ADMINISTRATIVE RULES AND REGULATIONS SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Room A, MAC
Little Rock, Arkansas

Tuesday, June 12, 2018
1:00 p.m.

A. Call to Order.

B. Reports of the Executive Subcommittee.

C. Report on Administrative Directives for the Quarter ending March 31, 2018 Pursuant to Act 1258 of 2015.

1. Department of Correction (Solomon Graves)

D. Rules Deferred from the May 15, 2018 Meeting of the Administrative Rules and Regulations Subcommittee:

1. <u>STATE BOARD OF DENTAL EXAMINERS</u> (Kevin O'Dwyer)

a. <u>SUBJECT</u>: Article IX: Credentials for License

<u>DESCRIPTION</u>: Pursuant to Act 489 of 2017, the amendment to Article IX clarifies the required credentials for issuing a dental or dental hygienist license.

<u>PUBLIC COMMENT</u>: A public hearing was held on January 19, 2018, and the public comment period expired on that date. Public comments were as follows:

<u>Mark Willis</u>
COMMENT: Dr. Willis, in an email, stated that a specialist should not be allowed to practice general dentistry and a general dentist should not be allowed to practice as a specialist.
RESPONSE: Dr. Willis' comments were contrary to the act. The board adopted the regulation as proposed.

Jennifer Lamb
COMMENT: Ms. Lamb, spoke for the regulation. Ms. Lamb needed clarification on non-substantive changes. **RESPONSE:** The board adopted the regulation as proposed with Ms. Lamb's clarifications.

A second public hearing was held on May 11, 2018, and no public comments were received at that time.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Dental Examiners is authorized to promulgate rules and regulations in order to carry out the intent and purposes of the Arkansas Dental Practice Act. *See* Ark. Code Ann. § 17-82-208(a). The board shall by rule or regulation prescribe specifically those acts, services, procedures and practices which constitute the practice of dentistry. Ark. Code Ann. § 17-82-208(b). These rules implement Act 489 of 2017, sponsored by Representative Michelle Gray, which amended the Arkansas Dental Practice Act, created additional exemptions to the practice of dentistry and dental hygiene, and modified dentistry specialty licenses.

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

1. STATE BOARD OF DENTAL EXAMINERS (Kevin O'Dwyer)

a. SUBJECT: Amendment to Article XX Mandating Prescribers Check the Prescription Drug Monitoring Program

DESCRIPTION: Pursuant to Act 820 of 2017, a prescriber who prescribes schedule drugs shall be required by the board to register with the Prescription Drug Monitoring Program and access patient information before writing a prescription for an opioid; and to set limits for opioid prescribing.

PUBLIC COMMENT: A public hearing was held on May 11, 2018, and the public comment period expired on that date. Dr.

William Dill commented, requesting to strike section 3(e) because it was confusing. The board subsequently removed section 3(e).

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Dental Examiners shall have the power to promulgate rules and regulations in order to carry out the intent and purposes of the Arkansas Dental Practice Act. *See* Ark. Code Ann. § 17-82-208(a). This rule implements Act 820 of 2017, sponsored by Senator Jeremy Hutchinson, which amended the Prescription Drug Monitoring Program to mandate prescribers to check the program when prescribing certain medications. Under the act, a licensing board that licenses practitioners who have the authority to prescribe shall adopt rules requiring the practitioners to check the information in the Prescription Drug Monitoring Program. *See* Ark. Code Ann. § 20-7-604(d). Additionally, the Arkansas State Board of Dental Examiners shall promulgate rules limiting the amount of Schedule II narcotics that may be prescribed and dispensed by licensees of the board. Ark. Code Ann. § 17-82-208(e).

2. ARKANSAS DEVELOPMENT FINANCE AUTHORITY
(Andrew Branch and Ben Van Kleef)

a. SUBJECT: National Housing Trust Fund Operations Manual

DESCRIPTION: This new rule is proposed for providing agency guidelines governing administration of the National Housing Trust Fund program. These guidelines are encompassed in the NHTF Operations Manual and include the following content: Purposes of the NHTF, Fund Distribution, Eligible Activities, Eligible Recipients, Development Subsidy Limits, Application Process, Fund Priorities, Application Scoring Criteria, and Barriers to Addressing Needs of Eligible Low Income Populations, Regulatory Compliance, and Project Goals.

PUBLIC COMMENT: A public hearing was held on May 2, 2018. The public comment period expired on May 2, 2018. The comments included the following:

Phillis Rogers, Carroll Mortgage, at this time I'm here to determine if I'm for or against.

Jim Petty, Strategic Realty, I am here in support of the proposed program rules. I have questions that I can ask at some point in the future but I'm here in support of it.

Karen Phillips, Sebastian County Project Coordinator for Restore Hope and a housing consultant – I'm definitely for helping veterans and also extremely low income families and this looks like a great program.

Charles Vann, Vann and Associates a development and consulting firm. I'm here to get more information about the program and how it works. I am in support in concept but I need to know a little more about it and how it is going to work.

Ada Hollingsworth, Board Member of People Trust Bank – it is a new, about two years old, on line bank and we have the community development finance forum for Southwest Little Rock and we are interested in veteran's housing. We are for those resources.

Laura Kehler Shue, an attorney with the Bureau of Legislative Research, asked the following questions:
On page three of the Operations Manual, with regard to the sentence about application denial, "[a]n applicant can be denied consideration …if the applicant or its related parties have a history of payment delinquencies, bankruptcy, foreclosure or activities determined to be unsound or lawful," is "history" defined?
Is the denial determination process executed by ADFA?
Finally, should the word "lawful" be "unlawful?"

Agency Response:
The word "history" refers to an established record or pattern of fraud, misrepresentation, or other nefarious behavior. It is at the discretion of ADFA, the ADFA Board of Directors and the President of ADFA to make the decision to deny participation in ADFA Housing Programs. The suspension policy is published on our website:
https://adfa.arkansas.gov/media/file/ADFA_Suspension_Policy.pdf
The word "lawful" which was a typographical error, has been corrected to "unlawful."

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas Development Finance Authority ("ADFA") has the power to accept funds for and participate in federal and other governmental programs established for the purpose of the promotion and development of the provision of decent, safe, and sanitary housing, and to have and exercise all of the powers granted to the public housing authorities by the State. *See* Ark. Code Ann. § § 15-5-207(a), and (b)(24), (25). ADFA has the authority to make and issue such rules as may be necessary or convenient in order to carry out these purposes. *See* Ark. Code Ann. § 15-5-207(b)(5).

The federal Housing and Economic Recovery Act of 2008 (HERA) established the Housing Trust Fund, which complements existing federal, state and local efforts to increase and preserve the supply of decent, safe, and sanitary affordable housing for extremely low- and very low-income households, including homeless families. In 2015, HUD provided the guidelines for states to implement the Fund. Per 24 CFR 93.100, Arkansas notified HUD of its intent to become a grantee for the funds and designated ADFA as the agency to administer its Fund program.

b. SUBJECT: 2018 HOME Program Operations Manual

DESCRIPTION: This rule revises the HOME Program Operations Manual to incorporate programmatic changes. Additionally, the revisions are intended to condense the volume of the operations manual to make it more user friendly.

ADFA receives and administers funds provided by the HOME Investment Partnership Act (the HOME Program) as a Participating Jurisdiction (PJ) through the U. S. Department of Housing and Urban Development (HUD).

This Policy and Operations Manual is presented to provide an overview of ADFA policies and procedures as they pertain to the HOME Program. This manual is not meant to be a substitute for HOME Program regulations, but as a supplement to them. It is not exhaustive regarding all considerations affecting the use of HOME

Program funds. ADFA reserves the right to implement additional policies as needed.

PUBLIC COMMENT: A public hearing was held on May 2, 2018. The public comment period expired on May 2, 2018. The Authority received the following comments:

Darryl Swinton, Director BCD, Inc.
My first question is on Chapter 8-1 under CHDO set aside requirements, the 3rd bullet point, ADFA requires qualified CHDOs to apply for CHDO set aside once every two years and in the event that a CHDO fails to meet this requirement ADFA will not recertify the organization as a CHDO. So my question for that is that if a CHDO — well you're not a CHDO unless you have an active project. So if I complete my project, based on the final rule, once I complete my project, in order to submit for another project I have to get recertified again as a CHDO. So my question is there a purpose for having this requirement of a two year time period if you don't apply for application? Based on the new final rule, that really shouldn't apply.

ADFA Response: *We agree and will make changes in the manual.*

My second one under CHDO page 8-18 where it states building capacity, I think it's the fourth bullet point starting nonprofits says ADFA may start a nonprofit that qualifies as a CHDO, so my question is that something that ADFA wants to do as far as trying to establish nonprofits to do CHDO work? To me that seem like that's one when you mention about capacity, does the state have capacity to set up nonprofits to do affordable housing? And that what I'm sort of, that's the way I read it. I may be reading it wrong and I hate staff isn't here to determine that, but based on what it says, starting a nonprofit, ADFA may start a not for profit that qualifies as a CHDO.

ADFA Response: *The Federal Regulations allow Participating Jurisdictions to establish a CHDO arm of their organization.*

As it relates to the bullet point under that, it may be just a typo where it says requisite one year it probably means prerequisite, coming up with a prerequisite one year experience, problematic, so just may be a typo or something. Under where it says starting a nonprofit, the second bullet point it has coming up with a requisite

one year experience may be problematic, I think what they are trying to say is prerequisite of one year experience.

My third point is on page 8-16 exhibit 1 potential CHDO contacts, in this chart it mentions the National Congress of Community Economic Development. From my understanding this organization is defunct and has been since 2004. That's 8-16 exhibit 1, potential CHDO contacts and down where it says national nonprofit associations such as the National Congress of Community Economic Development, I think that organization no longer exists.

ADFA Response: *We have made the suggested changes in the manual.*

On Chapter 11-18 under Construction Management, it talks about the payment request of documentation review and down of the second bullet point, once the payment request has been approved by a recipient it should be paid promptly in accordance with the agreement upon schedule. Promptly—I think that's kind of vague. Maybe we can get some days as far as being able to get paid, pay requests. And it goes on to talk about the importance of paying contractors and subcontractors in a timely matter and so I'm glad to see that's been added because that is important for us to be able to pay ourselves on draw requests and getting reimbursed.

ADFA Response: *Thank you for the observations and input we will see if this is possible.*

On Chapter 14 Match, it could be under key understanding of match requirements, debits under that point, for virtually every dollar of HOME funds drawn down for a project there is a .25 cent match obligation. Is that a 0.25 cent or 25% obligation?

Moderator, Derrick Rose, Public Information & Outreach, ADFA –0.25 cents is 25% of a dollar.

So as opposed to putting the amount, because HUD determines that each year right, could it be stated based on determination from HUD the state requirement of match, as opposed to just saying 25% because it can change year to year? I don't know how often the manual will be updated but it hadn't been updated in several years so if it is just based on HUD requirements, I think that would suffice.

ADFA Response: *The match requirement is set at 25% in CFR 92.*

On page 5-7 where it mentions the homeowner homebuyer program, it mentions the relocation costs and it mentions builders and development fees. But nowhere in the CHDO part as far as it relates to developers fees isn't mentioned, it's only project administration. So my question is, I know it's been a challenge in years past as far as project administration being allocated, and the difference between project admin and developer fees for CHDO and nonprofit and basically all projects is pretty much the same but I just think the requirements are more burdensome for project admin than they are developer fees. So is there a reason that developer fees aren't included as far as what CHDO's are able to receive on their projects as opposed to just project admin? Both of them are 10%, but I think from the regulation standpoint of documentation, I think it would be easier for ADFA staff to do developer fee route as opposed to project admin because we have to provide documentation on all the project admin, staff has to go through that. Based on the consultants that (inaudible) it was stated that developer fees would be simpler than project admin. And there used to be a time when that was allowed and I don't know how it's no longer.

ADFA Response: *The role of the CHDO project determines whether it is administration expense reimbursement or a project delivery payment.*

On page 8-2 on CHDO qualification criteria, it states to qualify for a CHDO set aside, ADFA must certify a nonprofit agency as a CHDO each time it commits funds for the organization for a specific project. Then it states ADFA accepts applications for CHDO set asides on a continuous basis. Is that the case or from my understanding it's NOFAs now, we can only apply when a NOFA is issued. Based on the manual, it states that we can submit applications on a continuous basis and not strictly on a NOFA, for CHDOs. That's something that needs to be addressed. For a CHDO, we'd all like for it to continue to be receiving applications on a continual basis as opposed to a NOFA.

ADFA Response: *We will update the manual to reflect CHDO applications will be received when a CHDO NOFA is announced.*

Charles Vann, Vann & Associates
The only comment I have is the timing of this particular hearing and the notice of the changes that were being made, when did y'all make the changes?

Moderator - They haven't officially been made yet.

Charles Vann -I don't have anything to look at. Where was it on the website or how do we know what changes were going to be made?

Moderator - It was posted on the website and we did a notification in the Democrat Gazette.

Daryl Swinton - In the past we got a mass email or an email notice about the comment period. Information now is just strictly on the website only?

Moderator - Notification was also in the Democrat Gazette.

Charles Vann - I'm kind of confused about that. Maybe I just didn't know that you guys were planning on making changes and a discussion about what those changes were vs. coming to a hearing saying this is what we are going to do, what do you think about it? Seems kind of a little bit moot. Then again it depends upon what kind of decisions you arbitrarily make about the comments you hear here today. So how much input would all of us have about the decisions you've made? You take these notices, then you go back to your offices and you say we are going to do this one, this one, this one and this one, Do you have any comment on that or will it just be arbitrarily, we decided this is what we are going to do?

Moderator - I'm not sure, but I do know I'm here to record if you have any comments about the actual document we are talking about.

Charles Vann - I'm commenting on the process.

Moderator - From what I understand, we will take the comments under consideration and key personnel and management will consider whether or not to include those changes.

Charles Vann - OK

Moderator - We followed the Administrative Procedures Act. We posted it in the Democrat Gazette, it was a notice of a 30-day comment period and we take those comments into consideration. If we make significant changes (to the manual) they are taken to the ADFA Board and they are accepted or rejected. And before we go any further I would like to finish up the public comment period on the document itself, and then we can discuss the process and all that goes along with it. So if you have any comments regarding the document or about changes to it, then let's make those now and then we can then go back to discussing the process.

Charles Vann - I don't have any comments then.

Karen Phillips, Restore Hope and also a housing consultant
The only thing I really wanted to clarify was if a CHDO could get certified again if there was a two year gap. A clarification on that one.

ADFA Response: *We will update the manual.*

Michael Jackson, Delta Community Development and Law
I agree that the process is critical too because I think we've experienced changes to the rules without having notice and I think that has resulted in some projects being turned down. So I appreciate that, Charles, and just want to put that on the record.

Page 3-10 says that HOME funded projects must meet certain minimum property standards. I think that is terribly ambiguous. I think those property standards ought to be stated clearly and I also believe that was a problem with the last round up homeowner applications.

ADFA Response: *ADFA has set the minimum design standards and they are available.*

Page 6-12 second paragraph from the bottom, and I apologize folks, I just found out about this 30 minutes before it started. ADFA requires 100 of the total households assisted through the rental program have at or below 60% of area median income at initial occupancy of the rental project. However during the affordability period, HUD has a rule and the HUD rule says that tenants can have incomes up to 65% of the median. I'm fully aware that ADFA has a requirement that 90% of the total HOME

dollars must serve people who are 60% or below so there's that programmatic rule but I also believe that limiting rental to 60% discriminates against lower income people in lower income areas although I know that it does align with the rules of the tax credit program.

ADFA Response: *ADFA has set these rules for compliance and recordkeeping.*

Page 4-6 ADFA lists the maximum property value. The way it's stated on 4-6, that's actually the HUD rule in my opinion, which says that the maximum value after rehabilitation, which includes reconstruction and rehabilitation cannot exceed 95% of the median value of the sales price in the area, which has been interpreted to the county. What happened during the last homeowner round was that ADFA instituted a minimum value rule and then used that rule to turn away applications. When we spoke to the Governor about this, I described it as being told that ADFA said for every dollar that you invested in a home to rehabilitate it, it must increase the market value by a dollar. The Governor's response was that doesn't even happen in my neighborhood. So I think it's important to clarify whether ADFA is going to follow the HUD rule, which in my opinion is stated on page 4-6, or whether ADFA's going to implement a minimum value rule that, in my opinion was conjured out of thin air.

