summary of comments it received and its responses thereto:

Commenter: Dr. Alishia Ferguson, LMSW, Board President, National Association of Social Workers, Arkansas Chapter

Summary: “Members of NASW are concerned that the broad and vague language described above will result in people without a current social work licensure and/or accredited social work degree obtaining a license to practice social work in Arkansas. Additionally, we are concerned that people who do not have adequate supervision hours will obtain an LSCW degree.”

Board Response: Thank you for your comments regarding the proposed rule changes for the Arkansas Social Work Licensing Board. Please note this change is being made in accordance with legislative changes to Arkansas Code Annotated § 17-4-107 during the regular session of the General Assembly. The board appreciates your time and commitment to the social work profession.

Commenter: Stephen Vasquez, LCSW

Summary: “I acknowledge the board’s well-intentioned effort to support servicemembers, veterans, and their families through the proposed rule change.” It is imperative to ensure that pursuing this noble goal does not

inadvertently compromise the standards of social work practice and the quality of mental health services in Arkansas.”

Board Response: Thank you for your comments regarding the proposed rule changes for the Arkansas Social Work Licensing Board. Please note this change is being made in accordance with legislative changes to Arkansas Code Annotated § 17-4-107 during the regular session of the General Assembly. The board appreciates your time and commitment to the social work profession.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the amended rule does not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas Social Work Licensing Board shall make rules consistent with law as may be necessary to regulate its proceedings. *See* Ark. Code Ann. § 17-103-203(b)(4). Changes to the rule were made in light of Act 137 of 2023, sponsored by Senator Ricky Hill, which amended the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021; added consideration of national certifications toward initial occupational licensure and extended the application to spouses; and eliminated the one-year limit for veterans to apply service education, training, or certification toward initial occupational licensure.

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

a. **SUBJECT: Arkansas State Board of Athletic Training Rules**

DESCRIPTION: The Arkansas State Board of Athletic Training is making revisions to its current rules. Per Act 137 of 2023, the proposed rule amends the Board’s current rule regarding military licensure to allow the board to accept relevant and applicable uniformed service education, training, national certification, or service-issued credential toward licensure qualifications or requirements when considering an application for initial licensure of an individual listed in Ark. Code Ann. § 17-4-104. Per Act 348 of 2021, the proposed rule updates the section covering supervision of athletic trainers. The following changes are proposed:

SECTION II. Methods of Licensure, (A) Examination/Certification

- Updates language in paragraphs (1), (a), and (b) to comply with Act 137 of 2023.
- Insert paragraph (1), (c) to comply with Act 137 of 2023.

SECTION II. Methods of Licensure, (C) Licensure for Uniformed Service Members, Veterans, and Spouses

- Insert paragraph (6) to comply with Act 137 of 2023.

SECTION III. Application of Licensure (B)(5)

- Insert paragraph (5) to comply with Act 137 of 2023.

DEFINITIONS.

- Update language in paragraph (6) to comply with Act 348 of 2021.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on January 2, 2023. The board indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the amended rule does not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Athletic Training has the power and duty to adopt: (1) minimum curriculum and internship requirements for qualification for an Arkansas athletic trainer's license and (2) rules consistent with Title 17, Chapter 93, Subchapter 4 of the Arkansas Code concerning athletic trainers, which are necessary for the performance of its duties, including, but not limited to, the imposing of fees adequate to carry out the purposes of the subchapter. *See Ark. Code Ann. § 17-93-406(2), (5).*

This rule implements Act 137 of 2023, sponsored by Senator Ricky Hill, which amended the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021; added consideration of national certifications toward initial occupational licensure and extended the application to spouses; and eliminated the one-year limit for veterans to apply service education, training, or certifications toward initial occupational licensure.

5. **DEPARTMENT OF HEALTH, STATE BOARD OF OPTOMETRY** (Matt Gilmore, Suzette Weast, Amber Leclerc)

a. **SUBJECT:** Licensure for Uniformed Service Members

DESCRIPTION: The State Board of Optometry is amending its rules concerning licensure for uniformed service members. The purpose of the proposed rule amendments is to comply with legislation from the 2023. The rule amendments are required under Act 137 of 2023.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on December 4, 2023. The board indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the amended rule does not have a financial impact.

