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

**Thursday, June 19, 2025**
**10:00 a.m.**
**Room A, MAC**
**Little Rock, Arkansas**

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**A. Call to Order**

**B. Rules Filed Pursuant to Arkansas Code § 10-3-309**

**1. DEPARTMENT OF AGRICULTURE (Corey Seats)**

**a. Liquid Animal Waste Management Systems**

**DESCRIPTION:** The Department of Agriculture proposes its Liquid Animal Waste Management Systems Rule.

**Background**
Act 824 of 2023 transferred the authority related to liquid animal waste management systems from the Department of Energy and Environment to the Department of Agriculture.

**Discussion**
Act 824 conferred to the Department of Agriculture the authority to promulgate rules related to liquid animal waste management systems, to issue and modify permits related to liquid animal waste management systems, approve design plans and site requirements related to liquid animal waste management systems, and to take any other action related to liquid animal waste management systems.

**Conclusion**
The rule will implement the transfer of authority related to liquid animal waste management systems to the Department of Agriculture in accordance with Act 824 of 2023.

**PUBLIC COMMENT:** A public hearing was held on August 26, 2024. The public comment period expired on September 2, 2024. The agency provided a summary of the public comments it received and its responses thereto. 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) Did the Department consult with the Division of Environmental Quality in promulgating this rule, per Arkansas Code Annotated § 15-20-102(a)? **RESPONSE:** Yes, we consulted extensively with ADEQ in this draft.

2) Are the permit fee amounts contained in Section II(7) of the proposed rule set by statute? **RESPONSE:** The permit fee schedule is not found in statute. The fees in our rule are unchanged from those that were set by ADEQ and are found in their Regulation 9 (Permit Fee Regulations).

**FINANCIAL IMPACT:** The agency has indicated that the proposed rule does not have a financial impact. In addition, the agency states that the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed rule is $200.00 for the current fiscal year and $200 for the next fiscal year. Per the agency, the fee for the application, renewal, or modification of a liquid animal waste management system permit is $200. This amount is unchanged from the fees charged by the Arkansas Department of Environmental Quality when liquid animal waste management systems were governed by ADEQ Regulation 5. Further, the agency states that the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule is $35,000 for the current fiscal year and $35,000 for the next fiscal year. Per the agency, this amount represents staff salaries and fringe for Department of Agriculture employees who oversee this program, in addition to other duties.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 15-20-102(a), in consultation with the Division of Environmental Quality, the Department of Agriculture has authority over all liquid animal waste management systems in this state, including without limitation the authority to: promulgate rules related to liquid animal waste management systems; issue and modify permits related to liquid animal waste management systems; approve design plans and site requirements related to liquid animal waste management systems; and take any other action related to liquid animal waste management systems. The department shall promulgate rules to implement Ark. Code Ann. § 15-20-102, concerning liquid animal waste management systems, and in promulgating such rules, the department shall consider the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

The proposed amendments are those made in light of Act 824 of 2023, sponsored by Representative DeAnn Vaught, which regarded liquid animal waste management systems; and transferred the authority related to

liquid animal waste management systems from the Department of Energy and Environment to the Department of Agriculture.

**2. DEPARTMENT OF COMMERCE, STATE INSURANCE DEPARTMENT (Amanda Gibson, item a; Sara Farris, Jimmy Harris, item b)**

**a. Rule 20: Automatic and Expedited Licensure for Military Service Members, Veterans, and Spouses**

**DESCRIPTION:** The Arkansas Insurance Commissioner is considering adopting Proposed Rule 20 Automatic and Expedited Licensure for Military Members, Veterans, and Spouses. Ark. Code Ann. § 17-4-101 et seq. requires occupational licensing entities to adopt rules requiring automatic licensure and expedited initial licensure for military service members, veterans, and spouses. Ark. Code Ann. § 17-4-105 requires occupational licensing entities to grant automatic licensure to military service members, veterans, and spouses. Ark. Code Ann. § 17-4-106 requires occupational licensing entities to expedite the process of initial licensure for military members, veterans, and spouses.

**PUBLIC COMMENT:** A public hearing was held on this rule on October 29, 2024. The public comment period expired on October 29, 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 Insurance Commissioner has "the authority to promulgate rules necessary for the effective regulation of the business of insurance" in Arkansas. Ark. Code Ann. § 23-61-108(b)(1). This rule implements Act 137 of 2023. The Act, sponsored by Senator Ricky Hill, amended the Arkansas Occupational Licensing of Uniform 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.

**b. Rule 12: Credit Life and Credit Disability Insurance**

**DESCRIPTION:** The Department of Commerce, State Insurance Department, proposes amendments to its Rule 12: Credit Life and Credit Disability Insurance. The department provided the following summary of the rule changes:

**Legislative Authority for Rule**
Arkansas Insurance Department Rule 12 ("Rule 12") was originally promulgated pursuant to the authority set forth in Act 148 of 1959 ("Act 148"), as subsequently amended, and codified at Ark. Code Ann. § 23-87-101 et seq.

**Background and Purpose of Rule**
Rule 12 was promulgated for the purpose of implementation of Act 148. The Commissioner has determined that subsections 14.8 and 14.9 of Rule 12, requiring notarized affidavits regarding agent/broker compensation are no longer necessary. Therefore, these subsections and the requisite Exhibits B and C, respectively, are deleted from Rule 12.

**Explanation of the Proposed Rule**
Affidavits required by subsections 14.8 and 14.9 of Rule 12 are no longer required pursuant to Commissioner's discretion. Therefore, Rule 12 is amended to delete these subsections and requisite Exhibits B and C.

Following the closing of the public comment period, the agency indicated that the following changes were made:

1. In Section 17, deleted "Stat. Ann. §66-2814(7)(a)" and "§66-2814(1)".
2. In Section 3, deleted the "3." in "3.6."

**PUBLIC COMMENT:** A public hearing was held on November 7, 2024. The public comment period expired that same day, November 7, 2024. The agency indicated that it received no public comments.

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

**LEGAL AUTHORIZATION:** In order to assure that the premium rates charged or to be charged for credit life insurance or credit disability insurance are reasonable in relation to benefits provided, the Insurance Commissioner, after due notice and hearing, may issue rules establishing the maximum compensation payable to an agent, a broker, or a creditor or any affiliate, associate, subsidiary, director, officer, employee, or other representative of or for the creditor for writing or handling the insurance, including commission, dividends, premium adjustments, policy writing fees, underwriting gain, or any compensation or remuneration in whatever form. *See* Arkansas Code Annotated § 23-87-117(a)(1). Further authority for the rulemaking can be found in Ark. Code Ann. § 23-87-118(a), which provides that, after notice and hearing, the commissioner may issue such rules as the commissioner deems appropriate for the supervision of the Model Act for the Regulation of Credit Life Insurance and Credit Disability Insurance. *See* Title 23, Subtitle 3, Chapter 87 of the Arkansas Code.

## 3. DEPARTMENT OF CORRECTIONS, BOARD OF CORRECTIONS (Tawnie Rowell)

### a. Earned Release Credits, 12 CAR § 60-116

**DESCRIPTION:** The Department of Corrections' Board of Corrections proposes its Earned Release Credits rule for legislative review and approval. Act 659 of 2023, the Protect Arkansas Act, requires that the Board of Corrections establish a rule that sets guidelines for the accrual of earned release credits for work practices, job responsibilities, good behavior, and involvement in rehabilitative activities while in the custody of the Division of Correction. The proposed rule:

- Sets the maximum percentage of a sentence when can be accrued in earned release credits for (1) classification — which is based on good behavior, work practices, and job responsibilities, and (2) involvement in programming, which consists of rehabilitative activities;
- Sets the rate of accrual for classification, which ranges from Class One to Class Four; and
- Sets the rate of accrual for participation in programming at a rate determined by weighing the total number of days an inmate can earn for programming with the inmate's criminogenic needs.

Following the closure of the comment period, technical revisions were made to the policy to align it with Code of Arkansas Rules style.

**PUBLIC COMMENT:** This rule was filed on an emergency basis and was reviewed and approved by the ALC – Executive Subcommittee, with the review and approval becoming effective March 7, 2025. The emergency rule became effective March 7, 2025. With respect to the permanent promulgation, a public hearing was not held on this matter. The public comment period expired April 14, 2025. The agency indicated that it received no public comments.

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

**1.** Section 116(e)(1) – This provision seems to be premised on Ark. Code Ann. § 12-29-702(b)(1) which states "[t]he Board of Corrections shall promulgate rules and the Division of Correction shall administer rules that set guidelines for accrual of earned release credits for work practices, *job responsibilities*, good behavior, and involvement in rehabilitative activities while in the custody of the Division of Correction." (Emphasis added.) 12 CAR § 60-116(e)(1), as proposed, appears to lack reference to "job responsibilities." Is there a reason

"job responsibilities" was omitted from the rule? **RESPONSE:** It was inadvertent. We are happy to update when the rule is revised next time.

**2.** Section 116(e)(2) – 12 CAR § 60-116(e)(2) states "[e]arned release credits shall not reduce an *offender's period of confinement* for more than the maximum amount authorized under Arkansas Code §§ 16-93-1803 and 16-93-1804." (Emphasis added.) This provision appears to be premised on Arkansas Code § 12-29-702(c)(3), which states "[e]arned release credits shall not reduce an *inmate's time served in prison* by more than the maximum amount authorized under §§ 16-93-1803 and 16-93-1804." (Emphasis added.) Is there a difference between the two? **RESPONSE:** There is not a difference – we will make language mirror in a future amendment.

**3.** Section 116(e)(3)(C)(i) – This section lists the various classes to which inmates are assigned and the amount of earned release credits they may earn based on their designated class. How is an inmate's class determined? **RESPONSE:** Inmate class is determined pursuant to a variety of ADC directives, including the inmate classification directive and the inmate disciplinary manual.

