ADMINISTRATIVE RULES SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Wednesday, April 20, 2022
9:00 a.m.
Room A, MAC
Little Rock, Arkansas

A. Call to Order.

B. Reports of the Executive Subcommittee.

C. Reports on Administrative Directives Pursuant to Act 1258 of 2015, for the quarter ending December 31, 2021.

1. Department of Corrections (Lindsay Wallace)

2. Parole Board (Lindsay Wallace)

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

1. <u>ARKANSAS PUBLIC EMPLOYEES' RETIREMENT SYSTEM</u> (Laura Gilson, Allison Woods)

a. <u>SUBJECT</u>: 24 CAR § 1-213. DROP Provisions

<u>DESCRIPTION</u>: The Arkansas Public Employees' Retirement System ("APERS") seeks to amend APERS Rule 214, which is the Deferred Retirement Option Plan ("DROP") Rule to: (1) comply with Act 518 of 2021, which increases from seven (7) years to ten (10) years the maximum number of allowable years for a member's participation in the DROP; (2) amend the style of the rule in its entirety to be consistent with the Bureau of Legislative Research's Code of Arkansas Rules style and its codification efforts; and (3) make non-substantive corrections for grammatical purposes.

<u>PUBLIC COMMENT</u>: No public hearing was held. The public comment period expired on February 11, 2022. The System received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-4-105(b)(1), the Board of Trustees of the Arkansas Public Employees' Retirement System shall make all rules as it shall deem necessary from time to time in the transaction of its business and in administering the System. The proposed changes include revisions made in light of Act 518 of 2021, sponsored by Representative Les Warren, which amended the law concerning the duration of participation in the Arkansas Public Employees' Retirement System Deferred Retirement Option Plan.

b. SUBJECT: 501 Investment Policy – REPEAL

DESCRIPTION: The Arkansas Public Employees' Retirement System ("APERS") seeks to repeal APERS Rule 501 – Investment Policy in its entirety. Arkansas Code Annotated § 24-2-601 et seq. grants the APERS Board authority to invest and manage the funds for APERS for the benefit of the members in accordance with the "prudent investor rule" set forth in §§ 24-2-610 to -619. The Board annually and periodically updates its portfolio of investments, adopted under Board policy, with the advice and expertise of investment consultants hired for such purpose and reacts to dynamic market changes as the needs arise by using market strategies available for those investments. Thus, APERS Rule 501 Investment Policy has become outdated, obsolete, and not applicable to Board investment actions that are already taken under applicable law. The repeal of the rule is non-controversial and assists in expediency in government by eliminating an obsolete and unnecessary APERS Board rule.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on February 11, 2022. The System received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-4-105(b)(1), the Board of Trustees of the Arkansas Public Employees' Retirement System shall make all rules as it shall deem necessary from time to time in the transaction of its business and in administering the System.

2. ARKANSAS TEACHER RETIREMENT SYSTEM (Clint Rhoden)

a. SUBJECT: ATRS Rule 4 – Election of Board of Trustees

DESCRIPTION: The Arkansas Teacher Retirement System ("System") proposes changes to its Rule 4: Election of Board of Trustees ("Rule 4"). The purpose of the changes is to amend Rule 4 in accordance with legislation enacted during the Regular Session of 2021 and to redraft current provisions for clarity and to correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate. The amendments to Rule 4 are necessary for the proper operation and administration of the System.

Changes to Rule 4 include the following:

- Rule 4 currently provides that at least one (1) of the administrators serving as an active administrator trustee must be employed by a participating employer as an Arkansas school superintendent or educational cooperative director. Before the passage of Acts 2021, No. 279, A.C.A. § 24-7-301 required two (2) active member trustees to be employed in a position requiring an administrator's license and one (1) of the two (2) active member trustees to be an administrator. Acts 2021, No. 279 amended A.C.A. § 24-7-301 (2)(C)(i) to require one (1) of the two (2) active member trustees to be a superintendent or an educational cooperative director.

- Rule 4 refers to "participating employer" when "employer" or "covered employer" as defined in A.C.A § 24-7-202(17) is intended. Rule 4 is being amended to use the term "employer'' or "covered employer" instead of "participating employer" as appropriate. Corresponding amendments were made in Acts 2021, No. 279.

- Rule 4 is being amended to redraft current provisions for clarity and correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate.

After the public comment period, language was amended or added that:

- Clarifies the Arkansas congressional district boundaries that will be used to determine candidate and voter eligibility;
- Appropriately references "active administrator trustee positions" where necessary;
- Appropriately references "requiring an administrator's license" where necessary;

- Clarifies that one (1) of the two (2) administrator trustee positions must be a superintendent or educational cooperative director;
- Addresses campaign materials that appear to claim the endorsement of the System or the Board of Trustees of the System; and
- Clarifies that the Board of Trustees of the System must declare a vacancy upon the resignation or death of a trustee.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on January 14, 2022. The System provided the following summary of the comments that it received and its responses thereto:

1. *Page 4, Section (IV)(a)(1).*
ATRS Staff Comment: Should the following language be added as a subdivision of Section (IV)(a)(1)?

i. "The Arkansas congressional district boundaries as defined on the first day of the fiscal year in which an election for an active member trustee position occurs shall be used to determine:

1. Whether a person is qualified to become a candidate for an active member trustee position; and
2. The eligibility of a member to vote in an election for an active member trustee position."

Response: Yes. This proposed language derives from an action adopted by the Board of Trustees of the Arkansas Teacher Retirement System ("Board") by resolution 2021-67 on December 6, 2021. This change has been made.

2. *Page 5, Section (IV)(b)(2)(A)(ii).*
ATRS Staff Comment: As a person can be a licensed administrator, but not be employed in a position that "requires" them to have an administrator's license, to avoid confusion, should "licensed administrator" in Section (IV)(b)(2)(A)(ii) instead reflect the law in Ark. Code Ann. § 24-7-301(2)(C)(i) and say "requiring an administrator's license"?
Response: Yes. The appropriate change has been made.

3. *Page 9, Section V(d)(1) and (2).*
ATRS Staff Comment: In order to clarify that the ATRS will not send the mailing addresses of members of the System directly to a candidate and to address campaign materials that appear to claim the endorsement of ATRS or the Board, should Section (V)(d)(1) and (2) read as follows:

i. "1. A candidate's message shall not include information that:

A. Would constitute defamation of another candidate; or

B. Claims or appears to claim the endorsement of ATRS or the Board.

2. At the request of a candidate, ATRS shall provide a list of the mailing addresses of each eligible voter to the election vendor for the distribution of the candidate's campaign materials."

Response: Yes. This change has been made.

4. *Page 14, Section (IX)(d)(3)(C).*

ATRS Staff Comment: As a trustee who dies or resigns is unlikely to attend three (3) or more Board meetings, should Section (IX)(d)(3)(C) be revised to read, "Resignation or death of a trustee."?

Response: ATRS agrees that it is unlikely for a trustee who dies or resigns to attend three (3) or more Board meetings. The appropriate changes have been made.

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

(1) Section IV.b.2.A. – Should the reference be to "active *administrator* trustee positions"? **RESPONSE:** Yes. This change has been made.

(2) Section IV.b.2.A.ii. – As written, the proposed rule appears to require that to be qualified for candidacy for an active administrator trustee position that one must be an administrator *and* be employed as a school superintendent or an educational cooperative director; however, Ark. Code Ann. §24-7-301(2)(C)(i), as amended by Act 279 of 2021, § 6, appears to provide that only one of the two administrator trustee positions "shall be a superintendent or educational cooperative director." Is there a reason the rule appears to differ from the statute? **RESPONSE:** The Arkansas Teacher Retirement System ("ATRS") agrees with the commentator's reading of Ark. Code Ann. § 24-7-301(2)(C)(i), as amended by Acts 2021, No. 279, § 6. The appropriate change has been made, so that the proposed rule does not differ from the statute.

The proposed effective date is June 1, 2022.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the System.

The Board's member and retirant trustees shall be elected in accordance with rules as have been adopted by the Board to govern the elections. *See* Ark. Code Ann. § 24-7-301(5). The proposed changes include those made in light of Act 279 of 2021, sponsored by Representative Les Warren, which made technical corrections to Title 24 of the Arkansas Code concerning the System.

b. **SUBJECT: ATRS Rule 6 – Membership Rules**

DESCRIPTION: The Arkansas Teacher Retirement System ("System") proposes changes to its Rule 6: Membership ("Rule 6"). The purpose of the changes is to amend Rule 6 in accordance with legislation enacted during the Regular Session of 2021 and to redraft current provisions for clarity and to correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate. The amendments to Rule 6 are necessary for the proper operation and administration of the System.

Changes to Rule 6 include the following:

- Rule 6 currently references sixty-five (65) years of age in lieu of using the term "normal retirement age" as "normal retirement age" in A.C.A. § 24-7-202(27) was previously defined to mean sixty-five (65) years of age. Acts 2021, No. 290 amended the definition of "normal retirement age" in A.C.A. § 24-7-202(27) to mean sixty-five (65) years of age if a member has at least five (5) years of actual service or at least sixty years (60) of age if a member has a combined total of thirty-eight (38) years or more of credited service in the System, Teacher Deferred Retirement Option Plan, or reciprocal service in another eligible state retirement system. As such, Rule 6 is being amended to use the term "normal retirement age," so that rules concerning the normal retirement age will apply to members who meet the definition of "normal retirement age" as amended by Acts 2021, No. 290.

- Rule 6 currently provides that effective July 1, 2005, an active member who changes status from nonteacher to teacher under contract for one hundred eighty-one (181) days or more shall be a contributory member of the System regardless of an earlier noncontributory election. Acts 2021, No. 443 amended the law to provide that effective July 1, 2021, an active member whose status changes from nonteacher to administrator or teacher under a contract for one hundred eighty-five (185) days or more shall become a contributory member regardless of an earlier election to be a noncontributory member. Rule 6 is being amended to reflect the amendment to the law in Acts 2021, No. 443.

- Rule 6 currently provides that effective July 1, 2007, a new member of the System who is under contract for one hundred eighty (180) days or less may elect to become a contributory member. Acts 2021, No. 443 amended the law to provide that effective July 1, 2021, a member under contract with a covered employer for one hundred eighty-five (185) days or more shall be a contributory member. Additionally, Acts 2021, No. 443 amended the law to provide that a member under contract with a covered employer for less than one hundred eighty-five (185) days may make an irrevocable election to become a contributory member. Rule 6 is being amended to reflect the amendments to the law in Acts 2021, No. 443.

- A.C.A. § 24-7-601(e) was amended by Acts 2021, No. 427 to clarify when reciprocal service earned from participation in an alternate retirement plan may be used to establish eligibility for a benefit from the System. Rule 6 is being amended to address the clarification provided in Acts 2021, No. 427.

- Rule 6 refers to "participating employer" when "employer" or "covered employer" as defined in A.C.A. § 24-7-202(17) is intended. Rule 6 is being amended to use the term "employer" or "covered employer" instead of "participating employer" as appropriate. Corresponding amendments were made in Acts 2021, No. 279.

- Rule 6 is being amended to redraft current provisions for clarity and correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate.

After the public comment period, language was amended or added that:

- Changes the title of the proposed rule to "Membership and Employer Participation";
- Changes "PSHE plan" to "'Post-secondary higher education plan" or "PSHE plan'";
- Appropriately reflects the names of various entities listed in Ark. Code Ann. §§ 24-2-401(3)(F)(ii) and 24-2-401(4)(D)(ii) that were changed by Acts 2019, No. 910;
- Addresses employer participation in the System as permitted by Ark. Code Ann. § 24-7-202(19)(D);
- Addresses the consideration of employer participation applications by the Board of Trustees of the System;
- Clarifies when the Executive Director of the System is required to review an employer's participation in the System;

- Inserts “new” before “member” in Section (III)(b)(1)(A) of the proposed rule;
- Inserts “next” before “July 1” in Section (III)(f)(1)(C) and Section (III)(f)(2)(C) of the proposed rule;
- Changes “shall” to “may” in Section (V)(d)(4) of the proposed rule to align with Acts 2021, No. 221; and
- Revises the Contributory and Noncontributory Service Chart by Year of Entry into System to clarify when a member with or without a contract may elect contributory status under the System.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on January 14, 2022. The System provided the following summary of the comments received and its responses thereto:

1. *Page 1, Title.*
ATRS Staff Comment: Can we make the title of the rule “Membership and Employer Participation”?
Response: Yes. This change has been made.

2. *Page 2, Section (I)(f)(1)(B).*
ATRS Staff Comment: Do we have or need a control to make sure of Section (I)(f)(1)(B)?
Response: The Arkansas Teacher Retirement System (“ATRS”) will implement procedures as necessary to verify that an organization meets the definition of “organization” as provided by the proposed rule.

3. *Page 2, Section (I)(h).*
ATRS Staff Comment: As this is the first introduction to the acronym for post-secondary or higher education, for clarity should “‘PSHE plan’ means” be changed to “‘Post-secondary higher education plan’ means”?
Response: ATRS does not have an objection to incorporating “Post-secondary higher education plan” into the definition of “PSHE plan.” The appropriate changes have been made.

4. *Page 5, Section (II)(c).*
ATRS Staff Comment: Should “executive director” be capitalized?
Response: No, this would not comply with the style format of the Code of Arkansas Rules. No changes have been made.

5. *Page 5, Section (II)(c).*
ATRS Staff Comment: Is this employer participation like in Section (II)(c)?
Response: Yes. For clarity, Section (II)(c) and Section (II)(g) have been reorganized. The changes can be found starting on page 7, Section (II)(f). Additionally, the following has been included: (1) a section concerning employer participation under Ark. Code Ann. § 24-7-202(19)(D) has been

included; and (2) a rule addressing the consideration of employer participation applications by the Board of Trustees of the Arkansas Teacher Retirement System ("Board").

6. *Page 5, Section (II)(c)(1).*
ATRS Staff Comment: Should the time frame for when the executive director monitors employers that participate in ATRS be clarified?
Response: Yes. The appropriate change has been made. This change can be found on page 7, Section (II)(f)(1)(A).

7. *Page 8, Section (II)(f)(2)(C).*
ATRS Staff Comment: Should something regarding consultation with a tax attorney be included in this section?
Response: No. ATRS will initiate contact with a tax attorney as is necessary and when appropriate. No changes have been made.

8. *Page 12, Section (III)(a)(1).*
ATRS Staff Comment: When does a person first become a member of ATRS? Is it when the person first enrolls with ATRS, is first reported by his or her employer, or earns forty (40) days of service credit?
Response: A person first becomes a member of ATRS when the person begins employment with a covered employer. No changes have been made.

9. *Page 12, Section (III)(a)(3).*
ATRS Staff Comment: Is all service rendered before July 1, 1986, contributory service unless forfeited?
Response: Yes. No changes have been made.

10. *Page 12, Section (III)(b)(1)(A).*
ATRS Staff Comment: Should "new" be included before "member"?
Response: No, "new" should not be included before "member." This change has been made.

11. *Page 14, Section (III)(c).*
ATRS Staff Comment: Should Section (III)(c) specify that a noncontributory status will change to contributory status effective on the July 1 that follows when a noncontributory member enters into a contract of one hundred eighty-five (185) days or more?
Response: No. The specification mentioned by the commentator is already included in Section (III)(b)(3). No changes have been made.

12. *Page 18, Section (V)(b).*
ATRS Staff Comment: This section appears to provide that ATRS will credit service at a higher rate for a member who has less service credit with a reciprocal system. Is this intentional?

Response: This section of the proposed rule is drafted to ensure that a member of ATRS does not receive credited service in excess of one (1) year in ATRS. No changes have been made.

13. *Page 19, Section (V)(d)(4).*
ATRS Staff Comment: As service credit could be waived and no contributions returned when all the member's salary was earned before his or her participation in another plan, should "shall" be changed to "may"?
Response: Yes. In accordance with Acts 2021, No. 221, "shall" has been changed to "may."

14. *Page 20, Section (V)(i).*
ATRS Staff Comment: Should Section (V)(i) be included in Rule 10 – T-DROP and Return to Service?
Response: ATRS intends to continue reorganizing its rules and an appropriate relocation of Section (V)(i) will be made at a later time. No changes have been made.

15. *Page 20, Section (V)(j).*
ATRS Staff Comment: Should this section be included in Rule 9 – Retirement and Benefits?
Response: ATRS intends to continue reorganizing its rules and an appropriate relocation of Section (V)(j) will be made at a later time. No changes have been made.

16. *Page 20, Section (V)(k).*
ATRS Staff Comment: Should this section be included in Rule 9 – Retirement and Benefits?
Response: ATRS intends to continue reorganizing its rules and an appropriate relocation of Section (V)(k) will be made at a later time. No changes have been made.

17. *Page 19, Section (V)(l).*
ATRS Staff Comment: Should this section be included in Rule 11 – Survivors and Domestic Relations Orders?
Response: ATRS intends to continue reorganizing its rules and an appropriate relocation for Section (V)(l) will be made at a later time. No changes have been made.

18. *Page 28, Service Chart by Year of Entry into System.*
ATRS Staff Comment: Should "Contract one hundred eighty-five (185) days or more – Contributory" only apply to new members or should it apply to all members?
Response: "Contract one hundred eighty-five (185) days or more – Contributory" applies to all members. The chart has been revised for clarity.

19. *Page 28, Service Chart by Year of Entry into System.*
ATRS Staff Comment: Should "New" be included for the last box concerning school district employees, year 2021-, or should "New" be revised to read "A member with"?
Response: Both "new" and "a member with" are intended to be used. The chart has been revised for clarity.

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

(1) Section I.i.8.B. – This rule appears to be premised on Ark. Code Ann. § 24-2-401(3)(F)(ii). If so, the statute now includes the names of the various entities that were changed during Transformation. **RESPONSE:** The appropriate changes have been made.

(2) Section I.j.2.B. – This rule appears to be premised on Ark. Code Ann. § 24-2-401(4)(D)(ii). If so, the statute now includes the names of the various entities that were changed during Transformation. **RESPONSE:** The appropriate changes have been made.

(3) Section I.l. – This section appears to be premised on Ark. Code Ann. § 24-7-202(43)(A); however, the statute does not include the term "teaching" before the term "licensure" as the proposed rule does. Is there a reason for the difference in the rule? **RESPONSE:** "Teaching" was added before the term "licensure" for additional clarity regarding the type of licensure required. The proposed rule as written aligns with Ark. Code Ann. § 24-7-202(43)(A). No changes have been made.

(4) Section III.f.1.C. – This section appears to be premised on current Section III.M., which contained a "next" before "July 1." Is that no longer necessary to the rule? **RESPONSE:** "Next" should be inserted before "July 1." This change has been made.

(5) Section III.f.2.C. – This section appears to be premised on current Section III.L., which contained a "next" before "July 1." Is that no longer necessary to the rule? **RESPONSE:** "Next" should be inserted before "July 1." This change has been made.

(6) Should Act 221 of 2021 also be cited as one of the bases for changes to the rules as it looks like Section VI.d.4. might be premised on Ark. Code Ann. § 24-7-601(g)(3)(B), as amended by Act 221? **RESPONSE:** Yes. Acts 2021, No. 221 should also be cited as one of the bases for the changes to the proposed rule. No changes to the proposed rule have been made.

The proposed effective date is June 1, 2022.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the System. The proposed changes include those made in light of the following acts:

Act 221 of 2021, sponsored by Representative John Maddox, which amended the law concerning the final average salary and credited service under the Arkansas Teacher Retirement System;

Act 279 of 2021, sponsored by Representative Les Warren, which made technical corrections to Title 24 of the Arkansas Code concerning the Arkansas Teacher Retirement System;

Act 290 of 2021, sponsored by Senator Larry Teague, which concerned the termination of active membership under the Arkansas Teacher Retirement System and amended the definition of "normal retirement age";

Act 427 of 2021, sponsored by Representative Stu Smith, which concerned reciprocal service credit as it relates to the administration of monthly benefits and concerned the definitions of "alternate retirement plan" and "alternative retirement plan"; and

Act 443 of 2021, sponsored by Senator Greg Leding, which concerned mandatory contributory member designation for employees under the Arkansas Teacher Retirement System.

c. SUBJECT: ATRS Rule 7 – Reporting and Eligibility

DESCRIPTION: The Arkansas Teacher Retirement System ("System) proposes changes to its Rule 7: Reporting and Eligibility ("Rule 7"). The purpose of the changes is to amend Rule 7 in accordance with legislation enacted during the Regular Session of 2021 and to redraft current provisions for clarity and to correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate. The amendments to Rule 7 are necessary for the proper operation and administration of the System.

Changes to Rule 7 include the following:

- Rule 7 currently provides that if an employer fails to remit employee or employer contributions by the fifteenth (15th) day of the month in which it is due, the employer shall be assessed an interest penalty of eight percent (8%) with daily interest until the contributions are paid. Acts 2021, No. 220 amended the law to provide that an actuarially assumed rate of return on investments of the Arkansas Teacher Retirement System Fund, in the form of interest applied on an annual basis to the moneys due, shall be assessed against an employer who fails to remit employee or employer contributions by the due date established by the Board of Trustees of the System. Rule 7 is being amended to reflect the amendment to the law in Acts 2021, No. 220.

- Rule 7 currently provides that the final average salary for members with reciprocal service shall be the highest salary years credited to the member by either an employer covered under the System or a reciprocal system pursuant to A.C.A. § 24-2-402. Acts 2021, No. 221 amended the law to provide that the final average salary for a member with reciprocal service shall be the final average salary of the System or a reciprocal system in which the member has at least two (2) years of service credit, whichever furnishes the highest final average salary at the time of the member's retirement. Rule 7 is being amended to reflect the amendment to the law in Acts 2021, No. 221.

- Acts 2021, No. 691 amended the definition of "employee" in A.C.A. § 24-7-202(17) to provide that "employee" under the System does not include a participant in a summer work program whose compensation is disbursed by a covered employer through an agreement with an administrator of a summer work program to serve as a pass-through fiscal agent if the participant is:
(1) enrolled in a secondary public school as a student;
(2) employed for a period between the first day of June and the last day of August; and (3) participating in a program in which the covered employer is acting as a pass-through fiscal agent.
Additionally, Acts 2021, No. 691 added a new provision of the law addressing the obligations of a covered employer in relation to the System and youth participants in a summer work program. Rule 7 is being amended to reflect the amendment to and new provisions of law in Acts 2021, No 691.

- Rule 7 is being amended to redraft current provisions for clarity and correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate.

After the public comment period, language was amended or added that:

- Removes language that incorrectly states that a covered employer is required to submit supplemental salary payment reports;
- Changes "refund employee contributions" to "refund employee and employer contributions" where necessary;
- Clarifies the rules concerning the electronic submission of reports;
- Changes "assumed rate of seven and one-half percent (7.5%) return" to "assumed rate of return" where necessary;
- Clarifies that the System will return overpayments of employee contributions and employer contributions;
- Provides that the System will not collect a contribution underpayment of less than the de minimis amount from a covered employer;
- Changes "de minimis amount of twenty-five dollars ($25)" to "de minimis amount" where necessary; and
- Changes "fair base year" to "fair base salary."

PUBLIC COMMENT: No public hearing was held. The public comment period expired on January 14, 2022. The System provided the following summary of the comments that it received and its responses thereto:

1. *Page 1, Section (I).*
ATRS Staff Comment: Can the definitions related to the rules concerning final average salary be removed from Rule 7 – Reporting and Eligibility and placed in Rule 9 – Retirement and Benefits?
Response: The Arkansas Teacher Retirement System ("ATRS") intends to continue reorganizing its rules and an appropriate relocation of the definitions concerning final average salary will be made at a later time.

2. *Page 13, Section (IV)(a)(1)(A).*
ATRS Staff Comment: As ATRS no longer requires covered employers to submit a supplemental salary payment report, can Section (IV)(a)(1)(B) be removed?
Response: Yes. This change has been made.

3. *Page 13, Section (IV)(b)(2)(C).*
ATRS Staff Comment: Should "refund employee contributions" be changed to "refund employee and employer contributions" as employee contributions are also refunded in this situation?
Response: Yes. This change has been made.

4. *Page 14, Section (IV)(d)(1)(B).*
ATRS Staff Comment: Is this still required by law? If not, should this language be stricken since all reports and funds can be sent electronically?

Response: No, the proposed rules in Section (IV)(d)(1)(B) are not required by law. However, Acts 2021, No. 220 amended the law to allow a covered employer to submit a written request for a temporary waiver from submitting reports and payments electronically if the covered employer is unable to do so. Therefore, it is necessary to include rules that address employers who obtain a waiver. Appropriate changes have been made to clarify that Section (IV)(d)(1)(B) applies when a covered employer obtains a waiver.

5. *Page 15, Section (IV)(d)(4)(B)(i).*
ATRS Staff Comment: As the assumed rate may change, should "assumed rate of seven and one-half percent (7.5%) return" be changed to "assumed rate of return"?
Response: Yes. This change has been made.

6. *Page 16, Section (IV)(d)(6)(B)(i).*
ATRS Staff Comment: Does this section pertain to employee and employer contributions? If yes, does Section (IV)(d)(6)(B)(i) need to include more specific language?
Response: Yes, Section (IV)(d)(6)(B)(i) concerns both employee contributions and employer contributions. The appropriate change has been made.

7. *Page 16, Section (IV)(d)(6)(B)(ii).*
ATRS Staff Comment: Should additional rules concerning the documentation of refunds or forfeitures of de minimis amounts owed to an employer be included in this section?
Response: Yes. Appropriate changes have been made.

8. *Page 16, Section (IV)(d)(6)(B)(ii) and (iii).*
ATRS Staff Comment: As the Board of Trustees of the Arkansas Teacher Retirement System ("Board") may set the de minimis amount, should only "de minimis amount of twenty-five dollars ($25)" be changed to "de minimis amount"?
Response: Yes. This change has been made.

9. *Page 16, Section (V).*
ATRS Staff Comment: Can the rules concerning final average salary be removed from Rule 7 – Reporting and Eligibility and placed in Rule 9 – Retirement and Benefits?
Response: ATRS intends to continue reorganizing its rules and an appropriate relocation of the rules concerning final average salary will be made at a later time.

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

Section V.b.3.C.ii. – Should "fair base year" be "fair base salary" as that term was changed in Ark. Code Ann. § 24-7-736(c)(2)(B), as amended by Act 279 of 2021, § 31? **RESPONSE:** Yes. This change has been made.

The proposed effective date is June 1, 2022.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the System. Further authority for the rulemaking can be found in Ark. Code Ann. § 24-7-202(17)(B)(ii), as amended by Act 691 of 2021, § 1, and Ark. Code Ann. § 24-7-507, as amended by Act 691, § 2, which require the Board to promulgate rules for the implementation of Ark. Code Ann. §§ 24-7-202(17)(B)(i) and 24-4-507, both of which concern youth participants in summer work programs. The proposed changes include those made in light of the following acts:

Act 220 of 2021, sponsored by Representative John Maddox, which amended the law concerning the compelling of payments from a delinquent employer under the Arkansas Teacher Retirement System;

Act 221 of 2021, also sponsored by Representative John Maddox, which amended the law concerning the final average salary and credited service under the Arkansas Teacher Retirement System; and

Act 691 of 2021, sponsored by Representative Reginald Murdock, which amended certain provisions of Title 24 of the Arkansas Code concerning retirement and pensions; concerned the membership of participants in summer youth work programs in the Arkansas Teacher Retirement System; and amended the definition of "employee."

d. SUBJECT: ATRS Rule 8 – Purchases and Refunds

DESCRIPTION: The Arkansas Teacher Retirement System ("System") proposes changes to its Rule 8: Purchases and Refunds ("Rule 8"). The purpose of the changes is to amend Rule 8 in accordance with legislation enacted during the Regular Session of 2021 and to redraft current provisions for clarity and to correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate. The amendments to Rule 8 are necessary for the proper operation and administration of the System.

Changes to Rule 8 include the following:

- Rule 8 currently provides that only an active member may purchase domestic federal service credit. Acts 2021, No. 279 amended the law to provide that both active and inactive members may purchase domestic federal service credit. Rule 8 is being amended to reflect the amendment to the law in Acts 2021, No. 279.

- Acts 2021, No. 279 amended references to "interest" to "regular interest" as appropriate. Rule 8 is being amended to correspond with Acts 2021, No. 279 by referring to "regular interest" instead of "interest" as appropriate.

- Rule 8 currently provides that A.C.A. § 24-7-201 et seq. permits members to purchase various types of service and credit that service to the member under certain circumstances. For clarity, Rule 8 is being amended to add additional rules concerning the various types of purchasable service and when purchased service may be credited to a member in the System.

- Rule 8 is being amended to redraft current provisions for clarity and correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate.