LEGAL AUTHORIZATION: The State Board of Optometry has the power to make rules for the administration and enforcement of Title 17, Chapter 90 of the Arkansas Code concerning optometrists. *See* Ark. Code Ann. § 17-90-204(1). This rule implements Act 137 of 2023, sponsored by Senator Ricky Hill, which amended the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021 to add consideration of national certifications toward initial occupational licensure and extend the application to spouses and eliminated the one-year limit for veterans to apply service education, training, or certifications toward initial occupational licensure.

6. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILDREN AND FAMILY SERVICES** (Tiffany Wright, Christin Harper, Mitch Rouse)

a. **SUBJECT:** Birth Parents Relinquishing Infants for Adoption Under the Safe Haven Act

DESCRIPTION:

Statement of Necessity

This rule revision is necessary to allow the Division of Children and Family Services (DCFS) to update rules regarding birth parents relinquishing infants for adoption under the Safe Haven Act to align with Act 68 and Act 348 of the 94th General Assembly, Regular Session. Also, DCFS made technical revisions in preparation for the launch of the ARfocus case management system and for general formatting purposes.

Rule Summary

Policy VIII-F: Birth Parents Relinquishing Infants for Adoption Under the Safe Haven Act

- To clarify, per Act 68, that a medical provider under the Safe Haven Act includes when a parent leaves a newborn with a medical provider staff member after delivery of the newborn child.
- To include, per Act 348, that:

- If the identity of a parent or child is released or made known to the Department of Human Services in violation of § A.C.A. 9-34-202(b)(2), the case shall proceed as a dependency-neglect action, but with the same protections from criminal and civil liability as if an anonymous Safe Haven surrender was made.
- The Department shall not subsequently use a resulting termination of parental rights against a parent who surrendered his or her child as allowed under the Voluntary Placement of a Child chapter in Arkansas law.
- To make formatting, organizational, and other technical changes in preparation for the Division's launch of the ARfocus case management system by striking instructional language specific to the Division's current CHRIS case management system and deleting other internal procedure guidance from the rule.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on December 30, 2023. The agency indicated that it received no public comments.

The proposed effective date is March 1, 2024.

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

LEGAL AUTHORIZATION: The Department of Human Services, Division of Children and Family Services has the authority and responsibility to provide services to dependent-neglected children and their families and investigate reports of child maltreatment. Ark. Code Ann. § 9-28-103(a)(2), (3). The Division may promulgate rules necessary to administer these duties. Ark. Code Ann. § 9-28-103(b). This rule implements Acts 68 and 348 of 2023.

Act 68, sponsored by Representative Julie Mayberry, amended the Safe Haven Act, clarified that a parent may leave a newborn child with medical provider staff following delivery of the child under the Safe Haven Act, and clarified that a volunteer fire department may operate a newborn safety device under certain conditions under the Safe Haven Act.

Act 348, sponsored by Senator Kim Hammer, amended and updated laws regarding newborn surrenders, clarified when parents' rights no longer attach regarding Safe Haven infants, and amended and expanded definitions under the laws regarding safe haven.

- b. **SUBJECT: Financial Support to Resource Parents & REPEALS:**
Appendix 9 – Support Payments to Provisional Resource Payments;
Policy XI-C – Child Welfare Student Stipend Program

DESCRIPTION:

Statement of Necessity

This rule revision by the Division of Children and Family Services (DCFS) updates the DCFS Policy and Procedure Manual regarding financial support to resource parents. The updates include increasing monthly board rates to resource parents by ten percent (10%) in accordance with previously approved funding to the DCFS State Fiscal Year 2024 budget for that specific purpose.

DCFS clarifies the assessment process used to determine special board rates. Information was also added to reflect the current practice of providing additional financial support to resource parents outside of the board payment, as appropriate, for medical expenses, transportation, clothing, expenses for children who are not in foster care but who are the children of minors in foster care, and incidental expenses. Technical changes were made in preparation for the Division's launch of the ARfocus case management system and for general formatting purposes.

Rule Summary

The DCFS Policy and Procedure Manual has been updated as follows.