**4.** Section 116(e)(C)(i) – 12 CAR §§ 60-116(e)(C)(i)(d) and (e)(C)(i)(e) state that Class Four (IV) inmates and inmates held in restrictive housing generally do not accrue days of earned release credit for good behavior. 12 CAR §§ 60-116(a) — (c) make no mention of good behavior, but state that Class One (I), Two (II), and Three (III) inmates do accrue earned release credits while categorized under those classifications. Are the credits accrued by Class One, Two (II), and Three (III) inmates under this subdivision earned for good behavior? **RESPONSE:** Class Status is generally tied to good behavior and institutional adjustment.

**5.** Section 116(e)(3)(C)(ii)(b) – This subdivision states, "[e]arned release credits for good behavior and work practices may be forfeited for disciplinary reasons as set out in division policy." What is the "division policy" this provision is referring to? **RESPONSE:** The inmate disciplinary manual.

**6.** Section 116(e)(3)(C)(ii)(c) – This subdivision states, "[d]ivision directors may restore forfeited earned release credits in accordance with division policy." What is the "division policy" this provision is referring to? **RESPONSE:** The administrative directive on restoration of good time.

**7.** Section 116(e)(3)(D)(i)*(b)(1) & (2)* – 12 CAR § 60-116(e)(3)(D)(i)*(b)(1)* makes reference to the "earned release credit*s*

committee," while 12 CAR § 60-116(e)(3)(D)(i)*(b)(2)* refers to it as the "earned release credit committee." (Emphasis added.) However, Ark. Code Ann. § 12-29-703(a)(1)(A) refers to an "earned release credit classification committee." Are the committees in the rule the same as the committee referred to in the statute? **RESPONSE:** Yes – they are the same.

**8.** Section 116(e)(3)(D)(i)*(b)(1) & (2)* – 12 CAR § 60-116(e)(3)(D)(i)*(b)(1)* states "[o]nly those programs authorized by the earned release credits committee are eligible for accrual of earned release credits." 12 CAR § (e)(3)(D)(i)*(b)(2)* states "[i]n determining whether a program is authorized to accrue earned release credits, the earned release credit committee shall consider the recommendation of the Director of the Division of Correction..." These subsections appear to be premised on Arkansas Code § 12-29-703(b)(1), which states "[u]pon recommendation of the committee, the Director of the Division of Correction may authorize accrual of earned release credits for each successful completion of [programs]." Is there a reason the two appear to differ? **RESPONSE:** The ADC director has to authorize accrual of award credits – but the earned release credit committee has to authorize which programs are eligible.

The proposed effective date of this rule is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency indicated that this rule has no financial impact. In reference to the total estimated cost by fiscal year to a state, county, or municipal government to implement the rule, the agency stated:

> The Department has expended funds implementing the new time computation rules resulting from the Protect Arkansas Act, which this rule impacts. The portion attributable to changes in time computation are estimated to be approximately $45,000, but these funds were required to be expended in order to implement the Act – not this rule specifically.

**LEGAL AUTHORIZATION:** The Board of Corrections shall promulgate rules, and the Division of Corrections shall administer rules that set guidelines for accrual of earned release credits for work practices, job responsibilities, good behavior, and involvement in rehabilitative activities while in the custody of the Division of Correction. *See* Ark. Code Ann. § 12-29-702(b)(1). The rules shall provide for uniform application of authorizing release to post-release supervision for an inmate who successfully completes programs determined to reduce recidivism

and has met behavioral expectations while incarcerated. *See* Ark. Code Ann. § 12-29-702(b)(2).

The proposed rule implements the following act from the 2023 Regular Session:

Act 659, sponsored by Senator Ben Gilmore, which created the Protect Arkansas Act, amended Arkansas law concerning sentencing and parole, amended Arkansas law concerning certain criminal offenses, amended Arkansas law concerning the Parole Board, and created the Legislative Recidivism Reduction Task Force.

**4. DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION (Daniel Shults, Courtney Salas-Ford)**

**a. Rules Governing Special Education and Related Services**

**DESCRIPTION:** The Department of Education, Division of Elementary and Secondary Education proposes amendments to its Rules Governing Special Education and Related Services (Section 18.00 – Residential Placement).

**Background**
The division is charged with promulgating rules regarding the responsibility of providing and paying for educational and related services of juveniles in juvenile detention and residential facilities. *See* Arkansas Code §§ 6-20-104 and 6-20-107.

**Key Points**
• Adds requirements that must be met to pay for educational and related costs for disabled juveniles placed in an out-of-state residential or inpatient facility.
• Specifies that no payment of any educational or related services will be made for any juvenile placed in an out-of-state residential or inpatient facility prior to April 7, 2005.
• Adds requirements for juvenile detention facilities to:
    - Notify the juvenile's resident school district upon disposition of the juvenile court that the juvenile shall be placed in the juvenile detention facility.
    - Certify the juvenile's detention dates to the resident school district within five (5) days of the juvenile being released.
• Makes formatting changes in advance of the Code of Arkansas Rules.

**Discussion**
Arkansas Code § 6-20-107(b)(1) sets out the requirements that must be met in order for the Division of Elementary and Secondary Education, a

public school district, or an open-enrollment charter school to be liable for educational or related costs for a juvenile placed in an out-of-state residential or inpatient facility. This amendment adds those requirements to the section of the rule related to disabled juveniles placed out-of-state. It also adds to the rule the specification from subsection (f) of the aforementioned statute that the division, a school district, or open-enrollment charter school shall not be liable for costs associated with an out-of-state residential or inpatient facility prior to April 7, 2005.

Arkansas Code § 6-20-104(b)(1) requires juvenile detention facilities to notify a student's resident school district upon disposition by the court that the juvenile will be residing there and also requires facilities to certify the juvenile's detention dates to the resident school district within five days of the juvenile's release. The amendment adds this requirement to the rule.

**PUBLIC COMMENT:** A public hearing was held on January 14, 2025. The public comment period closed on January 27, 2025. The agency has indicated that it received no public comments.

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

**LEGAL AUTHORIZATION:** The State Board of Education shall make the necessary rules in keeping with the provisions of the Children with Disabilities Act of 1973, codified in Arkansas Code Annotated §§ 6-41-201 – 6-41-223, and shall employ the necessary personnel for the proper administration of the Act if funds are made available for this purpose. *See* Ark. Code Ann. § 6-41-207(c). Further, the Division of Elementary and Secondary Education shall issue rules for the effective implementation of Ark. Code Ann. § 6-20-104, concerning reimbursement for educational services provided in juvenile detention facilities, including the: 1) Classification of juvenile detention centers as approved residential treatment facilities; 2) Designation of the juvenile detention facility and the district where the juvenile detention facility is located as responsible for educating the student consistent with federal and state laws for any period of time the student is being held in the facility; and 3) Designation of the resident district of a student who is being held in a juvenile detention facility as responsible for the timely transfer of a student's educational records to the district where the juvenile detention facility is located upon notification by the court of the student's placement in a juvenile detention facility. *See* Ark. Code Ann. § 6-20-104(c). The funds appropriated to the division for residential or inpatient facilities shall be allocated in accordance with rules promulgated by the state board. *See* Ark. Code Ann. § 6-20-107(g).

The proposed amendments include those made in light of Act 572 of the 2023 Regular Session, §§ 11 – 12, sponsored by the Joint Budget Committee, which made an appropriation for public school grants for the Department of Education – Division of Elementary and Secondary Education – Public School Fund for the fiscal year ending June 30, 2024.

## 5. DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY (Bailey Taylor, Michael McAlister)

### a. Rule No. 6: Rules for State Administration of the National Pollutant Discharge Elimination System (NPDES)

**DESCRIPTION:** The Department of Energy and Environment's Arkansas Pollution Control and Ecology Commission and the Division of Environmental Quality (DEQ) propose this rulemaking to modify Regulation 6: Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES). The commission has general rulemaking authority through Ark. Code Ann. § 8-1-203(b)(1)(A), and specific authority to promulgate this rule through Ark. Code Ann. § 8-4-202(a).

**Background**

The purpose of Regulation 6 is to adopt the federal regulations necessary to qualify the State of Arkansas to receive and maintain authorization to implement the state water pollution control permitting program, in lieu of the federal NPDES program, pursuant to the federal Clean Water Act, 33 U.S.C. § 1251 et seq. In order for DEQ to maintain its delegated authority to administer the NPDES permit program, DEQ must have rules as stringent as the federal program administered by the United States Environmental Protection Agency.

**The Proposed Rule Amendments**

The DEQ proposes this rulemaking to Regulation 6 before the Arkansas Pollution Control and Ecology Commission: to adopt federal revisions to the NPDES program, incorporate statutory revisions made by the Arkansas General Assembly, and make corrections and stylistic and formatting updates throughout the regulation. Regulation 6 establishes the parameters for the state water pollution control permitting program in lieu of the federal NPDES program and pursuant to the federal Clean Water Act, 33 U.S.C. § 1251 et seq. The state legislative acts prompting the regulatory amendments are Acts 94 and 575 of 2015, Acts 987 and 1037 of 2017, 315 and 910 of 2019, Act 441 of 2021, and Act 46 of 2023. The federal regulatory changes prompting the amendments are 40 C.F.R §§ 122.21(e)(3), 122.44(i)(l)(iv), 136.1(c), 125(I) and (J), 423, 122, 123, 127, and 401.17.

Proposed changes to Rule 6 include:
**Incorporation of Updates to Federal Regulations.** Amendments to Regulation 6.104 to incorporate changes made to federal regulations;
**Incorporation of Updates to Arkansas Law.** Acts 94 and 575 of 2015, Acts 987 and 1037 of 2017, 315 and 910of 2019, Act 441 of 2021, and Act 46 of 2023, were enacted by the Arkansas General Assembly and require revisions to Regulation 6;
**Amendments to Provide Clarification and Minor Corrections.** Corrections to the rule, including adding necessary definitions and corrections to be consistent with other state rules;
**Amendments to Chapter 6.** To amend Chapter 6 to be consistent with the Department of Agriculture's rule for Liquid Animal Waste Management Systems; and

**Stylistic and Formatting Corrections.** To make minor, non-substantive stylistic and formatting corrections throughout the regulation.

