ADMINISTRATIVE RULES SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Thursday, June 20, 2024
1:30 p.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. Rule Held at the May 30, 2024 Meeting of the Administrative Rules Subcommittee

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

a. 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 to -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.

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

1. ARKANSAS TEACHER RETIREMENT SYSTEM (Mark White, Jennifer Liwo)

a. SUBJECT: Rule 6: Membership and Employer Participation

DESCRIPTION: The Arkansas Teacher Retirement System ("ATRS") seeks to amend Rule 6: Membership and Employer Participation as follows:

• Redrafted for clarity and to address issues such as formatting, renumbering, grammar, and spelling;

• Redrafted to further align with the Code of Arkansas Rules style format;
• The authority for this rule has been moved to the end of the document;
• Acts 2023, No. 107, amended certain sections of the Arkansas Code applicable to ATRS to refer back to the definition of "alternate retirement plan" under A.C.A. § 24-7-202. The rule has been amended to conform the definitions of "reciprocal system" and "state employer" with the legislative change (See mark-up, page 2, § 6-101(9)(H) and § 6-101(10)(B));
• Amended to provide that member information may also be disclosed if the disclosure is authorized by statute or necessary for the proper operation and administration of the System and a confidentiality agreement authorizing the disclosure has been executed by ATRS and the person or entity that will receive the information (See mark-up, page 3, § 6-102(b)(3) and (4));
• Amended to provide that the Executive Director's determination concerning the continued participation of a permissible employer must be reviewed by the Board (See mark-up, page 5, § 6-109(c));
• Amended to clarify that audited financial statements are required unless otherwise provided by the rule (See mark-up, page 6, § 6-110(b)(2)(B)(i));
• Amended to clarify that the Board is required to consider and vote on permissible employer applications for continued participation in ATRS (See mark-up, page 6, § 6-110(d)(1));
• Acts 2023, No. 107, amended the law to clarify when an education-related agency or organization becomes a covered employer of ATRS. The act also amended the law to clarify when an education-related agency or organization will be considered a covered employer for an employee. The rule has been amended to incorporate these legislative changes (See mark-up, page 7, § 6-111(b));
• Acts 2023, No. 52, amended the law to permit ATRS to prorate the number of contract days in order to determine whether a member should be classified as contributory or noncontributory. The rule has also been amended to incorporate this legislative change. *The previous proposed amendment that would have permitted ATRS to appropriately adjust the number of contract days in order to determine whether a member should be classified as contributory or noncontributory has been removed* (See mark-up, page 9, § 6-116(b)(3));
• Amended to clarify that in the case of an inactive member who returns to covered employment after July 1, 1999, and is incorrectly reported as noncontributory, the member must begin making contributions to the System on the next July 1 following the member's first year of service with the covered employer (See mark-up, page 10, § 6-118(a)(3));
• Amended to clarify that in the case of a new member of the System who is incorrectly reported as noncontributory, the member must begin making contributions to the System on the next July 1 following the member's first year of service with the covered employer (See mark-up, page 10, § 6-118(b)(3));

• In the context of education-related agencies, revised definition of "Administrator" to clarify that the employee must be an active member of the System through his or her employment with an education-related agency that is participating in the System (See mark-up, page 1, § 6-101(1)(B));
• Revised definition of "nonteacher" to clarify that a nonteacher is a member who is not employed as a teacher or administrator (See mark-up, page 1, § 6-101(5));
• New section added to adopt IRS mailbox rule and to clarify that deadlines will be extended to the next business day if the deadline falls on a Saturday, Sunday, or Arkansas State Holiday (See mark-up, page 3, § 6-103);
• As previously written, the rule required the employee to be both a vested member and non-vested member of ATRS at the same time in order to be eligible to participate in a PSHE plan. The rule has been amended to correct this error (See mark-up, page 5, § 6-108(c)(2)(B));
• Amended to clarify that a person's initial status as a contributory or noncontributory member of ATRS will be determined by the law in effect at the time the person became a member of the System (See mark-up, page 8, § 6-114(a)(1)).

Following the public comment period, the agency indicated that the following change was made: Amended to clarify that only a new employee of a PSHE is eligible for membership in ATRS (See mark-up, page 5, § 6-108(c)(2)).

Following discussion at the Joint Committee on Public Retirement and Social Security Programs on March 4, 2024, the agency indicated that the following change was made: The previous proposed amendment that would have permitted ATRS to appropriately adjust the number of contract days in order to determine whether a member should be classified as contributory or noncontributory has been removed (See mark-up, page 9, § 6-116(b)(3)).

PUBLIC COMMENT: A public hearing was held on February 5, 2024. The public comment period expired on January 22, 2024. The System provided the following summary of public comments and its responses thereto:

Commenter's Name: ATRS Staff
COMMENT: Should § 6-108(c)(2) read "A new employee of a PSHE" instead of "An employee of a PSHE employer"? **RESPONSE**: Yes. This recommended change aligns with Ark. Code Ann. § 24-7-1605(a)(2). The rule has been amended.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the System. The board of trustees of each reciprocal system shall promulgate rules necessary to coordinate the retirement benefits of the reciprocal system with any other reciprocal system. *See* Ark. Code Ann. § 24-2-402(j)(2).

The proposed changes include those made in light of the following acts:

Act 52 of 2023, sponsored by Representative John Maddox, which amended the law concerning the membership status of certain members of the Arkansas Teacher Retirement System;

and Act 107 of 2023, sponsored by Representative Les Warren, which enacted the Arkansas Teacher Retirement System's General Omnibus Act, corrected certain references to "alternative retirement plan", "covered employer", "credited service", "retirant", "service credit", and "the system", amended and added certain definitions applicable to the Arkansas Teacher Retirement System, clarified the law concerning benefits increases and computation, deadlines, system assets, termination separation period, service credit, second reviews of disability retirement applications, a member's residue, contract buyout settlement agreements, the de minimis amount, and other various provisions applicable to the Arkansas Teacher Retirement System.

2. DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION (Andrés Rhodes, Daniel Shults)

a. SUBJECT: Rules Governing Petitions for Student Transfers

DESCRIPTION: The Arkansas Department of Education, Division of Elementary and Secondary Education (DESE) proposes its Rules Governing Petitions for Student Transfers. The rules are necessary in order to implement Act 731 of 2023, which makes legal transfers subject to appeal to the State Board of Education if one or both districts fail to approve the transfer. Prior to the Act, legal transfers were a mechanism that School Districts and parents could use to allow a student to move from one district to another at any time; however, transfers were only possible if both districts agreed. The Act brings the State Board into the process for the first time and gives the Board the ultimate authority over all petitions, making it necessary for a rule to be promulgated, which

governs this process. The rule also provides additional details regarding the withholding of state aid funds. Withholding is required under Arkansas Code Annotated § 6-18-317 when a district fails to certify to DESE that the resident or receiving district is not under a desegregation order or that the transfer complies with any existing order.

Following the public comment period, the following change was made: Based on a comment, an erroneous "by" was removed from 6.05.2.

PUBLIC COMMENT: A public hearing was held on April 17, 2024. The public comment period expired April 24, 2024. The agency provided the following public comment summary:

Commenter Name: Lucas Harder, ASBA
COMMENTS: 6.05.2: There is an unnecessary "by" between "provided" and "to".
6.10: For consistency with other rules, "of these Rules" should be added after "Section 5.05".
RESPONSE: Comment considered; a non-substantive change was made to correct a scrivener's error consistent with the comment.

Commenter Name: Mike Mertens, AAEA Assistant Executive Director
COMMENTS: Section: 3.05 says that a student who transfers under this rule shall not be (1) denied participation in an extracurricular activity at the nonresident school district to which he or she transfers based exclusively on his or her decision to transfer to the nonresident school district; or (2) disciplined in any manner based on the exercise of his or her right to transfer to another nonresident school district under this rule.
Suggested Change/Concern: Add language after 3.05.02 that says a student who transfers to another school district under this section shall complete a Changing Schools/Athletic Participation (CSAP) form as defined by the Arkansas Activities Association.
Rationale: The proposed rules as written leave out the CSAP requirement. This appears to be language from Act 768 of 2023. However, the rules do not include the section of Act 768 that says a student who transfers to another school district under this section shall complete a Changing Schools/Athletic Participation form as defined by the Arkansas Activities Association.
RESPONSE: Comment considered; no changes made.

Commenter Name: Karen C. Walters, Bryant Public Schools, Superintendent
COMMENTS: Section 3.01. This section specifies that a transfer is prohibited if a transfer would violate a desegregation order. May a school district also deny a transfer due to lack of capacity of a program, class,

grade level, school building, etc? Are the reasons for denial up to a local school board?

Section 4.01.1. When DESE releases the form to the public, it would be helpful if the form included a question about whether the petitioning student is currently under expulsion or pending expulsion from another school district. This information would assist school districts in their efforts to comply with other state laws.

Section 4.03.2.2. This section requires the superintendent to recommend in writing to the school board of directors whether the petition should be approved or denied. However, the law allows a school board to delegate to the superintendent the authority to approve petitions. The rules should make it clear that if a school board delegates to the superintendent the authority to approve petitions and a petition is approved by the superintendent, no further action is necessary.

Section 7.05. This section imposes upon a school district the burden of proof of justifying its decision to deny a family's petition and overcome that burden with a clear and convincing reason for that decision. Typically, in administrative hearings such as these, the moving party (in this case, the family) bears the burden of proof. Additionally, the standard of proof in most administrative hearings is "preponderance of the evidence." What is the authority or reasoning for a school district bearing the burden of proof at the clear and convincing standard?
RESPONSE: Comment considered; no changes made.