- Policy VII-M: Financial Support to Resource Parents:
 - To reflect the ten percent (10%) increase to all standard board payment rates;
 - To provide additional information to resource parents regarding when the monthly board payment is made and how board payments are pro-rated, as applicable;
 - To convey the Division's preference for resource parents to select the direct deposit option to help expedite the time in which they receive the monthly board payments;
 - To more clearly explain how board payments are augmented when a child of a minor who is in foster care is also placed in the resource home;
 - To provide policy guidance regarding special board rates to supplement resource parents who provide additional care for children with special needs;
 - To allow a special board rate to be considered when resource parents perform specific activities to support reunification;
 - To explain why a special board rate may be lower than a standard board rate due to the resource parent serving as the

payee for the child for other federal benefits the child may receive;

- To add details regarding current, additional financial support for which a resource parent may be eligible to support medical, transportation, clothing, and incidental expenses (for example, extracurricular activities) for the children placed in the resource home; and
- To make formatting, organizational, and other technical changes in preparation for the Division's launch of the ARfocus case management system by striking instructional language specific to the Division's current CHRIS case management system and deleting other internal procedure guidance from the rule.
- Policy VIII-I: Adoption Subsidy
 - To reflect the ten percent (10%) increase to all standard board rates which are the basis for determination of an adoption subsidy rate.
- Policy V-C: Family Support Fund:
 - To reflect that the Family Support Fund is designed to support biological families in an effort to prevent removal and re-entry into foster care.
 - To move information regarding support for extracurricular and other well-being activities for children in foster care to Policy VII-M: Financial Support to Resource Parents.
- Changes to ensure consistent terminology and updated effective dates are made throughout.

Repeals pursuant to the Governor's Executive Order 23-02:

1. Appendix 9 – Support Payments to Provisional Resource Payments; and
2. Policy XI-C – Child Welfare Student Stipend Program

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on January 13, 2024. The agency indicated that it received no public comments.

The proposed effective date is March 1, 2024.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact and provided the following explanation:

This rule formalizes in writing the increased monthly board payment rates and previously existing financial supports that the Division of Children and Family Services (DCFS) provides to resource parents (i.e., foster parents). The increased board payment rates went into effect in August 2023. The review and

implementation of the rule itself will not result in a subsequent financial impact. DCFS moved forward with the monthly board payment increases in light of increased costs of living (prior to August 2023, the last increase in monthly board payments occurred in November 2009) and to meet the mandate of Governor Sanders' Executive Order 23-18: "To Protect Children, Support Families, and Improve the Foster Care System," regarding improving retention of foster family homes. The Division funded the increased board payment through the support of the Arkansas General Assembly, 94th General Assembly, Regular Session in its approval of the DCFS SFY 24 budget.

LEGAL AUTHORIZATION: The Department of Human Services, Division of Children and Family Services has the responsibility to "provide services to dependent-neglected children and their families;" "ensure child placements support the goal of permanency for children when the division is responsible for the placement and care of a child; and ensure the health, safety, and well-being of children when the division is responsible for the placement and care of a child." Ark. Code Ann. § 9-28-103(a)(2), (6)-(7). The Division may promulgate rules as necessary to administer Title 9, Chapter 28, Subchapter 1 of the Arkansas Code, regarding children and family services. Ark. Code Ann. § 9-28-103(b).

7. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF COUNTY OPERATIONS** (Mary Franklin, Mitch Rouse)

- a. **SUBJECT:** Act 923 – Independence Accounts & REPEALS: Social Services Block Grant Manual; Social Services Block Grant Pre-Expenditure Plan

DESCRIPTION:

Statement of Necessity

Act 923 of 2021 amended eligibility for Long Term Care Medicaid assistance to ensure beneficiaries in the low-income disabled working person category can transition to other categories in the Medicaid program upon retirement. To the extent allowed by federal regulation, the Act provides for a disregard of assets accumulated in a person's Independence accounts. The Department of County Operations updates the Medical Services Policy to comply with the Act. Appropriate revisions regarding eligibility are also being made in the Medicaid State Plan.

Rule Summary

The following are changes to the Medical Services Policy Section E-500 – Aid to the Aged, Blind, and Disabled (AABD):

1. E-500 Resources – AABD:
 - a. Added: “When determining eligibility and cost sharing requirements for long term care, assets accumulated in an individual’s Independence Account during or after an individual’s enrollment in Workers with Disability (WWD) category will be excluded. The Independence Account may be funded by any income or assets from retirement benefits earned or accumulated from employment income or employer contributions while the person was employed and eligible for and receiving WWD benefits.”;
 - b. Clarified that accounts that income from retirement or pensions through an employer can be used to fund accounts designated as Independence Accounts;
 - c. Added: “NOTE: No additional deposits into the account are allowed once the individual is no longer enrolled in WWD. Actions involving the Independence Accounts are subject to standard eligibility rules relating to resources (for example: a transfer from the account for less than fair market value would be subject to transfer-of-asset rules)”;
 - d. Added: “NOTE: Withdrawals from Independence accounts are subject to regular eligibility rules.”
2. Global Change – changes Medicaid to Health Care Program to ensure consistent terminology and update effective dates throughout;
3. Corrected and updated style, formatting, layout, and terminology throughout section.