**Necessity and Practical Impact of Rule Amendments**
DEQ must have rules as stringent as the federal program administered by the United States Environmental Protection Agency to maintain its delegated authority to administer the NPDES permit program. Pursuant to 40 C.F.R. § 123.62(e), states administering the NPDES program must make revisions to its rules to conform to the federal regulations within one year of the date of promulgation of the federal regulation, with the exception that if a state must amend or enact a statute in order to make the required revision, the revision shall take place within two years of promulgation of the federal regulations. The risk of not updating this rule is that EPA could attempt to remove Arkansas's delegated authority to issue NPDES permits under the federal Clean Water Act. Loss of delegated authority would result in EPA becoming the permitting authority for Arkansas.

**PUBLIC COMMENT:** A public hearing was held on August 26, 2024. The public comment period was set to expire on September 5, 2024, however, the comment period was extended by the agency and ultimately expired on September 16, 2024. The agency provided a summary of public comments it received and its responses thereto. 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) Will the agency still recognize the NPDES financial assurance exceptions which were removed from Sections 6.205(B) and (D) of the amended rules, and those which are enumerated in Arkansas Code

Annotated § 8-4-203(b)(1)(C), as amended by Act 46 of 2023?
**RESPONSE:** Yes.

2) What was the agency's reasoning for amending the permit restrictions under Section 6.602 of the proposed rules, which concerns the Buffalo National River Watershed? **RESPONSE:** The amendments to Section 6.602 do not change the current permit restrictions under that section. The amendments reflect the movement of the permitting program for Liquid Animal Waste Management Systems to Department of Agriculture. In addition, these amendments to Chapter 6 are consistent with the Department of Agriculture's rule for Liquid Animal Waste Management Systems.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency has indicated that the amended rule does not have a financial impact. The agency further states that implementing the revised federal rules and clarification/correction of various sections of this rule is not expected to cause an increase in costs to private entities because permittees were expected to comply with these requirements prior to incorporation. Implementing the revised state rule should result in reduced costs to non-municipal domestic sewage treatment works permittees. Changes to the general permit process are expected to reduce costs to facilities.

**LEGAL AUTHORIZATION:** The Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules implementing or effectuating the powers and duties of the Division of Environmental Quality and the commission under the Arkansas Water and Air Pollution Control Act, codified in Title 8, Chapter 4 of the Arkansas Code. *See* Ark. Code Ann. § 8-4-202(a). Without limiting the generality of this authority, these rules may, among other things, prescribe:
1) Effluent standards specifying the maximum amounts or concentrations and the physical, thermal, chemical, biological, and radioactive nature of the contaminants that may be discharged into the waters of this state or into publicly owned treatment facilities; 2) Requirements and standards for equipment and procedures for monitoring contaminant discharges at their sources, including publicly owned treatment facilities and industrial discharges into such facilities, the collection of samples, and the collection, reporting, and retention of data resulting from such monitoring; and 3) Water quality standards, performance standards, and pretreatment standards. *See* Ark. Code Ann. § 8-4-202(b).

The proposed amendments include those made in light of Act 46 of 2023, sponsored by Representative Richard McGrew, which amended the

Arkansas Water and Air Pollution Control Act; and exempted certain property owners' associations and homeowners' associations from certain permit actions related to National Pollutant Discharge Elimination System permits or state permits for a municipal domestic sewage treatment works.

Per the agency, the amended rules are required to comply with federal law, specifically, 40 C.F.R. §§ 122.21(e)(3), 122.44(i)(l)(iv), 125 Subparts I and J, 127, and 136.1(c).

**b. Rule No. 2: Rule Establishing Water Quality Standards for Surface Waters of the State of Arkansas, 8 CAR pt. 21**

**DESCRIPTION:** The Department of Energy and Environment, Division of Environmental Quality ("DEQ") proposes this rulemaking before the Arkansas Pollution Control and Ecology Commission ("APC&EC" or "Commission") to amend Rule 2, (the Rule) to fulfill Arkansas' responsibilities under the federal Clean Water Act, 33 U.S.C. § 1251 et seq. The Clean Water Act requires states to review the applicable water quality standards at least once every three years to determine whether any modifications are appropriate ("Triennial Review").[1] This rulemaking proposes to modify Rule 2 to clarify several provisions, add certain new criteria, revise certain criteria, remove certain criteria, make stylistic and formatting corrections throughout the Rule, and update the Rule to be consistent with the Code of Arkansas Rules (CAR) which changes Rule 2 to 8 CAR Part 21.

Any changes to water quality standards adopted by a state during the Triennial Review[2] must be submitted to the Environmental Protection Agency for review and approval or disapproval. The standards adopted by the state are submitted to EPA along with any supporting information[3] and a certification that the standards were adopted pursuant to state law.[4] This submittal is to be provided to the EPA within thirty (30) days of the final state action to adopt and certify the revised standards.[5] After the state submits its revised water quality standards, the EPA must approve or disapprove the revisions.[6] If the EPA approves the new state standards, then those standards can be used for purposes of implementing the federal Clean Water Act, including such actions as listing water quality impairments, calculating Total Maximum Daily Loads (TMDLs), and

[1] Section 303(c) of the Clean Water Act.
[2] The review of water quality standards at least once every three years is commonly called the Triennial Review.
[3] 40 C.F.R. § 131.20 (c).
[4] 40 C.F.R. § 131.6(e).
[5] 40 C.F.R. § 131.20(c).
[6] 40 C.F.R. § 131.21.

developing effluent limits for National Pollutant Discharge Elimination System (NPDES) permits.[7]

If the revised water quality standards are disapproved by the EPA, then the standards are not applicable water quality standards for purposes of implementing the Clean Water Act. If the water quality standards adopted by a state are disapproved by the EPA, then those standards cannot be used to implement the provisions of the Clean Water Act until the standards have been revised through a new rulemaking and re-submitted to the EPA for review and approval.

The Commission's authority for amending Rule 2 is found in Arkansas Code Annotated §§ 8-1-203(b)(1)(A), 8-1-201(b), 8-4-202(a), and 8-4-202(b)(3)). DEQ's authority to propose these amendments to Rule 2 is found in Ark. Code Ann. §§ 8-1-202 and 8-4-206.

Proposed changes to Rule 2 include:

- *Amendments to Provide Clarification and Minor Corrections*. Clarification of sections of the rule that were otherwise unclear, and minor corrections to make the rule more illustrative of the legislative and regulatory intent.
- *Stylistic and Formatting Corrections*. Make minor, non-substantive stylistic and formatting corrections throughout the Rule.
- *Amendments to be consistent with the Code of Arkansas Rules*. In the Code of Arkansas Rules (CAR), Rule 2 will become 8 CAR Part 21.
- *Amendments to Incorporate Revised Criteria*. Revise primary contact season recreation dates. Revise E. coli geometric mean criteria for "All Other Waters." Revise criteria for cadmium and ammonia. Revise pH criteria to include site specific pH criteria to five waterbodies. Revise dissolved oxygen criteria to include site specific dissolved oxygen criteria to three waterbodies. Revise ecoregion boundaries. Add threatened and endangered species names to existing Ecologically Sensitive Waterways waters.
- *Amendments to Incorporate New Criteria*. Add five human health criteria to ensure protection of human health.
- *Amendments to Remove Criteria*. Remove fecal coliform criteria. Remove trout water use from three lakes. Remove site specific temperature criteria from one waterbody. Remove exception of "no fishable/swimmable uses" from three waterbodies.

[7] 40 C.F.R. § 131.21(d).

Significant Proposed Revisions for 2024 Rule 2 Triennial Revision:

8 CAR § 21-507 (Rule 2.507) – Extension of the primary contact recreation season.
*Justification*: Expanding the primary contact recreation season to include April and October will ensure human health protection for Arkansas citizens and tourists.

8 CAR § 21-507 (Rule 2.507) – Revise E. coli geometric mean criteria for "All Other Waters." *Justification*: Provide clarification for permitting and TMDLs.

8 CAR § 21-508 (Rule 2.508) – Revision of cadmium criteria.
*Justification*: Current Rule 2 cadmium criteria are from 1986. EPA updated the cadmium criteria in 2016. EPA's 2016 criteria are supported by current science and DEQ has determined that these revisions will be more protective of aquatic life.

8 CAR § 21-508 (Rule 2.508) – Addition of human health criteria for benzene, toluene, ethylbenzene, xylene, and phenol. *Justification*: Current Rule 2 does not contain criteria for these five parameters. These parameters are known to have negative health effects for humans: benzene – carcinogen; toluene - nervous system, kidney, or liver problems; ethylbenzene - blood, liver, and kidney damage; xylene - impaired lung function, memory, and breathing; phenol – digestive, blood, and liver effects. DEQ has determined that adoption of these criteria will be more protective of human health.

8 CAR § 21-512 (Rule 2.512) – Ammonia – Revision of ammonia criteria.
*Justification*: Current Rule 2 criteria are from 1999; EPA updated the ammonia criteria in 2013. The 2013 criteria take into account the sensitivity of freshwater mussels, which are common in Arkansas's waters.

Appendix A – Addition of site-specific dissolved oxygen (DO) criteria for three waterbody assessment units (AUs). *Justification*: It has been demonstrated the observed DO range, which is lower than current criteria, can be described as natural and capable of supporting aquatic life in the Alum Fork Saline River (AR_08040203_014), South Fork Ouachita River (AR_08040101_043), and Saline River (Red River Basin) (AR_11140109_014) AUs.