After the public comment period, language was amended or added that:

- Clarifies that free military service will be credited to a member's account on a pro-rated basis if the member has both contributory and noncontributory service;
- Corrects the list numbering for Section (III)(c)(1) of the proposed rule;
- Removes "and" from between Section (III)(h)(2)(A)(i)(b) and Section (III)(h)(2)(A)(i)(c) of the proposed rule;
- Provides that a full year salary shall be calculated by dividing each partial year's service percentage into each partial year's salary;
- Appropriately references "account" and "accountant" as necessary;
- Clarifies when the Arkansas Teacher Retirement System will refund interest; and
- Adds additional rules concerning the overpayment of member and employer contributions.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on January 14, 2022. The System provided the

following summary of the comments that it received and its responses thereto:

1. *Page 1, Section (I)(d).*
ATRS Staff Comment: Is the reference to the "United States Department of State" correct?
Response: Yes.

2. *Page 2, Section (I)(e)(1)(B)(ii).*
ATRS Staff Comment: Should there be an "and" at end of Section (I)(e)(1)(B)(ii)?
Response: Yes. This conforms with the style format of the Code of Arkansas Rules.

3. *Page 2, Section (II)(a).*
ATRS Staff Comment: Should a rule providing, "If the member has both contributory and noncontributory service, free military service will be credited to the member's account on a prorated basis," be included in this section?
Response: Yes. The appropriate changes have been made.

4. *Page 5, Section (III)(c)(1).*
ATRS Staff Comment: Is the list numbering for Section (III)(c)(1) correct?
Response: No. The appropriate changes have been made.

5. *Page 8, Section (III)(h)(2)(A)(i)(b) and (c).*
ATRS Staff Comment: Should there be an "and" between Section (III)(h)(2)(A)(i)(b) and Section (III)(h)(2)(A)(i)(c)?
Response: No. The appropriate change has been made.

6. *Page 9, Section (III)(i)(1).*
ATRS Staff Comment: To be consistent with the other types of purchases in Rule 8, under the Federal Retirement Service, should "active" be removed from "An active member may purchase…"?
Response: No. The proposed rule aligns with the current provisions of Ark. Code Ann. § 24-1-107.

7. *Page 10, Section (IV)(a).*
ATRS Staff Comment: Should a rule requiring members to purchase service no later than one (1) month before the member's effective date of retirement be included?
Response: No. Legislative amendments appear to be required before the commentator's suggestion could be included in the proposed rules.

8. *Page 10, Section (IV)(a).*
ATRS Staff Comment: Should a rule prohibiting a member from purchasing service unless the member is vested be included?
Response: No. Legislative amendments appear to be required before the commentator's suggestion could be included in the proposed rules. Additionally, as purchasing service earlier reduces the purchase price, adopting the commentator's suggestion would prevent a member from being able to purchase service at the cheapest cost possible.

9. *Page 10, Section (IV)(a).*
ATRS Staff Comment: Should a rule prohibiting a member from purchasing service unless the member meets the requirements for having the purchase service included in the calculation of the member's benefits be included?
Response: No. Legislative amendments appear to be required before the commentator's suggestion could be included in the proposed rules. Additionally, as purchasing service earlier reduces the purchase price, adopting the commentator's suggestion would prevent a member from being able to purchase service at the cheapest cost possible.

10. *Page 11, Section (IV)(c)(1).*
ATRS Staff Comment: Section (IV)(c) relates to the way the purchase is calculated. Do we need to define the year? Once a year has closed?
Response: No, the year does not need to be defined. No changes have been made.

11. *Page 12, Section (IV)(c)(6).*
ATRS Staff Comment: This deals with calculation. I don't understand why we would not use the correct salary or service reflected on a member's history if it was corrected through a history adjustment.
Response: The proposed rule provides an accurate and fair method for calculating actuarial cost for service to be purchased. No changes have been made.

12. *Page 14, Section (IV)(d)(4)(E).*
ATRS Staff Comment: When would Section (IV)(d)(4)(E) come into play?
Response: Ark. Code Ann. § 24-7-612(b)(2) provides that if a member has not agreed to a reasonable payment schedule for a service credit purchase on or before June 30, 2012, the member's payments, if any, shall be returned to the member without interest on the member's payments. Therefore, Section (IV)(d)(4)(E) would likely come into play if there was a legislative change to Ark. Code Ann. § 24-7-612(b)(2) or another statute that required a refund of interest in this situation. Appropriate changes have been made to clarify when the Arkansas Teacher Retirement System ("ATRS") would refund interest.

13. *Page 15, Section (V)(b).*
ATRS Staff Comment: Does this section address the termination of refunds? If yes, should this section be removed and placed in Rule 6 – Membership Rules or Rule 7 - Reporting and Eligibility?
Response: This section addresses a refund of member contributions and employer contributions. ATRS intends to continue reorganizing its rules and an appropriate relocation of Section (V)(b) will be made at a later time. No changes have been made.

14. *Page 15, Section (V)(b).*
ATRS Staff Comment: Should additional rules concerning the documentation of refunds or forfeitures of de minimis amounts owed to an employer be included in this section?
Response: Yes. Appropriate changes have been made.

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

(1) SectionIV.c.5 – This rule appears to be premised on current section II.D. Is the calculation the same? The current rule seems to provide that the percentage is divided *into* the partial year's salary (salary ÷ percentage or salary/percentage), while the proposed rule seems to provide that the percentage is divided *by* salary (percentage ÷ salary or percentage/salary). **RESPONSE:** The calculation has not changed. The percentage should be divided into the partial year's salary (salary ÷ percentage or salary/percentage). This change has been made.

(2) Section IV.d.2.D. – In the third line, should the terms "account" and "accountant" be switched? **RESPONSE:** Yes. This change has been made.

The proposed effective date is June 1, 2022.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the System. The proposed changes include those made in light of Act 279 of 2021, sponsored by Representative Les Warren, which made technical corrections to Title 24 of the Arkansas Code concerning the Arkansas Teacher Retirement System.

e. **SUBJECT: ATRS Rule 9 – Retirement and Benefits**

DESCRIPTION: The Arkansas Teacher Retirement System ("System") proposes changes to its Rule 9: Retirement and Benefits ("Rule 9"). The purpose of the changes is to amend Rule 9 in accordance with legislation enacted during the Regular Session of 2021 and to redraft current provisions for clarity and to correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate. The amendments to Rule 9 are necessary for the proper operation and administration of the System.

Changes to Rule 9 include the following:

- Acts 2021, No. 190 amended the law to add an obvious or documented error resulting in an understatement of a member's salary by an employer or the System as an exception to the five-year look-back period rule. Rule 9 is being amended to provide that actions affecting benefit rights shall not be corrected or adjusted further than the five-year look-back period unless a manifest injustice has occurred or an exception exists under A.C.A. § 24-7-205(c).

- Acts 2021, No. 223 amended the law to clarify procedures and deadlines concerning the disability retirement application process under the System. Additionally , Acts 2021, No. 223 amended the law to provide that a member whose initial disability retirement application is denied may request a second review if the medical committee finds that the member is ineligible to receive disability retirement benefits. Rule 9 is being amended to reflect the amendment to the law in Acts 2021, No. 223.

- Acts 2021, No. 279 amended the law to provide that an annuity may begin earlier than July 1 if the Board of Trustees of the System adopts by rule or resolution an earlier beginning date for members whose retirement will not result in a reduction of classroom teachers. Rule 9 is being amended to reflect the amendment to the law in Acts 2021, No. 279.

- Rule 9 refers to "participating employer" when "employer'' or "covered employer" as defined in A.C.A. § 24-7-202(17) is intended. Rule 9 is being amended to use the term "employer" or "covered employer" instead of "participating employer" as appropriate. Corresponding amendments were made in Acts 2021, No. 279.

- Rule 9 is being amended to clarify that a member may designate a dependent child as a replacement Option A beneficiary if the member initially designated his or her spouse as the Option A or Option B beneficiary and the member's spouse predeceases the member after the member retires.

- Additionally, Rule 9 is being amended to clarify that a disability retiree's surviving spouse shall be subject to the provisions of A.C.A. § 24-7-710(b) generally and A.C.A. § 24-7-710(b)(1)(B) specifically under certain circumstances.

- Finally, Rule 9 is being amended to correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate.

After the public comment period, language was amended or added that:

- Provides that the Board of Trustees of the System shall modify the standard multipliers for credited service of ten (10) years as necessary to maintain actuarial soundness;
- Clarifies that the greater of either member contributions or the T-DROP residue will be refunded;
- Clarifies submission deadlines with regard to applications for retirement;
- Strikes language in Section (IV)(d) of the proposed rule that was intended to be stricken;
- Revises the sentence structure of Section (VI)(a)(3), Section (VI)(a)(4), Section (VI)(b)(3)(B)(i), and Section (VI)(b)(3)(B)(ii) of the proposed rule for clarity;
- Clarifies that a member may reapply for disability retirement if the member's application for disability retirement is considered rescinded and the member is eligible to reapply;
- Changes "member" to "retiree" as appropriate;
- Provides that a retiree's disability retirement will be terminated immediately and the retiree will become an active member if the retiree expresses the intent to return to work for more than eighty (80) days with a termination and status sheet or membership data form;
- Changes "on and after" to "before" in Section (VI)(c)(2)(A)(i) of the proposed rule in accordance with Acts 2021, No. 223;
- Changes "send/return" to "return" in Section (VI)(c)(5) of the proposed rule;
- Provides that a retiree will begin receiving regular retirement benefits if the retiree attains fifty-seven (57) years of age in the month the retiree's disability retirement benefits become effective;

- Clarifies that a member may reapply for disability retirement if the member is active and eligible for disability retirement;
- Clarifies that a member may apply for age and service retirement or early voluntary retirement if a member is ineligible to apply for disability retirement;
- Adds a new section titled "Denial of Disability Review Retirement" for clarity;
- Clarifies when a second review may be requested;
- Provides that documentation must be provided within six (6) months unless an extension is granted by the System;
- Clarifies the authority of the Board of Trustees of the System with regard to payment errors; and
- Clarifies that before making an adjustment of benefits or pursuing a collection action, the System is required to provide notice to a person who is the subject of an adjustment if the adjustment of benefits causes a reduction of benefits.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on January 14, 2022. The System provided the following summary of the comments that it received and its responses thereto:

1. *General Comment Concerning Organization of Rule.*
ATRS Staff Comment: Can the rules concerning final average salary be removed from Rule 7 – Reporting and Eligibility and placed in Rule 9 – Retirement and Benefits?
Response: The Arkansas Teacher Retirement System ("ATRS") intends to continue reorganizing its rules and an appropriate relocation of the rules concerning final average salary will be made at a later time.

2. *General Comment Concerning Organization of Rule.*
ATRS Staff Comment: Can the definitions related to the rules concerning final average salary be removed from Rule 7 – Reporting and Eligibility and placed in Rule 9 – Retirement and Benefits?
Response: ATRS intends to continue reorganizing its rules and an appropriate relocation of the definitions concerning final average salary will be made at a later time.

3. *Page 4, Section (III)(a)(2).*
ATRS Staff Comment: In order to clarify the current benefit formula, should Section (III)(a)(2) be changed to read as follows, "The Board shall modify the standard multipliers for credited service of ten (10) years as necessary to maintain actuarial soundness (Arkansas Code § 24-7-705)"?
Response: Yes. This change has been made.

4. *Page 4, Sections (III)(b)(4)(A) and (B).*
ATRS Staff Comment: For clarity, should it be explained further that if A or B has been met the member can retire before July 1?
Response: No, the proposed rule adequately explains that a member's retirement date may begin before July 1 if the member meets the requirements of Sections (III)(b)(4)(A) and (B). No changes have been made.

5. *Page 4, Sections (III)(b)(4)(A) and (B).*
ATRS Staff Comment: For clarity, should the amount of service credit a member can retire with before July 1 be explained? It may be important to state if A or B has been met, a member will receive a full year of service credit prior to a July 1 retirement effective date. Section (III)(b)(4) does clearly state that they can retire prior to July 1 – just not how much service credit they are allowed to receive. As this is part of ATRS procedures, it may be a good idea to state that a member will be credited with 1.00 year of service if they meet A or B and have at least 160 days.
Response: No, the proposed rule explains that a member must have a full year of service credit equal or greater to one hundred sixty (160) days in a fiscal year in order to possibly have a retirement date that begins before July 1. No changes have been made.

6. *Page 6, Section (III)(f)(2).*
ATRS Staff Comment: ATRS does not refund both the member contributions and the residue from the T-DROP. Should Section (III)(f)(2) be revised to clarify that the refund would be the greater of the contributions/interest or the T-DROP balance?
Response: Yes. These changes have been made.

7. *Page 7, Section (IV)(a)(2).*
ATRS Staff Comment: Why is this different? Is there a benefit to keeping it all consistent with active members?
Response: A reason for the difference is that an inactive member does not need to file a retirement application until he or she is ready to retire. There does not appear to be a benefit to treating inactive and active members the same in this situation. No changes have been made.

8. *Page 10, Section (IV)(d)(1).*
ATRS Staff Comment: This talks of just retirement applications. Is it 6 months?
Response: This section is intended to address submission deadlines for additional documents required by ATRS with regard to age and service retirement applications and early retirement applications. Appropriate changes have been made to clarify this section.

9. *Page 11, Section (IV)(d).*
ATRS Staff Comment: On page 11, before Section (V), is all the language in black font intended to be stricken?
Response: Yes. This change has been made.

10. *Page 12, Section (VI)(a)(3).*
ATRS Staff Comment: Should Section (VI)(a)(3) be revised to read, "Disability retirement benefits shall begin on the first of the month in which a member files a disability retirement application with ATRS if the:"?
Response: Yes. This change has been made.

11. *Pages 12-13, Section (VI)(a)(4).*
ATRS Staff Comment: Should Section (VI)(a)(2) be revised to read, "If the member is still employed by a covered employer at the time the member files the disability retirement application, then, once approved by the Medical Committee and then ATRS Board, the disability retirement shall begin on the first of the month following the last day of the member's covered employment."?
Response: ATRS agrees with a majority of the commentator's suggested revision. The suggestions concerning style format were not adopted in order to comply with the style format of the Code of Arkansas Rules. The appropriate changes have been made.

12. *Page 13, Section (VI)(b)(3)(B)(i).*
ATRS Staff Comment: Should Section (VI)(b)(3)(B)(i) be changed to read, "Terminate direct or indirect employment with the covered employer by the proposed disability effective retirement date; or"?
Response: Yes. This change has been made.

13. *Pages 13-14, Section (VI)(b)(3)(B)(ii).*
ATRS Staff Comment: Should Section (VI)(b)(3)(B)(ii) be revised to read, "If the member is finalizing work for the covered employer, terminate employment no later than two (2) full calendar months after the Medical Committee's final decision."?
Response: ATRS agrees with a majority of the commentator's suggested revision. The suggestions concerning style format were not adopted in order to comply with the style format of the Code of Arkansas Rules. The appropriate changes have been made.

14. *Page 14, Section (VI)(b)(3)(C).*
ATRS Staff Comment: Should "if eligible" be added to end of the sentence in Section
(VI)(b)(3)(C)?
Response: Yes. This change has been made.

15. *Page 14, Section (VI)(b)(4)(A).*
ATRS Staff Comment: Should "member" be replaced with "retiree" in Section (VI)(b)(4)(A)?
Response: Yes. These changes have been made.

16. *Page 14, Sections (VI)(b)(5).*
ATRS Staff Comment: Should the following be included in Section (VI)(b)(5), "If retiree expresses the intent to return to work for more than 80 days with termination and status sheet or membership data form, their ATRS disability retirement will be terminated immediately and retiree will become active member."?
Response: Yes. The appropriate changes have been made.

17. *Page 14, Section (VI)(b)(5).*
ATRS Staff Comment: Should "member" be replaced with "retiree" in Section (VI)(b)(5)?
Response: Yes. These changes have been made.

18. *Page 15, Section (VI)(c)(2).*
ATRS Staff Comment: Should references to "member" be removed from Section (VI)(c)(2)?
Response: Yes. These changes have been made.

19. *Page 15, Section (VI)(c)(2)(B).*
ATRS Staff Comment: Should references to "member" be removed from Section (VI)(c)(2)(B)?
Response: Yes. These changes have been made.

20. *Page 15, Section (VI)(c)(2)(B)(i).*
ATRS Staff Comment: Should Section (VI)(c)(2)(B)(i) be revised to read, "The retiree demonstrates through an administrative or judicial confirmation of an initial active SSA claim that the claim is:"?
Response: No. The proposed rule aligns with the provisions of Ark. Code Ann. § 24-7-704. No changes have been made.

21. *Pages 15-16, Section (VI)(c)(3).*
ATRS Staff Comment: Should "member" be replaced with "retiree"?
Response: Yes. These changes have been made.

22. *Pages 15-16, Section (VI)(c)(3).*
ATRS Staff Comment: In Section (VI)(c)(3)(B), if receiving retirement benefits, the person would be a retiree. Should references to "member or retiree" be changed to "retiree"?
Response: Yes. These changes have been made.

23. *Page 16, Section (VI)(c)(3).*
ATRS Staff Comment: Should "medical committee" be replaced with "Medical Committee"?
Response: No. This suggestion does not comply with the style format of the Code of Arkansas Rules. No changes have been made.

24. *Pages 16-17, Section (VI)(c)(4).*
ATRS Staff Comment: Should references to "member or retiree" be changed to "retiree"?
Response: Yes. These changes have been made.

25. *Pages 16-17, Section (VI)(c)(4).*
ATRS Staff Comment: If receiving retirement benefits, the person would be a retiree. Should references to "member or retiree" be changed to "retiree"?
Response: Yes. These changes have been made.

26. *Page 17, Section (VI)(c)(4)(C).*
ATRS Staff Comment: Should "medical committee" be changed to "Medical Committee"?
Response: No. This suggestion does not comply with the Code of Arkansas Rules style format.

27. *Page 17, Section (VI)(c)(5).*
ATRS Staff Comment: Should "send return" be changed to "send and return"?
Response: No, the proposed rule is intended to read "return." This change has been made.

28. *Page 17, Section (VI)(c)(6).*
ATRS Staff Comment: Should Section (VI)(c)(6) be revised to read as follows?

> A. If the retiree turns fifty-seven (57) in the month their disability retirement benefit payments become effective; or
> B. Once the retiree receiving disability retirement benefit payments reaches sixty (60) years of age, the retiree shall begin receiving regular retirement benefits as if the retiree voluntarily retired under Arkansas Code § 24-7-701 and a SSA Determination letter shall not be required.

Response: Yes. The appropriate changes have been made.

29. *Page 18, Section (VI)(d).*
ATRS Staff Comment: Should "Section (VI)(d) be revised to include the following?

> Denial of Disability Retirement

1. If a member's application for disability retirement is denied and the member elects and qualifies for voluntary retirement, the member's effective retirement date shall be determined by the date the member's disability retirement application is filed.
2. If a member's application for disability retirement is denied and the member is active and eligible to apply again for disability, the member must submit a new application for disability and new medical reports.
3. If a member's application for disability retirement is denied and the member is not active and eligible to apply again for disability, the member is eligible for Age and Service Retirement benefits the month after turning 60.

Denial of Disability Review Retirement

1. If a retiree's application for disability review is denied, the member may request a one-time appeal review within six (6) calendar months from the date of initial denial.
2. The retiree must submit a written letter requesting an appeal to the ATRS director, and new medical reports.
3. The ATRS Board must approve a Board Order for the retiree to proceed with a one-time appeal case, which will be heard by the Medical Committee.
4. All disability review decisions are submitted to the ATRS Board in an order to be finalized and approved.

Response: The response to each suggestion is as follows:

Denial of Disability Retirement

a. **Response:** The suggestion and the proposed rule do not differ. No changes have been made.

1. *If a member's application for disability retirement is denied and the member elects and qualifies for voluntary retirement, the member's effective retirement date shall be determined by the date the member's disability retirement application is filed.*

a. **Response:** This comment is addressed in Section (VI)(d)(1). The suggested language does not differ from the proposed rules. No changes have been made.

2. If a member's application for disability retirement is denied and the member is active and eligible to apply again for disability, the member must submit a new application for disability and new medical reports.

a. **Response:** This comment is addressed in Section (VI)(d)(5). Ark Code Ann. § 24-7-704 does not require a member to request a second review. As such, incorporating language that requires a member to submit a new application for disability and medical reports would require legislative amendments. The proposed rule

has been revised to clarify that the member may submit another disability retirement application if the member is active and eligible for disability retirement under Ark. Code Ann. § 24-7-704.

3. If a member's application for disability retirement is denied and the member is not active and eligible to apply again for disability, the member is eligible for Age and Service Retirement benefits the month after turning 60.
a. **Response:** There is no objection to addressing this suggestion in Section (VI)(d). Appropriate changes have been made.

Denial of Disability Review Retirement
a. **Response:** For clarity, a separate section titled "Denial of Disability Review" has been added as Section (VI)(c)(5).

1. If a retiree's application for disability review is denied, the member may request a one-time appeal review within six (6) calendar months from the date of initial denial.
a. **Response:** Section (VI)(c)(5)(2) of the proposed rule addresses this comment. The proposed rule gives a member who is denied further disability benefits after a disability review by medical committee an opportunity to offer additional medical information and request that the Board of Trustees of the Arkansas Teacher Retirement System return the matter to the medical committee for reconsideration. No changes have been made.

2. *The retiree must submit a written letter requesting an appeal to the ATRS director, and new medical reports.*
a. **Response:** This suggestion relates to the suggestion immediately above. For the reasons mentioned above, no changes have been made.

3. The ATRS Board must approve a Board Order for the retiree to proceed with a one-time appeal case, which will be heard by the Medical Committee.
a. **Response:** This suggestion relates to the two (2) suggestions immediately above. For the reasons mentioned above, no changes have been made.

4. All disability review decisions are submitted to the ATRS Board in an order to be finalized and approved.
a. **Response:** This suggestion is addressed in Section (VI)(c)(5). No changes have been made.

30. *Page 18, Section (VI)(d)(2).*
ATRS Staff Comment: Is the option for a second review only available to first time disability applicants?
Response: A second review is only available in the case of an initial disability application. Section (VI)(c)(4)(D) has been added and Section (VI)(d)(2) has been revised to clarify that a member may request a second review of only his or her initial disability application.

31. *Page 26, Section (VIII)(a)(1).*
ATRS Staff Comment: Should "may" be changed to "shall'? If not, how does the agency determine which option to pursue?
Response: Yes. This and other appropriate changes have been made to align Section (VIII)(a)(1) with Ark. Code Ann. § 24-7-205.

32. *Page 27, Section (VIII)(c)(1).*
ATRS Staff Comment: Does Section (VIII)(c)(1) only apply if the adjustment of benefits causes a reduction?
Response: Yes. Section (VIII)(c)(1) has been revised to clarify that the rule applies only if the adjustment of benefits causes a reduction. Additional revisions have been made in accordance with Ark. Code Ann. § 24-7-205.

33. *Page 26, Section (VIII)(f).*
ATRS Staff Comment: For clarification, as contributions has a different meaning in reporting, does Section (VIII)(f) refer to waiving interest on payroll benefits paid in error?
Response: No, this section does not refer to payroll benefits paid in error. No changes have been made.

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

(1) Section VI.c.2.A.i. – Should "on or after" be "before" in accord with Ark. Code Ann. § 24-7-704(b)(3)(A)(*i*), as amended by Act 223 of 2021, § 1? **RESPONSE:** Yes. This change has been made.

(2) Section Vi.d.2. – The rule seems to provide that documentation must be filed within six months; however, Ark. Code Ann. § 24-7-704(a)(1)(H)(*iii*), as amended by Act 223, § 1, seems to provide that a member has six months, unless an extension is granted by the System. Is there a reason the rule does not reference any extension? **RESPONSE:** The Arkansas Teacher Retirement System agrees with the commentator's reading of Ark. Code Ann. § 24-7-704(a)(1)(H)(iii) and has revised the proposed rule to provide that a member has six (6) months to file documentation with the system unless an extension is granted by the system.

The proposed effective date is June 1, 2022.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the System. The proposed changes include those made in light of the following acts:

Act 190 of 2021, sponsored by Representative Brian Evans, which amended the law concerning member contributions, service credit, correction of errors, and termination of membership under the Arkansas Teacher Retirement System;

Act 223 of 2021, sponsored by Representative Stu Smith, which amended the law concerning disability retirement under the Arkansas Teacher Retirement System; and

Act 279 of 2021, sponsored by Representative Les Warren, which made technical corrections to Title 24 of the Arkansas Code concerning the Arkansas Teacher Retirement System.

f. SUBJECT: ATRS Rule 10 – T-DROP and Return to Service

DESCRIPTION: The Arkansas Teacher Retirement System ("System") proposes changes to its Rule 10: T-DROP and Return to Service ("Rule 10"). The purpose of the changes is to amend Rule 10 in accordance with legislation enacted during the Regular Session of 2021 and to redraft current provisions for clarity and to correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate. The amendments to Rule 10 are necessary for the proper operation and administration of the System.

Changes to Rule 10 include the following:

- Rule 10 currently provides that the final average salary that is used to determine the retirement benefit of a participant in the Teacher Deferred Retirement Option Plan shall be the final average salary of the reciprocal system furnishing the highest final average salary at the time of plan participant's retirement. Acts 2021, No. 221 amended the law to provide that the final average salary for a member with reciprocal service shall be the final average salary of the System or a reciprocal system in which the member has at least

two (2) years of service credit, whichever furnishes the highest final average salary at the time of the member's retirement. Rule 10 is being amended to reflect the amendment to the law in Acts 2021, No. 221.

- Rule 10 currently provides that the plan interest rate and the ten (10) year plus plan interest applied to a member's Teacher Deferred Retirement Option Plan account shall be adopted by resolution of the Board of Trustees of the System prior to the beginning of the fiscal year. Acts 2021, No. 279 amended the law to provide that the plan interest rate and the ten (10) year plus plan interest shall be adopted by resolution of the Board of Trustees of the System by the end of the first quarter of the fiscal year in which the respective interest rate shall apply. Additionally, Acts 2021, No. 279 provides that the plan interest rate and the ten (10) year plus plan interest rate adopted by resolution of the Board of Trustees of the System shall apply to subsequent fiscal years following the first quarter of the fiscal year in which the respective interest rates were adopted unless modified by the Board of Trustees of the System. Rule 10 is being amended to reflect the amendment to the law in Acts 2021, No. 279.

- Rule 10 currently provides that the remainder of a Teacher Deferred Retirement Plan account plan distribution shall be annuitized with the Arkansas Teacher Retirement System according to the distribution options in A.C.A. § 24-7-1308. Acts 2021, No. 279 repealed the distribution option provisions in A.C.A. § 24-7-1308. Rule 10 is being amended to provide that the remainder of a Teacher Deferred Retirement account plan distribution shall be annuitized with the System or received as a lump-sum distribution.

- Rule 10 is being amended to redraft current provisions for clarity and correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate.

After the public comment period, language was amended or added that clarifies that on call availability shall not be used for monthly plan deposits.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on January 14, 2022. The System provided the following summary of the comments that it received and its responses thereto:

1. *Page 4, Section (III)(a)(4).*
ATRS Staff Comment: Should "for deposits" be added?
Response: Yes. The appropriate change has been made.

2. *Page 6, Section (III)(e)(2)(B)(i)(a).*
ATRS Staff Comment: Is a report or other control currently used or needed to ensure that Section (III)(e)(2)(B)(i)(a) occurs?
Response: The Arkansas Teacher Retirement System ("ATRS") will implement procedures as necessary to verify that plan participant earns at least one hundred sixty (160) days of service credit in a fiscal year and does not terminate employment, retire, or die during the fiscal year.

3. *Pages 6-7, Section (III)(e)(2)(B)(ii).*
ATRS Staff Comment: This will need a programming change.
Response: ATRS will implement any programming changes as necessary.

4. *Page 9, Section (III)(e)(4)(B)(i).*
ATRS Staff Comment: How will a member who leaves on the 29th of the month be handled?
Response: A member who leaves on the 29th of the month will have his or her monthly plan deposits suspended.

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

Section III.e.2.B.ii. – It looks like the number of days of service credit has changed for both first and fourth quarters (from 5 to 15) and second and third (from 15 to 25). What prompted these changes? **RESPONSE:** The changes are intended to create more equity in the treatment of plan participants who are either full-time employees or part-time employees. The proposed rule will reduce the likelihood that a plan participant who is a part-time employee will receive plan deposits for twelve (12) months when the plan participant has worked only forty (40) days out of the year. The proposed rule will require a plan participant who is a part-time employee to work at least eighty (80) days out of the year, half of the one hundred sixty (160) days required for plan participants who are full-time employees, in order to receive plan deposits for twelve (12) months. No changes have been made.

The proposed effective date is June 1, 2022.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher

Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the System. Further authority for the rulemaking can be found in Ark. Code Ann. § 24-7-1301(c), which provides that the Board of the System may promulgate rules necessary for the orderly administration of the Teacher Deferred Retirement Option Plan, including without limitation the rules for eligibility for continuance of deposits for part-time employment. The proposed changes include those made in light of Act 221 of 2021, sponsored by Representative John Maddox, which amended the law concerning the final average salary and credited service under the Arkansas Teacher Retirement System, and Act 279 of 2021, sponsored by Representative Les Warren, which made technical corrections to Title 24 of the Arkansas Code concerning the Arkansas Teacher Retirement System.

g. **SUBJECT: ATRS Rule 11 – Survivors and Domestic Relations Orders**

DESCRIPTION: The Arkansas Teacher Retirement System ("System") proposes changes to its Rule 11: Survivors and Domestic Relations Orders ("Rule 11"). The purpose of the changes is to amend Rule 11 in accordance with legislation enacted during the Regular Session of 2021 and to redraft current provisions for clarity and to correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate. The amendments to Rule 11 are necessary for the proper operation and administration of the System.