Commenter Name: Aaron M. Randolph, Cabot School District, Assistant Superintendent
COMMENTS: What is the criteria for denying a legal transfer? The only thing I see is that you can't have a legal transfer when either the resident or receiving district is under a desegregation order (3.01.1, p. 1) or the transfer would violate a court order (3.01.2, p. 1). We operate under a resolution to let the superintendent approve transfers, so this comment would not apply to us. Section 4.03.2.2 (p. 3) states that the superintendent is required to recommend in writing that the board approve or deny a petition. To whom should this written notice be provided? In the section above, it states that a recommendation for denial be sent to the board and parents of the student. If that is the case, 4.03.2.2.b is duplicative. There is no provision in law for notice of an approval recommendation to be written (4.03.2.2.a, p. 3). Ark. Code Ann. § 6-18-316(c)(2)(B)(ii) only requires written notification of the denials, as mentioned in 4.03.2.1 (p. 3). Operating under a resolution, this rule adds the requirement that a petition must be approved within 10 business days or else it should be scheduled to be heard by the board. (4.06.4.4, p. 4) It adds the provision that it may be approved after it's added to the agenda

and then the board would take no action on it. We may need more than 10 days to gather information on if we can approve the request in some situations, though it may be rare. Depending on when the request is received in light of the next board meeting, it has the potential to put districts in a bind. There is no 10 day provision in the law.
RESPONSE: Comment considered; no changes made.

The proposed effective date is July 1, 2024.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-11-105, the State Board of Education shall administer the state's early learning and education system, which shall include the administration of relevant rules related to administering funding, licensing, standards, and program requirements. Further rulemaking authority can be found in Ark. Code Ann. § 6-20-2304(a), which provides that the state board shall have the authority, acting pursuant to its rulemaking powers, to adopt rules for the implementation of the provisions of the Public School Funding Act of 2003, codified in Ark. Code Ann. §§ 6-20-2301 through 2309.

The rules implement Act 731 of 2023, sponsored by Representative Sonia Eubanks Barker, which required that a petition of a student to transfer from one school district to another school district be placed on the agenda of a school district board of directors for review and approval, and created a process whereby a denial of a transfer petition may be appealed.

b. SUBJECT: Rules Governing the Right to Read Act

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education proposes amendments to its Rules Governing the Right to Read Act. Act 237 of 2023 amended the Right to Read Act, codified in Ark. Code Ann. § 6-17-429. As part of the amendment, the Act created a literacy coach program for low-performing public schools based on results of high-quality literacy screeners. The Act requires the Department to provide, train, and assign literacy coaches to low-performing public schools. These rules outlines eligibility and qualifications for literacy coaches and sets goals for those literacy coaches. Additionally, the rules set out requirements for school districts to monitor and notify parents of their students' progress in reading and develop intervention programs and reading plans for underperforming students. The rules also amend the requirements for which teachers must have proficiency in, and awareness of the science of reading, to align with policy goals.

Following the public comment period, the Department made nonsubstantive changes based on some of the comments received.

PUBLIC COMMENT: A public hearing was held on April 19, 2024. The public comment period expired April 24, 2024. The agency provided the following public comment summary:

Commenter Name: Lucas Harder, Arkansas School Boards, Policy Services Director, April, 3, 2024
COMMENTS: *Submitted Electronically*
2.01: I would recommend keeping this definition as it would make it shorter in several places in the Rules and be in alignment with other rules.
3.02: I believe that this was intended to become 3.01 with only the year of implementation being stricken but the entire paragraph was accidentally stricken.
5.02.1.1: If 2.01 was retained, then this would be able to remain as "Division" like it has elsewhere in these rules.
6.02: If the definition was retained at 2.01, it would allow for consistency within the Rules as sometimes "Division" is used and other times the full "Division of Elementary and Secondary Education" is like here.
7.06-7.07: Due to the repeal of 7.03-7.05, these should be 7.03 and 7.04 instead.
7.06.2: This should be 7.03.2 instead and the references to 7.06 and 7.06.1 should instead be to 7.03 and 7.03.1 instead.
8.03: If 2.01 was retained, it would allow for consistency in the Rules as this could remain "Division" instead of having to use the full "Division of Elementary and Secondary Education".
9.01: If 2.01 was retained, it would allow for consistency in the Rules as this could remain "Division" instead of having to use the full "Division of Elementary and Secondary Education".
11.01.3: If 2.01 was retained, it would allow for consistency in the Rules as this could just be "Division" instead of having to use the full "Division of Elementary and Secondary Education".
11.03: For consistency within the rule and with other rules, I would recommend changing "fourth grade" to be "grade four (4)".
11.03.1: For consistency within the rule and with other rules, I would recommend changing "fourth grade" to be "grade four (4)".
12.01.6: As there is not a third item in the list, it should be "public school or public school district, including".
12.01.7.1: The citation to "10.01.7.1" should be updated to "12.01.7.1".
RESPONSE: A change was made to correct an erroneous internal citation consistent with the comment. No additional changes were made.

Commenter Name: Jon Laffoon, Farmington School District, Superintendent, April 4, 2024
COMMENTS: *Submitted Electronically*
7.01-06.1 – When will the district review of materials, resources, and curriculum begin? Will DESE be providing support for districts? We have purchased curriculum materials from the approved list. Will current materials be on the new list or removed?
7.06.1.1-7.06.1.3 – Will the materials approved require a rationale explanation and letter from the superintendent and board president?
11.02-11.03.2.6 – What are examples of necessary, justifiable good cause exemptions for 11.03.1.1.f? What about students who transfer into a district mid-year or during the second semester? Could holding students back create the need for additional staff due to grade level or classroom-level capacity with standards?
RESPONSE: Comment considered; no changes made.

Commenter Name: Julia Williams, Randall G. Lynch Middle School, Principal, April 5, 2024
COMMENTS: *Submitted Electronically*
7.01-06.1 We have applied for and received SOR Grants over the past few years. We have spent the money on a currently approved curriculum. When will we know if what we have purchased and are repurchasing for the next cycle will be approved?
RESPONSE: Comment considered; no changes made.

Commenter Name: Vicki King, Arkansas Department of Education, April, 8, 2024
COMMENTS: *Submitted Electronically*
4.01.1.2 K-12 Special education teachers in kindergarten through grade twelve (K-12) who teach a special education course that directly relates to literacy;

It is my understanding that special education teachers are no longer tied to special education courses. Instead they are providing a special education service that directly relates to literacy.

The special education service related to literacy could occur in a number of courses and different subject areas based on the student's disability and the impact on performance.
RESPONSE: Comment considered; no changes made.

Commenter Name: Anne Martfeld, Pea Ridge School District; Assistant Superintendent; April 8, 2024
COMMENTS: *Submitted Electronically*
11.02.2 – Can an IEP take the place of this if it includes the student's specific diagnosed reading skill needs?

Does 11.03.1.1.d only apply only to students who have not been evaluated or been found eligible for special education, but have been retained? I see no provision in 11.03.1.1.d that this group of students had to have received scientifically-based reading instruction to be considered for a good cause exemption. If 11.03.1.1.d is only about students who are not reading at grade level but have been retained, why is 11.03.1.1.c necessary since retention is one of the requirements in 11:03.1.1.c regardless of the other criteria? These students would be eligible for a good cause exemption simply on the basis of retention according to 11.03.1.1.d.

7.00 Program Evaluation and Approval – Does this apply to all ELA courses (upper grades courses)? If we don't purchase a specific curriculum program, are we okay? Many of our ELA courses use open-resource materials and teacher-created materials.

Our College Board resources for Pre-AP English I and Pre-AP English II are essentially Springboard materials, and that is on the list. Spire is our Dyslexia program and that is on the list.
RESPONSE: Comment considered; no changes made.

Commenter Name: Dawn Bessee, Crowley's Ridge Educational Cooperative, Teacher Center Coordinator, April 11, 2024
COMMENTS: *Submitted Electronically*
Good afternoon. I am wondering about 11.03.2.2 of the Right to Read Act and need some clarification, please. It looks as though the aforementioned rule (...Assign the student to a teacher with a value-added model score in the top quartile statewide in English language arts for the past three (3) years, or if the public school district or open-enrollment public charter school is unable to identify a teacher with a value-added model score in the top quartile statewide in English language arts for the past three (3) years, assign the student to a teacher: 11.03.2.2.a With a highly effective rating according to the Teacher Excellence and Support System, § 6-17-2801 et seq., where possible; or 11.03.2.2.b Deemed to be a high-performing teacher as defined by a Master Professional Educator designation;) falls under the "By the beginning of 2025-2026" timeline of 11.03. Is that correct?

I only ask because the LEARNS Act specifies the same criteria for math students beginning in 2023-2024 (page 55, line 2).

We have been told by DESE personnel that these students' placement for math and literacy both should begin this year.
RESPONSE: Comment considered; no changes made. The concerns addressed by this comment are governed by statutory provisions.

Commenter Name: Lesley Hipp, Parent and Educator, April 11, 2024
COMMENTS: *Submitted Electronically*
Are teachers still required to take the Pearson Foundations of Reading exam. The literature does not mention the exam at all, only paths to proficiency.

Also, does Take Flight Dyslexia training qualify as a proficient professional development?
RESPONSE: Comment considered; no changes made. The concerns addressed by this comment are governed by statutory provisions.