Appendix A – Addition of site-specific pH criteria for five waterbody AUs.
*Justification*: It has been demonstrated the observed pH range, which is lower than current criteria, can be described as natural and capable of

supporting aquatic life in Dry Fork Creek (AR_11110206_914), Irons Fork Creek (AR_08040101_838), Barren Creek (AR_11140108_907), Short Creek (AR_11140109_719), and Caney Creek (AR_11140109_921).

Appendix A – Remove the exceptions of "no fishable/swimmable or domestic water supply uses" and "exempt from Rule 2.406 and Chapter 5" from Coffee Creek.
*Justification*: A 2007 study by Parsons and a 2013 study by AquAeTer both noted the existence of aquatic life in Coffee Creek. Removal of these exceptions will add Aquatic Life, Primary Contact Recreation, Secondary Contact Recreation, and Domestic Water Supply designated uses and the criteria to protect those uses. This revision will make the uses of Coffee Creek consistent with all other waterbodies in the ecoregion.

Appendix A – Ecoregion boundary line updates. *Justification*: Revised Arkansas ecoregion boundaries have higher resolution to better reflect the true geographical boundaries of our distinct ecoregions. These revised ecoregion boundaries are recognized by other state agencies and the scientific community.

Appendix A – Species additions to Ecologically Sensitive Waterbodies (ESW) – stakeholder input from Arkansas Game and Fish Commission (AGFC).
*Justification*: Updated list of species documented in currently designated ESWs supporting protecting of these threatened and endangered species. No additional ESW stream or stream reaches are being proposed for addition.

Appendix A – Remove trout water designated use from three lakes (Bull Shoals, Greers Ferry, and Ouachita). *Justification*: AGFC no longer stocks trout in Bull Shoals Reservoir, Greers Ferry Reservoir, and Lake Ouachita. AGFC does not manage these lakes for trout.

Appendix A – Remove "Unnamed tributary of Lake June below Entergy Couch Plant to confluence with Lake June – maximum water temperature 95 degrees F (limitation of 5 degrees above natural temperature does not apply) (GC-1, #30)." *Justification*: Entergy Couch plant closure was complete December 7, 2017. The associated NPDES permit AR0000493 was voided December 18, 2017.

Appendix A – Remove current Rule 2 language "Unnamed tributary to Flat Creek – no fishable/swimmable uses (GC2, #4)." Add seasonal aquatic life and secondary contact recreation designated uses.
*Justification*: The removal of these uses and the site-specific DO criteria occurred in 1986. The revision was in consideration for an NPDES facility

that is no longer in operation. These revisions will add seasonal aquatic life and secondary contact recreation designated uses.

Appendix A – Remove current Rule 2 language "Unnamed tributary to Smackover Creek - no fishable/swimmable uses (GC2, #2)." Add seasonal aquatic life and secondary contact recreation designated uses.
*Justification*: The removal of these uses and the site-specific DO criteria occurred in 1981. The revision was in consideration for an NPDES facility that is no longer in operation.

**PUBLIC COMMENT:** A public hearing was held on January 6, 2025. The public comment period closed on January 21, 2025. The agency provided the following summary of public comments:

Commenter Name: American Electric Power Service Corporation (AEP)
**COMMENTS:** The revision of chronic ammonia water quality standards no longer accounts for presence versus absence of fish early life stages. In addition, the proposed water quality standards for warm waters where fish early life stages are present would be reduced by approximately half, with water quality standards reduced by an even greater percentage for warm waters where fish early life stages were designated as absent. The reduction is so significant that for warm waters with high pH, AEP is concerned that the water quality standard will be below the reporting limit (RL) for laboratories we have used in the past, and that accurate monitoring results will not be feasible, even if limits are above the method detection limits. AEP encourages ADEQ to keep the limited capabilities in sample analysis in mind when using these water quality standards to develop permit limits. AEP also requests that ADEQ reconsider applying separate water quality standards based on fish early life stage presence.
**RESPONSE:** The 1999 U.S. Environmental Protection Agency (EPA) ammonia chronic criteria were based on the most sensitive species toxicity known at the time, consisting of four (4) invertebrate genera and five (5) fish genera (EPA-822-R-18-002), which included bluegill sunfish early life stage toxicity (EPA-820-F-13-013). The 2013 EPA ammonia chronic criteria are based on the most sensitive species toxicity known at this time, which includes sixteen (16) genera of freshwater mussels and gill breathing snails (EPA-822-R-18-002). Freshwater mussels and gill breathing snails are more sensitive to chronic ammonia toxicity than bluegill sunfish early life stage. There is no longer a need for separate ammonia chronic early life stage present and absent criteria due to the 2013 EPA ammonia chronic criteria being protective of freshwater mussels, gill breathing snails, fish early life stage present, and fish early life stage absent. The lowest temperature and pH dependent proposed EPA ammonia chronic criteria is 0.08 mg/L. Analysis of ammonia with a reporting limit of 0.03 mg/L is possible using standard methods SM-4500-NH3H-2021, an approved method pursuant to 40 C.F.R. Part 136.

Commenter Name: Arkansas Department of Transportation (ARDOT)
**COMMENTS:** It is recommended that adequate information/procedures be included in the proposed rule to allow permittees to calculate their new permit limits. This information is necessary to adequately assess the potential impacts of the proposed changes. **RESPONSE:** General information and procedures required to calculate National Pollutant Discharge Elimination System (NPDES) permit limits are included in the State of Arkansas Continuing Planning Process (CPP). Permit specific information and procedures are included within each permit.

Commenter Name: Arkansas Department of Transportation (ARDOT)
**COMMENTS:** It is unclear how the removal of the fecal coliform standard will affect permittees. Clarification is needed to inform permittees on what the new standard will be and how DEQ will assess the permit limits. **RESPONSE:** Permittees with fecal coliform bacteria (FCB) limits should expect to receive E. coli limits that are found in 8 CAR § 21-507 (Rule 2.507).

| **Current FCB Limit** | **Expected *E. coli* limit (ORW[1]/lake)** | **Expected *E. coli* limit (all other waters)** |
|---|---|---|
| 200 col/100 mL (monthly avg.) | 126 col/100 mL (monthly avg.) | 126 col/100 mL (monthly avg.) |
| 400 col/100 mL (daily max.) | 298 col/100 mL (daily max.) | 410 col/100 mL (daily max.) |
| 400 col/100 mL (7-day avg.) | 298 col/100 mL (7-day avg.) | 410 col/100 mL (7-day avg.) |
| 1000 col/100 mL (monthly avg.) | 630 col/100 mL (monthly avg.) | 630 col/100 mL (monthly avg.) |
| 2000 col/100 mL (daily max.) | 1490 col/100 mL (daily max.) | 2050 col/100 mL (daily max.) |
| 2000 col/100 mL (7-day avg.) | 1490 col/100 mL (7-day avg.) | 2050 col/100 mL (7-day avg.) |

Commenter Name: Arkansas Department of Transportation (ARDOT)
**COMMENTS:** Implementation of any proposed amendments should be part of the regular permitting renewal process unless some other action by the permittee triggers a permit modification. **RESPONSE:** DEQ will incorporate new limits for bacteria and ammonia, as applicable, during the permit renewal cycle, unless the permittee requests new limits be incorporated by modification of the permit prior to the next renewal cycle in accordance with 40 C.F.R. § 122.62.

Commenter Name: Arkansas Department of Transportation (ARDOT)
**COMMENTS:** As a state agency and member of the regulated community, ARDOT requests to be a stakeholder for discussions of amendments affecting water quality standards. **RESPONSE:** The Division appreciates ARDOT's commitment to protection of state waters and will add ARDOT to the list of state agencies invited to participate in the 2026 triennial review stakeholder process.

Commenter Name: Arkansas Game and Fish Commission (AGFC)
**COMMENTS:** 8 CAR § 21-509 (Rule 2.509) Nutrients – AGFC recommends that Rule 2 adopt numeric nutrient criteria for water quality standards. Numeric criteria more accurately reflect water quality than the narrative criteria currently being used. **RESPONSE:** Water quality criteria can include narrative statements. (See 40 C.F.R. § 131.3(b).) Nutrient water column concentrations do not always correlate directly with stream impairments. 8 CAR § 21-509. In certain waters DEQ has implemented protections, via phosphorus permit limits, based on the current narrative criteria in waterbodies where studies have shown that excess nutrients are present. Likewise, DEQ evaluates other water chemistry and biological data (dissolved oxygen, diurnal dissolved oxygen, pH, and aquatic-life data) to assess water quality and ultimately determine if nutrient impairment in such waterbodies is supported. The current adopted narrative criteria are protective of aquatic life. DEQ is continuing the ecoregion projects as well as other projects with EPA to develop appropriate and protective criteria. DEQ continues to work towards updating criteria for waterbodies following the process outlined in the State of Arkansas Nutrient Criteria Development Plan, 2012. EPA has agreed with DEQ's plan.

Commenter Name: Arkansas Game and Fish Commission (AGFC)
**COMMENTS:** 8 CAR § 21-302 (2) (Rule 2.302(B)) Ecologically Sensitive Waterbody – AGFC recommends expanding the list of Ecologically Sensitive Waterbodies (ESW) to accurately reflect the location of Threatened and Endangered (T&E) species listed under the federal Endangered Species Act and, high priority Species of Greatest Conservation Need (SGCN). While we appreciate, and are supportive of, this proposal's effort to update the list of T&E and SGCN species that occur in existing ESW streams, updating the ESW to reflect T&E and SGCNs where they occur throughout the state is appropriate.
**RESPONSE:** Adding the designated use of Ecologically Sensitive Waterbody to a waterbody or waterbody segment must be completed in accordance with 8 CAR § 21-311 (Rule 2.311) and 8 CAR § 21-Appendix F. 8 CAR § 21 identifies the factors considered when adding the designated use of Ecologically Sensitive Waterbody to a waterbody or waterbody segment. AGFC or other entities may propose the addition of the ESW designated use to a waterbody or waterbody segment in accordance with the Commission's administrative procedures for rulemaking which are set forth in 8 CAR Part 11, Subpart 8.

