

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

Thursday, August 22, 2024

9:00 a.m.

Room A, MAC

Little Rock, Arkansas

- A. Call to Order**
 - B. Reports from the Executive Subcommittee Concerning Emergency Rules**
 - C. Reports from ALC Subcommittees Concerning the Review of Rules**
 - D. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309**
- 1. ARKANSAS STATE POLICE RETIREMENT SYSTEM (Amy Fecher, Laura Gilson)**

- a. SUBJECT: REPEAL: Rule 1 – November 1957 and June 1973 – Repayment of a Refund**

DESCRIPTION: The Arkansas State Police Retirement System (“ASPRS”) seeks to repeal its Rule 1 – November 1957 and June 1973 – Repayment of a Refund, which only applied when a member took a refund of their contributions and later decided to repay ASPRS for that refund to reestablish service in the system. ASPRS’ members prior to January 1, 1978, were contributory members. The contributory requirement ended more than forty-six years ago. A review of ASPRS members found no refunded contributions that could be repaid to ASPRS to reestablish service. There are currently fourteen (14) inactive ASPRS members that contributed to the ASPRS plan. None of those members who took a refund of their ASPRS service could reestablish service with ASPRS by paying back the refund and receive a monthly benefit. This rule is therefore obsolete because it no longer applies to any ASPRS member and is not necessary for the proper administration of benefits.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on July 9, 2024. ASPRS received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: ASPRS has indicated that the proposed repeal has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-6-204(f)(1), the Board of Trustees of the State Police Retirement System shall make all rules from time to time as it shall deem necessary in the transaction of its business and in administering the State Police Retirement System, in addition to other duties that are imposed upon the Board by Title 24, Chapter 6, Subchapter 2 of the Arkansas Code, concerning the State Police Retirement System.

b. SUBJECT: REPEAL: Rule 2 – December 1981 – Termination Refund

DESCRIPTION: The Arkansas State Police Retirement System (“ASPRS”) seeks to repeal its Rule 2 – December 1981 – Termination Refund. The rule applied when a contributory member terminated employment and requested a refund of their member contributions, thereby forfeiting their ASPRS annuity. ASPRS members have not been contributory since 1977. A review of ASPRS member records found no remaining member contributions to be refunded; therefore the rule is obsolete.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on July 9, 2024. ASPRS received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: ASPRS has indicated that the proposed repeal has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-6-204(f)(1), the Board of Trustees of the State Police Retirement System shall make all rules from time to time as it shall deem necessary in the transaction of its business and in administering the State Police Retirement System, in addition to other duties that are imposed upon the Board by Title 24, Chapter 6, Subchapter 2 of the Arkansas Code, concerning the State Police Retirement System.

c. SUBJECT: REPEAL: Rule 5 – March 1975 – Final Average Salary

DESCRIPTION: The Arkansas State Police Retirement System (“ASPRS”) seeks to repeal its Rule 5 – March 1975 – Final Average Salary, which only applied to contributory service. There is no final average salary to calculate for contributory members since the contributory requirement for ASPRS members ended January 1, 1978.

There are no active contributory members of ASPRS, only inactive members that are not eligible for an ASPRS annuity because they did not meet vesting requirements. If an ASPRS member still retains accumulated contributions in their member deposit account and vests, Ark. Code Ann. § 24-6-201(6) defines “final average compensation” for contributory service within Tier One and APERS will administer the final average salary accordingly.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on July 9, 2024. ASPRS received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: ASPRS has indicated that the proposed repeal has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-6-204(f)(1), the Board of Trustees of the State Police Retirement System shall make all rules from time to time as it shall deem necessary in the transaction of its business and in administering the State Police Retirement System, in addition to other duties that are imposed upon the Board by Title 24, Chapter 6, Subchapter 2 of the Arkansas Code, concerning the State Police Retirement System.

d. **SUBJECT: REPEAL: Rule 6 – May 1978 – Public Safety**

DESCRIPTION: The Arkansas State Police Retirement System (“ASPRS”) seeks to repeal its Rule 6 – May 1978 – Public Safety. This is a repeal of an obsolete rule that applied to Tier 1 members. Arkansas Code § 24-6-201(11)(A) currently defines “public safety member” under ASPRS plan as a Tier 1 noncontributory member. Ark. Code Ann. § 24-6-201(19) defines Tier 1 as closed for ASPRS members hired after April 2, 1997. The rule’s reference to “commissioned personnel” is obsolete since Tier 1 is closed. There are currently twelve (12) active Tier 1 noncontributory members whose service is credited as a “public safety member” under Ark. Code Ann. § 24-6-201(11)(A). Since this rule is no longer needed for the proper administration of benefits, the rule is obsolete.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on July 9, 2024. ASPRS received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: ASPRS has indicated that the proposed repeal has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-6-204(f)(1), the Board of Trustees of the State Police Retirement System shall make all rules from time to time as it shall deem necessary in the transaction of its business and in administering the State Police Retirement System, in addition to other duties that are imposed upon the Board by Title 24, Chapter 6, Subchapter 2 of the Arkansas Code, concerning the State Police Retirement System.

e. **SUBJECT: REPEAL: Rule 8 – June 1988 – Retirement Date**

DESCRIPTION: The Arkansas State Police Retirement System (“ASPRS”) seeks to repeal its Rule 8 – June 1988 – Retirement Date. Rule 8 was promulgated to clarify which members qualified for a one-time ad hoc increase granted to certain retired members by Act 718 of 1987. Therefore, this rule obsolete. Additionally, Rule 8 may cause member confusion in planning for the administration of their retirement benefit because it states that the date of retirement is the last day of employment, which may or may not be the case. Ark. Code Ann. §§ 24-6-212 and 404, covering Tier 1 and Tier 2 members, state that a member may retire upon written application to ASPRS. The application must state the member’s desired retirement date, which must be at least thirty (30) days but no more than ninety (90) days after the filing of the application. Using the last day of employment as the retirement date under Rule 8 does not accurately describe the options available to the member under the law.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on July 9, 2024. ASPRS received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: ASPRS has indicated that the proposed repeal has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-6-204(f)(1), the Board of Trustees of the State Police Retirement System shall make all rules from time to time as it shall deem necessary in the transaction of its business and in administering the State Police Retirement System, in addition to other duties that are imposed upon the Board by Title 24, Chapter 6, Subchapter 2 of the Arkansas Code, concerning the State Police Retirement System.

f. **SUBJECT: REPEAL: Rule 9 – November 1988 – Application of Ad Hoc Increases**

DESCRIPTION: The Arkansas State Police Retirement System (ASPRS) seeks to repeal its Rule 9 – November 1988 – Application of Ad Hoc Increases. Rule 9 was promulgated to clarify the administration of a one-time ad hoc increase to retirement benefits granted by Act 718 of 1987. Rule 9 clarified that the ad hoc increase would be added to retirement benefits after the annual post-retirement increase (also known as cost-of-living adjustment or “COLA”) had been applied. In the event future legislation grants an ad hoc increase to retirement benefits, then the law should set forth when to apply the increase so that the system’s actuaries can produce an accurate financial impact statement before the passage of the act. Therefore, the rule is obsolete and no longer needed for the administration of ASPRS benefits.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on July 9, 2024. ASPRS received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: ASPRS has indicated that the proposed repeal has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-6-204(f)(1), the Board of Trustees of the State Police Retirement System shall make all rules from time to time as it shall deem necessary in the transaction of its business and in administering the State Police Retirement System, in addition to other duties that are imposed upon the Board by Title 24, Chapter 6, Subchapter 2 of the Arkansas Code, concerning the State Police Retirement System.

2. **DEPARTMENT OF FINANCE AND ADMINISTRATION, OFFICE OF DRIVER SERVICES (Paul Gehring)**

a. **SUBJECT: Gender Information Required to be Displayed on an Arkansas Driver’s License or State Identification Card**

DESCRIPTION:

Background

Under Ark. Code Ann. § 27-16-1104(3), each driver’s license or identification card issued by DFA shall contain information regarding the person’s gender. Pursuant to the authority vested in the Secretary under Ark. Code Ann. §§ 25-8-102(a) and 27-16-1108, the Secretary, with the

approval of the Governor, will administer the requirements of Ark. Code Ann. § 27-16-1104(3) consisted with this proposed permanent rule by requiring each driver's license and identification card issued by the Office of Driver Services of the Department of Finance and Administration to state the person's gender as "M" (male) or "F" (female) consistent with information contained on the person's birth certificate, passport, or identification document issued by the U.S. Department of Homeland Security (DHS) and no longer permit "X" to be stated on the person's driver's license.

The Office previously permitted the holder of a driver's license or identification card to choose to indicate "M" (male) or "F" (female) on the driver's license or identification card although the person's birth certificate, passport, or DHS document provided differing gender information. The Office also permitted driver's licenses and identification cards to state gender information as "X" instead of "M" (male) or "F" (female). On March 12, 2024, the Secretary of DFA rescinded this policy. The purpose of this rule is to ensure that individuals and organizations that rely upon identifying information contained within a driver's license or identification card are provided with the most accurate and complete gender information that reflects the person's gender information stated within the holder's birth certificate, passport, or DHS document.

Key Points

The proposed permanent rule:

- Requires that a driver's license or identification card issued by the Office of Driver Services contain the same gender information of "M" (male) or "F" (female) as stated on the person's birth certificate, passport, or DHS document;
- Prohibits the Office from issuing or renewing a driver's license or identification card that contains gender information that is different than the person's gender information stated on the person's birth certificate, passport, or DHS document or states "X" or "blank" as the person's gender information;
- Authorizes the Office to amend the gender information contained on a person's driver's license or identification card upon presentation of an original or certified copy of an amended birth certificate issued by the Arkansas Department of Health or the vital records office of another state or governmental agency;
- Authorizes the Office to change the "X" gender information contained on a previously-issued Arkansas driver's license or identification card based upon the birth certificate, passport, or DHS document records kept by the Office; and
- Requires that an applicant for a driver's license or identification card provide gender information to the Office as either "M" (male) or "F"

(female) in circumstances where the applicant's birth certificate, passport, or DHS document do not contain "M" (male) or "F" (female) gender information.

PUBLIC COMMENT: A public hearing was held on this rule on June 7, 2024. The public comment period expired on June 27, 2024. The agency provided a public comment summary. Due to its length, the public comment summary is attached separately.

This rule was previously reviewed and approved as an emergency rule; the agency states that the emergency rule became effective on March 15, 2024, and expired on July 14, 2024. The proposed effective date for permanent promulgation is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Secretary of the Department of Finance and Administration "shall promulgate rules to implement and administer" the Driver's License Security and Modernization Act, codified at Ark. Code Ann. §§ 27-16-1101 to -1112. Ark. Code Ann. § 27-16-1108. Arkansas Code § 27-16-1104 requires the Office of Driver Services to "include at a minimum the following information and features on each driver's license and identification card that it issues to a person:

- (1) The person's full legal name;
- (2) The person's date of birth;
- (3) The person's gender;
- (4) The person's driver's license or identification card number;
- (5) A digital photograph of the person;
- (6) The person's address of residence;
- (7) The person's signature;
- (8) Physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes; and
- (9) A common machine-readable technology with defined minimum data elements."

3. **DEPARTMENT OF HEALTH, STATE BOARD OF HEALTH** (Craig Smith, Laura Shue, items a-g; Ric Mayhan, item a; Terry Paul, item b; Kelli Kersey, items c, f-g; Shane David, item d; Rachel Sizemore, item e)

- a. **SUBJECT:** Rules Pertaining to Master, Journeyman, and Restricted Plumber Licenses, Plumbing and Gas Inspector Licenses, Restricted Hospital Maintenance, and Water and Sewer Service Line Installation & **REPEALS:** Rules and Regulations Pertaining to Plumbing and/or Natural Gas Inspector Certification; Rules and Regulations Pertaining to Restricted Plumbers License – Water and Sewer Service Line Installation; and Rules and Regulations Pertaining to Restricted Plumbers License – Hospital Maintenance

DESCRIPTION:

Background

Pursuant to A.C.A. § 17-38-201, the Department has authority to promulgate the Rules Pertaining to Master, Journeyman, and Restricted Plumber Licenses, Plumbing and Gas Inspector Licenses, Restricted Hospital Maintenance, and Water and Sewer Service Line Installation. These rules set standards for the qualifications, examination, and licensing of master plumbers and journeyman plumbers and for the registration of apprentice plumbers, and of plumbing and gas inspectors, restricted hospital maintenance, and water and sewer service line installation.

Key Points

The proposed rule:

- Updates rule to reflect requirements of Act 137 of 2023.
- Updates rule to comply with Act 457 of 2023.
- Updates rule to incorporate the Rules Pertaining to Plumbing and/or Natural Gas Inspector Certification; Rules Pertaining to Restricted Plumbers License Water and Sewer Line Installation; and Rules Pertaining to Restricted Plumbers License Hospital Maintenance into one set of Rules, and repeal each of the Rules Pertaining to Plumbing and/or Natural Gas Inspector Certification; Rules Pertaining to Restricted Plumbers License Water and Sewer Line Installation; and Rules Pertaining to Restricted Plumbers License Hospital Maintenance.
- Updates rule to include provisions for backflow preventer assembly installation and repair.