ADFA Response: *ADFA will follow the rules set forth by the enabling legislation and HUD.*

Another point about 4-6 - ADFA lists here tax assessments can be used for comparable value of property. I just want to state that to the best of my knowledge the last time the appraisal prices for tax assessors was modified was 1995. I think it makes it really difficult to use tax assessments for appraised value unless ADFA increases that 1995 value by 2.8 percent per year which is what my research suggests happens.

ADFA Response: *ADFA will follow the rules set forth by the enabling legislation and HUD.*

Page 5-4, the last paragraph says for acquisition and rehabilitation projects, the cost of the rehabilitation must be reasonable, comparable to the value of the house, in effect the level of rehabilitation. I'm sorry. The term reasonable in value, the cost of

rehabilitation must be reasonable compared to the value of the house, I think is ambiguous. What is reasonable? And this particular paragraph was used to turn down homeowner projects in the Delta.

***ADFA Response**: ADFA will follow the rules set forth by the enabling legislation and HUD.*

Page 8-13, Operating assistance, here ADFA says under operating assistance, and this has to do with grants for CHDOs. Up to 5% of ADFA's HOME allocation may be used to provide general operating assistance for CHDOs. I think the word "may" is problematic. It should be used or not used if this is the program manual. My concern is that I have seen incidences where ADFA has done things that wasn't in the manual, so I think that should be clarified. If you read down a little bit further under limitations it says the first allocation will be awarded in the amount not to exceed $50,000 or 50% of the CHDOs operating budget. And it lists the second and third allocation. ADFA has not done that in 10 years? A long time.

***ADFA Response**: ADFA will follow the rules set forth by the enabling legislation and HUD.*

Page 3-6 says grants will be provided with no requirement for expectations for repayment. They are most commonly used - I think most commonly is a problematic word — most commonly used for down payment and closing assistance in the homebuyer program or to provide assistance to very low income occupants. Traditionally this program, under general requirements, in rental it's been people under 60% or below which are considered low income for rental, including tax credit purposes and for homeowner and homebuyer projects people who are 80% or below. The use of the term very low income I think raises a question because I think very low income is 50% of area median income or below. I think ADFA really means low income people, but I think that ought to be clarified on page 3-6. This very low-income language here on 3-6 conflicts with what's on 4-9.

ADFA Response: *ADFA will follow the rules set forth by the enabling legislation and HUD.*

On page 4-5 this limits the availability of funds for rehabilitation to $25,000. Rehabilitation according the HUD rule includes both

reconstruction and rehabilitation. To my knowledge ADFA has/is eliminating reconstruction and limiting what we're supposed to grant for low or very low-income people. I think they mean low income people to $25,000. I just want to state for the record the State of Arkansas has a high percentage of low income homeowners with incomes of $20,000 or less. Secondly, some houses can't be rehabilitated for $25,000, that being the case, ADFA should do two things, or not do two things. One is, ADFA should not eliminate the reconstruction program and secondly, I think that there is a middle ground. What I would suggest is that ADFA increase the amount of money or rehabilitation to $40,000. Not $40,001 but $40,000 to limit the compliance period. And ADFA should make the $40,000 for either rehabilitation or for reconstruction. So if a homeowner was awarded $40,000 ADFA would limit its investment, which I understand its concern, and the homeowner would have the opportunity to go down to the bank and perhaps applying for a loan to fund the rest of their house.

***ADFA Response**: Thank you for the input.*

So I've talked about post rehabilitation, ADFA should follow the HUD rule. ADFA has mentioned to me twice that it was considering focusing the HOME funds on growth areas. I think focusing the HOME funds on growth areas is by its nature discriminatory and raises the prospect of a lawsuit against the state under the doctrine of disparate impact. So I think focusing HOME funds on growth areas is problematic and I think it discriminates against lower income areas and has a disparate impact on a protected class.

Daryl Swinton Director BCD, Inc.
One more comment, one chapter 2-1 administrative and management overview, down at the bottom, the last bullet point, it talks about program administrators and it also talks about the two and a half days of certifications and trainings, is that something that, I know that in years past, organizations and individuals had to go through the training and get their certificate to be qualified to do the HOME Program. Is that something that is going to continue? I know that it has been, I think, since 2013, since it's been offered. I guess on this manual, these are requirements that you must do, right? In order to participate right? So the question is, that's a process that's going to continue, and if so is it something that is starting now with the new manual or is/has this been ongoing and has all organizations that's been funded, completed this same

process over the past 2 or 3 years I guess as far as consultants getting certifications and training?

ADFA Response: *ADFA will follow the rules set forth by the enabling legislation and HUD.*

Moderator - We are working to get training put online. Are there any other comments?

Michael Jackson, Delta Community Development and Law
One last point - one page 8-1, Mr. Swinton mentioned this before, I believe that the policy that states ADFA requires qualified CHDOs to apply for CHDO set aside funds once every two years, in the event that CHDO fails to meet this requirement ADFA will not recertify the organization. I think we already have a problem with the number of CHDOs and the capacity of CHDOs which is why I think the operating support is important. I believe this policy will make matters worse. If in fact, ADFA does not recertify those organizations then that policy is going to eliminate more organizations than it should.

ADFA Response: *ADFA will follow the rules set forth by the enabling legislation and HUD.*

The proposed effective date for the manual is upon legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas Development Finance Authority ("ADFA") shall have such rights, powers, and privileges and shall be subject to such duties as provided by Title 15, Chapter 5 of the Arkansas Code, concerning the Arkansas Development Finance Authority. *See* Ark. Code Ann. § 15-5-207(a). The ADFA has the power to accept funds for and participate in federal and other governmental programs established for the purpose of the promotion and development of the provision of decent, safe, and sanitary housing, and to have and exercise all of the powers granted to the public housing authorities by the State. *See* Ark. Code Ann. § § 15-5-207(a), and (b)(24), (25). The ADFA has the authority to make and issue such rules as may be necessary or convenient in order to carry out these purposes. *See* Ark. Code Ann. § 15-5-207(b)(5).

States are eligible for federal HOME funds under the HOME Investment Partnerships Act, also known as TITLE II of the Cranston-Gonzalez National Affordable Housing Act 42 U.S.C. 12701, and receive either a formula allocation or $3 million, whichever is greater. *See also* 2013 HOME Final Rule, 24 CFR Part 92. States may use HOME funds to provide home purchase or rehabilitation financing assistance to eligible homeowners and new homebuyers; build or rehabilitate housing for rent or ownership; or for "other reasonable and necessary expenses related to the development of non-luxury housing," including site acquisition or improvement, demolition of dilapidated housing to make way for HOME-assisted development, and payment of relocation expenses.

3. <u>ARKANSAS ECONOMIC DEVELOPMENT COMMISSION</u>
(Alexandra Johnston and Kurt Naumann, item a; Tom Chilton and Kurt Naumann, item b)

a. <u>SUBJECT</u>: Community Assistance Grant Program

<u>DESCRIPTION</u>: This new rule is for administering the Community Assistance Grant Program administered by the Arkansas Economic Development Commission. This rule:

1. Specifies the process by which eligible applicants may submit applications for funding eligible community and economic development projects;

2. Defines key terms include AEDC; Eligible Applicant; Eligible Community and Economic Development Project; Executive Direct; Leased; and Review Committee;

3. Delineates eligibility criteria for funding;

4. Specifies the process by which applications for funding shall be reviewed and approved; and

5. Establishes an effective date of July 1, 2018.

The AEDC may utilize any funds legally appropriated and available to the Program to provide grants to eligible applicants for eligible community and economic development projects. Funding is limited to $50,000 per project.

PUBLIC COMMENT: The AEDC held a public hearing on May 7, 2018. The public comment period expired on May 7, 2018. There were no public comments.

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The AEDC is responsible for receiving and disbursing funds for the purpose of community and economic development. *See* Ark. Code Ann. § 15-4-205(b)(5). The AEDC is required to administer grants to assist with economic development and has the authority to promulgate rules necessary to implement the programs and services that improve the state's economic condition. *See* Ark. Code Ann. §§ 15-3-209(a)(1) and (b)(5).

b. SUBJECT: Funding Programs of the Division of Science and Technology of the Arkansas Economic Development Commission at 15-3-101

DESCRIPTION: These are new rules for administering Funding Programs of the Division of Science and Technology of the Arkansas Economic Development Commission, administered by the Arkansas Economic Development Commission. The purpose of the rule consolidation is to:

1. Revise the names of programs, divisions, and agencies to reflect the Type II transfer of the Arkansas Science and Technology Authority to the Division of Science and Technology of the Arkansas Economic Development Commission;

2. Provide standardized definitions of common terms;

3. Create standardized application submittal and review processes for funding programs;

4. Reflect current Board of Directors' review processes;

5. Correct technical and grammatical errors in existing rules; and

6. Reduce redundancy and simplify the process by which prospective applicants for Division of Science and Technology

funds may apply. Existing rules would be repealed after approval of this new rule.

PUBLIC COMMENT: The AEDC held a public hearing on May 7, 2018. The public comment period expired on May 7, 2018. There were no public comments.

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The AEDC may promulgate rules necessary to implement the programs and services to improve the state's economic condition. *See* Ark. Code Ann. § 15-3-209 (b)(5). The AEDC has authority to promulgate rules necessary to administer programs of the Division of Science and Technology of the Arkansas Economic Development Commission. *See* Ark. Code Ann. § 15-3-108(d)(1).

4. DEPARTMENT OF EDUCATION (Mary Claire Hyatt, items a and b; Courtney Salas-Ford, items c and e; Jennifer Davis, item d; Jennifer Dedman, items f, g, and h)

a. SUBJECT: How to Meet the Needs of Children with Dyslexia

DESCRIPTION: Amendments to these rules are necessary as a result of Act 1038 of 2017. They also contain non-substantive edits.

Section 5.02.1 is added to clarify how the Level II dyslexia screening in Rule 5.02 shall be completed, per Act 1039 of 2017.

Sections 8.02, 8.02.1, 8.02.2, and 8.02.3 are added to incorporate new school district reporting requirements mandated by Act 1039 of 2017.

Sections 14.00, 14.01, and 14.02 are added to incorporate new Arkansas Department of Education enforcement powers granted by Act 1039 of 2017.

Additional Changes Made During Public Comment

Sections 2.01 and 2.02 are changed from "§ 6-41-601 through § 6-41-610" to "§ 6-41-601 through § 6-41-611."

Section 14.01 is changed from "in probationary status" to "on probationary status."

PUBLIC COMMENT: A public hearing was held on March 19, 2018. The public comment period expired on April 13, 2018. The Department provided the following summary of the public comments received and its responses thereto:

Ginny Blankenship, Arkansas Advocates for Children and Families
Comment: Request that the dyslexia law be excluded from the list of allowable waivers for charter schools and school districts.
Agency Response: Comment considered. This request would require a legislative change. No change made.

Lucas Harder, Arkansas School Boards Association
Comment: Section 2.01 should be changed from "6-41-601 through 6-41-610" to either "6-41-601 et seq" or "6-41-601 through 6-41-611." **Agency Response:** Comment considered. Non-substantive change made.

Dana Whited, Dyslexia Interventionist, Hamburg School District
Comment: I am attempting to serve all of the students in our district. I am seeing growth and confidence in students that I previously was not seeing with any other intervention. My concern is that we are having large numbers of students. If 15-20 percent of students are dyslexic, then one person per district cannot meet the needs with the exception of an exceptionally small district. I am serving about 30 students k-8 with more students being served by my para as tier 2 students as she does not have the OG training. I am not able to take any more students. **Agency Response:** Comment considered. No change made.

Comment: We have to have training for more individuals. Possibly one grade level teacher for k-2. We may also need training for one to two paras. This is a huge expense on the district as each person would be about $1500-$4000 depending on the OG program. It is also difficult to get individuals willing to take their

own unpaid time to get a week to more training. **Agency Response:** Comment considered. No change made.

Comment: [A] challenge I am facing is finding time in 6-12 graders' schedules to provide intervention as they have required coursework. It is very difficult to schedule students around core and physical education when you have so many and they may all be at different levels. Funding, staff, and time are a concern. **Agency Response:** Comment considered. No change made.

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

Sections 2.01 and 2.02 – I just wondered if the references to the authority in both sections should include "through § 6-41-611"? **RESPONSE:** Comment considered. Non-substantive changes made.

Section 14.01 – I wondered if "in" should be "on" before "probationary status" to be consistent with Section 14.02 and the statute. **RESPONSE:** Comment considered. Non-substantive changes made.

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-41-610(a), the Department of Education ("Department") shall adopt rules to implement Title 6, Chapter 41, Subchapter 6, Dyslexia and Related Disorders, of the Arkansas Code. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-41-611(b), as amended by Act 1039 of 2017, § 3, which provides that the Department shall enforce the requirements of the subchapter and may promulgate rules to enforce and implement it. The proposed rules include revisions made in light of Act 1039 of 2017, sponsored by Senator Joyce Elliott, which served to amend provisions of the Arkansas Code concerning dyslexia screening and intervention in public schools**.**

b. **SUBJECT: Identifying and Governing the Arkansas Fiscal Assessment and Accountability Program**

DESCRIPTION: All amendments to this rule are made to reflect changes made to the law by Act 745 of 2017.

Sections 7.04, 7.10, and 10.05 are amended to cite to the correct subsection of the law. These changes are non-substantive.

Section 10.05.1 is amended to change "second school year" to "second full school year." It is also amended to change "following a school district's classification as being in fiscal distress status" to "following the assumption of authority."

Additional Changes Made During Public Comment:

In Section 3.16, "Arkansas Comprehensive Testing and Accountability Program" is changed to "Arkansas Educational Support and Accountability Act."

In Section 10.02.8.3, "Arkansas Geographic Information Office" is changed to "Arkansas Geographic Information Systems Office."

In Section 10.05, the citation is changed from "§ 6-20-1910" to "§ 6-20-1909."

PUBLIC COMMENT: A public hearing was held on March 19, 2018. The public comment period expired on April 13, 2018. The Department provided the following summary of the public comments received and its responses thereto:

Lucas Harder, Arkansas School Boards Association
Comment: In Section 3.16, "Arkansas Comprehensive Testing and Accountability Program" should be replaced with "Arkansas Educational Support and Accountability Act." **Agency Response:** Comment considered. Non-substantive changes made.

Comment: In Section 10.02.8.3, "Arkansas Geographic Information Office" should be changed to "Arkansas Geographic Information Systems Office" per Act 103 of 2015.
Agency Response: Comment considered. Non-substantive changes made.

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

Section 10.05 – Should the citation be to Ark. Code Ann. § 6-20-1909, per Act 745 of 2017, § 30, and Ark. Code Ann. § 6-20-1910(d)? **RESPONSE:** Comment considered. Non-substantive changes made.

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-20-1911(a), the Department of Education ("Department") shall promulgate rules and regulations as necessary to identify, evaluate, assist, and address school districts in fiscal distress. The Department may promulgate rules and regulations as necessary to administer the Arkansas Fiscal Assessment and Accountability Program, codified at Ark. Code Ann. §§ 6-20-1901 through 6-20-1911. *See* Ark. Code Ann. § 6-20-1911(b). The proposed changes include revisions made in light of Act 745 of 2017, sponsored by Representative Bruce Cozart, which amended various provisions of the Arkansas Code concerning public education.

c. SUBJECT: Special Education Procedural Requirements and Program Standards, Sec. 18.00 Residential Placement

DESCRIPTION: These rules govern the program approval and funding process for the education of students in residential facilities. Amendments are proposed to the following sections:

- 18.03.6.1 – Adds sexual rehabilitation programs for children to the list of eligible facilities.

- 18.04.2.9 - 18.04.2.13 – Removes process of state-level review team.

- 18.04.3.3 – Clarifies process for requesting payment.

- 18.04.3.5 – Corrects formatting.

- 18.05.3 – Clarifies notification requirement when a student with a disability is placed in an approved residential facility.

- 18.05.4.2 – Corrects limitation on financial responsibility.