Commenter Name: Arkansas Game and Fish Commission (AGFC)
**COMMENTS:** 8 CAR § 21-302 (F)(1) (Rule 2.302(F)(1)) Trout Waters – AGFC supports the removal of the trout water designation on the waterbodies listed in the Rule 2 proposed changes. **RESPONSE:** The division acknowledges this comment.

Commenter Name: Arkansas Game and Fish Commission (AGFC)
**COMMENTS:** 8 CAR § 21-507 (Rule 2.507) Bacteria – AGFC supports the modified data prerequisite to assess geometric mean criteria for bacteria to change to samples that are collected within a single primary contact season from a minimum of five samples spaced evenly within thirty days. The previous stipulation was very difficult to meet.
**RESPONSE:** The division acknowledges this comment.

Commenter Name: American Forest & Paper Association (AF&PA) and National Council for Air and Stream Improvement, Inc. (NCASI)
**COMMENTS:** 8 CAR § 21-508 (Rule 2.508) Toxic substances – human health criteria – Comments regarding uncertainties and conservative assumptions involved in risk estimates, a systematic and inclusive rulemaking process to ensure regional and state-specific data are used to appropriately define exposure inputs, consideration of native American tribal exposure estimates, and calculation of criteria using both probabilistic and deterministic methods. **RESPONSE:** The division acknowledges this comment. The division follows a methodical approach in determining which human health criteria to propose for adoption, prioritizing those toxics that are discharged or present in the state according to EPA's Toxic Release Inventory (TRI). Among these, substances are then selected with medium or high confidence ratings in the EPA's Integrated Risk Information System (IRIS), which reflects the reliability of the research underlying toxicity endpoint values. The Probabilistic Risk Assessment (PRA), which incorporates 90th percentile values for each exposure factor, is an alternate yet EPA approved method. This contrasts with the Deterministic Risk Assessment (DRA), which uses national averages. While Arkansas-specific 90th percentile values may differ from national figures, state specific data (body weight, drinking water intake, and fish consumption) is currently unavailable. Nevertheless, the national criteria developed under the DRA remain conservative and applicable to Arkansas. Additionally, tribal exposure estimates are not factored in Arkansas due to the absence of delegated tribal water quality standards programs in the state. Ultimately, the values for the toxics proposed are those that best protect human health in Arkansas.

Commenter Name: Jonesboro City Water and Light, Springdale Water Utilities
**COMMENTS:** Revised effluent limitations resulting from the change in bacteria and ammonia WQS should be incorporated into NPDES permits only during the routine permit renewal cycle following the U.S. Environmental Protection Agency's approval of the revised WQS.
**RESPONSE:** DEQ will incorporate new limits for bacteria and ammonia, as applicable, during the permit renewal cycle, unless the permittee

requests new limits be incorporated by modification of the permit prior to the next renewal cycle in accordance with 40 C.F.R. § 122.62.

Commenter Name: Jonesboro City Water and Light, Springdale Water Utilities
**COMMENTS:** Revised effluent limitations resulting from the change in bacteria and ammonia WQS should include all appropriate compliance schedules to allow municipal wastewater treatment facilities to implement necessary changes, *e.g.* development of operational changes, implementation of training and analytical procedures, or acquisition of new equipment. **RESPONSE:** In accordance with the CPP and 8 CAR § 21-104 (Rule 2.104), DEQ will allow "a reasonable time for an existing facility to comply with new or revised water quality standards. Compliance schedules may be included in NPDES permits at the time of renewal to require compliance with new water quality standards at the earliest practicable time; but not to exceed three years from the effective date of the permit."

Commenter Name: Jonesboro City Water and Light, Springdale Water Utilities
**COMMENTS:** DEQ's review of revised effluent limitations resulting from the change in bacteria and ammonia WQS, should include all due consideration toward flexibility - *e.g.,* use of recalculation procedure, variances, dilution allowances, and similar tools - where appropriate.
**RESPONSE:** The Division's procedures allow for flexibility in implementation of WQS. According to 8 CAR § 21-309 (Rule 2.309), "A water quality standards temporary variance shall be developed in accordance with and meet the requirements of 40 C.F.R. §131.14 and must be approved by the Arkansas Pollution Control and Ecology Commission and the United States Environmental Protection Agency." The Division acknowledges that EPA has provided guidelines on flexible application of ammonia criteria in the form of EPA's guidelines on flexible application of criteria for ammonia, Flexibilities for States Applying EPA's Ammonia Criteria Recommendations (EP A-820-F -13-001).

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency indicated that the proposed rule amendments may have a financial impact, and provided the following information in support of its Financial Impact Statement:

DEQ believes that the proposed amendments to Rule 2 may have financial impact on some entities, but DEQ has no way to quantify that impact or verify that the cost is different from the current cost of compliance. Rule 2 does not have fees associated with it, making the cost of compliance

with permits issued in compliance with this rule the source of any financial impact.

The revisions in this rule will result in changes to the limits in NPDES permits for certain pollutants. As a result, some entities may incur additional costs to achieve compliance with more stringent limits. Other entities will incur no additional cost because their current treatment systems can achieve compliance with the more stringent limits. Multiple factors can influence what action or actions each entity can take to achieve compliance with a more stringent effluent limit. In some instances, an entity will have more than one treatment option available. The cost depends in part on the treatment technology used and on how the treatment system is operated. Each entity can choose its technology and how its system is operated.

Clean Water Act Implementation and Federal Funds

EPA provides federal funds for Arkansas to implement its delegated authority under the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. §1251 *et seq*. Pursuant to the Clean Water Act, Arkansas is required review its water quality standards on a triennial basis and to amend those standards as necessary. This amended rule is a result of that review and will not increase the cost for Arkansas to implement its delegated authority under the Clean Water Act.

Financial Impact Analysis - Cost Unknown

For the reasons stated in response to Question #5 and #6, DEQ is unable to quantify the cost of compliance for any particular entity or facility. DEQ has determined that these proposed revisions are likely to result in permit changes for over 500 permitted facilities. However, DEQ does not have any reliable way to determine if a facility's cost of compliance will actually be increased by these revisions because the facilities can choose from a variety of technologies to comply.

Many factors will contribute to a facility's cost of compliance, including the volume of discharge, the type of wastewater treated, the treatment processes, current operations at the facility, the age of the facility, the condition of the treatment works, and others. For facilities that are not currently in compliance with permitted effluent limits for these pollutants, it may not be possible to determine if there is a cost difference between complying with the new limits versus the current limits.

**LEGAL AUTHORIZATION:** The Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules implementing or effectuating the powers and duties of the Division of Environmental Quality and the commission under Title 8, Chapter 4 of the

Arkansas Code, codified as the Arkansas Water and Air Pollution Control Act. *See* Ark. Code Ann. § 8-4-202(a). The commission is further charged with the power and duty to promulgate rules, including water quality standards. *See* Ark. Code Ann. § 8-4-201(b)(1)(A). *See also* Ark. Code Ann. § 8-4-202(b)(3). Finally, in addition to any other powers which it may have under the Arkansas Water and Air Pollution Control Act or any other legislative act, the Division of Environmental Quality is authorized and empowered to act as the "state water pollution control agency" for the State of Arkansas for the purposes of the Federal Water Pollution Control Act Amendments of 1972. *See* Ark. Code Ann. § 8-4-206(a). As the state water pollution control agency, the division may, among other things, approve projects for the construction of disposal systems for the purposes of loans and grants from the United States Environmental Protection Agency or any other federal agency and may take any other action necessary or appropriate to secure for the state the benefits of the Federal Water Pollution Control Act, as amended. *See* Ark. Code Ann. § 8-4-206(b).

The agency states that the amended rule is required to comply with the Federal Clean Water Act, 33 U.S.C. § 1251 et seq. and the regulations promulgated thereunder.

**6. <u>DEPARTMENT OF HEALTH, STATE BOARD OF HEALTH</u> (Laura Shue, Nick Shull, Shane David)**

**a. List of Controlled Substances**

**<u>DESCRIPTION</u>:** The proposed listed amendments update the List of Controlled Substances to include these drugs:

1. Meta-fluorofentanyl [other name(s): N-(3-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide]. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. This drug would be included as Schedule I to follow DEA. Page 5, Schedule I, (b), (51), (vi), (RR).

2. Meta-fluoroisobutyryl fentanyl [other name(s): N-(3-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide]. The DEA has placed this opioid analgesic into Schedule I because it has norecognized medical use. This drug would be included as Schedule I to follow DEA. Page 5, Schedule I, (b), (51), (vi), (SS).

3. Para-methoxyfuranyl fentanyl [other name(s): N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-yl)furan-2-carboxamide]. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. This drug would be included as Schedule I to follow DEA. Page 5, Schedule

I, (b), (51), (vi), (TT).

4. Para-methylcyclopropyl fentanyl [other name(s): N-(4-methylphenyl)-N-(1-phenethylpiperidin-4-yl)cyclopropanecarboxamide]. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. This drug would be included as Schedule I to follow DEA. Page 5, Schedule I, (b), (51), (vi), (UU).

5. 3-furanyl fentanyl [other name(s): N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-3-carboxamide]. The DEA has placed this opioid analgesic into Schedule I because it has norecognized medical use. This drug would be included as Schedule I to follow DEA. Page 5, Schedule I, (b), (51), (vi), (VV).

6. 2′,5′-dimethoxyfentanyl [other name(s): N-(1-(2,5-dimethoxyphenethyl)piperidin-4-yl)-N-phenylpropionamide]. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. This drug would be included as Schedule I to follow DEA. Page 5, Schedule I, (b), (51), (vi), (WW).

7. Isovaleryl fentanyl [other name(s): 3-methyl-N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide]. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. This drug would be included as Schedule I to follow DEA. Page 5, Schedule I, (b), (51), (vi), (XX).

8. Ortho-fluorofuranyl fentanyl [other name(s): N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)furan-2-carboxamide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. This drug would be included as Schedule I to follow DEA. Page 6, Schedule I, (b), (51), (vi), (YY).

