

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

**Thursday, May 30, 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. Reports on Administrative Directives Pursuant to Act 1258 of 2015, for the Quarter Ending March 31, 2024 (Tawnie Rowell)**
 - 1. Department of Corrections**
 - 2. Post-Prison Transfer Board**
- E. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309**
 - 1. DEPARTMENT OF AGRICULTURE (Corey Seats)**
 - a. SUBJECT: Rules Governing the Poultry Feeding Operations Registration Program**

DESCRIPTION: The Department of Agriculture seeks to promulgate its Rules Governing the Poultry Feeding Operations Registration Program. Per the agency, Act 600 of 2023 transferred the responsibility for registering poultry feeding operations from the Arkansas Natural Resources Commission to the Department of Agriculture. The proposed rules establish the poultry feeding operations registration program in compliance with Act 600.

PUBLIC COMMENT: A public hearing was held on March 15, 2024. The public comment period expired on March 18, 2024. The agency received no comments.

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

1) Section II.A – Applicability – Should this section, which concerns registration program applicability, refer to poultry that are “housed or confined *and fed or maintained* on any given day”, as it appears in the definition of “Poultry feeding operation” under Arkansas Code Annotated § 15-20-903? **RESPONSE:** Not required for purposes of this rule. The 2500 bird threshold is to establish a one-time bird count.

2) Section III.B – Review of suspected noncompliance – What was the agency’s reasoning for removing the entry, notice and bio security documentation provisions that were previously in this section of the rules, and which appeared to track the language in Ark. Code Ann. § 15-20-905(a)(2) and (3), which concern enforcement of the Arkansas Poultry Feeding Operations Registration Act? **RESPONSE:** In the case of an outbreak, 72 hours is too long to wait for an investigation. A 72-hour notice also gives the violator time to cover up the issue; the Department does not just show up, we do work with the grower, however, the 3 day advanced warning can be problematic in response to a violation. The Department is still required to comply with biosecurity procedures.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rules have no financial impact. The agency estimates that the cost to any private individual, private entity, or private business subject to the proposed rules will be \$10.00 for the current fiscal year and \$10.00 for the next fiscal year. The agency further states that Poultry Feeding Operations, defined as any lot or facility where 2,500 or more poultry are housed or confined and fed or maintained on any one day in the preceding 12-month period, are subject to the rules. The \$10.00 fee was established when the registration began in 2005 and remains unchanged. Further, the agency estimates that the total cost to a state, county, or municipal government to implement the rules will be \$30,000.00 for the current fiscal year and \$30,000.00 for the next fiscal year. Per the agency, the amount represents staff salaries and fringe for two employees who oversee portions of this program in addition to other duties.

When asked by Bureau Staff whether its statement that there was no financial impact was correct, the agency responded that there is no financial impact, explaining:

No is the correct answer to question 1 on the Financial Impact Statement. The rule as it previously existed imposed a \$10 fee for poultry feeding operations. This amendment does not change the fee structure. As a result, we said the amendment doesn’t have a financial impact—because the fee is the same as it’s been since 2005 and the amendment doesn’t change it.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 15-20-904(c), the Department of Agriculture shall promulgate rules that require a poultry feeding operation to submit, at a time and in a manner determined by the department, information regarding: (1) the number and kind of poultry housed or maintained in the poultry feeding operation; (2) the location of the poultry feeding operation; (3) the litter management system used; (4) the litter storage system used and the amount of litter stored; (5) the acreage owned or controlled by the poultry feeding operation and used for land application of litter; (6) the land application practices used by the poultry feeding operation and the amount of litter applied; (7) the amount and destination of litter transferred or otherwise utilized by the poultry feeding operation and the type of transfer or utilization; (8) the poultry processor or processors with which the poultry feeding operation has contracted to provide poultry; and (9) any other relevant information necessary to effect the purposes of this subchapter. Further, each poultry feeding operation required to register under this subchapter shall pay an annual fee established by rule by the department. *See Ark. Code Ann. § 15-20-904(d).*

The proposed rule incorporates changes made in light of Act 600 of 2023, sponsored by Representative Jon Milligan, which amended the Arkansas Poultry Feeding Operations Registration Act and transferred duties from the Arkansas Natural Resources Commission to the Department of Agriculture.

2. **DEPARTMENT OF AGRICULTURE, ARKANSAS FORESTRY COMMISSION (Corey Seats)**

a. **SUBJECT: Posting Paint Rule**

DESCRIPTION: The Department of Agriculture, Arkansas Forestry Commission seeks to amend its Posting Paint Rule. The proposed rule sets a standard for color and type of accepted paint to be used by land owners or lessees when posting property. The proposed rule also requires the Arkansas Forestry Division to maintain samples and formulas of approved posting paint and make samples available upon request.

PUBLIC COMMENT: A public hearing was held on March 15, 2024. The public comment period expired on March 18, 2024. The agency received no comments.

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

1) Does the proposed rule apply to both forest lands and property other than forest, per Arkansas Code Annotated §§ 18-11-404(2)(D)(i) and 18-11-405(2)(D)(i)? **RESPONSE:** Yes.

2) The proposed rule refers to the “Forestry Division” where the Arkansas Code refers to the “Forestry Commission.” Does the agency know if there is a meaningful difference between those two entities? **RESPONSE:** The Forestry *Commission* has no employees, no office, no website, and no operating budget. Any Commission action (in this case maintain paint samples, publishing their formulas on a website, and maintaining paint samples) must be accomplished by the entity under which the Commission lies. In this case, that is the Forestry *Division*.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The type and color of the paint to be used for posting shall be prescribed by rule by the Arkansas Forestry Commission, for both forest lands and property other than forest. *See* Ark. Code Ann. §§ 18-11-404(2)(D)(i) and 18-11-405(2)(D)(i).

3. **DEPARTMENT OF AGRICULTURE, ARKANSAS LIVESTOCK AND POULTRY COMMISSION (Corey Seats)**

a. **SUBJECT: Veterinary Technician Specialist Rule**

DESCRIPTION: The Department of Agriculture, Arkansas Livestock and Poultry Commission seeks to promulgate its Veterinary Technician Specialist Rule. The proposed rule sets the standard for the requirements for initial certification as a veterinary technician specialist, such as a written application showing that the applicant has an active veterinary technician specialist certification and has completed a specific set of educational and training requirements set forth in the rule. The rule also requires the submission of any collaborative practice agreement to the Commission and to notify the Commission of the termination of the agreement within seven (7) days of termination.

PUBLIC COMMENT: A public hearing was held on March 15, 2024. The public comment period expired on March 18, 2024. The agency provided the following public comment summary:

Commenter's Name: Courtney Shere

COMMENT: The memorandum states CVT where it should state VTS.

RESPONSE: This is in a memo, not in the law. The Law is clear on the definition of a VTS vs CVT. No changes are recommended.

Commenter's Name: Lindy O'Neal (in care of Maggie Milligan);
Arkansas Veterinary Medical Association

COMMENTS: 1) Statement that the VTS is licensed in AR and in good standing with the Commission; 2) They want more clarity on the practice agreement and what it should say; and 3) They want clarity on how a VTS can establish a "preliminary" VCPR.

RESPONSE: 1) The rule already established that it is a state held license; 2) The practice agreement is a contract between the VTS and the Vet. The state does not involve itself in private contracts. It is the responsibility of the VTS to follow and the Vet to enforce, they are their employee and hold all responsibility for their actions; and 3) Much debate was on this issue. The preliminary is only a temporary VCPR. The Vet establishes this relationship with the client at a later date. This was so the tech can proceed with an emergency call if necessary. No changes are recommended.

Commenter's Name: Meg Harrington

COMMENT: Wants to establish a template for the practice agreement.

RESPONSE: The practice agreement is a contract between the VTS and the Vet. The state does not involve itself in private contracts. It is the responsibility of the VTS to follow and the Vet to enforce; they are their employee and hold all responsibility for their actions. No changes are recommended.

Commenter's Name: Janet Donlin (in care of Rachel Cole)

COMMENTS: 1) Concerned about the training and right to conduct certain practices not appropriate for a VTS; 2) Also wants to make requirements for the practice agreement; and 3) Takes issue with the words diagnosis and prognosis.

RESPONSE: 1. The law (the Practice Act) is clear on what a VTS can and cannot do; 2) The practice agreement is a contract between the VTS and the Vet. The state does not involve itself in private contracts. It is the responsibility of the VTS to follow and the Vet to enforce, they are their employee and hold all responsibility for their actions; and 3) Diagnosis and prognosis were taken out of previous versions. No changes are recommended.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 17-101-203(1), the Arkansas Livestock and Poultry Commission shall have the power to examine and determine the qualifications and fitness of applicants for a license to practice general veterinary medicine or any specialty area thereof, and the certification of veterinary technicians in Arkansas, and issue, renew, deny, suspend, or revoke licenses or certificates, or otherwise discipline veterinarians or veterinary technicians. Further, the commission shall have the power to promulgate and enforce rules necessary to establish recognized standards for the practice of veterinary medicine and to carry out the provisions of Title 17, Subtitle 3, Chapter 101 of the Arkansas Code, which concerns veterinarians and veterinary technicians. *See Ark. Code Ann. § 17-101-203(7).*

The proposed rule incorporates changes made in light of Act 161 of 2023, sponsored by Representative DeAnn Vaught, which provided clarity regarding the certification of a veterinary technician specialist and authorized a collaborative practice agreement between a veterinarian and a veterinary technician specialist.

b. SUBJECT: Continuing Education Requirements for Veterinary Medical License and Certificate Renewal

DESCRIPTION: The Department of Agriculture, Arkansas Livestock and Poultry Commission seeks to amend its Continuing Education Requirements for Veterinary Medical License and Certificate Renewal. Per the agency, the proposed rule amends the current rule to include the basic twelve (12) hours and an additional eight (8) specialty hours for veterinary technician specialists per Act 161 of 2023 as now codified.

PUBLIC COMMENT: A public hearing was held on March 15, 2024. The public comment period expired on March 18, 2024. The agency provided the following public comment summary:

Commenter's Name: Lindy O'Neal (in care of Maggie Milligan);
Arkansas Veterinary Medical Association

COMMENT: They would like the rule to have more detail on CE (8 additional hrs). **RESPONSE:** The 8 additional hours are in the law (not in the rule). No changes are recommended.

Commenter's Name: Meg Harrington

COMMENT: An issue with the 8 hour CE not in the rule. **RESPONSE:** The 8 additional hours are in the law (not in the rule). No changes are recommended.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 17-101-203(1), the Arkansas Livestock and Poultry Commission shall have the power to examine and determine the qualifications and fitness of applicants for a license to practice general veterinary medicine or any specialty area thereof, and the certification of veterinary technicians in Arkansas, and issue, renew, deny, suspend, or revoke licenses or certificates, or otherwise discipline veterinarians or veterinary technicians. Further, the commission shall have the power to promulgate and enforce rules necessary to establish recognized standards for the practice of veterinary medicine and to carry out the provisions of Arkansas Code Title 17, Subtitle 3, Chapter 101, which concerns veterinarians and veterinary technicians. *See Ark. Code Ann. § 17-101-203(7).*

The proposed rule incorporates changes made in light of the following Acts:

Act 161 of 2023, sponsored by Representative DeAnn Vaught, which provided clarity regarding the certification of a veterinary technician specialist and authorized a collaborative practice agreement between a veterinarian and a veterinary technician specialist.

Act 691 of 2023, sponsored by Senator Blake Johnson, which abolished certain boards within the Department of Agriculture, transferred the duties of certain boards within the Department of Agriculture, and amended the duties of certain boards within the Department of Agriculture.

c. **SUBJECT: Veterinary Medical License and Certificate Fees Rule**

DESCRIPTION: The Department of Agriculture, Arkansas Livestock and Poultry Commission seeks to amend its Veterinary Medical License and Certificate Fees Rule. The proposed rule sets the standard for the requirements for an initial \$40 and the additional \$10 veterinary technician specialist licensing fees as directed by Ark. Code Ann. §§ 17-101-203(1), 17-101-203(12), 17-101-319 (a)(2)(A)-(B).

PUBLIC COMMENT: A public hearing was held on March 15, 2024. The public comment period expired on March 18, 2024. The agency received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rule does have a financial impact. The agency estimates that the cost to any private individual, private entity, or private business subject to the amended rule will be \$10.00 for the current fiscal year and \$10.00 for the next fiscal year. Per the agency, a certified veterinary technician or technologist can further their skill set through a training process to become a veterinary technician specialist. Once they have completed this training, they can be certified as a veterinary technician specialist in Arkansas through an application process that includes a \$10.00 fee.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 17-101-203(3), the Arkansas Livestock and Poultry Commission shall have the power to establish annually a schedule of license and permit fees based on the commission's financial requirements for the ensuing year. Further, the commission shall have the power to promulgate and enforce rules necessary to establish recognized standards for the practice of veterinary medicine and to carry out the provisions of Title 17, Subtitle 3, Chapter 101 of the Arkansas Code, which concerns veterinarians and veterinary technicians. *See* Ark. Code Ann. § 17-101-203(7). All licenses, certificates, and registrations expire on March 31 each year and may be renewed by payment of the annual renewal fee established by rule of the Arkansas Livestock and Poultry Commission. *See* Ark. Code Ann. § 17-101-309(a)(1). The commission may provide by rule for waiver of payment of any renewal fee of a licensed veterinarian, veterinary technician, or veterinary technologist during any period when he or she is on active duty with any branch of the United States Armed Forces for not to exceed three (3) years or for the duration of a national emergency, whichever is longer. *See* Ark. Code Ann. § 17-101-309(c).

The proposed rule incorporates changes made in light of the following Acts:

Act 161 of 2023, sponsored by Representative DeAnn Vaught, which provided clarity regarding the certification of a veterinary technician specialist and authorized a collaborative practice agreement between a veterinarian and a veterinary technician specialist.

Act 691 of 2023, sponsored by Senator Blake Johnson, which abolished certain boards within the Department of Agriculture, transferred the duties of certain boards within the Department of Agriculture, and amended the duties of certain boards within the Department of Agriculture.

d. **SUBJECT: Arkansas Egg Marketing Rule**

DESCRIPTION: The Department of Agriculture, Arkansas Livestock and Poultry Commission seeks to amend its Arkansas Egg Marketing

Rule. Per the agency, Act 598 of 2023 amended the Arkansas Egg Marketing Act by adding a provision regarding the direct delivery of eggs to consumers to address food safety in home grocery delivery. This amendment will allow delivery of eggs as long as they are maintained at a temperature of 45 degrees or less. Most provisions of Act 598 are self-implementing and require no rulemaking. However, an amendment to commission rules implementing the Egg Marketing Act regarding the method of maintaining the temperature of eggs during direct delivery to consumers was necessary.

PUBLIC COMMENT: A public hearing was held on March 15, 2024. The public comment period expired on March 18, 2024. The agency received no comments.

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

1) The section of the proposed rule entitled “Enforcement”, which appears to be premised upon Arkansas Code Annotated § 20-58-214, gives the Arkansas Department of Agriculture the authority to enforce these rules by way of inspection, entry, examination and other forcible means. Under the Code, however, that authority is granted to the Arkansas Livestock and Poultry Commission. Is there a reason why the language in the proposed rule is different from the Arkansas Code in this respect?

RESPONSE: Department personnel act on behalf of the Commission, which has no employees to conduct inspections or examinations.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact. The agency further states that the proposed rule could result in some cost savings for some private individuals, entities, or businesses because it eliminates previously required methods of maintaining eggs at 45 degrees Fahrenheit or below that could be expensive.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 20-58-214(a), the Arkansas Livestock and Poultry Commission shall enforce the provisions of the Arkansas Egg Marketing Act of 1969 and is authorized to make and promulgate such rules as may be necessary thereto. *See* Ark. Code Ann. §§ 20-58-201 through 20-58-216. For the purpose of financing the administration and enforcement of this subchapter, the Department of Agriculture shall collect an inspection fee from any processor, packer, or dealer-wholesaler that sells or transports eggs into the state. *See* Ark. Code Ann. § 20-58-215(a). The inspection fee and annual permit fee will be set by the Commission after review and consultation with the Poultry

Federation for all shell eggs and egg products processed or sold in the State of Arkansas. *See* Ark. Code Ann. § 20-58-215(b).