Changes to Rule 11 include the following:

- Acts 2021, No. 279 amended the law to clarify the pro rata formula to be used to calculate the residue of a participant in the Teacher Deferred Retirement Option Plan. The formula is required to be used if the participant's residue would have been paid under A.C.A. § 24-7-709 except for the provisions of A.C.A. § 24-7-1310(c). Rule 11 is being amended to incorporate this amendment to the law.

- Rule 11 does not currently address whether a dependent child who qualifies under A.C.A. § 24-7- 710(c)(2)(B)(i) to receive survivor annuity benefit payments may have his or her benefit payments temporarily suspended when he or she is called to active military duty or active military training. Rule 11 is being amended to clarify that a dependent child who qualifies under A.C.A. § 24-7-710(c)(2)(B)(i) to receive survivor annuity benefit payments and is called to active military duty or active military training may have

his or her benefit payments temporarily suspended and resumed at a later time if certain requirements are met.

- Rule 11 is being amended to redraft the current provisions for clarity and correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate.

After the public comment period, language was amended or added that:

- Revises the definition of a "qualifying member" to align with Ark. Code Ann. §§ 24-7-720(a)(1)(B) and 24-7-720(b)(1);
- Clarifies that a surviving spouse must be the only designated primary residue beneficiary in order for the surviving spouse to elect an Option A survivor annuity;
- Changes "physicalyy" to "physically"; and
- Add clarifications and additional rules concerning benefit payments made pursuant to a qualified domestic relations order.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on January 14, 2022. The System provided the following summary of the comments that it received and its responses thereto:

1. *Pages 6-7, Sections (III)(d)(2) and (3).*
ATRS Staff Comment: Do the provisions of Sections (III)(d)(2) and (3) permit a member's surviving spouse to elect Option A survivor annuity benefits if the member designates one (1) or more alternative residue beneficiaries as primary beneficiaries of the member's residue?
Response: No. The proposed rule has been revised to clarify that in order for a member's surviving spouse to elect Option A survivor annuity benefits, the surviving spouse must be the only designated primary residue beneficiary.

2. *Page 19, Section (VII).*
ATRS Staff Comment: Should this section include additional rules concerning the responsibility for payments that are not received by a party under a qualified domestic relations order?
Response: Yes. Appropriate changes have been made.

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

(1) Section I.g.1.B.iii. – The proposed rule appears to be premised on Ark. Code Ann. § 24-7-720(a)(1)(B), which provides that the member have "ten (10) or more years of actual service." I'm not seeing the language contained in the rule that the service be "for the year immediately

preceding his or her death." Is there a reason that the language has been included in the rule? **RESPONSE:** No. The Arkansas Teacher Retirement System ("ATRS") agrees that the language referenced by the commentator should not be included. This change has been made.

(2) Section I.g.1.C.ii. – The proposed rule appears to be premised on Ark. Code Ann. § 24-7-720(b)(1). Should "including actual service" preface "for the year immediately preceding his or her death"? **RESPONSE:** Yes. This change has been made.

(3) Section IV.C.3.b. – There appears to be a typo in the first line – "physicalyy." **RESPONSE:** Yes. This change has been made.

The proposed effective date is June 1, 2022.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the System. Further authority for the rulemaking can be found in Ark. Code Ann. § 24-7-1301(c), which provides that the Board of the System may promulgate rules necessary for the orderly administration of the Teacher Deferred Retirement Option Plan, including without limitation the rules for eligibility for continuance of deposits for part-time employment. The proposed changes include those made in light of Act 279 of 2021, sponsored by Representative Les Warren, which made technical corrections to Title 24 of the Arkansas Code concerning the Arkansas Teacher Retirement System.

3. DEPARTMENT OF AGRICULTURE (Patrick Fisk, Wade Hodge, item a; Chris Colclasure, Tate Wentz, Wade Hodge, item b)

a. SUBJECT: State Meat Inspection Program Rules

DESCRIPTION: The Department of Agriculture proposes its Rules of the Arkansas Meat Inspection Program. Act 418 of 2021 ("Act") moved the authority for a State Meat Inspection Program from the Department of Health to the Department of Agriculture ("Department") and requires the Department to conduct inspections for meat and meat products manufactured for intrastate sale. The Act requires the Secretary of Agriculture to promulgate rules necessary for the administration of the Program. The Department has developed the proposed Meat Inspection

Rules to satisfy the legal requirements under the Act and the Federal laws and rules regarding meat inspection, 21 U.S.C. § 601 et seq., 7 U.S.C. §§ 1902 and 1906, and 9 C.F.R. Chapter III, Subchapters A and E (Federal law).

While meat inspection is mostly performed by the United States Department of Agriculture – Food Safety and Inspection Service ("USDA"), the federal law authorizes the Department to establish a state meat inspection program, provided that (1) program rules are "at least equal to" the requirements of the federal act and (2) the USDA approves a plan submitted by the Department to the USDA to administer the program. Meat and meat-product manufacturing facilities have the option to participate in either the state or federal meat inspection program.

The proposed Meat Inspection Rules incorporate federal meat inspection laws and regulations by reference, as permitted by Act 418, which states, "[t]he rules shall be in conformity with the rules and regulations under the Federal Meat Inspection Act, 21 U.S.C. § 601 et seq." Incorporation by reference will allow for quicker USDA approval of the State program, enable the Program to integrate facilities into the Program more efficiently by utilizing the rules the facilities are already following, and avoid any potential confusion that may be created by requiring additional regulatory requirements for Arkansas facilities.

PUBLIC COMMENT: A public hearing was held on December 27, 2021. The public comment period expired that same day. The Division provided the following summary of the comments that it received and its response thereto:

Cody Burkham (Arkansas Cattlemen's Association) and Randy Radley (Griffen's Custom Processing) expressed support for the rule and thanks to the Department for getting a rule prepared in such a timely fashion and further stated that the program was very much needed and would be a great benefit to Arkansas. **RESPONSE:** The Department appreciates the comments.

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

(1) Section III.3. – The rule provides that the Department may accept or deny any application for license or exemption, but the application fee paid to the Department, if applicable, shall be refunded to the applicant. Is this only if the application is denied? **RESPONSE:** Yes. This should be changed to say "shall be refunded to the applicant if an application is denied."

(2) Section III.3. – Should the citation include reference to subsection (a) to provide "§ 20-60-212(a)(2)"? **RESPONSE:** I believe this is Section III.4, and if so, yes that should be "§ 20-60-212(a)(2)."

(3) Section V.2.D. – If the appeal affirms condemnation, the rule currently provides that the food product will be subject to "Section IV, paragraph (1)." Should this be a reference to Section V, paragraph (1), which provides for condemnation? **RESPONSE:** Yes. This should be changed to "Section V, paragraph (1)."

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the proposed rule has a financial impact, which is expected to be minimal and consists solely of the application fee.

LEGAL AUTHORIZATION: The proposed rules implement Act 418 of 2021, sponsored by Representative DeAnn Vaught, which created a State Meat Inspection Program; amended the Arkansas Meat and Meat Products Inspection Act; amended the Meat and Meat Products Certification Act; created the State Meat Inspection Program Fund; and transferred authority over meat inspection to the Department of Agriculture.

Pursuant to Arkansas Code Annotated § 20-60-206(a)(1)(A), as amended by Act 418, § 2, the Secretary of the Department of Agriculture shall promulgate rules and appoint qualified personnel as necessary to carry out the purposes or provisions of the Arkansas Meat and Meat Products Inspection Act ("Act"), Ark. Code Ann. §§ 20-60-201 to -217. The rules shall be in conformity with the rules and regulations under the Federal Meat Inspection Act, 21 U.S.C. § 601 et seq., as in effect on January 1, 2021, and with subsequent amendments of the Federal Meat Inspection Act, 21 U.S.C. § 601 et seq., unless the rules and regulations under the Federal Meat Inspection Act, 21 U.S.C. § 601 et seq., are considered by the Secretary as not to be in accord with the objectives of the Act. *See* Ark. Code Ann. § 20-60-206(a)(1)(B), as amended by Act 418, § 2. *See also* Ark. Code Ann. § 20-60-208(a)(2), as amended by Act 418, § 2 (requiring that an application fee shall be submitted with an application for inspection).

b. SUBJECT: Unpaved Roads Program Rules

DESCRIPTION: The Department of Agriculture ("Department") proposes for legislative review and approval its Unpaved Roads Program Rules. The Arkansas Unpaved Roads Program Act, Ark. Code Ann. § 14-305-101 et seq., establishes the Unpaved Roads Program ("Program"),

which allows grant funds to be given to counties for unpaved road projects that reduce or prevent the erosion of unpaved roads and the nonpoint source pollution of water bodies. The Transformation and Efficiencies Act of 2019 transferred the Program from the Rural Services Division of the Economic Development Commission to the Arkansas Natural Resources Commission ("ANRC"). Since that time, the Program has continued to operate under the rules adopted by the Rural Services Division. In the 2021 General Assembly, the legislature passed Act 901 ("Act"), which shifted from the ANRC to the Department the responsibility and authority for all unpaved road program functions, including rulemaking, determining which programs to fund, how much each project should receive, setting standards for completion of funded projects, and auditing compliance and records.

The Act specifically requires the Department to promulgate rules regarding:

1. The application process;
2. Creation and administration of an advisory committee;
3. Disbursement of grant funds;
4. Reporting required by grant recipients;
5. Evaluation and assessment of unpaved roads projects;
6. Eligible expenses; and
7. Standards for completion of projects.

PUBLIC COMMENT: A public hearing was held on January 11, 2022. The public comment period expired on January 22, 2022. The Department received no public comments.

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

(1) Section 2.3.B. – The rule seems to provide that applicants may apply for the full or partial costs of materials, equipment, and labor required, up to $75,000; however, Ark. Code Ann. § 14-305-106(b), as amended by Act 901 of 2021, § 2, provides that the Department may award a grant "for up to fifty percent (50%) of the estimated total costs." Does this mean that while the application can include the full costs, only up to 50% could be awarded? **RESPONSE:** The Department will award up to 50% of the total project cost, up to $75,000. The applicant will be required to tell us how much the costs will be for each category (labor, materials, equipment, etc.). For example, if the total project cost is $150,000, they can be awarded half that amount. If the cost of labor and equipment for that project is $75,000, the $75,000 we award may cover the total cost of labor and equipment, but would not cover any materials. So, while we can only award 50% of the entire costs of the project, our award may cover the entire costs for one or more of the expense categories.

(2) Section 3.4.A. – The proposed rule permits the Department to institute corrective action, "including but not limited to a warning letter" to resolve compliance issues. What other corrective action does the Department envision might be taken? **RESPONSE:** Section 3.4.B. identifies other alternatives if the corrective action is not achieved through a warning letter. Alternative actions include "may withhold, reduce, or de-obligate the grant recipient's program grant monies."

(3) Section 3.4.C. – The proposed rule allows the Department to "take other action as appropriate to recapture grant monies expended in contravention to this Title." What other action is envisioned by the Department? **RESPONSE:** This would apply only in worst-case scenarios, but other action might include collection actions, civil suit to enforce the terms of a grant agreement, requesting or referring the case to Legislative Audit, etc.

(4) I also wondered if "Title" as used in Section 3.4.C. was intended. **RESPONSE:** "This Title" should be replaced with "these rules." The rule was initially written when the program was under the Natural Resources Commission and their rules are organized in titles, but that no longer applies since the program was moved to the Department. A new markup and clean copy are included to indicate this correction.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Department states that the proposed rules have no financial impact:

> There will be no financial impact because the program is already administered by a Departmental agency. Act 901 just shifted the administrative and rulemaking responsibilities to the Department level instead of one of its commissions.

LEGAL AUTHORIZATION: The proposed rules implement Act 901 of 2021, sponsored by Senator Missy Irvin, which amended the Arkansas Unpaved Roads Program Act, transferred duties to the Department of Agriculture ("Department"), and authorized the Department to promulgate rules and award grant funds. Pursuant to Arkansas Code Annotated § 14-305-110, as amended by Act 901, § 5, the Department shall promulgate rules to implement and administer the Arkansas Unpaved Roads Program Act ("Act"), Ark. Code Ann. §§ 14-305-101 to -110, including without limitation rules regarding: the application process; the creation and administration of an advisory committee to assist the Department in evaluating applications and making funding determinations; the disbursement of grant funds; the reporting required by counties that receive grant funds under the Act; the evaluation and assessment of

unpaved road projects approved for grants; the expenses that are eligible for grant funds; and the standards a county is required to meet in completing an unpaved road project.

4. DEPARTMENT OF COMMERCE, ARKANSAS ECONOMIC DEVELOPMENT COMMISSION (Jim Hudson, Renee Doty)

a. SUBJECT: Consolidated Incentive Act of 2003 Rule

DESCRIPTION: The Arkansas Economic Development Commission ("AEDC") is promulgating a revision to the administrative rule for the Consolidated Incentive Act to conform the rule to changes by Act 911 of 2021. The existing rule outlines the administration of the incentive programs authorized under the Act by AEDC.

Changes to the rule include the following:

- A company would be eligible if they filed an InvestArk application with AEDC between June 22-29, 2017, and was approved by the executive director.
- The project may have an additional two years to incur project costs if a positive return on taxpayer investment is met.
- The executive director will determine if the positive return is greater than the amount of retention tax credits that are attributable to the extension period and if so may approve the extension period.
- The agency will calculate the return based on documentation from the company stating:
  (a) Enhanced or retained productivity in dollars;
  (b) Enhanced or retained revenue, sales, or output in dollars;
  (c) Enhanced or retained employee compensation expressed in dollars;
  (d) Enhanced or retained taxes paid expressed in dollars; and
  (e) Any other quantifiable information and data that AEDC requests to determine a reasonable proof of a positive return to state taxpayers.
- The maximum amount of tax credits that may be used by a qualified applicant in any fiscal year for the extension period is equal to $750,000.
- The tax credits earned may be taken beginning on or after July 1, 2023.
- The proposed amended rule makes various technical corrections to conform the rule to new Code of Arkansas Rules style formatting.

PUBLIC COMMENT: A public hearing was held on January 28, 2022. The public comment period expired on January 31, 2022. The

Commission provided the following summary of the comment that it received and its response thereto:

Commenter's Name: Matthew C. Boch
Commenter's Business/Agency: Wright, Lindsey & Jennings, LLP
Summary of Comment: The proposed rule reads "The maximum amount of tax credits that may be used in any fiscal year for this extension period is seven hundred fifty thousand dollars ($750,000)." Suggest clarifying language that the limit is per applicant, consistent with the statute: "The maximum amount of tax credits that may be used by a qualified applicant in any fiscal year for this extension period is seven hundred fifty thousand dollars ($750,000)."
Agency's Response to Comment: The agency will consider the recommendation and determine if a clarification is necessary in the proposed rule.
Were any changes made to the Proposed Rules as a result of this Comment? If so, please describe.
Yes, the Agency reviewed the submitted comment and incorporated the recommended language into the proposed amended rule to clarify the maximum cap allowed under the Act per qualified applicant.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 15-4-2710(1), the Arkansas Economic Development Commission shall administer the Consolidated Incentive Act of 2003 ("Act"), Ark. Code Ann. §§ 15-4-2701 to -2712, and in addition to powers and duties mentioned in other laws may promulgate rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., necessary to carry out the provisions of the Act. The proposed changes include revisions made in light of Act 911 of 2021, sponsored by Senator David Wallace, which amended the Act, amended the definition of "project costs" under the Act, and extended the time period during which project costs may be incurred for certain retention tax credit projects.

b. SUBJECT: Digital Product and Motion Picture Industry Development Act

DESCRIPTION:
Background:
Act 797 of 2021 changed the existing rebate program to allow the incentive authorized under the Digital Product and Motion Picture Industry Development Act, administered by the Arkansas Economic

Development Commission ("AEDC"), to be taken as either a rebate or a tax credit. The proposed amended rule outlines the process for a company to receive the incentive as a tax credit. A company that opts to receive the incentive as a tax credit must meet the same standards and requirements as the current rebate option.

Key Points:

- The amended rule allows the incentive authorized under the existing Digital Product and Motion Picture Industry Development Act to be taken as a rebate or as a tax credit.
- The amended rule allows an enhanced incentive of 10% of certain qualifying expenditure related to veterans, which may be authorized by the executive director AEDC. Those expenditures are:
    - Salaries and wages of a person who meets the definition of "veteran," as stated in the amended rules.
    - Expenditures paid for production costs to a business who meets the definition of "veteran-owned small business" stated in the proposed amended rule.
- A company must submit a program application stating if it opts to receive the incentive as a rebate or tax credit.
- The tax credit has a carry-forward period of five years and may be transferred or sold by the company.
- The rule outlines the process by which a taxpayer may transfer or sell the tax credits.
- AEDC may issue up to $4,000,000 in tax credits per fiscal year.
- The rule outlines the mechanism to issue supplemental tax credits in excess of the $4,000,000 cap if the Secretary of Commerce and the Secretary of Finance and Administration jointly approve an application for tax credits that would exceed the set cap.
- Supplemental credits may be considered and approved by the Secretaries if a project's positive cost-benefit analysis demonstrates that the issuance of additional credits would be in the prudent interests of the State.
- Any supplemental credits issued shall not exceed the amount in the Arkansas Supplemental Digital Product and Motion Picture Industry Development Trust Fund created by Act 797 of 2021.
- The rule extends the sunset to apply for an incentive under the program to 2032.
- The proposed amended rule makes various technical corrections.

PUBLIC COMMENT: A public hearing was held on January 28, 2022. The public comment period expired on February 5, 2022. The Commission received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Commission indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas Economic Development Commission has authority to promulgate appropriate rules to carry out the intent and purposes of the Digital Product and Motion Picture Industry Development Act of 2009 ("Act") and to prevent abuse. *See* Ark. Code Ann. § 15-4-2010. The proposed rules implement Act 797 of 2021, sponsored by Representative Charlene Fite, which authorized tax credits or rebates to be issued under the Act and extended the sunset date for the Act.

c. SUBJECT: Railroad Modernization Act of 2021

DESCRIPTION:

Purpose

The Arkansas Economic Development Commission ("AEDC") is promulgating an administrative rule for the Railroad Modernization Act of 2021. This proposed rule will replace an existing emergency rule that will expire on May 28, 2022.

Background

Act 967 of 2021 created the Railroad Modernization Act. The Act authorizes eligible taxpayers to claim an income tax credit in the amount of 50% of railroad track maintenance expenditures. The maximum amount of the tax credit is $5,000 per mile of track owned or leased by the taxpayer within the state. The Act is retroactively effective for tax years beginning on January 1, 2021. The Department of Commerce is required to promulgate rules to verify the expenditures and certify the amount of the expenditure that qualify for the tax credit. The Department of Finance and Administration ("DFA") has the discretion to promulgate rules to enable and certify the amount of the credit.

Key Points

- The proposed rule outlines the process by which the Department of Commerce will verify and certify an eligible taxpayer's railroad track maintenance expenditures to claim the income tax credit allowed under the program.
- An eligible taxpayer may seek pre-approval of railroad track maintenance expenditures prior to incurring the expenses by submitting a pre-approval application to the Department.
- To receive a certificate of verification of railroad track maintenance expenditures a taxpayer shall submit a verification of qualified expenditures to the Department.

- The company must submit the following to the Department to receive a verification certificate:
    - The status of the railroad as an eligible taxpayer;
    - That the project work has been completed;
    - The miles of track owned or leased in the state; and
    - Any other information the Department may request to confirm verification.
- The verification of expenditures form must be submitted to the Department no later than 90 days following the end of the tax year in which the expenditures were incurred.
- The Department will review and verify documentation submitted by the taxpayer and issue a certificate setting the amount of expenditures verified as eligible to be claimed for a credit under the program.
- A taxpayer shall submit the certificate of verification issued by the Department to DFA to claim the tax credit.

PUBLIC COMMENT: This rule was filed on an emergency basis and was reviewed and approved by the Executive Subcommittee on January 12, 2022. With respect to permanent promulgation, a public hearing was held on March 4, 2022. The public comment period expired on March 6, 2022. The agency received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: These rules implement Act 967 of 2021, sponsored by Representative Jeff Wardlaw, which created the Railroad Modernization Act of 2021 and allowed an income tax credit for certain railroad track maintenance expenditures. Pursuant to the Act, the Department of Commerce has authority to adopt rules to:
(1) Permit verification of an eligible taxpayer's railroad track maintenance expenditures for purposes of claiming the income tax credit allowed under this subchapter;
(2) Provide for the approval of railroad track maintenance expenditures before a project commences; and
(3) Provide for a certificate of verification upon the completion of a project that uses railroad track maintenance expenditures. *See* Ark. Code Ann. § 26-51-2804(b).

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

a. SUBJECT: Licensure of Certain Individuals

DESCRIPTION: This rule requires the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services to grant licensure to those individuals who fulfill the Arkansas requirements for licensure and who hold a Federal Form I-766 United States Citizenship and Immigration Services-issued Employment Authorization Document, known popularly as a "work permit."

The proposed rule:
- Defines "licensure"; and
- Requires the Board to grant licensure to individuals who meet the licensure requirements and who also hold a work permit.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on November 23, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services is the state licensing authority for embalmers, funeral directors, and crematory retort operators. Ark. Code Ann. § 23-61-1103(a)(3)-(7). The Board may promulgate rules "to establish qualifications necessary" to engage in these professions and "to enforce and administer laws governing" these professions. Ark. Code Ann. § 23-61-1103(a)(3)(D), (5).

This rule implements Act 746 of 2021. The Act, sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals holding a federal work permit. Temporary language in the Act required all occupational and professional licensing entities to promulgate rules necessary for the Act's enforcement. *See* Act 746, § 2(a).

b. SUBJECT: Fee Waivers for Certain Individuals

DESCRIPTION: This proposed rule requires the Board to waive the initial licensing fee for those individuals who are covered by the

Workforce Expansion Act of 2021, and who apply to the Board for an individual license.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on November 23, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services is the state licensing authority for embalmers, funeral directors, and crematory retort operators. Ark. Code Ann. § 23-61-1103(a)(3)-(7). The Board may promulgate rules "to establish qualifications necessary" to engage in these professions and "to enforce and administer laws governing" these professions. Ark. Code Ann. § 23-61-1103(a)(3)(D), (5).

This rule implements Act 725 of 2021. The Act, sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary to implement its provisions. *See* Ark. Code Ann. § 17-5-105(2), *as created by* Act 725.

6. DEPARTMENT OF EDUCATION, COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION (Lori Freno)

a. SUBJECT: Rules Governing the Academic Facilities Catastrophic Program

DESCRIPTION: The Department of Education's Commission for Arkansas Public School Academic Facilities and Transportation proposes changes to its Rules Governing the Academic Facilities Catastrophic Program. These rules were amended to update definitions to bring them in line with existing rules or law and to eliminate an unnecessary definition. Appendix "A" also was removed, which was a nonregulatory guidance concerning the catastrophic program application process, and the application process was simplified. Other amendments are technical and stylistic.

After the public comment period, non-substantive changes were made. The definition of ADM in Section 3.04 of the rules was corrected to refer

to Ark. Code Ann. § 6-20-2502(3), which is contained in Subchapter 25, Arkansas Public School Academic Facilities Funding Act. Section 6.01 was changed to clarify that once the Division determines that a school district qualifies for State participation and submits a written notice of certification to the CAPSAFT, the Commission then must certify that amount of funds for payment within thirty days following the *receipt* of the certification.

PUBLIC COMMENT: A public hearing was held on December 20, 2021. The public comment period expired on January 3, 2022. The Commission provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association (12/7/2021)
Comment (1): In Section 6.04, there is a "the" missing between "to" and "office."
Response: Comment considered. Non-substantive change made.

Comment (2): In Section 6.01, I would recommend amending "within thirty (30) calendar days written notice of certification" to read "within thirty (30) calendar days of the receipt of the written notice of certification."
Response: Comment considered. Suggested language adds clarity. Non-substantive change made.

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

Section 3.04 – I see that the definition for "average daily membership" is referencing Ark. Code Ann. § 6-20-2303(3), which defines the term. Is there a reason the reference is not to Ark. Code Ann. § 6-20-2502(3), which similarly defines the term and as part of the same subchapter as the Facilities Catastrophic Program also contains specific provisions applicable to the subchapter? **RESPONSE:** You are correct. The change was made.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: There is established the Academic Facilities Catastrophic Program under which the Division of Public School Academic Facilities and Transportation shall award state financial participation to a school district based on a school district's academic

facilities wealth index for eligible catastrophic repair and new construction projects for the purpose of supplementing insurance or other public or private emergency assistance received by or payable to the school district. *See* Ark. Code Ann. § 6-20-2508(a). Pursuant to Ark. Code Ann. § 6-20-2512, the Commission for Arkansas Public School Academic Facilities and Transportation shall promulgate rules necessary to administer the Arkansas Public School Academic Facilities Funding Act ("Act"), Ark. Code Ann. §§ 6-20-2501 to -2517, which shall promote the intent and purposes of the Act and assure the prudent and resourceful expenditure of state funds with regard to public school academic facilities throughout the state.

b. SUBJECT: Rules Governing the Facilities Master Plan

DESCRIPTION: The Department of Education's Commission for Arkansas Public School Academic Facilities and Transportation proposes changes to its Rules Governing the Facilities Master Plan. These rules were amended to incorporate the provision of Act 126 of 2021 that eliminated the requirements for school districts to consult with and submit preliminary master plans to the Division of Public School Academic Facilities and Transportation, which constitute an inefficient use of time and resources by both the school district and Division. Most school districts are familiar with how to draft master plans and have many opportunities to discuss the plans or proposed projects with the Division. Although the Division would be happy to meet with any district that wants or needs assistance, this amendment would free up valuable time and resources to enable the Division to focus on the districts that need the most support.

The amended rules also provide that the Division will provide enrollment projections to be used in the suitability analysis. Because the Division obtains its projections from a demography consultant that uses statistical analysis to calculate projections for every school district in the state, the projections will be more accurate and realistic. Historically, projections offered by school districts often have proven to be based on unrealistic assumptions, resulting in an inaccurately high suitability need, which resulted in an imprudent use of tax dollars. Other amendments to the rules are technical and stylistic.

PUBLIC COMMENT: A public hearing was held on December 20, 2021. The public comment period expired on January 3, 2022. The Commission received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-21-114(e)(2)(A), the Commission for Arkansas Public School Academic Facilities and Transportation ("Commission") may adopt, amend, and rescind rules as necessary or desirable for the administration of the Arkansas Public School Academic Facilities Program and any other related program. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-21-804(b), which provides that the Commission shall promulgate rules necessary to administer the Arkansas Public School Academic Facilities Program, all its component and related programs, and the provisions of the Arkansas Public School Academic Facilities Program Act ("Act"), Ark. Code Ann. §§ 6-21-801 to -817, which shall promote the intent and purposes of the Act and assure the prudent and resourceful expenditure of state funds with regard to public school academic facilities throughout the state. *See also* Ark. Code Ann. §§ 6-21-805 to -807 (provisions within the Act concerning the Academic Facilities Master Plan Program). The proposed changes include those made in light of Act 126 of 2021, sponsored by Representative Brian Evans, which amended provisions of the Arkansas Code concerning Arkansas public school academic facilities and transportation.

c. SUBJECT: Rules Governing Maintenance and Operation of Public School Buses and Physical Examinations of School Bus Drivers

DESCRIPTION: The Department of Education's Commission for Arkansas Public School Academic Facilities and Transportation proposes changes to its Rules Governing Maintenance and Operations of Public School Buses and Physical Examinations of School Bus Drivers. These Rules were amended to incorporate the provision of Act 126 of 2021. Although school bus drivers must annually be certified by the Division of Public School Academic Facilities and Transportation in order to drive a bus, Act 126 eliminated the incredibly costly and time consuming practice of the Division printing cards for and mailing them to each individual driver. Amendments also were made to correct grammar, update terminology, and to update what must be kept in each school bus driver's file, e.g., add documentation of current Child Maltreatment Registry Check. Also, although the Rules incorporate the Arkansas School Bus Inspection Manual as Appendix B, and the Manual has been used for many years, the Division found no evidence that the entire manual has been promulgated. In an abundance of caution, it therefore is being promulgated as a part of these Rules.

Following the public comment period, non-substantive technical changes were made.

PUBLIC COMMENT: A public hearing was held on December 20, 2021. The public comment period expired on January 3, 2022. The Commission provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association (12/7/2021)
Comment (1): In Section 6.00, due to APRN being abbreviated at 3.01, I would recommend replacing "advance practice nurse" or "APN" everywhere in this section with "APRN" so as to use the new definition.
Response: Comment considered. Non-substantive changes made.