Commenter Name: Kimberly Starr, Fort Smith Public Schools, Director of Elementary Education, April, 11, 2024
COMMENTS: *Submitted Electronically*
11.01 – With scores not released until October 2024, how can public school districts determine the reading needs of students before that time, as mandated by the outlined requirements ("by no later than October 1")?
11.02.01 – Will this also satisfy the Act 940 independent reading level reporting requirement for K-2 and possibly 3rd grade?
11.02.2 – Will IEPs take the place of this if it includes the student's specific diagnosed reading skill needs?
11.02.3.1.g – This states that the plan shall include any "additional services the student's teacher determines are available and appropriate." Should this decision be made by the teacher only?
11.02.3.1.g – What criteria points are considered by the teacher to determine the availability and appropriateness of additional services, and how are these services intended to accelerate the student's reading skill development?
11.03 – With a student: "third-grade reading standard" based solely on the student's performance on the "state annual accountability assessment" (11.02.2.2)? Do these agree?
11.03.1.1 – What about a student who moves from another state and hasn't had SoR aligned instruction/intervention?
7.06 – Says that any school "that purchases" a curriculum shall choose from the approved list. DESE guidance for secondary Tier I has been "when" a school makes a purchase it should be from the approved list, but no unplanned purchases are required.
RESPONSE: Comment considered; no changes made. The concerns addressed by this comment are governed by statutory provisions.

Commenter Name: Tamara Smart, Mena School District, April 12, 2024
COMMENTS: *Submitted Electronically*
4.01.2.1 – What is a proficiency plan within the EES?
7.06.2 – Are "C" schools considered Level 3 schools?

7.07 – Are supplemental curricula considered "curriculum programs", and do they have to be reported to parents? (ie. Flocabulary, Lexia, Math Seeds,...)
9.04 – Visual memory as the primary means for teaching word recognition…How does this relate to teaching high-frequency words within an HQIM?
10.00 – Literacy Coaches – Where are the literacy coaches coming from? (DESE, Education Cooperatives, or District)
10.04.12 – If the literacy coaches aren't a district employee, where does the $10,000 bonus come from?
11.00 – We would like clarification on all of the components of the literacy tutoring grant opportunities. (Will there be a template for the parent letters, more guidance from DESE, etc…)
11.02.1 – Will DESE define a High Quality Literacy Screener, or will ATLAS just be the screener?
11.02.2 – Our district developed its own Individual Reading Plan template – Does DESE plan to create a universal template?
11.03 – The "good cause" exemptions are VERY BROAD and it seems as if any student could qualify for such a label. Is this the intention?
11.03.2.3 – Will DESE make a usable template for the "READ AT HOME PLANS"? We would appreciate clearly defined directives.
11.03.2.2.A – Are we correct in that, if we have a novice who has been designated as Highly Effective in the EES system, can they be the TOR for students that have been promoted to the 4th grade with a "good cause exemption"?
RESPONSE: Comment considered; no changes made. The concerns addressed by this comment are governed by statutory provisions.

Commenter Name: Aaron Randolf, Cabot School District, Assistant Superintendent, April 15, 2024
COMMENTS: *Submitted Electronically*
11.3 – What is the "3rd grade reading standard"? It says it is "defined by the state board", but how will that be determined, when will that standard of measure be given and how will proficiency be set? Is this based on a ELA standard, multiple standards or is it grade level reading proficiency? (There are 73 third grade ELA standards, and 29 relate specifically to decoding or reading comprehension.) Will meeting or not meeting this standard be based on one piece of data or multiple sources of information?
11.03 – This only mentions public school students. Are open enrollment charter school students exempt from this requirement?
11.03.1.1.b.i: For a student with an IEP, does special education services in reading qualify as "intervention" if the goals are working toward the students reading deficits?
11.03.1.1.b.i, 11.03.1.1.c.i: "received an intensive evidence based literacy intervention program aligned to the science of reading for more than 2

years" – does the 3rd grade year count as a full year when considering time in intervention?
11.03.1.1.e.i: Will schools be given a specific list of the "certain tools" that are referred to in this section that can be used to show that a student is reading on grade level?
11.03.1.1.f: This is vague and open ended. Who will the reading experts be, and what is considered a "justifiable good-cause exemption"?
11.03.2.1: "90 minutes of evidence-based literacy instruction aligned to the science of reading during each school day": 11.03.2 states that the requirement is the summer and school year. Is the 90 minutes of literacy instruction also required M-F during the summer (summer school) or does the summer portion only apply to the read-at-home and tutoring options in 11.03.2.3 and following?
11.03.2.3 – Provide parents with a "read at home plan aligned to the science of reading" – Who is developing this plan?
11.03.2.6: "be given the opportunity to participate in additional intensive, evidence-based literacy intervention programs" – what are these and will this be covered by the state tutoring grants or something the school is expected to provide?
RESPONSE: Comment considered; no changes made. The concerns addressed by this comment are governed by statutory provisions.

Commenter Name: Mike Mertens, AAEA, Assistant Executive Director, April 22, 2024
COMMENTS: *Submitted Electronically*
Section: 11.02.2 – Develop an individual reading plan for each student in K-3 who does not meet the reading standard…
Suggested Change/Concern: Provide clarifying language that an IEP that includes required components of an IRP is sufficient to comply with the rule.
Rationale: Having an IRP and an IEP for the same student could be confusing and an unnecessary duplication of work.
RESPONSE: Comment considered; no changes made. The concerns addressed by this comment are governed by statutory provisions.

Commenter Name: Karen Walters, Bryant School District, Superintendent, April 22, 2024
COMMENTS: *Submitted Electronically*
11.02.3.1.a The student's specific diagnosed reading skill needs, including without limitation:
Concerns: Teachers do not diagnose a problem. Medical professionals can provide a diagnosis or a professional who has a degree in an area to make a diagnosis. Teachers can identify a deficiency in a skill based on assessment.

How will it apply to kindergarten students? Labeling them as having a reading deficiency within the first 30 days of school, when they have not had any type of formal education does not seem reasonable.

11.02.4.2 – Students receiving each type of intervention.
Concerns: How will this reporting happen? Intervention groups are and should be fluid based on the students' identified skill deficit. It is not a reasonable time expectation for staff to enter the information into eschool or other reporting system and report this daily or weekly. Educator's time is better spent working with students on deficient skills. Also, students should not be given a label due to a skill deficiency. Also, most students receive intervention at some point in the school year, this does not mean they should be labeled.

11.03– …if a public school student has not met the third-grade reading standard, as defined by the state board,....
Concern: Where is the definition of meeting third-grade reading standard?

11.03.1.1.f – Other students with necessary, justifiable good-cause exemptions identified as appropriate by the state board, in consultation with reading experts.
Concern: When and how will the exemptions of good-cause be communicated to districts? Also, what qualifies a person as being a reading specialist?

11.03.2.1 – Provide at least ninety (90) minutes of evidence-based literacy instruction aligned to the science of reading during each school day.
Concern: Is the 90 minutes included in the minutes that are already provided for literacy during the school day or in addition to those minutes. Example: if a literacy block is 120 minutes, does that mean an additional 90 minutes will be added. If so, what about the requirements for math, science, social studies, art, music, pe, recess, etc.

11.03.2.2-11.03.2.2.b
Concern: Moving a teacher with a highly-effective rating from one grade to a different grade does not mean you will see the same results. This is likely to cause more educators to leave the profession.

11.03.2.6 Be given the option to participate in additional intensive evidence-based literacy intervention programs aligned to the science of reading.
Concerns: What are the additional intensive evidence-based literacy intervention programs? Who will provide the programs and training? Is this covered by the state grants, if so, what is the process for parents to receive these interventions? What class or course requirements will

students be allowed to miss to receive this additional intervention (parent choice)?
RESPONSE: Comment considered; no changes made. The concerns addressed by this comment are governed by statutory provisions.

Commenter Name: Tiffany Lewis
COMMENTS: *Transcript of Statement Made at the Public Hearing*
Tiffany Lewis, teach plus Arkansas. Good afternoon. Thank you, Chairperson, board and members of the board for allowing me the opportunity to present my testimony. My name is Tiffany Lewis and I'm a Forest Heights Stem Academy 3rd year, 3rd grade teacher. I am currently completing my Masters of Education and my National Board Certification. I'm also currently serving as a policy fellow for Teach. Mrs. Lewis, I have something for you. My student Max was standing not with our lessons exit ticket, but with a folded blue piece of paper in his hand. I did not look at the paper until my lunch break. It's simply said, Miss Lewis, you are the best teacher. Now this phrase did not bring me to tears because it was praise from a student. It was simply the fact that this student whom I know has literary struggles spelled each word correctly and with no grammatical errors. I knew how hard he thought to overcome so much to write an unsolicited note of encouragement to me after a particularly hard lesson. But this makes me beg the question. What if Max had not had the amazing team of teachers in administration in his formative years? What if he needed more years to cultivate and understand the 1st 3 pillars of reading. What about the other Maxes that need more intent and reinforcement to unlock the educational potential? Let's be honest with ourselves. For every Max there is 20 unnamed children who don't have the same opportunities. Who helps them? Who supports them? Yes, we have resource teachers, but is that enough? No, it's not. I'm an educational soldier in the battle against illiteracy. So, here's what I know. Despite the adoption of the past legislation, Arkansas is still in knee deep in the trenches of the illiteracy war. The nation's report card shows Arkansas still significantly underperforming with 39% of our 4th graders in the below reading achievement level. The Learns act has the potential to combat this malignancy through its adoption of the science of reading. However, the mandate for wish and knowledge of the science reading for all K through secondary educators is not enough. We must extend it to 7th and 8th grade educators. 4 3.0 1 through 7.0 dealing with the proficiency and awareness mandates should be a minute to include K through 8th grade educators. We must strike 6 and add a in all proficiency mandates. Let's support educators with this mandate, we should expand state training. Currently we have rise training by stands for reading initiative for student excellence. Educators are required to extend these training sessions once in order to maintain their license. This should not be a 1 and done. It should be revisited and should be a continued educational part that must be revisited annually. Everyone knows you get more from the second

and 3rd experience than you ever get from the first. They'd liken it to drinking a cool glass of water on a hot summer's day. The 1st step, the 1st sip quenches your thirst, the second nourishes your soul. If you truly believe that the children are future and they deserve a quality education, you must join with me and say for efficiency for all K through 8 educators. Let's stop expecting them to know and help them learn. Let's help the other and older Max's win. Thank you for your time.
RESPONSE: Comment considered; no changes made. The concerns addressed by this comment are governed by statutory provisions.