The proposed rule incorporates changes made in light of Act 598 of 2023, sponsored by Representative Roger D. Lynch, which amended the Arkansas Egg Marketing Act of 1969.

4. **DEPARTMENT OF AGRICULTURE, ARKANSAS NATURAL RESOURCES COMMISSION (Corey Seats)**

a. **SUBJECT: Title 2 – Rules Governing Conservation Districts**

DESCRIPTION: The Department of Agriculture, Arkansas Natural Resources Commission seeks to amend its Title 2 – Rules Governing Conservation Districts. Per the agency, Acts 690 and 691 return control of conservation district directors and board member elections from the Arkansas Natural Resources Commission (ANRC) to the local districts. The election procedure outlined in the Act comes directly from an ANRC rule that has been in place for several years. While the Act does not explicitly require the promulgation of rules, the provisions in the existing ANRC rules should be amended to conform to changes in the Act.

PUBLIC COMMENT: A public hearing was held on March 15, 2024. The public comment period expired on March 18, 2024. The agency provided the following public comment summary:

Commenter’s Name: Jeanette Hale, President, Arkansas Association of Conservation Districts Employees

COMMENTS: Section 201.3 – Definitions - District funds are not defined; Section 207.2 - (D) There is no definition of district funds as opposed to “operating funds” or “local funds” as is listed in definitions; Section 209.5 – Inventory - (C) Assets that were purchased with funds generated by the District and not by means of a state grant, should be exempt from needing approval of the Department before disposing of that asset. **RESPONSE:** Comments provided are focused on portions of the rules that were not modified as a result of the 2023 session. Rule changes considered for public comment are a direct result of legislation changes, with some general clean up. No changes are recommended.

Commenter’s Name: Debbie Moreland, Arkansas Association of Conservation Districts

COMMENT: We are concerned about the elimination of the District Director Emeritus designation and want assurances that AACD can continue to bestow this recognition on past conservation district leaders. It will have no financial impact on ADA or the state. We would like to see clarification on the definition of district funds as opposed to other

references within the revisions such as “operating funds” and/or “local funds”. Any action to reduce or eliminate state appropriations to districts are unacceptable given the tasks and responsibilities that local districts maintain. Several of our districts have expressed concern regarding assets such as equipment, buildings, or any financial assets acquired which are not the result of state dollars. We believe those assets belong to the local conservation district, a local entity of government, and should not be taken without full consent of the district. Any future potential changes and/or revisions to conservation district law or programs should be discussed with conservation districts prior to seeking legislation or enacting changes. It is difficult to maintain a strong working partnership without open transparent communication between all entities. **RESPONSE:** In response to the comment concerning the district emeritus program, the program still exists through the governing board of the conservation districts. All other comments are general statements and are not tied to specific rule changes out for public comment. No changes are recommended.

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

1) Section 208.1(D) of the proposed rule, which concerns state fund requests, has been amended to provide that, following an initial election of a newly created conservation district, the costs of administering that election incurred by the Department shall be deducted from operating funds owed to the district. Is this particular amendment made in response to Arkansas Code Annotated § 14-125-302(b)(8), as amended by Act 690 of 2023, §1 and Act 691 of 2023, § 16, which provides that the governing body of the district shall pay all the expenses of the election?

RESPONSE: Yes.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact. The agency further states that the proposed rule transfers responsibility of conservation district board appointments and elections from the Arkansas Natural Resources Commission to each of the 75 conservation districts in the state.

LEGAL AUTHORIZATION: The Arkansas Natural Resources Commission in cooperation with the land grant college in the state shall develop a program for soil conservation and for other purposes as provided for in Title 14, Subtitle 7, Chapter 125 of the Arkansas Code, which shall be recognized as the state’s policy in soil conservation. The commission may perform such acts, hold such public hearings, and promulgate such rules as may be necessary for the execution of its

functions under the chapter, which concerns conservation districts law. *See Ark. Code Ann. § 14-125-108(a)*. Further, for the purpose of carrying out its functions, the commission shall have authority to make and amend and enforce all necessary or desirable rules and orders not inconsistent with law. *See Ark. Code Ann. § 15-20-206(a)*. Payments made to the various conservation districts of this state shall be used only in furtherance of the purposes of Title 14, Subtitle 7, Chapter 125 of the Arkansas Code, and shall be in such amounts and with such restrictions as prescribed by the rules of the commission. *See Ark. Code Ann. § 14-125-109(c)*.

The proposed rule incorporates changes made in light of the following Acts:

Act 690 of 2023, sponsored by Senator Blake Johnson, which amended the procedure for the election of a director of a conservation district; and

Act 691 of 2023, also sponsored by Senator Blake Johnson, which abolished certain boards within the Department of Agriculture, transferred the duties of certain boards within the Department of Agriculture, and amended the duties of certain boards within the Department of Agriculture.

5. **DEPARTMENT OF COMMERCE, ARKANSAS ECONOMIC DEVELOPMENT COMMISSION** (Clint O’Neal, Allison Hatfield, Jake Windley)

a. **SUBJECT: Arkansas Site Development Grant Program**

DESCRIPTION: The Arkansas Economic Development Commission is proposing a new administrative rule for the new Arkansas Site Development Grant Program to be administered by the commission. The proposed grant program aims to enhance the state’s economic competitiveness by upgrading the existing inventory of high-quality industrial development sites to increase attractiveness to prospective companies. Recognizing the importance of quick development to attract prospective companies, the program provides a matching grant for eligible applicants to leverage cost associated with site development improvements.

Background

Arkansas has a need to increase the inventory of high-quality industrial development sites that are prepared for quick development. The Arkansas Economic Development Commission received a planning grant through the U.S. Economic Development Administration to identify sites that have strong development potential. Communities in Arkansas submitted sites for evaluation and a recommendation of competitive improvements. Act

561 of 2023 appropriated \$10 million in funding from restricted reserve for economic stimulus activities. The commission will utilize these funds to assist grant applicants to leverage matching funds for qualified activities related to site development and improvements.

Key Points

The proposed new rule:

- Requires an applicant to match at least 5% of total costs provided by cash or in-kind.
- Requires all matching funds to be available immediately if a grant is awarded.
- Defines eligible applicants, eligible activities, and eligible site parameters.
- Eligible activities include infrastructure extension, right-of-way acquisition, site due diligence studies, and other activities improving a site's competitiveness. Ineligible expenditures encompass property purchase, principal and interest on debt, and routine site repair and maintenance.
- An eligible site means a greenfield industrial site that is a minimum of 30 contiguous acres and is listed in the Arkansas Site Selection Center database.
- Outlines the application process including documents the agency shall need to determine eligibility.
- Sets a scoring rubric to guide the agency's grant review team to assess and score eligible applications.
- The amount of a grant award shall be at the discretion of the executive director of the Commission, based on the recommendations of the grant review team.
- All project expenditures must be completed within 24 months of the date of award.
- All grantees must execute a grant agreement specifying project details, eligible activities, repayment provisions, and the disbursement process.
- Projects must submit a final report to the Commission within sixty days of project completion.
- Any unused grant funds must be returned to the commission after the project is completed.
- Any funds determined to be used for ineligible expenditures or that are determined to be non-compliant with the executed grant agreement will be subject to repayment provisions.

PUBLIC COMMENT: A public hearing was held on March 1, 2024. The public comment period expired on March 8, 2024. The Commission indicated that it received no comments.

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

Q. You disclosed a \$10,000,000 current-fiscal-year financial impact, but did not explain it on the financial impact statement. Could you please provide an explanation? **RESPONSE:** Act 561 of 2023, § 23, appropriated funds of \$10,000,000 from the Other Restricted Reserve Fund Set Asides (0-10 Economic Stimulus Program Set-Aside) for State Fiscal Year 2024 to fund this pilot grant program for site development in Arkansas.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The commission indicated a current fiscal year cost of \$10,000,000.00 to a state, county, or municipal government to implement this rule. In response to a question from Bureau staff, the agency explained that Act 561 of 2023, § 23, appropriated funds in the amount of \$10,000,000.00 from the Other Restricted Reserve Fund Set Asides (0-10 Economic Stimulus Program Set-Aside) for State Fiscal Year 2024 to fund this pilot grant program for site development in Arkansas. The agency provided the following information concerning the cost:

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

(1) a statement of the rule's basis and purpose;

The Site Development Grant Program will assist economic development in the state by providing matching to eligible applicants for site improvements that will enhance readiness and competitiveness of available site in Arkansas.

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

Arkansas has a need to increase the inventory of shovel ready sites that could be marketed to prospective companies. Many states that Arkansas regularly compete with have programs that address this need. This will be a pilot program for Arkansas to increase the inventory of sites to attract new and expanding businesses.

*(3) a description of the factual evidence that:
(a) justifies the agency's need for the proposed rule; and*

The administrative rule will identify entities eligible to apply, eligible activities, matching requirements, review process, and the grant agreement.

(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

The program will assist community economic development efforts by matching funds to improve, upgrade, rehabilitate, or conduct necessary due diligence on industrial property. Companies are searching for sites that can accomplish fast development schedules to start operations and create new jobs. Several other states have invested funds for programs of this nature. They include Tennessee, Georgia, Alabama, North Carolina, and Oklahoma who announced a \$780M site development grant program in 2022.

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

AEDC has been appropriated \$10M for the program by Act 561 of 2023. The agency expects to fully expend the funds appropriated for this pilot program. The need to assist Arkansas's cities and counties with site upgrades to be competitive for projects as well as surrounding states exists for sites of all sizes. This will allow the state and AEDC to help local areas invest in themselves to further development funds.

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

AEDC received no public comment on the rule.

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

AEDC has no rules for the program in place. This is a pilot program with one-time funding.

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:

(a) the rule is achieving the statutory objectives;

(b) the benefits of the rule continue to justify its costs; and

(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

AEDC will thoroughly evaluate the program after the pilot phase is completed. Agency leadership will determine if the goals of the program have been met, what needs were not met, and if there is a better way to structure the grant, the application process, scoring, and eligibility requirements. AEDC and the Department of Commerce review rules through Act 781 of 2017 requirement.

LEGAL AUTHORIZATION: In accordance with state and federal law, the Arkansas Economic Development Commission shall administer grants, loans, cooperative agreements, tax credits, guaranties, and other incentives, memoranda of understanding, and conveyances to assist with economic development in the state. *See* Ark. Code Ann. § 15-4-209(a)(1). In addition, the Commission may promulgate rules necessary to implement the programs and services offered by the commission. *See* Ark. Code Ann. § 15-4-209(b)(5).

The proposed rule implements Act 561 of 2023, sponsored by Senator Jonathan Dismang, which transfers funds; defines monies available in the restricted reserve fund; and allowed additional funds for state departments, agencies, and institutions.

6. **DEPARTMENT OF COMMERCE, STATE INSURANCE DEPARTMENT, STATE BOARD OF EMBALMERS, FUNERAL DIRECTORS, CEMETERIES, AND BURIAL SERVICES (Amanda Gibson)**

a. **SUBJECT: Rule 1: Rule Pertaining to Embalmers, Funeral Directors, Funeral Establishments, Crematories, Crematory Retort Operators, and Transport Services**

DESCRIPTION: The State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services (“Board”) is proposing amendments to an existing rule governing licensees in the funeral home industry.

Background

- Act 137 of 2023 expands Act 135 of 2021 by allowing the Board to consider national certifications toward initial licensing requirements for uniformed service members, veterans, and spouses.

- Act 137 further eliminates the one-year limitation for discharged uniformed service veterans to use service education, training, or certification toward initial licensing requirements.
- Act 457 of 2023 requires the Board to provide automatic licensure to new Arkansas residents who hold a license in another state.
- Act 368 of 2023 allows licensees of the Board to renew licenses on either an annual or biennial basis, with no increase in fees. The biennial option is new, as enacted in Act 368.

Key Points

- The language implementing Act 137 begins on the markup, page 50, #4.
- The language implementing Act 457 begins on the markup, page 50, Subsection H.
- The language implementing Act 368 is reflected on the markup, page 9, underneath #4, and throughout the rule where renewal is referenced.
- Additional methods of identification are added, starting on the markup, page 14, #14.
- The licensing examination, which was previously allowed to be taken every 30 days, may now be taken every 15 days. That change is reflected at the top of the markup, page 47.
- Section 10, starting on the markup, page 47, required some stylistic amendments in addition to those required to implement Acts 137 and 457. The Board has not entered into reciprocity agreements with any other states, and because Act 457 exempts individuals covered by reciprocity agreements and multistate or interstate compacts, all referenced to reciprocity have been deleted to be consistent with Act 457.

PUBLIC COMMENT: A public hearing was held on March 12, 2024. The public comment period expired on March 12, 2024. The board provided the following summary of the comment it received and its response thereto:

Commenter: Michael Smith

Summary of Comment: The comment dealt with waiving annual licensing fees for disabled veterans. Agency Response: The comment was presented at the public hearing. The Board's response is that at this time, it does not wish to waive those annual fees. The proposed amendments to the rules are in compliance with current legislation regarding occupational licensing. No revisions were made to the rule as a result of the comment.

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 Embalmers, Funeral Directors, Cemeteries, and Burial Services may promulgate appropriate rules: (A) for the transaction of business of the board; (B) for the betterment and promotion of the standards of service and practice; (C) to establish the standards of practice and code of ethics for persons licensed or authorized under Title 23, Chapter 61, Subchapter 11 of the Arkansas Code concerning the board, Ark. Code Ann. § 17-29-301 et seq. concerning licensing under the Embalmers and Funeral Directors Law, the Cemetery Act for Perpetually Maintained Cemeteries, or under Title 23, Chapter 78, Section 101 concerning burial associations; and (D) to establish qualifications necessary to: practice the science of embalming; engage in the business of funeral directing; practice cremation; transport human remains; and operate a funeral establishment, mortuary service, crematorium, retort, or transport service firm to transport human remains. *See* Ark. Code Ann. § 23-61-1103(a)(3).

Further, the board may develop, establish rule, and administer a mandatory or voluntary continuing education program and its requirements for persons licensed or authorized by the board. *See* Ark. Code Ann. § 23-61-1103(a)(4)(A). In addition, the board may promulgate rules and publish forms to enforce and administer laws governing: (A) Embalmers, funeral directors, and funeral establishments, under Ark. Code Ann. § 17-29-301 et seq.; § 17-29-401 et seq.; and § 17-29-501 et seq.; (B) Burial associations under Ark. Code Ann. § 23-78-101 et seq.; and (C) Cemetery companies under the Cemetery Act for Perpetually Maintained Cemeteries, Ark. Code Ann. § 20-17-1001 et seq. and the Insolvent Cemetery Grant Fund Act, Ark. Code Ann. § 20-17-1301 et seq. *See* Ark. Code Ann. § 23-61-1103(a)(5). The amended rule implements the following Acts of the 2023 Regular Session:

Act 137 of 2023, which was sponsored by Senator Ricky Hill, 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.

Act 368 of 2023, which was sponsored by Senator David Wallace, amended the law regarding embalmers and funeral directors and revised the due date for renewal of licenses under the law regarding embalmers and funeral directors.

Act 457 of 2023, which was sponsored by Senator Ricky Hill, created the Automatic Occupational Licensure for Out-of-State Licensure Act and authorized occupational licensing entities to provide for automatic occupational licensure for new residents who are licensed in another state, territory, or district of the United States.