Comment (2): In Section 6.05, APRN appears to be missing here as it only references a licensed physician doing the physical examination.
Response: Comment considered. Non-substantive change made.

Comment (3): In Section 8.05, I believe the "has" here should actually be "have" to match the plurality of "repairs."
Response: Comment considered. Non-substantive change made.

Comment (4): In Section 8.06, there appears to be an "of" missing from between "8.05" and "these rules."
Response: Comment considered. Non-substantive change made.

Comment (5): In Section 9.01, I believe this should be "monitor on a school bus" instead of "in a school bus."
Response: Comment considered. Non-substantive change made.

Comment (6): In "physical," remove extra "I" in Diabetes and add "I" in Eligibility.
Response: Comment considered. Non-substantive changes made.

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

(1) Section 6.04.2 – This section regarding the completion of in-service training is being stricken; however, Ark. Code Ann. § 6-19-108(d)(2) appears to retain it. Is there a reason it is being stricken when still contained in the statute? **RESPONSE:** Section 6 of the rules addresses physical examinations of bus drivers; not bus driver certification/training. Although the in-service training language was stricken from Section 6.04.2, the in-service training and certification requirements still are in the rules. *See* Sections 3.06 (definition of bus driver—possession of current certification of completed in-service training required), 5.00 (school district must establish school bus training

program), 5.03 (annual in-service training provided by DPSAFT required), 5.04 (DPSAFT certifies bus driver for one year if, among other things, driver has met all training requirements set forth in rules). Also, DPSAFT has electronic access to the certification status of each school bus driver, so there's no need for the driver to provide this proof.

(2) Section 9.01.2 – This section requiring record checks for parental monitors is being stricken. Why? **RESPONSE:** Section 9.01.2 requires record checks "as a condition of initial employment or non-continuous reemployment as a parental monitor." Parental monitors are not "employees," but rather are volunteers. It appears that the last drafting of the rules didn't catch that distinction, although it's obvious from the rest of Section 9.0 (and the related law) that they are in fact volunteers. We struck that provision because of the employment language, and also because the law already provides quite clearly that a "parental monitor" must get the same record checks as "nonlicensed staff" at school districts. *See* Ark. Code Ann. § 6-17-414(a)(1)(A)(i). Still, your comment is well taken and to avoid confusion, Section 9.0 will refer the reader back to the records check requirements in 6-17-414.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The proposed changes include those made in light of Act 126 of 2021, sponsored by Representative Brian Evans, which amended provisions of the Arkansas Code concerning Arkansas public school academic facilities and transportation. Pursuant to Arkansas Code Annotated § 6-19-111(a), the Commission for Arkansas Public School Academic Facilities and Transportation shall adopt and enforce rules to govern the design and operation of all school buses used for the transportation of school children when the buses are owned and operated by a school district or privately owned and operated under contract with a school district in this state. The Commission is also charged with promulgating rules and standards governing the school transportation program in school districts that promote and provide a safe, efficient, and economical system of pupil transportation. *See* Ark. Code Ann. § 6-19-101. The Commission shall further adopt rules to implement Ark. Code Ann. § 6-19-127, concerning parental monitors on school buses. *See* Ark. Code Ann. § 6-19-127(c).

7. DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION (Whitney James, items a, j-k; Lori Freno, items b-i, l; David Dawson, item l)

a. SUBJECT: Rules Governing the Arkansas Tutoring Corps

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education proposes its Rules Governing the Arkansas Tutoring Corps. The rules were created per Arkansas Code Annotated § 6-15-3104 to set out the responsibilities and processes of the Arkansas Tutoring Corps, as well as define terms related to the program. The rules define the requirements individuals must meet to become qualified tutors and Arkansas Tutoring Corps certified members. The rules also define qualified tutoring sites.

The rules set out the responsibilities of the Arkansas Tutoring Corps. These responsibilities include identifying curriculum, as well as assessing the needs to tutors across the state. Additionally, responsibilities include retaining tutors, training tutors and providing support, as well as maintaining data related to the program. The rules also list the responsibilities of Education Renewal Zones ("ERZs").

PUBLIC COMMENT: A public hearing was held on November 12, 2021. The public comment period expired on November 28, 2021. The Division provided the following summary of the comments received and its responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association (11/1/21)
Comment (1): Section 3.01 – I would recommend changing this to be "Division of Elementary and Secondary Education (Division)." **Division Response:** Comment considered. Non-substantive change made.

Comment (2): Section 3.04 – "Education Renewal Zones (ERZ)s" can be shortened to "ERZs" as the long form and parenthetical abbreviation were set forth in Section 3.03. **Division Response:** Comment considered. Non-substantive change made.

Comment (3): Section 3.04.1 – "Education Renewal Zones (ERZ)s" can be shortened to "ERZs" as the long form and parenthetical abbreviation were set forth in Section 3.03. **Division Response:** Comment considered. Non-substantive change made.

Comment (4): Section 3.04.3 – "but are not" has been flipped so that it reads "but not are." **Division Response:** Comment considered. Non-substantive change made.

Comment (5): Section 3.04.7.4 – "Education Renewal Zone" could be shorted to "ERZ" as the long form and parenthetical abbreviation were previously set forth in Section 3.03. "Division of Elementary and Secondary Education" could be shortened to just "Division" especially if the long form and parenthetical are set forth at 3.01. **Division Response:** Comments considered. Non-substantive changes made.

Comment (6): Section 4.02.2 – I would recommend changing this to read "Successful completion of background checks, including: an Arkansas Child Maltreatment Central Registry Background Check and an Arkansas State Police/FBI background check, which must include the taking of fingerprints." **Division Response:** Comment considered. Non-substantive change made.

Comment (7): Section 4.02.2.1 – I'd recommend changing this to be "An applicant's background check must." **Division Response:** Comment considered. The rules refer to "candidates" rather than "applicants."

Comment (8): Section 4.02.2.2 – I'd recommend changing this to read "No waivers will be granted for a disqualifying offense to applicants for participation in the Arkansas Tutoring Corps program;". **Division Response:** Comment considered. The rules do not intend to state that no waivers will be granted for a disqualifying offense to applicants for participation in the program; rather, the rules clarify that a candidate will not be able to seek a waiver via the program for a disqualifying offense.

Comment (9): Section 4.02.2.3 – I'd recommend changing this to read "Approved tutors are required to notify the Division of subsequent conviction(s) of disqualifying offenses or a true finding(s) and placement on the Child Maltreatment Central Registry." **Division Response:** Comment considered. Non-substantive change made.

Comment (10): Section 4.04.3 – I'd recommend changing to read "At least 175 documented hours of tutoring at one or more approved, qualified tutoring sites, which include:". **Division Response:** Comment considered. Non-substantive change made.

Comment (11): Section 4.05.3 – I'd recommend changing this to "Document at least 175 hours of." **Division Response:** Comment considered. Non-substantive change made.

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

(1) Section 3.04.7 – In this section, the Education Renewal Zones ("ERZs") are required to keep ongoing documentation of hours worked by a tutor in a public school, a tutor in a private school, a tutor in a community or faith-based program or residential facility, and a community service volunteer approved by the ERZ or the DESE. Arkansas Code Annotated § 6-15-3103(2) defines "qualified tutoring site" and includes a public school or open-enrollment public charter school, an education service cooperative, an institution of higher education located within Arkansas, or a community facility that meets the requirements established by DESE. Do private schools, a community or faith-based program, or residential facility fall within the definition of qualified tutoring sites? **RESPONSE:** They can fall within the definition of qualified tutoring sites, but they are not pre-approved as a public school, open-enrollment public charter school, an education service cooperative, an institution of higher education located within Arkansas, or a community facility that meets the requirements established by DESE. We do have a process for private schools, a community or faith-based program, or residential facility to apply to be an approved site.

(2) Section 3.04.7 – In this section, the Education Renewal Zones ("ERZs") are required to keep ongoing documentation of hours worked by a tutor in a public school, a tutor in a private school, a tutor in a community or faith-based program or residential facility, and a community service volunteer approved by the ERZ or the DESE. Arkansas Code Annotated § 6-15-3103(2) defines "qualified tutoring site" and includes a public school or open-enrollment public charter school, an education service cooperative, an institution of higher education located within Arkansas, or a community facility that meets the requirements established by DESE. While public schools are included in the documentation required under this section, should documentation of hours worked by tutors in these other qualified tutoring sites also be kept? **RESPONSE:** Yes, in order to receive the stipend, all documentation of tutoring at approved sites must be submitted for payment. The tutors receive a form that must be completed, verified, and signed by the site contact as documentation.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the proposed rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-15-3104(c), as amended by Act 912 of 2021, § 1, the Department of Education shall promulgate rules to implement the Arkansas Tutoring Corps Act ("Act"), Ark. Code Ann. §§ 6-15-3101 to -3104. The proposed rules implement Act 912, sponsored by Senator Joyce Elliott, which

created the Act and supported the implementation of a sustainable tutoring program in response to learning loss.

b. SUBJECT: Rules Governing Grading and Course Credit, Chapters 1 and 7 Only

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education proposes changes to its Rules Governing Grading and Course Credit, Chapters 1 and 7 Only. The proposed amendments to Chapters 1 and 7 incorporate the provisions of Act 414 of 2021, which is the Computer Science Education Advancement Act of 2021. In summary, Act 414 requires that, beginning with the ninth grade class of the 2022-2023 school year, a public school student earn one unit of credit in a computer science course before graduation and that each public high school employ a computer science teacher by the 2023-2024 school year. Clarifying definitions were added. Amendments also clarify that a computer science teacher may teach at more than one high school within the same school district and must be the teacher of record for at least one course each school year through which a student may earn a computer science credit.

Based upon public comment, a non-substantive change was made to the definition of "Pre-Advanced Placement" course to recognize that the College Board trademarked the term.

PUBLIC COMMENT: A public hearing was held on December 7, 2021. The public comment period expired on December 16, 2021. The Division provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association
Comment (1): In Section 1-2.08, there appears to be an unnecessary "or course" to match the language from 6-16-152(b)(1). Division of Elementary and Secondary Education" could be shortened to just "Division" here.
Division Response: Comments considered. Non-substantive changes made.

Comment (2): In now Section 1-2.23, "DESE" here should probably be "the Division" as there has been no previous abbreviation to DESE.
Division Response: Comment considered. Non-substantive change made.

Comment (3): In Section 7-2.02, I would recommend adding a parenthetical "one" here.

Division Response: Comment considered. Non-substantive change made.

Commenter Name: Bonnie Curlin, North Little Rock School District
Comment: Perhaps 1-2.18 needs to specify that the pre-AP course also has a syllabus and must be approved by College Board now. Districts may no longer call a course pre-AP unless they go through the College Board process.
Division Response: Comment considered. Non-substantive changes made.

Commenter Name: Michelle Cruz Arnold, Vice President of Government Relations, College Board
Comment: The College Board, as a mission-driven not-for-profit organization that connects students to college success, welcomes the opportunity to share comments on the proposed rule Grading Scales and Course Credit – Chapters 1 and 7 only. We are privileged to have partnered with the State of Arkansas as an integral component of its strategy for more students to participate in computer science education and look forward to continuing our long-standing relationship. **College Board supports the proposed changes to Chapters 1 and 7 and congratulates Arkansas for its ongoing efforts to increase access to rigorous computer science education.**

Advanced Placement Computer Science Principles and Arkansas
An education in computer science and coding—the tools with which the future is being built—has been out of reach for too long for too many students across the country. That is why College Board applauds Arkansas for its continued and comprehensive efforts to support computer science education – from the course offering requirement to preparing educators to provide instruction in the subject.

College Board, like Arkansas, believes that providing a more diverse group of students with access to computer science courses is imperative to increasing access to the computer science field's high-paying, fast-paced jobs and to drive innovation, creativity, and competitiveness. We are committed to ensuring all students have access to challenging computer science coursework that prepares students for college and career. Our most recognizable contribution to expanding computer science access is through our newest AP course—AP Computer Science Principles (AP CSP). The AP CSP course changes the invitation to computer science education by engaging traditionally underrepresented students.

College Board has also endorsed curriculum and professional development delivered by a limited number of organizations to ensure that schools and teachers have high-quality options for implementing AP Computer

Science Principles. We believe the steps we've taken with AP CSP will continue to complement Arkansas' efforts for computer science education expansion. While we are pleased with the success we've seen with AP CSP across the nation, there is still significant room for growth in Arkansas. Based on College Board 2020-2021 school year data, about 21% of schools offer AP CSP in the state. We also see significant gaps in exam participation among the different student populations in the state.

The latest research findings for AP CSP underscore the importance of the state's efforts to expand computer science access to this course.

- The College Board finds students who took AP CSP in high school were more than 3 times as likely to major in computer science in college, compared to similar students who did not take AP CSP.
    - These results held true for female, Black, Hispanic, and first-generation college students.
    - In fact, Black students who took AP CSP then majored in computer science at higher rate (nearly 20%) than students from any other racial/ethnic group.

- AP CSP students are nearly twice as likely to enroll in AP Computer Science A (CSA)—a more programming-focused course—than students who did not take AP CSP, thus notably reducing AP CSA race/ethnicity enrollment gaps.

- Black students who take AP CSP are three times more likely to take AP CSA, virtually the same share as Asian CSP students, who have long led AP CSA participation.

- AP CSP may serve as a stepping-stone to other advanced STEM coursework. For the class of 2019, more than half of the students who took AP CSP were taking their first AP STEM course. The number of Black, Hispanic, and first-generation students was even higher.

College Board looks forward to seeing the progress Arkansas will make in expanding computer science access over the coming years, especially for the students who have been traditionally underserved in the subject.
Division Response: Comment considered. No changes made.

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

(1) Section 1-2.08 – Arkansas Code Annotated § 6-16-152, as amended by Act 414 of 2021, seems to require that the course taken be approved by the Department. Is there a reason that the rule allows the completion of a

course OR a course approved by the State Board and DESE? **RESPONSE:** The second "course" is a typo. It should read "courses." This "course or courses" language recognizes that a student might take two computer science courses that add up to one unit of computer science credit.

(2) Section 1-2.18 – Why is the definition of "special education" being stricken in these rules? **RESPONSE:** Because although the term is defined, it appears nowhere in the rules.

(3) Chapter 7 – Arkansas Code Annotated § 6-16-152, as amended by Act 414 of 2021, appears to provide that the required unit can be earned in grade eight and that the Department shall designate at least four (4) courses that students in grade eight can take for high school credit. Is there a reason that the rules do not address or include the grade eight provisions of the statute? **RESPONSE:** This is because DESE already has taken this action. At its March 11, 2021 meeting, the State Board approved nine computer science and computing courses for which 8th grade students could receive high school credit. The courses, which were listed in Commissioner's Memo COM-21-099, are as follows: Artificial Intelligence & Machine Learning; Computer Engineering; Cyber Security; Data Science; Game Development and Design; Mobile Application Development; Networking; Programming; and Robotics.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The proposed changes include those made in light of Act 414 of 2021, sponsored by Senator Jane English, which created the Computer Science Education Advancement Act of 2021. Pursuant to Arkansas Code Annotated § 6-16-152(f), as amended by Act 414, the State Board of Education may adopt rules to administer the statute, including rules for flexible options to license computer science teachers, which may include without limitation, approval codes, technical permits, ancillary licenses, and standard licenses.

c. SUBJECT: Rules Governing Act 1240 Waivers

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education proposes changes to its Rules Governing Act 1240 Waivers. The proposed amendments incorporate the provisions of Acts 678 and 688 of 2021. In summary, Act 678 requires that if the State Board of Education seeks to review an already granted Act 1240 waiver for potential modification or revocation, the Division must

notify the president of the local board of directors in addition to the district's superintendent. If timely notice is not given, the State Board may not proceed with its consideration until the notification requirement is met. Act 688 provides that a school district may not receive an Act 1240 waiver of the school start date set forth in Ark. Code Ann. § 6-10-106, *i.e.*, the first day of school shall not be earlier than the Monday two weeks before Labor Day. Technical changes also were made to reflect that Act 1240 Waiver requests will be handled by the Division's Office of Legal Services instead of its Charter School Office.

Following public comment, only non-substantive clarifying and technical changes were made.

PUBLIC COMMENT: A public hearing was held on January 10, 2022. The public comment period expired on January 11, 2022. The Division provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association
Comment (1): In Section 3.02.1, there is a "to" missing from between "purpose" and "avoid."
Division Response: Comment considered. Non-substantive changes made.

Comment (2): In Section 4.08.2, the "90" here is missing the longhand version for consistency.
Division Response: Comment considered. Non-substantive change made.

Comment (3): In Section 4.09.2, the parenthetical Arabic numeral five is missing here.
Division Response: Comment considered. Non-substantive change made.

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

Section 3.05.10 – The rule appears to prohibit any waiver regarding the school start date in Ark. Code Ann. § 6-10-106; however, § 6-10-106(a)(2)(A) seems to continue to contemplate a waiver should a school district need to begin on a later date in limited circumstances. Is there a reason for the difference in language between the two? **RESPONSE:** These rules govern only Act 1240 waivers, which are those granted by the State Board pursuant to its authority in Ark. Code Ann. § 6-15-103 (a/k/a Act 1240 of 2015). The limited waiver to which you refer in § 6-10-

106(a)(2)(A) is not an Act 1240 waiver granted by the State Board, but rather a waiver granted by the Division "due to very exceptional or emergency circumstances." Granted, § 6-10-106(a)(2)(B), which absolutely prohibits waivers under § 6-15-103, also reads that the "Division" grants the waiver, but it's clear from § 6-15-103 that school districts must petition the State Board for the Act 1240 waivers and it is the State Board that grants or denies the Act 1240 waivers.

Still, your point is well taken. For the sake of clarity, a definition of "waiver" was added that limits the use of the term in the rules to Act 1240 waivers.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-15-103(d), the Division of Elementary and Secondary Education may promulgate rules to implement the statute, concerning school district waivers. The proposed changes include those made in light of Act 678 of 2021, sponsored by Representative David Tollett, which concerned public school district waivers and required certain notification procedures by the State Board of Education upon the State Board's review of waivers granted to public school districts; and Act 688 of 2021, sponsored by Representative Mark Lowery, which concerned the school start date and the definition and length of a school day, allowed public school district boards of directors to elect to implement an alternate school calendar, and amended the definition of a school day.

d. SUBJECT: Rules Governing Public School Choice

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education proposes changes to its Rules Governing Public School Choice. The amendments incorporate the provisions of Act 490 of 2021, which changed provisions of both the Opportunity Public School Choice Act, Ark. Code Ann. § 6-18-227, and the Public School Choice Act of 2015, Ark. Code Ann. § 6-18-1901 et seq. The amendments establish a school choice application "window" of January 1 through May 1 to provide a consistent application period statewide. Concerning Opportunity School Choice, the amendments clarify that an applicant whose student is enrolled in a school with a letter grade of "F" may seek to transfer to another school in his/her resident district that does not have that grade, and if none are available, to another school district for possible enrollment in a school in the nonresident district that does not have a letter grade of "F."

The amendments also incorporate the Act's requirement that school districts must have a policy concerning the means by which it will accept school choice applications, *e.g.*, in-person, via facsimile, Email, regular mail, but prohibits districts from requiring in-person filing only. The amendments also provide that an applicant has no right to appeal a denial to the State Board of Education when the reason for the denial was that the application was not timely filed, *i.e.*, by May 1, with the appropriate school district(s). The State Board hearing procedures also were changed to simplify them, and technical/clerical changes were also made.

Post-public comment, amendments were made to the proposed rules to make them mirror the applicable law. Technical changes also were made.

PUBLIC COMMENT: A public hearing was held on January 10, 2022. The public comment period expired on January 11, 2022. The Division provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association
Comment (1): The following technical changes need to be made:
• Section 3-1.02.1: There is an unnecessary "A" between "the" and "parent."
• Section 3-1.03: There is an unnecessary "A" between "the" and "parent."
• Section 3-1.07 through 3-1.14: Due to previous deletions, these should all be two numbers lower; in the new Section 3-1.10, "3-1.10.1" and "3-1.10.2" should read "3-1.08.1" and "3-1.08.2"; and in the new Section 3-1.10.1, "3-1.10" should read "3-1.08."
• In Section 4-1.02.3, I would recommend adding "the" before both "resident district" and "non-resident district."
Division Response: Comments considered. Non-substantive changes made.

Comment (2): Both the Public School Choice Act of 2015 and Opportunity School Choice Act give authority over acceptance and rejection to the superintendent rather than the board. As such, there's no statutory process for a school choice application to be taken before the district Board to accept or reject the application. As such, I would recommend amending this section to have the transfer become effective upon the acceptance of the application by the superintendent.
Division Response: Comment considered. This language, which mirrors Ark. Code Ann. § 6-18-227(b)(2)(A)(ii)(*b*), was in the rules prior to the amendment. Some reorganizing of the rules caused it to be moved to the

end of the rules. Because this language is set forth in law, the recommended change would require legislative action. No changes made.

Commenter Name: Tripp Walter, Arkansas Public School Resource Center
Comment (1) and (2): In Section 2-3.01 and 2-5.01, the language "or student over the age of eighteen (18)" is not contained in the statute; it is only contained in the Opportunity School Choice Act.
Division Response: Comments considered. This language was added to provide consistency between the laws. No changes made.

Comment (3): Concerning Section 3-1.04.4, while Ark. Code Ann. § 6-18-227(4) grants the Division authority governing the use of school capacity as a basis for denying admission, why was the capacity set at 95 (ninety-five) percent?
Division Response: Comment considered. The 95% capacity figure was not changed from prior rules. No changes made.

Comment (4): In Section 3-1.02.1, delete either the words "the" or "a" in the first line of the section.
Division Response: Comment considered. Non-substantive change made.

Comment (5): Concerning Section 3-4.07, this language is not contained in Ark. Code Ann. § 6-18-227; it was added to the Public School Choice statute (at Ark. Code Ann. § 6-18-1907(b)(4)) only by Section 7 of Act 490 of 2021.
Division Response: Comment considered. Both the Public School Choice Act and Opportunity School Choice Act require that applications be filed with a school district "no later than May 1." Because of this language, even before Act 490 of 2021, the State Board did not hear appeals under either the Opportunity or Public School Choice Act when a school district rejected the applications as a result of the applicant filing the application outside of the time period allowed by law. The reasoning behind the language in the Public School Choice Act, although not restated in the Opportunity School Choice Act, applies with like force to the Opportunity School Choice Act. Allowing appeals for denials based on late filings would render the May 1 deadline date superfluous. No changes made.

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

(1) Section 2-1.06 – This rule appears to be premised upon Ark. Code Ann. § 6-18-1905(a)(2)(B), as amended by Act 490 of 2021, § 6. While the rule refers to a "public school," the statute refers to a "public school

district." Is there a reason that the rule does not track the statute? **RESPONSE:** You are correct. I've added "district."

(2) Section 2-3.01.3 – This rule appears to be premised upon Ark. Code Ann. § 6-18-1905(a)(3)(C)(i), as amended by Act 490 of 2021, § 6. While the rule requires the submission of an application "[n]o earlier than January 1 and no later than May 1," the statute provides that the application shall be submitted "[p]ostmarked or delivered no later than May 1," which could arguably allow receipt after May 1 if postmarked no later than that date. Is there a reason that the rule does not track the statute? **RESPONSE:** You are correct. I've changed to "Postmarked or delivered no earlier than January 1 . . ."

(3) Sections 2-606 and 2-607 – It appears from the changes that the burden of proof is changing from being placed on the nonresident school district having to prove the basis for the denial of the transfer to a totality-of-the-evidence standard. What prompted the change? **RESPONSE:** In the majority of cases, the non-resident district is willing and able to accept the student but the resident district denies the transfer, reporting that it already has met its 3% cap. A non-resident district does not have the data needed to substantiate the resident district's report that it exceeded the 3% cap. Consequently, it does not make sense to place a burden of proof on the non-resident district. A totality of evidence standard recognizes this reality.

(4) Section 3-1.03.2 – It appears that the change is based upon Ark. Code Ann. § 6-18-227(b)(3)(B)(i)(*b*)(*1*), as amended by Act 490 of 2021, § 3; should the phrase "and that is nearest the legal residence of the student" be included to track the language of the statute? **RESPONSE:** You are correct. I've added the omitted language into 3-1.03.2.

(5) Section 3-1.04 (formerly 3-1.05) – For applicants applying to attend within the student's resident district, the rule provides that the resident district shall notify within fifteen (15) calendar days; however, Ark. Code Ann.§ 6-18-227(d)(2)(D), as amended by Act 490 of 2021, § 4, on which the change appears premised, appears to provide that the notification shall be by July 1. (I see that there is a reference to fifteen calendar days, but that seems to be applicable to subdivision (b)(1)(B)(ii) of the statute, concerning students of military parents.) Is there a reason for the difference between the rule and the statute? **RESPONSE:** You are correct. The date should read July 1. The 15 days applies only to students of military families, which are addressed in Chapter 4 of the rules.

(6) Section 3-1.04.6 (formerly 3-1.05.6) – This rule speaks to an applicant's ability to appeal a decision from a nonresident school; however, the rules and statutes also provide that an applicant can apply to

attend a school in the student's resident district and that that application can also be accepted or rejected. This section appears premised upon Ark. Code Ann. § 6-18-227(d)(3), as amended by Act 490 of 2021, § 5, which concerns the appeal of "a school district's decision to deny admission to a school in the student's school district of choice." Was the rule intended to only permit appeals from nonresident district decisions and not the decisions from an applicant's resident district, and if so, is there a reason that it does not track the statute? **RESPONSE:** You are correct. Language has been added to mirror the law.

(7) Section 3-4.07 – The rule prohibits the request for a hearing when transfer is rejected due to the untimeliness of the application. While I see this provision in Act 490 of 2021, § 7, it specifically amends Ark. Code Ann. § 6-18-1907(b), which is part of the Public School Choice Act of 2015. What is the basis for its inclusion in the rules concerning the Opportunity Public School Choice Act as well? **RESPONSE:** Both the Public School Choice Act and Opportunity Public School Choice Act require that applications be filed with a school district "no later than May 1." Because of this language, even before Act 490 of 2021, the State Board did not hear appeals under either the Opportunity or Public School Choice Act when a school district rejected the applications as a result of the applicant filing the application outside of the time period allowed by law. The reasoning behind the language in the Public School Choice Act, although not restated in the Opportunity School Choice Act, applies with like force to the Opportunity School Choice Act. Allowing appeals for denials based on late filings would render the May 1 deadline date superfluous.

(8) Section 4-2.03 – This rule concerns the effective date for approval for students of military parents. While I see this provision in Ark. Code Ann. § 6-18-227(b)(2)(A)(ii)(*b*), concerning the Opportunity Public School Choice Act, I did not find it in the Public School Choice Act of 2015. What is the basis for its application under both? **RESPONSE:** The General Assembly allowed exceptions to deadlines in both Acts for certain military families, thus evincing a recognition of and legislative intent that these military families (*i.e.*, those that live on base and thus are not able to choose their residential school district, and who also have no control over when they will begin residing in Arkansas) should receive special treatment. Applying the language found in the Opportunity School Choice Act to the Public School Choice Act creates consistency between the Acts and is consistent with legislative intent.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-18-227(k), the State Board of Education shall adopt any rules necessary for the implementation of the statute, concerning the Arkansas Opportunity Public School Choice Act, under the Arkansas Administrative Procedure Act, § 25-15-201 et seq. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-18-1907(a), which provides that the State Board may promulgate rules to implement the Public School Choice Act of 2015, Ark. Code Ann. §§ 6-18-1901 to -1908. The proposed changes include those made in light of Act 490 of 2021, sponsored by Senator Jane English, which amended provisions of the Arkansas Code concerning the Arkansas Opportunity Public School Choice Act and amended provisions of the Arkansas Code concerning the Public School Choice Act of 2015.

e. SUBJECT: Rules Governing Consolidation and Annexation of School Districts, Sections 2.00, 13.00, and Table of Contents Only

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education proposes changes to its Rules Governing Consolidation and Annexation of School Districts, Sections 2.00, 13.00, and Table of Contents Only. Section 13.00 of the Rules was amended to incorporate Act 662 of 2021, which authorizes the reversal of a voluntary administrative annexation that occurred under Ark. Code Ann. § 6-13-1601 et seq. (resulting from annexed district's student count falling below 350 ADM for two consecutive years) if the receiving school district intends to close a school campus that was part of the annexed district. Act 662 sets forth several prerequisites to the reversal and requires the approval of the Arkansas Board of Education. Other amendments were merely technical and clerical: Section 2.00 includes the removal of a reference to an Act that has been codified, and the Table of Contents reflects new page numbering.

PUBLIC COMMENT: A public hearing was held on January 10, 2022. The public comment period expired on January 11, 2022. The Division provided the following summary of the comment that it received and its response thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association
Comment: Concerning Section 13.12.1, while I realize that it matches the statutory language, I would recommend changing "that occurred no more than twenty (20) years ago" to "that occurred on or after "2001," as the way the language is drafted would provide that any district annexed/consolidated in 2004 due to Act 60 of 2003 would only need to wait until 2025 to no longer have the restriction be applicable.