The proposed effective date is August 1, 2024.

FINANCIAL IMPACT: The agency has indicated that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-17-429(m), the Division of Elementary and Secondary Education shall promulgate rules to implement the Right to Read Act. *See* Ark. Code Ann. § 6-17-429. Further, the State Board of Education may promulgate rules to implement the Right to Read Act. *See* Ark. Code Ann. § 6-17-429(p).

The proposed changes include those made in light of Act 237 of 2023, sponsored by Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood through grade twelve (12) education in the state of Arkansas.

c. SUBJECT: Rules Governing the Arkansas Student Protection Act

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education proposes its Rules Governing the Arkansas Student Protection Act. The rule is amended pursuant to Act 653 of 2023, to add a prohibition for public or open-enrollment charter schools from knowingly entering into any transactions with an individual or entity that offers or provides abortion referral, consistent with legislation.

PUBLIC COMMENT: A public hearing was held on April 18, 2024. The public comment period expired April 24, 2024. The agency provided the following public comment summary:

Commenter Name: Aaron Randolph, Cabot School District, Superintendent
COMMENT: *Submitted Electronically* – Section 3.01.4 (p. 2) expands the definition with whom districts cannot enter into transactions. The definition of "transaction" includes even the most informal arrangement where the district does not even have to receive any benefit as a result of it. (2.04, p. 1). This could be interpreted as even a guest speaker in a

classroom or a chaperone on a field trip. Our CTE department includes agreements with MEMS, Cabot Fire Department, and a practice in the Unity Health network. All of these could be included as a group that would likely share an "abortion referral," which can be simply directing where a pregnant woman could learn about abortions. (2.2, p. 1)
RESPONSE: Comment considered; no changes made. The concerns addressed by this comment are governed by statutory provisions.

The proposed effective date is August 1, 2024.

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

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 6-18-2204(a), the Division of Elementary and Secondary Education shall promulgate rules to implement the Arkansas Student Protection Act, codified in Ark. Code Ann. §§ 6-18-2201 through 2204.

The proposed rule change implements Act 653 of 2023, sponsored by Senator Jim Dotson, which amended the Arkansas Student Protection Act to include offering or providing abortion referrals as a prohibited transaction by a public school or open-enrollment charter school.

d. SUBJECT: Rules Governing Educator Performance

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education proposes amendments to its Rules Governing Educator Performance. The rules are being amended for consistency with Act 237 of 2023. The amendments add new sections regarding the Merit Teacher Incentive Fund Program, superintendent performance targets, and superintendent contracts. "Value Added Measure" is also being added to the rules, where appropriate, for consistency with Act 237 of 2023, and references to the Teacher Fair Dismissal Act have been removed. The rules are also being amended to make technical changes, remove unnecessary or repetitive language, and to add language needed to clarify the processes of TESS and LEADS. Finally, language is being added from Act 237 of 2023 regarding termination or non-renewal of contracts. The Division provided the following summary of amendments:

• Name of rules has been changed to reflect amendments that address additional topics.
• Per Act 237 of 2023, a new section of the rules has been added regarding the Merit Teacher Incentive Fund Program creation, eligibility requirements, distribution of funds, and reporting.

• Per Act 237 of 2023, a new section of the rules has been added regarding superintendent performance targets, superintendent contract requirements, and school district responsibilities regarding same.
• New definitions have been added or amended for consistency with Act 237 of 2023.
• "Value Added Measure" was added to the rules, where appropriate, for consistency with Act 237 of 2023.
• For consistency with Act 237 of 2023, references to the Teacher Fair Dismissal Act have been removed.
• The rules were also amended to make technical changes and remove unnecessary or repetitive language.
• Language was added to Section 6.10 to clarify that an evaluator supports formative year goals.
• Language was added to clarify that while an educational entity shall conduct a summative evaluation once every four years, an educational entity may choose to conduct a summative evaluation at any time.
• Language was added to clarify that while other school personnel are allowed to guide support in formative years, the designated evaluator remains responsible for conducting summative evaluations of teachers and assigning the overall ratings.
• For consistency with other rules and the law, language was added to clarify that a teacher may be placed in intensive support status for not demonstrating proficiency in knowledge and practices of scientific reading instruction.
• Language was added from Act 237 of 2023 regarding termination or non-renewal of contracts.

Following the public comment period, the agency indicated the following changes were made to the rules:

• Technical changes were made to the following sections of the rules: 2.01, 2.02, 2.03, 4.31.2.2.5, 6.26-6.27, 7.14.2, 8.00, and 10.03.3.
• Removal of Section 4.18 of the previous draft. This was the definition of "impact teacher" which is not used elsewhere in the rules; thus, a definition is unnecessary.
• Removal of Section 4.19 of the previous draft. This was the definition of "high impact teacher" which is not used elsewhere in the rules; thus, a definition is unnecessary.
• Removal of Section 4.24 of the previous draft. This was the definition of "outstanding performance growth," which was not used elsewhere in the rules other than in the definition of "high impact teacher."
• Definition of "annual rating" was added to the rules.
• The definitions section of the rules was re-numbered.

PUBLIC COMMENT: A public hearing was held on April 19, 2024. The public comment period expired April 24, 2024. The agency provided

a public comment summary which, due to its length, is attached separately.

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

1) Section 3.02.6 of the amended rules appears to track Ark. Code Ann. § 6-17-2804(b)(10)(A), which provides that these rules shall without limitation include the requirements for schools and school districts to report data under this subchapter to inform public school accountability and support the state's goal of equitable access to effective teachers for all students. Is there a reason why the amended rules' language does not mirror the language in the Arkansas Code? **RESPONSE**: Equity language was removed to comply with Ark. Code Ann. 6-16-156. The rules are still consistent with the law (Ark. Code Ann. 6-17-2804) when we remove the language.

2) Section 6.03.1 of the amended rules appears to track Ark. Code Ann. § 6-17-2805(c)(1), which provides that a summative evaluation shall result in a written evaluation determination for the teacher's performance on all evaluation domains as a whole. Is there a reason why the amended rules' language does not mirror the language in the Arkansas Code? **RESPONSE**: This language was amended because the evaluation in the system is available electronically and schools may print evaluation per district rules. It does not have to be written/a hard copy.

3) Section 6.13 of the amended rules, ,which concerns T.E.S.S. intensive support, appears to track Ark. Code Ann. § 6-17-2807(a), which enumerates circumstances under which an evaluator may place a teacher in intensive support status. Is there a reason why the amended rules add an additional circumstance, under Section 6.13.5, that does not appear in the Arkansas Code? **RESPONSE**: This language was added for consistency with the Right to Read Act (Ark. Code Ann. 6-17-429).

The proposed effective date is July 1, 2024.

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

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 6-17-2804(a), the State Board of Education shall promulgate rules for the Teacher Excellence and Support System consistent with Ark. Code Ann. §§ 6-17-2801 through 2809. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-17-2809(b), which provides that the state board may promulgate rules as necessary for the administration of Ark.

Code Ann. § 6-17-2809, which concerns the system of administrator leadership support and evaluations. Additionally, the state board may promulgate rules to implement Ark. Code Ann. § 6-17-123, which concerns superintendent performance targets. *See* Ark. Code Ann. § 6-17-123(d). Finally, Ark. Code Ann. § 6-17-2903(c) provides that the state board may promulgate rules for the implementation of the Merit Teacher Incentive Fund Program, codified in Ark Code Ann. §§ 6-17-2901 through 2906. Under the Program, the Division of Elementary and Secondary Education shall develop rules to establish the process and procedure for public school districts to annually report data related to value-added models that includes without limitation student test scores and prior student performance by subject and school. *See* Ark. Code Ann. § 6-17-2904(a)(1)(B)(ii).

The proposed changes include those made in light of Act 237 of 2023, sponsored by Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood through grade twelve (12) education in the state of Arkansas.

3. DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY (Lauren Ballard, Michael McAlister)

a. SUBJECT: Rule No. 12: Storage Tanks

DESCRIPTION: The Arkansas Department of Energy and Environment's Division of Environmental Quality (DEQ) proposes this rulemaking before the Arkansas Pollution Control and Ecology Commission (PC&EC) to amend its Rule No. 12: Storage Tanks. This rulemaking is necessary to amend the current rule to implement new requirements set forth in Act 422 of 2023, which amended Arkansas law regarding underground storage tanks and the Petroleum Storage Tank Trust Fund. Act 422 of 2023 increased the maximum amount of reimbursement that can be paid for any one occurrence from $1,500,000 to $2,000,000. Rule 12.306, Amount of Reimbursement, must be amended to reflect this statutory change. The practical impact of this amendment will allow qualified claimants to receive additional funds from the Petroleum Storage Tank Trust Fund for any one occurrence, in conformance with Arkansas law. Rules 12.512 and 12.610 were amended to implement provisions regarding lapsed licenses and reinstatement required by Ark. Code Ann. § 17-1-107. This change will allow licensees a more expeditious process to reinstate lapsed licenses. Finally, Rules 12.513 and 12.611 were amended to include provisions regarding reciprocity and provisional licenses as required by Ark. Code Ann. § 17-1-108. This modification allows license applicants who hold the same or similar license from out of state to apply for and receive a license in

Arkansas. The provisional license will allow applicants from out of state to immediately be employed while the application is pending.