Discussion

The Rules Pertaining to Master, Journeyman, and Restricted Plumber Licenses, Plumbing and Gas Inspector Licenses, Restricted Hospital Maintenance, and Water And Sewer Service Line Installation are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the laws of the State Arkansas including, without limitation, Act 200 of 1951, as amended by Act 372 of 1957, Act 555 of 1963, Act of 1973, Act 902 of 1975, Act 816 of 1987, Acts 330 & 1293 of 1991, Acts 1217 of 2003, 248 of 2017, Acts 426, 820, and 1011 of 2019, Acts 135 and 725 of 2021.

The Rules were substantially revised and reorganized to provide for greater administrative efficiency and access to the public by combing four sets of rules into one and allow for the repeal of three sets of rules; as well as update the language for automatic military licensure pursuant to Act 137 of 2023, and incorporate the provisions of Act 457 of 2023 for automatic occupational licensure.

Second Revision

We removed language that specified the number of hours required for recertification classes for Backflow Prevention Assemblies Technicians, as those hours are determined by the training platform.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on June 2, 2024. The agency indicated that it received no public comments.

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

Q. Section IV.e.vii states, “Persons holding a Restricted Water and Sewer Line Installation Plumber’s License shall not transfer a license from one phase of plumbing to any other phase.” The old rule continued, “...or move from one restricted area to another without first resubmitting a new application to the Department.” Why was this language removed?

A. The removed language eliminates an unnecessary geographic restriction for licensees of this plumbing phase.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Health has the power to adopt “rules as to the qualifications, examination, and licensing of master plumbers and journeyman plumbers and for the registration of apprentice plumbers[.]” Ark. Code Ann. § 17-38-201(a)(3), (d)(1). The Board also has authority to adopt “rules defining restrictions in the type of work allowed, geographical area served, and term of” restricted licenses limited to gas fitter licenses. *See* Ark. Code Ann. § 17-38-201(c)(7). These rules implement 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 certification toward initial occupational licensure.

Act 457, also sponsored by Senator Hill, created the Automatic 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.

b. SUBJECT: Rules Pertaining to Onsite Wastewater Systems

DESCRIPTION:

Background

Pursuant to A.C.A. §§ 14-236-101, et seq., the Department has authority to promulgate the Rules Pertaining to Onsite Wastewater Systems. These rules set standards for the design and construction of onsite wastewater systems in suitable soils for the renovation of wastewater and the return of the renovated wastewater into the hydrologic cycle.

Key Points

The proposed rule amendments are intended to comply with Acts 137 and 457 of 2023, to remove old language, propose changes to allow additional use of good management practices in subdivision review, and incorporate changes regarding interceptor drains.

Discussion

Deletions:

- Section 2.10 Soil Qualified Designated Representative
- ~~9.3. In addition to the permitting requirements outlined in Section 4 of this rule, a Memorandum of Agreement signed by~~

~~the property owner shall be submitted as part of the Onsite Wastewater System Application for all alternate systems.~~

- Appendix A
- Deleted laundry loading rate 750
- Deleted Service Stations and Convenience Stores 10 Deleted Outdoor Drive Ins 10

Additions:

- Section 3.5 Applicant may receive a waiver from initial licensure fee if eligible.
- Section 2.56 Soil Qualified Designated Representative (moved to proper location).
- Section 8.4.3 Daily flow adjustment for RV park sites with engineered pretreatment.
- Section 16.13 Automatic Occupational Licensure under Act 457 of 2023.

Changes:

- 2.25 Interceptor Drain. A subsurface drain line usually constructed upgrade five to ten feet from the absorption area to divert seasonal groundwater. A minimum of a 4 mil plastic barrier shall be placed the entire depth on the field line side of the trench. Interceptor drains shall be located between the absorption area and any upslope direction where subsurface flow could influence the drain field.
- 2.42 Relict Relic Redoximorphic Features – (Typo correction).
- 2.50 Similarly Qualified Individual. An individual with bachelor's degree with 30 hours of natural science, engineering and/or math, 3 years' experience verified by the Department in the design of onsite wastewater systems or who has completed an 24- month training plan approved by the Department with a licensed Designated Representative, completed wastewater one and two licensing with the Arkansas Department of Environmental Quality.
- 5.4 No surface discharging systems shall be allowed in subdivisions for new construction until all requirements of the Division of Environmental Quality under the Department of Energy and Environment and the Department of Health are met.
- 5.5.1 Capping fill systems may be used to overcome separation to bedrock. On lots less than three acres in size proposed for subdivision development, all undisturbed soils shall have a minimum depth of 13 inches or greater to a brief seasonal water table, and/or a depth of 18 inches or greater to an adjusted moderate seasonal water table, and/or a depth of 24 inches or greater to an adjusted long seasonal water table.
- 5.5.2. Interceptor drains may be used for the purpose of determining minimum lot size when soils exhibiting a brief

seasonal water table between the surface and 18 inches of depth that an interceptor drain can effectively reduce the depth of the seasonal water table.

- 5.5.3. Lots less than three acres that require interceptor drains in subdivision approval shall include a complete permit submittal to establish siting of the primary and secondary areas including the interceptor drain. Lots that do not meet the above minimum soil criteria shall be three acres or larger and sized on natural soil conditions. Good management practices shall not be used for the purpose of determining minimum lot size.
- 5.5.4. Drip dispersal design may be used in determining minimum lot size for subdivisions when the following criteria are met: Minimum depth to bedrock in section 7.2.2 primary and secondary absorption areas are flagged on contour, legal description of primary and secondary absorption areas included in the legal description of those lots.
- 8.1. A standard onsite wastewater system consists of a field of perforated pipe surrounded by gravel, or other conventional trench media product authorized by the Department and installed in such a manner that the clarified effluent from the septic tank or pretreatment unit will be distributed with reasonable uniformity into the natural soil. The individual absorption trench should not be more than 100 feet without mechanical dosing, and the trench bottom and perforated pipe or gravel substitute should be installed at a grade of 0 to 2 inches per 100 feet. In all cases line length shall not exceed 150 feet. In order to ensure even distribution of the effluent, all onsite wastewater systems utilizing a distribution box shall have absorption trenches of the same length.
- Section 12. Owners of holding tanks, or alternative wastewater systems are required to maintain a Monitoring Contract with a Monitoring Person registered by the Department for the life of the system. A Monitoring Person shall be authorized by the manufacturer in order to provide a contract for the monitoring of any proprietary system. No homeowner shall be allowed to monitor their own system. All systems discharging treated sewage shall be maintained at all times by an individual or company trained in the operation and maintenance of that system. {General Sanitation Rule Section VII. A. Method of Disposal}
- 12.1. The Monitoring Contract and the Memorandum of Agreement shall be submitted with the Application for an Onsite Wastewater System Permit (EHP-19).
- 16.1.1.1.1. Designated Representatives must be a Registered Land Surveyor, Registered Sanitarian, Plumber, Engineer, or a similarly qualified individual, as defined in these Rules. (Similarly qualified is defined as a person with a degree with 30 credit hours in the natural sciences).

- 16.9. Relevant and applicable uniformed service education, training, national certification, or service-issued credential shall be accepted toward initial licensure for a uniformed service member or a uniformed service veteran who makes an application within one (1) year of his or her discharge from uniformed service.

Appendix A Changes:

- Reduced per person/employee water usage to 15 gallons per day per person in various locations for each 8 hour shift for consistency.
- Reduced RV usage rate per space to 120 gallons.
- RV usage with engineered wastewater strength reduction water and sewer at each site 60 GPD.
- Footnotes:
 - Waste Wastewater from food service operations is commercial high strength wastewater in nature and may require special system sizing and treatment/disposal considerations.
 - For food service operations, kitchen wastewater flows are normally to be calculated at 66% of the total wastewater flow. Wastewater flows should include estimated flows from drains from all drink dispensers including soda, tea, coffee, juice, and ice cream.

Appendix F Changes

- All items will be submitted in triplicate to the local health unit with the permit fee or through electronic submission.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on June 3, 2024. The agency provided a public comment summary. Due to its length, the public comment summary is attached separately.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas Department of Health, Division of Environmental Health Protection has authority to certify wastewater system installers and certified maintenance personnel. Ark. Code Ann. § 14-236-115(a), -119(a). The Department's Division of Environmental Health Protection has authority to adopt and amend rules governing individual sewage disposal systems and good management practices and procedures for septic system construction. Ark. Code Ann. § 14-236-107(b). These rules implement 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 certification toward initial occupational licensure.

Act 457, also sponsored by Senator Hill, created the Automatic 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.

c. **SUBJECT: Rules for Massage Therapy in Arkansas**

DESCRIPTION: The following changes are proposed:

Section 1: Authority and Purpose

- Moved (2)-(12) for better flow of rules

Section 2: Definitions

- Added definitions to comply with Act 45 of 2023
 - Massage therapy apprentice
 - Massage therapy apprentice program
 - Massage therapy learning permit
 - Massage therapy student
- Amended definition of master massage therapist to comply with Act 167 of 2023

Section 3: Policies

- Added language for requirements of background check to comply with Act 45 of 2023

Section 4: Enforcement

- Moved to § 1 for better flow of the rules

Section 5: Reciprocity, Temporary Licensure and Military Licensure

- Added model language created by ADH legal to (5) to meet requirements of Act 137 of 2023

Section 7: Massage Clinics

- Added registration requirements language for massage therapy clinics

Section 8: Massage Therapy Schools and Postsecondary Massage Therapy Schools

- Added “must be made available for inspection” to § 8(6)(a) for better clarification of the rule
- Added language for requirements of student enrollment or apprentice enrollment to meet requirements of Act 45 of 2023
- Added language for requirements of student records
- Amended language in § 8(11)(b) for better clarification of the rule

Section 9: Conduct and Ethics

- Added note regarding LMT being mandated reporter for child maltreatment pursuant to Act 531 of 2023
- Added language regarding providing false or misleading statements or documentation to the Department

PUBLIC COMMENT: A public hearing was held on this rule on June 4, 2024. The public comment period expired on June 5, 2024. The agency indicated it allowed additional time for industry members to submit additional comments through June 13, 2024. The agency provided the following public comment summary:

Commenter’s Name: Donna McGriff

COMMENT: I have an issue with section 10-6 regarding cupping. There is no qualifying requirements for who can teach the Cupping in a school. I suggest you add that the instructor has been approved by the DOH to teach this class. **RESPONSE:** All continuing education hours are approved by the Massage Therapy Technical Advisory Committee and each applicant wishing to teach continuing education hours must submit documentation that they are properly trained in the subject matter they intend to teach.

Commenter’s Name: Christabelle Carpenter

COMMENT: The proposed changes to the massage rules/laws, is vague on the wording of inspectors being allowed to enter any room of a massage clinic/office/school. In the past, no one except the massage therapist was allowed to enter the massage room if a client was in that room or on the massage table. The current proposed changes to the inspection part of the laws/rules, makes it sound like an inspector can enter that massage room if a client is in that room or on the massage table, regardless of whether the inspector came at an appointed time or made an unannounced visit. Clarification is needed on this point, please.

RESPONSE: Ark. Code §17-86-203(b)(2) specifically prohibits inspectors from entering a room in which a client is receiving treatment. The Department of Health follows the law in this matter, and will review this for addition of the law in future rule revisions.

Commenter's Name: Rachel McKeethen

COMMENT: Is control or direction of licensed physician, medical hospital or similar licensed medical institution defined by review, access, or control of a plan of care or treatment plan by licensed physician or medical institution of patient and or client records that are receiving touch base therapy or massage therapy? Ex; Physician owns and rents out a space, room, or building that is used by a non-licensed person to practice massage. This physician has no supervision or access to patient or client records, treatment plan, plan of care, or treatment notes. Is this still considered exempt from Arkansas Massage Therapy Law Rules and Regulations? **RESPONSE:** Ark. Code §17-86-301(b)(1) specifically exempts from licensure persons authorized by the laws of this state to practice medicine, osteopathy, podiatry, or physical therapy, and licensed physicians' assistants, licensed nurses, licensed physical therapy assistants, licensed acupuncturists, licensed midwives, and chiropractors. This exemption extends to individuals to whom the exempt professional delegates tasks within their scope of practice. Supervision and oversight for those professionals are subject to their licensing entity and any complaints must be directed to that licensing entity for investigation.