Division Response: Comment considered. The proposed language would not be consistent with the language of Act 662 of 2021or legislative intent. The Act provides a look-back period of 20 years from a voluntary annexation under Ark. Code Ann. § 6-13-1601 et seq., after which time a petition to the State Board to reverse the voluntary annexation would be time barred. No changes made.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-13-1409(a)(3), the State Board of Education has the duty regarding consolidations and annexations to enact rules regarding the consolidation and annexation of school districts under Title 6 of the Arkansas Code. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-13-1603(j), which provides that the State Board shall promulgate rules to facilitate the administration of Title 6, Chapter 13, Subchapter 16 of the Arkansas Code, concerning the Public Education Reorganization Act. The proposed changes include those made in light of Act 662 of 2021, sponsored by Representative Richard Womack, which concerned the voluntary consolidation of an affected district and allowed a contiguous public school district to consolidate with an affected district under certain conditions.

f. SUBJECT: Rules Governing the Arkansas Student Protection Act

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education proposes its Rules Governing the Arkansas Student Protection Act. These new rules incorporate the provisions of Act 820 of 2021, which prohibits traditional public schools and open-enrollment public charter schools from knowingly entering into any transaction with an individual or entity that performs abortions, induces abortions, or provides abortions. The definition of "abortion" excludes actions taken with the intent of saving the life of a mother, saving the life of or preserving the health of an unborn child, removing an unborn child that died due to spontaneous abortion, or removing an ectopic pregnancy. The rules require that public schools and open-enrollment public charter schools develop a policy for implementing these rules and Act 820, codified as Ark. Code Ann. § 6-18-2201 et seq. If a public school or open-enrollment public charter school knowingly violates these rules and Act 820, it must appear before the State Board of Education at the Board's next regularly scheduled meeting to discuss why the violation occurred and how future violations will be prevented.

Post-public comment, only non-substantive technical corrections were made. No public comments were made.

PUBLIC COMMENT: A public hearing was held on January 10, 2022. The public comment period expired on January 11, 2022. The Division received no comments.

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

Title and Section 1.01 – I believe that the title of the subchapter and act includes Arkansas. **RESPONSE:** You are correct. Changes made.

Section 2.03 – In the last line, reference is made to "party" rather than "part," I believe. **RESPONSE:** You are correct. Change made.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the proposed rules have no financial impact.

LEGAL AUTHORIZATION: The proposed rules implement Act 820 of 2021, sponsored by Representative Mark Lowery, which created the Arkansas Student Protection Act. Pursuant to Arkansas Code Annotated § 6-18-2204(a), as amended by Act 820 of 2021, § 1, the Division of Elementary and Secondary Education shall promulgate rules to implement the Arkansas Student Protection Act, Ark. Code Ann. §§ 6-18-2201 to -2204.

g. SUBJECT: Rules Governing Standards for Accreditation of Arkansas Public Schools and School Districts

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education proposes changes to its Rules Governing Standards for Accreditation of Arkansas Public Schools and School Districts. The changes include the following:

- Section 1-A.4.1 is amended to incorporate provisions of Act 688 of 2021.
- Section 1-A.5 and 1-A.6 are amended to separate class size and teaching load into two standards for purposes of monitoring.
- Section 1-B.3 is amended to simplify the standard for purposes of monitoring.
- Sections 1-C.2.7 and 4-D.6 are added to incorporate provisions of Act 414 of 2021.
- Section 3-A.7, 3-A.10.1, 3-A.10.2, and 3-B.2 are all amended for clarity in monitoring.

Following public comment, the proposed rules were amended to require that a request for a Standards for Accreditation waiver be sent to DESE's Assistant Commissioner for Public School Accountability instead of the Office of the Commissioner of Elementary and Secondary Education. Technical changes also were made.

PUBLIC COMMENT: A public hearing was held on January 10, 2022. The public comment period expired on January 25, 2022. The Division provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Kelli Langan, Springdale School District
Comment: You have moved the annual report to the public, s*ee* Standard 3-B.2, to be posted to the district website by August 1. Traditionally, we do not have processed results back from the prior year's state assessment by August 1. Does this indicate that we should NOT include increasing academic achievement and growth in our district goals as we won't be able to show progress toward accomplishing these goals at this time? (Emphasis in original.) More succinctly, a deadline of August 1 for the annual report to the public would preclude having academic achievement as measured by the state assessment and growth from district goals.
Division Response: Comment considered. August 1 is merely a deadline for districts to post their annual report to the public. School districts have time throughout the preceding school year to prepare and post its report. Some districts present their annual report to the public in October when the ESSA School Index is posted. Other districts may wait until the School Report Card is accessible to the public (*i.e.*, late December through April 15). August 1 is the date on which the Division of Public School Accountability begins its monitoring. No changes made.

Commenter Name: Gregg Grant, Arch Ford Education Service Cooperative
Comment: [Concerning Standard 4-D.6, which requires employment of a computer science teacher at each high school by the 2023-2024 school year], my concern is for our small, rural schools being able to find quality licensed computer science teachers. I do appreciate the requirement does not begin until the 2023-2024 school year, allowing districts the opportunity to encourage current staff members to add computer science certification to license but I still feel it may be a shortage area.
Division Response: Comment considered. Although we understand your concern regarding the availability of certified Computer Science teachers, the CSforAR team (which includes the Statewide Computer Science Specialists funded through Arch Ford Education Service Cooperative, as well as our State Director of Computer Science) have and will continue to put the State in a good position to implement this requirement in 2023-

2024. When the state first began this initiative in 2015, DESE identified fewer than 50 teachers that had state recognized training and were "certified" to teach certain computer science courses. Since then the CSforAR team has grown the number of certified teachers to over 650, and an additional 48 will attend certification training in spring of 2022. No changes made.

Commenter Name: Novella Humphrey, Southside School District
Comment: In reviewing the rules and proposed changes, I noticed the change date for website publication of the annual report to the public (3-B.2). This report requires progress of the district/school towards accomplishing goals and correcting deficiencies. While school leaders have student achievement data in time to meet this deadline, it does not allow the leaders to first meet with a school or district's entire staff of teachers before it is published on the website. For example, school will begin August 22, 2022. Teacher in-service and professional development days will be held across schools from August 8-19. During this time, school leaders traditionally share data, progress towards goals, celebrate growth, and collaborate with teachers to plan for continued growth in the upcoming school year. Publishing this report prior to this time when leaders have their entire staff may be counterproductive to the culture of trust and emphasis on growth that so many leaders have worked to cultivate. I recognize the change to August 1 better aligns with other website requirements and the specific requirement to publish school improvement plans. It makes this easier from a compliance standpoint. However, I feel it is critical to allow school leaders time to meet with teachers/staff before publication. Again, thank you for accepting comments on these proposed changes.
Division Response: Comment considered. *See* Division Response to the Comment of Kelli Langan. No changes made.

Commenter Name: Lucas Harder, Arkansas School Boards Association
Comment (1): Several technical changes were recommended:

3.06.1.2: "Commissioner of Education" should be "Commissioner of Elementary and Secondary Education."
4.00: I would recommend adding "at least" before "every two years." The "two" is missing the parenthetical Arabic numeral for consistency. There is a "the" missing from before "Division."
4.01: I would recommend changing "or Division" to "or the Division's."
7.04: The language in this subsection is italicized while all others are normal.
7.04.4: There is a comma missing from between "time" and "but."
8.01: "Calendar" is on the wrong side of the parenthetical "(15)."
8.04: There is a comma missing from between "year" and "which."

10.00: "Commissioner of Education" should be "Commissioner of Elementary and Secondary Education."
10.01: There seems to be some language missing here. There's no language indicating what the start of the fifteen days is. I believe the missing language should be something along the lines of "after the school district's receipt of the notice of being placed in Accredited – Probation status."
11.01.1: "Commissioner" is not previously abbreviated. Also, "Commissioner of Education" should be "Commissioner of Elementary and Secondary Education." I would recommend adding an "at least" before "thirty." I would recommend changing "hearing the waiver petition" to "where the waiver petition will be heard."
1-A.1.2.9: I would recommend changing "an approved waiver" to "an approved licensure exception" to more closely match the language and options available under Chapter 7 of the Educator Licensure Rules as well as the language used throughout Standard 4.
1-C.1.1: For consistency, 95% is missing the longhand.
1-C.2.3: For consistency, 60% is missing the longhand.
1-C.2.4: I would recommend removing "with the freshman class of 2017-2018," as even the super seniors should have graduated by the time the new Standards go into effect.
1-C.2.5: "One" is missing a parenthetical Arabic number for consistency.
1-C.2.7: The parenthetical "(1)" is missing the longhand for consistency.
3-B.1: There is a comma missing between "state" and "and."
3-B.2: "The" is repeated twice in the new language.
4-C.3: "Three" here is missing a parenthetical Arabic numeral for consistency.
4-C.4: "Four" here is missing a parenthetical Arabic numeral for consistency.
4-D.4: "Three" here is missing a parenthetical Arabic numeral for consistency.
4-D.5: "Four" here is missing a parenthetical Arabic numeral for consistency.
Division Response: Comments considered. Non-substantive changes made.

Comment (2): While I understand that the August 1 deadline for posting the report to the public is intended to align this posting with the deadline for the other postings to the district website, the August 1 deadline in this case is potentially problematic. Most districts wait until after receiving their previous year's test scores to hold their annual report to the public so as to include those results in the discussion. As a result, that puts their annual report to the public after August 1 so that the report that would be being posted to the website would be a year old rather than for the current school year. Requiring the report to the public be posted by November 1 would provide adequate time for districts to review the previous year's test

data for use in the report as well as reinstate the previous November 1 deadline for holding the public meeting on the report to the public.
Division's Response: Comment considered. *See* Division Response to the Comment of Kelli Langan. No changes made.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Division states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-15-202(a)(1), the State Board of Education is authorized and directed to develop comprehensive rules, criteria, and standards to be used by the State Board and the Division of Elementary and Secondary Education in the accreditation of school programs in elementary and secondary public schools in this state. The State Board shall further promulgate rules setting forth the process for identifying schools and school districts that fail to meet the standards; enforcement measures the State Board may apply to bring a school or school district into compliance with the standards, including, but not limited to, annexation, consolidation, or reconstitution of the school district in accordance with Ark. Code Ann. § 6-13-1401 et seq. and the Quality Education Act of 2003 ("Act"), Ark. Code Ann. §§ 6-15-201 to -216; and the appeal process available to a school district under the Act. *See* Ark. Code Ann. § 6-15-202(c). *See also* Ark. Code Ann. § 6-15-209 (providing that the State Board shall promulgate rules as necessary to set forth the 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; 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 Ark. Code Ann. § 6-13-1401 et seq. and the Act; appeals process and procedures available to a school district pursuant to the Act and current law; and definitions and meaning of relevant terms governing the establishment and governance of the standards).

The proposed changes include those made in light of Act 414 of 2021, sponsored by Senator Jane English, which created the Computer Science Education Advancement Act of 2021, and Act 688 of 2021, sponsored by Representative Mark Lowery, which concerned the school start date and the definition and length of a school day; allowed public school district boards of directors to elect to implement an alternate school calendar; and amended the definition of a school day.

h. **SUBJECT: Rules Governing Eye and Vision Screening Report in Arkansas Public Schools**

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education proposes changes to its Rules Governing Eye and Vision Screening Report in Arkansas Public Schools. The proposed rules incorporate Act 320 of 2021, which authorizes the Division, in conjunction with the Arkansas Commission on Eye and Vision Care of School Age Children, to establish the tests, procedures, equipment, and instruments to be used to perform eye and vision screenings. The amendments provide that a school district may use an "automated testing instrument" (auto refractor instrument) to test certain students and set forth a protocol to be followed if the instrument is used. They also change the timeline for school district vision screening and reporting to the Division (annually instead of twice annually), but does not change the annual reporting requirement to the Governor, Legislative Council, and Joint Public Health, Welfare, and Labor.

Following public comment, the proposed rules were changed to clarify that the Division and Commission must jointly develop vision screening training standards for school nurses based upon the screening requirements contained in Sections 5.01 and 5.02 of the rules, which they already have done. Also, language was revised to allow for the use of an automated testing instrument (auto refractor) for *all* students in all grades, assuming the protocol set forth in the rules is followed. The Commission received several reports from school nurses that the auto refractor was more accurate at having caught vision complications than was traditional screening. Also, the auto refractor results in less contact time between the screener and student screened, which proves beneficial in times of high infectious rates for communicable diseases, and the efficiency/time savings of the screening process when using the instrument provide districts an opportunity to screen students beyond those in the mandated grades.

PUBLIC COMMENT: A public hearing was held on February 7, 2022. The public comment period expired on February 24, 2022. The Division provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association
Comment (1): In Section 5.01, I would recommend amending this language to read "for a referral for a" rather than "referral to a" as it would more closely match the language in 9.02.4. **Division Response:** Comment considered. Non-substantive change made.

Comment (2): In Sections 6.01, 6.03, and 6.04, there is an "a" missing from before "vision care consultant." **Division Response:** Comments considered. Non-substantive changes made.

Commenter Name: Arkansas Commission on Eye and Vision Care of School Age Children, Dr. Kenny Wyatt
Comment: The Eye Commission would like to change the following statement in the Rules from DESE if possible. Public schools may utilize an automated testing instrument to conduct the required vision screening tests for "all students in Pre-Kindergarten through Grade Twelve (12) in these Rules, subject to the following: 5.02.1." **Division Response:** Comment considered. Non-substantive changes made.

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

(1) In Section 7.02, the rules set forth the forms to be developed for screenings. The rules seem to track the forms set forth in Ark. Code Ann. § 6-18-1503(b), but for the "form to report the results of screening and examination." *See* Ark. Code Ann. § 6-18-1503(b)(4). Is there a reason this form is not listed in the rules? **RESPONSE:** DESE does have a form for school districts to report results of examinations to parents, which takes place when there is an issue that necessitates a follow-up examination. School districts also report screenings to DESE electronically through eSchool. To make Section 7.02 consistent with law, however, the language has been added.

(2) In Section 8.01, the rules provide that the Division and Commission shall develop standards for training school nurses to perform the screenings. Ark. Code Ann. § 6-18-1504 provides that the Division and Commission "shall adopt rules that establish standards for training school nurses to perform eye and vision screenings." Have rules been adopted establishing the standards? **RESPONSE:** The Division and Commission have developed standards for training school nurses to perform the screenings. School nurses receive the training through Education Service Cooperatives based upon those criteria set forth in the "Screening" section of these rules (Section 5.00).
FOLLOW UP QUESTION: Will those standards that have been developed be promulgated as rules? If yes, when? If no, why not?
RESPONSE: You are correct that this might need to be more clearly included in the rules. Consequently, we will add language to Section 5.00 that formalizes what currently is taking place.

(3) Is there a reason that Sections 9.01-9.02.6 are still included in the rules when the statute containing that language, Ark. Code Ann. § 6-18-1505, appears to have been repealed by Act 1573 of 2007, § 59? **RESPONSE:**

The data set forth in these sections continues to be collected for inclusion in the report to the Governor, the Legislative Council, and the Joint Committee on Public Health, Welfare, and Labor on an annual basis that is required by Ark. Code Ann. § 6-18-1803(b). Because the language in Ark. Code Ann. § 6-18-1505 was repealed in a technical corrections bill, the language may have been deemed redundant to the mandates in Ark. Code Ann.§ 6-18-1803(a)(1)-(5).

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-18-1501(b), the Division of Elementary and Secondary Education, in conjunction with the Arkansas Commission on Eye and Vision Care of School-Age Children, shall adopt rules to establish the tests, procedures, equipment, and instruments that shall be used to perform eye and vision screenings. The proposed changes include revisions made in light of Act 320 of 2021, sponsored by Senator Missy Irvin, which amended provisions of the Arkansas Code concerning mandated vision screenings for public school students.

i. SUBJECT: Rules Governing Documents Posted to School District and Education Service Cooperative Websites, Chapters 1 and 4 Only

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education proposes changes to Chapters 1 and 4 only of its Rules Governing Documents Posted to School District and Education Service Cooperative Websites. The rules that set forth required website postings for school districts and education service cooperatives were amended to incorporate three Acts: Act 646 of 2021, Act 688 of 2021, and Act 774 of 2021.

Act 646 of 2021 requires school districts to develop by August of 2022 a three-year teacher and administrator recruitment and retention plan, which shall among other things set goals for the recruitment and retention of teachers and administrators to reflect the racial and ethnic diversity of school district students. This plan must be posted to the school district's website by August 1 of each year. Act 688 of 2021 authorizes school districts to implement an alternative school calendar based upon hours as opposed to days. Any alternative calendar must be posted to the school district's website by August 1, 2021. Act 774 of 2021 requires that public charter schools post the most recent version of their written charter contract by August 1 of each year.

As a result of public comment, only technical, non-substantive changes were made.

PUBLIC COMMENT: A public hearing was held on February 7, 2022. The public comment period expired on February 24, 2022. The Division provided the following summary of the sole comment received and its response thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association
Comment: In Section 1.01, I would recommend changing "The Rules" to "These Rules" to more closely align with phrasing in other Rules. In Section 4.01.7, the "two" here is missing parenthetical Arabic numerals for consistency with other Rules. **Division Response:** Comments considered. Non-substantive changes made.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Education shall have general supervision of the public schools of the state and shall take such other action as it may deem necessary to promote the organization and efficiency of the public schools of the state. *See* Ark. Code Ann. § 6-11-105(a)(1), (a)(7)(B). The proposed changes include revisions made in light of the following acts:

Act 646 of 2021, sponsored by Senator James Sturch, which amended provisions of the Arkansas Code concerning minority teacher and minority administrator recruitment plans and amended provisions of the Arkansas Code concerning the Equity Assistance Center;

Act 688 of 2021, sponsored by Representative Mark Lowery, which concerned the school start date and the definition and length of a school day, allowed public school district boards of directors to elect to implement an alternate school calendar, and amended the definition of a school day; and

Act 774 of 2021, sponsored by Senator Jane English, which amended provisions of the Arkansas Code concerning school district waivers and amended provisions of the Arkansas Code concerning public charter school charters, enrollment, authorization, and facility funding.

j. SUBJECT: Rules Governing Arkansas Military Child School Transitions

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education proposes changes to its Rules Governing Arkansas Military Child School Transitions. The rules were amended to add language per Act 1031 of 2021. Act 1031 of 2021 clarified the purpose of the Arkansas Military Child School Transitions Act. The rules were amended to reflect same. The rules were also amended to include additional definitions and update definitions per the Act. The rules were amended per the Act to include a defined list of United States Department of Defense and Arkansas military installations.

The "Application" section of the rules was amended to clarify per Act 1031 that the rules apply to dual status military technicians and traditional members of the National Guard and reserve components of the armed forces who are relocating to Arkansas for employment or to serve as a member of an Arkansas-based reserve component unit.

The "Public School District Duties" section of the rules was amended to add additional language per Act 1031 including language regarding the option for districts to request sending and receiving districts outside of the state to assist with services for families that are covered under Arkansas state law but may not be covered under the interstate compact. The rules were also amended to add language per Act 1031 regarding enrollment of inbound transitioning children of military families in virtual distance-learning or digital coursework.

PUBLIC COMMENT: A public hearing was held on February 7, 2022. The public comment period expired on February 24, 2022. The Division provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association
Comment (1): Section 1-3.00: I would recommend adding a definition for "Public school district" to clarify that the language in the rules regarding "districts" applies to all traditional districts as well as open-enrollment public charter schools. **Division Response:** Comment considered. This change was not made in the law. No changes made.

Comment (2): Section 2-3.01.1.1: The parenthetical Arkansas State MIC3 Council was repealed from 1-3.05. As such, I would recommend amending this section to read just "Arkansas Council for Military Children." **Division Response:** Comment considered. Non-substantive change made.

Comment (3): Section 2-3.01.1.2: The parenthetical Arkansas State MIC3 Council was repealed from 1-3.05. As such, I would recommend amending this section to read just "Arkansas Council for Military Children." **Division Response:** Comment considered. Non-substantive change made.

Comment (4): Section 3-1.01: As "local education agency" was stricken earlier, I would recommend amending this to be "State, public schools, and public school districts." **Division Response:** Comment considered. The language in the rules mirrors the law. No change made.

Comment (5): Section 3-3.01.1: As "local education agency" was stricken earlier, I would recommend amending this to be "State, public schools, and public school districts." **Division Response:** Comment considered. The language in the rules mirrors the law. No change made.

Comment (6): Section 3-3.01.2: As "local education agency" was stricken earlier, I would recommend amending this to be "State, public schools, and public school districts." **Division Response:** Comment considered. The language in the rules mirrors the law. No change made.

Comment (7): Section 3-3.07.5: The "g" in the citation for FERPA is part of the section rather than a subsection so it should not be in parenthesis. **Division Response:** Comment considered. Non-substantive change made.

Commenter Name: Col. Don K. Berry, MOAA Arkansas & Arkansas Veterans Coalition

Comment (1): Chapter 2 – Public School District Duties lacks clarity. Chapter 2 – Section 2-1.00 – School Transition of Children of Military Families fails to provide clear administration of the Title 6, Chapter 28, Subchapter 1 statutes. The provisions of this section should be reordered and broken out as separate sections so as to provide a clear outline/index for schools and military families. **Division Response:** Comments considered. The proposed rules are fully-developed and have been amended to include language that mirrors the law. Should military families or school districts have questions about the rules, they may contact Col. John Kaminar, Chair of the Arkansas Council for Military Children and an ADE employee, or the ADE legal department. Both Col. Kaminar and the ADE legal department will be happy to assist in answering any questions. No changes made.

Comment (2): Act 1031 repealed A.C.A. § 6-18-107 because the statute lacked clarity. The result is Title 6, Chapter 28, which provides clear and complete presentation of statutory direction. Despite the flawed statute's

repeal the pending rule's Chapter 2 – Public School District Duties, Section 2-1.00 retains the current rules' 34 unindexed, untitled and out of sequence provisions. This bundles nine code sections (A.C.A. § 6-18-107 through § 6-18-115) without topic indexing. **Division Response:** Comments considered. The proposed rules are fully-developed and have been amended to include language that mirrors the law. Should military families or school districts have questions about the rules, they may contact Col. John Kaminar, Chair of the Arkansas Council for Military Children and an ADE employee, or the ADE legal department. Both Col. Kaminar and the ADE legal department will be happy to assist in answering any questions. No changes made.

Comment (3): The lack of clarity of the Markup version is seen by comparing the Markup's Table of Contents on the left and the '… 10-25-2021 dkb' version on the right.

Table of Contents – Markup Version	
Chapter 2 – Public School Duties	
2-1.00	School Transition of Children of Military Families *Chapter 2, Section 2-1.01 bundles out of sequence content from §6-28-107 through §6-28-115 into 34 subsections without titles or indexing to provide clarity.* *Which ToC version better reflects statute?* *The markup version* ^^^ ***... or the one on the right >>>?***
2-2.00	Reporting
2-3.00	New Student Recognition Programs and School District Coordinators

Table of Contents – 10-25-21 dkb Version	
Chapter 2 – Public School Duties	
2-1.00	School Transition of Children of Military Families
2-2.00	Transfer of Education Records and Enrollment
2-3.00	Advance Enrollment
2-4.00	Virtual Enrollment
2-5.00	Immunizations
2-6.00	Grade Placement
2-7.00	Course and Education Program Placement
2-8.00	Special Education Services
2-9.00	Student Excused Absences
2-10.00	Graduation and Testing
2-11.00	School Choice for Military Families
2-12.00	New Student Reception Programs – School District Military Family Education Coordinators (DMECs)
2-13.00	Reporting Enrollment of Children of Members of the Uniformed Services

Division Response: Comments considered. The proposed rules are fully-developed and have been amended to include language that mirrors the law. Should military families or school districts have questions about the rules, they may contact Col. John Kaminar, Chair of the Arkansas Council

for Military Children and an ADE employee, or the ADE legal department. Both Col. Kaminar and the ADE legal department will be happy to assist in answering any questions. No changes made.

Comment (4): Recommended Action:

- Re-order and make Chapter 2 provisions individual sections to provide clear guidance in conformity with statute.
  - Action ought not constitute a substantial change only a re-ordering of provisions.
  - Suggested language re-ordering provisions attached.
  - Depending on an anticipated BLR-led codification project revising the style, formatting, and codification of this rule admits that the rule falls short of what is proscribed in statute.
- We need to provide the clearest translation of statute to operationally guide school districts and inform uniformed services families of anticipated school transition services.

Division Response: Comments considered. The proposed rules are fully-developed and have been amended to include language that mirrors the law. Should military families or school districts have questions about the rules, they may contact Col. John Kaminar, Chair of the Arkansas Council for Military Children and an ADE employee, or the ADE legal department. Both Col. Kaminar and the ADE legal department will be happy to assist in answering any questions. No changes made.

Comment (5): Recommended edit: Table of Contents; (add) 3-4.00 Military Family Education Liaison. **Division Response:** Comment considered. Non-substantive change made.

Comment (6): Recommended edit: 1-2.02.5 – Providing for the adoption and enforcement of administrative rules to implement ~~the Compact~~ Ark. Code Ann. § 6-28-101 et seq. Statutory basis: A.C.A. § 6-28-103(c)(5). **Division Response:** Comment considered. Non-substantive change made.

Comment (7): Recommended edit: 2-1.01 – Children of military families under this rule shall have equitable access to academic courses and programs and to extracurricular academic, athletic, and social programs. Statutory basis for re-inclusion: A.C.A. § 6-28-103(c)(3). **Division Response:** This language was stricken from the law by Act 1031 of 2021. No changes made.

Comment (8): Recommended edit: 2-3.01.1.1 – Public schools may choose to adopt the Arkansas ~~State MIC3~~ Council for Military Children developed Purple School/Campus program, … Statutory basis: A.C.A. § 6-28-106(b) established the Arkansas Council for Military Children.

There is no statutory basis for the Arkansas State MIC3 Council. **Division Response:** Comment considered. Non-substantive change made.

Comment (9): Recommended edit: Arkansas ~~State MIC3~~ Council for Military Children will recognize public school … Statutory basis: A.C.A. §§ 6-28-106(b), 6-28-204(b)(4). **Division Response:** Comment considered. Non-substantive change made.

Comment (10): Recommended edit: 3-2.03.1 – One (1) member ~~to~~ shall be appointed by the President Pro Tempore … Statutory basis: A.C.A. § 6-28-203(A)(3)(a). **Division Response:** Section 3-2.03 provides a list of the three (3) appointed at-large members. Use of the word "shall" would not correlate with the structure of the section. No change made.

Comment (11): Recommended edit: 3-2.03.2 – One (1) member ~~to~~ shall be appointed by the Speaker of the House … Statutory basis: A.C.A. § 6-28-203(A)(3)(b). **Division Response:** Section 3-2.03 provides a list of the three (3) appointed at-large members. Use of the word "shall" would not correlate with the structure of the section. No change made.

Comment (12): Recommended edit: ~~3-3.07.5~~ 3-3.07.4.2 Information provided under section 3-3.07.4 of these rules … Statutory basis: A.C.A. § 6-28-204(h)(4)(b). **Division Response:** Per the structure of the rules, this language is not a subpart of 3-3.07.4. No change made.

Comment (13): Recommended edit: ~~3-3.07.6~~ 3-3.07.5. **Division Response:** Please see response to Comment (12). No change made.

Comment (14): Recommended edit: ~~3-3.07.7~~ 3-3.07.6. **Division Response:** Please see response to Comment (12). No change made.

Comment (15): Thank you for the opportunity to contribute and comment. Recommend reorder Chapter 2 to provide clear guidance in conformity with statute using the provided draft. Recommend making the specific edits to bring a number of passages into agreement with statute. *Division's note:* Commenter included a proposed draft of the rules. [Bureau Staff Note: A copy of the commenter's proposed draft of rules was provided to Bureau Staff.]

Division Response: Comment considered. Please see commenter's draft (attached). The proposed rules are fully-developed and have been amended to include language that mirrors the law. Should military families or school districts have questions about the rules, they may contact Col. John Kaminar, Chair of the Arkansas Council for Military Children and an ADE employee, or the ADE legal department. Both Col. Kaminar and the ADE legal department will be happy to assist in

answering any questions. No changes made except as specifically set out in preceding responses.

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

(1) Section 1-3.15.1 – The rule reads a "dependent member." Is this correct? **RESPONSE:** I will add the words "of a" to that sentence.

(2) Section 1-3.15.1 – I am confused over the subsections of this rule. Is it saying that a dependent is considered a resident of the school district before the physical arrival of the dependent in the school district and when the member enrolls the dependent in the school district? **RESPONSE:** Yes. This language was added from Act 1031.

(3) Sections 2-1.05, 2-1.06, and 2-1.07 – The statutes on which these rules appear to be based provide that the reasonable time period will be determined by the DESE in its rules. Is there a reason that the time periods contemplated are not set forth in the rules? **RESPONSE:** The language about the reasonable time period was added from Act 1031. The reasonable time period is 30 days or it can be longer per Act 1031.