9. Alpha′-methyl butyryl fentanyl [other name(s): 2-methyl-N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide]. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. This drug would be included as Schedule I to follow DEA. Page 6, Schedule I, (b), (51), (vi), (ZZ).

10. Etodesnitazene [other name(s): Etazene], N-Pyrrolidino Etonitazene (other name(s) Etonitazepyne), and Protonitazene are Schedule I controlled substances. To follow DEA, controlled substance code numbers have been set forth opposite of these substances. Page 6, Schedule I, (b), (54), (vi), (E), Page 6, Schedule I, (b), (54), (vi), (O), and Page 6, Schedule I, (b), (54),

(vi), (Q).

11. 2-Methyl AP–237. [other name(s): 1-(2-methyl-4-(3-phenylprop-2-en-1-yl)piperazin-1-yl)butan-1-one]. The DEA has placed this synthetic opioid into Schedule I because it has no recognized medical use. This drug would be included as Schedule I to follow DEA. Page 7, Schedule I, (b), (55).

12. 3-methylmethcathinone (other names: 3–MMC). The DEA has identified this synthetic cathinone as a positional isomer of mephedrone a currently listed controlled substance. This drug without a recognized medical use would be included as Schedule I with subsequent numbering changes to follow. Page 13, Schedule I, (f), (2), (xvii).

13. 4-methyl-1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one [other names: alpha-PiHP, and Alpha-Pyrrolidinoisohexanophenone). The DEA has identified this synthetic cathinone as a positional isomer of Alpha-PHP a currently listed controlled substance. This drug without a recognized medical use would be included as Schedule I. Page 14, Schedule I, (f), (2), (xxviii).

14. The following items are marked for clean up:
    a. Page 2, Schedule I, (b), (46);
    b. Page 3, Schedule I, (b), (51), (vi), (B);
    c. Page 3, Schedule I, (b), (51), (vi), (C);
    d. Page 3, Schedule I, (b), (51), (vi), (G);
    e. Page 3, Schedule I, (b), (51), (vi), (I);
    f. Page 4, Schedule I, (b), (51), (vi), (N);
    g. Page 12, Schedule I, (f), (1), (iv);
    h. Page 12, Schedule I, (f), (1), (ix);
    i. Page 12, Schedule I, (f), (1), (xi);
    j. Page 13, Schedule I, (f), (2), (iii);
    k. Page 17. Schedule II, (d), (3);
    l. Page 19, Schedule III, (c), (13);
    m. Page 23, Schedule III, (g), (51); and
    n. Page 27, Schedule IV, (d), (1).

15. Xylazine The potential adverse health effects when abused, and increasing national prevalence of xylazine utilized as an adulterating agent to other illicit substances pose a threat to public health and safety. The substance will be included as a Schedule III controlled substance, Page 19, Schedule III, (c), (15), (i through vi), with outlined exceptions utilizing the following language:

Xylazine and any material, compound, mixture, or preparation which contains any quantity of xylazine, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, except in the following uses:

i. Dispensing, prescribing, or administering, to an animal, a drug containing xylazine that has been approved by the United States Secretary of Health and Human Services under section 512 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 360b);

ii. Dispensing, prescribing, or administering xylazine to an animal that is permissible under section 512 (a)(4) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 360b(a)(4));

iii. Possessing a drug containing xylazine, as described in this Section (15), for animal use:
   (A) By a licensed pharmacist or licensed veterinarian; or
   (B) Pursuant to a valid prescription from a licensed veterinarian.

iv. Possessing, manufacturing, distributing, or using xylazine as an active pharmaceutical ingredient for manufacturing an animal drug either:
   (A) Approved under section 512 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 360b); or
   (B) Issued an investigation use exemption under section 512 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 360b(j));

v. Manufacturing, distributing, or using a xylazine bulk chemical for pharmaceutical compounding by a licensed pharmacist or veterinarian; or

vi. Another use approved or permissible under the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301, et seq.) or under 21 CFR Part 530, Subpart B.

16. Zuranolone. The FDA approved this drug for use in treatment of post-partum depression. This drug would be included as Schedule IV to follow DEA. Page 27, Schedule IV, (c), (61).

17. ADB–BUTINACA or N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-butyl-1H-indazole-3-carboxamide. The DEA has identified this synthetic cannabinoid as positional isomer of AB-PINACA, a currently listed controlled substance. This drug without a recognized medical use would be included as Schedule VI. Page 36, Schedule VI, (a), (5), (xi), (LL).

**PUBLIC COMMENT:** A public hearing was held on this rule on January 7, 2025. The public comment period expired on January 1, 2025. The agency provided the following public comment summary:

Commenter's Name: Bill Paschall, Arkansas Cannabis Industry Association
**COMMENT:** RULE: SCHEDULE VI(A)(2) – "Tetrahydrocannabinols, unless the tetrahydrocannabinol is:"

Schedule VI(a)(2) should be amended as follows:

> "Tetrahydrocannabinols, and their acidic precursors, unless the tetrahydrocannabinol is:…"

The addition of this language will make enforcement of the Arkansas Controlled Substances Act (ACSA) consistent with federal guidance issued by the Drug Enforcement Administration (DEA), per the attached letter. A failure to specify that acidic precursors are included in prohibited tetrahydracannabinols has led to the proliferation of intoxicating hemp-derived products (frequently marketed to minors) sold over the counter throughout the United States. *See* Matthew E. Rossheim, PhD, et al. (2024, November) Intoxicating Cannabis Products in Vape Shops: United States, 2023. American Journal of Preventative Medicine, 67(5), 776-784. https://www.ajpmonline.org/article/S0749-3797(24)00229-0/abstract.
**RESPONSE:** The Department of Health will consider the suggested language for future rule promulgation, however, with the current litigation regarding Acts of 2023 and recent Acts of 2025 that may affect this section of the List, the Department has determined the suggested change must be further reviewed.

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 administers the Uniform Controlled Substances Act and has authority to add substances to the Controlled Substances List and to delete or reschedule "any substance enumerated in a schedule[.]" Ark. Code Ann. § 5-64-201(a)(1)(A)(i). "The Secretary of the Department of Health shall revise

and republish the schedules annually." Ark. Code Ann. § 5-64-216. If a substance is controlled under federal law, the Department "shall similarly control the substance" unless the Secretary objects to inclusion within thirty days of publication in the Federal Register of a final order designating a substance as a controlled substance. Ark. Code Ann. § 5-64-201(d).

**b. Rules for Controlled Substances**

**DESCRIPTION:** Summary of Proposed Amendments to Rules Pertaining to Controlled Substances for the State of Arkansas:

1. Section VI, (C), (4), Page 8, language is updated removing unwitnessed partial doses of controlled substances sent to Pharmacy Services and Drug Control. This language is removed to prevent confusion for DEA registered facilities regarding Title 21 Code of Federal Regulations Part 1317 related to disposal of controlled substances by registrants.

2. Section VII, (B), Page 9, pursuant to Code of Federal Regulations Part 1317, language is updated removing "hospitals" as entities required to surrender unwanted controlled substances to Pharmacy Services and Drug Control. Hospitals are DEA registrants and are required to comply with disposal processes outlined in Title 21 Code of Federal Regulations Part 1317.

3. Pursuant to Act 315 of 2019, language is updated removing the word "regulation" from the rule as applicable.

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on January 14, 2025. 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 may promulgate rules necessary for the administration of Title 5, Chapter 64 of the Arkansas Code, regarding controlled substances. Ark. Code Ann. § 5-64-702.

## 7. DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILDREN AND FAMILY SERVICES (Amber Sartain)

### a. Safety and Risk Management and Technical Revisions & REPEALS: PUB-50 – Be Your Own Advocate: A Road Map to Your Time in Arkansas Foster Care; PUB-52 – Child Protective Services: A Caretaker's Guide

**DESCRIPTION:**

Statement of Necessity

This rule revision reflects current practice in the Arkansas Department of Human Services (DHS) Division of Children and Family Services (DCFS) Policy Manual as it relates to safety and risk management. This rule also reflects language changes as a result of Act 364 of 2023 (such as replacing the term "protection plan" with "immediate safety plan"). Technical changes include those made in preparation for the Division's launch of the ARFocus case management system, operational changes within the Division, and general formatting updates.

Summary

- Policy II-A: Prevention Services
  - To replace the term "supportive services case" with "prevention services case" to better describe the intent of these cases and to align with terminology in the Division's forthcoming information management system;
  - To include additional guidance to staff regarding reasons for which prevention services cases may be opened outside of a traditional prevention services request from clients;
  - To include additional guidance to staff regarding frequency of visits to families with a prevention services case; and
  - To make technical corrections to delete references to obsolete forms and to improve organization and clarity through minor formatting changes.
- Policy II-B: Differential Response
  - To replace the term "supportive services case" with "prevention services case" to better describe the intent of these cases and to align with terminology in the Division's forthcoming information management system;
  - To clarify that a Family Service Worker (FSW) serving as a Differential Response (DR) Worker may complete a removal of a child who is in immediate danger just as any other FSW has the ability to do, as appropriate;
  - To remove obsolete references to the Division's previous safety and risk assessments and update term "safety factor" with "safety threat";