- 18.05.6 – Removes language that caused confusion but has no legal effect.

- 18.06.3.5 – Corrects limitation on financial responsibility.

- 18.07.1.5 – Amends instructional time requirement for juvenile detention facilities.

- 18.07.2.1 – Amends instructional time requirement for juvenile detention facilities.

- 18.07.3.1 – Clarifies that a licensed special education teacher is required in accordance with IDEA.

- 18.07.4.4 – Clarifies process for requesting funding.

- 18.07.4.5 – Clarifies the district's financial liability for payment of educational costs.

- 18.08.1 – Clarifies which facilities are referred to as juvenile treatment centers.

PUBLIC COMMENT: A public hearing was held on July 5, 2017. The public comment period expired on July 10, 2017. Additional changes were made; consequently, a second public hearing was held on March 19, 2018, and the second public comment period expired on April 13, 2018. The Department provided the following summary of the sole public comment it received and its response thereto:

Lucas Harder, Arkansas School Boards Association
Comment: 18.05.3.1: "Agencies" is missing the "c" in the third paragraph.
Agency Response: Corrected.

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

Section 18.04.3.3 – I see that in the revised proposed rules, a change has been made requiring residential treatment facilities to submit written requests "by the deadline established by the ADE,"

instead of "in a timely manner." I'm just curious as to what the Department anticipates that deadline to be? **RESPONSE:** Requests for reimbursement must be submitted on a quarterly basis. The ADE Special Education Unit posts a calendar each spring notifying districts and facilities of the deadlines for the upcoming year. You can see this year's calendar on the website: https://arksped.k12.ar.us/documents/fundingFinance/RPACalendar1718.pdf. While this is a change to the wording in the rule, it is not a change to the current practice.

Sections 18.05.4.2 and 18.06.3.5 – What was the basis for the addition of the language "for a student placed [in a residential facility] by a parent or agent other than the school district" in these sections, where that language does not appear in Ark. Code Ann. § 6-20-107(d), on which it appears that the sections are premised? **RESPONSE:** If a school district places a student in a residential facility, pursuant to IDEA, the school district is responsible for all costs associated with that placement and the district is not able to seek reimbursement from ADE for those costs. The language regarding placement by someone other than the district in Sections 18.05.4.2 and 18.06.3.5 was added to attempt to clarify. State law cannot limit the district's responsibility under federal law so this provision is applicable only to ADE.

No changes made.

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Arkansas Code Annotated § 6-20-107, concerning the prohibition of educational cost reimbursement for juveniles placed in treatment facilities, establishes the limited conditions under which the Department of Education ("Department"), a public school district, or an open-enrollment public charter school may be liable for educational or other related costs associated with the placement of a juvenile in in-state and out-of-state residential or inpatient facilities for any care or treatment, including psychiatric treatment. Likewise, Ark. Code Ann. § 6-20-104 addresses the reimbursement for educational services provided in juvenile detention facilities, and it requires that the Department shall issue regulations for the effective implementation of the section. Pursuant to Ark. Code Ann. § 6-11-105(a)(1), the State Board of Education has general supervision of

the public schools of the state. The State Board shall take such action as it may deem necessary to promote the physical welfare of school children and the organization and efficiency of the public schools of the state. *See* Ark. Code Ann. § 6-11-105(a)(8)(A)–(B). It shall further perform all other functions delegated to it by law. *See* Ark. Code Ann. § 6-11-105(a)(9)(A).

d. <u>SUBJECT</u>: Standards for Accreditation of Arkansas Public Schools and School Districts

<u>DESCRIPTION</u>: The proposed changes amend the Standards for Accreditation and seek to streamline the process and make it easier to understand the requirements a school/district must follow in order to be accredited. The changes include corrections/deletions based in legislation, remove inconsistencies in reporting dates and requirements, and remove obsolete requirements to ensure schools/districts are being held to measureable standards.

The current Standards for Accreditation includes many outdated requirements, does not include current legal requirements, and has several requirements which are inconsistent with each other, with state law, or are unable to be measured for compliance by the districts.

The proposed Standards for Accreditation clarifies the process for determination of cited and probationary status, and streamlines the accreditation process including the timeframe for citations and probations and the enforcement and appeal rights. The proposed rules also outline the bi-annual process for the review and approval of the standards. This bi-annual review will ensure the Standards for Accreditation stay current with applicable law and rules.

Additionally, the Standards are realigned to match the systems prescribed by Act 930 of 2017, and are written such that each standard can be clearly measured by the school/districts and the Department. These measurable Standards allow for better monitoring by the Department in order to provide assistance to the districts. The Standards also incorporate other rules promulgated by the Department ensuring the schools and districts are held to consistent measures and requirements, in addition to, reducing the need for waivers from the Standards for Accreditation.

Changes as a result of the public comment period:

Section 1.01	Correction to the regulatory authority
Section 2.01	Sentence reworded for clarity
Section 3.02	Typo – missing word added
Section 4.02	Typo – missing word added
Section 4.06	Typo – missing word added and word tense corrected
Section 7.02	Typo – section numbering corrected, including subsections
Section 8.01	Typo corrected
Section 8.02	Typo – missing word added
Section 9.01	Typo – internal reference corrected
Section 9.02	Typo – internal reference corrected
Section 9.03.2	Corrected reference to the Arkansas Academic Standards
Section 10.00	Typo – missing word added
Section 10.02	Missing reference to public school added
Section 10.02.4	Typo corrected
Section 10.04	Typo – additional “the” removed
Section 11.01.2	Typo corrected
Standard 1	Sentence reworded for clarity
1-A.1	Corrected reference to success skills rather than competencies
1-A.1.3	Typo – missing word added

1-A.1.3.5	Corrected reference to language rather than subject for clarity
1-A.1.3.11	Corrected reference to course name
1-A.5.2	Typo – added missing period
1-A.5.2	Missing reference to other allowances by law
1-A.7	Sentence reworded for clarity and missing reference to laws and rules of the Department added
1-B.1	Typo – corrected "policy" to plural
1-C.2.2	Typo – added missing reference to "minimum"
1-C.2.3	Typo – added missing word
Standard 2	Typo – corrected "communities" to singular
2-A.1	Sentence reworded for clarity
2-A.3	Sentence reworded for clarity
2-D.1	Sentence reworded for clarity
2-E.2	Clarification added
2-F.2	Typo – missing word added
2-J.1	Sentence reworded for clarity
Standard 4	Additional word deleted in order to not cause confusion
4-D.2	Typo – corrected "offenses" to singular
6-A.2	Typo – corrected "districts" to singular

PUBLIC COMMENT: A public hearing was held on April 19, 2018. The public comment period expired on May 15, 2018. The Department provided a summary of the public comments received and its responses; that summary, due to its length, is attached hereto.

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

(1) Section 4.05 – This section provides that, as part of the bi-annual review, these Standards will be sent to the Senate and House Education Committees for review and feedback. Does the Department intend to have these Committees review the instant proposed changes prior to them being submitted to the Administrative Rules and Regulations Subcommittee for review and approval? **RESPONSE:** Yes, the proposed rules will be reviewed [by the Senate and House Education Committees] on Monday[, May 21, 2018]. Any feedback received will be reviewed and any changes would be made in a new draft that would go through the promulgation process.

(2) Section 4.06 – Will revisions made during a bi-annual review then be filed with the Legislative Council for review and approval? **RESPONSE:** Any feedback received will be reviewed and any changes would be made in a new draft that would go through the promulgation process.

(3) Section 8.01 – Should "be" be "been" in the second line? **RESPONSE:** Corrected.

(4) Section 9.02 – Should "Section 8.03" be "Section 9.03" in the first line? **RESPONSE:** Corrected.

(5) Section 10.02.4 – Should "my" be "may"? **RESPONSE:** Corrected.

(6) Standard 1-A.1.3.11 – Pursuant to Ark. Code Ann. § 6-16-135(c), should this read "personal *and family* finance standards"? **RESPONSE:** Corrected.

(7) Standard 1-A.7 – Pursuant to Ark. Code Ann. § 6-21-403(a), should this read "adopt *and provide*"? **RESPONSE:** Sentence was reworded for clarity, but Standard 1-A.8 deals with providing the necessary instructional materials at no cost to the student.

(8) Standard 1-C.1.1 – It appears that this standard may be based on ESSA, 20 U.S.C. § 6311(c)(4)(E); however, does it conflict with Ark. Code Ann. § 6-15-2907(e), which provides that "[a]ll students enrolled in a public school district shall participate in the

statewide student assessment system"? **RESPONSE:** All students are required to assess. Some students may have valid reasons for not testing, but schools should ensure that all students have the opportunity to test. By setting the minimum 95% threshold, this still allows students with valid reasons for not testing, but ensures districts don't inflate scores by not testing students.

(9) Standard 1-C.2.2 – The current rules set forth the specific graduation requirements, while the proposed rules simply provide that students must have twenty-two (22) units to graduate "as determined by the State Board of Education." How will the Board make that determination, and will its determination be promulgated as a rule? If it will not, what is the Department's rationale for not doing so? **RESPONSE:** Corrected to include "at a minimum." The Department will publish a list of the classes yearly after receiving State Board approval. The courses are outlined in the standards and it's only the names of the courses that qualify that will be approved yearly by the State Board and posted on the ADE website. For example, the standards requires English to be taught, but yearly, the Department, upon State Board approval, will state that English 11, AP English 11, combined English 11/Oral Comm, etc. that will qualify for the 22. We wanted to stay away from putting a course name such as Computer Business Applications into the standards because as soon as we change the name to Computer Business Systems, the standards are out of date. So, we put the content area, Computer Science, into the standards, then will publish a list that will be approved by the SBE of all the courses that satisfy that content area.

(10) Standard 1-C.2.3 – The proposed rule provides that all students must pass the Arkansas civics exam with at least 60% in order to graduate. However, Ark. Code Ann. § 6-16-149 pertaining to the United States citizenship test appears to be much more specific, requiring that each student shall "take a test that is identical to the civics portion of the naturalization test" and "[c]orrectly answer *at least sixty (60) of the one hundred (100) test questions*." (Emphasis added.) Was there a reason the Department did not specify that the test shall be 100 questions as provided for in the statute? It seems with a simple percentage that it could be interpreted as allowing a 10 question test, so long as the student answered 6 correctly, thereby obtaining a 60%. **RESPONSE:** Updated to include "a score of at least." Additionally, the Department is working to provide the course which will mirror the requirements of the law.

(11) Standard 4-A.1 – This standard provides that a school district "shall not employ" personnel, either licensed or non-licensed, who have not successfully completed background checks. The use of the term "employ" rather than "hire" seems to suggest that it would apply to both initial and existing employees. However, Ark. Code Ann. § 6-17-415 specifically leaves it to the school district to determine whether to conduct background checks on existing non-licensed personnel. What was the Department's intent of the standard? **RESPONSE:** There are many schools, especially a large number of districts/schools with licensure waivers that have a lot of people in schools with direct contact to students that have not had background checks. In order to ensure the safety of the students, this standard was written.

(12) Standard 4-E.2 – Did the Department intend to limit a school district's ability to have more than one guidance counselor for each 450 students when it provided the ratio of "no more than one"? **RESPONSE:** No, the standard only sets the student/counselor ratio at no more than 450:1. Districts can choose to have a lower ratio, but no more than 450:1.

(13) Arkansas Code Annotated § 6-15-202(b)(2)(F) provides that the State Board shall promulgate rules necessary to administer subdivisions (b)(2)(B)-(E) of the statute, concerning combining or embedding curriculum frameworks. While these provisions are contained in the current Standards, it appears that they have been deleted from the proposed Standards. I may be missing it, but I'm not seeing where it has been included in the new proposed rules. Is the Board including them elsewhere? If so, where? If not, why not? **RESPONSE:** The ADE has a procedure for embedding through the course approval process. Approvals reviewed by the ADE are submitted to the State Board for approval.

(14) Standard 1-A.1.3 – It appears that the language in this standard has been changed from "courses shall be *taught* annually" (current Section 9.03.4) to "content areas shall be *offered* annually." However, Arkansas Code Annotated § 6-15-213 provides that "[a] course shall be considered *taught* by a school district in compliance with the Standards for Accreditation . . . if." What was the Department's reasoning behind the change in term used? **RESPONSE:** This standard was updated to "offered" because it adds the flexibility for those districts that have a course offered but no students enroll, or have so few students enroll or not

have a qualified teacher that they use digital courses or perhaps an agreement with a neighboring district to provide the instruction to the students. The district would still be offering the required 38 units even though they may not be teaching it (directly or indirectly), but it's still part of the course offerings.

(15) Section 1.02 – Should "6-15-272" be "6-15-207"?
RESPONSE: Corrected.

(16) Section 2.01 – Is there an extra "to" before "set forth"?
RESPONSE: Corrected.

The proposed effective date is August 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The State Board of Education ("State Board") is authorized and directed to develop comprehensive regulations, criteria, and standards to be used by the State Board and the Department of Education in the accreditation of school programs in elementary and secondary public schools in this state. *See* Ark. Code Ann. § 6-15-202(a)(1). In its regulations, criteria, and standards, the State Board shall include a provision regarding the attainment of unitary status for school districts that have not been released from court supervision over desegregation obligations. *See* Ark. Code Ann. § 6-15-202(a)(2). Further, the State Board shall promulgate rules and regulations as necessary to set forth the: (1) process for identifying and addressing a school or school district that is failing to meet the Standards for Accreditation of Arkansas Public Schools and School Districts; (2) process and measures to be applied to require a school or school district to comply with the standards, including, but not limited to, possible annexation, consolidation or reconstitution of a school district under § 6-13-1401 et seq. and The Quality Education Act of 2003 ("Quality Education Act"), codified at Ark. Code Ann. §§ 6-15-201 through 6-15-216; (3) appeals process and procedures available to a school district pursuant to the Quality Education Act and current law; and (4) definitions and meaning of relevant terms governing the establishment and governance of the standards. *See* Ark. Code Ann. § 6-15-209; *see also* Ark. Code Ann. § 6-15-202(c) (also requiring that the State Board shall promulgate rules setting forth the process for identifying schools and school districts failing to meet the standards, enforcement measures that the State Board

may apply, and the appeal process available). Changes to the instant rules were also made in light of Act 930 of 2017, sponsored by Senator Jane English, which amended provisions of the Arkansas Code concerning the Public School State Accountability System.

e. SUBJECT: Rules Governing Home Schools

DESCRIPTION: These rules govern the notification requirements and participation of home-schooled students in public school activities and courses. The proposed amendments reflect changes pursuant to Acts 173, 592, 635, and 863 of 2017:

3.00 – Definitions

- Unnecessary definitions removed and current relevant definitions added.

4.00 – General

- Language from referenced statutes amended to reflect current date for public school enrollment.

5.00 – Notice of Intent

- All references to waiver removed in accordance with amended statutes.
- Methods for submission of notice of intent clarified.
- Deadline for submission clarified.
- Procedure for transferring school districts clarified.
- Required content of notice updated.

6.00 – Enrollment or Re-enrollment in Public School

- Requirements and procedures added in accordance with 2017 acts.

7.00 – Students with Disabilities

- Applicability of IDEA clarified.

8.00 – Participation in Interscholastic Activities

- Requirements and procedures for home-schooled students participating in activities at a resident or nonresident public school added in accordance with 2017 acts.

Testing and Results

- Sections regarding testing removed in accordance with 2017 acts.

Driver's Permit/License

- Section removed because not in education laws.

Information will be provided as guidance on the Department's website.

Changes made as a result of public comment:

- Act 832 of 2015 added to Regulatory Authority.

- 4.01 and 4.05 removed; language included in law but no authority to promulgate in rules.

- Term "guardian" changed to "legal guardian" throughout rules.

- Term "year" in 4.02 changed to "school year."

- Previous 5.06, renumbered to 5.07: removed requirement that signature on Notice of Intent be notarized if student indicates intent to seek a high school equivalency diploma; not required by law and several public comments were not in favor of adding.

- References to the Department's form removed or reworded in applicable sections to clarify that the form is not required.