Commenter's Name: Ashley Hernandez, Federation of State Massage Therapy Boards

COMMENT: Dear Members of the Massage Therapy Technical Advisory Committee (MTTAC):

The FSMTB is a not-for-profit organization comprised of 45 massage therapy regulatory boards/agencies in the United States with a mission to support its membership in their work to ensure that the practice of massage therapy is provided to the public safely and competently. Arkansas' MTTAC is a member of the FSMTB. The FSMTB provides collective wisdom and best practices to its membership to promote uniformity of massage therapy regulation, ensuring protection of the health, safety, and welfare of the consuming public. It is imperative that therapists have a basic, entry-level knowledge of the massage therapy profession. FSMTB is writing in concern of the current proposed rules for approved massage therapy apprenticeship programs. The rule defers to the federal apprenticeship guidelines for approval and does not provide any additional state level requirements. Therefore, if the federal guideline were to change, the state would have no choice but to defer to those requirements without any state minimum standards. FSMTB recommends that the MTTAC add minimum standards for apprenticeships to the proposed rules, including minimum program hours, apprenticeship ratio, compensation provisions, and structural guidelines including visual learning to hands-on requirements and competency needs. FSMTB does

not oppose apprenticeships as a pathway to licensure but acknowledges that without proper oversight and guidelines, apprenticeships can be a source of workers' rights abuse, human trafficking, and a means for cheap labor. Apprenticeships can be abused by the mentor, resulting in a form of indentured servitude. Therefore, FSMTB urges MTTAC to consider additional guidelines for apprenticeships to fortify the standards outlined by the Federal Office of Apprenticeships to protect apprentices and uphold professional standards. Thank you for the opportunity to present you with testimony. Should you have any questions or would like additional information, please contact Ashley Hernandez, Government Relations Specialist at (913) 681-0380 or ahernandez@fsmtb.org.

RESPONSE: With the exception of issuance of learning permits for the purposes of background checks, the MTTAC and the Board of Health have no authority over apprenticeship programs under Act 811 of 2021 ("Earn and Learn Act"). Regulatory authority regarding apprenticeship programs was delegated to the Federal Government under said Act. See Ark. Code Ann. §17-6-101, et seq.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Health may promulgate and enforce reasonable rules for the purpose of carrying out Title 17, Chapter 86 of the Arkansas Code, regarding massage therapists. This rule implements Acts 45, 137, 167, 457, and 531 of 2023.

Act 45, sponsored by Senator Missy Irvin, created a student and apprentice level of licensure in the massage therapy profession.

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 167, sponsored by Representative John Maddox, amended the definition and requirements of a master massage therapist within the Massage Therapy Act.

Act 531, sponsored by Representative Zack Gramlich, amended the list of persons who are mandated reporters under the Child Maltreatment Act and

named a licensed massage therapist as a mandated reporter under the Child Maltreatment Act.

d. **SUBJECT: Rules for Home Caregiver Training in Arkansas**

DESCRIPTION: These proposed changes amend the aide training requirements in Rule Section 3.B.3.iv to include Alzheimer’s disease and dementia, in accordance with Act 70 of 2023.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on June 7, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Department of Health shall adopt rules to implement Title 20, Chapter 77, Subchapter 23 of the Arkansas Code, regarding home caregiver training. Ark. Code Ann. § 20-77-2305. This rule implements Act 70 of 2023. The Act, sponsored by Representative Julie Mayberry, required a specific number of hours of dementia training for home caregivers.

e. **SUBJECT: Rules Pertaining to Dental Hygienists Serving Underserved Areas**

DESCRIPTION:

Purpose

The Arkansas Department of Health (Department) is seeking review and approval of proposed amendments to the Rules Pertaining to Dental Hygienists Serving Underserved Areas. These proposed amendments remove barriers to using Dental Hygiene Collaborative Care permits in public settings, specifically public schools, and allow the use of a broad range of oral and public health data to assess a community’s need priority in relation to the provider’s service area. Proposed rule changes also protect and preserve any existing provider/patient relationships by eliminating a rule that required yearly patient assessment by the DHCC provider.

Background

The Department of Health is tasked with prioritizing the communities in which a dental hygienist may practice under a Dental Hygiene Collaborative Care permit. Existing rules specify the Arkansas

Department of Health, Office of Oral Health shall develop and maintain a list of communities and/or rural areas prioritized as to need for dental services and will endeavor to direct collaborative services to these communities and rural areas. Schools shall be prioritized utilizing the following criteria: (1) Low full-time dentist-to-population ratio; and (2) Percentage of students participating in free and reduced lunches of the school or school district. Schools are currently stratified across six (6) tiers categorized by percentage of the student population participating in Free and Reduced Meals (FARM). The school tier stratification has created an unforeseen barrier to providing care in public school communities that may not meet school or district level FARM criteria but still have high need for dental care. Basic Screening Survey data indicates key oral health indicators, such as decay experience and untreated decay, are consistent across tier levels. This finding suggests that a wider range of oral and public health data should be assessed when determining a community's need for oral health services.

Proposed Rules

The proposed rule removes the school tier system and the provision for annual referral to the collaborative dentist. The proposed rule incorporates prioritization of communities based on provider availability and service area, relevant oral health surveillance data, and other applicable public health datasets deemed appropriate by the Office of Oral Health.

The proposed rule establishes prioritization, pursuant to Ark. Code Ann. § 17-82-706.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on June 30, 2024. The agency received no public comments.

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

1. The definition of “public settings” in the rule does not appear to mirror the definition as set out in Ark. Code Ann. 17-82-701(5). Specifically, the word “patients” appears to be omitted on Section III(D)(2) of the markup.

RESPONSE: This was not new language. This appears to be a typo from when the Rule was promulgated in 2014. Apparently, it was never caught until now.

2. In addition, Section III(D)(5) does not mirror Ark. Code Ann. 17-82-701(5)(D). Could you please look over these and explain why the language in the rule does not mirror the language used in the statute?

RESPONSE: After further review this was the original language in the statute and the Rules in 2014. It appears this section was updated by Act

1035 of 2019 which updated the language concerning individuals with developmental disabilities throughout the Arkansas Code. Unfortunately, this slipped passed us in the current proposed amendments.

3. The rule provides that the agency “shall determine prioritization of communities in which collaborative services are permitted based upon provider availability, relevant oral surveillance data, and *other applicable public health datasets deemed appropriate* by the Department of Health.” (Emphasis added.) What other datasets does the agency anticipate utilizing in determining prioritization? **RESPONSE:** While no specific datasets have been identified at this time, the revision is to allow the program to utilize various datasets that may be useful in prioritization; for example: smoking rates; chronic disease rates [e.g. diabetes prevalence], free and reduced meal (FARM)/Community Eligibility Provision; and/or average household income.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Department of Health shall develop a system of prioritization of services permitted under Title 17, Chapter 82, Subchapter 7 of the Arkansas Code, concerning the Dental Hygienist Collaborative Care Program, to communities in the state, including rural areas, based on the relative population of people at need for services permitted under the subchapter and endeavor to direct services permitted under the subchapter to such communities, including rural areas. *See* Ark. Code Ann. § 17-82-705(b). Pursuant to Ark. Code Ann. § 17-82-706(b), the State Board of Health shall adopt rules to implement § 17-82-705.

f. **SUBJECT: Rules for Cosmetology and Body Art in Arkansas**

DESCRIPTION: These amendments incorporate the Rules for Body Art Establishments in Arkansas into the Rules for Cosmetology, creating the Rules for Cosmetology and Body Art. The combined rules are being amended to comply with Acts 137, 457, and 688 of 2023, and Acts 135 and 725 of 2021.

PUBLIC COMMENT: A public hearing was held on this rule on July 10, 2024. The public comment period expired on July 10, 2024. The agency provided the following public comment summary:

Commenter's Name: Angi Ozbun

COMMENT: While reviewing the draft of the proposed rules may I first say blessed be the person who had to type this. They deserve a raise! I did come across a couple of things that I was wanting clarification on.

First, under 115 on page 12, Temporary License. This was previously included as a subset of the Military License in our current rules making it clear it pertained to Military and out of state applicants. In the draft, it does not specifically state this and directs me to documentation required under 202. So my question is who does the temporary license section apply to? Is it still military/out of state applicants (neither of which are covered in 202) or is the Section now issuing temporary licenses to anyone, including students, who apply for testing? The reason I am asking and possibly my confusion is that since I am on a border, I do work with several students applying for licenses in Missouri and it is their practice to issue Temporary licenses while a student is awaiting testing. I was wondering if that was going to be the case for us now.

Second, under the curriculum guidelines as follows; Manicure, (n) (8) on page 43 Aesthetic, (o) (8) on page 44 & Electrology (p) (10) on page 46 These all state that under Act 724, 50% of the hours may be done in class, online, or distance learning. The last instruction I received from the Section on 8/16/21 was that Act 724 only referred to the Cosmetology license. Manicure, Aesthetics, Instruction and Electrology were not included in the eligibility for online or distance learning. Has this been changed? Do Aesthetics now qualify to do 50% in an online or distance learning course?

Last question is regarding (r) (1) on page 46, Discretionary Acceptance of Certified Courses from Related Educational Training, it refers to a conversion table in Appendix A. There was no Appendix A with the draft. Where do we find this information?

RESPONSE: The provisions for the Department to issue temporary licenses applies to both applicants under Military licensure and reciprocity. As the expediency of licensure has increased, the need for issuance of temporary licenses has decreased and therefore, the Department will review removing this provision in future rule promulgations.

After review of Act 724 of 2021 and the definition of the art of cosmetology under Ark. Code § 17-26-102, the Department has determined that the legislative intent under Act 724 was to allow online or remote education up to 50% of the curriculum for cosmetology and any related branches. Each branch of manicure, aesthetics, and electrology fall

within this and benefit from online or remote education, not to exceed 50% of each branch's required curriculum.

Appendix A is the conversion table established by the Department and previously available to members of the public and will be included in the draft of the proposed rule submitted for approval.

Commenter's Name: Shannon Ewald

COMMENT: Good morning! I was checking out the amended info before the July 10th deadline. I am reading chemical peel rules under the cosmetology rules and need clarification on the rules of PH. the % of allowed AHA/BHA and TCA are very straight forward and easy to follow. I am running into issues with the ph rules of 2 Most chemical peels that fall well within these guidelines have a PH of 1 or 1.5 Having a rule of 2ph makes it difficult to follow and I'm discovering that most common peels or AHA enzyme masks that myself and probably other Estheticians are using may not fall with this 2ph rule. Again, it is easy to follow the 50% AHA, 20% BHA and 20% TCA my concern is how the 2ph drastically changes my ability to find any product that utilizes the AHA/BHA strengths while remaining above 2ph. As I set myself up for peel season this fall I want to make sure I'm within the Arkansas guidelines but I also dont want to do due diligence and be behind other Estheticians that are continuing services and not considering the ph rule. I want the results that the higher AHA/BHA will safely give my clients. Is there an education gap I need to further myself in? I asked this question to my inspector when she came to inspect my room (she is wonderful btw!) and she suggested emailing.

My second less lengthy question is to confirm that I can offer IPL photofacial as a solo Esthetician, assuming my machine is a class 1 or 2. This same photofacial machine allows for IPL hair removal. I am reading that I could not use this machine for hair removal even though it falls under the class 1/2? Or can I offer IPL hair removal so long as I do not promise "permanent hair removal" as laser is not permanent.

RESPONSE: The provisions regarding PH levels for chemical peels were previously recommended by subject matter experts through the Cosmetology Technical Advisory Committee and followed FDA guidelines. The Department will take this comment under further review and discuss with current subject matter experts to determine if changes to the Rules are appropriate.

Pursuant to FDA safety requirements, cosmetologists and estheticians may use either a class 1 or class 2, provided they follow all FDA, OSHA, and state safety requirements and manufacturer instructions.

Commenter's Name: Christina Lewis. Verbal Comment, received during public hearing on July 10, 2024

1. 110-2 The time to make a complaint should be extended or exception be made on a case-by-case basis as many customers do not know that it is possible or how to make a complaint until outside the 90- day window.

RESPONSE: In order to provide more efficient agency adjudication of complaints, complainants are encouraged to report all complaints within the ninety-day window. As the Department has implemented in similar occupation rules, the Department will consider expanding this provision to allow complaints of serious nature, including those of sexual assault, past the initial 90 day window, if adjudication of the complaint is necessary for the protection of public health and safety.

2. 306- Record Keeping – section (G) piercing/tattoo – are we now required to keep a separate consent book for minors' paperwork from that of the rest of the other customers paperwork.

RESPONSE: The Department is implementing a requirement for separate recordkeeping for body art performed on minors to ensure compliance with Arkansas law regarding minors. The body art establishment is now required to keep one record bound book for all clients since the last inspection and one record bound book for minors, instead of two bound books for the current year since the last inspection and the previous year's bound book.

3. 306 Record Keeping – section 1 (B) – Regularly told by parents that other shops have separated them from their minor during the procedure (no line of sight). If they make a complaint, what proof can they give to affirm their complaint?