    - To update the term “protection plan” with “immediate safety plan” per Act 364 of the 94th General Assembly, Regular Session;
    - To remove procedural directives regarding the Child Abuse Hotline as the hotline governed by its own rules and procedures;
    - To allow Differential Response cases to be open for up to sixty (60) days without requesting extensions during those sixty (60) days; and
    - To make technical corrections to reflect current functional job titles, to remove references to obsolete forms, and to improve organization through minor formatting changes.
- Policy II-D: Investigation of Child Maltreatment Reports
    - To remove obsolete references to the Division’s previous safety and risk assessments and update term “safety factor” with “safety threat”;
    - To update the term “protection plan” with “immediate safety plan” per Act 364 of the 94th General Assembly, Regular Session;
    - To align Division policy language with Arkansas Code Annotated § 12-18-702 regarding the factors to be considered in the determination of whether an offender may pose a maltreatment risk to a vulnerable population;
    - To delete duplicated policy directives that appear in other sections of the policy manual;
    - To strike internal procedures from promulgated rule; and
    - To make technical corrections to reflect current functional job titles, to remove references to obsolete forms, and to improve overall organization and clarity.
- Policy VII-K: Child Maltreatment Allegations Concerning Out-of-Home Placements
    - To remove obsolete references to the Division’s previous safety and risk assessments and update term “safety factor” with “safety threat”;
    - To update the term “protection plan” with “immediate safety plan” per Act 364 of the 94th General Assembly, Regular Session;
    - To allow an immediate safety plan to be implemented in a resource home when safe and appropriate to do so; and
    - To make technical corrections to reflect the previously adopted language change of “resource parent” and “resource home” in the place of “foster parent” and “foster home”.
- Appendix 1: Glossary
    - To replace “Independence” with “Another Planned Permanent Living Arrangement (APPLA)”;

- To add additional details to define "Another Planned Permanent Living Arrangement (APPLA)";
- To define "Grooming";
- To add "Licensed massage therapist" to the definition of a "Mandated Reporter";
- To add "Person who is eighteen (18) years of age or older and observes abuse, sexual abuse, or sexual exploitation of a child" to the definition of a "Mandated Reporter";
- To remove "parental unfitness" from the definition of "Neglect";
- To add "and, if for abuse and neglect, the failure to take reasonable action to protect the juvenile causes the juvenile serious bodily injury" to the definition of "Neglect";
- To make additional updates to the definition of "Neglect";
- To replace "Foster Home" with "Resource Home";
- To replace "Safeguard Measures" with "Resource Home Safety Plan" and to make additional updates to the definition of said;
- To update the definition of "Sexual Abuse"; and
- To make technical corrections and to improve organization and clarity through minor formatting and grammatical changes.

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

1) PUB 50: Be Your Own Advocate: A Roadmap to your Time in Arkansas Foster Care; and
2) PUB 52: Child Protective Services: A Caretaker's Guide

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on December 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.** Item B on Policy II-B, page 2 (page 21 of the packet PDF) states, "Those alleged to be responsible for the allegations are parents, birth or adoptive, legal guardians, custodians, or any person standing in loco parentis;" as a factor. Is the underlined language intended to mean "those alleged to be responsible for making the allegations" or "those alleged to be responsible for the conduct prompting the allegations"?
**RESPONSE:** The meaning of the underlined section is those alleged to be responsible for the conduct prompting the allegations.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b). This rule implements Acts 364 and 727 of 2023.

Act 364, sponsored by Senator Bart Hester, promoted child safety while reducing child welfare involvement in the lives of Arkansas residents, amended and updated the law regarding dependency-neglect and child maltreatment, amended and updated definitions under the Arkansas Juvenile Code of 1989 and the Child Maltreatment Act, amended investigation acceptance, assignment, and notice provisions under the Child Maltreatment Act, and amended language regarding protection plans in the Child Maltreatment Act.

Act 727, sponsored by Representative DeAnn Vaught, amended the Child Maltreatment Act, clarified the law regarding reports that are received by the Child Abuse Hotline concerning alleged victims who are eighteen years of age or older, prohibited anonymous reporting to the Child Abuse Hotline, amended penalties and the statute of limitations for failure to report child maltreatment, and amended the law regarding who is a mandated reporter.

## 8. DEPARTMENT OF HUMAN SERVICES, DIVISION OF COUNTY OPERATIONS (Mary Franklin, Lori McDonald)

### a. Supplemental Nutrition Assistance Program Updates Pursuant to Act 675 of 2023, 20 CAR pt. 501

**DESCRIPTION:**

Statement of Necessity
This rule adds a Broad Based Categorical Eligible definition and updates resource limits to five thousand five hundred dollars ($5,500) for Supplemental Nutrition Assistance Program (SNAP) households in compliance with Act 675 of 2023.

Summary
A new section regarding Broad Based Categorical Eligibility is added to sections 1919 and 4300 of the SNAP certification manuals providing that

it applies to all SNAP households that receive non-cash Temporary Assistance for Needy Families (TANF) or Maintenance of Effort benefit. This allows the resource limit for all households to be increased to five thousand five hundred dollars ($5,500) (See Appendix D). This increase is permitted for a twelve (12) month period and can only be granted once every five (5) years. After the twelve (12) month period has been exhausted the standard resource amounts will apply.

Section 12233 is updated to delete the resource limits and instead to reference Appendix D. This allows for easier updates to resource amounts in the future. Correspondingly, Appendix D is updated to reflect the resource amount for Broad Based Categorically Eligibility as detailed in section 1919 and 4300.

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on May 10, 2025. The agency indicated that it received no public comments.

This rule was filed on an emergency basis and was reviewed and approved by the ALC – Executive Subcommittee, with the review and approval becoming effective April 5, 2025. The emergency rule became effective April 8, 2025. The proposed effective date for permanent promulgation is July 1, 2025.

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

Per the agency, the total cost to implement this rule is $333,684 for the current fiscal year (all federal funds) and $1,584,736 for the next fiscal year ($125,000 in general revenue and $1,459,736 in federal funds). The total estimated cost by fiscal year to a state, county, or municipal government to implement this rule is $0 for the current fiscal year and $125,000 for the next fiscal year.

The agency indicated that the $125,000 cost to the state in fiscal year 2026 represents a one-time systems update cost.

**LEGAL AUTHORIZATION:** The Department of Human Services has the responsibility to administer assigned forms of public assistance and the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

This rule implements Act 675 of 2023. The Act, sponsored by Senator Jonathan Dismang, amended the asset limits for the Supplemental Nutrition Assistance Program, allowed for an adjustment to the asset limit based upon inflation, included an automatic inflation adjustment, and directed the Department of Human Services to request a broad-based categorical eligibility waiver.

**9. DEPARTMENT OF HUMAN SERVICES, DIVISION OF COUNTY OPERATIONS AND DIVISION OF MEDICAL SERVICES (Mary Franklin, Elizabeth Pitman, Lori McDonald)**

**a. Pregnant Presumptive Eligibility, 20 CAR pts. 500, 570, 600, 610, 631, 636**

**DESCRIPTION:**

Statement of Necessity
The Department of Humans Services (DHS) seeks to add presumptive eligibility for pregnant women under Medicaid pursuant to Acts 124 and 140 of 2025, known widely as "Healthy Moms, Healthy Babies". The goal of Presumptive Eligibility – Pregnant Women (PE-PW) is to offer immediate health care coverage to pregnant women likely to be eligible for Medicaid before there has been a full eligibility determination. Implementation of the PE-PW coverage requires an amendment to the Medicaid State Plan, as well as updates to the Medical Services Policy (MSP) Manual and Medicaid Provider Manuals.

The Division of County Operations (DCO) adds "Presumptive Eligibility – Pregnant Women" (PE-PW) Section B-280 to the Medicaid Services Policy Manual. The Division of Medical Services (DMS) adds presumptive eligibility to Sections I and II of the Physician, Certified Nurse Midwife, and Nurse Practitioner provider manuals. DHS will submit a state plan amendment (SPA) to the Medicaid State Plan.

Summary
DCO creates Section B-280 in the MSP Manual. B-280 describes the PE-PW program, eligibility determination and length of coverage, and the process for applying for ongoing coverage. The MSP Glossary is updated to further define "Qualified Entities (QE)", which are designated agencies that determine presumptive eligibility.

DMS updates the Medicaid Provider Manual Section I (124.140) and mirrors the language in the Certified Nurse Midwife manual, Nurse Practitioner manual, and Physician Manual. The added language is: "Medicaid provides a temporary Aid Category 62, Presumptive Eligibility Pregnant Woman (PE-PW). Coverage is restricted to prenatal services and

services for conditions that may complicate the pregnancy. These services are further limited to the outpatient setting only."

A state plan amendment will be submitted to the Centers for Medicare & Medicaid Services.

**PUBLIC COMMENT:** A public hearing was held on this rule on April 23, 2025. The public comment period expired on May 5, 2025. The agency indicated that it received no public comments.

The proposed effective date is July 1, 2025.

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

Per the agency, the total cost to implement this rule is $483,929 for the current fiscal year ($139,662 in general revenue and $344,267 in federal funds) and $1,607,144 for the next fiscal year ($486,844 in general revenue and $1,120,300 in federal funds). The total estimated cost by fiscal year to a state, county, or municipal government is $139,662 for the current fiscal year and $486,844 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;*

Provide prenatal care to pregnant women, if eligible while awaiting full determination of healthcare benefits, in compliance with Acts 124 and 140 of 2025.

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

Increase early access to quality prenatal care and address complications of pregnancy with better and earlier management of risk factors.

*(3) a description of the factual evidence that:*
*(a) justifies the agency's need for the proposed rule; and*
*(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;*

N/A

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

N/A

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

N/A

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

N/A

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

The Agency monitors state and federal rules and policies for opportunities to reduce and control cost.

**LEGAL AUTHORIZATION:** This rule implements identical Acts 124 and 140 of 2025. Act 124, sponsored by Representative Aaron Pilkington, and Act 140, sponsored by Senator Missy Irvin, created the Healthy Moms, Healthy Babies Act and amended Arkansas law to improve maternal health in this state. Each Act required the Department of Human Services to adopt rules implementing the Act. *See* Act 124, § 3; Act 140, § 3.

## 10. DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES (Elizabeth Pitman, Lori McDonald)

### a. Obstetric Professional Rate Increase and Unbundling, 20 CAR pts. 570, 610, 619, 631, 646

**DESCRIPTION:**

Statement of Necessity
The Department of Humans Services (DHS) seeks to revise the rate and claims process for prenatal, delivery, and postpartum professional services under Medicaid pursuant to Acts 124 and 140 of 2025, known widely as "Healthy Moms, Healthy Babies". The goal of the rate and claims revision is to improve Medicaid reimbursement to ensure adequate access to care and to improve Medicaid's data collection on utilization of prenatal and postpartum services.