PUBLIC COMMENT: A public hearing was held on January 10, 2018. The public comment period expired on January 17, 2018. The Department provided the following summary of the public comments received and its responses thereto:

Lucas Harder, Arkansas School Boards Association
Comment: Section 1.02: Due to hearing multiple comments questioning where the authority came for repealing requiring assessments, I would recommend including Act 832 of 2015 in the list of authorities.
Agency Response: Act 832 of 2015 added to regulatory authority.

Dena Wilson
Comment: I have two primary concerns about the new homeschooling rules. First, the new regulation defines a "Home School" as a school provided by a parent or legal guardian for his or her own child while the state law uses the term "responsible." Many parents, while responsible for the child's home education,

delegate part of the responsibility to a third party, such as a private tutor/class or co-op. The term "responsible" instead of "provided by" would set a clearer standard. There was a time in Arkansas when delegating part of the education of your homeschooled child to a third party was questionable legal ground. I do not want to see a return to that.
Agency Response: Ark. Code Ann. § 6-15-501 defines "home school" as "a school provided by a parent or legal guardian for his or her own child." No changes made.

Further, proposed regulation 5.06 would require families to notarize their notice of intent if their student plans to seek a high school equivalency diploma. A separate statute requires families to submit a notarized copy of their notice of intent if and when their student starts the process of obtaining a GED. These requirements are extra-legal. They do not exist in the homeschool statutes. According to the law, a family has the freedom to file a notice of intent without notarizing it during either process. That freedom, which legislators safe guarded, should be respected in the regulations.
Agency Response: This requirement has been removed in response to public comment.

Joan Brown
Comment: Things have changed dramatically since our family started homeschooling 26 years and it is so much better for families now. I was looking at the possible changes in the statutes and wanted to make a comment about having to get things notarized. For the most part, we did not have trouble getting our Letter of Intent notarized when we needed to do so in order to get their driver's license. We did have one incident when we asked a school principal who did not understand the purpose of it to notarize it. She finally notarized it, but only after calling the state office to understand the law. We did not go back to her again for notary services. My purpose for writing this concerns asking anything concerning the Letter of Intent to be notarized. As the principal asked, "What is the purpose? What am I notarizing?" Just this past summer when I sent my son's transcript to three places, only one asked it to be notarized. The state of Arkansas did not require it in order to receive scholarships, and has never done so and the NCAA did not require it to allow player eligibility. Only Henderson State asked for it—and, once again, what was the purpose? The notary had nothing to do with our homeschool program. So, before adding it to any rules concerning homeschool

paperwork, ask what you would think if someone came to you asking you to notarize something about which you knew nothing. **Agency Response:** The requirement that the notice be notarized if the student intends to seek a high school equivalency diploma has been removed in response to public comment. Ark. Code Ann. § 6-15-503(a)(3)(F)(ii) requires the notice to include a notarized signature of the parent or legal guardian if it includes a statement of plans to seek a driver's license during the current school year.

Lisa Crook, Arkansas Education Alliance
Comment: The organization has reviewed the proposed rules and found them acceptable. They appreciate all of ADE's work on the rules. The organization is good with them. **Agency Response:** Comment considered.

Scott Woodruff, Home School Legal Defense Association
Comment: Thank you for the opportunity to submit comments on the proposed changes to the Arkansas homeschool regulations on behalf of the roughly 560 Arkansas families who are members of Home School Legal Defense Association. I respectfully request that the Department of Education and State Board of Education make two changes.

FIRST REQUEST: DELETE NOTARY MANDATE THAT IS NOT SUPPORTED BY STATUTE

Proposed regulation 5.06 is out of line with the statutes which it purports to implement in that the proposed regulation commands families to notarize their notice of intent to homeschool if their student plans to seek a high school equivalency diploma. There is no statute that requires that a family file a notarized notice of intent merely because their child may seek a GED.

For some quick background, ACA § 6-15-503 sets forth all the information a family must include in a notice of intent to homeschool. It also stipulates when the notice must be filed, and issues related to signatures and delivery. Within this rather long section of code, there is one item that is singled out for special treatment. If a parent includes a statement of plans to seek a driver's license during the current school year, then the parent's signature on the notice of intent must be notarized at the time of filing.

ACA § 6-l5-503(a)(3)(F) says the notice of intent must include:

(i) A statement of plans to seek a drivers' license during the current school year.
(ii) If a parent or legal guardian includes the information under subdivision (a)(3)(F)(i) of this section, the notice shall include a notarized signature of the parent or legal guardian.

Under the statutory structure, the one and only item of information that triggers the requirement that the parent signature be notarized is a plan to seek a driver's license.

Regulation 5.06, however, incorrectly applies a notary mandate to a family whose student plans to seek a high school equivalency diploma. Regulation 5.06 says: "If a parent or guardian includes a statement described in subsection 5.05.5 or 5.05.6, the parent or guardian signature on the Notice of Intent shall be notarized."

Subsection 5.05.5 is the subsection that requires families to include a statement of plans to seek a high school equivalency diploma.

Obtaining a notarized signature is an inconvenience. It must not be forced on families when there is no clear statutory mandate—especially in light of the newly-added statutory prohibition against non-statutory mandates (ACA § 6-l5-503(e)) which says: "The department ... shall not create additional criteria or require additional information for a student to attend a home school beyond that provided in this section."

Because Regulation 5.06 imposes a notary demand on a notice of intent signature with respect to a student who plans to seek an equivalency diploma when no such requirement exists in the authorizing statutes, it exceeds the regulatory authority of the Board of Education. I therefore request that the reference to subsection 5.05.5 be deleted from regulation 5.06.

FURTHER EXPLANATION

The inclusion of a reference to 5.05.5 in regulation 5.06 may have simply been an error, or it may have been based on a misunderstanding of another statute, ACA § 6-18-20l(d). This section of the code deals with the procedure to follow when a 16 or 17 year old wishes to pursue a GED. Students enrolled in a private or parochial school are required to "provide a letter from the principal of the ... school to verify enrollment." A home school

student, on the other hand, is required to "submit a notarized copy" of his notice of intent to homeschool.

The phrase "notarized copy of their notice of intent" does not imply that the original notice of intent must have been notarized. It only requires that when the GED applicant submits a copy of his notice of intent (obtained either from his own records or the local superintendent's office) as part of his GED application procedure, it (the copy) must be notarized.

Three quick illustrations will expose the fallacy of insisting prematurely on a notarized signature in this context.

Illustration 1. A 16 year old homeschool student's parent files a notice of intent in August and does not indicate the student plans to pursue a GED. In January, the family decides that pursuing a GED is a good idea. They obtain a copy of their non-notarized original notice of intent. The parents notarize the copy and send it on as part of the GED application package. The fact that the original notice of intent was not notarized is of no consequence.

Illustration 2. A 17 year old homeschool student's parent files a notice of intent in August and indicates that the student plans to pursue a GED during the coming year–but the parents do not notarize their signature on the notice of intent. When the student begins organizing his paperwork to apply for the GED in February, he obtains a copy of the notice of intent. His parents notarize it and he includes it with his other GED application materials. The fact that the original was not notarized is of no consequence.

Illustration 3. A 16 year old homeschool student's parents file a notice of intent in August. Their son plans to pursue a GED that year, so they go to the trouble of notarizing their signature on the original notice of intent. But then circumstances change. The young man no longer desires to obtain a GED. The trouble to get the notarized signature was a wasted effort.

As these illustrate, for a student seeking a GED, it is never necessary that the original notice of intent be notarized; it is only mandated that a copy be notarized, and that can be done at any time. In fact, notarizing a signature on the original will sometimes be a waste of time and effort since plans often change. Regulation 5.06 has no statutory basis for mandating that an original notice of intent be notarized in connection with plans to seek a GED.

If families so choose, they can voluntarily notarize their original notice of intent before they file it. They may prefer this route if they are certain they will need it later. But this should be preserved as an option for each family, not converted into a mandate.
Agency Response: This requirement has been removed in response to public comment.

SECOND REQUEST: DELETE ALL REFERENCES TO MANDATORY USE OF THE DEPARTMENT'S FORM

The present iteration of the homeschool regulations carries forward an error that has escaped correction for some time. The legislature has never said that families must use any particular form—or the Department's form—when submitting their notice of intent. The regulations, however, invent that requirement.

State law now specifically says that the Department "shall not create additional criteria or require additional information for a student to attend a home school beyond what is provided in this section." (ACA § 6-15-503(e)). This should add a sense of urgency to correct an error that has been too long tolerated. It's time to clean house.

I believe no one would object to the Department offering a form that families could use if they so desire. The use of a particular form has pros and cons, and some families will evaluate the situation and determine that the pros outweigh the cons. That is their right. Whether it is wise or smart to use any form, or the Department's form, would be the subject of a very long and possibly interesting discussion. But the mandate to use the Department's form must go. The Department may not rely on its own judgment call to maintain a mandate the legislature itself did not create.

Legislatures across the country know quite well how to tell homeschool families that a specific form must be used. A few examples will illustrate this.

In South Dakota, state law (SDCL § 13-27-7) provides: "Each notification for excuse from school attendance for the reasons provided in § 13-27-3 [home schooling] shall be on a standard form .... The form shall be provided by the secretary of the Department of Education."

In Wisconsin, state law (Wis. Stat. § 115.30(3)) provides: "On or before each October 15, each administrator of a public or private school system or a home-based private educational program shall submit, on forms provided by the department, a statement of the enrollment on the 3rd Friday of September..."

In Iowa, state law (Iowa Code § 299.4) provides: "The parent, guardian, or legal custodian of a child who is of compulsory attendance age, who places the child under competent private instruction [home schooling] ... shall furnish a report in duplicate on forms provided by the public school district..."

Nevada has a very interesting provision, which is unique in the nation that requires the Department to make a form available, but allows families the option of using that form or some other vehicle for transmitting their notice. NRS § 388D.020 provides: "If the parent of a child who is subject to compulsory attendance wishes to homeschool the child, the parent must file with the superintendent of schools of the school district in which the child resides a written notice of intent to homeschool the child. The Department shall develop a standard form for the notice of intent to homeschool.... The board of trustees of each school district shall ... make only the form developed by the Department available to parents who wish to homeschool their child."

With this structure, the Department must create a form, and local school systems can make only that form available to families, but use of that particular form is not mandatory. (This statute previously specifically required families to use the Department's form, but this requirement was repealed.)

In other states, filing a notice is required but there is no accompanying requirement to use a form at all. Maine and Virginia, for example, fit into this category.

Arkansas is in this category as well. The legislature has given families the freedom to file their notice of intent without using any form at all. The Department is exceeding its authority in creating a mandate which does not exist in statute. I therefore request that all references to the Department's form be deleted, or rephrased to make the use of the form explicitly optional, before this set of proposed regulations moves to the next step. These references can

be found in the following sections, using the enumeration in the proposed draft regulations. 4.06; 5.01; 5.02; 5.03; 5.04; 5.05; 5.08. **Agency Response:** References to the Department's form removed or reworded in applicable sections to clarify that the form is not required.

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

(1) Sections 4.01 and 4.05 – Both sections appear to recite language from Ark. Code Ann. § 6-18-201(a). Is the Department comfortable that by doing so there is no conflict with Ark. Code Ann. § 6-15-502(a), which provides that § 6-18-201(a) shall be self-executing and that the State Board of Education shall have no authority to promulgate rules, regulations, or guidelines for the enforcement or administration thereof?
RESPONSE: Sections 4.01 and 4.05, restating language contained in § 6-18-201(a), removed.

(2) Sections 4.02, 5.01, 5.03, 5.04, 5.05.3, 5.05.7, and 5.06 – Was there a reason the Department did not include "legal" preceding the term "guardian," as used in the statutes on which it appears the rules are premised? **RESPONSE:** Corrections made to add "legal."

(3) Section 4.02 – Should the term "school" precede "year thereafter" as used in the latter portion of the rule, which appears to be premised on Ark. Code Ann. § 6-15-503(a)(1)(B)(i), as amended by Act 635 of 2017, § 1? **RESPONSE:** Corrections made to add "school."

(4) Section 4.04 – Was there a reason the Department substituted "a" and deleted the term "local," when that term has been retained in Ark. Code Ann. § 6-15-503(d)(2), on which the rule appears to be premised? **RESPONSE:** Use of the term "local" caused confusion as to whether this section applied to students attending and under disciplinary action by a non-resident school, pursuant to school choice or district transfer provisions.

(5) Section 5.06 – Was there a reason the Department has required that the signature for the statement of plans to seek a high school equivalency diploma also be notarized when Ark. Code Ann. § 6-15-503(a)(3), as amended by Act 635 of 2017, § 1, appears to only require notarization for a statement of plans to seek a driver's

license? **RESPONSE:** The addition of the notarization requirement if the student intends to seek a high school equivalency diploma was added for the convenience of parents because such notarization is required pursuant to motor vehicle laws. This requirement has been removed in response to public comment.

(6) Section 6.01 – Was there a reason the Department omitted the term "local" preceding "public school district," when that term is used in Ark. Code Ann. § 6-15-504(a), as amended by Act 863 of 2017, § 1, on which it appears the rule is premised? **RESPONSE:** Use of the term "local" caused confusion as to whether this section applied to students attending a non-resident school, pursuant to school choice or district transfer provisions.

(7) Section 6.07 – Was there a reason the Department omitted the term "local" preceding "public school," when that term is used in Ark. Code Ann. § 6-15-504(g), as amended by Act 863 of 2017, § 1, on which it appears the rule is premised? **RESPONSE:** See previous response.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: For the current fiscal year, the cost would be $1,119/course with a maximum of $6,713/student. Additional public school funds would be necessary to meet this obligation.

There are no additional state costs to implement the rule.

LEGAL AUTHORIZATION: The proposed changes include revisions made in light of Act 173 of 2017, sponsored by Representative Mark Lowery, which served to allow a student who attends a private school or a home school to enroll in an academic course within the public school district; Act 592 of 2017, sponsored by Representative Mark Lowery, which concerned the participation of home-schooled students in interscholastic activities; Act 635 of 2017, sponsored by Representative Mark Lowery, which amended provisions of the Arkansas Code concerning home schools; and Act 863 of 2017, sponsored by Representative Mark Lowery, which concerned the enrollment or re-enrollment of a home-schooled student in a public school. Pursuant to Arkansas Code Annotated § 6-15-502(b), the State

Board of Education is empowered to make such reasonable rules and regulations required for the proper administration of Title 6, Chapter 15, Subchapter 5 of the Arkansas Code, concerning home schools, that are not inconsistent with the intent of the subchapter.

f. SUBJECT: Schools of Innovation

DESCRIPTION: This proposed rule incorporates changes from Act 871 of 2017 concerning Schools of Innovation. Act 871 required only the addition of a single sentence to the rule, found at Section 8.01.11 of the proposed rule. The change was incorporated to require Schools of Innovation to demonstrate and document research-based implementation of professional learning communities throughout the school that address the needs of the students and professionals.

PUBLIC COMMENT: A public hearing was held on March 19, 2018. The public comment period expired on March 27, 2018. The Department received no public comments.

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The State Board of Education shall adopt rules to administer Title 6, Chapter 15, Subchapter 28 of the Arkansas Code, concerning the District of Innovation Program, including without limitation rules that address the: (1) rules subject to exemption or modification for a school of innovation plan if approved by the commissioner; (2) application, school of innovation plan review, approval, and amendment process for a public school district to establish a school of innovation; (3) timeline for initial approval of a school of innovation and subsequent renewal, including any ongoing evaluations of a school of innovation; (4) documentation required to show meaningful parental, educator, and community engagement and capacity for the changes identified in the school of innovation plan; (5) approval by the eligible employees of a school of innovation; (6) evidence of teacher collaboration and shared leadership responsibility within each school seeking to become a school of innovation; (7) documentation of the understanding and implementation of research-based practices of professional learning communities; (8) process for revocation of a designation as a district of innovation or school of innovation; (9) reporting

and oversight responsibility of the school of innovation and the Department of Education; (10) budget and financial details of the school of innovation; and (11) other information necessary as determined by the State Board. *See* Ark. Code Ann. § 6-15-2802(c), as amended by Act 871 of 2017, § 1. The proposed changes include revisions made in light of Act 871 of 2017, sponsored by Representative Bruce Cozart, which amended provisions of the Arkansas Code concerning schools of innovation.

g. SUBJECT: Implement the Braille and Large Print Textbook Appropriation

DESCRIPTION: This rule is mandated in the annual appropriation for braille and large print textbooks, most recently appropriated in Act 174 of 2017. Amendments to the rule remove outdated information and replace it with current terms and methods.