7. **DEPARTMENT OF CORRECTIONS, BOARD OF CORRECTIONS**
(Tawnie Rowell)

a. **SUBJECT: County Jail Medical Expense Reimbursement**
ADC808/ACC9.3

DESCRIPTION: Act 133 of 2023 requires reimbursement to county jails back to the date of sentencing for eligible medical expenses. The proposed rule covers the guidelines for reimbursement for both ADC and ACC facilities. Similar subject matter is covered by a rule that is being repealed, but only applies to ADC.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on April 2, 2024. The agency indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Board of Corrections is the governing authority of the Department of Corrections. *See* Ark. Code Ann. § 25-43-401(b)(1)(B). The Board of Corrections has the power and duty to develop and approve policy and management decisions for the Division of Correction and the Division of Community Correction. *See* Ark. Code Ann. § 12-27-105(b)(4). The Department of Corrections shall assist the Board of Corrections with complying with the general guidelines, policies, and rules of the department with respect to personnel and personnel policies, records, purchasing, bookkeeping, and other administrative procedures prescribed by the department. *See* Ark. Code Ann. § 25-43-401(d)(2).

This rule implements Act 133 of 2023, sponsored by Senator Jimmy Hickey, Jr., which amended the law concerning reimbursement of county costs for holding state inmates, probationers, and parolees. *See* Ark. Code Ann. § 12-27-114, *as amended by* Act 133 of 2023.

b. SUBJECT: REPEAL: AR 810 – Inmate Emergency Medical Expenses Incurred While in County Jails

DESCRIPTION: The Board of Corrections has proposed the repeal of AR 810 – Inmate Emergency Medical Expenses Incurred While in County Jails. AR 810 is being replaced by County Jail Medical Expense Reimbursement ADC808/ACC 9.3, which applies to both divisions with secured facilities and incorporates legislative changes.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on April 10, 2024. The agency indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the repealed rule does not have a financial impact.

LEGAL AUTHORIZATION: The Board of Corrections is the governing authority of the Department of Corrections. *See* Ark. Code Ann. § 25-43-401(b)(1)(B). The Board of Corrections has the power and duty to develop and approve policy and management decisions for the Division of Correction and the Division of Community Correction. *See* Ark. Code Ann. § 12-27-105(b)(4). The Department of Corrections shall assist the Board of Corrections with complying with the general guidelines, policies, and rules of the department with respect to personnel and personnel policies, records, purchasing, bookkeeping, and other administrative procedures prescribed by the department. *See* Ark. Code Ann. § 25-43-401(d)(2).

8. DEPARTMENT OF HEALTH, ARKANSAS STATE BOARD OF NURSING (David Dawson, Matt Gilmore)

a. SUBJECT: Chapter One: General Provisions

DESCRIPTION: The Arkansas State Board of Nursing is amending its rules concerning General Provisions. The definition of *Full Practice Authority/Full Independent Practice* was updated to align with Act 872 of 2023. The definition of *Program Outcomes* was added to aid consistency in measurement by Arkansas nursing education programs. The current fees charged to licensees were updated to reflect current assessed fees.

PUBLIC COMMENT: A public hearing was held on February 28, 2024. The public comment period expired on March 8, 2024. 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 Nursing has the power and responsibility to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87, concerning nurses. *See* Ark. Code Ann. § 17-87-203(1)(A). This rule implements Act 872 of 2023, sponsored by Senator Kim Hammer, which allowed full independent practice authority for clinical nurse specialists and authorized experience in another state to qualify for full independent practice authority.

b. **SUBJECT: Chapter Two: Licensure: RN, LPN, and LPTN**

DESCRIPTION: The Arkansas State Board of Nursing is revising its current rules relating to Licensure. As a member of the compact, all participating states must adopt consistent rules with the Nurse Licensure Compact (NLC). Definition of terms and editorial changes were made throughout to align.

- The added provision of 60 days for a licensee to apply for a license in the new primary state of residence provides guidance for employers and licensee related to working on the privilege to practice in a new primary state of residence.

Arkansas Code Annotated § 17-3-102 was passed in 2019, replacing the Board of Nursing’s statute and related rules to criminal convictions which are considered a bar to licensure. The duplicate rule of Ark. Code Ann. § 17-87-312 was not removed due to an oversight and is now repealed as it is unnecessary.

In 2017, legislation was passed which provided automatic licensure of uniformed service members, their spouses, and veterans. Each year the statute is modified, and the current changes reflect modifications made by Act 137 of 2023. Revisions were made to align.

PUBLIC COMMENT: A public hearing was held on February 28, 2024. The public comment period expired on March 8, 2024. The board provided the following summary of the comment it received and its response thereto:

Commenter: Janice Ivers, National Park College (Attended public comment hearing)

Comment: She asked for clarification regarding Multistate Applicant Responsibilities 402.4 “A nurse shall not apply for a single state license in

a remote state while the nurse holds a multistate license in their primary state of residence.” *Response:* Mrs. Tedford explained this provision is required by the Compact. She also defined the term “remote state” as any other Compact state outside the primary state of residence.

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

1. The following information was provided in the summary:
 - “Section III(B) 202(1) – Changes made to align with statute and provide clarification.” Could you please identify the statute(s) that require these changes? **RESPONSE:** Ark. Code Ann. § 17-87-601, Article IV(a).
 - “Section III(B) 203(1-3) – This new rule defines full party state participation in the coordinated licensure system. This is required by statute.” Could you please identify the statute(s) that require these changes? **RESPONSE:** Ark. Code Ann. § 17-87-601, Article VI(a).
2. What is a “remote party state” as referenced in Section IV(D) 401(3)? **RESPONSE:** Ark. Code Ann. § 17-87-601, Article II(1) – the definition of a “remote state.”
3. Concerning Section IV(D) 402(2), was the provision of 60 days for a licensee to apply for a license in a new primary state of residence, required by the National Licensure Compact? **RESPONSE:** The provision for applying within a specific number of days was a part of the original compact (passed by AR in 1999). It was removed from the enhanced compact (passed by AR in 2017) and is now being added back.
4. Could you please identify the statute necessitating the changes in Section IV (D) 407 concerning active-duty military personnel? **RESPONSE:** The changes are editorial (changing home state to primary state of residence) for consistency within the Rules. Spouse was added to broaden the scope of the compact which aligns with Arkansas statute.

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 Nursing has the power and responsibility to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87 of the Arkansas Code concerning nurses. *See* Ark. Code Ann. § 17-87-203(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; added consideration of national certification 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.

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

DESCRIPTION: The Arkansas State Board of Nursing is proposing changes to its standards for nursing education programs. The agency proposes the following changes to its rules:

- To align with the change of agency name, “on Accreditation of Health Care Organizations” was removed;
- For consistency purposes “one (1) year” was changed to “two (2) years” relating to conditional approval status;
- In accordance with Act 672 of 2023, “Preceptors shall not be utilized in foundation or introductory course” was deleted; Editorial change was made removing “or licensed psychiatric technician nurse” as they do not serve as preceptors;
- In accordance with Act 672 of 2023, “there shall be no reimbursement to students for the educational preceptorship” was removed.
- A section was added to clarify role of educational program, clinical facility, and student under Act 672 of 2023.

PUBLIC COMMENT: A public hearing was held on February 28, 2024. The public comment period expired on March 6, 2024. The board provided the following summary of comments it received and its responses thereto:

Commenter: Susan D. Kehl, Ph.D., RN, CNE, Carr College of Nursing (emailed 02/19/24)

Comment: “Hello, I hope you are doing well. I write to inform you of my experience in Texas with a school that used only preceptors at a local hospital rather than clinical faculty. Yes, it cut costs for the school, but it created a monopoly for the school that utilized preceptors. The floor nurses were used up and would not work with other schools. I have appreciated the AR rule to not allow preceptors in the introductory courses. I suppose I still support that rule. Thank you for your time.”

Response: Mrs. Tedford responded by thanking Susan for her comment.

Commenter: Shela Upshaw, University of Arkansas at Monticello-Crossett (Attended public comment hearing)

Comment: Ms. Upshaw commented on the Earn to Lean Program, stating that in her opinion a school non-employee “will not give an accurate

evaluation”. She felt “nurses are stretched and will not have time to teach” and that “not all nurses want to teach”. She stated, “we are not going to have the quality of nurses that is needed”. *Response:* Mrs. Tedford advised the provisions will pass as they are in statute, but if there are any suggestions on how schools can implement the changes safely, notify the Board in writing.

Commenter: Schelista Glenn, Baptist Health Center Little Rock (Attended public comment hearing)

Comment: Ms. Glenn stated she had questions relating to the Earn to Learn Program. First, she requested clarification of (J)(1) “The student may not work more than twenty (20) hours per week in any of the above listed roles”. Second, how does the student account for hours worked and how is the percentage broken down relating to (J)(2) “...shall not exceed fifty percent (50%) of direct patient clinical hours”. Ms. Glenn asked for the term “Senior Level” to be defined. Finally, she wanted to know if there will be an application and/or notification process regarding enrollment and productivity of program from the school to the Board.

Response: Mrs. Tedford advised the twenty (20) hours is referencing only the credit hours towards “Earn to Learn” program. Additional hours outside of those requirements can be assigned. As to accounting for hours worked, Mrs. Tedford stated that the issue will be up to the discretion of the school. In relation to (J)(2) direct patient clinical hours percentage, it has not been determined at this time. The school will define “Senior Level”. Mrs. Vaughn indicated a question will be added to the Annual Report regarding application and/or notification on enrollment and productivity of program. She also asks that nursing programs notify the Board if they will be participating.

Commenter: Angie Smith, St. Bernard’s Medical Regional Center (Attended public comment hearing)

Comment: Ms. Smith spoke on the Earn to Learn Program. She stated she was thankful for the program opportunity and asked what is the expected timeline for implementation. Is there more detail as to the introductory to foundation classes? Finally, she asked if the program structure was similar to an apprenticeship model. *Response:* Implementation date will be based on public comments and timeline of the Public Health Committee Meeting, followed by Rules Committee Meeting. Schools will outline related classes. As to program structure, an apprenticeship model is a partnership with the Department of Labor, whereas the Earn to Learn Program has a different structure.

Commenter: Janice Ivers, National Park College (Attended public comment hearing)

Comment: Mrs. Ivers asked if the State Board of Nursing will be writing Rule for state level regarding apprenticeship and be tracking the

differences between schools who do and do not participate in the Earn to Learn Program. *Response:* Mrs. Tedford stated the apprenticeship outline will be determined by the school and facility. Tracking the differences in participation has not been discussed at this time but would be important to do so.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following question and received the following answer thereto:

Q. In the summary, the agency stated, “For consistency purposes “one (1) year” was changed to “two (2) years” relating to conditional approval status.” What is the agency trying to make this rule consistent with?
RESPONSE: It is for consistency within the Rules. See Chapter 6, Section III(B)(3)(c)(2).

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 Nursing shall have the power and responsibility to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87 of the Arkansas Code concerning nurses. *See* Ark. Code Ann. § 17-87-203(1)(A). Changes to the rules were made in light of Act 672 of 2023, sponsored by Senator Kim Hammer, which established Nursing Earn-to-Learn programs and authorized a nursing student to earn direct patient care clinical credit hours for working in a healthcare facility in certain jobs.

d. SUBJECT: Chapter Seven: Rules of Procedure

DESCRIPTION: The Arkansas State Board of Nursing is amending its rules to include all application types received. The current rules do not specifically identify the application for independent practice as included in the example of a violation of the Nurse Practice Act. The addition of this language gives the Board of Nursing the ability to take action on all application types if fraudulent information is submitted.

PUBLIC COMMENT: A public hearing was held on February 28, 2024. The public comment period expired on March 8, 2024. 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 Nursing has the power and responsibility to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87, concerning nurses. *See* Ark. Code Ann. § 17-87-203(1)(A).

e. **SUBJECT: Chapter Eight: Medication Assistant-Certified**

DESCRIPTION: The Arkansas State Board of Nursing is revising their Medication Assistant-Certified rules to align with current statute. The previous statutory reference was repealed, and the relevant statutory provision was assigned a different code number.

Act 365 of 2023 abolished many inactive state entities, including the Medication Assistive Persons Advisory Committee. The Advisory Committee section was deleted due to the Committee being dissolved.

In 2017, legislation was passed which provided automatic licensure of uniformed service members, their spouses, and veterans. Each year the statute is modified, and the current changes reflect modification made by Act 137 of 2023. Editorial changes were made to align.

PUBLIC COMMENT: A public hearing was held on February 28, 2024. The public comment period expired on March 8, 2024. 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 Nursing has the power and responsibility to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87, concerning nurses. *See* Ark. Code Ann. § 17-87-203(1)(A). This rule implements Acts 137 and 365 of 2023.

Act 137 of 2023, which was sponsored by Senator Ricky Hill, amended the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021; added consideration of national certification 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.

Act 365 of 2023, sponsored by Senator Jane English, abolished inactive state entities; amended the law concerning the reporting of boards and commissions; and declared an emergency.

f. **SUBJECT: Chapter Nine: Insulin, Glucagon and Medication for Adrenal Insufficiency or Adrenal Crisis**

DESCRIPTION: The Arkansas State Board of Nursing is amending its rules relating to the administration of glucagon, insulin, and medication for adrenal crisis in accordance with Act 1050 of 2021 and rules promulgated by the Board of Education.

PUBLIC COMMENT: A public hearing was held on February 28, 2024. The public comment period expired on March 8, 2024. The agency provided the following summary of the comments it received and its response thereto:

Commenter: Janice Ivers, National Park College (Attended public comment hearing)

Comment: Mrs. Ivers asked if “LPNs are able to perform” based on the Definition of Terms, Licensed School Nurse Employed by a School District, and General Requirements (E). *Response:* Mrs. Tedford stated Chapter 9 Rules are mirrored from the Department of Education Rules, which defined terms. As to General Requirements, if the LPN is an employee, they should fall under the term public school personnel.

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.

LEGAL AUTHORIZATION: The Arkansas State Board of Nursing has the power and responsibility to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87 of the Arkansas Code, concerning nurses. *See* Ark. Code Ann. § 17-87-203(1)(A). Further, pursuant to Ark. Code Ann. § 17-87-103(11)(E), the State Board of Education and the Arkansas State Board of Nursing shall promulgate rules necessary to administer Ark. Code Ann. § 17-87-103(11), which exempts from the requirement of a nursing license certain trained volunteer school personnel who may administer glucagon or insulin, or both, to a student diagnosed with diabetes, as outlined in the statute.

g. SUBJECT: Chapter Ten: Alternative to Discipline

DESCRIPTION: The Arkansas State Board of Nursing is amending its Alternative to Discipline rules to broaden individuals eligible for participation to include not only individuals licensed by the Board of Nursing, but also those who are certified.

PUBLIC COMMENT: A public hearing was held on February 28, 2024. The public comment period expired on March 8, 2024. The board indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas State Board of Nursing has the power and responsibility to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87 of the Arkansas Code, concerning nurses. *See* Ark. Code Ann. § 17-87-203(1)(A). This rule implements Act 234 of 2024, sponsored by Senator Missy Irvin, which amended the Alternative to Discipline Act and broadened the Alternative to Discipline Act to apply to non-nurses regulated by the Arkansas State Board of Nursing.

h. SUBJECT: Chapter Eleven: Full Independent Practice Credentialing Committee

DESCRIPTION: The Arkansas State Board of Nursing is proposing amendments to its rules on Full Independent Practice Credentialing Committee. During the 2021 legislative session, Act 412 was passed which permitted Certified Nurse Practitioners to apply for full independent practice. This act was revised by Act 872 of 2023 to include Clinical Nurse Specialists and provide a pathway for APRNs licensed and practicing in another state to apply for independent practice. The revisions made are to align with current statute.