PUBLIC COMMENT: A public hearing was held on March 27, 2024. The public comment period expired on April 10, 2024. DEQ indicated that it received no public comments.

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

1) Rule 12.306: Amount of Reimbursement – Is there a reason that the proposed cap for reimbursement in the amended rules ($1,992,500) does not mirror the cap set out in Act 422 of 2023 ($2,000,000)?
RESPONSE: Ark. Code Ann. § 8-9-907(a) requires that the owner or operator of the storage tank pay the first $7,500.00 for corrective action, to "be considered as the equivalent of an insurance deductible." Ark. Code Ann. § 8-9-907(b), prior to Act 442 of 2023, stated that "[p]ayment for corrective action shall not exceed one million five hundred thousand dollars ($1,500,000) per occurrence." Acknowledging the requirements in § 8-9-907(a), Rule 12.306(A) correspondingly provided that the Trust Fund would provide reimbursement to eligible owners/operators in an amount not to exceed one million four hundred ninety-two thousand five hundred dollars ($1,492,500) per occurrence. The statutory cap in § 8-9-907(b), minus owner/operator's obligation for the $7,500 "deductible" in § 8-9-907(a), yields total amount reimbursable from the Trust Fund. Act 442 of 2023 raised the cap in Ark. Code Ann. § 8-9-907(b) from $1,500,000 to $2,000,000. This pending rule change amends Rule 12.306(A) to reflect the increase of the reimbursable amount to $1,992,500. Again, this reflects the statutory cap, minus owner/operator's obligation for the $7,500 "deductible", yielding total amount reimbursable from the Trust Fund. This rule amendment is consistent with interpretation and application of the statute reflected in the current rule. Because the rule amendment is consistent with the statute, the Division of Environmental Quality does not recommend any further revision of the rule in response to this point.

2) Did the Advisory Committee on Petroleum Storage Tanks advise DEQ and the Commission regarding promulgation of these rules, per Ark. Code Ann. § 8-7-904(h)?
RESPONSE: Ark. Code Ann. § 8-7-904(h) provides that the Advisory Committee on Petroleum Storage Tanks shall advise the Division of Environmental Quality (DEQ) and the Arkansas Pollution Control and Ecology Commission (PC&EC) regarding promulgation of rules. However, rather than promulgation of new rules or changes initiated by DEQ or PC&EC, these pending revisions to Rule 12 are in response to legislative mandates in Ark. Code Ann. § 17-1-107, Ark. Code Ann. § 17-

1-108, and to incorporate the changes approved in Act 422 of 2023. While the Committee was fully informed of the passage of Act 422 and the resulting need to update Rule 12 to reflect the changes in the statutory cap, the advice of the Committee was not required to comply with these legislative mandates.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: DEQ states that the amended rules have no financial impact. DEQ further states that Act 422 of 2023 increased the maximum amount paid in any one year for any one occurrence from $1,500,000 to 2,000,000. The cost attributed to Act 422 of 2023 is therefore $500,000 per occurrence. However, there is no additional cost or financial impact to amend this rule to accommodate the Act.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 8-7-802(a)(1), the Arkansas Pollution Control and Ecology Commission has the power and duty to promulgate, after notice and public hearing, and to modify, repeal, and enforce, as necessary or appropriate to implement or effectuate the purposes and intent of Title 8, Chapter 7, Subchapter 8 of the Arkansas Code, which concerns regulated substance storage tanks, rules relating to an underground storage tank release detection, prevention, corrective action, and financial responsibility program as required by the Resource Conservation and Recovery Act of 1976 and the Energy Policy Act of 2005, Pub. L. No. 109-58. The Commission is further authorized to adopt appropriate rules and regulations not inconsistent with the Petroleum Storage Tank Trust Fund Act, codified at Ark. Code Ann. §§ 8-7-901 through 8-7-909, to carry out the intent and purposes of and to assure compliance with that Act. *See* Ark. Code Ann. § 8-7-903(b). The Advisory Committee on Petroleum Storage Tanks shall advise DEQ and PC&EC regarding promulgation of rules concerning storage tanks. *See* Ark. Code Ann. § 8-7-904(h).

The proposed revisions implement changes brought about by Act 422 of 2023, sponsored by Representative Jack Ladyman, which amended the Petroleum Storage Tank Trust Fund Act and amended the payment limit per occurrence for corrective action.

4. DEPARTMENT OF ENERGY AND ENVIRONMENT, OIL AND GAS COMMISSION (Lauren Ballard, Daniel Pilkington)

a. SUBJECT: Rule D-23: General Rule for the Regulation of Underground Natural Gas and Other Gas Storage Projects

DESCRIPTION: The Department of Energy and Environment, Oil and Gas Commission ("OGC" or "Commission") proposes this rulemaking

regarding General Rule D-23: General Rule for the Regulation of Underground Natural Gas and Other Gas Storage Projects, in order to comply with changes in Arkansas law enacted in Act 140 of 2023.

OGC General Rule D-23 provides procedural guidelines for the establishment, maintenance, and closure of underground facilities for the storage of natural gas. The Underground Storage of Natural Gas Law, Ark Code Ann. § 15-72-601 et seq., provides the statutory authority for this rule. These statutory sections were amended by Act 140 of 2023, to provide for the underground storage of carbon oxides, ammonia, hydrogen, nitrogen, or noble gas, as well as natural gas. The ultimate purpose of the rule amendments is to start the process to create and establish the Underground Injection Control, Class VI Well Program delegated by the Environmental Protection Agency. It is governmental priority to establish this program to allow the Commission to continue to regulate underground storage facilities in the State of Arkansas.

The proposed amendment to General Rule D-23 modifies this rule to conform to the new statutory requirements. The authority and applicability section of the rule was broadened to allow for the creation of gas storage facilities, which include facilities for the storage of gases other than natural gas. New definitions were added for the term "Gas" and "Gas Storage Reservoir." Other definitions, such as "Gas Storage Operator," and "Underground Gas Storage Facility" have been modified to allow for the underground storage of other gases. Other definitions, such as "Cushion Natural Gas," "Native Natural Gas," and "Working Natural Gas," have been modified to allow certain provisions in the rule to continue to apply only to natural gas, and not other gases identified in Act 140 of 2023. The new definitions are utilized in the rule to allow for eminent domain powers to be used to establish underground storage facilities for other gases. Finally, terminology has been modified to clarify that certain provisions in the rule for permitting, drilling, well construction, well abandonment and closure and decommissioning, now only apply to natural gas wells related to underground storage facilities.

The amendments to General Rule D-23 are necessary to allow Arkansas business interests to use geological resources to have a positive impact on the state and local economy. The state will benefit from the utilization of geological formations for the underground storage of gas as it will create new industry and jobs for Arkansans. The program will be attractive to both existing businesses and new business enterprises seeking to develop gas storage facilities. The practical impact of the rule amendment is to allow the Commission to adopt Class VI rules and seek primacy for carbon capture utilization and storage. These rule amendments also help our HALO (hydrogen) efforts by granting the Commission authority to regulate the underground storage of hydrogen. Although there is a

positive impact for the state and local economy, there is no negative financial impact for the State of Arkansas or local government. There will be no additional cost for the State as a result of this rule amendment.

Following the public comment period, the agency indicated that the following amendments were made: The definition of "gas" in Section b.4 of the rule was amended to reflect the language of the Arkansas Code; the term "natural" was removed from the definition of "native natural gas" in Section b.7 the rule.

PUBLIC COMMENT: A public hearing was held on March 27, 2024. The public comment period expired April 15, 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 was provided with the following responses:

1) Is there a reason why the definition of "gas" provided in the amended rule does not include the qualifier "either while in its original state or after the natural gas has been processed by removal from the natural gas of component parts not essential to its use for light and fuel", as it appears in Arkansas Code Annotated § 15-72-602(2), as amended by Act 140 of 2023, § 1? **RESPONSE**: The phrase was omitted because it neither adds nor detracts from the term "natural gas." The phrase is referring to components removed from the 'raw' natural gas, such as water vapor, nitrogen, and CO2, which do not contribute to the methane component that is used for light and fuel. The definition of "gas" referred to does incorporate the definition of "Natural Gas" from the rule, which should bridge any gap with the statutory definition. However, given that the qualifier referenced neither adds nor detracts from the meaning of the rule, the Oil and Gas Commission will amend the rule to include the qualifying language.

2) Is there a reason why the amended rule refers to "native natural gas" as opposed to "native gas", as it appears in Arkansas Code Annotated § 15-72-602(4), as amended by Act 140 of 2023, § 1? **RESPONSE**: Inserting the term "natural" was an attempt to be more descriptive and precise with the terminology. The only occasion where native gas will be an issue is in permitting a natural gas storage facility for a reservoir that was formerly producing natural gas. In those circumstances, the native natural gas must be accounted for and credited to the mineral owner. The term "native gas" will not be used for CO2 or hydrogen storage because there will not be a native component of those gases that will belong to the mineral owner and for which he or she will be compensated. However, in order to be consistent, the Oil and Gas Commission will remove the term "natural" from the definition of "native natural gas" in the rule.