RESPONSE: Pursuant to Ark. Code § 17-26-602 and the Rules, the parent or legal guardian must be present during the procedure. If any minor or parent has a complaint regarding this requirement, the complaint should be submitted to the Department for review and adjudication.

4. 306 – Record Keeping – section 2(B) What forms of ID/parental consent/proof of guardianship is required for piercing earlobes of minors under the age of 16.

RESPONSE: Ark. Code § 17-26-602 requires the person to undergo body art (piercing) and the parent or legal guardian to each (if the minor has attained the age required to obtain an identification) provide a valid government-issued form of identification that includes a name, date of

birth, and photo; and shall provide proof of guardianship that matches the identification given, such as birth certificate or a court or state record for adoption, legal guardianship, emancipation, or a marriage license.

5. 314 – Standard for serving clients references of steel or titanium jewelry for the initial piercing- what grade of surgical steel is allowed for the initial piercing?

RESPONSE: Ark. Code § 17-26-611(c)(3) requires jewelry used for initial piercing be certified by the ASTM International or the International Organization for Standardization, or both, for steel and titanium jewelry.

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

1. Sections 207(a)(1)(H) and 207(b)(1)(H) require a statement that the owner(s) of a private school or postsecondary school of cosmetology shall provide not less than 600 hours of continuous training for all manicure and esthetic students enrolled. Is this a statutory requirement or does it come from somewhere else? The closest thing I can find is the requirement in ACA § 17-26-304 for at least 480 hours of training for manicurists and aestheticians. RESPONSE: ACA § 17-26-304 revised the minimum number of hours required for a student to be eligible to take the licensure exam, however did not affect the number of hours required to complete the program. (It allows the student to take the exam early.) Sections 207(a)(1)(H) and 207(b)(1)(H) are not new requirements but sections moved from previous 8.15 and 8.16 under the current Cosmo Rules passed in 2019/2020. The State Board of Health has the authority to establish the required hours under ACA § 17-26-205.

2. Section 207(t)(2) states that enrolled instructor-trainees who have completed at least 50% of the required training may be employed in a school/postsecondary school of cosmetology to instruct students. Is there specific statutory authority for this provision? RESPONSE: This proposed change was requested by school owners, is based on State Board of Health rule-making authority, and is not based on statute.

3. Page 64 of the markup shows that the section dealing with pre-licensure determinations for disqualifying offenses is stricken through. Why is this section being removed from the rule? RESPONSE: Act 516 of 2023 exempted cosmetologists from the occupational licenses subject to Act 990 of 2019.

4. Section 304(a)(2) states, “Any person, firm or corporation who has applied for a license to operate a body art establishment or mobile establishment will receive a license allowing the owner to operate the

establishment or mobile establishment.” Does this mean that licensure for these establishments is automatic, or are there grounds to deny an application? **RESPONSE:** If an applicant meets the requirements specified in this Section, they are issued an establishment license subject to inspection of the facility. The provision allows for an establishment to begin operating while the physical inspection is pending.

5. Section 304(c)(3)(A) states that practical exams must be administered by a licensed body art institution. Section 304(c)(3)(B) references practical exams “conducted by the Department.” What is the difference in “administering” an exam and “conducting” an exam? **RESPONSE:** ACA § 17-26-608 provides that the practical exams are conducted by the Department, and Section 304(c)(3)(A) should be corrected to state the practical exams are administered at the body art institution.

6. Section 306(f) states that records must be preserved for one year from the date of the last entry. The prior rules required records to be preserved for two years. Why was the amount of time reduced? **RESPONSE:** The Department inspects each body art establishment annually and the previous year’s records are reviewed at each inspection. It was determined to be unnecessary and potentially redundant for the establishment to be required to retain two years of records, some of which may have already been reviewed during the prior inspection.

7. The proposed rules require all body art student artists to have a high school diploma or results from an ability-to-benefit test. Is this required by statute? **RESPONSE:** Through Act 900 of 2021 and Act 688 of 2023, body art institutions are defined as postsecondary education, which necessitates a high school diploma or equivalent for enrollment. The requirement is codified in ACA § 17-26-601.

8. Section 400 of the proposed rules promulgates a fee table for cosmetology. Are these new fees or fees that were already in place? Are these fees and the amounts specifically addressed in statute? **RESPONSE:** These are moved from the previous version of the cosmetology rules. No new fees or fees changes were made in these amendments. Authority for establishing fees is found at ACA § 17-26-209.

9. Act 688 of 2023 changed the reciprocity license fee for a body artist from \$500 to \$200 (see Act 688, § 12). Why have the rules kept the \$500 fee? **RESPONSE:** This is a typo, the fee is correct under Section 305(a)(1) but was not corrected in the fee schedule.

10. What is the statutory authority for the \$150 fees charged for body art establishment license reinstatement and annual renewal for body art institutions? **RESPONSE:** ACA § 17-26-603(e).

11. I see the \$850 fee for a new body art institution in Ark. Code Ann. § 17-26-708, but that statute was repealed by Act 688 of 2023. Is there other statutory authority for this fee? **RESPONSE:** That is a typo, and will be corrected to \$150.

12. Is there specific statutory authority for the hot check fee?

RESPONSE: The hot check fee for each of cosmetology is derived from the State Board of Health's authority regarding fees under ACA § 17-26-209. The addition to the body art fees was a typo and will be removed.

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 "may adopt appropriate rules regarding the artists, premises, equipment, procedures, and conditions of establishments which perform procedures subject to" Title 17, Chapter 26, Subchapter 6 of the Arkansas Code, regarding body art, "to assure that the premises, equipment, procedures, and conditions are aseptic and do not constitute a health hazard." Ark. Code Ann. § 17-26-603(b)(1). The Department shall implement the State Board of Health's rules for carrying out the provisions of Title 17, Chapter 26 of the Arkansas Code, regarding cosmetology and related occupations. Ark. Code Ann. § 17-26-205(a)(5)(A). These rules implement Acts 137, 457, 516, and 688 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 certification toward initial occupational licensure.

Act 457, also sponsored by Senator Hill, created the Automatic 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.

Act 516, sponsored by Representative Les Warren, exempted cosmetologists from licensing restrictions based on criminal records.

Act 688, sponsored by Senator Breanne Davis, amended the law concerning body art and amended the law concerning the Cosmetology Technical Advisory Committee.

g. **SUBJECT: REPEAL: Rules Pertaining to Body Art Establishments**

DESCRIPTION: As part of a separate promulgation, the Department of Health is incorporating the Rules Pertaining to Body Art Establishments into the Rules for Cosmetology, thereby creating the Rules for Cosmetology and Body Art in Arkansas. As a result, the existing Rules Pertaining to Body Art Establishments are being repealed.

PUBLIC COMMENT: A public hearing was held on this rule on July 10, 2024. The public comment period expired on July 10, 2024. The agency received no comments on the rule repeal.

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 “may adopt appropriate rules regarding the artists, premises, equipment, procedures, and conditions of establishments which perform procedures subject to” Title 17, Chapter 26, Subchapter 6 of the Arkansas Code, regarding body art. Ark. Code Ann. § 17-26-603(b)(1).

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

a. **SUBJECT: Living Choices Rate Increase**

DESCRIPTION:

Statement of Necessity

Act 198 of 2023 requires Assisted Living Facilities (ALFs) to complete annual cost reports and submit them to the Department of Human Services as a condition for participating in the Arkansas Medicaid Program. The reports “[a]ssist the department in ascertaining and monitoring the financial stability and solvency” of the facilities.

Following passage of the Act, the Division of Aging, Adult, and Behavioral Health Services (DAABHS) completed the review of cost reports received through its qualified contractor, Myers & Stauffer. Myers & Stauffer issued a cost report analysis. Based upon the analysis, DHS proposes a rate increase for Living Choices Assisted Living Facility providers.

Summary of Changes

As a result of the cost analysis, DAABHS proposes an amendment to the Centers for Medicare and Medicaid (CMS) for its 1915(c) Home and Community-Based Services Living Choices Assisted Living Waiver. The amendment proposes an increase of the current daily rates of \$81.59 (urban) and \$85.67 (rural) for providers to \$86.73 for both urban and rural, thus removing the distinction between the two types of facilities.

[BLR Staff Note: Due to its length, the Myers & Stauffer cost report analysis has been provided separately.]

PUBLIC COMMENT: A public hearing was held on this rule on April 24, 2024. The public comment period expired on May 13, 2024. The agency indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

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

Per the agency, the total cost to implement this rule is \$1,393,873 for the current fiscal year (\$390,284 in general revenue and \$1,003,588 in federal funds) and \$1,393,873 for the next fiscal year (\$390,284 in general revenue and \$1,003,588 in federal funds). The total estimated cost by fiscal year to state, county, or municipal government to implement this rule is \$390,284 for the current fiscal year and \$390,284 for the next fiscal year.

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

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

To increase the daily rates paid Assisted Living Facility providers.

A cost report study with analysis conducted by Myers and Stauffer was completed of 50 Assisted Living Facilities. The report was presented to ALC and the Hospital and Medicaid Study Subcommittee. The public was given the opportunity to provide comment on this study and DHS has responded to comments. This amendment to the Living Choices waiver formally requests approval from CMS to increase the daily rate to \$86.73

and a shift away from urban and rural rates to one single rate for all Assisted Living Facilities across Arkansas.

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

To address the results and recommendation of the cost report analysis issued by Myers and Stauffer.

(3) a description of the factual evidence that:

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

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

With the passage of Act 198 during the 2023 general legislative session, which requires all assisted living facilities participating in the Arkansas Medicaid program to submit annual cost reports, DHS contracted Myers and Stauffer LC (Myers and Stauffer) to prepare this analysis of the Living Choices Assisted Living Waiver program, herein referred to as waiver, rates. This effort included analysis of data collected through a cost survey of all assisted living waiver program providers. The cost survey was developed for the 2022 Living Choices Rate Study and updated by the Department for 2023 to fulfill legislatively mandated reporting requirements. All Living Choices Assisted Living Waiver providers were required to submit a cost survey for the 12-month period ending June 30, 2023.

Myers and Stauffer completed a review of all cost survey data. Reports were reviewed to ensure completeness and to investigate data anomalies. Myers and Stauffer also reviewed supporting documentation to ensure the cost surveys tied back to each facilities financial reports. *Table 1* summarizes this information.

High Medicaid Utilization Facilities	> 50%	16
Medium Medicaid Utilization Facilities	≥ 30%, ≤ 50%	16
Low Medicaid Utilization Facilities	< 30%	18
Non-Waiver Providers	No Medicaid	0
Total		50

Table 1: Survey Participation

The costs captured by the survey were separated into cost centers including direct care, indirect care, administrative and general, and rent/utilities/food. Costs were also evaluated to determine if they should be 100% waiver service costs (completely tied to providing waiver services), 100% non-waiver service related (not related to provider waiver

services), or allocated between waiver service and non-waiver service related (partially tied to providing waiver services).

- **Direct Care.** Includes wages and benefits for direct caregivers including licensed practical nurses, certified nurse assistants, personal care aides, and universal workers. These costs were considered 100 percent waiver service costs.
- **Indirect Care.** Covers the cost of indirect staffing such as registered nurse (RN) supervisors, dietary supervisor, meal preparation staff and activities staff, as well as non-labor indirect care costs. Most of these costs were treated as 100 percent waiver service costs but a few costs were excluded completely where documentation was not provided to indicate a relevance to the waiver program.
- **Administrative and General (A&G).** Includes the allowable share of administrative expenses such as the salaries for the facility administrator and office staff, as well as any supplies they require. These costs were divided between those considered 100 percent waiver service costs such as the administrator's wages, those that were deemed non-waiver service costs like laundry workers' wages, costs that were allocated by wages such as benefits, and costs that were allocated by square footage such as housekeeping expenses.
- **Rent, Utilities, and Food (RUF).** Cost of the building, maintenance, utilities, and raw food. Most of these costs were considered non-waiver service costs, but a small portion of building and utilities costs were included in two of the rate recommendations to account for space required to conduct administrative functions and to provide resident activities.

Following a period of public comment, no changes were made to the report. Comments generally pertained to the providers requests for increased Medicaid rates in excess of what was supported by the providers actual data. Additionally, requests were made for two policy changes involving eligibility payments and absentee beds days which the agency has committed to review.

[BLR Staff Note: Due to its length, the Myers & Stauffer cost report analysis has been provided separately.]

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

See answer to Question 3, above.

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

No comments received on the proposed rules.

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

N/A

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

(a) the rule is achieving the statutory objectives;

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

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

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

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 responds to cost reporting required by 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.

5. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES** (Elizabeth Pitman, Mitch Rouse)

a. **SUBJECT:** Update to Medicare and Medicaid Crossover Billing Rules

DESCRIPTION:

Statement of Necessity

Medicaid updates billing rules for Medicare Crossover reimbursement and adds a new field to its Medicaid Management Information System to improve how the claims are paid and reported. A separate copayment field is added to the electronic claims system to allow Medicaid to identify the correct amounts being paid for Medicare copayments apart from coinsurance amounts.