PUBLIC COMMENT: A public hearing was held on February 28, 2024. The public comment period expired on March 8, 2024. The board indicated that it received no comments.

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

Q. Could you please explain why the definition of Clinical Nurse Specialist in Section II of the rule differ from the statutory definition in

Ark. Code Ann. § 17-87-302(a)(4)? **RESPONSE:** The Chapter 11 definitions of CNP and CNS match the definitions in Chapter 4. They say the same thing but in clearer language. These definitions in Chapter 4 were written back in 1995 (I think) so I assume they believed they were easier for the public to understand.

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 Nursing has the power and responsibility to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87, concerning nurses. *See* Ark. Code Ann. § 17-87-203(1)(A). This rule implements Act 872 of 2023, sponsored by Senator Kim Hammer, which allowed full independent practice authority for clinical nurse specialists and authorized experience in another state to qualify for full independent practice authority.

9. **DEPARTMENT OF HEALTH, STATE BOARD OF HEALTH (Laura Shue, Paula Day)**

a. **SUBJECT: Rules for Critical Access Hospitals in Arkansas**

DESCRIPTION: This rule promulgation implements changes required by several 2023 Acts of the General Assembly. It provides provision for Pharmacy Continuity of Care Endorsement (Act 233); requires posting of a written notice that attacking a healthcare professional is a felony (Act 313); requires hospitals in this state to comply with federal hospital pricing transparency regulations (Act 482); requires hospitals to comply with the abortion Right-To-Know-and-See Act (Act 559); implements the No Patient Left Alone Act regarding clergy members (Act 716); amends the patient right to know regarding licensure of a healthcare provider (Act 830); and clarifies that the performance of an abortion to save the life of a pregnant woman in a medical emergency may be performed only in a hospital or emergency room (Act 848).

The following changes have been made:

- Section 3 – name clarification for provider type Ambulatory Surgery Center.
- Section 6.B.13 – change timeframe for reappointment to medical staff from 2 years to 3 years (requested by the Arkansas Hospital Association).

- Section 7.S – amended to address provision of Act 559 and 848 regarding ultrasounds prior to an abortion referral and abortions may only be performed to save the life of the pregnant woman in a hospital or emergency department.
- Section 7.T – added requirement for written notice regarding attacking a healthcare professional.
- Section 7.U – added requirement regarding healthcare provider not misleading the public regarding licensure status.
- Section 7.V – added requirement for compliance with Federal Hospital pricing transparency.
- Section 9.A – clarified reporting requirement regarding infectious or communicable diseases in a facility to the Arkansas Department of Health.
- Section 9.F – added reporting requirement regarding Hospital Discharge Data System to the Arkansas Department of Health.
- Section 12 and 16 – clarification in pharmacy equipment requirements, references, and documentation to include electronic medication dispensing systems, electronic documentation processes, and electronic references.
- Section 16.H.4 – amended to allow compliance with Pharmacy Continuity of Care Endorsement.
- Section 18 – clarified reporting requirement regarding infectious or communicable diseases in a facility to the Arkansas Department of Health. (Also added to Administration Section)
- Appendix A – amended to address clergy member visitation in hospitals.
- Table 9 – amended to address correct temperature for medication storage.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on February 28, 2024. The agency indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas Department of Health, Division of Health Facilities Services has the authority to inspect, regulate, and license hospitals and institutions. Ark. Code Ann. § 20-9-204(b)(3). The Department may promulgate rules as necessary to accomplish the purposes of Ark. Code Ann. §§ 20-9-201 to -223, which relate to health facilities services. Ark. Code Ann. § 20-9-205(b). These rules implement Acts 233, 313, 482, 559, 716, 830, and 848 of 2023.

Act 233, sponsored by Senator Justin Boyd, created the hospital pharmacy continuity of care endorsement to allow licensed hospitals to dispense outpatient medications for certain patients and clarified that nonprofit hospitals can dispense medications for outpatient use for hospital employees and students.

Act 313, sponsored by Senator Kim Hammer, required posting of a written notice that attacking a healthcare professional is a felony and allowed a healthcare professional to use a work address when reporting certain offenses.

Act 482, sponsored by Representative Justin Gonzales, required hospitals in the state to comply with federal hospital pricing transparency regulations and required the Department of Health to enforce compliance with federal hospital pricing transparency regulations.

Act 559, sponsored by Senator Missy Irvin, amended the Right-to-Know-and-See Act and required an abortion provider who knowingly performs or refers a patient for an abortion to comply with the right of the patient to view ultrasound images before an abortion.

Act 716, sponsored by Senator Clint Penzo, amended the No Patient Left Alone Act and set certain requirements regarding clergy member visitation.

Act 830, sponsored by Representative Lee Johnson, amended the Patient Right-to-Know Act.

Act 848, sponsored by Representative Aaron Pilkington, clarified the performance of an abortion to save the life of a pregnant woman in a medical emergency.

b. SUBJECT: Rules for Hospitals and Related Institutions in Arkansas

DESCRIPTION: This rule promulgation implements changes required by several 2023 Acts of the General Assembly. It provides provision for Pharmacy Continuity of Care Endorsement (Act 233); requires posting of a written notice that attacking a healthcare professional is a felony (Act 313); requires hospitals in this state to comply with federal hospital pricing transparency regulations (Act 482); requires hospitals to comply with the abortion Right-To-Know-and-See Act (Act 559); implements the No Patient Left Alone Act regarding clergy members (Act 716); amends the patient right to know regarding licensure of a healthcare provider (Act 830); and clarifies that the performance of an abortion to save the life of a pregnant woman in a medical emergency may be performed only in a hospital or emergency room (Act 848).

The following changes have been made:

- Section 3 – name clarification for provider type Ambulatory Surgery Center.
- Section 6.B.13 – change timeframe for reappointment to medical staff from 2 years to 3 years (requested by the Arkansas Hospital Association).
- Section 7.S – amended to address provision of Act 559 and 848 regarding ultrasounds prior to an abortion referral and abortions may only be performed to save the life of the pregnant woman in a hospital or emergency department.
- Section 7.T – added requirement for written notice regarding attacking a healthcare professional.
- Section 7.U – added requirement regarding healthcare provider not misleading the public regarding licensure status.
- Section 7.V – added requirement for compliance with Federal Hospital pricing transparency.
- Section 9.A – clarified reporting requirement regarding infectious or communicable diseases in a facility to the Arkansas Department of Health.
- Section 9.F – added reporting requirement regarding Hospital Discharge Data System to the Arkansas Department of Health.
- Section 12 and 16 – clarification in pharmacy equipment requirements, references, and documentation to include electronic medication dispensing systems, electronic documentation processes, and electronic references.
- Section 16.H.4 – amended to allow compliance with Pharmacy Continuity of Care Endorsement.
- Section 18 – clarified reporting requirement regarding infectious or communicable diseases in a facility to the Arkansas Department of Health. (Also added to Administration Section)
- Appendix A – amended to address clergy member visitation in hospitals.
- Table 9 – amended to address correct temperature for medication storage.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on February 28, 2024. The agency indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas Department of Health, Division of Health Facilities Services has the authority to inspect, regulate, and license hospitals and institutions. Ark. Code Ann. § 20-9-204(b)(3). The Department may promulgate rules as necessary to accomplish the purposes of Ark. Code Ann. §§ 20-9-201 to -223, which relate to health facilities services. Ark. Code Ann. § 20-9-205(b). These rules implement Acts 233, 313, 482, 559, 716, 830, and 848 of 2023.

Act 233, sponsored by Senator Justin Boyd, created the hospital pharmacy continuity of care endorsement to allow licensed hospitals to dispense outpatient medications for certain patients and clarified that nonprofit hospitals can dispense medications for outpatient use for hospital employees and students.

Act 313, sponsored by Senator Kim Hammer, required posting of a written notice that attacking a healthcare professional is a felony and allowed a healthcare professional to use a work address when reporting certain offenses.

Act 482, sponsored by Representative Justin Gonzales, required hospitals in the state to comply with federal hospital pricing transparency regulations and required the Department of Health to enforce compliance with federal hospital pricing transparency regulations.

Act 559, sponsored by Senator Missy Irvin, amended the Right-to-Know-and-See Act and required an abortion provider who knowingly performs or refers a patient for an abortion to comply with the right of the patient to view ultrasound images before an abortion.

Act 716, sponsored by Senator Clint Penzo, amended the No Patient Left Alone Act and set certain requirements regarding clergy member visitation.

Act 830, sponsored by Representative Lee Johnson, amended the Patient Right-to-Know Act.

Act 848, sponsored by Representative Aaron Pilkington, clarified the performance of an abortion to save the life of a pregnant woman in a medical emergency.

c. **SUBJECT: Rules for Free-Standing Birthing Centers in Arkansas**

DESCRIPTION: The following changes are proposed for the Rules for Free-Standing Birthing Centers in Arkansas:

- Section 6.R. – amended to state abortion can only be performed to save the life of a pregnant woman and may only be performed in a hospital or emergency room. (Act 848)
- Section 7.S – added requirement for written notice regarding attacking a healthcare professional. (Act 313)
- Section 7.T – added requirement regarding healthcare provider not misleading the public regarding licensure status. (Act 830)

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on February 28, 2024. The agency indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Department of Health has the authority to promulgate rules “[s]etting minimum standards for the construction, maintenance, and operation of a freestanding birthing center[.]” Ark. Code Ann. § 20-9-403(a)(1). This rule implements Acts 313, 830, and 848 of 2023.

Act 313, sponsored by Senator Kim Hammer, required posting of a written notice that attacking a healthcare professional is a felony and allowed a healthcare professional to use a work address when reporting certain offenses.

Act 830, sponsored by Representative Lee Johnson, amended the Patient Right-to-Know Act.

Act 848, sponsored by Representative Aaron Pilkington, clarified the performance of an abortion to save the life of a pregnant woman in a medical emergency.

d. SUBJECT: Rules for Private Care Agencies in Arkansas

DESCRIPTION: The purpose of this rule promulgation is to amend the aide training requirement to include Alzheimer’s disease and dementia (Act 70); to require posting of a written notice that attacking a healthcare professional is a felony (Act 313); and to amend the patient right to know regarding licensure of a healthcare provider. The following changes have been made:

- Section 10.E – added requirement for written notice for attacking a healthcare professional.

- Section 10.F – added requirement regarding healthcare provider not misleading the public regarding licensure.
- Table 1-1 – added training requirements for Alzheimer’s disease and dementia for Personal Care Aides.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on February 28, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: “The State Board of Health shall promulgate rules necessary to implement” Title 20, Chapter 10, Subchapter 23 of the Arkansas Code, regarding personal care service providers. Ark. Code Ann. § 20-10-2304(a). This rule implements Acts 70, 313, and 830 of 2023.

Act 70, sponsored by Representative Julie Mayberry, required a specific number of hours of dementia training for home caregivers.

Act 313, sponsored by Senator Kim Hammer, required posting of a written notice that attacking a healthcare professional is a felony and allowed a healthcare professional to use a work address when reporting certain offenses.

Act 830, sponsored by Representative Lee Johnson, amended the Patient Right-to-Know Act.

e. **SUBJECT: Rules for Home Health Agencies in Arkansas**

DESCRIPTION: The following changes to the Rules for Home Health Agencies in Arkansas are proposed:

- Section 11.H. – added requirement for written notice for attacking a healthcare professional. (Act 313)
- Section 11.I. – added requirement regarding healthcare provider not misleading the public regarding licensure. (Act 830)
- Table 1-1. – added training requirements for Alzheimer’s disease and dementia for Personal Care Aides. (Act 70)
- Table 2-1. – added training requirements for Alzheimer’s disease and dementia for Home Health Aides. (Act 70)

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on February 28, 2024. The agency indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Health shall promulgate “such rules and standards as may be necessary for the accomplishment of the purposes of” Title 20, Chapter 10, Subchapter 8 of the Arkansas Code, regarding home healthcare services. Ark. Code Ann. § 20-10-806(b)(1). These rules implement Acts 70, 313, and 830 of 2023.

Act 70, sponsored by Representative Julie Mayberry, required a specific number of hours of dementia training for home caregivers.

Act 313, sponsored by Senator Kim Hammer, required posting of a written notice that attacking a healthcare professional is a felony and allowed a healthcare professional to use a work address when reporting certain offenses.

Act 830, sponsored by Representative Lee Johnson, amended the Patient Right-to-Know Act.

f. **SUBJECT: Rules for Hospice in Arkansas**

DESCRIPTION: The following changes to the Rules for Hospice in Arkansas are proposed:

- Section 8.P. – added requirement for written notice for attacking a healthcare professional. (Act 313)
- Section 8.Q. – added requirement regarding healthcare provider not misleading the public regarding licensure. (Act 830)
- Section 17.I.4 – added training requirements for Alzheimer’s disease and dementia for hospice aides. (Act 70)
- Section 22.A.2. – amended to address clergy member visitation. (Act 716)

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on February 28, 2024. The agency indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Department of Health has the authority to regulate hospice care in Arkansas through the State Hospice Office, “to be administered in a division of the department to be designated by the Secretary of the Department of Health.” Ark. Code Ann. § 20-7-117(a), (b)(1). The State Hospice Office shall “implement rules, regulations, and standards for hospice care in general agreement with” national standards and federal law. Ark. Code Ann. § 20-7-117(b)(1)(B). These rules implement Acts 70, 313, 716, and 830 of 2023.

Act 70, sponsored by Representative Julie Mayberry, required a specific number of hours of dementia training for home caregivers.

Act 313, sponsored by Senator Kim Hammer, required posting of a written notice that attacking a healthcare professional is a felony and allowed a healthcare professional to use a work address when reporting certain offenses.

Act 716, sponsored by Senator Clint Penzo, amended the No Patient Left Alone Act and set certain requirements regarding clergy member visitation.

Act 830, sponsored by Representative Lee Johnson, amended the Patient Right-to-Know Act.

10. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES (Janet Mann, Mitch Rouse, Elizabeth Pitman)**

- a. **SUBJECT: Continuous Glucose Monitors and Diabetic Supplies as a Pharmacy Benefit & REPEALS: DDS Policy 3018 – Reporting of Denial of Access to Services; DDS Policy 3018 – Mortality Review of Deaths of Persons Receiving Alternative Community Services Waiver Services**

DESCRIPTION:

Statement of Necessity

The Division of Medical Services (DMS) revises the Arkansas Medicaid state plan and corresponding provider manuals to comply with Act 393 of 2023. The Act requires Arkansas Medicaid to cover continuous glucose monitors (CGMs) as a pharmacy benefit. It also mandates pharmacy coverage of CGMs for certain individuals with diabetes allowing for blood glucose levels to be monitored at set intervals without finger sticks.

Eligible beneficiaries include those with Type 1 diabetes or any other type of diabetes with either insulin use or evidence of level 2 or level 3 hypoglycemia, or beneficiaries diagnosed with glycogen storage disease type 1a.

While reviewing the financial impact, it was determined that blood glucose monitors (BGMs) and other diabetic supplies should be added to the rule to streamline administrative procedures and to increase access to care for beneficiaries.

This rule began promulgation in October 2023. A public comment period ran from October 14, 2023, to November 12, 2023. DHS reviewed all public comments received and in response revised the rule and published it for a second public comment period with the responsive changes incorporated into the rule.

Summary

The following provider manuals and state plan amendment (spa) pages will be updated in compliance with the Act and for the other reasons stated above.

Medicaid Provider Manuals:

ARKids First B

- Section 221.100 – Deleted “Continuous Glucose Meters (CGM) and CGM supplies” and added “Including diabetic supplies”. Added the statement “For billing information to include Continuous Glucose Monitors (CGM), CGM supplies, patch or tubeless insulin pumps, blood glucose monitors (BGMs), and glucose testing supplies see the DHS contracted Pharmacy Vendor’s website.”