FOLLOW UP QUESTION: I understand the language was taken from the statute for those three sections of the rules, but my question is why is the Division not stating the time period it has determined as reasonable in the rules themselves, when the Act appears to provide for a reasonable time frame "as established by division rules"? **RESPONSE:** Based on your questions, I have made the following changes to the rules:

> ~~2-1.07~~ 2-1.05 Upon receipt of this request, the sending district, if it is a district within this state, shall process and furnish the student's official education records to the receiving district within ten (10) days.
>
> ~~2-1.08~~ 2-1.06 A student shall furnish his or her required immunization records to a receiving district within thirty (30) days of enrolling in the receiving district~~.~~ or as per the DESE Rules Governing Immunization Requirements in Arkansas Public Schools.
>
> ~~2-1.09~~ 2-1.07 For a series of immunizations, initial vaccinations shall be obtained within thirty (30) days~~.~~ or as per the DESE Rules Governing Immunization Requirements in Arkansas Public Schools.

(4) Section 3-1.01 – This section appears to be premised on Ark. Code Ann. § 6-28-204(a), as amended by Act 1031 of 2021, § 2. To that end, should "these rules" instead be a reference to the provisions of Chapter 28 of Title 6 of the Arkansas Code and the Interstate Compact to track the statute? **RESPONSE:** I will substitute "these rules" with "Title 6, Chapter 28 and the Interstate Compact."

(5) Section 3-2.01.1 – This section appears to be premised on Ark. Code Ann. § 6-28-202(b), as amended by Act 1031, § 2. To that end, should "these rules" instead be a reference to the provisions of Chapter 28 of Title 6? **RESPONSE:** I will substitute "these rules" with "Title 6, Chapter 28 and the Interstate Compact."

(6) Section 3-2.01.3 – This section appears to be premised on Ark. Code Ann. § 6-28-202(d), as amended by Act 1031, § 2. To that end, should "this compact" instead be a reference to the provisions of Chapter 28 of Title 6? **RESPONSE:** Yes. I will make this change.

(7) Section 3-3.01.1 – This section appears to be premised on Ark. Code Ann. § 6-28-204(b)(1), as amended by Act 1031, § 2. To that end, should "these rules" instead be a reference to the provisions of Chapter 28 of Title 6? **RESPONSE:** Yes. I will make this change.

(8) Section 3-3.01.2 – This section appears to be premised on Ark. Code Ann. § 6-28-204(b)(2), as amended by Act 1031, § 2. To that end, should "these rules" instead be a reference to the provisions of Chapter 28 of Title 6? **RESPONSE:** Yes. I will make this change.

(9) Section 3-3.02 – This section provides that the Council may call special meetings; however, Ark. Code Ann. § 6-28-204(c)(2), as amended by Act 1031, § 2, provides that the Chair of the Council may do so. Is there a reason that the rule does not track the statute? **RESPONSE:** I will make this change so that the rules track the statute.

(10) Section 3-3.03– I noticed that this section continues its reference to "the compact," while Ark. Code Ann. § 6-28-204(f), as amended by Act 1031, § 2, references "this Chapter." Is there a reason that the rule does not track the statute? **RESPONSE:** I will replace "this compact" with "Title 6, Chapter 28."

(11) Section 3-3.07.6 – This section appears to be premised on Ark. Code Ann. § 6-28-204(h)(5), as amended by Act 1031, § 2. To that end, should "these rules" instead be a reference to the provisions of Chapter 28 of Title 6? **RESPONSE:** I will substitute "these rules" with "Title 6, Chapter 28."

(12) Section 3-3.07.7 – This section appears to be premised, in part, on Ark. Code Ann. § 6-28-204(h)(6), as amended by Act 1031, § 2. To that end, should "these rules" instead be a reference to the provisions of Chapter 28 of Title 6? **RESPONSE:** I will substitute "these rules" with "Title 6, Chapter 28."

(13) Section 3-4.01.3.1 – This section appears to be premised on Ark. Code Ann. § 6-28-205(b)(3)(A), as amended by Act 1031, § 2. To that end, should "these rules" instead be a reference to the provisions of Chapter 28 of Title 6? **RESPONSE:** I will substitute "these rules" with "Title 6, Chapter 28."

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-28-106(c), as amended by Act 1031 of 2021, § 2, the State Board of Education shall promulgate rules to implement the Arkansas Military Child School Transitions Act of 2021, Ark. Code Ann. §§ 6-28-101 to -206. The proposed rules include revisions made in light of Act 1031 of 2021, sponsored by Senator Jane English, which created the Arkansas Military Child School Transitions Act of 2021 and advanced achievement of educational success on behalf of children of military families.

k. SUBJECT: Rules Governing Public Charter Schools

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education proposes changes to its Rules Governing Public Charter Schools. The rules were created per Ark. Code Ann. § 6-23-101, et seq. Other than the language adding multi-year services contracts as an exception to the definition of debt, and the one-week extension added to paragraph 4.02.3.3, the amendments to the rules are either technical or a result of legislation, namely Acts 744 and 774 of 2021.

Act 744 of 2021 created the "Community Schools Act," which is codified at Ark. Code Ann. § 6-15-3001, et seq. Per Ark. Code Ann. § 6-23-109, the Charter Authorizing Panel may designate public charter schools as community schools, as defined by Ark. Code Ann. § 6-15-3001, if the schools meet certain application requirements. Language regarding this was added to the rules.

The amendments add language regarding transfer of funds and clarify that when an open-enrollment charter is revoked, transferred or assigned, the

charter school shall provide the Division of Elementary and Secondary Education with a comprehensive list of all banking information and accounts in which the school holds state or federal funds. Additional language was added per the Act stating that the charter must receive approval from the Division for expenditures over $500 and that the charter must work in coordination with the Division to draft a charter closure plan.

Language was added regarding open-enrollment public charter school policy regarding enrollment of students after the statutory deadline.

The language regarding multi-year services contracts was added because these contracts do not represent significant risks to the financial stability of the school(s). The existing rules state that after receipt of a request to change the physical location of a public charter school, the Commissioner is given a period of seven (7) days to request additional information. The rule has been amended to change that time period to fourteen (14) days in order to allow the Commissioner additional time to review and respond to the request.

There were also some technical changes made to the rules.

PUBLIC COMMENT: A public hearing was held on February 7, 2022. The public comment period expired on February 24, 2022. The Division provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association
Comment (1): 3.12: To clarify the new language, I would recommend amending this to read as "Debt does not include when charters enter" instead of "An exception is that charters may enter." **Division Response:** Comment considered. Non-substantive change made in part.

Comment (2): 3.14.1: There is a space between the period and fourteen. 3.14.2: There is a space between the period and fourteen. 3.14.3: There is a space between the period and fourteen. 3.14.4: There is a space between the period and fourteen. **Division Response:** Comments considered. Non-substantive changes made.

Comment (3): 3.20.3: While I recognize that this language matches the statutory definition from 6-23-103, I would recommend updating to recognize the passage of the Every Student Succeeds Act in 2015 to ensure that it's not out of alignment with Federal law. **Division Response:** Comment considered. Non-substantive change made.

Comment (4): 3.20.4: While I recognize that this language matches the statutory definition from 6-23-103, I would recommend updating to recognize the passage of the Every Student Succeeds Act in 2015 to ensure that it's not out of alignment with Federal law. **Division Response:** Comment considered. Non-substantive change made.

Comment (5): 3.24: The "4" here is unnecessarily struck. **Division Response:** Comment considered. No change made.

Comment (6): 4.03.1.3: The "this" here is unnecessary. **Division Response:** Comment considered. Non-substantive change made.

Comment (7): 4.06.2.2: There is a repeat of "the" at "under the the Arkansas." **Division Response:** Comment considered. Non-substantive change made.

Comment (8): 5.01.3.8.1: There is an unnecessary period after the "1." **Division Response:** Comment considered. Non-substantive change made.

Comment (9): 5.06.7: The note here references Sections 8 and 9 of the Rules and should actually reference Sections 9 and 10 of the Rules. **Division Response:** Comment considered. Non-substantive change made.

Comment (10): 5.08.2: The note here references Sections 8 and 9 of the Rules and should actually reference Sections 9 and 10 of the Rules. **Division Response:** Comment considered. Non-substantive change made.

Comment (11): 6.03.2: I believe that this should read "open-enrollment" instead of "conversion." **Division Response:** Comment considered. Non-substantive change made.

Comment (12): 6.04.3.1: I would recommend either removing the "an" from in front of "open-enrollment charter schools" or removing the final "s" from "open-enrollment charter schools" to fix a grammar issue. **Division Response:** Comment considered. Non-substantive change made.

Comment (13): 6.11.3.1: There is a space between the period and the "3" here. 6.11.3.1.1: There is a space between the period and the "3" here. 6.11.3.1.2: There is a space between the period and the "3" here. 6.11.3.2: There is a space between the period and the "3" here. **Division Response:** Comments considered. Non-substantive change made.

Comment (14): 6.17: There are currently two 6.17s. I believe that the second one should be 6.17.11. **Division Response:** Comment considered. Non-substantive change made.

Comment (15): 6.17.1: There are two 6.17.1 in the document. I believe that this was supposed to be 6.17.11.1. There is also a space between the period and the "17." **Division Response:** Comment considered. Non-substantive changes made.

Comment (16): 6.17.2: There are two 6.17.2 here. I believe that this one is supposed to be 6.17.11.2. Also, there is a space between the period and the "17." **Division Response:** Comment considered. Non-substantive changes made.

Comment (17): 6.20.1: There is a space between the period and "20." 6.20.2: There is a space between the period and "20." 6.20.3: There is a space between the period and "20." 6.20.4: There is a space between the period and "20." 6.21.1: There is a space between the period and "21." 6.21.2: There is a space between the period and "21." 6.21.3: There is a space between the period and "21." **Division Response:** Comments considered. Non-substantive changes made.

Comment (18): 6.22.8: The note here references Sections 8 and 9 of the Rules and should actually reference Sections 9 and 10 of the Rules. **Division Response:** Comment considered. Non-substantive change made.

Comment (19): 6.23.5: The note here references Sections 8 and 9 of the Rules and should actually reference Sections 9 and 10 of the Rules. **Division Response:** Comment considered. Non-substantive change made.

Comment (20): 6.26.1.1: There is a space between the period and "26" here. 6.26.1.2: There is a space between the period and "26" here. 6.26.1.3: There is a space between the period and "26" here. 6.26.1.4: There is a space between the period and "26" here. 6.26.1.4.1: There is a space between the period and "26" here. 6.26.1.4.2: There is a space between the period and "26" here. 6.26.1.4.3 There is a space between the period and "26" here. 6.26.2: There is a space between the period and "26" here. 6.26.3: There is a space between the period and "26" here. 6.26.3.1: There is a space between the period and "26" here. 6.26.4: There is a space between the period and "26" here. **Division Response:** Comments considered. Non-substantive changes made.

Comment (21): 8.05.4: This should actually read "Family Educational Rights and Privacy Act" instead of "Federal." **Division Response:** Comment considered. Non-substantive change made.

Comment (22): 10.04.1.4: As there does not appear to be a Section 10.03.1.3, I believe that this is actually intended to reference Section 10.03.1. **Division Response:** Comment considered. Non-substantive change made.

Comment (23): 11.01.1: There appears to be a colon missing from the end of this section. **Division Response:** Comment considered. Non-substantive change made.

Comment (24): 11.03.1.2.2: This section continues to reference "academic distress," which no longer exists as a category under law or rule. **Division Response:** Comment considered. Non-substantive change made.

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

(1) Section 6.03.2 – Should the reference be to "open-enrollment public charter school" rather than "conversion" as Section 6.0 concerns open-enrollment public charter schools? **RESPONSE:** Yes, you are correct. I have made this change.

(2) Section 8.04.3 – Should the reference to "Section 8.02.2" be "Section 8.04.2"? **RESPONSE:** Yes, you are correct. I have made this change.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to the Arkansas Quality Charter Schools Act of 2013, Arkansas Code Annotated §§ 6-23-101 to -1008, the State Board of Education is authorized and directed to establish rules for conversion public charter schools, authorized to promulgate rules for the creation of open-enrollment public charter schools, and may adopt rules for adult education public charter schools. *See* Ark. Code Ann. §§ 6-23-206, 6-23-309, and 6-23-1008(a). The State Board shall further adopt rules as necessary to administer Title 6, Chapter 23, Subchapter 7 of the Arkansas Code, concerning the public charter school authorizer, including without limitation the procedure for hearings and administration of the public charter authorizing panel. *See* Ark. Code Ann. § 6-23-702(a). Additionally, the State Board may promulgate rules to implement Ark.

Code Ann. § 6-23-105(e), concerning the actions to be taken immediately upon the revocation, transfer, or assignment of an open-enrollment charter by the authorizer. *See* Ark. Code Ann. § 6-23-105(e)(4). Changes to the rules include revisions made in light of Act 744 of 2021, sponsored by Senator Missy Irvin, which supported Arkansas public schools and public school districts in the implementation of a community school approach; and Act 774 of 2021, sponsored by Senator Jane English, which amended provisions of the Arkansas Code concerning school district waivers and amended provisions of the Arkansas Code concerning public charter school charters, enrollment, authorization, and facility funding.

l. **SUBJECT: Division of Elementary and Secondary Education and State Board of Nursing Rules Governing the Administration of Insulin, Glucagon, and Medication for Adrenal Insufficiency or Adrenal Crisis to Arkansas Public School Students**

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education propose changes to the Arkansas Division of Elementary and Secondary Education and State Board of Nursing Rules Governing the Administration of Insulin, Glucagon, and Medication for Adrenal Insufficiency or Adrenal Crisis to Arkansas Public School Students. The rules currently set forth protocols and procedures for the administration of insulin and glucagon to public school students. The amendment is necessary to incorporate Act 1050 of 2021, which authorizes the administration of medication for adrenal insufficiency or crisis. The Act allows for student self-administration of a "stress dose," *i.e.*, oral hydrocortisone, as well as administration of an "emergency dose," *i.e.*, intramuscular hydrocortisone sodium succinate, by trained volunteer school district personnel when a school nurse is not available. The Act also immunizes school districts from liability as a result of medication through self-administration or by trained school district volunteers; requires that a parent, guardian, or person acting *in loco parentis* authorize the medication administration in writing; and that the written authorization be incorporated into the student's Individualized Healthcare Plan. Other amendments are technical and clerical.

As a result of public comment, the definition of "glucagon" was changed (to remove the word "injectable") to recognize that glucagon may be administered in a non-injectable manner. Sections 4.11 and 6.01.5 were amended for the same reason. Other technical corrections were made.

PUBLIC COMMENT: A public hearing was held on February 7, 2022. The public comment period expired on February 28, 2022. The Division provided the following summary of the comments that it received and its responses thereto:

Commenter: Lucas Harder, Arkansas School Boards Association
Comment: In the definitions, the "l" is missing between the "n" and the "t." In Chapter 3, there is a missing "of" between "Administration" and Medication." In (new) Section 8.03.1.1, there is an extra "os" here so that it reads as "proposer" instead of "proper." In Section 8.04, "Medication" has been spelled as "medical." **Division Response:** Comments considered. Non-substantive changes made.

Commenter: Mount Magazine School District
Comment: [Agency Note: Referring to the use of the term "injectable" in the definition of "glucagon"] I would like to point out as a parent of a child who is diabetic that glucagon is not always injectable. We have a nasal inhalant form, where the tip of the bottle is placed in the nose and released (similar to nasal sprays found over the counter for allergies). **Division Response:** Comment considered. Non-substantive changes made to the definition of "glucagon" (which is section 3.06 in the proposed amended rules), as well as to Sections 4.11 and 6.01.5.

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

Are these rules being promulgated in coordination with the Arkansas State Board of Nursing, as referenced in Ark. Code Ann. § 17-87-103(15)(H), as amended by Act 1050 of 2021, § 2? **DIVISION RESPONSE:** Yes. I have been working with David Dawson, the lawyer for the State Board of Nursing (who I have copied on this email in case he has anything to add). Because these are joint rules, the State Board of Nursing will be considering them as well. I don't anticipate any substantive changes because DESE's amendments closely follow Act 1050. We will not submit these rules amendments for ALC Rules Subcommittee review, however, until they get a thumbs up from the State Board of Nursing. **RESPONSE FROM THE ARKANSAS STATE BOARD OF NURSING:** Yes. Our Board reviewed these rules and voted to approve them with no recommended changes on Thursday last week.

The proposed effective date is May 31, 2022.

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

LEGAL AUTHORIZATION: The proposed changes include revisions made in light of Act 1050 of 2021, sponsored by Senator Bart Hester, which amended the law concerning the health and safety of public school students. Pursuant to Arkansas Code Annotated § 17-87-103(11)(E), the State Board of Education and the Arkansas State Board of Nursing shall promulgate rules necessary to administer Ark. Code Ann. § 17-87-

103(11), which exempts from the requirement of a nursing license certain trained volunteer school personnel who may administer glucagon or insulin, or both, to a student diagnosed with diabetes, as outlined in the statute. Likewise, the Division of Elementary and Secondary Education, in coordination with the Arkansas State Board of Nursing, shall promulgate rules to implement Ark. Code Ann. § 17-87-103(15), which exempts from the requirement of a nursing license the administration of an emergency dose medication to a public school student who is diagnosed with an adrenal insufficiency by volunteer public school personnel if the public school personnel are trained to administer an emergency dose medication using the appropriate delivery equipment when a public school nurse is unavailable. *See* Ark. Code Ann. § 17-87-103(15)(H), as amended by Act 1050, § 2. *See also* Ark. Code Ann. § 6-18-711(c) (providing that "[a] public school employee may volunteer to be trained to administer and may administer glucagon to a student with Type 1 diabetes in an emergency situation as permitted under § 17-87-103(11)"); Ark. Code Ann. § 6-18-718(a)(1), as amended by Act 1050, § 1 (providing that "[s]elf-administration of a stress dose medication by a public school student with adrenal insufficiency while the student is at his or her public school, on his or her public school grounds, or at an activity related to his or her public school may be permitted with the authorization of the public school student's parent, legal guardian, or person standing in loco parentis and the public school student's treating physician" as outlined in the statute).

8. <u>DEPARTMENT OF EDUCATION, DIVISION OF HIGHER EDUCATION</u> (Whitney James)

a. <u>SUBJECT</u>: Rules Governing the Arkansas Future Grant Program

<u>DESCRIPTION</u>: The Department of Education's Division of Higher Education proposes changes to its Rules Governing the Arkansas Future Grant Program. These rules were amended to incorporate the provision of Act 388 of 2021 that expanded the definition of approved institution of higher education to include private, nonprofit two-year or four-year colleges or universities. In addition, to mirror the language of Act 388, section (a)(2) of the rules under subheading "Grant Award Amounts" was amended to include language further defining the four-year institutions of higher education as "state-supported" or "private, nonprofit."

Act 618 of 2019 changed the frequency of certification of receipt of mentoring services from once per month to once per semester. This change has now been made in the rules. The previous version of the rules referred to the "Department of Higher Education" rather than the "Division of Higher Education." The rules have been amended to replace

"Department of Higher Education" with "Division of Higher Education." The previous version of the rules referred to the "Arkansas Department of Career Education." The rules have been amended to replace "Department of Career Education" with "Division of Workforce Services" as this is the proper agency name.

PUBLIC COMMENT: A public hearing was held on December 3, 2021. The public comment period expired on December 14, 2021. The Division provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association (11/17/21)
Comment (1): Collection of Loan, Subsection B1 – "ADHE" is abbreviated here though there is no previous parenthetical abbreviation for "Arkansas Division of Higher Education."
Division Response: Comment considered. No changes made.

Comment (2): Collection of Loan, Subsection E – Although there is no (2) here, (1) could be removed along with the (2) that has no following language.
Division Response: Comment considered. Non-substantive change made.

Comment (3): Collection of Loan, Subsection G – Although there is no second item under this subsection, the (a) could be removed.
Division Response: Comment considered. Non-substantive change made.

Comment (4): Institutional Responsibilities, Subsection A4 – "ADHE" is abbreviated here though there is no previous parenthetical abbreviation for "Arkansas Division of Higher Education."
Division Response: Comment considered. No changes made.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-82-1805, the Division of Higher Education shall promulgate rules to implement Title 6, Chapter 82, Subchapter 18 of the Arkansas Code, concerning the Arkansas Future Grant Program. The proposed changes include those made in light of Act 388 of 2021, sponsored by Senator Linda Chesterfield, which concerned the Arkansas Future Grant Program and deemed a private, nonprofit two-year or four-year institution of higher

education an approved institution of higher education under the Arkansas Future Grant Program.

b. SUBJECT: Rules Governing the Military Dependents' Scholarship Program

DESCRIPTION: The Department of Education's Division of Higher Education proposes changes to its Rules Governing the Military Dependents' Scholarship Program. Act 988 of 2021 expanded the definition of institution of higher education in Ark. Code Ann. § 6-82-601 to include private and nonprofit institutions of higher education in Arkansas. This language was added to the rule. Additionally, Act 988 of 2021 clarified that state assistance awarded to a dependent attending a private, nonprofit institution of higher education shall not exceed the maximum amount of state assistance awarded to dependents attending state-supported institutions of higher education. This language was added to the rule. Finally, the previous version of the rules referred to the "Department of Higher Education" rather than the "Division of Higher Education." The rules have been amended to replace "Department of Higher Education" with "Division of Higher Education."

PUBLIC COMMENT: A public hearing was held on December 3, 2021. The public comment period expired on December 14, 2021. The Division provided the following summary of the comments received and its responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association (11/17/21)
Comment (1): Organization and Structure, Subsection II – There is a comma missing from between "2009" and "and."
Division Response: Comment considered. Non-substantive change made.

Comment (2): Organization and Structure, Subsection III – There is a comma missing from between "2009" and "and." "Administrative Procedures Act" at 25-15-501 et seq. is the "Administrative Procedure Act."
Division Response: Comment considered. Non-substantive changes made.

Comment (3): Scholarship Eligibility Criteria, Subsection III – "ADHE" is abbreviated here though there is no previous parenthetical abbreviation for "Arkansas Division of Higher Education."
Division Response: Comment considered. No changes made.

Comment (4): Scholarship Payment Policies, Subsection I – "MDS" is not previously parenthetically abbreviated in the rules and is not abbreviated later in the rules.
Division Response: Comment considered. Non-substantive change made.

Comment (5): Scholarship Payment Policies, Subsection IV – "ADHE" is abbreviated here though there is no previous parenthetical abbreviation for "Arkansas Division of Higher Education."
Division Response: Comment considered. No changes made.

Comment (6): Institutional Responsibilities, Subsection II – The parenthetical abbreviation of "ADHE" here seems unnecessary as it is only abbreviated afterwards in V but spelled out the rest of the time it appears after the parenthetical abbreviation.
Division Response: Comment considered. Non-substantive change made.

Comment (7): Institutional Responsibilities, Subsection V – "ADHE is abbreviated here though there is no previous parenthetical abbreviation for "Arkansas Division of Higher Education."
Division Response: Comment considered. No changes made.

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

Scholarship Payment Policies, Section V. – Should the term "maximum" precede "amount of state assistance awarded" as it is used in Ark. Code Ann. § 6-82-601(d)(2)(C), as amended by Act 988 of 2021, § 1?
RESPONSE: Comment considered. Non-substantive change made.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-82-601(c), the Arkansas Higher Education Coordinating Board and the State Board of Education are directed, authorized, and empowered to promulgate and adopt such rules as are necessary to implement the provisions of the statute, concerning tuition waiver for dependents of certain veterans. The proposed changes include those made in light of Act 988 of 2021, sponsored by Representative Cameron Cooper, which allowed dependents of certain veterans to receive tuition waivers to private, nonprofit institutions of higher education in this state and capped the amount of the tuition waiver for dependents of certain veterans attending private, nonprofit institutions of higher education in this state.

c. SUBJECT: Rules Governing Out-of-State Veterinary Medical Education Loan Repayment Program

DESCRIPTION: The Department of Education's Division of Higher Education proposes changes to its Rules Governing Out-of-State Veterinary Medical Education Loan Repayment Program. The Veterinary Medical Education Loan Repayment Program was established by Act 811 of 2011. While rules were promulgated previously, the program has only recently been funded. Therefore, it was necessary to amend the rules to include the updated graduation year. The application deadline has also been updated.

Because the program was created for the benefit of Arkansas students, the rules have been amended to clarify that an applicant must be a graduate of an Arkansas public, private, or home school or GED program. The rules are amended to include the requirement that applications be accessed online rather than mailed upon request. This amendment removes the unnecessary language stating that applications must be filled out online.

Because funding for the program comes from fees that vary from year to year, the selection process in the rules has been amended to clarify that awards are made on a first-come, first-served basis. Finally, the previous version of the rules referred to the "Department of Higher Education" rather than the "Division of Higher Education." The rules have been amended to replace "Department of Higher Education" with "Division of Higher Education."

PUBLIC COMMENT: A public hearing was held on December 3, 2021. The public comment period expired on December 14, 2021. The Division provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association (11/17/21)
Comment (1): Organization and Structure, Subsection II – "ADHE" is abbreviated here though there is no previous parenthetical abbreviation for "Arkansas Division of Higher Education."
Division Response: Comment considered. No changes made.

Comment (2): Organization and Structure, Subsection II – "Administrative Procedures Act" at 25-15-201 et seq. is the "Administrative Procedure Act."
Division Response: Comment considered. Non-substantive change made.

Comment (3): Eligibility Criteria, Subsection II – "ADHE" is abbreviated here though there is no previous parenthetical abbreviation for "Arkansas Division of Higher Education."
Division Response: Comment considered. No changes made.

Comment (4): Selection Process, Subsections II, III, IV(A) – "ADHE" is abbreviated here though there is no previous parenthetical abbreviation for "Arkansas Division of Higher Education."
Division Response: Comment considered. No changes made.

Comment (5): Program Definitions, Arkansas Resident – "ADHE" is abbreviated here though there is no previous parenthetical abbreviation for "Arkansas Division of Higher Education."
Division Response: Comment considered. No changes made.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rules have a financial impact and that the additional cost of the state rule will be $250,000.00 in special revenue for the next fiscal year.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-81-1105(c)(2)(A), the Division of Higher Education shall adopt rules to implement the statute, concerning veterinary medicine loans, and address the terms and conditions of loan repayments made under the statute. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-81-1106(e), which provides that the Division shall adopt rules to administer the statute, concerning student loan repayment.

d. SUBJECT: Rules Governing the Arkansas Workforce Challenge Scholarship Program

DESCRIPTION: The Department of Education's Division of Higher Education proposes changes to its Rules Governing the Arkansas Workforce Challenge Scholarship Program. These rules were amended to incorporate the provision of Act 636 of 2021 that replaced a citation listed in Ark. Code Ann. § 6-85-303(a)(1). The previous citation listed in Ark. Code Ann. § 6-85-303(a)(1) was Ark. Code Ann. § 6-85-212(e)(2)(B)(i). Act 636 of 2021 replaced that citation with Ark. Code Ann. § 6-85-212(d)(2)(B)(i).

The previous version of the rules referred to the "Department of Higher Education" rather than the "Division of Higher Education." The rules have been amended to replace "Department of Higher Education" with "Division of Higher Education." The previous version of the rules referred to the "Arkansas Department of Career Education." The rules

have been amended to replace "Department of Career Education" with "Division of Workforce Services" as this is the proper agency name.

PUBLIC COMMENT: A public hearing was held on December 3, 2021. The public comment period expired on December 14, 2021. The Division provided the following summary of the comment that it received and its response thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association (11/17/21)
Comment: Definitions, Subsection 2B – "May include" appears here twice.
Division Response: Comment considered. Non-substantive change made.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The proposed changes include those made in light of Act 636 of 2021, sponsored by Senator Jimmy Hickey, which amended the Arkansas Academic Challenge Scholarship Program – Part 2 and established procedures and funding requirements for the creation or amendment of scholarships funded with net revenue available. Pursuant to Arkansas Code Annotated § 6-85-307, the Division 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.

e. SUBJECT: Rules Governing the Law Enforcement Officers' Dependents Scholarship Program

DESCRIPTION: The Department of Education's Division of Higher Education proposes changes to its Rules Governing the Law Enforcement Officers' Dependents Scholarship Program. The existing rules have created confusion regarding eligibility requirements, particularly for Arkansas state law enforcement officers and other state employees who reside in a different, often bordering, state but work in/for Arkansas. The rules are amended to clarify that the state of employment, rather than residency, determines eligibility. Additionally, the previous version of the rules referred to the "Department of Higher Education" rather than the "Division of Higher Education." The rules have been amended to replace "Department of Higher Education" with "Division of Higher Education."

The rules have also been amended to update the names of other state agencies.

PUBLIC COMMENT: A public hearing was held on December 3, 2021. The public comment period expired on December 14, 2021. The Division provided the following summary of the comments received and its responses thereto:

Commenter: Lucas Harder, Arkansas School Boards Association (11/9/21)
Comment (1): Organization and Structure, Subsection II – I would recommend adding a comma after Act 158 of 2001, removing the "and" from between Act 158 of 2001 and Act 172 of 2007, and add a comma after 2009.
Division Response: Comment considered. Non-substantive change made.