Summary
Implementation of adequate rates requires amendment to the Medicaid State Plan, as well as updates to the Medicaid Provider Manuals. The Division of Medical Services (DMS) adds revised billing rules to Section II of the Physician, Certified Nurse Midwife, Nurse Practitioner, Federally Qualified Health Center, and Rural Health Center provider manuals. DHS will submit a state plan amendment (SPA) to the Centers for Medicare & Medicaid (CMS).

The following documents the specific updates to the provider manuals:

**Certified Nurse Midwife:** (a) Section 213.600 to correct information regarding visit limit exclusion and correct number of visits from twelve to sixteen; (b) Sections 240.100 - 240.400 to revise prior authorization process instructions to be consistent with standard practices in use; (c) Section 272.470 to remove irrelevant verbiage and correct sentence structure; (d) Section 272.490 to remove references to global billing, itemized billing, and correct grammatical inconsistencies; and (e) Section 272.493 is revised to 272.491 for numbering sequence.

**Federally Qualified Health Center:** (a) Section 220.000 to add postpartum visits to the visit limit exclusion list.

**Nurse Practitioner:** (a) Section 214.210 to correct information regarding visit limit exclusion.

**Physician:** (a) Section 247.000 to correct reference to related sections; (b) Section 292.670 to 292.671 to remove references to global billing,

itemized billing, and to correct grammatical inconsistencies; (c) Section 292.674 to remove reference to global billing; and delete Section 292.675.

**Rural Health Center:** (a) Section 218.100 to correct information regarding visit limit exclusion.

**PUBLIC COMMENT:** A public hearing was held on this rule on April 30, 2025. The public comment period expired on May 10, 2025. The agency indicated that it received no public comments.

The proposed effective date is July 1, 2025.

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

Per the agency, the total cost to implement this rule is $38,030,852 for the current fiscal year ($11,519,545 in general revenue and $26,511,307 in federal funds) and $38,030,852 for the next fiscal year ($11,702,093 in general revenue and $26,328,759 in federal funds). The total estimated cost by fiscal year to a state, county, or municipal government is $11,519,545 for the current fiscal year and $11,702,093 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;*

The Department of Human Services (DHS) seeks to revise the rate and claims process for prenatal, delivery, and postpartum professional services under Medicaid pursuant to Acts 124 and 140 of 2025, known widely as "Healthy Moms, Healthy Babies".

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

The goal of the rate and claims revision is to improve Medicaid reimbursement to ensure adequate access to care and to improve collection of utilization data for prenatal and postpartum services.

*(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;*

Increasing the professional fees for obstetrical services provided by qualified Medicaid practitioners and removing global billing bundles will allow improved access to a wider range of prenatal, delivery, and postpartum services across the state to ensure adequate access is available. This rule, combined with others resulting from Acts 124 and 140 of 2025 will support the overarching purpose of promoting Healthy Moms and Healthy Babies in Arkansas.

*(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:** This rule implements identical Acts 124 and 140 of 2025. Act 124, sponsored by Representative Aaron Pilkington, and Act 140, sponsored by Senator Missy Irvin, created the Healthy Moms, Healthy Babies Act and amended Arkansas law to improve

maternal health in this state. Each Act required the Department of Human Services to adopt rules implementing the Act. *See* Act 124, § 3; Act 140, § 3.

## C. Agency Updates on the Status of Outstanding Rulemaking from the 2023 Regular Session Pursuant to Act 595 of 2021[8]

### 1. DEPARTMENT OF AGRICULTURE (Corey Seats)

***Rules Outstanding as of June 1, 2025, as Reported and Updated by the Agency***

- ***Liquid Animal Waste Management Systems Rule (Act 824 of 2023)**
  - Act 824 provides that the Department of Agriculture, in consultation with the Division of Environmental Quality, has authority over all liquid animal waste management systems in the state, including issuance of permits for those systems. The Act requires the Department to adopt rules but provides that the Department shall use the current Pollution Control and Ecology Commission Regulation No. 5 until the Department promulgates rules. The public comment period ran from August 3 to September 16, 2024, and the Department held a public hearing on the rule on August 26, 2024.
  - On November 14, 2024, this rule did not receive the ALC Rules Subcommittee review necessary for completion of the promulgation process. To allow more time to carefully review the proposed rule in response to the large number of comments from interested parties and stakeholders and anticipated legislation before the General Assembly, the Department requested removal of the rule from December's ALC-Administrative Rules Subcommittee agenda. The rule has now been placed on the June 19, 2025 ALC-Administrative Rules Subcommittee agenda.

### 2. DEPARTMENT OF COMMERCE, ARKANSAS ECONOMIC DEVELOPMENT COMMISSION (Jake Windley, Bo Loftis)

***Rules Outstanding as of June 1, 2025, as Reported and Updated by the Agency***

- **Consolidated Incentive Act Rules (Act 834 of 2023)**
  - Changes to existing version of rule required by changes to the definition of an "eligible business" included in Act 834 of 2023. The current version of the rule does not incorporate these changes.
  - The Agency is currently drafting amendments to the rule to include not only these changes, but also changes to the

[8] Outstanding rules that are on the current agenda for legislative review and approval are designated by an asterisk (*).

Consolidated Incentive Act from the 2025 legislation session which added two incentives: Corporate Headquarters (Act 881) and Modernization and Automation (Act 882). The Consolidated Incentive Act does not require rules promulgation, and the current version of the rule largely restates the statute. Due to the fact that internal discussion regarding the rule amendment is ongoing, no anticipated date for the rule being on the subcommittee's agenda can be provided.

**3. DEPARTMENT OF CORRECTIONS (Tawnie Rowell)**

***Rules Outstanding as of June 1, 2025, as Reported and Updated by the Agency***

The Department of Corrections has the following rules pending promulgation from the 2023 legislative session:

*Secretary of Corrections*

- **Visitation (Act 659, § 112 of 2023)**
  - This rule will be promulgated by the Secretary of Corrections, who has approved it. There was a stakeholder request for a definition change. It is anticipated that review and approval will be sought in August 2025.

*Post-Prison Transfer Board*

- **Transfer to Post Release Supervision (Act 659, § 2 of 2023)**
  - This rule is being promulgated by the Post-Prison Transfer Board, and a draft is being circulated to stakeholders. It is anticipated that review and approval will be sought in September of 2025.

**4. DEPARTMENT OF EDUCATION (Daniel Shults, Courtney Salas-Ford)**

***Rules Outstanding as of June 1, 2025, as Reported and Updated by the Agency***

*Arkansas State Library*

- **Rules Governing the Standards for State Aid to Public Libraries (Act 566, § 11 of 2023)**
  - Rulemaking regarding Act 566 of 2023 is temporarily suspended due to the passage of Act 903 of 2025. The agency anticipates rulemaking to occur following the appointment of a new slate of library board members.

*Division of Career and Technical Education*

- **Rules Governing the Approval of Computer Science-Related Career and Technical Education Course (Act 654, § 4 of 2023)**
  - This rule is being redrafted in compliance with the Code of Arkansas Rules. It is anticipated that the final rule will be submitted for ALC review in September.
- **Rules Governing the Vocational Start-Up Grant Program (Act 867, § 7 of 2023)**
  - This rule is being redrafted in compliance with the Code of Arkansas Rules. It is anticipated that the final rule will be submitted for ALC review in September.

*Division of Elementary and Secondary Education*

- **Rules Governing the Child Sexual Abuse and Human Trafficking Prevention Program (Act 237, § 16 of 2023)**
    - This amendment has completed its public comment period and is on the State Board of Education June 12, 2025 agenda for final approval. It is anticipated that the final rule will be submitted for ALC review in August.
- **Rules Governing School District Waivers (Act 347, § 1 of 2023)**
    - The agency is redrafting this rule due to the enactment of Act 304 of 2025. The rule will be a top priority for the current round of rulemaking with a final rule anticipated in September.
- **Rules Governing Grading and Course Credit (Act 654, §§ 2, 4 of 2023)**
    - This rule has been released by the State Board of Education to be released for a public comment; however, the agency is redrafting this rule due to the enactment of Act 341 of 2025. The rule will be a top priority for the current round of rulemaking with a final rule anticipated in September.

*State Board of Education*

- **Rules Governing the Course Choice Program (Act 237, § 20 of 2023)**
    - The agency is redrafting this rule due to the enactment of Act 730 of 2025. The rule will be a top priority for the current round of rulemaking with a final rule anticipated in September.
- **Rules Governing Dyslexia Screenings in Schools (Act 237, § 51 of 2023)**
    - This amendment has completed its public comment period and is on the State Board of Education June 12, 2025 agenda for final approval. It is anticipated that the final rule will be submitted for ALC review in June.
- ***Rules Governing Implementation of the Inpatient and Residential Facilities Appropriation (Act 572, § 11 of 2023)**
    - This rule has been approved by the State Board of Education on May 8, 2025, and has been submitted for ALC review in June.
- ***Rules Governing Implementation of the Juvenile Detention Facilities Appropriation (Act 572, § 12 of 2023)**
    - This rule has been approved by the State Board of Education on May 8, 2025, and has been submitted for ALC review in June.
- **Rules Governing Public Charter Schools (Act 237, § 49 of 2023)**
    - The agency is redrafting this rule due to the enactment of Act 800 of 2025. The rule will be a top priority for the current round of rulemaking with a final rule anticipated in September.

*Division of Higher Education*

- **Rules Governing Universal Academic Credit (Act 237, § 54 of 2023)**
    - The agency is redrafting this rule due to the enactment of Act 341 of 2025. The rule will be a top priority for the current round of rulemaking with a final rule anticipated in September.

## D. Adjournment