Summary of Changes

Medicare/Medicaid Crossover Only, Section II, 211.000: Deleted the phrase and following sentence, “less the Medicaid coinsurance charge for inpatient admission. For non-exempt Medicaid beneficiaries age 18 and older, this coinsurance amount is 10% of the hospital’s interim Medicaid per diem, applied on the first Medicaid covered day only.”

Section III, 332.00: Updated the policy references for claim filing procedures.

Section III, 332.100: Corrected information throughout the section to add “copayment”. Added the sentence, “Providers must submit the copayment, deductible, and coinsurance at the detail level.”

Section III, 340.100 – 340.400: Added new sections to explain crossover billing rules for Medicaid reimbursement of Medicare primary claims. These sections also provide the claims billing instructions for the different types of Medicare/Medicaid crossover claims.

Section III, 345.00 – 363.00: Section numbering was changed to account for the new section added above. No content changes were made.

PUBLIC COMMENT: A public hearing was held on this rule on June 26, 2024. The public comment period expired on July 13, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

Per the agency, this rule will result in a total estimated cost savings of \$225,000 for the current fiscal year (\$63,000 in general revenue and \$162,000 in federal funds) and \$225,000 for the next fiscal year (\$63,000 in general revenue and \$225,000 in federal funds). The total estimated savings by fiscal year to state, county, and municipal government as a result of this rule is \$63,000 for the current fiscal year and \$63,000 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).

b. SUBJECT: Disproportionate Share Hospital (DSH) Audit

DESCRIPTION:

Statement of Necessity

The Division of Medical Services (DMS) amends its Disproportionate Share Hospital (DSH) payment methodology to allow funds to be redistributed to other eligible hospitals upon completion of an annual, independent, certified audit of DSH payments in accordance with federal regulations. Redistribution of overpayment DSH funding is necessary for the state to best utilize funding that becomes available once a certified audit and recoupment has occurred. Any overpayments of DSH funds shall be redistributed to other eligible hospitals within the state, provided each acute care hospital remains below their hospital specific DSH limit.

Summary of Changes

To establish the above redistribution methods, DMS issues a state plan amendment (SPA) and adds a new section, 250.460, to the Hospital Provider Manual. The language of these two additions state:

In addition to any other audits which may occur, independent certified audits of the DSH payments shall be conducted annually in accordance with 42 CFR 455.301 and 42 CFR 455.304.

Reporting of the audit shall follow the guidelines stated in 42 CFR 447.299. In accordance with 42 CFR 455.304(e), any overpayments of DSH funds shall be redistributed to other eligible hospitals within the state, provided each acute care hospital remains below their hospital specific DSH limit, in the following manner:

- A. The amount of the DSH payment made to the acute care hospital will be recouped by the State of Arkansas to the extent necessary to reduce the DSH payment to an allowable amount.
- B. Amounts recouped from acute care hospitals with payments in excess of the audited hospital specific DSH limits will be placed into an acute care hospital redistribution pool. Redistribution will be made to remaining acute care hospitals that do not exceed their hospital specific DSH limit. The allocation will be made based on these remaining acute care hospitals' available uncompensated care. No acute care hospital shall exceed its hospital specific DSH limit after redistribution.
- C. Additionally, DSH funds not otherwise paid to qualifying acute hospitals shall be paid, subject to the uncompensated care cost limits and annual DSH allotment, to the Arkansas State Operated Teaching Hospital.

PUBLIC COMMENT: A public hearing was held on this rule on June 26, 2024. The public comment period expired on July 14, 2024. The agency indicated that it received no public comments.

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

Q. The rule states that overpayments of DSH funds shall be redistributed “in accordance with 42 CFR 455.304(e).” This citation may be incorrect – 42 CFR § 455.304(e) reads, in its entirety: “To ensure a period for developing and refining reporting and auditing techniques, findings of State reports and audits for Medicaid State Plan years 2005-2010 will not be given weight except to the extent that the findings draw into question the reasonableness of State uncompensated care cost estimates used for calculations of prospective DSH payments for Medicaid State plan year 2011 and thereafter.” **RESPONSE:** CMS approved the SPA January 17, 2024, effective to December 18, 2023, including the citation you highlight. We can only speculate at CMS’s reasoning for the specific CFR references but wish it to remain for now as any change would require a new SPA be submitted.

The proposed effective date is pending legislative review and approval.

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

Per the agency, the total estimated cost to implement this rule is \$10,948,978 for the current fiscal year (\$3,065,714 in general revenue and \$7,883,264 in federal funds) and \$10,948,978 for the next fiscal year (\$3,065,714 in general revenue and \$7,883,264 in federal funds). The total estimated cost by fiscal year to state, county, or municipal government to implement this rule is \$3,065,714 for the current fiscal year and \$3,065,714 for the next fiscal year. The agency indicated that the state share includes \$2,495,974 which will be paid by UAMS and that these payments will occur once a year.

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

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

Redistribution of overpayment DSH funding is necessary for the state to best utilize funding that becomes available following the certified audit once recoupment has occurred.

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

A change to the Medicaid state plan and relevant Medicaid provider manual is necessary for the State to be able to redistribute overpayments of DSH funding after the annual independent certified audit of DSH payments has been completed and original payments up to the acute care hospital specific DSH limits have been established. Overpayments will be recouped, placed into an acute care hospital redistribution pool, and redistributed to other eligible hospitals within the state, provided each acute care hospital remains below their hospital specific DSH limit. Additionally, DSH overpayment funds not otherwise paid to qualifying acute hospitals shall be paid, subject to the uncompensated care cost limits and annual DSH allotment, to the Arkansas State Operated Teaching Hospital.

(3) a description of the factual evidence that:

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

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

N/A

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

N/A

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

N/A

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

N/A

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

(a) the rule is achieving the statutory objectives;

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

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

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

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).

c. **SUBJECT: Vaccine Counseling for Early and Periodic Screening, Diagnostic and Treatment (EPSDT)**

DESCRIPTION:

Statement of Necessity

This Medicaid manual revision clarifies the availability of vaccine counseling for providers of Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services in compliance with a Centers for Medicare & Medicaid Services (CMS) State Health Officials Letter. CMS issued guidance on Medicaid and Children's Health Insurance Program (CHIP) coverage and payment for "stand-alone vaccine counseling," a term used when a patient or caregiver receives counseling about a vaccine from a health care practitioner, but the patient does not actually receive the vaccine dose at the same time as the counseling. CMS interprets the EPSDT benefit to require states to provide coverage of stand-alone vaccine counseling to Medicaid beneficiaries under the age of 21 who are eligible for EPSDT.

Rule Summary

Children Health Services/Early and Periodic Screening, Diagnostic and Treatment (EPSDT) manual, Section 215.290: Adds the paragraph, "Health education can include vaccine counseling services to parents and legal guardians, and children. New codes for reimbursement for vaccine counseling under EPSDT are available beginning 09/1/2024. Vaccine counseling is allowed up to 4 times per year, with the ability to request an extension of benefit limit. View or print DMS contractor information for extension of benefits."

PUBLIC COMMENT: A public hearing was held on this rule on July 3, 2024. The public comment period expired on July 13, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

Per the agency, the total estimated cost to implement this rule is \$1,194,138 for the current fiscal year (\$167,179 in general revenue and \$1,026,959 in federal funds) and \$4,776,552 for the next fiscal year (\$1,170,255 in general revenue and \$3,606,297 in federal funds). The total estimated cost by fiscal year to state, county, or municipal

government to implement this rule is \$167,179 for the current fiscal year and \$1,170,255 for the next fiscal year.

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

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

Clarify that Medicaid covers vaccine counseling by physician's under EPSDT and use CMS updated codes specific to standalone vaccine counseling in its Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program for children under age twenty-one.

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

This manual revision clarifies the availability of vaccine counseling for providers of EPSDT services and provides the hyperlink for information pertaining to extension of benefits, in compliance with a May 12, 2022, State Health Officials Letter.

(3) a description of the factual evidence that:

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

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

See above.

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

None.

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

N/A

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation

of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

N/A

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

(a) the rule is achieving the statutory objectives;

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

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

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

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

This rule implements guidance presented in the May 12, 2022, State Health Official Letter from the Centers for Medicare and Medicaid Services (CMS). Ctr. for Medicare & Medicaid Servs., SHO #22-002, *RE: Medicaid and CHIP Coverage of Stand-alone Vaccine Counseling* (May 12, 2022), <https://www.medicaid.gov/federal-policy-guidance/downloads/sho22002.pdf>. Per the letter, “CMS interprets the Medicaid Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit to require states to provide coverage of stand-alone vaccine counseling to Medicaid beneficiaries under the age of 21 who are eligible for EPSDT.” *Id.* at 1, 3.

6. **DEPARTMENT OF LABOR AND LICENSING, ARKANSAS TOWING AND RECOVERY BOARD** (Daniel L. Parker, Paul Burnett)

a. **SUBJECT:** Administrative Rules of the Arkansas Towing and Recovery Board

DESCRIPTION: The purpose and necessity of the proposed amendment is to:

- (1) Comply with changes from the 2023 legislative session for establishing rules for the towing, recovery, and storage of electric vehicles;
- (2) Reduce the fire extinguisher capacity requirement;
- (3) Clarify notice and sales procedures, permissible vehicle immobilization devices, and that commercial towing must be licensed; and
- (4) Make grammatical and stylistic changes.

The proposed amendments would accomplish the following:

- (1) Establish rules necessary for the towing, recovery, and storage of electric vehicles pursuant to Act 840 of 2023;
- (2) Amend the board's rules to reduce the weight capacity requirement for fire extinguishers;
- (3) Clarify notice and sales procedures, permissible vehicle immobilization devices, and that commercial towing must be licensed; and
- (4) Redraft existing Board rules to reorganize definitions by alphabetical order, add grammar and stylistic changes for clarity, and to conform to the Bureau of Legislative Research drafting manual and the format for the Code of Arkansas Rules.

Changes made following the receipt of public comments include the following:

- (1) Numerous suggested edits were made in response to the Attorney General's review of and comments to the proposed rules, including:
 - (A) Combining as new Rule 1 the formerly unnumbered "Applicability" section with the identical former Rule 2 "Exemption" section to avoid duplication;
 - (B) Language changes to help the administration of the proposed rules and to ensure the wording is clear, unambiguous, and consistent with the statutory language; and
 - (C) Language changes to the EV rules to remove the "Disciplinary Action" Rule and more clearly articulate that only suggested recommendations are being provided and no new license, insurance, or other expense will be required to tow and store electric vehicles.
- (2) Clarified that redemption of property can be made by anyone with an interest in the property, the timing of a non-judicial sale after lien perfection, and ambiguous language concerning required liability insurance; and
- (3) Clarified that the proposed rules do not apply solely to the storage of vehicles by a salvage vehicle pool or salvage vehicle auction (regulated by other state law) that does not otherwise perform towing services.

PUBLIC COMMENT: A public hearing was not held in this matter.

The public comment period expired on October 23, 2023. The board provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Katerina Dotzeva, Director of Government Affairs, IAA, Inc.

Comment Summary: Ms. Dotzeva expressed concern that the “Applicability” and “Definition” sections would encompass the business of her client, which operates two salvage vehicle pools in Arkansas that are governed by other provisions of Arkansas law, and would thereby require her client to incur additional, undue expenses to comply with the electric vehicle (EV) storage requirements.

ATRB Response: The ATRB responded to IAA’s satisfaction. Language which could be construed as imposing mandatory EV towing and storage requirements has been revised to clarify that ATRB is merely providing suggested guidelines for the safe towing and storage of EVs. Additionally, the “Applicability and Exemptions” provision of subsection (c) of Rule 1 now reads as follows to clarify that the rules do not apply solely to the storage of vehicles by a salvage vehicle pool or salvage vehicle auction:

(c) These Rules do not apply to the storage of vehicles by a salvage vehicle pool or salvage vehicle auction that does not otherwise perform towing services.

The Board is pleased to report that IAA is supportive of the proposed rules with these revisions.

Commenter Name: Ward Tisdale, Regional Vice President – Southwest Region, National Association of Mutual Insurance Companies.

Comment Summary: Mr. Tisdale expressed concern about limiting the number of tow companies that can tow and store EVs thereby resulting in much higher towing and storage costs if a license to tow and store EVs was conditioned upon storing EVs with a 50-foot clearance area or in a fireproof vehicle storage bin. Mr. Tisdale specifically asked: “Does the proposed rule create an all-or-nothing situation? In other words, if a towing company does not wish to comply with the additional requirements imposed on the towing and storage of EVs, will they still be issued a permit to tow non-EVs?”