Repeals pursuant to the Governor’s Executive Order 23-02:

- (1) Social Services Block Grant Manual
- (2) Social Services Block Grant Pre-Expenditure Plan

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on September 25, 2023. The agency provided the following summary of the comments received and its responses to those comments:

Commenter’s Name: Shannon Long MA, CRC, Community Work Incentive Coordinator Project AWIN

1. To whom it may concern:

Workers with Disabilities Medicaid allows even those with the most significant disabilities to participate in the workforce while retaining their Medicaid, but specifically those who depend on Medicaid waivers (ARChoices, CES). The intent of this policy change, as the original drafter, is to exclude the savings that we are allowed to accumulate during the WDM program and any other financial gain that may come from employment such as a 401(k) or 403B, etc. for when the WDM protections are no longer in place. The account can continue to be funded by an employer-sponsored retirement program because those are benefits the employee contributed to while employed. They should not cause a beneficiary to lose waiver services when they retire.

RESPONSE: Thank you for your comment. We have updated and clarified the rule based on your comment and direction from the Centers for Medicaid and Medicare during their approval process, as detailed below.

Independence Accounts established during an individual's eligibility in WWD; approved as an Independence Account by the state, and held separate from other resources, shall be disregarded. Accounts that may be designated as Independence Accounts include assets such as savings accounts and retirement accounts (including retirement or pension accounts through an employer). Once approved by the state, an individual is permitted to fund their Independence Account with their earned income. An Independence Account may be the individual's retirement account through an employer.

2. There are no protections in the long-term disability rules excluding this. Anyone on a waiver who ages out of or stops working and no longer qualifies for WDM will be subject to the \$2,000 resource test and 300% income rule. Representative Mayberry, having acknowledged our dilemma, helped me write the current policy that mimics what Wisconsin did for their disabled population on waiver and enrolled in the Medicaid Buy-In.

RESPONSE: Federal law doesn't allow income exclusions. Income and resources placed in the independence account while receiving WWD is protected once recipient is no longer eligible for WWD and applies for LTSS categories.

3. Making this change will send a consistent message to people with significant physical disabilities by allowing them to reach their work goals and enjoy the product of their achievements, not just now but throughout their entire working lives.

RESPONSE: Assets accumulated in an Independence account will be disregarded when determining eligibility for LTSS programs. However, federal law doesn't allow us to disregard the income derived from those assets.

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 to implement this rule is \$45,600 for the current fiscal year (\$12,768 in general revenue and \$32,832 in federal funds) and \$91,200 for the next fiscal year (\$25,536 in general revenue and \$65,664 in federal funds). The total estimated cost to a state, county, or municipal government to implement this rule is \$12,768 for the current fiscal year and \$25,536 for the next fiscal year.

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).

This rule implements Act 923 of 2021. The Act, sponsored by Representative Julie Mayberry, amended the eligibility for long-term care Medicaid assistance and ensured that beneficiaries on the low-income disabled working person category of Medicaid can transition to other categories in the Arkansas Medicaid Program.

8. **DEPARTMENT OF HEALTH, ARKANSAS STATE MEDICAL BOARD**
(Matt Gilmore, Amy Embry)

a. **SUBJECT:** Rule No. 24: Rules Governing Physician Assistants

DESCRIPTION: The State Medical Board is amending its rules governing physician assistants to implement Act 303 of 2023, allowing physician assistants to receive payment from a patient or an insurance provider.