3) Section (c)(1) of the proposed rule, concerning eminent domain, cites to Ark. Code Ann. § 15-72-606, which imposes certain requirements on "any Natural Gas Public Utility or Gas Storage *Operator*". (Emphasis added). However, Ark. Code Ann. § 15-72-606, as amended by Act 140 of 2023, § 1, refers to "any natural gas public utility or gas storage *facility*". (emphasis added). Is there a reason why the term "operator" was used in place of the term "facility", as it appears in the Arkansas Code? If so, does that same reasoning apply to the use of the term "Gas Storage Operator" in sections (c)(2) and (d)(1) of the proposed rule?
RESPONSE: The definition of "Gas Storage Operator" in the rule includes the definition of "gas storage facility from the statute." The term "Gas Storage Operator" is used for clarity. The statute describes what is being created, which is a facility. The purpose of General Rule D-23 is to provide a pathway for entities to obtain a certificate for use in court as part of an eminent domain proceeding in construction of the facility. The facility does not exist at the time of the eminent domain proceeding. When you regulate this process, you permit an operator of a facility under D-23 because the operator is requesting the permit as part of the plan to build the facility. The operator is the party that obtains the certificate for use in the eminent domain proceeding, which is why that term is used in the rule. The same rationale explains why this term as it is used in sections (c)(2) and (d)(1) of the rule. Because the term "Gas Storage Operator" is used for clarity, the OGC does not recommend that any change be made to the rule in response to this point.

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 § 15-72-608(a), the Oil and Gas Commission shall have authority to make reasonable rules and exercise such powers as are granted to it by §§ 15-71-101 – 15-71-112, 15-72-101 – 15-72-110, 15-72-205, 15-72-212, 15-72-216, 15-72-301 – 15-72-324, and 15-72-401 – 15-72-407 as may be necessary in the administration of the Underground Storage of Gas Law. *See* Ark. Code Ann. §§ 15-72-601 through 15-72-608.

The proposed amendments include those made in light of Act 140 of 2023, sponsored by Senator Missy Irvin, which amended the law regarding the underground storage of gas and amended the Underground Storage of Gas Law to include certain other gases.

5. DEPARTMENT OF HEALTH, STATE BOARD OF HEALTH (Laura Shue)

a. SUBJECT: Standards Pertaining to Human Breast Milk Bank

DESCRIPTION:

Background

The purpose of these Standards is to comply with the requirements of Act 225 of 2021 regarding appropriate safety standards in the transporting, processing, and distributing of commercial human breast milk to protect the citizens of Arkansas.

Key Points

These changes were required to reflect legislation, Act 225 (Ark. Code Ann. § 20-7-140), during the 2021 legislative session.

Discussion

It is proposed to modify the Rules Pertaining to Human Breast Milk Banks as follows:

1. Update rule name to reflect language in Act 225 of 2021.
2. Update cover page including effective dates, Secretary of Health, and State Health Officer information.
3. 4.4.2 (page 7), we have removed the statement regarding the requirement for a baby's healthcare provider to provide a statement of known health or medical risks is no longer a requirement.
4. 4.4.4 (page 7), replaces the term Members of the Medications Committee to Medical Director and approved by the human breast milk bank's panel of consultants. This panel is referred to in section 3.2 and reflects what was already in the rules.
5. 4.4.4.5 (Page 8-9), removes a written list of specific medications that do not defer a potential donor; refers back to 4.4.4. and the Medical Director and panel of consultants determining which medications are permissible and which ones are not.
6. Section 6, 6.1 – 6.14 (page 10-13), these have been updated to reflect current practices. The reasons for disqualification, either temporarily or totally, have been revised, and reflect current regulatory guidelines from AABB (Association for the Advancement of Blood and Biotherapies), US CDC, and other regulatory bodies, and these reasons are recognized and used by the Human Milk Bank Association of North America.

7. 6.15-6.19 (page 13) have been removed as these are no longer seen as reasons to disqualify individuals from donating milk, or they are thought to be covered by another listed reason.
8. Completely removed Section 7 (page 13-15), Temporary Disqualification, as concerns are addressed in Section 6.
9. Section 22.2 (page 23-24), updated spelling.

The following changes were made in response to public comment:

- Revised Section 4.4.3 to include language "that achieved accreditation from an International Laboratory Accreditation Cooperation recognized accreditation body…"
- Revised Section 15.3.2 regarding calibration of thermometers.
- Struck language from Section 26.1.3 for consistency with Section 4.4.2.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on February 28, 2024. The agency provided the following public comment summary:

Commenter's Name: Randall Querry, Director Government Relations, American Association for Laboratory Accreditation (A2LA)
COMMENT: We appreciate the opportunity to provide comments directed at the proposed rule "Standards Pertaining to Human Breast Milk Banks." Specifically, we write regarding laboratory testing and calibration requirements and the related laboratory accreditation standards. By way of background, A2LA is a non-profit, accreditation body with over 4200 actively accredited certificates representing all 50 states and international, and 30 organizations accredited in Arkansas including the Arkansas Public Health Laboratory. We have been granting accreditation to laboratories in various industries since 1979.

The criteria forming the basis for our testing and calibration laboratory accreditation programs is ISO/IEC 17025 General requirements for the competence of testing and calibration laboratories. We also provide accreditation to clinical laboratories to ISO 15189 Medical laboratories – Requirements for quality and competence; and achieved and maintain Centers for Medicare and Medicaid Services (CMS) Deem Status as an accreditation organization to accredit clinical laboratories to the Clinical Laboratory Improvement Amendments (CLIA) requirements. We ourselves, as an accreditation body, have been evaluated against rigorous standards in providing these accreditation services and we are the only accreditation body in the world that is recognized globally as an International Laboratory Accreditation Cooperation (ILAC)-recognized accreditation body and CMS deemed status accreditation organization.

We offer the following comments for your consideration. Our recommended language is inserted in bold: In section 4.4.3, the requirements specify "A CLIA certified high complexity clinical laboratory, or an ISO 17025 accredited clinical laboratory does the tests…" Please note that an additional ISO standard exists that is based on ISO/IEC 17025 and ISO 9001 but specifies requirements for quality and competence that are particular to medical laboratories. This ISO standard is ISO 15189 and has been in use for close to twenty years. We recommend that 4.4.3 be revised to "A CLIA certified high complexity ~~**clinical**~~ laboratory or an ISO/IEC 17025 **or ISO 15189** accredited clinical laboratory, **which achieved accreditation from an International Laboratory Accreditation Cooperation recognized accreditation body,** does the tests…"

In section 8.1, consider revising certified laboratory to the following: "A certified or accredited laboratory is to conduct screening blood tests…"

Section 10.1 provides requirements for the breast milk bank to have disaster plans. We support this requirement; however, we advise that a provision be included to require periodic testing of the disaster plans to ensure that they are effective. We recommend that Section 10.1 be amended by adding a third, final sentence "**The disaster plan shall be testing at periodic intervals to determine effectiveness.**"

In section 15.3.2, the requirements specify, "Thermometers may be certified calibrated by National Institute of Standards and Technology(NIST) (or similar agency) or calibrated quarterly by the milk bank using an NIST certified reference thermometer. The milk bank must keep records of calibration." It is industry practice to rely on NIST calibration or rely on an ISO/IEC 17025 accredited calibration laboratory that is accredited by an ILAC recognized accreditation body for calibration of the reference thermometers. Then the milk bank may verify working thermometers against the reference thermometers. This can be more cost effective to the milk bank than as currently written in the proposed rule. We recommend the following revision to section 15.3.2: "Thermometers may be calibrated **by a national metrology institute (NMI) such as** the National Institute of Standards and Technology (NIST) **or an ISO/IEC 17025 accredited calibration laboratory that is accredited by an ILAC recognized accreditation body, for the calibration of the reference thermometers. The milk bank shall verify working thermometers against the calibrated reference thermometers at least quarterly.** The milk bank must keep records of **the** calibration **and verification records**."

In Section 14.1, second sentence, we recommend the following addition: Two distinct and appropriately calibrated (see section 15.3.2)

thermometers – whether electronic, or indwelling, or mercury—monitor freezers. Also note that the EPA has launched an effort to reduce the use of mercury-filled non-fever thermometers. As referenced on the EPA website: EPA has launched an effort (https://www.epa.gov/mercury/mercury-thermometers) to reduce the use of mercury-filled non-fever thermometers used in industrial settings where suitable alternatives exist. As part of a partnership EPA developed with the National Institute of Standards and Technology (NIST), NIST no longer provides calibration services for mercury thermometers. You can read more about the impact the decision will have in NIST's February 2011 press release announcing the change.

Section 26.1.3 appears to be inconsistent with section 4.4.2, where language was struck out concerning the baby. Section 26.1.3 still includes a requirement for the infant. This may need to be reviewed further to consider striking the infant requirement.

Section 27.5, requirements are in place to initiate a root cause analysis. We respectfully recommend that this language be improved upon. We recommend a fourth and final sentence added to 27.5 that states "**Following implementation of a corrective action, (e.g. three months), audit the correction to determine its effectiveness.**"
RESPONSE: The Department has revised the Standards in response to public comment.

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

Q. Section 26.1.3 is similar to § 4.4.2, which was amended, but no changes were made to § 26.1.3. Just wanted to flag this.
RESPONSE: For § 26.1.3, that is a correct catch. The information regarding the medical release for an infant did need to be removed, and we have made the change. It is essentially a typo and not substantive.

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 shall establish, by rule, standards for transporting, processing, and distributing commercial human breast milk on a for-profit or nonprofit basis in this state." Ark. Code Ann. § 20-7-140(a).

6. DEPARTMENT OF HUMAN SERVICES (John Parke, Mitch Rouse)

a. SUBJECT: Audit Guidelines

DESCRIPTION:

Statement of Necessity

The Department of Human Services (DHS) issues a comprehensive update for Audit Guidelines. The last major update was in 1998 and since that time multiple changes have been made to federal and state law that need to be placed in a single reference resource. Providers and their auditors may rely on the information in this rule to know what information to submit to DHS.