ATRB Response: No changes were made to the proposed rules, but Mr. Tisdale was reassured: “Under the proposed rules, an Arkansas tow business license would authorize, but not require, a tow business to tow and store electric vehicles. The rules do not require any additional insurance or other requirements to tow or store electric vehicles, and the existing authority of a tow businesses is not affected. Electric vehicle towing and storage guidelines are provided as just that – suggested guidelines based upon the best practices the board’s research has revealed. These are not mandatory requirements, but the board recommends that they be followed for the safety of the general public and the tow businesses themselves.”

Commenter Name: Mark Binder, Director of Government Affairs, Copart, Inc.

Comment Summary: Mr. Binder: (1) asked for clarification that the proposed rules applied only to “for hire” tows; and (2) expressed concerns over the cost of requiring EV storage via a 50-foot clearance area or in a fireproof vehicle storage bin.

ATRB Response: No changes were made to the proposed rules because: (1) ATRB advised that it had no authority to adopt the request for clarification because doing so would circumvent Arkansas Code § 27-50-1201(a)(1) and (b)(4) as amended by Sections 1 and 2 of Act 789 of 2021 to expressly remove any “for hire” requirement or commercial “personal use” exception; and (2) all language which could be construed as imposing mandatory EV towing and storage requirements has been revised to clarify that ATRB is merely providing suggested guidelines for the safe towing and storage of EVs.

The Board is pleased to report that Copart, Inc. is supportive of the proposed rules.

Commenter Name: Shannon Newton, President, Arkansas Trucking Association, Inc.

Comment Summary:

A. Rule 16 should be revised to clarify the sale, redemption, and lien procedures.

ATRB Response: To clarify that redemption of property subject to the towing lien can be accomplished by anyone with a valid interest in the subject property, the timing of the sale, and lien procedures the words “by the owner” were removed and the words “after perfection of the lien by . . .” were added to Rule 16.1(b) so that it now reads “(b) All vehicles, trailers, and contents towed, recovered, or stored that have not been claimed within forty-five (45) days after perfection of the towing lien by both maintaining possession and sending notice (by certified mail) that complies with Arkansas Code § 1208(b)(2) or (3) shall be offered for sale through a non-judicial public sale pursuant to Arkansas Code §§ 27-50-1208 through 27-50-1210.”

Changes requested to exclude commercial cargo from the towing lien and to require additional lien notices to unknown third parties that would conflict with statutory provisions or procedures were not made.

B. Rule 9 should be amended to clarify insurance requirements.

ATRB Response: The Board agrees the first sentence of Rule 9(1) was confusing and revised the language to read as follows: “(1) Each tow

vehicle shall have liability insurance covering injury and damage, ~~except that to the towed vehicle,~~ for which the tow business or tow truck owner is liable.”

Changes requested to provide proportionately greater storage insurance coverage for larger stored vehicles that would increase expenses to licensees were not made because the board had agreed not to increase license fees or towing expenses in the current proposed rules.

C. The Complaint procedure should be better advertised and more inclusive; and the consequences for failure to pay a judgment should not be reduced.

ATRB Response: Because the complaint procedure is already available to anyone harmed by a tow business and no substantive changes were made to the consequences for failure to pay a judgment, no changes were made. Additionally, the Board is willing to explore the possibility of adding a notice of its complaint procedures (which are already required to be posted at each tow business location) to each tow company invoice by legislation, but had agreed not to increase license fees or towing expenses in the current proposed rules.

D. Local law enforcement should not be prohibited from addressing and redressing any abusive towing practices.

ATRB Response: No changes were made because the current language clearly articulates the authority of law enforcement and local jurisdictions to address abusive towing practices. The Board works closely with its law enforcement partners, including the Arkansas State Police, on all towing-related matters, including the maintenance by state and local law enforcement of their nonconsent rotation lists. Board Rules 14.1 and 14.2 closely mirror Arkansas Code § 27-50-1219, each of which appropriately places the maintenance of a law enforcement agency’s rotation list under the law enforcement agency’s control. Significantly, both Arkansas Code § 27-50-1219(e) and Board Rule 14.4 state:

Nothing in this [act or rule adopted by the Board] shall be construed to prohibit a law enforcement agency, city, or county from:

- (1) Enforcing any local nonconsent towing policies, rules, ordinances, or contracts;
- (2) Removing a towing company from the local towing rotation list; or
- (3) Assessing a fine, penalty, or other remedy available by law or under its contracts or policies.

The Board is pleased to report that the Arkansas Trucking Association does not oppose the proposed rules.

Commenter Name: Arkansas Attorney General's Office

Comment Summary: Numerous suggested edits were provided by the AG to help update and clarify the proposed rules, including:

- (1) Combining as new Rule 1 the formerly unnumbered "Applicability" section with the identical former Rule 2 "Exemption" section to avoid duplication;
- (2) Language changes to help the administration of the proposed rules and to ensure the wording is clear, unambiguous, and consistent with the statutory language; and
- (3) Language changes to the EV rules to remove the "Disciplinary Action" Rule and more clearly articulate that only suggested recommendations are being provided and no new license, insurance, or other expense will be required to tow and store electric vehicles.

ATRB Response: As more specifically provided in the post-comment rule markup and markup comments, the AG suggestions were implemented as stated.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the amended rule may have a financial impact on private individuals, private entities, or private businesses subject to the rule. The agency provided the following explanation:

Optional costs, if desired, to construct an electric vehicle storage facility would be approximately \$7,000 per vehicle isolation bay. No increased insurance coverage is mandated, but if additional coverage is desired, the cost is estimated to be \$20 to \$40 per month depending upon coverage and underwriting requirements. The current rule requiring at least a nine-pound fire extinguisher costs roughly \$50 to \$70 per tow vehicle; the reduction to a five-pound fire extinguisher reduces this cost to approximately \$20 to \$30 per tow vehicle.

LEGAL AUTHORIZATION: The Arkansas Towing and Recovery Board shall promulgate rules to carry out the intent of Title 27, Chapter 50, Subchapter 12 of the Arkansas Code, concerning removal or immobilization of unattended or abandoned vehicles, and shall regulate the towing industry and vehicle immobilization service industry, including:

1. Establishing reasonable licensing, insurance, and equipment requirements for any person engaging in towing and related services for safety purposes or vehicle immobilization services under the subchapter;
2. Establishing reasonable tow truck safety requirements for any tow vehicle as defined in the subchapter;

3. Establishing a procedure to accept and investigate complaints from a consumer who claims that he or she has been overcharged for fees related to nonconsent towing, recovery, storage, or vehicle immobilization services;
4. Determining and sanctioning excessive or unnecessary fees charged to consumers related to nonconsent towing, recovery, storage, or vehicle immobilization services;
5. Requiring all entities permitted, licensed, or regulated under the subchapter to provide to the board all documents in response to information requests by the board pursuant to the investigation of consumer complaints or board complaints against the permittee or licensee;
6. Requiring all entities permitted, licensed, or regulated under the subchapter to provide itemized billing for fees related to towing, storage, or vehicle immobilization services that explains how the charges were calculated;
7. Requiring all entities permitted, licensed, or regulated under the subchapter to maintain a copy of their current maximum rate schedule or fee schedule posted in a conspicuous place and readily accessible to the public;
8. Requiring all entities permitted, licensed, or regulated under the subchapter to allow the owner or agent of the owner of a motor vehicle removed under the subchapter or under § 27-50-1101 to use any other entity permitted, licensed, or regulated under the subchapter when reclaiming the motor vehicle from storage;
9. Requiring all entities permitted, licensed, or regulated under the subchapter to post a sign notifying customers of the consumer complaint process under § 27-50-1218. The sign shall be in a conspicuous and central location in the public area and shall be a minimum of sixteen inches by twenty inches (16" x 20") in size. The board may assess a fine of between fifty dollars (\$50.00) and two hundred fifty dollars (\$250) for failure to comply with these provisions;
10. Setting a minimum standard for the structure of the place of business and storage facility located in Arkansas and utilized for the daily operation of a towing company licensed and regulated under the subsection. The place of business shall utilize: (a) A location easily accessible by the public; (b) An appropriate and secure filing system for business records; and (c) Clear and visible signage displaying the name on the business license issued by the board that: (1) Is a minimum of four feet by six feet (4' x 6') in size or meets the criteria established by a municipal zoning ordinance, subdivision regulation, or building code; and (2) Displays the name, physical address, a published telephone number of the towing company, and hours of operation;

11. Adopting rules for the registration of a person engaged in a consent-only towing business; issuance of a certificate of registration required under subdivision (f)(1)(A)(iii) of the section; and the denial, revocation, or suspension of a license or permit issued under the subchapter; and
12. Establishing a website that is sponsored and managed by the board for a towing business to post the notice required by § 27-50-1101 and the subchapter. *See* Ark. Code Ann. § 27-50-1203(e)(1). Further authority for the rulemaking can be found in Ark. Code Ann. § 27-50-1224, as amended by Act 840 of 2023, which provides that the Arkansas Towing and Recovery Board shall promulgate rules necessary for the towing, recovery, and storage of electric vehicles by October 31, 2023.

This rule implements Act 840 of 2023, sponsored by Representative Carlton Wing, which authorized the Arkansas Towing and Recovery Board to establish rules necessary for the towing, recovery, and storage of electric vehicles.

7. **DEPARTMENT OF LABOR AND LICENSING, STATE BOARD OF APPRAISERS, ABSTRACTERS, AND HOME INSPECTORS** (Lacie Kirchner, Diana Piechocki)

- a. **SUBJECT:** State Board of Appraisers, Abstracters, and Home Inspectors Rules & **REPEALS:** Appraiser Licensing and Certification Board Rules; Appraisal Management Company Rules; Arkansas Abstracters' Board Rules; and Rules and Procedures of the Arkansas Home Inspector Registration Board

DESCRIPTION: Act 628 of 2023 combined the Appraiser Licensing and Certification Board, the Abstracters' Board, and the Home Inspector Registration Board into one board under the title of the State Board of Appraisers, Abstracters, and Home Inspectors. To efficiently combine the rules of all three divisions and minimize duplication of rules for each division, the rules for each division in effect prior to Act 628 of 2023 are being repealed and replaced entirely by a five (5) chapter volume of rules. The chapters are as follows: (1) General Applicability, (2) Appraisers, (3) Appraisal Management Companies, (4) Abstracters, and (5) Home Inspectors. These proposed rules are in the best interest of the public who utilize the services of licensed professionals, as well as the licensees. Although many of the rules previously in effect for each division are contained in the new rules, below are summaries for each chapter of the significant changes that were made while combining the entities' rules into one cohesive document. The changes are consistent with statutory changes, professional development and the safety, health, and welfare of the public.

Chapter 1 – General Applicability

This chapter is designed to cover rules that are applicable to all three divisions of the combined board. Originally, each board had a variation of the rules contained in this chapter. This chapter places all information relevant to all licenses of all three divisions and the general public into one location. This chapter covers the general workings of the Board, licensure information for uniformed services members and their spouses, and general information regarding criminal background checks. The intent of this chapter is to have information easily accessible and not repeated throughout the separate chapters for each division.

Chapter 2 – Appraisers

This chapter covers the rules governing all levels of appraisers. The following is a summary of the changes that were made from the Appraiser Licensing & Certification Board rules that were in effect prior to Act 628 of 2023:

- Definitions were removed from the rules that are already contained in the governing statutes.
- Repetitive language was removed or placed at the beginning of a rule in order to be applicable to every subsection of the rule without repeating the same language.
- Language was removed concerning criminal background checks that was either outdated or not a necessary step in the review of a criminal background check for licensure purposes.
- Grounds for disciplinary action were updated to accurately list statutory guidelines.
- General qualifications for licensure were updated to accurately state limitations concerning criminal convictions.
- Removed the percentage of work that could be completed without a traditional client for supervision hours and now allow for any percentage of work to be completed without a traditional client to mirror the federal guidelines.
- Explicitly states that all experience must be USPAP compliant.
- Updated the value amount for transactions completed by a State Licensed Appraiser to mirror the federal guidelines.
- Added additional language to clarify that a state-registered license cannot be upgraded.
- Revised licensure by reciprocity to ensure that the least restrictive process for non-residents to be licensed and ensure that non-residents maintain the same general requirements for renewal as resident licensees.
- Removed unnecessary fees.

Chapter 3 – Appraisal Management Companies

This chapter covers the rules governing appraisal management companies. The following is a summary of the changes that were made from the Appraiser Licensing & Certification Board rules that were in effect prior to Act 628 of 2023:

- Clarified requirements for registration of foreign management companies to align with statutory requirements.
- Removed language throughout that is already contained in the governing statutes.
- Included language regarding the failure of an audit could result in disciplinary action.
- Updated complaint rules to clarify the complaint process.
- Clarified the language concerning disqualifying criminal offenses.