PUBLIC COMMENT: A public hearing was held on March 19, 2018. The public comment period expired on March 27, 2018. The Department received no public comments.

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Pursuant to special language in Act 174 of 2017, § 11, the "State Board of Education shall make reasonable rules and regulations to implement the Braille and Large Print Textbooks appropriation."

h. SUBJECT: Diplomas for Veterans of WWII, Korea, and Vietnam

DESCRIPTION: The proposed rule is mandated by Ark. Code Ann. §§ 6-13-133 and 134, which allow the Board of Directors of any school district in Arkansas to grant a diploma of graduation to any honorably discharged veteran of World War II, the Korean War, or the Vietnam War who served a minimum of 18 months' active duty or was discharged with a service-connected disability during one of the relevant time periods listed. The rule also lists acceptable forms of discharge papers which may be presented as evidence of eligibility under the rule.

PUBLIC COMMENT: A public hearing was held on March 19, 2018. The public comment period expired on March 27, 2018. The Department provided the following summary of the sole public comment received and its response thereto:

Robin Sparks, Counselor, Ringgold Elementary School
Comment: Will families of veterans who are deceased but served and did not graduate be able to obtain the diploma? This would be an important document for families to have in order to document family history. **Agency Response:** Comment considered. No change is necessary. Ark. Code Ann. §§ 6-16-133 and 6-16-134 do not address veterans who are deceased, but do not prohibit the awarding of diplomas to qualifying deceased veterans.

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

Did the State Board consult with the Department of Veterans' Affairs in developing the rules and regulations to implement the provisions of Arkansas Code Annotated §§ 6-16-133 and 6-16-134, pursuant to Ark. Code Ann. §§ 6-16-133(d)(2) and 6-16-134(d)(2)?
RESPONSE: Yes. [Communications between counsel for the Department and Gina Chandler, Assistant Director for Veteran Services, were provided.]

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated §§ 6-16-133(d)(1) and 6-16-134(d)(1), the State Board of Education shall adopt rules and regulations to implement the provisions of Ark. Code Ann. § 6-16-133, concerning the granting of diplomas to World War II veterans, and Ark. Code Ann. § 6-16-134, concerning the granting of diplomas to veterans of the Korean and Vietnam Wars. The State Board shall consult with the Department of Veterans' Affairs in developing rules and regulations to implement the provisions of the statutes. *See* Ark. Code Ann. §§ 6-16-133(d)(2) and 6-16-134(d)(2).

5. <u>STATE BOARD OF ELECTION COMMISSIONERS</u> (Heather McKim)

a. <u>SUBJECT</u>: Annual School Election in Even Numbered Years

<u>DESCRIPTION</u>: The State Board of Election Commissioners approved the "Rules for the Annual School Election in Even Numbered Years" in response to questions raised by county election officials regarding Act 910 of 2017. These rules are designed to operate together with Act 910 to govern how counties conduct Annual School Elections when they are held with the Preferential Primary Election or the General Election.

Act 910 of 2017 requires that School Districts reimburse counties for the additional cost of an Annual School Election when held with a primary or general election. The Act also provides that no school district will ever be required to reimburse more than the cost of the most recent contested school election held in the "odd year" or the year the school elections were held independently of any other elections. This statutory language leaves many unanswered questions including precisely what constitutes an additional cost of the school election and how the county calculates that cost for each district in the county. Issues also exist regarding how the "cap" on the total reimbursement a district can be required to pay is allocated when the district lies in multiple counties.

The primary purpose of this rule is to create a uniform procedure for the calculation of the school district's share of the election costs; the calculation and allocation of the "cap" on the district's reimbursement; and the process by which the billing and paying of election expenses is handled. The rule also clarifies that, pursuant to state law, the SBEC cannot pay for the cost of the Annual School Election and that the calculation of the additional costs of the school election must be completed before the SBEC can reimburse counties for State funded elections.

In addition, this rule requires that the county clerk of a county in which a district is domiciled certify the candidates and issues on the ballot which are filed in that clerk's office to the county election commissions of the non-domicile counties in which the school district has territory. This rule also requires county election officials to produce an extra certified election return for each precinct with a non-domicile school district's candidates or issues

on the ballot and file those certified election results with the county clerk of the county in which the school district is domiciled.

PUBLIC COMMENT: A public hearing was held on May 7, 2018. The public comment period expired on May 14, 2018. No public comments were submitted to the board. The proposed effective date is July 4, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The State Board of Election Commissioners is authorized to "[f]ormulate, adopt, and promulgate all necessary rules to assure even and consistent application of voter registration laws and fair and orderly election procedures." Ark. Code Ann. § 7-4-101(f)(5). Under Ark. Code Ann. § 6-14-101, the general election laws shall apply to school elections insofar as they are not in conflict with the school election laws. These rules implement Act 910 of 2017, sponsored by Representative Mark Lowery, which changed the date of the annual school election.

6. DEPARTMENT OF HIGHER EDUCATION, FINANCIAL AID (Nicolas Fuller)

a. SUBJECT: Arkansas Workforce Challenge Program

DESCRIPTION: The Arkansas Workforce Challenge Program rules and regulations are being proposed due to the creation of the program by Act 613 of 2017. The Workforce Challenge program offers up to an $800 scholarship to a student admitted into a program of study that leads to an associate degree or certificate program in a high-demand field. The proposed new rule addresses the student eligibility criteria, method for recipient selection, continuing eligibility requirements, and procedures for making payments to an approved institution of higher education, and other administrative procedures necessary for operation of the program.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on May 2, 2018. The Department received no public comments.

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

(1) Definitions, (2)(A) "Certificate program" – Should there be an "or" between the terms "certification" and "license," as used in Ark. Code Ann. § 6-85-302(2)(A), as amended by Act 613 of 2017, § 3, on which the rule appears premised? **RESPONSE:** Yes, that has been corrected in the updated rules.

(2) Throughout – Should "these rules" be substituted for "this subchapter"? **RESPONSE:** Yes, this has been replaced in the updated rules.

(3) Eligibility Requirements, (1) – Has the Department set the date by which a student must apply? If so, what is that date, and does the Department believe it should be included in the rules? **RESPONSE:** There is no deadline to apply. Students will be able to apply at any time due to the rolling enrollment nature of these short-term programs.

(4) Eligibility Requirements, (1)(A) – Should "a" rather than "the" precede "parent of the student" in that Ark. Code Ann. § 6-85-304(a)(1), as amended by Act 613 of 2017, § 3, on which the rule appears to be premised, provides that only one (1) parent of the student (or the student) be an Arkansas resident if the student is less than twenty-one years of age? **RESPONSE:** Yes, that has been corrected in the updated rules.

(5) Eligibility Requirements, (1)(B)(ii) – Should "or another state" be included as such is authorized under Ark. Code Ann. § 6-85-304(a)(2)(B), as amended by Act 613 of 2017, § 3, on which it appears that the rule is premised? **RESPONSE:** Yes, that has been corrected in the updated rules.

(6) Distribution – Award Amounts, (1) – Is a period missing? **RESPONSE:** Yes, that has been corrected in the updated rules.

(7) Distribution – Award Amounts, (2)(B)(ii)(b) – Was there a reason that the Department limited the cost of a certificate program or program of study, when Ark. Code Ann. § 6-85-305(b)(2)(B)(ii), as amended by Act 613, § 3, on which the rule appears to be premised, states that the cost "shall include" and further provides that "[t]he scholarship awards may be used for expenses included in the cost of the certificate program or program of study" in subsection (b)(3) of the statute? **RESPONSE:** We limited at the Attorney General's office's suggestion to clarify the

type costs that could be paid by the scholarship. Some scholarships will pay other costs up to the cost of attendance (expenses outside of tuition/fees/supplies).

(8) Distribution – Award Amounts, (3)(B) – Has the Department set the date by which a student shall apply? If so, what is that date, and does the Department believe it should be included in the rules? **RESPONSE:** There is no deadline to apply. Students will be able to apply at any time due to the rolling enrollment nature of these short-term programs.

(9) Was there a reason the Department chose to omit the language found in Ark. Code Ann. § 6-85-305(b)(4), as amended by Act 613 of 2017, § 3, providing that a scholarship shall be only for the academic year for which it is awarded? **RESPONSE:** This was an oversight, it has been added into the updated rules.

(10) Is there a reason the Department omitted language from the rules mirroring that of Ark. Code Ann. § 6-85-306, concerning agreements between institutions? **RESPONSE:** This was an oversight, it has been added into the updated rules.

(11) I've had a chance to look over the revisions and only had one remaining question with regard to my original question (7). I will be sure to note your reliance on the Attorney General's guidance as the basis for using language that differs from the specific language of the statute, but is there a reason that the Department has opted not to include the provision of Ark. Code Ann. § 6-85-305(b)(3), which provides that "[t]he scholarship awards may be used for expenses included in the cost of the certificate program or program of study"? **RESPONSE:** We did not include that statement as we thought it was a bit redundant. But I have amended the document to include this line as well.

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: There is no additional cost in general revenue. This is a new scholarship program that will begin in the fall of 2018 for students enrolling in programs that will lead to an associate's degree or certificate program in a high-demand field. This scholarship is funded through remaining prior year net lottery proceeds, and the estimated impact for the next fiscal year is $1,000,000.

LEGAL AUTHORIZATION: The proposed rules implement Act 613 of 2017, sponsored by Senator Jimmy Hickey, Jr., which created the Arkansas Workforce Challenge Scholarship and provided for the use of excess lottery proceeds to fund scholarships for students enrolled in higher education programs that will lead to the students being qualified to work in high-needs occupations. Pursuant to Arkansas Code Annotated § 6-85-307, the Department of Higher Education shall promulgate rules to implement Title 6, Chapter 85, Subchapter 3, of the Arkansas Code, concerning the Arkansas Workforce Challenge Scholarship Program, codified at Ark. Code Ann. §§ 6-85-301 through 6-85-307.

b. SUBJECT: Arkansas Teacher Opportunity Program

DESCRIPTION: The Arkansas Teacher Opportunity Program rules and regulations are amended due to the passage of Act 160 of 2017. The amendment to the rules for the Teacher Opportunity Program changes the priority for awards from participants in the Dual Certification Incentive Program to applicants for additional education in certain education areas. The amendment is also striking the section regarding the Teacher Opportunity Program Advisory Council as this was created when the program was still awarded as loans. The program is now a reimbursement program rather than a loan.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on May 2, 2018. The Department received no public comments.

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: There are no additional costs in general revenue. This is an amendment to the current program to change the priority for awards. The cost of $1,500,000 for the current fiscal year and $1,500,000 for the next fiscal year is for the entire program. There is no additional cost due to this amendment.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-81-603, the Teacher Opportunity Program ("Program") shall be administered by the Department of Higher Education, which shall have the authority to establish necessary rules, regulations, procedures, and selection criteria for the administration of the program and to designate necessary forms and schedules. The instant proposed changes include revisions

made in light of Act 160 of 2017, sponsored by Representative Charlotte Douglas, which amended provisions in the Arkansas Code regarding the Program and prioritized the awarding of funds to teachers for additional education in certain fields.

7. DEPARTMENT OF HUMAN SERVICES, CHILDREN AND FAMILY SERVICES (Christin Harper)

a. SUBJECT: Services Accountability

DESCRIPTION: The purpose of this regular promulgation is to revise Division Policy IX-C: Child Near Fatalities and Fatalities, specifically:

- Requiring notification to DCFS leadership of any child near fatality or fatality involving a child or sibling of a child involved in a child maltreatment investigation or open case within the past 24 months, rather than 12 months;
- Clarifying that Division will assist with funeral arrangements for children who pass and were involved in open foster care cases;
- Changing the name of Child Death and Near Fatality Multidisciplinary Review Committee to External Near Fatality and Fatality Review Team and other technical changes due to the sunset of Act 1245 of the 90th General Assembly, Regular Session;
- Adding members to the External Child Near Fatality and Fatality Review Team;
- Updating roles and responsibilities of DCFS staff regarding notifications and reviews of child near fatalities and fatalities due to organizational changes within the Division.

PUBLIC COMMENT: The Department did not hold a public hearing. The public comment period ended on March 26, 2018. The Department received no public comments.

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Department of Human Services (DHS) is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201

(12). The Department's Division of Children and Family Services (DCFS) has the power to promulgate rules necessary to administer the laws that address protecting children from abuse and neglect and providing services and support to promote the safety, permanency, and well-being of Arkansas children and families. *See* Ark. Code Ann. §§ 9-28-101 and 103. Further, pursuant to Ark. Code Ann. § 12-18-105, DHS and the State Police are authorized to promulgate rules to implement the Child Maltreatment Act.

Representative Charlene Fite sponsored Act 1245 of 2015, which created the Child Death and Near Fatality Multidisciplinary Review Committee. The Act expired on August 1, 2017.

8. DEPARTMENT OF HUMAN SERVICES, COUNTY OPERATIONS (Kelley Linck)

a. SUBJECT: Medical Services Policy Manual Section I-325, TEFRA Renewal

DESCRIPTION: This revises the due date for the return of the TEFRA renewal packet as follows: "The eligibility worker will generate the appropriate renewal forms and send the packet to the individual's guardian or authorized representative. The due date for return of the TEFRA renewal packet will be the last day of the 10th month."

PUBLIC COMMENT: The Department did not hold a public hearing. The public comment period ended on May 8, 2018. The Department received no public comments.

CMS approved the renewal request for the TEFRA Waiver, but approval was not required for this specific manual change.

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Department of Human Services (DHS) is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201

(12). DHS is also authorized to promulgate rules as necessary to conform to federal rules that affect its programs as necessary to receive any federal funds. *See* Ark. Code Ann. § 25-10-129(b).

TEFRA 134(a), a provision of the Tax Equity and Fiscal Responsibility Act of 1982, allows states to extend Medicaid coverage to certain disabled children. TEFRA is a category of Medicaid that provides care to disabled children in their homes rather than in institutions.

9. <u>DEPARTMENT OF HUMAN SERVICES, DEVELOPMENTAL DISABILITIES SERVICES</u> (Melissa Stone)

a. <u>SUBJECT</u>: Adult Developmental Day Treatment (ADDT) New-18; State Plan Amendment #2018-007; and DDS Standards for Certification and Monitoring for Center-based Community Services

<u>DESCRIPTION</u>: DDS is combining the current Developmental Day Treatment Clinic Services (DDTCS) for children and Child Health Management Services (CHMS) into one successor program, now called Early Intervention Day Treatment (EIDT).

The adult population is currently served by DDTCS centers with adult programs. These programs will now be Adult Developmental Day Treatment (ADDT) programs. The ADDT program is not substantially different from the current DDTCS program, however the department is opening up the opportunity for these clients to receive nursing services at the ADDT center with prior authorization. DDS has determined, based upon on site reviews, that nursing is a needed service for many of the adult clients.

Current DDTCS centers will be grandfathered in as ADDT licensed programs under the current standards until June 30, 2019, at which time they will have to renew their license as an ADDT.

<u>PUBLIC COMMENT</u>: A public hearing was held on April 18, 2018. The public comment period expired on May 8, 2018. The Department received several comments at the public hearing and in writing as to all four proposed DDS rules. Summaries of all Public Comment Concerns and all Public Comment Support, as well as

comments from specific groups and regarding specific areas of concern are attached to the agenda online.

Specific comments of concern on the ADULT DEVELOPMENTAL DAY TREATMENT (ADDT) program include the following:

DAVID IVERS, DEVELOPMENTAL DISABILITIES PROVIDERS ASSOCIATION

COMMENT: The proposed rule, which creates a new program (ADDT) and ends licensure under DDTCS, puts at risk the state's "grandfather" status under OBRA 1989.

RESPONSE: The Omnibus Budget Reconciliation Act of 1989 (OBRA '89), which you cite, is a prohibition on the Secretary of the U.S. Department of Health and Human Services (DHHS) to defund an *old* program until such time as the Secretary finalized regulations addressing the issue of habilitation services. That legislation in no way presents a limitation on the Secretary's ability to approve alteration or fund a *new* program. A great deal has changed in the Medicaid program in the past 29 years which has provided states with new options that did not exist in 1989. DHS will not sunset DDTCS or CHMS without having CMS approval of the new programs.