Summary

DHS provides both state and federal funding, as well as non-cash resources and Medicaid reimbursements to organizations. DHS is required to adhere to Federal and State statutes, as well as demonstrate effective internal control. The same requirements apply to organizations who receive funding from DHS. The guidelines in this rule comply with 31 United States Code (U.S.C.) § 503, Federal Regulations found at 2 Code of Federal Regulations (C.F.R.) Part 200 and following which details the "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards", and the most recent U.S. Government Accountability Office Auditing Standards along with several state laws.

This rule details audit types and timelines for providers, including the thresholds applicable, compliance requirements, and late submissions. It is the responsibility of the provider to select an auditor and to pay for the audit. Audits must be performed by independent Certified Public Accountants (CPAs) currently holding an annual permit to practice from the Arkansas State Board of Public Accountancy (ASBPA), maintain professional proficiency through continuing education and other requirements for continuing licensure. Auditors of nonprofit organizations' activities and funding should have training related to that environment, and any other specific or unique activities audited.

DHS will require provider contact information and a management response letter detailing audit findings and remediation. Specific schedules regarding state and federal governmental assistance must be provided with required details, including the specifics for Medicaid funding. Finally, the guidelines for funding agreements are detailed in the rule to assist organizations subject to this rule.

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

The proposed effective date is July 1, 2024.

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

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 Title 2, Part 200 of the Code of Federal Regulations, addressing uniform administrative requirements, cost principles, and audit requirements for federal awards. Specifically, the rule implements 2 C.F.R. § 200.332, regarding subrecipient monitoring and management requirements for pass-through entities.

7. DEPARTMENT OF HUMAN SERVICES, DIVISION OF AGING, ADULT, AND BEHAVIORAL HEALTH SERVICES (Jay Hill, Mitch Rouse)

a. SUBJECT: Assisted Living Facility Cost Reporting Pursuant to Act 198

DESCRIPTION:

Statement of Necessity

In compliance with Act 198 of 2023, the Division of Aging, Adult and Behavioral Health Services (DAABHS) amends the Living Choices Assisted Living Medical Provider Manual to advise assisted living providers of cost-reporting requirements. Assisted Living Facilities (ALFs) must complete annual cost-reports as a condition for participating in the Arkansas Medicaid Program.

Rule Summary

Living Choices Assisted Living Medical Provider Manual Section 202.202 (formerly "Reserved") updated to include new mandate that:

- Any ALF participating in, or seeking to participate in, the Arkansas Medicaid Program, including any Medicaid waiver program under 42 U.S.C. § 1396n(c) or 42 U.S.C. § 1315, shall file a cost report with the Department of Human Services with the following requirements:
    - Annually not later than ninety (90) days after the end of the fiscal year of the facility;
    - Within sixty (60) days of any significant change in the facility's ownership, management, or financial status or solvency; and
    - At any time within sixty (60) days of a written request from the department or the Office of Medicaid Inspector General;
- The Department of Human Services (DHS) shall post the cost-reporting instructions, forms, and schedules on its website;
- DHS may revise the cost-reporting instructions, forms, and schedules at any time, following consultation with representatives of the assisted living facility industry and sixty days before written notice to each Medicaid-certified Level II licensed assisted living facility;
- DHS may require electronic submission of cost reports and accompanying information;
- In preparation and filing of cost reports, each ALF shall:
    - Comply with generally accepted accounting principles and cost-reporting instructions of the department;
    - Follow the accrual method of accounting; and
    - Maintain the working trial balance used in completing the cost reports for each reporting period for a minimum of three (3) years; and
- Requirement that to be considered complete and timely filed, each cost report shall include all information required by the forms, schedules, certifications, and instructions specified by the department and otherwise comply with generally accepted accounting principles and cost-reporting instructions of the department.

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

The proposed effective date is July 1, 2024.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact.

Per the agency, the total cost to implement the rule is $4,167 for the current fiscal year ($2,083 in general revenue and $2,083 in federal funds) and $50,000 for the next fiscal year ($25,000 in general revenue and $25,000 in federal funds). The total estimated cost by fiscal year to state, county, or municipal government to implement this rule is $2,083 for the current fiscal year and $25,000 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 198 of 2023. The Act, sponsored by Representative Jon Eubanks, established cost reporting for assisted living facilities to the Department of Human Services as a condition of participation in the Arkansas Medicaid Program.

8. DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILDREN AND FAMILY SERVICES (Christin Harper, Mitch Rouse)

a. SUBJECT: Changes Pursuant to the Trafficking Victims Prevention and Protection Reauthorization Act of 2022

DESCRIPTION:

Statement of Necessity

This Division of Children and Family Services (DCFS) updates the DCFS Policy and Procedure Manual protocols regarding children who are reported missing and involved in an open DCFS case pursuant to Public Law (P.L.) 117-348 that amends section 471(a)(35)(B) of the Social Security Act ("the Act"). These changes bring DCFS into compliance with the Act as required by the federal Children's Bureau. Revisions implement specific language from the Act regarding communication with law enforcement agencies and the National Center for Missing and Exploited Children (NCMEC) in an effort to provide a safe recovery of a missing child. DCFS also makes technical changes in preparation for the Division's launch of the ARfocus case management system, along with updating division operations and manual formatting.

Summary

The DCFS Policy and Procedure Manual updates are:

- Policy V-E: Child Involved in a Protective Services Case Who is Missing
  - To give specific examples of physical features and endangerment information to provide to law enforcement agencies and NCMEC when reasonably possible when a child is missing;
  - To specify that regular communication with law enforcement and NCMEC should be maintained throughout the search for a missing child and as it relates to the child's recovery; and
  - To make formatting and other technical revisions.
- Policy VII-N: Child Missing from an Out-of-Home Placement Case
  - To give specific examples of physical features and endangerment information to provide to law enforcement agencies and NCMEC when reasonably possible when a child is missing;
  - To specify that regular communication with law enforcement and NCMEC should be maintained throughout the search for a missing child and as it relates to the child's recovery; and
  - To make formatting and other technical revisions.

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

The proposed effective date is July 1, 2024.

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

LEGAL AUTHORIZATION: The Department of Human Services, Division of Children and Family Services has the responsibility to "provide services to dependent-neglected children and their families" and to "ensure the health, safety, and well-being of children when the division is responsible for the placement and care of a child." Ark. Code Ann. § 9-28-103(a)(2), (7). The Division may promulgate rules necessary to administer Title 9, Chapter 28, Subchapter 1 of the Arkansas Code, regarding children and family services. The Department of Human Services 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 changes to the Social Security Act. Section 471 of the Social Security Act requires certain state reports submitted to law enforcement agencies and the National Center for Missing and Exploited Children to include, when reasonably possible, a photo of the child in question, a description of the child's listed physical features, and endangerment information. 42 U.S.C. § 671(a)(35)(B).

9. DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILDREN AND FAMILY SERVICES, CHILD WELFARE AGENCY REVIEW BOARD (Janet Mann, Jim Brader, Mitch Rouse)

a. SUBJECT: Residential Licensing Standards

DESCRIPTION:

Statement of Necessity

Act 806 passed during the 94th Arkansas General Assembly of 2023. Act 806 increases the oversight by the Department of Human Services (DHS) of psychiatric residential treatment facilities and other regulated facilities. The Act requires DHS to promulgate rules setting minimum standards and metrics governing the quality of care provided by a regulated facility.

Act 806 authorizes the Department of Human Services to petition the Child Welfare Agency Review Board to deny, suspend, or revoke a regulated facility's license; allows DHS to impose adverse actions on psychiatric residential treatment facilities; clarifies which licensing standards apply to sexual rehabilitative programs operated in psychiatric residential treatment facilities; outlines quality assurance reviews to be conducted on psychiatric residential treatment facilities by DHS; updates minimum treatment plan and clinical discharge planning requirements; requires psychiatric residential treatment facilities to maintain written policies regarding health exams conducted upon admission to include medical and dental needs; and specifies which children may be admitted to a psychiatric residential treatment facility.

Rule Summary

To comply with the Act, the DHS amends the Minimum Licensing Standards for Child Welfare Agencies – Residential. This rule amends language in the manual's Introduction, Section 900 Psychiatric Residential Treatment Facilities, Section 1000 Sexual Rehabilitative Programs, and Appendix A: Definitions, to incorporate the requirements of the Act.

Substantively, this rule updates and details the duties of the board and DHS, and clarifies licensing approval and facility monitoring, including the addition of quality assurance reviews.

The specifics related to inspection, investigation, and adverse action are stated. The requirements for admission of a child to a facility and assessment and treatment planning are amended and updated. DHS updates the Sexual Rehabilitative Programs section to correspond to other rule revisions. DHS updates the rule to ensure consistent terminology throughout the manual, including clarification of definitions. Additionally, DHS streamlines formatting and layout and corrects grammatical and typographic errors.

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

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

Q. ACA § 9-28-1303(d), as created by Act 806, requires DHS to notify a regulated facility of an adverse action of the department in writing and set forth the facts forming the basis for the adverse action. I see changes in the rules regarding adverse actions, but I do not see anything in the rules regarding a notification in writing. Am I overlooking the relevant changes or is there a reason this provision is not reflected in the rules?

A. There was no need to include that--it's self-executing. That's a fundamental element of proper notice, and notice of adverse actions will always be in writing with details of the violation or it would fail as inadequate notice. Additionally, the Board is a body that meets monthly and relies on DHS to carry out its regulatory authority. Its authority to issue adverse actions has always been carried out by DHS (see the existing and unchanged definition of "adverse action" in Appendix "A").

The proposed effective date is July 1, 2024.