Chapter 4 – Abstracters

This chapter covers the rules governing abstracters. The following is a summary of the changes that were made from the Abstracters' Board rules that were in effect prior to Act 628 of 2023:

- Definitions were removed from the rules that are already contained in the governing statutes.
- Revised examination criteria to include the subjects to be covered, the percentage required for passage, and the number of attempts at passing the examination prior to a need for new application.
- Updated information regarding renewals to include electronic renewals, failure to renew notifications, and late renewals. Requirement to retake the licensure examination for failure to renew within thirty days was removed.
- Clarified when a temporary certification of registration may be issued.
- Updated reciprocity requirements by removing requirement for letters of recommendation.
- Removed professional development requirements since they are not required by statute.
- Revised the fee schedule for clarification.

Chapter 5 – Home Inspectors

This chapter covers the rules governing home inspectors. The following is a summary of the changes that were made from the Home Inspector Registration Board rules that were in effect prior to Act 628 of 2023:

- Definitions were removed from the rules that are already contained in the governing statutes.
- Revised the fee schedule to clarify required fees for licensees and to ensure that licensees are aware that failure to pay fees would result in an expired license.
- Revised registration requirements including clarification of the effective date of initial license.

- Changed the term, “pre-registration education” to “qualifying education” to be consistent with all other divisions under the combined board.
- Increased the period to complete qualifying education.
- Set a five-year period of validity for examination scores.
- Clarified the necessary requirements regarding liability insurance.
- Add automatic licensure under Act 457 of 2023.
- Revised requirements for reciprocity to ensure least restrictive process for non-residents to become licensed.
- Clarified renewal requirements and consequences of late renewals.
- Updated general requirements for both qualifying education and continuing education including the acceptance of all methods of education.
- Revised required continuing education courses to be met for each renewal period, now requiring completion of eight hours of mandatory courses per renewal period instead of requiring certain courses be completed within sixty months.
- Increased length of time licensees should maintain continuing education certificates for auditing purposes and clarified the waiver process for continuing education requirements.
- Revised information required to be submitted to the Board by education providers and required information provided to students.
- Updated qualifying education requirements to ensure practical, hands-on training is being completed during the required eighty hours of education in lieu of an apprenticeship or supervisory requirement.
- Clarified the requirement of exit examinations upon completion of coursework.
- Revised the coursework topics necessary for the eighty hours of education required for licensure.
- Adopted the ASHI Standards of Practice and Code of Ethics which conforms with the examination.
- Revised requirements of information required to be on all home inspection reports to ensure clarity for the public when reviewing the report.
- Revised grounds for disciplinary action including more detailed explanation of dishonest/unethical/unprofessional conduct.
- Clarified the complaint process including limiting the filing of a complaint to three years from date of report.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on June 17, 2024. The board received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated, § 17-14-203(6)(A), the State Board of Appraisers, Abstracters, and Home Inspectors shall establish by rule the minimum examination, education, experience, and continuing education requirements for state-registered, state-licensed, registered apprentice, and state-certified appraisers. With respect to examinations, these rules shall at all times require minimum examination contents that are equivalent to the national uniform examination content as promulgated by the Appraiser Qualifications Board of the Appraisal Foundation and shall provide for the selection and utilization of a testing service acceptable to the Appraiser Qualifications Board of the Appraisal Foundation. *See* Ark. Code Ann. § 17-14-203(6)(D). Additionally, the board is authorized to adopt and enforce such administrative rules as may be necessary to comply with state law and federal law with specific reference to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as it exists today and as it may be amended and adopted by the Appraisal Subcommittee. *See* Ark. Code Ann. § 17-14-203(11).

With respect to fees, every application for registering, licensing, and certifying shall be accompanied by an application fee and a criminal background check fee that the state Board of Appraisers, Abstracters, and Home Inspectors may establish by rule. *See* Ark. Code Ann. § 17-14-203(6)(E)(i). The State Board of Appraisers, Abstracters, and Home Inspectors, at its discretion, may direct each applicant to pay the actual cost of the examination fee directly to a testing service engaged by the State Board of Appraisers, Abstracters, and Home Inspectors to administer the examination. *See* Ark. Code Ann. § 17-14-203(6)(E)(ii). Further, the application fee to upgrade a credential from registered apprentice to state-licensed or to state-certified shall not exceed one hundred dollars (\$100), *see* Ark. Code Ann. § 17-14-203(6)(F)(i); the application fee to upgrade a credential from state-licensed to state-certified shall not exceed fifty dollars (\$50.00), *see* Ark. Code Ann. § 17-14-203(6)(F)(ii); and the total annual resident registering, licensing, certification, and application fees established by the State Board of Appraisers, Abstracters, and Home Inspectors shall not exceed three hundred dollars (\$300), excluding fees for applicable examination and federal pass-through fees and criminal background check fees, *see* Ark. Code Ann. § 17-14-203(6)(G).

Pursuant to Arkansas Code Annotated § 17-11-403(b), the board may adopt rules for the proper administration of its powers and duties and the carrying out of the purposes of the Abstracters' Licensing Law of 1969, Ark. Code Ann. §§ 17-11-101 to -404. The State Board of Appraisers,

Abstracters, and Home Inspectors may also adopt rules to implement, administer, and enforce the Appraisal Management Company Registration Act, Ark. Code Ann. §§ 17-14-401 to -414, including without limitation to prescribe forms and procedures for submitting information to the board; standards of practice for a person registered under the Act; and standards for the operation of appraisal management companies. *See* Ark. Code Ann. § 17-14-404.

The proposed rule implements Acts 457 and 628 of 2023. Act 457 of 2023, sponsored by Senator Ricky Hill, created the Automatic Occupational Licensure for Out-of-State Licensure Act and authorized occupational licensing entities to provide for automatic occupational licensure for new residents who are licensed in another state, territory, or districts of the United States.

Act 628 of 2023, sponsored by Senator Kim Hammer, created the State Board of Appraisers, Abstracters, and Home Inspectors; transferred the duties of the Arkansas Abstracters' Board, the Arkansas Home Inspector Registration Board, and the Arkansas Appraiser Licensing and Certification Board to the State Board of Appraisers, Abstracters, and Home Inspectors; and abolished the Arkansas Abstracters' Board, the Arkansas Home Inspector Registration Board, and the Arkansas Appraiser Licensing and Certification Board.

8. DEPARTMENT OF PUBLIC SAFETY, DIVISION OF ARKANSAS STATE POLICE (Joan Shipley, Capt. Chris Goodman, Lt. Darren Austin)

a. SUBJECT: Rules for Towing Rotation List

DESCRIPTION: The Division of Arkansas State Police is amending its rules concerning the towing rotation list. The Towing Rotation List rules were updated to reflect changes in doing business in the current climate. As an example of some of those changes, currently towing businesses are not required to accept credit card payment when responding to a crash on Arkansas highways, which puts many citizens in a position of not being able to pay since they did not have cash or checks. The changes also were meant to provide a more concise, straightforward set of rules for the towing industry. Changes were also made to clean up the rules, eliminating ambiguities and mistakes.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on May 28, 2024. The agency received no public comments.

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

Q. Draft rule 1.4 provides that, “Owner preference may not be offered in those instances of exigent circumstances, including when the occupant(s) has been physical arrested.”

(a) Should it read *physically*? **RESPONSE:** Yes, it should be “physically.”

(b) What other circumstances would the agency consider to be exigent?

RESPONSE: The only other exigency is if the driver is injured too badly to be able to give their preference.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: It shall be the duty of the Division of Arkansas State Police to establish, maintain, and enforce a towing rotation list to assist in clearing highways of motor vehicles which have been involved in accidents or abandoned. *See Ark. Code Ann. § 12-8-106(a)(1)(B).* The Director of the Division of Arkansas State Police may promulgate necessary rules to carry out the purpose and intent of Ark. Code Ann. § 12-8-106(a)(1)(B). *See Ark. Code Ann. § 12-8-106(a)(2).*

9. SECRETARY OF STATE (Michael Harry)

a. SUBJECT: Rules to Ensure the Security and Accuracy of the Statewide Voter Registration List

DESCRIPTION: The Secretary of State proposes its Rule to Ensure the Security and Accuracy of the Statewide Voter Registration List. This rule directs the Secretary of State to ensure the accuracy of the voter registration rolls, remove deceased voters, verify voter addresses, and verify the citizenship of registered voters. Specifically, the rule authorizes:

1. Cooperation between jurisdictions to compare voter registration lists;
2. Use of Social Security Administration data to identify deceased voters and remove them from the list; and
3. The creation of a process to verify address information for voters who have recently updated their addresses with the United States Postal Service.

This rule is necessary because Act 441 of 2023 requires the Secretary to issue rules to implement it.

PUBLIC COMMENT: A public hearing was held on July 8, 2024, and the public comment period expired that same day. The Secretary of State received no public comments.

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

(1) Section II.B. – Ark. Const. amend. 51, § 7(j)(2)(B), as amended by Act 441 of 2023, § 3, provides that the SOS shall “[h]ave the authority to utilize any services available to establish and implement a system for the verification of citizenship status for a person registering to vote.” The proposed rules echo the requirement established by Act 441, but do not appear to establish or spell out the system in these rules that will be used for verification.

(a) Will the SOS be establishing that system by rule?

(b) If yes, when?

(c) If not, why not?

RESPONSE: There currently is no such system available to utilize; this language will be fleshed out when that program is established on the national level.

(2) Section II.D.i. and ii. – Ark. Const. amend. 51, § 7(j)(2)(D), as amended by Act 441 of 2023, § 3, provides that the SOS shall “[e]stablish and implement a process for the verification of address information . . . [s]ubmitted by a person registering to vote [and] . . . (ii) [s]ubmitted by a registered voter updating his or her address.” The proposed rules echo the requirement established by Act 441, but do not appear to establish or spell out the process in these rules that will be used for verification.

(a) Will the SOS be establishing that process by rule?

(b) If yes, when?

(c) If not, why not?

RESPONSE: This language has been cleaned up to remove the unnecessary parts and make clear what the system is for verifying address information.

(3) Section II.E.i. and ii. – It appears that a word might be missing at the beginning of each section as the rule currently reads: “The Secretary of State shall: All confidential...” and “The Secretary of State shall: County boards of election commissioners...”

RESPONSE: The numbering has been updated to remove any confusion.

Upon receipt of a revised markup, follow-up questions were posed:

(1) Section II.D. – Is there possibly a word missing at the beginning of the section as the rule currently reads: “The Secretary of State shall: Voter registration address information shall be verified by the following process:”?

RESPONSE: The wording has been updated to read correctly.

(2) Section II.D. – Arkansas Const. amend. 51, § 7(j)(2)(D) provides that the Secretary of State shall “[e]stablish and implement a process for the verification of address information: (i) submitted by a person registering to vote; (ii) submitted by a registered voter updating his or her address; and (iii) provided through undeliverable mail by the [USPS] concerning a person registering to vote or a registered voter.” The proposed rules provide for a process whereby the SOS will receive a monthly report from the USPS change-of-address program and send voter registration application forms to those voters who have recently updated their address through the program. Will this same process be used to verify the address information of individuals falling within subsections (i) and (ii) of Ark. Const. amend. 51, § 7(j)(2)(D)?

(a) If so, how?

(b) If not, what process will be used to verify such address information?

RESPONSE: Yes, but I have added language to incorporate the other verification process outlined in Subsection (A) to help it flow/read correctly.

(3) Section III.B. – Ark. Const. amend. 51, § 7(j)(2)(F) provides that the SOS shall allow “view-only access to the voter registration files *and data* to all county board of election commissioners.” (Emphasis added.) Is there a reason that the term “data” was omitted from the rule?

RESPONSE: That was an omission on our part; it has been corrected.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Secretary of State states that the proposed rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Constitution, Amendment 51, § 7(j)(3), as amended by Act 441 of 2023, § 3, the Secretary of State shall promulgate rules under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., necessary to implement the requirements of the section, which concerns registration record files; and ensure the security, accuracy, and integrity of the statewide voter registration system; supporting technologies utilized by the counties to maintain and record voter registration information; secure user access requirements established by the Secretary of State; and election audit logs.

The rule implements Act 441 of 2023, sponsored by Representative Rick McClure, which created the Voter Registration and Secure Voter Records Act of 2023; amended Arkansas Constitution, Amendment 51; amended the law concerning audits of voter registration information; and amended the duties of the Secretary of State.

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

a. **SUBJECT:** Rule Regarding Voter Registration

DESCRIPTION: This rule provides clarity regarding the acceptance of voter registration applications, specifically, that electronic signatures are only permitted by those agencies identified in Ark. Const. amend. 51 § 5(b)(2)-(4), and that other submissions must have a wet signature or wet mark on the paper form to be a complete application.

The Board is aware that some county clerks were accepting voter registration applications that are electronically signed, whereas other county clerks were not accepting electronically signed voter registration applications. This difference in treatment has caused a difference in treatment for voter applicants, depending on in which county they reside. As such, under Amendment 51, the Board is adopting the proposed permanent rule to provide clarity. The purpose of the rule is to provide clarity to clerks, applicants, and third-party registration organizations.