COMMENT: Also, creating a new licensure would place the managed growth statute and rules under state law in question. The managed growth statute at 20-48-105 references "existing operations," which are defined as DDTCS at 20-48-101(3).

RESPONSE: Because of the state statute, the expansion rules will apply to the new EIDT and ADDT models, as successor programs; and the same standards will apply.

COMMENT: 201.200 ADDT Providing Occupational, Physical, or Speech Therapy
It is inconsistent to state that speech, physical, and occupational therapies are an "essential component" of an individual program plan and then to state that they are optional, not included as a core service, and can only be provided if the individual is eligible for day habilitation. Most adults in DDTCS do not receive therapy so it is hard to understand how it can be an "essential component."

RESPONSE: The language was meant to indicate that, when therapy is needed, it is an essential component of that individual's IPP. However, the word "essential" will be deleted from this sentence to clarify that occupational, physical, and speech therapy are not required for all clients attending an ADDT.

COMMENT: 211.100 Developmental Disability Diagnosis A.1.a. Intellectual Disability. Did you mean to use language regarding infants/preschool here?

RESPONSE: This language is in the definition of intellectual disability used in DDS Policy 1035; however, it is not applicable to ADDT programs and will be removed.

COMMENT: What is the difference between "results of a medical examination" and "diagnosis"?

RESPONSE: DDS cited DDS Policy 1035 for the definition of developmental disability. This policy uses both terms.

COMMENT: For epilepsy, the sentence is grammatically incorrect. Also, a neurologist is a licensed physician.

RESPONSE: DDS cited DDS Policy 1035 for the definition of developmental disability.

COMMENT: Does it really require all three of those professionals to make an Autism diagnosis in every instance? This does not seem to be the case universally.

RESPONSE: DDS cited DDS Policy 1035 for the definition of developmental disability. This is also the standard used to receive ABA therapy under EPSDT and the Autism Waiver.

COMMENT: A.2. – Part "b" seems redundant with part "a" with regard to IQ scores.

RESPONSE: This is correct, we will delete paragraph b.

COMMENT: 213.200 Non-Covered Services
DHS has proposed to include "**education**" as among those services that are not covered. Certain services, particularly habilitation, have both education and medical characteristics. This "overlap" does not mean that Medicaid will not cover them. A blanket

exclusion of education services would violate Medicaid. *Massachusetts v. Sec'y of Health and Human Services*, 816 F.2d 796 (1st Cir. 1987). See also 42 U.S.C. 1396b(c). See also, *Chisholm v. Hood*, 110 F. Supp.2d 499, 507 (E.D. La. 2000) (a state cannot avoid its obligation to children with special needs by delegating it to the state's education system). While we understand that traditional education is not covered, this does not mean that habilitative services with educational benefits are excluded. Please remove "education" from the Non-Covered Services list.

RESPONSE: While you are correct that we cannot exclude all educational services for children, education for adults is a non-covered service. This is not a change for adults receiving DDTCS services.

COMMENT: Also, this section says, "An ADDT clinic must provide only those services that DPSQA licenses the ADDT clinic to provide." The Medicaid Manual may state which services it will or will not reimburse, but the ability of a provider to offer other services in a particular setting relates to licensure, not reimbursement, and should not be included here. Regarding licensure, there are reasons the state may want providers to offer services Medicaid does not cover in an effort to more fully address individuals' well-being.

RESPONSE: We are simply reiterating the fact that covered services must meet DPSQA licensure requirements.

COMMENT: 215.000 Individual Program Plan
Introduction -This says the plan must be designed to "improve" the beneficiary's condition. For some individuals, the service will be necessary to "maintain" their condition and prevent regression, but they will not necessarily "improve." Please add "maintain or" before improve. See 42 U.S.C 1396-1 ("rehabilitation" includes "services to help… families and individuals attain or retain capability for independence or self-care.") (For background in Medicare context, see *Jimmo v. Sebelius* Settlement Agreement of 2013.)

RESPONSE: The word "maintain" will be added. The section also states that all services must be "medically necessary," which is defined to include services that prevent a worsening of the individual's condition. Therefore, the addition of the word "maintain," reflects this requirement.

COMMENT: B. Here the schedule needs to be defined as a "tentative" schedule to allow the individual flexibility in choice of services.

RESPONSE: We will add the word “tentative” to clarify that the daily schedule does not have to be met exactly; however, treatment goals and objectives must be met or modified as needed during the annual treatment period.

COMMENT: 216.100 Occupational, Physical, and Speech Therapy
See earlier comment on “essential” vs. “optional.”

RESPONSE: Please see response to earlier comment regarding essential v. optional services.

COMMENT: 216.200 Nursing Services
We definitely support this as a much-needed service for certain clients. Programs may be able to take more medically complex individuals with this addition.
Please clarify that this an optional service – that a provider does not have to offer nursing to be licensed.

RESPONSE: We added the same introductory sentence used for Occupational, Physical and Speech Therapy, “Optional service available through ADDT include nursing services,” to clarify that they do not have to be provided.

COMMENT: The list includes “Administration of medication” as #7 among those nursing services that may be billed, but the next sentence says it is *not* reimbursable. Please clarify by wording like the children’s manual.

RESPONSE: This language will be removed to clarify that administration of medication can be a billable component of nursing services.

COMMENT: 217.100 Establishing Medical Necessity for Core Services
This section seems to say the prescription comes first, then the care plan. The DD waiver is the opposite order. (The waiver process-requires that a meeting be held and the physician signs the prescription (part of plan of care) within 30 days after meeting.

The waiver PCSP must be submitted to DDS 45 days prior to the expiration of the current plan. The physician's prescription is as much as 60 days prior to the implementation of the new plan.) If this requirement in Adult DDTCS could be changed to mirror the waiver criteria, the waiver plan and Adult Development plan could be integrated into one plan. It would also allow there to be, at some point in time in the future, one prescription that could result in the annual staffing dates being the same.

RESPONSE: We agree that ideally, clients will have one overarching plan of care that will be signed off on by a physician, this plan will include Waiver and all state plan services.

COMMENT: 220.000 PRIOR AUTHORIZATION
For children in EIDT, up to 4 units a day of nursing can be provided without prior authorization, yet under ADDT all nursing has to be prior authorized. This creates an unnecessary administrative burden and waste of state resources over a small amount of money. The services listed for nursing in both EIDT and ADDT are the same, so why is there different treatment? This could discourage adult clinics from taking more medically involved individuals. Please remove prior authorization up to 4 units.

RESPONSE: For EIDT it is a mandatory service. For ADDT it is an optional service that is completely new to the program. Therefore, we are requiring a PA so that we can monitor utilization of this new service. We are happy to discuss removing the PA after we have at least one year of data.

COMMENT: 232.000 Retrospective Reviews
The current manuals have retrospective reviews in the context of therapy only. This broadens it to all non-prior-authorized services, including core services. These will now be conducted on top of on-site audits by Utilization Review. What is the cost of these reviews? In what frequency will they be conducted? These are low paying services for which retrospective reviews will create an administrative burden on providers and a cost to the state that may not be warranted by the results. Past retrospective reviews in therapy have not achieved significant benefits, and, in fact, have resulted in a net cost to the state. DDTCS has not had a rate increase since 2010, and that was less than $1. The minimum wage has increased more than that. Has a cost-benefit analysis been

conducted? What is the cost of these reviews? In what frequency will they be conducted?

RESPONSE: All services provided to Medicaid beneficiaries and billed to the Medicaid program may be reviewed. *See* All Provider Manual, Section I. The frequency and process of reviews will be established in the contract with the new prior authorization/retrospective review vendor. An RFP will be put out later this year and will be available for public inspection. DDS has a duty to ensure federal Medicaid funding is being used in accordance with regulations, therefore, we have opted to do random retrospective reviews and eliminate the majority of prior authorization requirements.

COMMENT: 242.100 ADDT Core Services Procedure Codes

T1023	U6, UA	Diagnosis and Evaluation Services (not to be billed for therapy evaluations) (1 unit equals 1 hour; maximum of 1 unit per day.)

Is this code what is meant by "assessment" elsewhere in the manual?

At front of manual (214.110) it states assessment can be done 1 unit, 1 x year and this section states it can be 1 hour per day. Rate that is on the rate sheet is same as the $108 it has always been. Please clarify.

RESPONSE: The code can be billed once per year, the same as it always has been. The language "once per year" will be added to the table to clarify this. Like any other service an extension of benefits can be requested.

COMMENT: DDPA supports Treatment Plan Development code 99367. Can you clarify if this can be done while in DDTCS or whether the person has to be logged out? Also, can provider request a second plan developer fee if the plan has to be revised during the year?

RESPONSE: A provider cannot bill for developing a treatment plan and providing other services at the same time, so a client would need to be "logged out" of day habilitation services for the time that the treatment plan was being developed. A provider can request an extension of benefits if the plan needs to be revised during the year.

COMMENT: Under the EIDT manual Treatment Plan Development is at $22.50 for 15 min unit with 4 units a year available ($90 year). See CPT 99367 in Section 232.100. This code is also in ADDT (adult day treatment) but adults cannot be broken into 4 units throughout the year--it has to be billed all at once. Section 242.100. Please make it match flexibility for individual's needs, as in children's.

RESPONSE: We put a more flexible schedule in place for children to meet their changing needs. Again, if an adult's plan needs to change the provider can request an extension of benefits.

TOM MASSEAU, EXECUTIVE DIRECTOR, DISABILITY RIGHTS ARKANSAS, INC.

COMMENT: DRA has concerns regarding the prior authorization requirements discussed in the manual. Individuals who require more than six units of a given therapy type (physical, occupational, or speech) over a one-week period and individuals who require nursing services must receive prior authorization. The only elaboration on this is found in Section 220.000, titled "Prior Authorization," which states only that: "Prior authorization not required for ADDT core service or for the first ninety minutes per week of each therapy discipline."
Section 216.200 discusses nursing services, stating they are available if prescribed by an individual's PCP and, "prior authorized in accordance with this manual." The only other reference to prior authorization for nursing services is in Section 220.000 states only that, "(a)ll nursing services must be prior authorized." As with the therapy requirement, this tells an individual receiving services nothing whatsoever about the prior authorization process and there is no further elaboration on prior authorization anywhere in the manual.
There is no information provided to explain the process to obtain authorization for extended therapy benefits or nursing services. There is no information provided laying out a timeline for the request process, and nothing is included to provide guidance on

how often authorization for extended services would be required. As such, DRA recommends that DHS develop and promulgate a clear process for obtaining prior authorization for extended therapy and nursing services, including timelines and an easily accessible appeals process. We also recommend establishing a system for careful monitoring and tracking of extended therapy benefits requests in order to ensure that the prior authorization requirement does not lead to avoidable delays for individuals to access needed therapies.

RESPONSE: The process to request an extension of benefits is already in place with AFMC and is not being changed. The exact same language is being added to the RFP for the vendor who will take over in January 2019. This process is outlined in the Physical, Occupational, and Speech Therapy Manual.

COMMENT: There is a lack of clarity in those sections dealing with the evaluation process as well. Section 216.100(D)(l) of the ADDT guidelines states that Medicaid will reimburse up to two hours of evaluation time for each therapy discipline, and that additional evaluation units for individuals under 21 require a request for extended therapies. Not only is the request process left undefined, but no mention is made of any mechanism for obtaining extended therapies for individuals over 21 years of age. DRA recommends that these issues be clarified.

RESPONSE: Please see previous responses.

COMMENT: DRA has also identified some discrepancies between documents in the materials released for public comment. Section 216.100(0)(2) of the ADDT guidelines states that: "Medicaid will reimburse up to six (6) occupational, physical, and speech therapy units (1 unit= 15 minutes) daily, per discipline, without prior authorization." The State Plan has been amended to allow 6 units per discipline, per week without prior authorization. While DRA prefers the daily model in the ADDT guidelines, we would suggest that the policy be standardized across the different documents in order to prevent confusion.

RESPONSE: This discrepancy will be corrected to clarify that Medicaid will reimburse up to six (6) units per discipline, *per week*, without prior authorization.

Specific comments on proposed CENTER-BASED COMMUNITY SERVICES licensure rules include the following:

DAVID IVERS, DEVELOPMENTAL DISABILITIES PROVIDERS ASSOCIATION

COMMENT: The new language seems designed primarily to bring CHMS providers under these licensure rules. However, the wording goes too far by saying it applies to "any day treatment program in Arkansas." We do not think you mean to include adult day care, adult day health care, behavioral health day treatment, and all other programs that could fall within that description, in and outside the Medicaid program. A simple modification of wording should fix that.

RESPONSE: The Center-Based Community Services Licensure Rules apply only to ADDT and EIDT programs.

COMMENT: However, overall, these rules reflect the quasi-governmental nature of non-profit DDTCS programs. Are the mostly for-profit CHMS clinics going to meet these requirements?

RESPONSE: The merged EIDT and ADDT programs, regardless of non-profit, will meet the same licensure requirements.

COMMENT: Licensing standards Section 202.B.3 addresses the requirement of a tuberculosis skin test. This needs to be removed from the manual. See attached memos. (memos from DDS regarding discontinuing TB skin test requirement)

RESPONSE: We are not requiring TB skin tests; we will follow the guidance in the memos we issued.

COMMENT: Also, this manual, not the Medicaid Provider Manual, is the more appropriate location for staff qualifications and ratios. Some are included in Section 523 but not all.

RESPONSE: We believe this will be clarified when the licensure standards are updated by the workgroup that will begin meeting at the end of May.

Laura Kehler Shue, an attorney with the Bureau for Legislative Research, asked the following two questions:

1. Does DHS have CMS approval of the new programs? (All of the successor programs?)
2. Also, with regard to the DDPA comment below, to which state statute is the response referring?

> ***COMMENT:*** *Also, creating a new licensure would place the managed growth statute and rules under state law in question. The managed growth statute at 20-48-105 references "existing operations," which are defined as DDTCS at 20-48-101(3).*
>
> ***RESPONSE:*** *Because of the state statute, the expansion rules will apply to the new EIDT and ADDT models, as successor programs; and the same standards will apply.*

RESPONSE:

1. No, we do not yet have approval from CMS. (The Department states in the summary that it will not sunset DDTCS or CHMS programs without CMS approval of the new programs).
2. The statute is Ark. Code Ann. § 20-48-101. There is a currently a moratorium on expanding these programs and the statute states that the expansion rules will also apply to any successor program.

FURTHER CLARIFICATIONS MADE BY DDS after public comments are also attached on the agenda online.

- In the Adult Developmental Day Treatment (ADDT) manual, we are clarifying the intent by removing the word "essential" to clarify that Occupational Therapy, Physical Therapy and Speech Therapy are not required for clients attending an ADDT.
- In the Adult Developmental Day Treatment (ADDT) manual, we are clarifying the eligibility section by removing "infant/preschool language" that was inadvertently left in the manual.
- In the Adult Developmental Day Treatment (ADDT) manual, we are clarifying that Section 215.000 by adding the words "maintain" and "tentative."
- In the Adult Developmental Day Treatment (ADDT) manual, we are clarifying that Section 216.000 that therapy units are allowed at 6 unit increments per week, not per day, which is consistent with all other Medicaid manuals regarding therapy units.
- In the Adult Developmental Day Treatment (ADDT) manual, we are clarifying that Section 216.000 allows administration of medications to be billed.

- In the Adult Developmental Day Treatment (ADDT) manual, we are clarifying that Section 242.100 allows for evaluations to be billed once per year.

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Department of Human Services is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201 (12). DHS is authorized to establish and maintain an indigent medical care program. *See* Ark. Code Ann. § 20-77-107. DHS is also authorized to promulgate rules as necessary to conform to federal rules that affect its programs as necessary to receive any federal funds. *See* Ark. Code Ann. § 25-10-129(b).