PUBLIC COMMENT: A public hearing was not held in this matter. The first public comment period expired on December 4, 2023. Following expiry of the first public comment period, the board made changes to the

rule and released it for a second public comment period, which expired on January 14, 2024. The board provided the following summary of comments it received and its responses thereto:

Commenter Name: David Wroten, Arkansas Medical Society (11/06/23)

Comments: The Arkansas Medical Society would like to offer the following comments on proposed amendments to Rule 24 governing physician assistants: The only change in the rule is the deletion of Section 7.c. This deletion appears to be intended to implement the provisions of Act 303 of the most recent legislative session. Act 303 allows physician assistants to be listed as the “billing provider” for Medicaid and insurance plans, but only if authorized by the supervising physician. By removing the entire section 7.c., a physician assistant would be allowed to directly bill an insurance company, thereby receiving monies directly from a patient or insurance carrier, without that crucial authorization. They would have to know both the rule and the statute in order to recognize that this ability is dependent upon the supervising physician. Therefore, we recommend, rather than deleting the section 7.c., it should either remain in the rule along with the caveat, “unless authorized by the supervising physician”, or; delete it and replace it with the language that appears in Act 303.

Board Response: The Board voted to amend the language to reflect the language in Act 303 and resubmit for public comment.

Commenter Name: Aaron Woodall, President of the Arkansas Academy of Physician Assistants (01/09/24)

Comments: A letter of support was received agreeing with the written language reflecting Act 303.

Board Response: A copy of the letter has been provided.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the amended rule does not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas State Medical Board shall promulgate rules in accordance with the Arkansas Administrative Procedure Act that are reasonable and necessary for the performance of the various duties imposed upon the board by Title 17, Chapter 105 of the Arkansas Code concerning physician assistants, including, but not limited to establishing license renewal dates and setting the level of liability coverage. *See Ark. Code Ann. § 17-105-117(a).* Changes to the rule were made in light of Act 303 of 2023, sponsored by Senator Justin Boyd, which authorized physician assistants to be identified as a treating provider for insurance billing and claims and to bill and receive payment for provided healthcare services.

b. **SUBJECT: Rule No. 3: Foreign Medical Graduates**

DESCRIPTION: To update training requirements to include a fellowship for the postgraduate medical education requirements; allows for either a fellowship accredited by the Accreditation Council of Graduate Medical Education in the United States or an American Board of Medical Specialties certification as required by Act 267 of 2019.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on January 14, 2023. The agency received no comments.

The proposed effective date is February 29, 2024.

FINANCIAL IMPACT: The agency indicated that the amended rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas State Medical Board shall make and adopt all rules and bylaws not inconsistent with the laws of the State of Arkansas or of the United States and necessary or convenient to perform the duties and to transact the business required by law. In addition, the board has the authority to promulgate and put into effect such rules as are necessary to carry out the purposes of the Arkansas Medical Practices Act. *See* Ark. Code Ann. § 17-95-303(a)-(b).

E. **Rule Deferred from the January 25, 2024 Meeting of the Administrative Rules Subcommittee**

1. **DEPARTMENT OF HEALTH, ARKANSAS STATE MEDICAL BOARD**
(Matt Gilmore, Amy Embry)

a. **SUBJECT: Rule No. 18: Fee Schedule for Centralized Verification Service**

DESCRIPTION: The State Medical Board is proposing an amendment to Rule 18 concerning fee schedule for centralized verification schedule. The proposed rule reduces the credentialing verification fees for out-of-state physicians from \$275 to \$80. Fees are to be established by rule pursuant to Ark. Code Ann. § 17-95-107(7)(A).

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on December 4, 2023. The agency received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the amended rule does not have a financial impact. With regard to the total estimated cost by fiscal year to a state, county, or municipal government to implement the rule, the agency explained that based on the calendar year 2022 orders, this will decrease CCVS revenue by \$320,000.00 annually; however, it was determined that the Board’s fund balance would be able to sustain this loss in income.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 17-95-107(7)(A), the board may charge credentialing organizations a reasonable fee for the use of the credentialing service as established by rule.

F. Agency Updates on the Status of Outstanding Rulemaking from the 2021 Regular Session Pursuant to Act 595 of 2021

1. Department of Education (Andrés Rhodes, Daniel Shults)

G. Agency Monthly Written Updates Pursuant to Act 595 of 2021 Concerning Rulemaking from the 2023 Regular Session

H. Evaluation of Rule Review Group 2 Agencies Pursuant to Act 781 of 2017 and Act 65 of 2021

1. Department of Parks, Heritage, and Tourism (Marty Ryall, Jeff King)

2. Department of Parks, Heritage, and Tourism, War Memorial Stadium Commission¹ (Marty Ryall, Jeff King)

I. Adjournment

¹ The rules report submitted by the Commission reflects no rules currently in effect.