Home Health

- Section 242.150 – Changed Bullet A to state that Home Blood Glucose supplies include all beneficiaries. Deleted HCPCS code information for Home Blood Glucose supplies.

Pharmacy

- Section 212.000 – Deleted “glucose monitoring devices and supplies.”
- Section 216.100 – Added “and glucose monitors and supplies” to bullet point D. Deleted “Glucose home monitors with supplies” from bullet point J.
- Section 216.101 – Added new section concerning Medical Supplies Covered as a Pharmacy Benefit.

Prosthetics

- Section 212.206 – Changed the title of the section from “(DME) Home Blood Glucose Monitor, Pregnant Women Only, All Ages” to “Home Blood Glucose Monitor and Supplies All Ages”. Deleted all previous information and added the statement “Effective 4/1/2024, Medicaid beneficiaries are eligible for diabetic and blood sugar testing supplies processed as a pharmacy claim submission by pharmacies or DME providers. Home blood sugar meters and supplies (strips, lancets, calibration solution, etc.) are available without a prior authorization. See the DHS Pharmacy Vendor’s website for specific information for coverage details.”
- Section 212.207 – Deleted “DME” from the title. Added the statement “Effective 4/1/2024, patch or tubeless insulin pumps are covered as a pharmacy claim submission while traditional insulin pumps requiring tubing and cannula type supplies remain processed as a medical claim. Beneficiaries with Medicare Part B benefits continue to be serviced for all of their needs under the DME program.” Also added the statement “When submitting prior authorization requests for the patch or tubeless insulin pumps see the DHS Pharmacy Vendor’s website for specific information for coverage details.”
- Section 212.208 – Bullet point A – Deleted “The Arkansas Medicaid Program provides coverage for a continuous glucose monitor (CGM) for the treatment of a Medicaid client if the client has:” and added “Effective 4/1/2024, continuous glucose monitors (CGMs) are covered as a pharmacy claim submission by pharmacies or DME providers. Beneficiaries must meet the following criteria for coverage:” Changed number 1 under this bullet point to remove “more than two times daily” and added #3 to state “See the DHS Pharmacy Vendor’s website for specific information for coverage details.”
- Deleted bullet point C which stated “Additional requirements are set out in Section 242.113”. Added the statement” Beneficiaries with Medicare Part B benefits continue to be serviced under the DME program.”
- Section 242.112 – deleted in its entirety.
- Section 242.113 – deleted in its entirety.

Medicaid State Plan:

Page 4.19-B 2g

- Added 7B.
“Effective for dates of service on or after April 1, 2024, reimbursement for Continuous Glucose Monitors (CGM) and related supplies including patch type insulin pumps is based on

wholesale acquisition cost (WAC) plus applicable professional dispensing fee. Traditional insulin pumps will remain at the Medicare non-rural rate as stated in A. above.”

Arkansas Child Health Plan Under Title XXI Of The Social Security Act Children’s Health Insurance Program (CHIP SPA):

- SPA # 14 adds the statement “The purpose of this SPA is to improve access to continuous glucose monitors (CGMs) through pharmacy claim submission processing for reimbursement to pharmacies and DME providers. Beneficiaries eligible for CGMs include those with Type 1 diabetes or any other type of diabetes with either insulin use or evidence of level 2 or level 3 hypoglycemia, or beneficiaries diagnosed with glycogen storage disease type 1a. Patch type insulin pumps, blood glucose monitors (BGMs) and testing supplies will be covered in the same manner. Coverage is being extended to comply with Arkansas Act 393 of 2023.”
- Section 6.2 – Adds “and diabetic supplies” to the Prescription Drugs section in the chart. Also adds the statement “*The Prescription Drugs and diabetic supplies category includes prescription drugs, Continuous Glucose Monitors (CGMs) with CGM supplies, patch type insulin pumps, and blood glucose monitors (BGMs) with blood glucose testing supplies (test strips, calibration solution).”
- Section 8.2 – *The Prescription Drugs and diabetic supplies category includes prescription drugs, Continuous Glucose Monitors (CGMs) with CGM supplies, patch type insulin pumps, and blood glucose monitors (BGMs) with blood glucose testing supplies (test strips, calibration solution).

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

- (1) DDS Policy 3018 – Reporting of Denial of Access to Services; and
- (2) DDS Policy 3018 – Mortality Review of Deaths of Persons Receiving Alternative Community Services Waiver Services.

PUBLIC COMMENT: A public hearing was held on this rule on October 25, 2023. The public comment period expired on November 12, 2023. The agency amended the rule in response to public comment and opened a second public comment period. A second public hearing was held on February 14, 2024. The second public comment period expired on March 4, 2024.

The agency provided a public comment summary for each public comment period. Due to length, both public comment summaries are attached separately.

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

Q. Section 212.208(A)(1)(a) of the Prosthetics manual removes the requirement that a beneficiary use insulin “more than two (2) times daily.” However, it appears that this language is still in the statute (see A.C.A. § 20-77-148(b)(1)(A)(i)). Why was it removed from the rule?

RESPONSE: The requirement for Medicaid to cover a continuous glucose monitor for a beneficiary who uses insulin more than two (2) times daily remains in state law. DHS is in compliance even though Medicaid’s rule has been revised to remove the restriction that insulin has to be used more than twice a day before the use of a CGM can be covered. The restriction was removed to allow Medicaid to conform with the CMS revised coverage guidelines and National Diabetes Association groups’ clinical guidelines for dispensing the product. The change in the Medicaid rule will allow more access to the use of improved blood monitoring products for beneficiaries who are insulin dependent regardless of the number of times per day their insulin must be injected.

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 cost to implement this rule is \$300,047 for the current fiscal year (\$84,013 in general revenue and \$216,034 in federal funds) and \$213,589 for the next fiscal year (\$59,805 in general revenue and \$153,784 in federal funds). The total estimated cost by fiscal year to state, county, or municipal government to implement this rule is \$84,013 for the current fiscal year and \$59,805 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 393 of 2023. The Act, sponsored by Representative Aaron Pilkington, modified the coverage of continuous glucose monitors in the Arkansas Medicaid Program.

b. SUBJECT: Children’s Advocacy Center (CAC) Reimbursement

DESCRIPTION:

Statement of Necessity

Beginning April 1, 2024, Medicaid is implementing coverage and reimbursement of medical evaluation for suspected sexual abuse by Pediatric Sexual Assault Nurse Examiner (SANE) when performed in Children’s Advocacy Centers (CACs). This service will benefit communities and the state by providing non-acute evaluations by specially trained and certified registered nurses to Medicaid-eligible children and youth in a less intimidating setting. CACs may also provide assessments for other forms of suspected physical maltreatment when completed by a physician or advanced practice nurse practitioner.

Medicaid funding will help CACs to fund ongoing services and support sustainability as other funding sources are redirected or depleted in the coming years.

Rule Summary

The Division of Medical Services proposes a Medicaid State Plan amendment and provider manual updates to include coverage and reimbursement to CACs under the clinic benefit for non-acute suspected sexual assault evaluations and assessments for other suspected physical abuse. The specific changes include:

Medicaid Provider Manuals

Nurse Practitioner Manual:

- Added section 203.800 – The Nurse Practitioner’s Role in Children’s Advocacy Centers; and
- Added section 203.801 – Sexual Assault Nurse Examiner Pediatric (SANE-P) Certification and Enrollment as a Provider for Arkansas Medicaid.

Physicians Manual:

- Added section 203.400 – Physician’s Role in Children’s Advocacy Centers; and

- Added section 203.401 – Sexual Assault Nurse Examiner Pediatric-Pediatric (SANE-P) Certification and Enrollment as a Provider for Arkansas Medicaid.

State Plan Amendment Pages

Attachment 3.1-A page 3b: Added the statement “Registered Nurse Sexual Assault Nurse Examiner-Pediatric (SANE-P) Certified by the Internal Association of Forensic Nurses.”

Attachment 3.1-A page 4c: Added a section for Children’s Advocacy Centers describing services provided and Medicaid coverage requirements.

Attachment 3.1-B page 3d: Added the statement “Registered Nurse Sexual Assault Nurse Examiner-Pediatric (SANE-P) Certified by the Internal Association of Forensic Nurses.”

Attachment 3.1-B page 4d: Added a section for Children’s Advocacy Centers describing services provided and Medicaid coverage requirements.

Attachment 4.19-B page 2c: Under Obstetric-Gynecologic and Gerontological Nurse Practitioner Services added the statement “Registered Nurse Sexual Assault Nurse Examiner-Pediatric (SANE-P) Certified by the Internal Association of Forensic Nurses For additional reimbursement refer to Attachment 4.19-B, item 5.”

Attachment 4.19-B page 3b(1): Added a section for Children’s Advocacy Centers describing how services are reimbursed.

PUBLIC COMMENT: A public hearing was held on this rule on January 31, 2024. The public comment period expired on February 12, 2024. The agency provided the following public comment summary:

Commenter’s Name: Elizabeth Pulley, Executive Director, Children’s Advocacy Centers of Arkansas

1. It’s so exciting to you moving forward with Medicaid plans to help our CACs! I appreciate everyone’s hard work and dedication on this project!

Some of the items we have discussed in the last several years were not captured in the document, so I had a few questions and clarifications.

Section 203.800: Clarification and consistency on types of provider is needed

Nurse Practitioners are nurses who have completed additional training following their RN and/or BSN degree in the medical assessment and diagnosis of patients. There are several terms used to describe this level of provider:

- Nurse Practitioner (NP)
- Advance Nurse Practitioner (APN)
- Advanced Practice Registered Nurse (APRN)

Registered Nurses (RNs) or Nurse Practitioners (NPs) can choose to pursue additional training in the medical evaluation of sexual assault patients and be considered a Sexual Assault Nurse Examiner (SANE). Since RNs do not have advanced training in medical assessment and diagnosis, it is required that this level of provider would complete SANE training. For NPs (APNs, APRNs) it would be encouraged, but not required for their scope of practice in order to provide care for victims of physical assault, sexual assault or neglect.

For medical evaluations performed at children's advocacy centers (CACs), there are minimum standards for training depending on the medical provider's level of training.

- i. RN's—Complete 40 hours of didactic training in a SANE course AND complete a clinical preceptorship to gain proficiency in use of the colposcope
- ii. NPs/APNs/APRNs—Complete additional medical education specific to the evaluation of child abuse conditions and complete a preceptorship if not already proficient in how to use a colposcope

Note that many NPs choose to complete SANE training even if it is not required with their advanced degree.

- iii. MDs/Dos-- Complete additional medical education specific to the evaluation of child abuse conditions if not already trained as a Child Abuse Pediatrician and complete a preceptorship if not already proficient in how to use a colposcope

Note that some MDs/DOs will choose to complete SANE training, but they would not carry the SANE title since they are not a nurse by profession.

SANE-P is copyrighted title for nurse who have achieved certification through the International Association of Forensic Nurses. The non-copyrighted title for a nurse who has had completed training in this area of practice would be just SANE or with the designation of specific age group trained on as a leading qualifier:

- A-SANE = Adult-SANE
- P-SANE = Pediatric SANE

- A/P-SANE = Adult and Pediatric SANE

RESPONSE: Thank you for the explanation. However, this rule will allow the enrolling of providers based on knowledge, training, and skillset. DHS does not have the technical expertise to independently evaluate the training, skills and experience outlined in your comments. DHS requires an independent evaluation/certification of the prerequisite training and skills. The IAFN certification meets this need.

2. Section 203.801:

203.801—C Certification by a national forensic nursing group (such as the International Association of Forensic Nurses=IAFN) is not required by the National Children’s Alliance that sets standards for minimum requirements needed of medical providers involved in the care of victims of physical abuse, sexual abuse or neglect being cared for in a CAC setting.

The IAFN is not the only source of forensic nurse training in the country.

RESPONSE: In review of the requirements, it appeared the IAFN was the best independent certifying body for the training and continuing education of RN-SANE nurses (APRN and RN).

3. The AR State Nursing Board does not maintain a credentialing verification process for nurses in the state who have voluntarily pursued forensic nurse certification as the AR State Medical Board does for physicians and/or nurse practitioners who are certified by a national board of medical care standards. So, if certification is required by the Rule, who would be responsible for ensuring the authenticity and currency of SANE certification status? **RESPONSE:** This would be collected and monitored as part of the RN-SANE enrollment and eligibility checks in Arkansas Medicaid. Providers are responsible for maintaining the documentation which must be kept current with Arkansas Medicaid. If it is not kept up to date, the provider’s enrollment will be terminated.

4. 203.801—D Physicians and Nurse Practitioners are Medicaid eligible providers. Is the Rule suggesting that RN-SANEs would be eligible to be enrolled as Medicaid providers even though they do not have a pathway to be considered practitioners by the AR State Medical Board?

RESPONSE: The rule will allow RN-SANE nurses to enroll as rendering Medicaid Providers only. SANE Nurses are not allowed to enroll as billing (pay-to) providers for services. The billing (pay-to) provider must be an actively enrolled Childhood Advocacy Center that operates under the medical direction of an enrolled physician.

5. Section 203.400: Clarification on role of the physician and nurse practitioner is needed when the sexual abuse evaluation is being conducted by an RN-SANE

Will the RN-SANE be eligible to bill Medicaid by acting on an order from a physician or nurse practitioner for an evaluation specific to child sexual abuse/assault without an advanced practice provider (physician or nurse practitioner enrolled as a Medicaid provider) being physically onsite at the time that the exam occurs? Similar question as #1 on Section 203.801 above.

RESPONSE: The RN-SANE may render services under standing orders for a sexual assault medical examination from a physician or nurse practitioner without a nurse practitioner or physician present when this service is rendered. However, RN-SANE nurses will not be able to serve as a billing provider. The billing provider is the Childhood Advocacy Center.

6. 203.400-A This section omits Nurse Practitioners as eligible for serving as medical directors of a CAC. **RESPONSE:** Medical Directors for CACs must be a Medicaid enrolled physician or advanced practice registered nurse for Medicaid to reimburse for covered services. The relevant sections of the affected manuals will be amended.

7. 203.400-C Is a medical director required to be physically onsite to supervise an RN-SANE conducting a medical evaluation for suspected sexual abuse under the order of a physician or nurse practitioner?

RESPONSE: No.

8. 203.400-D This section omits Nurse Practitioners as eligible providers for sexual assault medical evaluations. **RESPONSE:** Nurse practitioners may provide sexual assault medical evaluations. They are not required to have the SANE-P certification. The relevant sections of the affected manual will be amended.

9. Section 203.401 See comments and questions above for Section 203.801 as this is a duplicate section with same concerns. **RESPONSE:** This would be collected and monitored as part of the RN-SANE enrollment and eligibility checks in Arkansas Medicaid. Providers are responsible for maintaining the documentation which must be kept current with Arkansas Medicaid. If it is not kept up to date, the provider's enrollment will be terminated.

10. Is the intent of the Rule to require CAC to bill Medicaid, or does this just permit CACs to bill? Can vs must. **RESPONSE:** Individual CACs may choose whether to apply to enroll and bill Medicaid for covered services. There is no requirement that they must do so.

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 cost to implement this rule is \$234,860 for the current fiscal year (\$65,761 in general revenue and \$169,099 in federal funds) and \$939,439 for the next fiscal year (\$263,043 in general revenue and \$676,396 in federal funds). The total estimated cost to state, county, or municipal government to implement this rule is \$65,761 for the current fiscal year and \$263,043 for the next fiscal year.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

(1) a statement of the rule's basis and purpose;

Beginning April 1, 2024, Medicaid is implementing coverage and reimbursement of medical evaluation for suspected sexual abuse by Pediatric Sexual Assault Nurse Examiner (SANE) when performed in Children's Advocacy Centers (CACs). Children's Advocacy Centers may also provide assessments for other forms of suspected physical maltreatment when completed by a physician or advanced practice nurse practitioner. Medicaid funding will help CACs to fund ongoing services and support sustainability as other funding sources are redirected or depleted in the coming years.