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

LEGAL AUTHORIZATION: The Department of Human Services may promulgate rules to enforce Ark. Code Ann. § 9-28-416, regarding admission of children to psychiatric residential treatment. Ark. Code Ann. § 9-28-416(b), *as created by* Act 806 of 2023. The Department shall promulgate rules to implement Title 9, Chapter 28, Subchapter 13 of the Arkansas Code, regarding psychiatric residential treatment facilities and

other regulated facilities. Ark. Code Ann. § 9-28-1304, *as created by* Act 806 of 2023.

This rule implements Act 806 of 2023. The Act, sponsored by Representative Frances Cavenaugh, provided state oversight of quality of care provided to children in psychiatric residential treatment facilities and other regulated facilities.

10. DEPARTMENT OF HUMAN SERVICES, DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES (Melissa Weatherton, Paula Stone, Thomas Tarpley, Mitch Rouse)

a. SUBJECT: Crisis Stabilization Units

DESCRIPTION:

Statement of Necessity

The Arkansas Department of Human Services (DHS) is implementing changes to help Crisis Stabilization Units (CSUs) become more financially sustainable. These changes allow CSUs to provide and be reimbursed for additional services allowable under the Medicaid program.

Summary of Changes

DHS made changes to manual names and service names, as well as updates to allow service to be delivered at two levels (service for individuals who stay past midnight of the day they are admitted and individuals that discharge prior to midnight). The following are the updates being made.

Counseling and Crisis Services Manual:

- Section 200.00 – Changed manual name from "Counseling Services" to "Counseling and Crisis Services." Manual and provider names updated in sections throughout.
- Section 201.000 – Added statement, "Upon effective date of this manual, Acute Crisis Units across all Medicaid manuals will be called Crisis Stabilization Units. Manuals are in the process of being updated."
- Section 255.003 – Added service description for CSUs. Added "Fee for Service" as a payment unit. Removed "Psychiatric Residential Treatment Center" as a place of service and added "Other."

Crisis Stabilization Unit Manual:

- Changed manual name from "Behavioral Health Acute Crisis Unit Certification" to "Crisis Stabilization Unit." Manual name updated in sections throughout.
- Section 102.00 – Updated definitions of "Crisis Stabilization Unit," "Emergency Examination," and "Mental Health Professional."
- Section 103.00 – Deleted section.
- Section 111.00 – Updated to define "Required Service Options for Crisis Stabilization Units."
- Section 112.00 – Deleted section; information moved to previous section.
- Section 114.00 – Removed two bullet points regarding co-occurring services.
- Section 129.00 – Deleted section; information moved to previous section.
- Section 157.00 – Updated procedures for Incident Reporting.
- Section 171.00 – Deleted statement, "The use of tobacco is not permitted at an Acute Crisis facility." Also deleted statement, "An Acute Crisis Unit is a free-standing facility that is not an adjunct to an existing hospital. The acute crisis unit shall not have more than 16 beds."
- Section 180.00 – Deleted section.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on May 11, 2024. The agency provided the following public comment summary:

Commenter's Name: Michael Keck, Executive Director, Psychiatric Research Center, University of Arkansas for Medical Sciences
COMMENT: Thank you for the opportunity to provide comment on the proposed rule changes in the newly named Counseling and Crisis Services manual and the Crisis Stabilization Certification Unit manual.

In Section 210.200 Staff Requirements of the Counseling and Crisis Services manual, several provider types, licensures, required certifications and supervision requirements are listed. Noticeably absent from the list of providers is Physician Assistant. Across a variety of clinical service lines, the availability of physician assistants has allowed more patients to receive care across the state of Arkansas. Physician Assistants have provided care for patients in primary care as well as several different specialties, from orthopedic surgery to ophthalmology. The talent and skill set of a physician assistant should also be readily available for those who seek behavioral health services. That is not the case for all Arkansans because of the current wording of this section in the manual. With the growing shortage of psychiatrists in Arkansas, the same opportunity to utilize

physician assistants should be available for reimbursement in behavioral health, just as it is in other areas of medicine.

As such a change as is proposed is implemented, our state will see more behavioral health services available to more patients across the state. And patients served by Medicaid will have access to care in parity with what is available to those with private insurance, where services rendered by a physician assistant are reimbursed.

Revisions of manuals do not occur frequently within the Department of Human Services. It is imperative when those modifications take place, the needed changes be included so that needed resources can be available to provide needed services to patients. While this suggested addition to the proposed manual could potentially delay the new manual from July 1st start date, it is important that the proposed update to the Counseling and Crisis manual include the physician assistants.
RESPONSE: The rendering providers in this rule apply to hundreds of behavioral health agency providers which are providing services outside of the Crisis Stabilization Units. The state has not assessed any impact to changes that would add Physician Assistants and can consider that for subsequent manual updates after being able to study this potential change.

Commenter's Name: Aaron Woodall, MPAS, PA-C, President, Arkansas Academy of Physician Assistants
COMMENT: The Arkansas Academy of Physician Assistants (ARAPA), on behalf of over 150 Physician Assistants (PAs) throughout Arkansas, appreciates the opportunity to provide comments on amendments associated with Arkansas Regulation 10584: Crisis Stabilization Units (CSUs). By including PAs in the updated sections, we will further encourage PAs to practice to their full extent and ensure that we are not excluding PAs from important rules or amendments pertaining to medical care.

The updates to Crisis Stabilization Units (CSUs) gives appropriate information to providers surrounding Medicaid provider manuals and State Plan regarding the rules required to claim reimbursement. However, PAs have now been designated both rendering and billing providers by Arkansas Medicaid as per Act 303 (2023) and therefore should be incorporated in further updates. This planned change is set to be effective as of July 1, 2024.

We would like to draw your attention to Section 200.000 Counseling and Crisis Services General Information, specifically Section 210.200 "Staff Requirements" and respectfully request the Department to have a section that would refer to PAs as qualified providers. We recommend this section be similar to the "Advanced Practice Nurse (APN)" section, with the

license being a valid Physician Assistant license and certification, and supervision required with a delegation agreement in place alongside a supervising physician.

Please reach out to ARAPA if we can be of any further assistance in any areas regarding physician assistants. We thank you for your consideration.
RESPONSE: The rendering providers in this rule apply to hundreds of behavioral health agency providers which are providing services outside of the Crisis Stabilization Units. The state has not assessed any impact to changes that would add Physician Assistants and can consider that for subsequent manual updates after being able to study this potential change.

The proposed effective date is July 1, 2024.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact.

Per the agency, the total cost to implement this rule is $73,674 for the current fiscal year ($20,629 in general revenue and $53,045 in federal funds) and $73,674 for the next fiscal year ($20,629 in general revenue and $53,045 in federal funds). The total estimated cost by fiscal year to state, county, or municipal government to implement this rule is $20,629 for the current fiscal year and $20,629 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).

11. DEPARTMENT OF HUMAN SERVICES, DIVISION OF PROVIDER SERVICES AND QUALITY ASSURANCE (Martina Smith, Mitch Rouse)

a. SUBJECT: Licensure for Veterans, Spouses, and Active Military

DESCRIPTION:

Statement of Necessity

Acts 137 and 457 passed during the 94th Arkansas General Assembly of 2023. Act 137 removes the one-year limit for veterans, their spouses, and active military to apply for service education, training, or certifications

towards initial occupational licensure as a Nursing Home Administrator or Nursing Assistant in the State of Arkansas. Act 457 allows for automatic occupational licensure of out-of-state individuals who hold similar licensure from other states towards initial occupational licensure as a Nursing Assistant in the State of Arkansas.

Rule Summary

To comply with the Acts, the Division of Provider Services and Quality Assurance amends the Rules for Licensure of Nursing Home Administrators in Arkansas and the Rules for the Arkansas Long-Term Care Facility Nursing Assistant Training Program to incorporate the requirements in the Acts as stated above. Additionally, DPSQA updates the rules to ensure consistent terminology throughout the manuals, to streamline formatting and layout, correct grammatical and typographic errors, modernize webpage links, and to reflect current organizational structure within DPSQA.

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

The proposed effective date is July 1, 2024.

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

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 Acts 137 and 457 of 2023.

Act 137, 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 457, also sponsored by Senator 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.

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

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

G. Agency Updates on the Status of Outstanding Rulemaking from the 2023 Regular Session Pursuant to Act 595 of 2021

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

2. Arkansas Teacher Retirement System (Mark White, Jennifer Liwo)

3. Department of Agriculture (Secretary Wes Ward)

4. Department of Commerce, Arkansas Economic Development Commission (Allison Hatfield, Jake Windley)

5. Department of Commerce, State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services (Tasha Tidwell, Amy Goode)

6. Department of Commerce, State Insurance Department (Booth Rand)

7. Department of Corrections (Tawnie Rowell)

8. Department of Energy and Environment (Lauren Ballard)

9. Department of Finance and Administration, Regulatory Division (Christy Bjornson, Trent Minner)

10. Department of Finance and Administration, Revenue Division (Paul Gehring, Alicia Austin Smith)

11. Department of Health (Laura Shue)

12. Department of Human Services (Mitch Rouse)

13. Department of Inspector General, Tax Appeals Commission (Secretary Allison Bragg, Samantha Blassingame)

14. Department of Labor and Licensing (Dan Parker)

15. Department of Public Safety (Joan Shipley, Major Mike Moyer)

16. Secretary of State (Michael Harry)

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

1. Department of Commerce, Arkansas Development Finance Authority (Mark Conine, Jake Bleed)

2. Department of Commerce, Arkansas Economic Development Commission (Allison Hatfield, Jake Windley)

3. Department of Commerce, State Bank Department (John Ahlen, Susannah Marshall)

4. Department of Commerce, State Securities Department (Campbell McLaurin)

I. Discussion with Department of Corrections Concerning AD 2024-10, Movement of Pregnant Women, effective date of March 5, 2024 (Tawnie Rowell)

J. Adjournment