The Department's Division of Developmental Disabilities Services ("DDS") is responsible for the overall coordination of services for Arkansans with developmental disabilities as defined in Ark. Code Ann. §20-48-101. In 2013, DHS was required by law to convene stakeholders to assist in determining the feasibility of combining the child health treatment clinic services program for children into a successor program. *See* Ark. Code Ann. § 20-48-1108. The Division is authorized to adopt rules to implement programs and was required by law to work with stakeholders, including without limitation, representatives of the Child Health Management Services Association and the Developmental Disabilities Provider Association, in the development of rules. *See* Ark. Code Ann. § 20-48-1107. DHS states that the new DDS center –based community services standards will apply to any day treatment program in Arkansas for children and adults, including "successor programs," as defined in Ark. Code Ann. § 20-48-1101 et seq.

b. SUBJECT: Therapy 1-18; Section V 3-18; and State Plan Amendment #2018-008

DESCRIPTION: The Occupational Therapy, Physical Therapy, and Speech Therapy (Therapy) Provider Manual is being changed so that a physician referral is required annually to align with the annual comprehensive evaluation for Early Intervention Day Treatment and Adult Developmental Day Treatment services.

Additional edits are being made to the Therapy Manual and State Plan changes to comply with the changes made in July, 2017.

PUBLIC COMMENT: A public hearing was held on April 18, 2018. The public comment period expired on May 8, 2018. The Department received several comments at the public hearing and in writing as to all four proposed DDS rules. Summaries of all Public Comment Concerns and all Public Comment Support, as well as comments from specific groups and regarding specific areas of concern are attached to the agenda online. Specific comments and DDS responses on the Therapy Manual may be found on pages 11-23 of the Public Comments Concerns.

FURTHER CLARIFICATIONS MADE BY DDS:

- Due to the comments we received regarding the DMS-640, we are pulling the changes to the form and will present them to our Therapy workgroup for further discussion.

- In the Therapy Manual, we clarified that an extension of benefit request is allowed for evaluations; this was inadvertently deleted.

The Department does not yet have approval from CMS. The Department states that it will not sunset DDTCS or CHMS programs without CMS approval of the new programs.

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Department of Human Services is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201 (12). DHS is authorized to establish and maintain an indigent medical care program. *See* Ark. Code Ann. § 20-77-107. DHS is also authorized to promulgate rules as necessary to conform to federal rules that affect its programs as necessary to receive any federal funds. *See* Ark. Code Ann. § 25-10-129(b). The Department's Division of Developmental Disabilities Services ("DDS") is responsible for the overall coordination of services for Arkansans

with developmental disabilities as defined in Ark. Code Ann. §20-48-101.

c. <u>SUBJECT</u>: Transportation 1-18 and State Plan Amendment #2018-009

<u>DESCRIPTION</u>: Beginning July 1, 2018, DDS is sunsetting the current Development Day Treatment Clinic Services (DDTCS) and Child Health Management Services (CHMS) and creating the Early Intervention Day Treatment (EIDT) and Adult Developmental Treatment (ADDT).

DDS is amending the Transportation Provider Manual to allow ADDT and EIDT providers to provide transportation services, just as the DDTCS providers were able to do under the previous program. This decision was based upon a cost analysis comparing the current DDTCS transportation utilization and rate to the utilization and rate under the non-Emergency Transportation (NET) currently used CHMS.

<u>PUBLIC COMMENT</u>: A public hearing was held on April 18, 2018. The public comment period expired on May 8, 2018. The Department received several comments at the public hearing and in writing as to all four proposed DDS rules. Summaries of all Public Comment Concerns and all Public Comment Support, as well as comments from specific groups and regarding specific areas of concern are attached to the agenda online.

Specific comments and DDS responses on the TRANSPORTATION MANUAL include the following:

DAVID IVERS, DEVELOPMENTAL DISABILITIES PROVIDER ASSOCIATION (DDPA)

COMMENT: The rate for transportation has not been increased in eight years. Providers lose significant amounts of money providing transportation. No transportation broker provider would provide the transportation for the full EIDT rate, let alone as a subcontractor. This will create an access issue soon if not addressed.

RESPONSE: No transportation broker is needed. DDS will pay the rate directly to EIDT and ADDT providers to transport their own clients. We are currently engaging stakeholders in non-

emergency transportation (NET) discussions. We are happy to discuss a future change of eliminating EIDT/ADDT transportation and putting everyone on the NET rate, if eligible.

COMMENT: *272.200 Mileage Calculation: The route taken when transporting the clients must be reasonable and must be planned to minimize the beneficiaries' time spent in route to and from the facility (i.e. must pick up the beneficiary farthest from the facility first and drop him or her off last). The provider must not take unnecessary extended routes to increase the mileage.*
Why is the new language inserted? Providers lose money and only get paid for the client who lives the farthest, so what is the purpose of adding this?

RESPONSE: The purpose of this additional language was to clarify that the rule is the provider is paid for the client who lives the farthest, not the client who spends the most amount of time in transport. In doing so, we want to ensure that clients, both children and adults with developmental delays and disabilities, do not spend more time than necessary in route to the day treatment program.

COMMENT: Page 8aa at 23.a.(3) The statement that: "The route must be planned to ensure that beneficiaries spend the least amount of time being transported" is ambiguous. Considering the financial status of the program, this concept would have to be balanced with the economic realities.

RESPONSE: Please see response above.

The Department does not yet have approval from CMS. The Department states in the summary that it will not sunset DDTCS or CHMS programs without CMS approval of the new programs.

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Department of Human Services is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201 (12). DHS is authorized to establish and maintain an indigent medical care program. *See* Ark. Code Ann. § 20-77-107. DHS is also

authorized to promulgate rules as necessary to conform to federal rules that affect its programs as necessary to receive any federal funds. *See* Ark. Code Ann. § 25-10-129(b).

The Department's Division of Developmental Disabilities Services ("DDS") is responsible for the overall coordination of services for Arkansans with developmental disabilities as defined in Ark. Code Ann. §20-48-101.

d. **SUBJECT: Early Intervention Day Treatment-New-18; State Plan Amendment #2018-004; and DDS Standards for Certification and Monitoring for Center-based Community Services**

DESCRIPTION: DDS is combining the current Developmental Day Treatment Clinic Services (DDTCS) for children and Child Health Management Services (CHMS) into one successor program, now called Early Intervention Day Treatment (EIDT).

This new program combines eligibility criteria for both programs, specifically (1) a developmental assessment; and (2) the medical (nursing) or therapeutic needs of the beneficiary. The EIDT program will:

(1) Ensure children with the highest needs can access the full array of core services;

(2) Expand family choice of providers, instead of dividing clinics between programs;

(3) Tighten child-staff ratios to increase success, quality, and monitoring for high-need children; and

(4) Streamline billable codes whereby eliminating the need for prior authorization process and implementing a retrospective process.

Current DDTCS and CHMS centers will be grandfathered in as EIDT licensed programs under the licensing standards until June 30, 2019, at which time they will have to renew their license as an EIDT.

Children receiving services in DDTCS or CHMS centers as of July 1, 2018, and meet the eligibility criteria promulgated on October 1,

2017, for either a DDTCS children's program or a CHMS program, will be allowed enrollment in EIDT until June 30, 2019, as long as they meet the former criteria on July 1, 2018, and continue to meet the former criteria until June 30, 2019.

PUBLIC COMMENT: A public hearing was held on April 18, 2018. The public comment period expired on May 8, 2018. The Department received several comments at the public hearing and in writing as to all four proposed DDS rules. Summaries of all Public Comment Concerns and all Public Comment Support, as well as comments from specific groups and regarding specific areas of concern are attached to the agenda online.

The specific comments received and DDS responses on EARLY INTERVENTION DAY TREATMENT (EIDT) are found in Public Comment Concerns on pages 24-84.

FURTHER CLARIFICATIONS MADE BY DDS:

- In the Early Intervention Day Treatment (EIDT) manual, we are clarifying that evaluation services are billable once per year, instead of saying calendar year.
- In the Early Intervention Day Treatment (EIDT) manual, we are clarifying the intent of nursing services by removing the reference to optional services in the title in Section 215.000.
- In the Early Intervention day Treatment (EIDT) manual, we are clarifying that the summer program is available to age 21 not 20.
- In the Early Intervention Day Treatment (EIDT) manual, we are adding language to Section 214.500 clarify that all DDS Policy 1035 categorical diagnoses are allowed for the Habilitative Services in the Summer for Ages 6-21.

The Department does not yet have approval from CMS. The Department states in the summary that it will not sunset DDTCS or CHMS programs without CMS approval of the new programs.

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: The total estimated savings for the current fiscal year is $13,299,199.71 ($3,909,964.71 in general revenue and $9,389,235 in federal funds); and the total estimated savings for the next fiscal year is $40,065,626.50 ($11,000,715.72 in general revenue and $29,064,910.78 in federal funds).

LEGAL AUTHORIZATION: The Department of Human Services is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201 (12). DHS is authorized to establish and maintain an indigent medical care program. *See* Ark. Code Ann. § 20-77-107. DHS is also authorized to promulgate rules as necessary to conform to federal rules that affect its programs as necessary to receive any federal funds. *See* Ark. Code Ann. § 25-10-129(b).
The Department's Division of Developmental Disabilities Services ("DDS") is responsible for the overall coordination of services for Arkansans with developmental disabilities as defined in Ark. Code Ann. §20-48-101. In 2013, DHS was required by law to convene stakeholders to assist in determining the feasibility of combining the child health treatment clinic services program for children into a successor program. *See* Ark. Code Ann. § 20-48-1108. The Division is authorized to adopt rules to implement programs and was required by law to work with stakeholders, including without limitation, representatives of the Child Health Management Services Association and the Developmental Disabilities Provider Association, in the development of rules. *See* Ark. Code Ann. § 20-48-1107. DHS states that the new DDS center –based community services standards will apply to any day treatment program in Arkansas for children and adults, including "successor programs," as defined in Ark. Code Ann. § 20-48-1101 et seq.

10. DEPARTMENT OF HUMAN SERVICES, OFFICE OF CHIEF COUNSEL (Kelley Linck)

a. SUBJECT: 1098 Appeals and Hearings Procedure

DESCRIPTION: The Director of the Department of Human Services is proposing revisions to the DHS Office of Appeals and Hearings Policy 1098 to provide specific protection for minor witnesses and victims testifying in DCFS maltreatment hearings and adult maltreatment hearings.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on April 26, 2018. The Department received no comments.

The Executive Committee reviewed and approved this rule on an emergency basis on March 5, 2018.

The proposed effective date for the permanent rule is June 29, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Department of Human Services (DHS) is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201 (12).

The Department's Division of Children and Family Services (DCFS) has the power to promulgate rules necessary to administer the laws that address protecting children from abuse and neglect and providing services and support to promote the safety, permanency, and well-being of Arkansas children and families. *See* Ark. Code Ann. §§9-28-101 and 103. Further, pursuant to Ark. Code Ann. § 12-18-105, DHS and the State Police are authorized to promulgate rules to implement the Child Maltreatment Act, which includes a subchapter on administrative hearings and due process. *See* Ark. Code Ann. § 12-18-801 et seq.

11. STATE MEDICAL BOARD (Kevin O'Dwyer)

a. SUBJECT: Regulation 2.4 – Prescribing Controlled Substances

DESCRIPTION: These amendments define excessive prescribing pursuant to the Center of Disease Control guidelines.

PUBLIC COMMENT: Public hearings were held on February 1, 2018 and April 5, 2018. The public comment period expired on April 5, 2018. The board submitted the following public comment summary:

On February 1, 2018, the following submitted comments:

1. Dr. Carlos Roman spoke for the proposed regulation.

2. Rick Smith, M.D., spoke for the proposed regulation that education hours for doctors are needed.
3. David Wroten spoke for the proposed regulation.
4. Scott Pace spoke for the proposed regulation.
5. Joe Phillips spoke against the proposed regulation – fear of doctor limiting his prescribing.
6. Ed Bullington spoke against the proposed regulation – fear of doctors limiting his prescribing.
7. Leo Hausser spoke to amend "K."
8. Kirk Maymard spoke against the proposed regulation – fear of doctor limiting his prescribing.
9. Dr. Katy Chenanlt spoke for the proposed regulation to amend "E."
10. Dr. Masil George spoke to amend "E."
11. Dr. John Georee spoke for the proposed regulation to amend "E."
12. Dr. Daniel Judkins spoke for the proposed regulation to amend "E."

On April 5, 2018, the following submitted comments:

1. Joe Phillips spoke against the proposed regulation needing clarification.
2. Debbie Wood spoke against the proposed regulation as she feels the regulation is aiding prescribing doctors.
3. Jeffrey Wood spoke against the proposed regulation as he feels the regulation is aiding prescribing doctors.
4. Heather Pomplan spoke against the proposed regulation as she doesn't like the documentation; James Smith spoke against the limitations of the proposed regulation.
5. Maria Hill spoke against the proposed regulation as she believes there should be no limit.
6. James Spencer spoke against reducing the amount of pain medication a doctor can prescribe.
7. Dr. Ellen Stradola spoke against any limitations on the proposed regulations.
8. John Kireley spoke against the Pharmacy Board.
9. Kathryn Horton spoke against the 50 MME level.
10. Casey Cole spoke against 50 MME level.
11. Roberta Moreland spoke against the proposed regulation for fear of doctors limiting her prescription
12. Lisa O'Cain spoke against the proposed regulation because it doesn't deal with the drug addicts.

13. Henry Grainer spoke for the proposed regulation, concerned about the documentation requirements.
14. "R.S." spoke against the proposed regulation because the prescribing limit is too limiting.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas State Medical Board shall make and adopt all rules and regulations not inconsistent with state and federal law and those that are necessary or convenient to perform the duties and to transact the business required by law. Ark. Code Ann. § 17-95-303(1). The board is authorized to promulgate and put into effect such rules and regulations as are necessary to carry out the purposes of the Arkansas Medical Practices Act, § 17-95-201 *et seq.*, § 17-95-301 *et seq.*, and § 17-95-401 *et seq.*, and the intentions expressed therein. Ark. Code Ann. § 17-95-303(2).

The Arkansas State Medical Board's Regulation 2 concerns the revocation and suspension of a licensee to practice medicine if the holder has been guilty of gross negligence or gross malpractice. The board may revoke an existing license, impose penalties as listed in § 17-95-410, or refuse to issue a license in the event the holder or applicant has committed any of the acts or offenses defined in § 17-95-409 to be unprofessional conduct. *See* Ark. Code Ann. § 17-95-409(a)(1). Among other acts, "unprofessional conduct" is defined as specifically including gross negligence or ignorant malpractice (§ 17-95-409(a)(2)(G)) or violating a rule of the board (§ 17-95-409(a)(2)(P)).

12. NATURAL RESOURCES COMMISSION, CONSERVATION (Bruce Holland)

a. SUBJECT: Title 2 – Conservation Districts

DESCRIPTION: ANRC's Title 2, "Rules Governing Conservation Districts," provides general operating requirements for districts created under the Conservation District Law, Ark. Code Ann. §14-125-101, et seq. ANRC assists the districts with

carrying out conservation programs and provides funding to the districts. There are three purposes for these revisions.

First, ANRC proposes adding language from Ark. Code Ann. § 14-125-301(a)(1) to Section 211.5 to affirm the current statutory requirement that a candidate for an elected position must reside within the conservation district that he seeks to represent.

Second, ANRC is deleting a requirement in Section 214.1 mandating that district directors must attend two, successive, regular quarterly meetings. ANRC is unaware of any quarterly meetings ever being held that would have enabled a director to fulfill this requirement, has never scheduled such meetings, and does not see a need for such meetings.

Third, deletion of language in Section 218.1 removes any duty imposed by the existing rules that require ANRC to make payment upon behalf of conservation districts to a conservation support organization. Instead, ANRC will provide each district with funds that were previously withheld for state and national association memberships.

In the past, ANRC reserved membership fees from the funds allotted to all conservation districts and paid state and national association membership fees on behalf of all districts. However, some district boards asserted that the decision to join these associations should be up to each individual district. To address these concerns, ANRC agreed to release funds equivalent to membership dues to any district requesting that such funds not be withheld on its behalf.