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

This service will benefit communities and the state by providing non-acute evaluations by specially trained and certified registered nurses to Medicaid-eligible children and youth in a less intimidating setting.

(3) a description of the factual evidence that:

(a) justifies the agency's need for the proposed rule; and

(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

N/A

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

N/A

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

N/A

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

N/A

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

The Agency monitors State and Federal rules and policies for opportunities to reduce and control cost.

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).

11. **DEPARTMENT OF LABOR AND LICENSING, ARKANSAS
MANUFACTURED HOME COMMISSION** (Aaron Howard, Lacie
Kirchner)

a. **SUBJECT: Rules Including General Installation & Anchoring
Specifications**

DESCRIPTION: The proposed rule changes will bring the existing rule into conformance with the applicable requirements set forth by Act 391 of 2023. In accordance with Act 391, the proposed rule changes adjust the civil penalties to meet State Plan requirements for federal funding and provide for future per violation and per year maximums to be the inflation-adjusted amount, as adopted at a regular meeting of the Commission based upon the recommendation of the Director of the Commission and posted on the Commission's website. Section 306(A)(2) also implements Act 391's clarification that a civil penalty is not abated by a subsequent suspension, revocation, surrender, or failure or refusal to renew a license.

PUBLIC COMMENT: A public hearing was held in this matter. The public comment period expired on March 6, 2024. 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.

LEGAL AUTHORIZATION: The Arkansas Manufactured Home Commission by rule shall set uniform, reasonable standards for the proper: initial installation of new manufactured homes installed in this state, which shall equal or exceed installation standards promulgated under the federal standards, and secondary installation of used manufactured homes installed in this state. The commission by rule shall set the requirements for and require: (A) Licensing and certification of manufacturers of manufactured homes or modular homes in this state and manufacturers of manufactured homes or modular homes in other states selling them in this state; (B) Licensing and certification of any retailer, salesperson, and others engaged in the sale of manufactured homes or modular homes for sale in this state; and (C) Licensing, training, and certification of any installer engaged in the installation of manufactured homes or modular homes in this state. *See* Ark. Code Ann. § 20-25-106(a).

Further, the commission shall by rule establish procedures for the investigation and timely resolution of: (A) Construction or installation defects in manufactured homes that are reported to the commission during the one-year period beginning on the date of installation of the

manufactured home, including violations of the federal standards and violations of the rules governing the installation of manufactured homes promulgated by the commission; and (B) Disputes among manufacturers, retailers, and installers of manufactured homes regarding responsibility for the correction or repair of construction or installation defects in manufactured homes that are reported to the commission during the one-year period beginning on the date of installation of the manufactured home. *See* Ark. Code Ann. § 20-25-106(c)(1). The commission shall by rule establish procedures for the timely inspection and certification of a percentage of the initial installations of new manufactured homes installed in the state on a sample basis to assure compliance with installation standards adopted by the commission and to comply with requirements set forth by the United States Department of Housing and Urban Development. *See* Ark. Code Ann. § 20-25-106(c)(2).

Concerning penalties, whoever violates any provision of Section 610 of Title VI of Pub. L. No. 93-383 or any regulation or final order issued pursuant to it shall be liable to the State of Arkansas for a civil penalty established by the rules promulgated by the Arkansas Manufactured Home Commission and approved by the General Assembly. *See* Ark. Code Ann. § 20-25-104(c)(1)(A).

Concerning the authority of the Arkansas Manufactured Home Commission to impose a monetary penalty in lieu of other disciplinary action, the penalty shall not be abated by a subsequent surrender, suspension, failure or refusal to renew a license, or revocation of the license or certification. *See* Ark. Code Ann. § 20-25-106(g)(2)(B). In addition, no monetary penalty imposed by the commission shall exceed the penalty established by the rules promulgated by the commission and approved by the General Assembly. *See* Ark. Code Ann. § 20-25-106(g)(3)(A).

This rule implements Act 391 of 2023, sponsored by Senator Missy Irvin, which amended the law concerning the Arkansas Manufactured Home Commission and required civil penalties assessed by the Arkansas Manufactured Home Commission to be established by rule.

12. DEPARTMENT OF LABOR AND LICENSING, PROFESSIONAL BAIL BOND COMPANY AND PROFESSIONAL BAIL BONDSMAN LICENSING BOARD (Randy Murray, Lacie Kirchner)

a. SUBJECT: Professional Bail Bond Company and Professional Bail Bondsman Licensing Board Rules

DESCRIPTION: The purpose and necessity of the proposed amendments are to:

- (1) Conform to Section 238 of Act 659 of 2023, the Protect Arkansas Act, to require that prior to an arrestee's release: (A) The full 10% of premium or compensation is deposited in full; and (B) If property is deposited, appropriate documentation is submitted to the court verifying the value of the property deposited and that title to the property has been transferred to the surety;
- (2) Revise the appropriate form (Appendix A) accordingly; and
- (3) Make technical and grammatical changes for clarification and to conform to the style of the Code on Arkansas Rules and BLR drafting manual.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 6, 2024. 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 Professional Bail Bond Company and Professional Bail Bondsman Licensing Board shall adopt such reasonable rules as it shall deem necessary to assure the effective and efficient administration of Ark. Code Ann. § 17-19-107 (Exception to Education Requirements), § 17-19-212 (Licenses), and § 17-19-401 *et seq.* (Continuing Education Program). *See* Ark. Code Ann. § 17-19-108.

The amended rule implements Act 659 of 2023, sponsored by Senator Ben Gilmore, which created the Protect Arkansas Act; amended Arkansas law concerning sentencing and parole, certain criminal offenses, and the parole board; and created the Legislative Recidivism Reduction Task Force.

13. **DEPARTMENT OF THE MILITARY** (Brigadier General Michael Henderson, Jeff Wood)

a. **SUBJECT:** The Joint Enlistment Enhancement Program (JEEP) for the Arkansas National Guard

DESCRIPTION: The Department of the Military proposes its Joint Enlistment Enhancement Program (JEEP) for the Arkansas National Guard. The Joint Enlistment Enhancement Program (JEEP) is a new rule proposed by the Arkansas Department of the Military. The rule will aid in recruitment and enlistment efforts of the Arkansas National Guard by providing monetary incentives for successful referrals. The JEEP budget is \$500,000, all of which will come from the Department of Military's

cash funds. The JEEP program will not require any new money be appropriated.

Following the public comment period, the agency indicates that the following changes were made:

- changed all wording of “regulation” to “rule”, specially four (4) changes on Page 2 of the draft.
- labeled “DCSPER” as Deputy Chief of Staff Personnel (DCSPER) on Page 7; labeled “HRO” as Human Resource Officer (HRO) on Page 7; and labeled “DOTM” as the Department of the Military (DOTM) on page 5.

PUBLIC COMMENT: A public hearing was held on March 21, 2024. The public comment period expired on April 7, 2024. The agency indicated that it received no public comments.

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

1) Did the Department intend for the proposed rule to refer to “regulation” as opposed to “rule”, in light of Act 315 of 2019, § 921? **RESPONSE:** We agree with Mr. Kearney’s suggested change to be compliant under Act 315 of 2019, § 921. The agency has made all changes to the proposed rule by changing all wording of “regulation” to “rule”, specially four (4) changes on Page 2 of the draft.

2) Did the Department intend to leave the acronyms “DCSPER”, “HRO” and “DOTM” undefined within the proposed rule? **RESPONSE:** We agree with Mr. Kearney’s suggested change to properly label the different agency’s acronyms to reduce confusion by the public with the acronym after for classification for the rest of the rule. We properly labeled “DCSPER” as Deputy Chief of Staff Personnel (DCSPER) on Page 7. We properly labeled “HRO” as Human Resource Officer (HRO) on Page 7. We properly labeled “DOTM” as the Department of the Military (DOTM) on page 5.

FINANCIAL IMPACT: The agency has indicated that the rule does have a financial impact.

Per the agency, the total estimated cost to implement the rule is \$500,000 for the current fiscal year (\$500,000 in cash funds) and \$500,000 for the next fiscal year (\$500,000 in cash funds). There will be no additional costs to the State. There will be no costs to any private individual, private entity, or private business. There will be no costs to a state, county, or municipal government. The Department of the Military will fund this program through its cash fund which has already been appropriated. The

budget for the program is \$500,000, which will all come from the Department's cash funds.

LEGAL AUTHORIZATION: For the purpose of effectively carrying out the terms of the Arkansas Code, the Adjutant General shall have the power to prescribe such rules as he or she may from time to time deem necessary. *See* Ark. Code Ann. § 12-61-106(o).

14. DEPARTMENT OF TRANSFORMATION AND SHARED SERVICES, EMPLOYEE BENEFITS DIVISION (Grant Wallace)

a. SUBJECT: Rules Governing Voluntary Products

DESCRIPTION: Act 533 of 2023 transferred the implementation and day-to-day management of voluntary products for eligible state employees from the Department of Transformation and Shared Services, Employee Benefits Division (“EBD”) to the Arkansas State Employees Association, Inc. (“ARSEA”). The Act requires ARSEA to develop and administer a cafeteria plan for voluntary products for eligible state employees with all contracts being acquired by sealed, competitive bid. Ark. Code Ann. § 21-5-905 authorizes EBD to promulgate rules to administer Act 533 of 2023.

The rules require ARSEA to provide EBD with a report on the competitive bid process, including the procedure followed and selection process. ARSEA shall present all new contracts and amendments to the State Board of Finance and Employee Benefits Oversight Subcommittee of the Arkansas Legislative Council. Any material changes shall also be reported.

To ensure continuity of services to eligible state employees, ARSEA and EBD shall meet quarterly and coordinate on issues regarding billing, employee management, record keeping, and information sharing. Any disputes between ARSEA and EBD shall be brought to the State Board of Finance. These matters shall not be subject to the Administrative Procedure Act, Ark. Code Ann. § 25-15-201 et seq.

ARSEA shall submit semiannual report to the Employee Benefits Oversight Subcommittee of the Arkansas Legislative Council with a summary of the voluntary products offered, including the contract, pricing, number of participants, and a financial analysis for each offering including premiums and additional expenses and fees, if any.

Changes made as a result of the public comment period:

- Non substantive change made to Section 4.01 – Removed code reference to avoid confusion with similar defined term.

PUBLIC COMMENT: A public hearing was held on this rule on February 13, 2024. The public comment period expired on March 4, 2024. The agency provided the following public comment summary:

Comments Sent by Email

Commenter's Name: Derrick Smith, Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. on behalf of American Fidelity Assurance Company

COMMENT: We are submitting this letter on behalf of our client, American Fidelity Assurance Company (“American Fidelity”). American Fidelity appreciates the opportunity to provide comments regarding the Department of Transformation and Shared Services Employee Benefits Divisions Rules Governing Voluntary Products (“Proposed Rule”). American Fidelity is an Oklahoma insurance company that has worked with school districts for over 60 years. In Arkansas, American Fidelity works with school districts to provide life and supplemental benefits products. American Fidelity is concerned that the Proposed Rule could be read to apply to voluntary products provided to employees of public schools in addition to state employees. In that regard, American Fidelity requests that the Proposed Rule be revised to clearly state that it is only applicable to voluntary products offered to state employees. Under Arkansas law, the Director of the Employee Benefits Division (“EBD”) has administrative responsibility for developing, implementing, and maintaining cafeteria plans on behalf of state employees. Historically, the Arkansas State Employees Association has administered the cafeteria plan for voluntary products on behalf of state employees. In 2023, the Arkansas General Assembly memorialized this historical practice by requiring the Arkansas State Employees Association to develop and administer a cafeteria plan for voluntary products on behalf of eligible state employees or contract with a designee to develop and administer a cafeteria plan for voluntary products on behalf of eligible state employees. Notably, however, Act 533 also made clear that the Director’s historical authority to supervise the implementation and day-to-day management of employee benefits for state and public school employees did not extend to voluntary products or insurance procured by independent school districts for public school employees.

According to the Proposed Rule, its purpose is to implement Ark. Code Ann. § 21-5-905 regarding the administration of voluntary products on behalf of state employees. Although the EBD Director has indicated in public comments that the Proposed Rule is intended to only be applicable to voluntary products provided to state employees and is not intended to impact voluntary products marketed to public school employees, our principal concern is that the language of the Proposed Rule is not as clear.

Specifically, section 4.1 of the Proposed Rule states: All state employees who are eligible under Ark. Code Ann. § 21-5-901 shall be offered the opportunity to participate in a cafeteria plan for voluntary products during their new hire eligibility period and during open enrollment. Under § 21-5-901, an “eligible employee” is defined to mean “full time employees of governmental entities.” “Governmental entities” are subsequently defined to include “any agency of the state, any city, any county, any school district, or any other political subdivision of the state.” By referencing § 21-5-901, the Proposed Rule as currently written could be read to include employees of school districts. American Fidelity respectfully requests that the Proposed Rule be revised to clarify its singular applicability to voluntary products sold to state employees. Specifically, American Fidelity proposes that the title of the Proposed Rule, as well as Sections 1.01, 2.0, and 4.0, be revised to clearly state its applicability to voluntary products sold to state employees. American Fidelity also proposes that the statutory reference in Section 4.1 be changed to Ark. Code Ann. § 21-5-904 as that is the statute the Proposed Rule is intended to implement. A redline of the Proposed Rule with the suggested revisions is included for reference. Because these suggested revisions are consistent with the stated purposes of the Proposed Rule, we believe that the Department may make these revisions without a new public comment period. According to the Administrative Procedures Act (“APA”), an agency is to fully consider all written and oral submission respecting a proposed rule before finalizing the language of the proposed rule and filing it with the Arkansas Secretary of State and Arkansas Legislative Council. The APA clearly contemplates that a proposed rule may be revised during the promulgation process without requiring an additional public comment period. An Arkansas Attorney General’s Opinion has expressly adopted the view that “the mere fact that proposed regulations are modified during the public comment period does not automatically require an additional ‘notice and public comment period’ prior to the final adoption of the regulation.” The opinion further states: It has been stated that informed changes and distinctions are the very *raison d’etre* of the notice-and-comment period. This principle is recognized in Act 406 of 1997 which amended § 25-15-204(a)(2) by adding the phrase “the agency shall fully consider all written and oral submissions respecting the proposed rule before finalizing the language of the proposed rule.” Further, it has been recognized that if a final rule could not differ from a proposed rule without a new round of notice and comment, it would result in the absurdity that in rule making under the APA the agency could learn from comments on its proposals only at the peril of starting a new procedural round of commentary. See Annotation, What Constitutes Adequate Notice of Federal Agency Rule as against Objection that Rule Adopted Differed in Substance from that Published as Proposed in Notice, 96 A.L.R. Fed. 411 (1990); *Tenn. Envtl. Council v. Solid Waste Disposal Control Bd.*, 852 S.W.2d 893 (Tenn. Ct. App. 1992) (unreasonable and

inefficient to require an agency to publish the exact text of a proposed rule in order to obtain public reaction thereto and then require a republication and rehearing for every alteration made before final adoption). Although no Arkansas case law has addressed the issue, federal courts have generally cited two tests when considering whether a final rule is so different from a proposed rule that a new notice and comment period is required. A new notice and comment period is not required if: 1. The final rule is in character with the original scheme and was a logical outgrowth of the notice and comments stemming from the proposed rule, or 2. the notice fairly apprised interested persons of the subject and the issues that would be considered so that those persons had an opportunity to comment. While no Arkansas case law has considered these tests, no fewer than nine Arkansas state agencies have adopted rules of procedure (with Arkansas General Assembly's review) that adopt these tests. Clearly, Arkansas permits an agency to make some modifications to a proposed rule during the public comment period without requiring an additional notice and public comment period. In this instance, although the satisfaction of one test is sufficient, both tests for concluding that an additional public comment period is not required have been met. First, the proposed modifications do not change the publicly stated character of the rule to regulate the provision of voluntary products to state employees. The proposed modifications merely clarify that the rule only regulates the provision of voluntary products to state employees and does not regulate the provision of voluntary products to public school employees. Second, the notice described a proposed rule applicable to voluntary products. Any state or public school employee purchasing a voluntary product and any entity marketing such products was sufficiently notified of the items to be considered.