Comment (2): Organization and Structure, Subsection III – I would recommend adding a comma after 2009 and the period after "legislation" should be a comma.
Division Response: Comment considered. Non-substantive change made.

Comment (3): Scholarship Eligibility Criteria, Subsection I – In the second sentence, law enforcement officer is missing the "er" in "officer." "A state park employee means:" Act 910 of 2019 made the Department of Parks and Tourism into the Department of Parks, Heritage and Tourism. The "and" at the end of this definition should be deleted. "A teacher means:" The period at the end of this definition should be made in to a semicolon and followed by a "and."
Division Response: Comment considered. Non-substantive changes made.

Comment (4): Scholarship Eligibility Criteria, Subsection II – In "D," there appears to be an odd break between "state" and "supported" as though a hyphen is missing. Also, I'd recommend changing the comma after "institute" to a semicolon.
Division Response: Comments considered. The draft of the rules had a hyphen between "state" and "supported" so adding one was not necessary. The colon after "institute" has been changed to a semicolon. Non-substantive change made.

Comment (5): Scholarship Eligibility Criteria, Subsection II – In "E," I would recommend changing the comma between "spouse" and "and" to a semicolon.

Division Response: Comment considered. Non-substantive change made.

Comment (6): Scholarship Payment Policies, Subsection II – There appears to be an odd break between "in" and "state" and "state" and "supported" as though a hyphen is missing.
Division Response: The draft of the rules had hyphens between "in" and "state" as well as between "state" and "supported." No changes made.

Comment (7): Institutional Responsibilities, Subsection I – There appears to be an odd break between "state" and "supported" as though a hyphen is missing.
Division Response: The draft of the rules had a hyphen between "state" and "supported" so adding one was not necessary. No changes made.

Comment (8): Institutional Responsibilities, Subsections D, E, and F – These all include "ADHE" but ADH is not abbreviated from "Arkansas Division of Higher Education" anywhere else in the Rules.
Division Response: Comment considered. No changes made.

Comment (9): Program Definitions, Approved Institution – There appears to be an odd break between "state" and "supported" as though a hyphen is missing.
Division Response: The draft of the rules had a hyphen between "state" and "supported" so adding one was not necessary. No changes made.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-82-502, the Arkansas Higher Education Coordinating Board is directed and empowered to promulgate rules as necessary to administer benefits awarded under Title 6, Chapter 82, Subchapter 5 of the Arkansas Code, concerning children of law enforcement officers, etc., by the Arkansas State Claims Commission.

f. SUBJECT: Rules Governing the Arkansas Concurrent Challenge Scholarship Program

DESCRIPTION: The Department of Education's Division of Higher Education proposes changes to its Rules Governing the Arkansas Concurrent Challenge Scholarship Program. Act 82 of 2021 made some minor changes to the continuing eligibility requirements of the Arkansas Concurrent Challenge Scholarship Program. These changes include

removing the language "letter grade of C or the equivalent" and replacing it with "grade point average of 2.5." The rules were amended to maintain consistency with Act 82. Paragraph 2 under the heading "Continuing Eligibility" was also amended to reflect that students with a minimum grade point average of 2.5 shall, rather than "may" as the previous version of the rules stated, retain eligibility. This is consistent with Ark. Code Ann. § 6-85-403. Additionally, the previous version of the rules referred to the "Department of Higher Education" rather than the "Division of Higher Education." The rules have been amended to replace "Department of Higher Education" with "Division of Higher Education."

PUBLIC COMMENT: A public hearing was held on December 3, 2021. The public comment period expired on December 14, 2021. The Division provided the following summary of the comment that it received and its response thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association (11/17/21)
Comment: Institutional Responsibilities, Subsection 5 – I believe that the "comply" in "The division may periodically review the approved institution of higher education's records concerning this scholarship program to ensure the comply with due diligence requirements" should be "compliance."
Division Response: Comment considered. Non-substantive change made.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The proposed changes include those made in light of Act 82 of 2021, sponsored by Senator James Sturch, which amended provisions of the Arkansas Code concerning eligibility for the Arkansas Concurrent Challenge Scholarship Program. Pursuant to Arkansas Code Annotated § 6-85-406, the Division of Higher Education shall promulgate rules to implement Title 6, Chapter 85, Subchapter 4 of the Arkansas Code, concerning the Arkansas Concurrent Challenge Scholarship Program.

g. SUBJECT: Rules Governing the Arkansas Governor's Scholars Program

DESCRIPTION: The Department of Education's Division of Higher Education proposes changes to its Rules Governing the Arkansas Governor's Scholars Program. Act 217 of 2021 expanded eligibility

criteria for the program by adding language stating that an eligible student can be a holder or child of a holder of a work permit or a migrant from the compact of Free Association Islands. This language was added to the rules. Act 331 of 2021 added a requirement that applicants must complete the Free Application for Federal Student Aid ("FAFSA") or subsequent financial aid application. This language was added to the rules. Act 79 of 2021 removed language regarding end-of-course assessments. This language was also removed from the rules. Per Act 743 of 2021, ACT "score" was changed to "superscore as defined by § 6-85-204(25)" in the rules. Additionally, the previous version of the rules referred to the "Department of Higher Education" rather than the "Division of Higher Education." The rules have been amended to replace "Department of Higher Education" with "Division of Higher Education." Finally, in the interest of ensuring consistency between Acts 331, 217, 79, and 743 of 2021 and the rules, there were some additional minor technical changes made.

PUBLIC COMMENT: A public hearing was held on December 3, 2021. The public comment period expired on December 14, 2021. The Division provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association (11/17/21)
Comment (1): Governor's Scholars Program Advisory Council – In the last paragraph, there's a reference to the "Administrative Procedures Act." If this is a reference to A.C.A. § 25-15-201, et seq., then it is the "Administrative Procedure Act."
Division Response: Comment considered. Non-substantive change made.

Comment (2): Scholarship Payment Policies, Subsections C(4)(C) & E – In the second paragraph, "ADHE" is abbreviated when it has not previously been and "Division" is included in the definitions section.
Division Response: Comment considered. No changes made.

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

Definitions 8(B) – This rule appears to be premised on Ark. Code Ann. § 6-82-302(5)(B), as amended by Act 743 of 2021, § 1. Should the reference to scores after "The American College Test" be to "superscores" and the reference after "Scholastic Aptitude Test" be to just "scores" to be consistent with the statute and consistent with *Definitions* 8(A)(i)?
RESPONSE: Comment considered. Non-substantive changes made.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rules have a financial impact. It avers that the additional cost of the state rule will be $600,000.00 in general revenue for the current fiscal year and $600,000.00 in general revenue for the next fiscal year.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-82-304, the Division of Higher Education shall administer the Arkansas Governor's Scholars Program and shall have the following authority and responsibility with respect to the program to: prepare application forms or such other forms as the Division shall deem necessary to properly administer and carry out the purposes of Title 6, Chapter 82, Subchapter 3 of the Arkansas Code; establish and consult as necessary with an advisory committee representing the public and private sectors of postsecondary education and secondary schools in determining guidelines and rules for the administration of the program; select recipients of scholarships awarded pursuant to the provisions of Title 6, Chapter 82, Subchapter 3; establish the procedures for payment of scholarships to recipients; set a termination date for the acceptance of applications; review and evaluate the operation of the program with regard to eligibility criteria and size of the scholarship award to ensure that the program's operation meets the intent of the legislation; determine the necessary procedures for the awarding of scholarships if the number of eligible applicants exceeds the available funds or available awards; and approve a scholarship hold for a student for a period of twenty-four (24) months or less for reasons set forth in statute, without limitation.

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

Act 79 of 2021, sponsored by Senator James Sturch, which amended provisions of the Arkansas Code concerning higher education;

Act 217 of 2021, sponsored by Senator Bart Hester, which concerned eligibility requirements for certain Arkansas scholarships and amended the scholarship requirements to allow certain individuals to be eligible for certain scholarships;

Act 331 of 2021, sponsored by Senator Missy Irvin, which amended provisions of the Arkansas Code concerning applications and eligibility for the Academic Support Scholarship, the Arkansas Governor's Scholars Program, and scholarships for teachers in high-need subject areas; and

Act 743 of 2021, sponsored by Senator Jonathan Dismang, which concerned eligibility requirements for certain scholarships and allowed a

student applying for the Arkansas Governor's Scholars Program or the Critical Needs Minority Teacher Scholarship Program to use his or her ACT superscore.

h. SUBJECT: Rules Governing the Arkansas Academic Challenge Scholarship Program

DESCRIPTION: The Department of Education's Division of Higher Education proposes changes to its Rules Governing the Arkansas Academic Challenge Scholarship Program. In 2021, the Arkansas Academic Challenge Scholarship Program – Part 1 was repealed by Act 81, leaving in place Part 2 of the Arkansas Academic Challenge Scholarship Program, which was established by Act 605 of 2009. All amendments to these rules, aside from technical changes and the removal and clarification of eligibility requirements for traditional students, were the result of Act 636 of 2021.

Act 636 removed the definitions of "end-of-course assessment," "high school equivalency test," "non-traditional student," "personally identifiable student data," "postsecondary grade point average," "scholarship hold," "Smart Core," and "successfully completed." As a result of the Act, these definitions were also removed from the rules. The rules were amended to remove language regarding end-of-course assessments under the heading "Additional Eligibility Requirements for Traditional Students." This language was removed because districts do not currently administer end-of-course assessments in the subjects of Algebra, Geometry, Biology, and Literacy. The inclusion of this language in the rules created confusion regarding eligibility requirements.

Act 636 of 2021 removed language from Ark. Code Ann. § 6-85-210 regarding leave of absence. Corresponding language was removed from one section of the rules and language regarding leave of absence was added to the "Scholarship hold" section. Act 636 of 2021 also removed language regarding literacy tutoring. The corresponding language was removed from the rules. Additionally, the previous version of the rules referred to the "Division of Career Education" rather than the "Division of Workforce Services." The rules have been amended to replace "Division of Career Education" with "Division of Workforce Services." Finally, in the interest of ensuring consistency between Act 636 of 2021 and the rule, there were some additional technical changes made.

PUBLIC COMMENT: A public hearing was held on December 3, 2021. The public comment period expired on December 14, 2021. The Division received no public comments.

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

(1) *Additional Eligibility Requirements for Traditional Students*, Section 2(B) – This language appears to be stricken from the rule, yet is still present in Ark. Code Ann. § 6-85-207(2)(B). Is there a reason that the rule does not track the statute? **RESPONSE:** Comment considered. The rules do not track the statute because schools do not administer the end-of-course assessments referenced in the statute. To avoid confusion, language regarding these assessments was not included in the rules. No changes made.

(2) *Additional Eligibility Requirements for a nontraditional student*, Section 1(A) – Is there a reason that this language remains in the rule as it does not appear to remain in Ark. Code Ann. § 6-85-208, as amended by Act 80 of 2021, § 2? **RESPONSE:** Comment considered. Non-substantive change made.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The proposed changes include those made in light of Act 80 of 2021, sponsored by Senator James Sturch, which amended provisions of the Arkansas Code concerning the applicability and additional eligibility requirements of the Arkansas Academic Challenge Scholarship Program – Part 2; and Act 636 of 2021, sponsored by Senator Jimmy Hickey, which amended the Arkansas Academic Challenge Scholarship Program – Part 2 and established procedures and funding requirements for the creation or amendment of scholarships funded with net revenue available. Pursuant to Arkansas Code Annotated § 6-85-205(a), the Division of Higher Education shall develop and promulgate rules for the administration of the Arkansas Academic Challenge Scholarship Program ("Program") consistent with the purposes and requirements of Title 6, Chapter 85, Subchapter 2 of the Arkansas Code, concerning the Program. The rules developed and promulgated by the Division shall pertain to: student eligibility criteria based on the subchapter; the method for selecting scholarship recipients and for determining continuing eligibility; the procedures for making payment to an approved institution of higher education where the recipient is enrolled; and other administrative procedures that may be necessary for the implementation and operation of the Program.

i. SUBJECT: Minority Teacher Scholars Program Rules and Regulations REPEAL

DESCRIPTION: The Department of Education's Division of Higher Education proposes to repeal its Minority Teacher Scholars Program Rules and Regulations. The purpose of the rules was to address student eligibility criteria, method(s) for recipient selection, continuing eligibility requirements, procedures for making payments to an approved institution of higher education, and other administrative procedures as necessary for operation of the program. However, the program is no longer in existence and all repayments have been satisfied; therefore, rules are no longer necessary.

PUBLIC COMMENT: A public hearing was held on December 20, 2021. The public comment period expired on January 4, 2022. The Division received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the repealed rules have no financial impact.

LEGAL AUTHORIZATION: Authority for the original rulemaking was found in Arkansas Code Annotated § 6-81-131(a), (c), which authorized the Arkansas Higher Education Coordinating Board to continue to administer the Minority Teacher Scholars Program and to promulgate regulations as necessary to carry out the requirements of the statute. The Program was repealed by Act 1215 of 2009, which consolidated the Teacher Education Recruitment Programs by repealing the Minority Teacher Scholars Program, Minority Masters Fellows Program, and the State Teacher Assistance Resource Program and created the State Teacher Education Program.

j. SUBJECT: Emergency Secondary Education Loan Rules and Regulations REPEAL

DESCRIPTION: The Department of Education's Division of Higher Education proposes the repeal of its Emergency Secondary Loan Rules and Regulations. The purpose of the rules was to address student eligibility criteria, method(s) for recipient selection, continuing eligibility requirements, procedures for making payments to an approved institution of higher education, and other administrative procedures as necessary for operation of the program. However, the program is no longer in existence and all repayments have been satisfied; therefore, rules are no longer necessary.

PUBLIC COMMENT: A public hearing was held on December 20, 2021. The public comment period expired on January 4, 2022. The Division received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the repealed rules have no financial impact.

LEGAL AUTHORIZATION: Authority for the original rulemaking was found in Arkansas Code Annotated § 6-81-504, which provided that the Emergency Secondary Education Loan Program ("Program") shall be administered by the Department of Higher Education, which shall have the authority, in consultation with the Emergency Secondary Education Loan Program Advisory Committee as provided for in Title 6, Chapter 81, Subchapter 5 of the Arkansas Code, to establish necessary rules, regulations, procedures, and selection criteria for the administration of the Program and to designate necessary forms and loan repayment schedules. Title 6, Chapter 81, Subchapter 5 of the Arkansas Code, concerning the Program, was repealed by Act 1804 of 2003, § 1.

k. SUBJECT: Minority Masters Fellows Program Rules and Regulations REPEAL

DESCRIPTION: The Department of Education's Division of Higher Education proposes the repeal of its Minority Masters Fellows Program Rules and Regulations. The purpose of the rules was to address student eligibility criteria, method(s) for recipient selection, continuing eligibility requirements, procedures for making payments to an approved institution of higher education, and other administrative procedures as necessary for operation of the program. However, the program is no longer in existence and all repayments have been satisfied; therefore, rules are no longer necessary.

PUBLIC COMMENT: A public hearing was held on December 20, 2021. The public comment period expired on January 4, 2022. The Division received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the repealed rules have no financial impact.

LEGAL AUTHORIZATION: Authority for the original rulemaking was found in Arkansas Code Annotated § 6-81-131(a), (c), which authorized the Arkansas Higher Education Coordinating Board to continue

to administer the Minority Masters Fellows Program and to promulgate regulations as necessary to carry out the requirements of the statute. The Program was repealed by Act 1215 of 2009, which consolidated the Teacher Education Recruitment Programs by repealing the Minority Teacher Scholars Program, Minority Masters Fellows Program, and the State Teacher Assistance Resource Program and created the State Teacher Education Program.

9. DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY (Basil Hicks, Alan York, item a; Michael McAlister, item b)

a. SUBJECT: Rule No. 2, Rule Establishing Water Quality Standards for Surface Waters of the State of Arkansas

DESCRIPTION: The Department of Energy and Environment, Division of Environmental Quality ("DEQ") proposed this rulemaking before the Arkansas Pollution Control and Ecology Commission to Regulation No. 2 to incorporate statutory revisions made by the Arkansas General Assembly, clarify several provisions, and make stylistic and formatting corrections throughout the Regulation.

Under the federal Clean Water Act, states are given the responsibility to establish water quality standards, and at least once every three (3) years, states are to review the applicable water quality standards to determine whether any modifications are appropriate. *See* Section 303(c) of the Clean Water Act. Any changes to water quality standards adopted by a state during the Triennial Review must be submitted to EPA for review and approval or disapproval. The standards adopted by the state are submitted to EPA along with any supporting information, *see* 40 C.F.R. § 131.20(c), and a certification that the standards were adopted pursuant to state law, *see* 40 C.F.R. § 131.6(e). This submittal is to be provided to EPA within thirty (30) days of the final State action to adopt and certify the revised standards. See 40 C.F.R. § 131.20(c). After the State submits its revised water quality standards, EPA must approve or disapprove the revisions. *See* 40 C.F.R. § 131.21. If EPA approves the new state standards, then those standards can be used for purposes of implementing the federal Clean Water Act, including such actions as listing water quality impairments, calculating TMDLs, and developing effluent limits for NPDES permits. *See* 40 C.F.R. § 131.21(d).

If the revised water quality standards are disapproved by EPA, then the standards are not applicable water quality standards for purposes of implementing the federal Clean Water Act. If the water quality standards adopted by a State are disapproved by EPA, then those standards cannot

be used to implement the provisions of the federal Clean Water Act until the standards have been revised through a new rulemaking and re-submitted to EPA for review and approval.

The Commission's authority for amending Regulation No. 2 is found in Ark. Code Ann. §§ 8-6-207(b)(1), 8-4-202(a), and 8-1-203(b)(1)(A).

Proposed changes to Regulation No.2 include:

- *Incorporation of Updates to Arkansas Law*. Acts 315 and 910 of 2019 were enacted by the Arkansas General Assembly and require revisions to Regulation No. 2 concerning the name change from Arkansas Department of Environmental Quality to Division of Environmental Quality and the use of "rule" in lieu of "regulation";
- *Amendments to Provide Clarification and Minor Corrections*. Clarification of sections of the regulation that were otherwise unclear, and minor corrections to make the regulation more illustrative of the legislative and regulatory intent;
- *Regulatory Amendments for Consistency with Statutory Changes*. To amend other Chapters of the Regulation for consistency with the statutory changes made by the General Assembly and federal regulations, primarily concerning terminology and program name changes;
- *Amendments to Reflect Changes in Rule 6*. Amendments to remove permitting language from Reg. 2 (Rule 2) that is being adopted into Rule 6 – Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES); and
- *Stylistic and Formatting Corrections*. To make minor, non-substantive stylistic and formatting corrections throughout the Regulation.

The following changes were made based on public comments:

NOTE: Proposed revisions removing permitting language, receiving water language, or discharge language from Rule 2 will not occur at this time. This language will remain in Rule 2 until adoption into Rule 6 has been approved by the APC&EC, Legislative Committees, and U.S. EPA. This includes Rules 2.404, 2.407, 2.408, 2.409, 2.410, 2.502, 2.503, 2.504, 2.505, 2.507, 2.508, 2.509, 2.510, 2.512, and Appendix A.

Rule 2.410 Oil and Grease
Revisions to 2.410 will be made to reflect "aquatic biota" in lieu of "associated biota." Rule 2.106 defines aquatic biota as "All those life forms which inhabit the aquatic environment."

Rule 2.507 Bacteria
The second paragraph will not include a reference to "or fecal coliform"; this proposed addition is removed.

Rule 2.510 Oil & Grease
Revisions to 2.410 will be made to reflect "aquatic biota" in lieu of "associated biota." Rule 2.106 defines aquatic biota as "All those life forms which inhabit the aquatic environment."

Rule 2.511(A) Mineral Quality, Site Specific Mineral Quality Criteria
White River section noted will be revised as, "White River (WHI0052 to Missouri state line, including Beaver Reservoir)."

Kings River will be moved to reflect that it flows into the above section of White River downstream of Holman Creek.

The "†" footnote indicator will be removed from the Poteau River and Unnamed Tributary entries.

Stennitt Creek revised TDS and sulfate will be added to the final rule. Additionally, Brushy Creek and Unnamed Tributary revised mineral criteria will be added to the final rule.

The "†" footnote indicator will be removed from the Town Branch and Holmand Creek entries.

The Haliburton temporary EIP criteria and footnote located in Appendix A will also be located in Rule 2.511(A).

Chamberlain Creek from headwaters to confluence with Cove Creek	Chlorides 68 mg/L, sulfates 1,384 mg/L, TDS 2,261 mg/L***†
Cove Creek from the confluence with Chamberlain Creek to the Ouachita River	Sulfates 250 mg/L, TDS 500 mg/L***†
Lucinda Creek from the confluence of Rusher Creek to the confluence with Cove Creek	Sulfates 250 mg/L, TDS 500 mg/L***†
Rusher Creek from the confluence of the East and West Forks to confluence with Lucinda Creek	Sulfates 250 mg/L, TDS 500 mg/L***†
Reyburn Creek from headwaters to confluence of Francois Creek	Sulfates 250 mg/L, TDS 500 mg/L***†
Scull Creek from a point approximately 350 feet upstream of Clearwater Lake to Clearwater Lake (including Clearwater Lake) and from Clearwater Lake dam to confluence Reyburn Creek	Sulfates 250 mg/L, TDS 500 mg/L***†

***These temporary standards variations are effective for 160 months from EPA's approval of the EIP on January 7, 2020.

Appendix A
The following footnotes will not be stricken and will remain in the Rule. "*Increase over natural temperatures may not be more than 2.8°C (5°F). **At water temperatures ≤ 10°C or during March, April and May when stream flows are 15 cfs and greater, the primary season dissolved oxygen ~~standard~~ criteria will be 6.5 mg/L. When water temperatures exceed 22°C, the critical season dissolved oxygen standard may be depressed by 1 mg/L for no more than 8 hours during a 24-hour period."

The "†" footnote indicator will be removed from the Holman Creek, Town Branch, Unnamed Tributary of Brushy Creek and Brushy Creek entries.

The "†" footnote indicator will be removed from the Crooked Creek and White River entries.

Stennitt Creek revised sulfate will be added to the final rule. Additionally, Brushy Creek and Unnamed Tributary revised mineral criteria will be added to the final rule.

The "†" footnote indicator will be removed from the Poteau River and Unnamed Tributary entries.

Rule 2.511(A), Appendix A-OM, Appendix A-GCP
The footnote will be revised to "*These temporary standards variations are effective for 148 months from EPA's approval of the EIP."

PUBLIC COMMENT: A public hearing was held on July 29, 2020. The public comment period expired on September 8, 2020. Due to their length, the Division's Responsive Summary and Supplement to Responsive Summary have been attached separately.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact and that implementing the revised federal rules and clarification/correction of various sections of this regulation is not expected to cause an increase in costs to private entities because permittees were expected to comply with these requirements prior to incorporation.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 8-4-202(a), the Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules implementing or effectuating the powers and duties of the Commission and the Division of Environmental Quality under the Arkansas Water and Air Pollution Control Act, Ark. Code Ann.

§§ 8-4-101 to -318. The Commission is further given and charged with the power and duty to promulgate rules, including water quality standards. *See* Ark. Code Ann. § 8-4-201(b)(1)(A). *See also* Ark. Code Ann. § 8-4-202(b)(3).

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

b. SUBJECT: APC&EC Rule 19

DESCRIPTION: The Department of Energy and Environment's Division of Environmental Quality ("DEQ") proposes changes to the Arkansas Pollution Control and Ecology Commission's Rule 19, Rules of the Arkansas Plan of Implementation for Air Pollution Control. The proposed amendments to Rule 19 are necessary to update certain outdated references to federal law, remove obsolete provisions, and adopt standards of performance for municipal solid waste landfills as required by federal law.

Updates to outdated references to federal law include revisions to the definition of carbon dioxide equivalent; the definition of volatile organic compound; and updates to the United States Environmental Protection Agency ("EPA") guideline on air quality modeling, opacity testing, pollutants regulated under Clean Air Act § 111, ambient air quality monitoring methodology, data reduction, and total reduced sulfur continuous monitoring. The proposed amendments include revisions to Rule 19.405(B)(1); Rule 19.407(C)(3); Rule 19.904(G)(5); and Appendix A, Group A Items 1 and 13 to remove currently stayed provisions intended to address now-vacated federal greenhouse gas regulatory requirements.

The proposed amendments would also remove obsolete provisions pertaining to the vacated Clean Air Interstate Rule trading program, disapproved and non-regulatory provisions for implementing the Regional Haze program, and Pulaski County-specific volatile organic compounds rules from the 1980s that are redundant with more recent EPA regulations and have been demonstrated to be unnecessary to ensure compliance with ozone national ambient air quality standards. The proposed amendments also include provisions for implementing standards of performance for municipal solid waste landfills required under Clean Air Act § 111(d).

Additional non-substantive revisions are proposed throughout Rule 19 for consistency and clarity.

PUBLIC COMMENT: A public hearing was held on September 16, 2021. The public comment period expired on September 30, 2021 Due to

its length, the Division's Responsive Summary has been attached separately.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Division states that the amended rule is not anticipated to have a negative financial impact and that the proposed amendments may reduce costs for certain businesses by reducing redundant requirements and reducing testing frequency. The Division further states that in consideration of the alternatives to the rule, the rule was determined by the agency to be the least costly rule considered. It further avers that it considered several factors to determine the least costly path forward and that the proposed revisions are not anticipated to have a financial impact. However, according to the Division, significant increases in emissions from municipal solid waste landfills subject to the proposed standards of performance in the proposed revisions to the rule could trigger a requirement to install emissions controls. The Division states that the emission controls that would be required are no more stringent or costly than required under federal law.

With respect to any cost to implement the federal rule or regulation, the Division states that there are no additional costs for the State to implement the federal requirements in the rulemaking. It asserts that the additional permitting, recordkeeping, and reporting obligations will be fulfilled through existing programs and individual tasks assigned to currently-filled positions within DEQ Office of Air Quality; no additional resources will be necessary to meet federal requirements.

With regard to any additional costs of the state rule, the Division avers that there are none.

Regarding the total estimated cost by fiscal year to any private individual, entity, and business subject to the amended rule, the Division states that there are none, explaining:

> Under proposed revisions resulting from the federal 111(d) requirements for municipal solid waste landfills, none of the subject facilities are expected to trigger the requirement for the installation and operation of a gas collection and control system. Based on DEQ's analysis, affected landfills in the State do not emit greater than the thresholds under which additional controls would be required by the amendments to Rule 19.
>
> Under proposed revisions repealing controls of volatile organic compounds for Pulaski County in Chapter 10,

redundancy with EPA national emission standards for hazardous air pollutants and new source performance standards will be reduced, and the revision is associated with cost savings related to staffing resources of the subject entities. While the cost savings is not quantifiable, there is no additional cost to DEQ or the regulated community resulting from this revision. (Economic benefit)

Under proposed revisions at 19.804(B), which change compliance testing requirements for kraft pulp mills from annual testing to testing once every five (5) years, sources subject to the requirement will experience an annual reduction in costs associated with the testing. Industry average for annual compliance testing associated with this requirement is approximately $5000 per facility (Source: September 2020 consultation with staff from Alliance Source Testing, Inc.); under the proposed revisions, facilities would incur this expense only once every five (5) years, instead of annually. (Economic benefit)

With respect to the total estimated cost by fiscal year to state, county, and municipal government to implement the rule, the Division states that there is none. It avers that any additional permitting, recordkeeping, and reporting obligations will be fulfilled through existing programs and individual tasks assigned to currently-filled positions within DEQ Office of Air Quality; no additional resources will be necessary to meet federal requirements.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 8-4-202(a), the Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules implementing or effectuating the powers and duties of the Division of Environmental Quality and the Commission under the Arkansas Water and Air Pollution Control Act ("Act"), Ark. Code Ann. §§ 8-4-101 to -318. The Division shall have the power to develop and implement state implementation plans provided that the Commission shall retain all powers and duties regarding promulgation of rules under the Act. *See* Ark. Code Ann. § 8-4-311(a)(13). The Commission shall have the power to promulgate rules for implementing the substantive statutes charged to the Division for administration. *See* Ark. Code Ann. § 8-4-311(b)(1)(A).

The Division states that the rule is required to comply with a federal statute, rule, or regulation, specifically 79 FR 73750; 83 FR 61127; 82 FR

5182; 79 FR 71663; 77 FR 14604; 81 FR 59313; 81 FR 59332; 84 FR 44547; 85 FR 14474; and 80 FR 50199.

10. <u>DEPARTMENT OF ENERGY AND ENVIRONMENT, OIL AND GAS COMMISSION</u> (Daniel Pilkington)

a. <u>SUBJECT</u>: Rule B-4: Application to Transfer a Well

<u>DESCRIPTION</u>: The Oil and Gas Commission ("OGC" or "Commission"), a division of the Arkansas Department of Energy and Environment, proposes rulemaking regarding General Rule B-4(h)(4) and B-4(h)(5): Application to Transfer a Well, in order to amend current procedural requirements for the transfer of natural gas wells that either produce less than 25 MCF per day per OGC records, or for the transfer of a natural gas well that has received an approved Temporary Abandonment status from the OGC pursuant to General Rule B-7. The rulemaking will also address an amendment to General Rule B-4(h)(5) to address a grammatical error that does not affect the substance of this rule.