PUBLIC COMMENT: A public hearing was held on this rule on July 11, 2024. The public comment period expired on July 14, 2024. The agency provided a public comment summary which, due to its length, is attached separately.

This rule was previously reviewed and approved as an emergency rule. Per the agency, the emergency rule became effective on May 4, 2024, and will expire on September 1, 2024. The proposed effective date for permanent promulgation is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Election Commissioners has the authority and responsibility to promulgate rules supplementary to Amendment 51 of the Arkansas Constitution “as are necessary to secure uniform and efficient procedures in the administration of [the] amendment throughout the State.” Ark. Const. amend. 51, § 5(e)(1). The Board also has authority to promulgate “all necessary rules to assure even and consistent application of voter registration laws and fair and orderly election procedures[.]” Ark. Code Ann. § 7-4-101(f)(5).

E. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309 to Be Considered Pending Suspension of the Subcommittee Rules

1. DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION (Courtney Salas-Ford)

a. SUBJECT: Rules Governing Public School Policies Relating to Overnight Travel and Use of Public School Lavatories

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education seeks to promulgate its Rules Governing Public School Policies Relating to Overnight Travel and Use of Public School Lavatories. Per the agency, pursuant to Act 317 of 2023 and the authority of Ark. Code Ann. § 6-11-105, the Division is charged with promulgating rules regarding overnight trips for public schools and open-enrollment public charter schools. Act 317 is codified at Ark. Code Ann. § 6-10-317. The purpose of this rule is to provide guidelines for public school districts and open-enrollment public charter schools to provide for the privacy and safety of students during overnight trips and during the use of lavatories or multiple occupancy changing rooms.

The Rule implements legislation designed to ensure public school students are not required to be in a state of undress in front of a person that is genetically of the opposite sex.

KEY POINTS

- Each public school district and open-enrollment public charter school is required to designate multiple occupancy restrooms or changing areas as either for the exclusive use of the male or female sex.
- Establishes that access to single-occupancy restrooms or changing areas is a reasonable accommodation and the guidelines for such an accommodation.
- Creates exemptions for coaches and personnel providing services required by an IEP.

DISCUSSION

This rule is being promulgated to implement Act 317 of 2023 and to ensure that Arkansas Public Schools comply with the requirements of the Act. Following the first public comment period, language was added which provides the rule does not apply to coaches addressing student athletes before, during, or after an athletic event so long as no person is in a state of undress and a school employee of the same sex as the student athlete is present. Language was also added which provides the rule does not apply to personnel providing service required by an Individualized Education Program.

POST PUBLIC COMMENT CHANGES

The primary change was the addition of language clarifying the applicability of the rule in certain nuanced situations not fully addressed in the statute. This includes defining rooms designed as both meeting venues and changing rooms as outside the scope of the prohibitions of this rule when being used exclusively as a meeting venue under limited circumstances. The language was also added to clarify that personnel providing services required by a student's IEP are not prohibited from doing so under this rule.

In addition, one typographical error was corrected and one error in an internal citation was corrected.

PUBLIC COMMENT: A public hearing was held on April 18, 2024. The public comment period expired on April 24, 2024. A second public comment hearing was held on May 22, 2024 and the second public comment period expired on June 10, 2024. The agency provided a summary of the public comments it received. Due to its length, that summary 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 2.02 – Is there a reason why the definition of “multiple occupancy restroom or changing area” refers to use by two (2) or more individuals, when Arkansas Code Annotated § 6-21-120(a)(1)(A), as amended by Act 317 of 2023, § 2, refers to use by one (1) or more individuals? **RESPONSE:** The rules clarify ambiguity in the statute. Without this clarification, the definition of multiple occupancy restrooms would encompass single occupancy restrooms.

2) Section 6.02 of the proposed rules adds an exception for coaches or athletic personnel when addressing student athletes participating in athletic activities a reasonable time before, during, or immediately after an athletic event. Does the agency feel comfortable that it has the authority to create this exception, in light of Ark. Code Ann. § 6-21-120, which concerns public restrooms and designations based on sex? **RESPONSE:** Yes, the 6.02 exception is designed only to apply when the room is being use as room designed and designated as a meeting room and not designed and designated as a restroom or changing area.

After being presented at the July 30, 2024 meeting of the Administrative Rules Subcommittee, the rules were further revised by the agency. The following question was asked concerning those revisions:

3) Section 2.02.2 of the proposed rules creates an exception to the definition of “multiple occupancy restroom or changing area”. Does the agency feel comfortable that it has the authority to create this exception, in light of Ark. Code Ann. § 6-21-120(a)(1), which defines “multiple occupancy restroom or changing area”? **RESPONSE:** The agency’s position is that the statutory definition fails to explicitly address circumstances where a changing room is designed for more than one use. The 2.02.2 language clarifies the circumstances under which a room designed as a meeting venue may be used as a meeting venue despite the same room being designed to be used as a changing area at other times. Because meeting venues are not governed by this rule, the language of 2.02.2 clarifies that the prohibition of the rule does not apply to circumstances in which the space is being used exclusively as a meeting venue and establishes safeguards to prevent the violation of the statutory language in these circumstances.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rules have 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 authority for the rulemaking can be found in Ark. Code Ann. § 6-21-120(g), which provides that the Division of Elementary and Secondary Education shall promulgate rules to implement Ark. Code Ann. § 6-21-120, as amended by Act 317 of 2023, which concerns public school restrooms and designation based on sex.

The rules implement Act 317 of 2023, sponsored by Representative Mary Bentley, which concerned a public school district or open-enrollment public charter school policy relating to the sex of a public school student who attends a public school sponsored or supervised overnight trip, and concerned the designation of a multiple occupancy restroom or changing area based on an individual’s sex.

b. SUBJECT: Rules Governing Educator Licensure

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education seeks to amend its Rules Governing Educator Licensure. The rules are amended to add definitions necessary for implementation of the rules as well as definitions consistent with Act 237 of 2023 and executive orders signed by Governor Sarah Sanders. Additionally, the definitions section of the rules is amended to remove

outdated or unnecessary definitions. Much of the underlined language in the rules is not new language but is existing language that has been reorganized for coherence and clarity.

The following changes are made for coherence and clarity:

—Sections of Chapter 4 of the existing rules are added to the amended Chapter 2.

—Sections of the existing Chapter 2 are added to the amended Chapter 4.

—Section 2-6.0 of the current rules regarding the career continuum is moved to Chapter 6 of the amended rules, which addresses requirements for adding areas, endorsements, and designations.

—Section 3-4.0 of the current rules is moved to the amended Chapter 4.

Section 2-9.0 of the amended rules is added to outline Special Education Personnel Qualifications and Alternate Certifications. This new section allows the Division to provide opportunities for districts to put individuals on pathways to Special Education licensure and to meet the requirements of federal law.

Language is added to the rules to clarify that a substitute teacher may not provide instruction to any student for longer than two semesters.

Section 7-8.0 regarding aspiring teacher permits is added to outline the processes and requirements for the permit.

References to “ArkansasIDEAS” are removed from the rules to allow flexibility in the event that the name of the platform changes.

The existing Appendix A is removed from the rules so that the Division may include information regarding levels and areas of licensure on the Division website and update as needed rather than include this information in administrative rules. Career Technical Permit areas are listed in Section 2-1.0 of the rules.

Appendix B is removed from the rules. Updated information regarding licensure application fees will now be available on the Division website rather than being part of administrative rules. This will allow the Division to make necessary updates without amending the rules.

An appendix regarding updated professional development requirements is added to the rules as “Appendix A.” For this reason, language regarding specific professional development requirements is removed from the rules.

Duplicative language is removed from the rules and technical changes are made.

Following the public comment period, several non-substantive changes were made to correct scrivener's errors, internal references, and to ensure consistency. In addition, Appendix B was added in response to public comment in order to clarify the provisions of the rule. Also, the SPED 101 academy was defined as a three-hour course. Other minor changes were made including adding language that provided a person 62 years of age or older is not required to verify their retirement status and that SPED 101 modules are provided by the Office of Special Education.

Finally, the rule was pulled down prior to the July meeting of the ALC Rules Subcommittee and revisions were made in order to restore a fee schedule that was deleted in the prior draft, in compliance with A.C.A. § 25-15-105.

PUBLIC COMMENT: A public hearing was held on May 31, 2024. The public comment period expired on June 10, 2024. The agency provided its public comment summary. Due to its length, that summary is attached separately.

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

1) Section 2-1.0 – Is the Division of Career Education referenced in this section the same entity as the “Division of Career and Technical Education” created in Arkansas Code Annotated § 25-30-107?

RESPONSE: This is the same entity; the terminology is aligned to Division of Career and Technical Education in the final draft of the rule following the public comment period.

2) Section 3-1.03.4.1.1 – Does this section of the proposed rules pertain to a clinical internship requirement, a residency requirement, or both?

RESPONSE: The section applies to both clinical internship requirement and a residency requirement. The Residency requirement does not take effect until the 2026-2027 school year.

3) Section 1-2.40 – Does the definition of “Preservice Teacher” include an individual with an Aspiring Teacher permit? **RESPONSE:** Yes, they are a “Preservice Teacher” if working under an Aspiring Teacher Permit. (Always) It is technically during their internship.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-17-402(b), the State Board of Education shall promulgate rules for the issuance, licensure, relicensure, and continuance of licensure of teachers in the public schools of this state that require at a minimum that each in-state applicant for teacher licensure completes an educator preparation program approved by the Division of Elementary and Secondary Education and demonstrates licensure content area knowledge and knowledge of teaching methods and that require at a minimum that each in-state applicant for an administrator's license demonstrates knowledge of state-adopted competencies and standards for educational leaders. The State Board may further promulgate rules for a tiered system of licensure, which may include without limitation an emergency teaching permit; a technical permit; a provisional license; a novice or first-time license; a standard license; and a license with advanced requirements. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-17-410(i), which provides that the State Board shall adopt the necessary rules to fully implement the provisions of Ark. Code Ann. § 6-17-410, concerning the application, renewal application, revocation, suspension, and probation relating to teacher licensure. Additionally, the State Board of Education shall promulgate rules to implement the Highly Qualified Professor and Teacher Act. *See* Ark. Code Ann. § 6-63-105.

The proposed amendments are those made in light of the following Acts:

Act 237 of 2023, § 29, 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;

and Act 732 of 2023, sponsored by Representative Brian Evans, which amended provisions of the Arkansas Code as they relate to teacher licensure; amended the conditions under which an individual may teach without a license; amended the qualifications an individual must have to obtain a teaching license; amended the types of licenses that may be considered under a tiered system of teacher licensure; amended the length of time during which a provisional teaching license is valid; and repealed the licensed personnel testing program.

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

- 1. Department of Commerce, Arkansas Waterways Commission (Jake Windley)**
- 2. Department of Commerce, Division of Aeronautics¹ (Jake Windley)**

¹ The rules report submitted by the Division of Aeronautics reflects no rules currently in effect.

3. Department of Commerce, Division of Workforce Services (David McCoy)
 4. Department of Commerce, Office of Skills Development (Jake Windley)
 5. Department of Commerce, State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services (Tasha Tidwell)
 6. Department of Commerce, State Insurance Department (Booth Rand)
- G. Agency Requests to Be Excluded from Reporting Requirements of Act 595 of 2021**
1. Department of Education (Act 237 of 2023, § 16) (Andrés Rhodes, Daniel Shults)
- H. 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. Department of Agriculture (Secretary Wes Ward, Corey Seats)
 3. Department of Commerce, Arkansas Economic Development Commission (Jake Windley)
 4. Department of Commerce, State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services (Tasha Tidwell)
 5. Department of Commerce, State Insurance Department (Booth Rand)
 6. Department of Corrections (Tawnie Rowell)
 7. Department of Energy and Environment (Lauren Ballard, Kesia Morrison)
 8. Department of Finance and Administration, Regulatory Division (Trent Minner, Christy Bjornson)
 9. Department of Finance and Administration, Revenue Division (Paul Gehring, Alicia Austin Smith)
 10. Department of Health (Laura Shue)
 11. Department of Inspector General, Tax Appeals Commission (Secretary Allison Bragg, Samantha Blassingame)
 12. Department of Labor and Licensing (Lacie Kirchner)

- 13. Department of Public Safety (Joan Shipley)**
- 14. Secretary of State (Michael Harry)**
- I. Agency Monthly Written Updates Pursuant to Act 595 of 2021 Concerning Rulemaking from the 2024 Fiscal Session**
- J. Reports on Administrative Directives Pursuant to Act 1258 of 2015, for the Quarter Ending June 30, 2024 (Tawnie Rowell)**
 - 1. Department of Corrections**
 - 2. Post-Prison Transfer Board²**
- K. Adjournment**

² The Board's report reflects no new or revised administrative directives for this quarter.