**Per the agency, footnotes were removed in this document for ease of reading.*

RESPONSE: Comment considered; non-substantive change made to remove reference to definition in Ark. Code Ann. § 21-5-901.

Commenter's Name: Derrick Smith, Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. on behalf of USABLE Life

COMMENT: We are submitting this letter on behalf of our client, USABLE Life. USABLE Life appreciates the opportunity to provide comments regarding the Department of Transformation and Shared Services Employee Benefits Divisions Rules Governing Voluntary Products ("Proposed Rules"). USABLE Life is an Arkansas domestic life and health insurer based in Little Rock, Arkansas and is the 20th largest life insurer in the United States. USABLE Life is ranked in the top 10 of the supplemental, life, and disability in the markets that it serves. USABLE Life

does not currently provide group voluntary products to Arkansas state employees. Therefore, USABLE Life does not have any comments regarding the Proposed Rule's application to state employees. However, USABLE Life does provide voluntary group products to independent school districts throughout the State of Arkansas. As such, USABLE Life is primarily concerned with the potential applicability of the Proposed Rule to voluntary group products provided to employees of public school employees. In that regard, USABLE Life requests that the Proposed Rule clearly state that it is only applicable to voluntary products offered to state employees. Under Arkansas law, the Director of the Employee Benefits Division ("EBD") has administrative responsibility for developing, implementing, and maintaining cafeteria plans on behalf of state employees.¹ Historically, the Arkansas State Employees Association has administered the cafeteria plan for voluntary products on behalf of state employees. In 2023, the Arkansas General Assembly memorialized this historical practice by requiring the Arkansas State Employees Association to develop and administer a cafeteria plan for voluntary products on behalf of eligible state employees or contract with a designee to develop and administer a cafeteria plan for voluntary products on behalf of eligible state employees. Notably, however, Act 533 also made clear that the Director's historical authority to supervise the implementation and day-to-day management of employee benefits for state and public school employees did not extend to voluntary products or insurance procured by independent school districts for public school employees. According to the Proposed Rule, its purpose is to implement Ark. Code Ann. § 21-5-905 regarding the administration of voluntary products on behalf of state employees. Although the EBD Director has indicated in public comments that the Proposed Rule is intended to only be applicable to voluntary products provided to state employees and is not intended to impact voluntary products marketed to public school employees, our principal concern is that the language of the Proposed Rule is not as clear. Specifically, section 4.1 of the Proposed Rule states: All state employees who are eligible under Ark. Code Ann. § 21-5-901 shall be offered the opportunity to participate in a cafeteria plan for voluntary products during their new hire eligibility period and during open enrollment. Under § 21-5-901, an "eligible employee" is defined to mean "full time employees of governmental entities." "Governmental entities" are subsequently defined to include "any agency of the state, any city, any county, any school district, or any other political subdivision of the state." By referencing § 21-5-901, the Proposed Rule as currently written could be read to include employees of school districts. USABLE Life respectfully requests that the Proposed Rule be revised to clarify its singular applicability to voluntary products sold to state employees. Specifically, USABLE Life proposes that the title of the Proposed Rule, as well as Sections 1.01, 2.0, and 4.0, be revised to clearly state its applicability to voluntary products sold to state employees. USABLE Life also proposes that Section 4.1 be

amended to explicitly exclude public school employees. A redline of the Proposed Rule with the suggested revisions is included for reference. Because these suggested revisions are consistent with the stated purposes of the Proposed Rule, we believe that the Department may make these revisions without a new public comment period. According to the Administrative Procedures Act (“APA”), an agency is to fully consider all written and oral submission respecting a proposed rule before finalizing the language of the proposed rule and filing it with the Arkansas Secretary of State and Arkansas Legislative Council. The APA clearly contemplates that a proposed rule may be revised during the promulgation process without requiring an additional public comment period. An Arkansas Attorney General’s Opinion has expressly adopted the view that “the mere fact that proposed regulations are modified during the public comment period does not automatically require an additional ‘notice and public comment period’ prior to the final adoption of the regulation.” The opinion further states: It has been stated that informed changes and distinctions are the very *raison d’etre* of the notice-and-comment period. See Rybachek, *supra*. This principle is recognized in Act 406 of 1997 which amended § 25-15-204(a)(2) by adding the phrase “the agency shall fully consider all written and oral submissions respecting the proposed rule before finalizing the language of the proposed rule.” Further, it has been recognized that if a final rule could not differ from a proposed rule without a new round of notice and comment, it would result in the absurdity that in rule making under the APA the agency could learn from comments on its proposals only at the peril of starting a new procedural round of commentary. See Annotation, What Constitutes Adequate Notice of Federal Agency Rule as against Objection that Rule Adopted Differed in Substance from that Published as Proposed in Notice, 96 A.L.R. Fed. 411 (1990); *Tenn. Env’tl. Council v. Solid Waste Disposal Control Bd.*, 852 S.W.2d 893 (Tenn. Ct. App. 1992) (unreasonable and inefficient to require an agency to publish the exact text of a proposed rule in order to obtain public reaction thereto and then require a republication and rehearing for every alteration made before final adoption) Although no Arkansas case law has addressed the issue, federal courts have generally cited two tests when considering whether a final rule is so different from a proposed rule that a new notice and comment period is required. A new notice and comment period is not required if: 1. the final rule is in character with the original scheme and was a logical outgrowth of the notice and comments stemming from the proposed rule, or 2. the notice fairly apprised interested persons of the subject and the issues that would be considered so that those persons had an opportunity to comment. While no Arkansas case law has considered these tests, no fewer than nine Arkansas state agencies have adopted rules of procedure (with Arkansas General Assembly’s review) that adopt these tests.

Clearly, Arkansas permits an agency to make some modifications to a proposed rule during the public comment period without requiring an additional notice and public comment period. In this instance, although the satisfaction of one test is sufficient, both tests for concluding that an additional public comment period is not required have been met. First, the proposed modifications do not change the publicly stated character of the rule to regulate the provision of voluntary products to state employees. The proposed modifications merely clarify that the rule only regulates the provision of voluntary products to state employees and does not regulate the provision of voluntary products to public school employees. Second, the notice described a proposed rule applicable to voluntary products. Any state or public school employee purchasing a voluntary product and any entity marketing such products was sufficiently notified of the items to be considered.

**Per the agency, footnotes were removed in this document for ease of reading.*

RESPONSE: Comment considered; non-substantive change made to remove reference to definition in Ark. Code Ann. § 21-5-901.

Commenter's Name: John Starline – JTS Commenting on Behalf of Educational Benefits, Inc. (EBi)

COMMENT: Thank you for the opportunity to provide comments on the Department of Transformation and Shared Services Employee Benefits Divisions Rules Governing Voluntary Products (“Proposed Rules”). I am commenting on behalf of Educational Benefits, Inc. (“EBi”), an independently owned brokerage service based in Little Rock, Arkansas. The company has more than 40 years’ experience providing custom voluntary benefit solutions to educators, and we serve 151 school districts throughout the state. We provide flexible spending account administration, cafeteria plan documentation, enrollment solutions, and state of the art technology platform without any cost to our public-school clients. We can provide these services because we have invested in a team of over 200 employees, most of whom reside in the State of Arkansas.

According to the Proposed Rule, its purpose is to implement Ark . Code Ann. § 21-5-905 regarding the administration of voluntary products. The Director of the Employee Benefits Division (“EBD”) has publicly stated the Proposed Rule is intended to only apply to voluntary products provided to state employees and is not intended to impact voluntary products for public school employees. However, EBi is concerned that the language of the Proposed Rule does not make this distinction clear. Section 4.01 of the Proposed Rule states:

All state employees who are eligible under Ark. Code Ann. § 21-5-901 shall be offered the opportunity to participate in a cafeteria plan for voluntary products during their new hire eligibility period and during open enrollment.

“Eligible employee” is defined in § 21-5-901 as “full-time employees of governmental entities. That subchapter goes on to define “governmental entities” as “any agency of the state, any city, any county, any school district, or any other political subdivision of the state.” Therefore, as written, the Proposed Rule’s reference to § 21-5-901 could be read to include employees of school districts.

EBi respectfully requests that the Proposed Rule be revised to make clear that it only applies to voluntary products sold to state employees. Attached are proposed revisions for your consideration. EBi proposes that the title of the Proposed Rule, along with Sections 1.01, 2.0, and 4.02 be revised to clearly state the rule applies only to the voluntary products sold to state employees. EBi also proposes amending Section 4.01 to explicitly exclude public school employees. These revisions remain consistent with the stated purpose of the Proposed Rule, and therefore, we believe that the changes may be made without requiring a new public comment period. The Administrative Procedures Act (“APA”) clearly allows changes within the rulemaking process, since it instructs agencies to “fully consider” comments before finalizing language of a proposed rule. Furthermore, an Arkansas Attorney General’s Opinion states, “The mere fact that proposed regulations are modified during the public comment period does not automatically require an additional ‘notice and comment period’ prior to the final adoption of the regulation.” Merely clarifying the language of the proposed rule would not change the character or purpose of the rule, and would not require an additional public comment period. We appreciate your consideration of these comments. We are happy to discuss further, if helpful.

**Per the agency, footnotes were removed in this document for ease of reading.*

RESPONSE: Comment considered; non-substantive change made to remove reference to definition in Ark. Code Ann. § 21-5-901.

Comments Made During Public Hearing

Commenter’s Name: Derrick Smith, Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. on behalf of American Fidelity Assurance Company

COMMENT: I’ve authorized to speak on their behalf. First, let me thank you for the opportunity to make some public comments. On as proposed

rules governing voluntary products and I will supplement the comments with the written suggestions before the deadline is submitted. Those American Fidelity is an Oklahoma insurance company that's been working with school districts for over 60 years. In Arkansas, American Fidelity Works with school districts to provide life and supplemental benefits products, and it's in that regard that American Fidelity had its initial concerns in reviewing the draft. The concern is primarily assuring that the voluntary products that will be subject to this rule are limited to those voluntary products sold to state employees only and does not implicate a voluntary product sold to school district employees. I think when the statute or when the bill was passed, that is the genesis of this rule, the bill took steps in a couple of instances to make sure that it's clear that the voluntary products that are subject work that are the reason for this rule are offered to state employees only and not products sold to public school employees procured by school districts. The reason? The primary reason that this bill raised some concern is the reference in section 4.01 to all state employees who are eligible under our code section 21-5-901. That provision of the code doesn't really define state employees. It defines eligible employees who are employees of governmental entities, and the definition of governmental entities in that section speaks to employees of any agency of the state, any city, any county, any school district or any other political subdivision of the state. So with this reference, we think that there could be some confusion in viewing the rule of that it applies to public school employees as well. We think that the rule can be clarified simply by adding references throughout the draft rule, clearly stating its applicability to voluntary products sold to state employees. For instance, couple of words could be added to sections 1.01, 2.0 and 4.0 as well as an amendment to that statutory reference. Because we think these suggestions are consistent with the underlying statutes as well as the publicly stated purposes of the rule, but we do not believe these revisions are the type that are substantive and would require notice or a review and could be filed with the legislature.

RESPONSE: Comment considered; non-substantive change made to remove reference to definition in Ark. Code Ann. § 21-5-901.

Commenter's Name: Julie Marshall, executive vice president for USAble Life

COMMENT: I have been for several years. For those of you who don't know, USAble, we're an Arkansas insurance company. We're domiciled here. Our headquarters is out on Chenal Parkway. And we've provided insurance coverage here in Arkansas to the public school employees for about 40 years.

And so we are an in state employer and we've been designated as one of the best places to work in Arkansas since 2016. So we're very proud of our company, our heritage more so is how we have provided benefits to the public school employees for so many years. And although EBD has provided major medical coverage for public school employees, Independent School districts, the public schools have for a long time arranged for their own voluntary products. It's I can remember it for 40 years, so it's probably a lot longer than that. But they have had that right. And that was even further clarified in state law in 2015 that declare that schools could do that could choose their benefits. As the rate stands today, or as the rules stand today. We don't have any concern about the state employees. It's into the clarification of what are public school employees allowed to do?

And while we've heard many people say that the proposed rule is intended to apply to voluntary product, so to state employees. It's not intended to apply to voluntary products sold to public school employees. Still little ambiguous. And so that's, that's where we ask for clarification and we don't believe any clarification would be substantive. We're just asking for that clarification and then 4.01, as Mr. Smith referenced. It talks about all state employees. And so what we would ask and we will put this in writing. Follow up from our I think our CEO will sign our letter, but it's to some language that makes it clear that this doesn't refer to the public school employees, but rather the state employees. So we appreciate the time to make the comments. And we will follow the process and would like clarification.

RESPONSE: Comment considered; non-substantive change made to remove reference to definition in Ark. Code Ann. § 21-5-901.

Commenter's Name: John Starline – JTS Commenting on Behalf of Educational Benefits, Inc. (EBi)

COMMENT: There are two insurance companies present. We're a broker in the school market. We have been in the school market for 40 years. We currently represent the majority of the school districts in the state. And with those school districts, we provide technology platforms to manage eligibility. We do the enrollments with our own enrollers we provide products on a very much competitively bid basis every single year. And we compete against not only insurance carriers but also other brokers in our markets, which bring the pricing to bear very competitively competitive pricing to save our employees and school districts a lot of money. In fact, over the years since, we have been in this business and gone out and bid these products with both carriers in front of us. But other carriers, we've saved millions of dollars for the school district employees and our efforts to be. At this point, at this juncture, I'm here to talk about.

The bill that's been passed to Act 533 was House Bill 1160, I believe, and in that bill, we clarified, or at least my understanding was there was clarification in reference to code section 6-17-1115. That code section clearly established that public school employees are independent and make an independent. As to who their insurance brokers are, the reason I'm here, the bill itself as written. I believe can be interpreted to – to exclude public school employees and only include – include state employees. The problem that I aspire see is this is not the first time I've been here. This is about the 4th time that I've been here to try to clarify some of the ambiguities. The broker that was selected 10 years ago to take over the state benefits, and whoever is the followed after that affiliates, whatever it may be, there seems to be a continuous ambiguity as to who is supposed to be doing state employees and who's done public school employees. And that's when 6-17-1115 came and clarified. That and that is referenced in Acts 533 four different times. To clarify that. And so I think at this point what we want to do is to avoid any more ambiguity – make this clear and simple so that the school districts know what they what they have the right to do and the state employees have their rights too. So at this point, the first thing is I want to say, Director Wallace, we want to appreciate you for referencing the fact that this specifically doesn't include school employees in your in your video conference. So recognizing that fact, we just want to make sure that it's clear that that is the intent and that is what we're going to do. And I think that in all things. Trying to make that or effectuate that as best as we can. If we could put in some – some language as – as Derek said, and as Julie said, I believe it's in four.

I'm a recovering attorney, not a practicing attorney. I don't really know all of those things, but what I do know is just a little clarification. If it's not substantive. To not include it. I don't see where it would be a substantive change to include it to where you specifically included that we exclude public school employees and let them have their own right to make their independent choice to go to their own providers, to procure their benefits at a better price.

RESPONSE: Comment considered; non-substantive change made to remove reference to definition in Ark. Code Ann. § 21-5-901.