This process was complicated, and ANRC prefers that a district desiring to join an association provide payment directly to the conservation support organization. Currently only one state conservation support organization, the Arkansas Association of Conservation Districts, exists but some district boards have indicated that they prefer to choose whether to join this organization. As to national membership fees, ANRC also believes each conservation district should determine whether it wants to join a national conservation association, and ANRC should not be involved in the district's decision to pay a national membership fee.

PUBLIC COMMENT: A public hearing was held on April 10, 2018. The public comment period expired on April 25, 2018. The Commission received no public comments.

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 14-125-108(a), the Arkansas Natural Resources Commission ("Commission") may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under the Conservation Districts Law, Chapter 125 of Title 14 of the Arkansas Code.[1] The Commission shall further prescribe regulations governing the conduct of the election of conservation district directors and the determination of the eligibility of voters therein. *See* Ark. Code Ann. § 14-125-302(b)(8)(C).

13. SECRETARY OF STATE, ELECTIONS (Peyton Murphy)

a. SUBJECT: Rules on Vote Centers

DESCRIPTION: The rule makes the following changes:

1. Updates Voter Center Rules to encompass new voting technology.

2. Simplifies process by which counties may adopt vote centers.

3. Removes the requirement that the Secretary of State approve of a county's vote center plan.

4. Permits more flexibility in the allocation of voting equipment between vote centers to better serve voters and high turnout areas.

[1] While the statute references the Arkansas Soil and Water Conservation Commission, Act 1243 of 2005, § 2, renamed that commission the Arkansas Natural Resources Commission, which succeeded "to the general powers and responsibilities previously assigned to the Arkansas Soil and Water Conservation Commission."

PUBLIC COMMENT: A public hearing was held on April 25, 2018. The public comment period expired on May 13, 2018. The Secretary of State received no comments.

Laura Kehler Shue, an attorney with the Bureau of Legislative Research, asked the following question:

On page 2-3, under 4.0 ESTABLISHMENT OF VOTE CENTERS:

- The current Section 4.01, states that the "County Board of Election Commissioners or County Clerk may only establish one (1) or more Vote Centers in the county on election day in accordance with A.C.A. §7-1-113 and A.C.A. § 7-5-101 (requiring a local ordinance by the Quorum Court)."
- In section 4.02, the proposed amendment to the rule removes a requirement to submit a plan to the Secretary of State before establishing a Vote Center.
- In proposed section 4.03, only "After" the vote center plan is established and adopted, the following must be filed with the Secretary of State: a copy of the Vote Center Plan, the ordinance passed by the county quorum court, and the county clerk's certification that each Vote Center has access to a secured electronic connection.

Do these proposed changes affect the statutory requirement in Ark. Code Ann. §7-5-101 (e)(1)(A), that, "[b]efore establishing one (1) or more vote centers in the county under § 7-1-113, the county clerk shall certify to the Secretary of State and the county quorum court that the county has a secure electronic connection to prevent: (i) An elector from voting more than once; and (ii) Unauthorized access to a computerized registration book maintained by the county clerk." ?

Response:
The intent of the added section 4.03 was to create a list of all the things that are required to be filed with the Secretary of State before utilizing vote centers in an election. It was not the intent to circumvent §7-5-101 (e)(1)(A). We will adjust the language of 4.03 to make the original intent more clear.

The proposed effective date is June 25, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Secretary of State has authority to promulgate rules for the vote centers that: (1) Designate the electronic equipment to be used to verify the registration record of a voter; (2) Establish standards for the maintenance and use of the equipment used at a vote center; (3) Establish standards for the testing and backup of the equipment used at a vote center; (4) Establish standards for a secure electronic connection between a vote center and a county's computerized registration book; and (5) Establish procedures for the conduct of the vote center in the event that the electronic system fails. *See* Ark. Code Ann. §7-1-113 (Supp. 2017). Before establishing one (1) or more vote centers in a particular county, the county clerk shall certify to the Secretary of State and the county quorum court that the county has a secure electronic connection sufficient to prevent an elector from voting more than once and unauthorized access to a computerized registration book maintained by the county clerk. If the county clerk has certified a security sufficiency determination to the county quorum court, the county may adopt an ordinance to establish vote centers for elections. The ordinance shall be effective when it is filed with the county clerk, the county board of election commissioners, and the Secretary of State. *See* Ark. Code Ann. §7-5-101 (e)(1) (Supp. 2017).

14. DEPARTMENT OF TRANSPORTATION (Kevin Thornton and Gil Rogers)

a. SUBJECT: Transportation-Related Research Grant Program

DESCRIPTION: The Rules for Transportation-Related Research Grant Program set out procedures for selection committees, scoring criteria, award processes, and reporting requirements for grants awarded from the Future Transportation Research Fund for the TRRGP.

PUBLIC COMMENT: A public hearing was held on March 22, 2018. The public comment period expired on March 21, 2018. One public comment was received, as follows:

Alan Meadors, P.E., Arkansas Promotional Director, Oklahoma/Arkansas Chapter, American Concrete Pavement Association

1. Is everyone eligible to submit an application? What if one of Brad's buddies at Texas A&M submits an application? Is it state money for state institutions?

2. That leads to the question regarding selection. I would suggest a process similar to selecting on-call consultants. If not, you open yourself to criticism if someone is not selected, complains and you have no process.

3. I know this is a research grant, not a contract, but there are very few rules. I believe you should have wording that all work should be done in accordance with laws pertaining to the use of state funds. That could help solve many potential pitfalls. For example, a research university gets one of these grants for research that requires $50,000 of steel. So a helpful steel owner and highway commissioner wants to give them the steel for $25,000. The researcher accepts and everything is good until someone at a competing research lab hears about it and talks to the press. The next day the headline reads, "Highway Commissioner using a little known research program to line his pockets!" The researcher failed to get three bids or quotes and the drama heats up. Every research university has their own accounting procedures. You don't want the researcher believing he does not have to follow university or state accounting practices.

Response: Based upon these comments, the Application, submitted for consideration, but not as a rule in and of itself, has been extensively revised. Those revisions have sought to address issues with the application of process for selection and use of funds. In addition, any Agreement of Understanding to be signed by the parties will address use of funds.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: These rules implement Act 705 of 2017, sponsored by Senator Jake Files, which created the Transportation-Related Research Grant Program. The Transportation-Related Research Grant is established to provide grants to publicly funded institutions of higher education for transportation-related research. Ark. Code Ann. § 27-65-145(b). “Transportation-related research” means “the systematic

investigation into and study of materials and sources in order to establish facts and reach new conclusions to provide resilient and sustainable logistics, processes, materials, and methods to ensure cost-effectiveness and the furtherance of education and economic development concerning all forms of transportation, aviation, and waterborne transportation." Ark. Code Ann. § 27-65-145(a). The Department of Transportation and the State Highway Commission shall promulgate rules to implement and administer the Program, including without limitation the (1) application process; (2) disbursement of grant funds; and (3) criteria for an award of the grant. Ark. Code Ann. § 27-65-145(e).

15. <u>WHITE RIVER REGIONAL SOLID WASTE MANAGEMENT DISTRICT</u> (Jan Smith)

a. <u>SUBJECT</u>: White River RSWMD Policies and Procedures

<u>DESCRIPTION</u>: The White River RSWMD amended policies and procedures accomplish three things:

1. Add and define the term "interlocal agreement" in the definitions section and better clarify District policy on interlocal agreements, found in Chapter F, Subchapter 12.01.

2. Make a small number of typographical corrections from the existing Policies and Procedures.

3. Amend Chapter F. Host Fee to uniformly address all district related waste and clarify District policies on interlocal agreements.

The amended Chapter F, Host Fee, will uniformly assess a $1 per ton waste fee on all waste generated within, disposed of within and on waste transferred both into and out of the District for disposal. ACA 8-6-714 provides for eligible Districts a maximum waste assessment of $2 per ton on waste disposal to support solid waste district operations.

At its quarterly meeting on December 5, 2017, The White River District Board voted to assess a uniform $1 fee. The District Board felt this amended policy better addressed the increasing volume of waste transferring both in and out of the district and the resulting need for interlocal agreements between districts affected

by this movement. This amended policy better addresses ACA 8-6-714(c)(3)(A) in regard to interlocal agreements.

PUBLIC COMMENT: A public hearing was held on May 8, 2018. The public comment period expired on May 15, 2018. The District received no comments.

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Ark. Code Ann. § 8-6-704(a)(6) authorizes each regional solid waste management district board to adopt rules under the Arkansas Administrative Procedure Act as are reasonably necessary to administer the duties of the boards. The District Board has the authority to enter into an interlocal agreement to coordinate movement and disposal of solid waste between two districts. *See* Ark. Code Ann. §§ 8-6-704(a)(13) and 709.

The District Board states that the fee is authorized by Ark. Code Ann. § 8-6-714(a), which allows for a fee of no more than two dollars ($2.00) per ton of solid waste related to the movement or disposal of solid waste within the district, including without limitation fees and charges related to the district's direct involvement with disposal or treatment; or that support the district's management of the solid waste needs of the district. Districts determine by interlocal agreement how the districts shall assess and administer the fee; and divide the fees. *See* Ark. Code Ann. § 8-6-714(c)(3).

F. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309 to be Considered Pending Suspension of the Rules:

1. ARKANSAS STATE POLICE (Major Lindsey Williams and Mary Claire McLaurin)

a. SUBJECT: Arkansas Concealed Handgun Carry License Rules-Waiver Revisions

DESCRIPTION: A summary of the substantive changes to the Arkansas Concealed Handgun Carry License Rules follows:

1. Rule 5.4 – addresses renewal of an enhanced concealed handgun carry license by clarifying that enhanced licenses are required to be renewed.

2. Rule 7.3 – removes the Arkansas Justice Building in Little Rock as a location where a person with an enhanced license may carry a concealed handgun.

3. Rule 13.4 – clarifies and expands the waiver of a portion of enhanced training by detailing the process required for obtaining said waiver.

4. Rule 14.3(b) – extends the deadline for current instructors to obtain enhanced teaching certification from July 24, 2018 to January 1, 2020.

5. Rule 14.3(d) – clarifies the methods for approving and administering enhanced training when a waiver applies by detailing the process for same.

6. Rule 15.3(c) – reinserts language that was erroneously omitted in the previous rule revision related to conducting business as a registered instructor under the name listed with the Department.

PUBLIC COMMENT: A public hearing was held on May 15, 2018, and the public comment period expired on May 23, 2018. Public comments were as follows:

1. **Name of Commenter:** Doyle Oden

Comment: What is the purpose of Rule 15.3(d) and why did it come about? How extensive are the restrictions? Why is ASP concerned with how instructors do business if it does not violate the laws of the state?

Response: Proposed Rule 15.3(d) is not a new rule. In the 2017 revision, effective January 1, 2018, that provision (previously Rule 15.3(b)) was erroneously eliminated. ASP requires instructors to conduct business under the name shown on the registration with the Department for tracking purposes, in the event the Department receives complaints by applicants or if an audit becomes necessary.

2. Name of Commenter: Dan Hall

Comment: As a long-time instructor, I have been in favor of the Waiver and Combined training course included in proposed Rules 13.4(b) and 14.3(d). I believe these changes are in keeping with the legislative intent. I am 100% in support of the proposed Rule changes.

Response: As the comment contained only positive feedback, no response is necessary.

3. Name of Commenter: Cliff Barnett

Comment: As a long-time instructor, I feel the required class time is much too long. There is not enough meaningful new information to need this much time. No more than two (2) hours are needed to teach the modest changes to update a basic CHCL to enhanced. I am very pleased with the defined shooting requirements. I believe this or something similar should be included in the basic course.

Response: A.C.A. § 5-73-322(g)(2)(A)(ii) requires the course to last up to eight (8) hours. A.C.A. § 5-73-322(g)(2)(B) permits a Director's waiver of up to four (4) hours only. The new rule changes actually reduced the amount of class time for both new applicants seeking an enhanced license and current licensees who have received basic training within the last ten (10) years. A required standard must be set to ensure that each instructor covers the necessary topics in detail.

The second part of the comment contained positive feedback, no response is necessary.

4. Name of Commenter: Dwayne Franco

Comment: What kind of documentation must be submitted by the applicant to the Department to obtain a waiver under Rule 13.4? What will the applicant provide the instructor to prove they qualify for the waiver? In proposed Rule 13.4(b), the new applicant can take a combined class (basic class of five (5) hours) and a four (4) hour enhanced class for a total of approximately nine (9) hours – is that correct?

Response: The applicant will submit the completed training form from the instructor, demonstrating that he or she has completed the abbreviated enhanced training course, and attesting that the

applicant completed basic CHCL training within ten (10) years prior to submitting the enhanced application.

The instructor will be able to verify that the applicant received basic CHCL training within the last ten (10) years prior to administering the abbreviated enhanced training course by searching for the applicant's training history in the Department's instructor module CHCL database. The applicant will need to give the instructor enough information to locate his or her name and training history using the search features in the database.

The combined course described in proposed Rule 13.4(b) should be a minimum of eight (8) hours, and the instructor must cover all the topics required for basic and enhanced training set forth in Rule 13.0(a) and Rule 13.3(a), respectively.

5. Name of Commenter: Ron Everhart

Comment: I agree with the proposed rule changes.

Response: As the comment contained only positive feedback, no response is necessary.

6. Name of Commenter: Jim Staton

Comment: Why not have the class portion be the same for both the basic and the enhanced permits and then let the student decide which range portion they wish to complete? Why does an instructor have to teach the enhanced portion to keep his or her certificate?

Response: The enhanced training course covers additional topics not required to be taught in the basic training course.

The law requires all instructors to offer enhanced training. See Ark. Code Ann. § 5-73-322(g)(2)(A)(iii).

7. Name of Commenter: Wayne Evans

Comment: The ten (10) year prior training requirement to qualify for a waiver should be changed to include any current, valid licensee regardless of the time they received the license. I think additional training is necessary to upgrade to an enhanced license.

An additional four (4) hour class and 1.5-2 hour range instruction should be sufficient.

Response: Currently, the waiver look-back period is set by law. See Ark. Code Ann. § 5-73-322(g)(2)(B). The Department is not permitted to consider training received more than ten (10) years prior in deciding whether to grant a waiver of a portion of enhanced training.

As the second part of the comment contained feedback in line with the existing Rules, no response is necessary.

8. Name of Commenter: Jamie Green

Comment: How will instructors know if an applicant attended basic training within the last ten (10) years? How will I handle someone who moved to Arkansas and transferred the CHCL to Arkansas – I assume they would not qualify for the waiver? Proposed Rule 13.4(b) requires instructors to take the information from the basic course and the information from the enhanced course and blend them into one class. This may be difficult because both of my classes hit the required length of time. I am not sure how to do this without removing content. How should I market my classes to the various types of applicants? Can I structure them in such a way that new applicants arrive in the morning and current licensees who qualify for the waiver come for the afternoon portion with the enhanced training? Is a brand new applicant required to shoot the same qualification as those seeking an enhanced license?

Response: The instructor will be able to verify that the applicant received basic CHCL training within the last ten (10) years prior to administering the abbreviated enhanced training course by searching for the applicant's training history in the Department's instructor module CHCL database. The applicant will need to give the instructor enough information to locate his or her name and training history using the search features in the database.

Individuals who transferred their CHCL from another state will not qualify for the four (4) hour waiver. The prior training received must be Arkansas basic CHCL training.

Because the Department has also received feedback from the other end of the spectrum, stating that the class times are too long, the

current requirements are attempt at compromise. Course times are not limited to eight (8) hours, however, and instructors are free to teach longer courses if and as necessary. The rules set the minimum requirements.

As long as the courses contain all the required topics and extend for the minimum required amount of time, the instructor may arrange and market the class in whichever way he or she finds best.

No. The requirement in proposed Rule 13.4(b) that a new applicant shoot the enhanced qualification only applies when the new applicant is seeking an enhanced license as discussed in the first part of proposed Rule 13.4.

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: The estimated financial impact is unknown.

LEGAL AUTHORIZATION: The Director of the Department of Arkansas State Police may promulgate rules and regulations to permit the efficient administration of § 5-73-301 et seq., concerning concealed handguns. Ark. Code Ann. § 5-73-317. Portions of these rules implement Act 562 of 2017, sponsored by Representative Charlie Collins, concerning an enhanced license to carry a concealed handgun.

F. Adjournment.