Commenter's Name: Sharon Chuculate, Arkansas Association of Educational Administrators

COMMENT: It's gonna sound like we're beating a dead horse, but I'm just here to say that there is some confusion amongst our public school administrators. 21-5-901 does include public schools as the governmental entity, and I think that there is some concern that districts would lose their lot to choose their provider.

And I understand from conversations, again with EBD and Director Wallace, it's absolutely not intended to address public school employees, but we feel like even if you excluded under ACH, 21-5-901 and 4.01, that might make it a little more clear to the public schools.

Now say that within the law, and that is our comment.

RESPONSE: Comment considered; non-substantive change made to remove reference to definition in Ark. Code Ann. § 21-5-901.

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

Q. The rules provide that disputes between ARSEA and EBD shall be exempt from the Administrative Procedure Act. Is there statutory authority for this exemption, or does it come from somewhere else? **RESPONSE:** No, there is nothing in the law regarding disputes at all which is why we wanted to add something about dispute resolution into the rule. But we did not want it to become a full administrative hearing on disputes which is why that language was added.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: “The Employee Benefits Division shall promulgate rules to administer” Title 21, Chapter 5, Subchapter 9 of the Arkansas Code, regarding cafeteria plans. Ark. Code Ann. § 21-5-905.

This rule implements Act 533 of 2023. The Act, sponsored by Representative Jeff Wardlaw, regulated compensation and benefits of public officers and employees, defined voluntary products, clarified supervision of voluntary products offered to participants in the State and Public Life and Health Insurance Program, and amended the administration of cafeteria plans for certain public officers and employees. Uncodified language in the Act required the Employee Benefits Division to promulgate rules necessary to implement the Act and provided that the final rule shall be filed with the Secretary of State for adoption on or before January 1, 2024. *See* Act 533, § 12.

15. **DEPARTMENT OF TRANSFORMATION AND SHARED SERVICES,
OFFICE OF STATE PROCUREMENT (Jessica Patterson)**

a. **SUBJECT: R7 19-11-217 Direct Contract Negotiation**

DESCRIPTION: Act 556 of 2023 is an innovation in Arkansas Procurement Law. This rule will help clarify the extent of its reach. We want to make it clear that the state will have the authority to enter into contracts with suppliers who are commonly recognized as retailers as well as those who have contracts that are listed on the federal GSA contract schedule and/or who have contracts with other states or other public procurement units.

The proposed rule:

- Clarifies the extent of authority that the State Procurement Director has under Act 556; and
- Presents examples of what is permissible under Act 556.

PUBLIC COMMENT: A public hearing was held on this rule on February 26, 2024. The public comment period expired on February 27, 2024. The agency indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Procurement Director has authority to promulgate rules consistent with Arkansas Procurement Law. Ark. Code Ann. § 19-11-217(b)(1). This rule implements Act 556 of 2023. The Act, sponsored by Representative Jeff Wardlaw, amends the powers and duties of the State Procurement Director and authorizes the State Procurement Director to enter into nonmandatory state contracts in certain circumstances.

16. **STATE BOARD OF ELECTION COMMISSIONERS (Chris Madison,
Waylan Cooper)**

a. **SUBJECT: Rules on Poll Watchers, Vote Challenges, and Provisional Voting**

DESCRIPTION: The State Board of Election Commissioners met on August 15, 2023, and approved changes to the “Rules on Poll Watchers, Vote Challenges, and Provisional Voting.” This proposed amendment is being promulgated to incorporate changes approved by Acts 444 and 329 of 2023.

Purpose and Summary of Substantive Changes

This amendment is required by Acts 444 and 329 of 2023. Act 444, which is known as the “Arkansas Poll Watchers Bill of Rights Act of 2023,” made several changes to the process of becoming a poll watcher. Specifically, the Act created a responsibility for the State Board of Election Commissioners (“SBEC”) to develop a training program for poll watchers, which a poll watcher must complete prior to serving as a poll watcher. The Act also obligated the SBEC to adopt and promulgate rules for training poll watchers. The rule also creates an appeal process for a poll watcher who is unable to obtain a Certificate of Completion. Among other requirements, the Act obligates poll watchers to wear a name badge identifying the Poll Watcher by Name.

Act 329 of 2023 added slight modifications to the provisional ballot handling and processing procedures. The proposed amended rule incorporates these changes. First it incorporates the necessity for the County Board of Election Commissioners (“CBEC”) to provide a copy or image of the provisional voter envelope to the County Clerk, so the Clerk may perform his or her certification process. Secondly, it describes the certification elements the County Clerk must provide to the CBEC.

Additional Discussion

In addition to the substantive changes, the amendment does include some updating of the formatting of subsections to better comply with the codification of rules by the Bureau of Legislative Research.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 11, 2024. The board 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 Election Commissioners has the authority to: (1) formulate, adopt, and promulgate all necessary rules to assure even and consistent application of voter registration laws and fair and orderly election procedures *see* Ark. Code Ann. § 7-4-101(f)(5), and (2) develop a training program for poll watchers, including without limitation adopt and promulgate rules to establish procedures for training poll watchers. *See* Ark. Code Ann. § 7-4-101(f)(17)(B). The amended rule implements the following Acts of the 2023 Regular Session:

Act 329 of 2023, which was sponsored by Representative Robin Lundstrum, created the Ballot Security Act of 2023 and amended the election law concerning the handling of election ballots.

Act 444 of 2023, which was sponsored by Tony Furman, established the Arkansas Poll Watchers Bill of Rights Act of 2023 and amended the law concerning election procedures.

b. **SUBJECT: Rules of Procedure for Citizen Complaints Regarding Violations of State Election and Voter Registration Laws**

DESCRIPTION: The State Board of Election Commissioners met on August 15, 2023, and approved changes to the “Rules of Procedure for Citizen Complaints Regarding Violations of State Election and Voter Registration Laws.” This proposed amendment is being promulgated to incorporate changes approved by Acts 295 and 620 of 2023.

Purpose and Summary of Substantive Changes

This amendment is because of the adoption of Acts 295 and 620 of 2023. Act 295 modified the Citizen Complaint process, where a complaint may be filed up to thirty (30) days following the deadline to certify the election at issue. This was a change from the prior rule, which required identifying the specific date the county certified the election for which to calculate the thirty (30) day complaint filing deadline. This change allows a single deadline for all complaints regarding a specific election. Secondly this Act clarified that a complaint that is procedurally deficient, i.e. complainant failed to sign under penalty of perjury, can be corrected within ten (10) days. If a complaint is procedurally correct but fails to allege a violation of election law, it may be dismissed without the ten (10) day cure period. The Act also explicitly authorizes the SBEC to subpoena sealed election records as part of an investigation if necessary.

Act 620 expanded the SBEC’s authority to file a complaint itself. Prior to the Act’s adoption, the Board was limited to filing its complaints to within the 30 days of the certification of the election, like other complainants. The Act changed this deadline, and when certain conditions are met, the SBEC may file a complaint to begin the formal investigation process up to three (3) years after the election in question.

Additional Discussion

In addition to the substantive changes, the amendment does include some updating of the formatting of subsections to better comply with the codification of rules by the Bureau of Legislative Research.

Because the rule is being amended to incorporate Acts 295 and 620 of 2023, the Final Determination section of the rule is being proposed for

amendment to clarify the sequence of events when an offer of settlement is made and a hearing may be scheduled. This portion of the amended rule is to streamline and clarify this process for both Staff and Respondents to complaints.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 11, 2024. The board 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 Election Commissioners has the authority to formulate, adopt, and promulgate all necessary rules to assure even and consistent application of voter registration laws and fair and orderly election procedures. *See* Ark. Code Ann. § 7-4-101(f)(5). The amended rules implement the following Acts of the 2023 Regular Session:

Act 295 of 2023, which was sponsored by Representative Rebecca Burkes, amended the law concerning complaints of election law violations and amended the law concerning the State Board of Election Commissioners.

Act 620 of 2023, which was sponsored by Senator Jim Petty, created an election integrity review process; amended the duties of the State Board of Election Commissioners; and amended the law concerning election law violations.

c. **SUBJECT: Rules for Reimbursement of Expenses for State-Funded Elections**

DESCRIPTION: The State Board of Election Commissioners met on August 15, 2023, and approved changes to the “Rules for Reimbursement of Expenses for State-Funded Elections.” This proposed amendment is being promulgated to incorporate changes approved by Acts 329, 356, and 743 of 2023.

Purpose and Summary of Substantive Changes

This amendment is because of the adoption of Acts 329, 356, and 743 of 2023. Act 329 established a requirement that two (2) poll workers transport ballots from the polls to the central location. The amendment is necessary to include this change for mileage reimbursement as part of a State-Funded election. Act 356 established new minimum pay for county election commissioners. This new amount and additional compensation if

the Commissioner acts as the county's coordinator had to be incorporated into the reimbursement structure governed by this rule. Act 743 established a limitation on state funding for hand counted paper ballots. If a county chooses to utilize hand counting in lieu of current tabulation equipment and methods, the State will not reimburse the county for the increased costs caused by the hand counting process selected by the county.

Additional Discussion

The Rule is amended to establish caps on certain expense items that were not previously capped. The amendment seeks to limit these expenses by clarifying what is and is not reimbursable and limitations on those categories. Lastly, stylistic changes are proposed to comply more closely with BLR style guides.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 11, 2024. The board received no comments.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses thereto:

1. What is the source of the language in § 507(e)(3)(A), which is located on page 9 of the markup? **RESPONSE:** Ark. Code Ann. § 7-4-111(b)(1)-(e).

2. What is the source of the language in § 507(f)(3), which is located on page 9 of the markup? **RESPONSE:** Ark. Code Ann. § 7-5-101(e)(1)(A) – Requires vote center locations to have a “secure electronic connection sufficient to prevent: (i) an elector from voting more than once. Poll tablets are the electronic Precinct Voter registration list, and a voter must provide information, during check-in, to “verify the existence of his or her name on the precinct voter registration list” before being issued a ballot. Ark. Code Ann. § 7-5-305(a)(1). Thus, a voter must identify himself or herself, and that identification information must be stored and transmitted to other voter center locations so that the voter cannot vote more than once. Thus, paying for internet connection is a necessary part of conducting a state funded election. The rule is necessary to allow reimbursement of that expense so that polls can have dedicated hot-spot devices to have dedicated internet for the poll tablets.

3. What is the source of the language in Section 508(b)&(c)? **RESPONSE:** Ark. Code Ann. § 7-7-201 establishes SBEC authority and responsibility to reimburse counties the costs of conducting the primary election. However, there was no specific limitations on permanent part-time employees or maximum hours for extra help. This portion of the rule

amendment is to address those circumstances. We received a request for reimbursement of several thousand hours for extra-help and when the math was figured up, the extra help worked something like two hundred days or more. The Board and Staff agreed that a limit should be placed on that and this portion of the rule is the result.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the amended rule has a financial impact, disclosing a \$17,000 cost for the current fiscal year and \$19,000 cost for the next fiscal year to a state, county, or municipal government to implement the rule. The agency provided the following explanation: Part of the rule increases the authority for reimbursement of mileage for two poll workers to transport election materials from polling locations to the central location. Other parts of the amended rule limit expenses for personnel and other costs that previously did not have a limitation. It is unclear the exact amount of impact of the amended rule has because parts of the amended rule reduce and limit financial costs that were previously unlimited, whereas other parts of the amended rule may create a slight increase in costs for that category of expenses. However, the approximate impact of additional mileage costs can be estimated and is included.

LEGAL AUTHORIZATION: The State Board of Election Commissioners has authority to adopt rules for the administration of primary elections consistent with the provisions of Title 7, Chapter 7 of the Arkansas Code concerning nominations and primary elections. *See* Ark. Code Ann. § 7-7-201(b)(2). The amended rule implements the following Acts of the 2023 Regular Session:

Act 329 of 2023, sponsored by Representative Robin Lundstrum, created the ballot Security Act of 2023 and amended election law concerning the handling of election ballots.

Act 356 of 2023, sponsored by Senator Matt Stone, amended the compensation of a member of a County Board of Election Commissioners and amended the duties of a member of a County Board of Election Commissioners.

Act 743 of 2023, sponsored by Representative Wayne Long, amended the law concerning paper ballots and the marking and counting of paper ballots; and amended the law concerning the declaration of election results.

d. **SUBJECT: Rules for Verification of Voter Registration**

DESCRIPTION: The State Board of Election Commissioners met on August 15, 2023, and approved changes to the “Rules for the Verification of Voter Registration.” This proposed amendment is being promulgated to incorporate changes approved by Act 441 of 2023 and to incorporate language from Ark. Code Ann. § 7-1-101(40)(B).

Purpose and Summary of Substantive Changes

This amendment is because of the adoption of Act 441 of 2023. Act 441, known as the “Voter Registration and Secure Voter Records Act of 2023” made several changes to election law. Of particular importance was the inclusion of Trade Schools as a valid source for compliance with the Voter Verification requirements of Amendment 51. Because of this legislative change, the Rule has to be amended to accurately reflect that statutory requirement.

Additional Discussion

The Rule is also amended to incorporate the potential use of digital identification, when issued by an approved entity, per the requirements of Ark. Code Ann. § 7-1-101(40)(B). Section 804 is amended to read more plainly and succinctly. Lastly, stylistic changes are proposed to comply more closely with BLR style guides.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 11, 2024. The board received no comments.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following question and received the following response thereto:

Q. What is the agency’s rationale in allowing a document or identification card to be presented in digital format on an electronic device for photo identification? Is this provision being added in response to any legislation? **RESPONSE:** The rule did not previously include that language, but the language is from Ark. Code Ann. § 7-1-101(40)(B)(i)-(ii). That code section is based on Ark. Const. amend. 51, § 13(b)(1)(B)(1)-(2). Since updating the rule and we are aware of some colleges that are beginning to experiment with digital identification as an initial identification method, thus falling under these provisions.

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 Election Commissioners has the authority to formulate, adopt, and promulgate all necessary rules to assure even and consistent application of voter registration laws and fair and orderly election procedures. *See* Ark. Code Ann. § 7-4-101(f)(5). The amended rule implements Act 441 of 2023, sponsored by Representative Rick McClure, which created the Voter Registration and Secure Voter Records Act of 2023, amended the Arkansas Constitution, Amendment 51; amended the law concerning audits of voter registration information; and amended the duties of the Secretary of State.

e. **SUBJECT: Rules of Practice and Procedure**

DESCRIPTION: The State Board of Election Commissioners met on August 15, 2023, and approved changes to the “Rules of Practice and Procedure.” This proposed amendment is being promulgated to incorporate changes approved by Act 194 of 2023, which moved the review of ballot titles and popular names for statewide initiative petitions from the SBEC to the Attorney General’s Office.

Purpose and Summary of Substantive Changes

This amendment is because of the adoption of Act 194 of 2023. Act 194 removed the responsibility to review the ballot title and popular names of statewide initiative petitions from the SBEC and assigned that responsibility to the Attorney General’s Office. The amendment deletes the process the SBEC established to review these titles and names.

Additional Discussion

The rule is also amended to make minor stylistic changes to comply more closely with BLR style guides.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 11, 2024. The board 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 Election Commissioners has authority to formulate, adopt, and promulgate all necessary rules to assure even and consistent application of voter registration laws and fair and orderly election procedures. *See* Ark. Code Ann. § 7-4-101(f)(5). This rule implements Act 194 of 2023, sponsored by Representative David Ray, which amended the law concerning

initiative petitions and referendum petitions and required the attorney general to review an initiative petition or referendum petition before circulation.

- F. Agency Updates on the Status of Outstanding Rulemaking from the 2021 Regular Session Pursuant to Act 595 of 2021 (Andrés Rhodes, Daniel Shults)**
 - 1. Department of Education**
- G. Agency Monthly Written Updates Pursuant to Act 595 of 2021 Concerning Rulemaking from the 2023 Regular Session**
- H. Adjournment**