Currently, OGC Rule B-4(h)(4) requires the Current Permit Holder and New Permit Holder to file an application in accordance with General Rules A-2, A-3, and other established hearing procedures, to have the OGC review and approve the transfer request of a gas well producing less than 25 MCF per day per OGC records or a transfer request of a gas well that has received an approved Temporary Abandonment status from the OGC pursuant to General Rule B-7. After notice, hearing, and approval at the hearing by the OGC of these wells transfers, the New Permit Holder is required to file additional, well specific financial assurance of $35,000.00 for each natural gas well in a form provided by General Rule B-2. The OGC, after notice, hearing and approval, can waive the requirement to post this well specific financial assurance. Currently, OGC Rule B-4(h)(4) does not address well transfer requirements for oil wells.

The amendment of OGC Rule B-4(h)(4) will allow an administrative process to be followed for transfers of natural gas wells that produce less than 25 MCF per day per OGC records or natural gas wells that have received an approved Temporary Abandonment status from the OGC pursuant to General Rule B-7. The New Permit Holder and Current Permit Holder may now file an application on an OGC form requesting administrative approval by the OGC staff or Director for the transfer request without any required notice, hearing, and ultimate approval from the OGC by Commission vote. This amendment does not affect any requirements for the transfer of oil wells.

Under this amendment, if the administrative request is approved by the OGC Director or staff, the new permit holder continues to be obligated to file additional gas well specific $35,000.00 financial assurance on a form authorized by General Rule B-2. If the administrative request for gas well transfer is denied by OGC staff or the Director, or if the OGC Director notifies the Current Permit Holder and New Permit Holder of a referral to the entire Commission, then the New Permit Holder and Current Permit Holder may file an application in accordance with General Rules A-2, A-3, and other established hearing procedures to have the entire Commission review the transfer request after notice and hearing and a vote to deny or approve the request. A New Permit Holder and Current Holder will also continue to have the opportunity to request, after application, notice, and hearing, to have the Commission vote on a waiver request for financial assurance requirements for these wells.

The OGC currently follows a similar administrative review requirement for an initial request for Temporary Abandonment of oil and natural gas wells. *See* General Rule B-7(h). Therefore, the allowance of an administrative review and approval of limited requests pertaining to oil and gas wells without a formal notice, hearing, and approval by Commission vote is not a novel procedural requirement.

The amendments to General Rule B-4(h)(4) were originally requested by an Arkansas gas operator and have been reviewed and approved in a vote by the OGC. The amendments will address these limited gas transfers by administrative review without the added time and cost of having the additional Commission notice and hearing requirements and a formal Commission vote on the transfer.

If the administrative review of these gas transfers involves a matter that may require a Commission vote, then the OGC Director can refer, and the New Permit holder and Current Permit holder can procedurally request, a gas transfer hearing before the Commission for a vote if necessary after compliance with all notice and hearing requirements.

This rulemaking will also address an amendment to General Rule B-4(h)(5) to address a grammatical error that does not affect the substance of this rule.

PUBLIC COMMENT: A public hearing was held in Fort Smith, Arkansas, on February 15, 2022. The public comment period expired on February 28, 2022. The Commission provided the following summary of the sole comment received and its response thereto:

Commenter: W. Griffin Hanna, Hanna Oil and Gas Company "On behalf of Hanna Oil and Gas Company, I would like to show our support in changing General Rule B-4 to exclude the New Permit Holder from filing an application to the Commission. If the process would instead be done administratively, it would benefit the industry in the following ways:

1. Streamline the process of changing Operators in Arkansas
2. Benefit the Commission from seeing multiple marginal wells transferred from the same Operators (clean up the docket)
3. Benefit Permit Holders from delaying ownership transfers; the burden of incurred attorney fees; and less paperwork for everyone

With that being said, Hanna supports the AOGC and agrees financial assurance for marginal wells is a necessary tool. This letter is only to support streamlining the process. Below is a copy of the current General Rule B-4 for reference." **Response:** OGC acknowledges the comment and appreciates the commenter's support of the proposed Rule B-4 amendments. No revisions to proposed Rule B-4 language are necessary as a result of this comment.

The proposed effective date is May 15, 2022.

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

LEGAL AUTHORIZATION: The Oil and Gas Commission shall have jurisdiction of and authority over all persons and property necessary to administer and enforce effectively the provisions of the Commission's statutory authority relating to the exploration, production, and conservation of oil and gas. *See* Ark. Code Ann. § 15-71-110(a)(1). Pursuant to Ark. Code Ann. § 15-71-110(d), the Commission may make such reasonable rules and orders as are necessary from time to time in the proper administration and enforcement of Arkansas law, after hearing and notice as provided in Arkansas law. *See* Ark. Code Ann. § 15-71-110(d).

11. DEPARTMENT OF FINANCE AND ADMINISTRATION (Andy Babbitt, David Scott)

a. SUBJECT: Method of Distribution of American Rescue Plan Act ("ARPA") Funds for COVID-19 Testing

DESCRIPTION: The reason for creating proposed permanent rule 006.09.4 ("Rule") is that Act 1115 of the Regular Session of the Arkansas General Assembly ("Act 1115") requires the Department of Finance and Administration ("Department") to establish rules regarding the method of distribution of coronavirus 2019 (COVID-19) relief funds from the

American Rescue Plan Act of 2021, Pub. L. No. 117-2, if such funds are made available, to employees and employers to cover the cost of COVID-19 testing not covered by an employee's health benefit plan, to include the: timely distribution of funds to recipients within thirty (30) days; establishment of an option for distribution to an employer that chooses to receive funds for disbursement to employees; and verification and method of authentication of receipts that meets legislative auditing requirements including the development of forms.

The Rule defines several terms that are necessary to implement the COVID-19 Testing Program ("Program") which the Department created to comply with Act 1115. The Rule describes the requirements that an employer or employee must meet in order to participate in the Program. The Rule provides that, under the Program, an employer or employee may submit a claim for reimbursement of the cost of COVID-19 testing and an employer may submit a request for funding to disburse to employees for reimbursement of the cost of COVID-19 testing. The Rule further provides that an employer that requires or is mandated to require vaccination or immunization for COVID-19 must notify in writing the employer's employees by providing a certified copy of the employer's mandatory vaccination or immunization requirement or policy and the exemption options available under Ark. Code Ann. § 11-5-118 (Act 1115).

The Rule lays out the procedures to be followed for submission of claims for reimbursement including the form(s) to be completed and the necessary documentation to be provided with each such request. The Rule also lays out the procedures to be followed by an employer that chooses to receive funds for disbursement to employees including the form(s) to be completed, the necessary documentation to be provided with each such request, and the monthly reporting requirements.

PUBLIC COMMENT: This rule was filed on an emergency basis and was reviewed and approved by the Executive Subcommittee on January 12, 2022. With respect to permanent promulgation, a public hearing was held on this rule on March 11, 2022. The public comment period expired on March 14, 2022. The agency indicated that it received no public comments.

The proposed effective date for permanent promulgation is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact. The agency did not provide an estimated cost but provided the following explanation:

The rule does not impose a cost to any private individuals, entities, or businesses in the state. The rule does not impose a cost to any county or municipality in the state. The volume of the claims for reimbursement and requests for funds will dictate staffing needs. The following discussion is the upper limit of anticipated staffing.

The Department of Finance and Administration will need to contract or employ approximately 44 staff to enter data, monitor the Subrecipients' activities related to Act 1115 of 2021, and disburse funds under this rule. Additionally, database development will need to be undertaken to help monitor claims and automate the payment process.

LEGAL AUTHORIZATION: This rule implements identical Acts 1113 and 1115 of 2021. Act 1113, sponsored by Representative Joshua Bryant, and Act 1115, sponsored by Senator Kim Hammer, concern employment issues related to COVID-19 and provide employee exemptions from federal mandates and employer mandates related to COVID-19. The Acts contain the following language regarding rulemaking:

> The Department of Finance and Administration shall establish rules regarding the method of distribution of coronavirus 2019 (COVID-19) relief funds from the American Rescue Plan Act of 2021, Pub. L. No. 117-2, to employees and employers to cover the cost of testing, to include without limitation the: (1) Timely distribution of funds to recipients within thirty (30) days; (2) Establishment of an option for distribution to an employer that chooses to receive funds for disbursement to employees; and (3) Verification and method of authentication of receipts that shall meet legislative auditing requirements, including without limitation the development of forms.

Act 1113, § 2(g); Act 1115, § 2(g), *codified at* Ark. Code Ann. § 11-5-118(g). The Acts' provisions "expire on July 31, 2023, unless extended by the General Assembly." See Act 1113, § 2(j); Act 1115, § 2(j), *codified at* Ark. Code Ann. § 11-5-118(j).

12. DEPARTMENT OF FINANCE AND ADMINISTRATION, ALCOHOLIC BEVERAGE CONTROL (Doralee Chandler)

a. SUBJECT: Oversight of Medical Marijuana Cultivation Facilities, Processors, and Dispensaries

DESCRIPTION: The Alcoholic Beverage Control Division is seeking to implement the restrictions set forth in Act 342 prohibiting certain symbols from use in advertising, requirements of Act 666 modifying the requirements concerning a pharmacist consultant, Act 919 allowance of visitors in a cultivation facility's limited access areas, clarification of the allowance of hemp products in a facility, and requests of the industry related to the tagging of plants.

PUBLIC COMMENT: A public hearing was held on this rule on February 16, 2022. The public comment period expired on February 16, 2022. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Alcoholic Beverage Control Division has administration and enforcement authority over the provisions of Amendment 98 concerning dispensaries, cultivation facilities, transporters, distributors, and processors. Ark. Const. amend. 98, §§ 8(a)(3), 24(a)(2). The Division "shall adopt rules necessary to" perform its duties under Amendment 98. Ark. Const. amend. 98, § 8(b).

This rule implements Acts 342, 666, and 919 of 2021. Act 342, sponsored by Representative Delia Haak, amended the prohibitions on advertising and use of certain symbols regarding medical marijuana. Act 666, sponsored by Representative Clint Penzo, amended the Arkansas Medical Marijuana Amendment of 2016 and modified requirements concerning a pharmacist consultant. Act 919, sponsored by Representative Michelle Gray, amended the limitations on access to a cultivation facility.

b. SUBJECT: Title 1, Subtitle C, Rule 1.19(3): Types of Permits for which Application May Be Made

DESCRIPTION: This proposed rule allows beer wholesalers to sell certain spirituous liquor beverages.

PUBLIC COMMENT: A public hearing was held on this rule on January 19, 2022. The public comment period expired on January 19, 2022. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the authority to promulgate rules as needed to carry out any "alcoholic control acts enforced in this state." Ark. Code Ann. § 3-2-206(a). "It is intended by this grant of power to adopt rules that the director shall be clothed with broad discretionary power to govern the traffic in alcoholic liquor and to enforce strictly all the provisions of the alcohol control laws of this state." Ark. Code Ann. § 3-2-206(d).

This rule implements Act 578 of 2021. The Act, sponsored by Senator Mark Johnson, authorized beer wholesalers to distribute certain ready-to-drink products.

c. SUBJECT: Title 2, Subtitle C, Rule 2.16(2): Manufacturers to Register Brands of Controlled Beverages; Manufacturers and Wholesalers Not to Change Brands Without Approval of Director

DESCRIPTION: This proposed rule allows manufacturers, importers, or producers of spirituous liquor beverages to register certain spirituous products in the same manner as beer or malt products.

PUBLIC COMMENT: A public hearing was held on this rule on January 19, 2022. The public comment period expired on January 19, 2022. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the authority to promulgate rules as needed to carry out any "alcoholic control acts enforced in this state." Ark. Code Ann. § 3-2-206(a). "It is intended by this grant of power to adopt rules that the director shall be clothed with broad discretionary power to govern the traffic in alcoholic liquor and to enforce strictly all the provisions of the alcohol control laws of this state." Ark. Code Ann. § 3-2-206(d).

This rule implements Act 578 of 2021. The Act, sponsored by Senator Mark Johnson, authorized beer wholesalers to distribute certain ready-to-drink products.

~~**13. DEPARTMENT OF FINANCE AND ADMINISTRATION, MEDICAL MARIJUANA COMMISSION**~~

~~**a. SUBJECT: Licensure of Medical Marijuana Dispensaries**~~

14. DEPARTMENT OF HEALTH, ARKANSAS DIETETICS LICENSING BOARD (Debie Head, Matt Gilmore)

a. SUBJECT: Rules of the Arkansas Dietetics Licensing Board

DESCRIPTION: The following changes are being made to the Rules of the Arkansas Dietetics Licensing Board:

Rule 7: amends the Board's current language regarding military personnel licensure with language taken directly from Act 135; removes reference to permanently disqualifying offenses in regard to background checks as required by Act 748; and adds language regarding applicants with "work permits" in accordance with Act 746.

Rule 10: adds volunteer services provided under the Volunteer Healthcare Act to the Board's existing continuing education criteria in accordance with Act 968.

Rule 11: adds the waiver of initial license fee for those individuals listed in Act 725.

Rule 17: revises the definition of "originating site" to include the home of the patient for telemedicine purposes in accordance with Act 767; and revises the definition of "professional relationship" to remove audio-only communication for telemedicine purposes in accordance with Act 829.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on December 18, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

Per the agency, the total estimated cost by fiscal year to state, county, and municipal government to implement this rule is $5,500 for the current fiscal year and $5,500 for the next fiscal year.

The agency indicated that the proposed rule *may* have a financial impact on state government and that these numbers are the most extreme numbers. Act 725 requires the waiver of the initial licensing fee for individuals who meet certain criteria (i.e. receiving SNAP benefits or other state aid, having been on unemployment, or being below the federal poverty line). These criteria could potentially be met by all new licensees considering the number of new college graduates that make up the total for new licensure each year.

The above numbers are based on the average number of new applicants each year and the cost of the license fee that could be waived. As the Board has no true way of knowing just how many applicants will avail themselves of the waiver, there is no true way of knowing at this time just what the financial impact will actually be or if there will be one.

LEGAL AUTHORIZATION: The Arkansas Dietetics Licensing Board has authority to promulgate rules necessary to implement Title 17, Chapter 83 of the Arkansas Code, regarding dieticians. Ark. Code Ann. § 17-83-203(a)(6). These rules implement Acts 135, 725, 746, 748, 767, 829, and 968 of 2021.

Act 135, sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created by* Act 135.

Act 725, sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

Act 746, sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals holding federal work permits. Temporary language contained within Act 746 required all occupational or professional licensing entities to promulgate rules necessary to implement the Act. *See* Act 746, § 2(a).

Act 748, sponsored by Representative Bruce Cozart, amended occupational criminal background checks.

Act 767, sponsored by Representative Aaron Pilkington, clarified the Telemedicine Act, specified that the home of a patient may be an originating site for telemedicine and that group meetings may be performed via telemedicine, and clarified reimbursement of telemedicine services.

Act 829, sponsored by Representative Jim Dotson, amended the Telemedicine Act and authorized additional reimbursement for telemedicine via telephone.

Act 968, also sponsored by Representative Pilkington, updated the Volunteer Health Care Act, included therapists, addiction specialists, and counselors in the Volunteer Healthcare Program, and increased continuing education credits under the Volunteer Health Care Act.

15. DEPARTMENT OF HEALTH, ARKANSAS PSYCHOLOGY BOARD (Colin Davies, Matt Gilmore)

a. SUBJECT: Arkansas Psychology Board Rules

DESCRIPTION: The Arkansas Psychology Board's proposed rules include the following changes:

- Adds language regarding fee waiver for eligible individuals listed in Act 725 of 2021 (Attorney General's office model language).
- Language update, licensure extension, and continuing education requirement waiver language updated/added per Act 135 of 2021 (Attorney General's office model language).
- Removes reference to "permanently disqualifying offenses" per Act 748 of 2021 (Attorney General's office model language).
- Explicitly states licensure eligibility for individuals who hold work permits per Act 746 of 2021 (Attorney General's office model language).
- Adds language to continuing education section consistent with Act 968 of 2021's amendments to the Volunteer Health Care Act.
- Adds or amends language in Sections covering Telepsychology consistent with amendments to the Telemedicine Act made by Acts 767 and 829 of 2021.
- Adds language throughout consistent with Arkansas's joining of the Interjurisdictional Psychological Agreement ("Psypact") via Act 883 of 2021.
- Amends Section covering unlicensed practice to allow the Board to notify law enforcement as soon as it issues a warning letter to unlicensed practitioner.
- Removes mailing list fee.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on February 6, 2022. The board provided the following summary of comments that it received and its responses thereto:

Edward C. Kleitsch, Ph.D. - Commentary on Revision to ARKANSAS PSYCHOLOGY BOARD RULES 2022 revisions:
5.6. E, Temporary Interjurisdictional Practice by Psypact State Psychologists.
5.6. E. (1) Section 5.6. D. (1) does not apply to Psychologists licensed in Psypact member states.
5.6. E. (2) Temporary interjurisdictional practice by Psychologists licensed in Psypact member states is governed by Article V of Psypact A.C.A. § 17-97-501
I believe there needs to be an addition that the psychologist hold a valid Temporary Authorization to Practice from Psypact.
RESPONSE: As a result of this comment, the Board voted to amend section 5.6. E. to state specifically that the exception is for Psypact State Psychologists who hold a valid Temporary Authorization to Practice. This non-substantive change is marked in blue in the attached mark-up copy.

Serena McKnight - Section 19.1.A. (2) where it states "maintained by a psychologist/psychological examiner." So, this would rule out other mental health professionals (LAC/LPC/LMSW/LCSW/LAMFT/LMFT) who often maintain client records before they are referred to psychologist/LPEs for other services (i.e. testing). Is this meant to exclude those other professionals?
RESPONSE: The Board licenses only psychologists, psychological examiners, and psychological neuro-technicians; the other mental health professionals are licensed by other State Boards and Commissions. As such, the section only references psychologists and psychological examiners rather than any of the other mental health professionals referenced by the commenter.

Serena McKnight - Section 19.2.B. (11) where it states "may not be used for group therapy provided to a child who is eighteen (18) years of age or younger." Groups are often comprised of adolescent (up to age 17) or adult (18+) members, can you elaborate on how the 19+ population was chosen for this service.
RESPONSE: The language referenced by the commenter comes directly from Ark. Code Ann. § 17-80-404(f)(3) (as amended by Act 767 of 2021). The Board did not draft this language and therefore cannot elaborate on the question posed by the commenter.

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

QUESTION: Concerning changes made to Section 7.1 of the rule, why did the board change the rule to refer practice without a license to law enforcement on the first offense, instead of the prior board practice of referring it only "if the individual continues the verified illegal practice?" **RESPONSE:** The Board has encountered individuals who have practiced without a license in the past and a cease/desist was sent to those individuals. There have been instances with some individuals not complying with the cease/desist letters. This gives the Board flexibility to act on the first offense, but the Board does not have to act on the first offense.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules have a financial impact. Specifically, the agency disclosed a positive financial impact for applicants eligible for fee waiver under Act 725 of 2021, and also potential loss of fee revenue to the board. However, the board was unable to forecast exact values due to lack of statistical information.

LEGAL AUTHORIZATION: The Arkansas Psychology Board has authority to adopt rules that comply with national guidelines and standards as it may deem necessary for the performance of its duties. *See* Ark. Code Ann. § 17-97-203(3). In addition, the board has authority to adopt rules that are consistent with the Psychology Interjurisdictional Compact necessary to implement Title 17, Chapter 97, Subchapter 5, concerning the Psychology Interjurisdictional Compact. *See* Ark. Code Ann. § 17-97-502(b). These rules implement Acts 135, 725, 746, 748, 767, 829, 883, and 968 of 2021.

Act 135 of 2021, which was sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created* by Act 135 of 2021.

Act 725 of 2021, which was sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

Act 746 of 2021, which was sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals

holding federal work permits. Temporary language contained within Act 746 required all occupational or professional licensing entities to promulgate rules necessary to implement the Act. *See* Act 746, § 2(a).

Act 748 of 2021, which was sponsored by Representative Bruce Cozart, amended occupational criminal background checks. The Act allowed agencies to grant waivers for certain criminal offenses which would have previously resulted in permanent disqualification from occupational licensure. *See* Ark. Code Ann. §§ 17-3-201(e) and 17-3-201(g).

Act 767 of 2021, which was sponsored by Representative Aaron Pilkington, clarified the Telemedicine Act, specified that the home of a patient may be an originating site for telemedicine and that group meetings may be performed via telemedicine, and clarified reimbursement of telemedicine services. *See* Ark. Code Ann. § 17-80-402(3).

Act 829 of 2021, which was sponsored by Representative Jim Dotson, amended the Telemedicine Act and authorized additional reimbursement for telemedicine via telephone. *See* Ark. Code Ann. § 17-80-402(4).

Act 883 of 2021, which was sponsored by Representative Lee Johnson, established the Psychological Interjurisdictional Compact in Arkansas. *See* Ark. Code Ann. § 17-97-501 *as created by* Act 883 of 2021. Temporary language contained within Act 883 required the Arkansas Psychology Board to promulgate rules necessary to implement the Act. *See* Act 883, § 2(a).

Act 968 of 2021, which was sponsored by Representative Pilkington, updated the Volunteer Health Care Act, included therapists, addiction specialists, and counselors in the Volunteer Healthcare Program, and increased continuing education credits under the Volunteer Health Care Act. *See* Ark. Code Ann. § 20-8-803(5).

16. <u>DEPARTMENT OF HEALTH, ARKANSAS STATE BOARD OF CHIROPRACTIC EXAMINERS</u> (Laurie Mayhan, Tanya Holt, Matt Gilmore)

a. <u>SUBJECT</u>: Advertising by Chiropractic Physicians

<u>DESCRIPTION</u>: The Arkansas State Board of Chiropractic Examiners is proposing amendments in accordance with Act 589 of 2021, providing more specific registration requirements for procurers and record retention of solicitation call logs.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 1, 2022. The board received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas Chiropractic Practices Act authorizes the Arkansas State Board of Chiropractic Examiners to establish rules to enforce the requirements of Chapter 81 concerning chiropractors. *See* Ark. Code Ann. § 17-81-108. Additionally, the duties and powers of the Arkansas State Board of Chiropractic Examiners are contained in Ark. Code Ann. § 17-81-206. Under this section, the board is authorized to promulgate suitable rules for carrying out its duties under the provisions of this chapter. *See* Ark. Code Ann. § 17-81-206(b)(1). The proposed rules implement Act 589 of 2021, sponsored by Representative Michelle Gray, which amended statutory language concerning the use of procurers by licensed chiropractic physicians.

b. SUBJECT: Animal Chiropractic

DESCRIPTION: The proposed amendment is adding language to cover additional animal chiropractic certification programs so that licensees are not subject to only one program. The purpose of this rule amendment is to update the current rule according to Act 390 of 2021 and to make Arkansas licensed chiropractors aware of the certification requirements under Ark. Code Ann. § 17-101-307.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 1, 2022. The board received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas Chiropractic Practices Act authorizes the Arkansas State Board of Chiropractic Examiners to establish rules to enforce the requirements of Chapter 81 concerning chiropractors. *See* Ark. Code Ann. § 17-81-108. Additionally, the duties and powers of the Arkansas State Board of Chiropractic Examiners are contained in Ark. Code Ann. § 17-81-206. Under this section, the board is authorized to promulgate suitable rules for carrying out its duties under the

provisions of this chapter. *See* Ark. Code Ann. § 17-81-206(b)(1). The proposed rule implements Act 390 of 2021, sponsored by Representative DeAnn Vaught, which clarified the exemption to licensure by the Veterinary Medical Examining Board for chiropractors performing chiropractic upon animals. *See* Act 390 of 2021.

c. SUBJECT: Applications for State Board Examination and Licensure

DESCRIPTION: The proposed amendments are in accordance with Acts 725 and 746 of 2021, which will provide the ability to waive initial licensing fees for applicants who participate in state financial assistance programs. It also provides the board the option to license individuals who hold a work permit.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 1, 2022. The board received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Chiropractic Examiners is authorized to: promulgate suitable rules for carrying out its duties under the provisions of Title 17, Chapter 81 of the Arkansas Code, concerning chiropractors; adopt and revise such rules not inconsistent with the law as may be necessary to enable it to carry into effect the provisions of Title 17, Chapter 81 of the Arkansas Code, concerning chiropractors; and examine, license, and renew the licenses of duly qualified applicants. *See* Ark. Code Ann. § 17-81-206(b)(1), b(5) and b(9). This rule implements Acts 725 and 746 of 2021.

Act 725 of 2021, which was sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

Act 746 of 2021, which was sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals holding federal work permits. Temporary language contained within Act 746 required all occupational or professional licensing entities to promulgate rules necessary to implement the Act. *See* Act 746, § 2(a).

d. **SUBJECT: Licensure for Military Veterans**

DESCRIPTION: The proposed amendments are in accordance with Act 135 of 2021, providing certain terms be updated to be more inclusive of all service members, and also adding a section regarding the extension of license expiration and waiver for continuing education requirements if deployed.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 1, 2022. The board received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Chiropractic Examiners is authorized to: promulgate suitable rules for carrying out its duties under the provisions of Title 17, Chapter 81 of the Arkansas Code, concerning chiropractors; adopt and revise such rules not inconsistent with the law as may be necessary to enable it to carry into effect the provisions of Title 17, Chapter 81 of the Arkansas Code, concerning chiropractors; and examine, license, and renew the licenses of duly qualified applicants. *See* Ark. Code Ann. § 17-81-206(b)(1), b(5) and b(9).

Act 135 of 2021, which was sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created* by Act 135 of 2021. In addition, occupational licensing entities shall extend the expiration date of occupational licensure and allow full or partial exemption from continuing education requirements that are required as a component of licensure, for a deployed uniformed service member or his or her spouse for one hundred eighty (180) days following the date of the uniformed service member's return from deployment. *See* Ark. Code Ann. § 17-4-108.

e. **SUBJECT: Pre-Licensure Criminal Background Check Waiver Request**

DESCRIPTION: The proposed amendment is in accordance to Act 748 of 2021, which provides for the potential waiver for what were permanent prohibiting offenses. The purpose is to allow the board the option to

waive certain prohibiting offenses for applicants with criminal background history.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 1, 2022. The board received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Chiropractic Examiners is authorized to: promulgate suitable rules for carrying out its duties under the provisions of Title 17, Chapter 81 of the Arkansas Code, concerning chiropractors; adopt and revise such rules not inconsistent with the law as may be necessary to enable it to carry into effect the provisions of Title 17, Chapter 81 of the Arkansas Code, concerning chiropractors; and examine, license, and renew the licenses of duly qualified applicants. *See* Ark. Code Ann. § 17-81-206(b)(1), b(5) and b(9).

This rule implements Act 748 of 2021, sponsored by Representative Bruce Cozart, which amended occupational criminal background checks. The Act allowed agencies to grant waivers for certain criminal offenses which would have previously resulted in permanent disqualification from occupational licensure. *See* Ark. Code Ann. §§ 17-3-201(e) and 17-3-201(g).

17. DEPARTMENT OF HEALTH, ARKANSAS STATE BOARD OF NURSING (Sue Tedford, David Dawson, Matt Gilmore)

a. SUBJECT: Chapter Two – Licensure: RN, LPN, and LPTN

DESCRIPTION: The Arkansas State Board of Nursing is proposing the following changes to Chapter Two of its rules:

- In accordance with Act 746 of 2021, "or has been issued Federal Form I-766 U.S. Citizenship and Immigration Services-issued Employment Authorization Document" was added.
- For clarification, the term "application" replaces "examination" and added "for criminal background checks."
- In accordance with Act 630 of 2021, a section was added related to electronic submission of fingerprints.
- In accordance with Act 762 of 2021, a section added related to when a waiver is not required.

- For clarification, “Executive” is removed from Director Title; and to update and align with current process, emergency clause was removed.
- In accordance with Act 968 of 2021, we identified specific volunteer work which will be accepted for continuing education.
- To update and align with current process, a section was removed, and “submit” replaces “be issued a replacement license following submission of” and “request” replaces “form.”
- In accordance with Act 135 of 2021, Title of section changed: “Uniformed Service Members, Veterans” replaces “Certain Military Nurses”; “individuals listed in Section XI(A)(2)” replaces “an active duty military service member or their spouse stationed in the State of Arkansas or a returning military veteran or their spouse applying within one (1) year of his/her discharge from active duty”; “A uniformed” replaces “an active duty military”; “A uniformed service” replaces “a returning military”; “who resides in or establishes residency in the State of Arkansas” replaces “applying within one (1) year of his or her discharge from active duty”; Added “Uniformed service member who is assigned a tour of duty that excludes the uniformed service member’s spouse from accompanying the uniformed service member and the spouse relocates to Arkansas; or”; Added “Uniformed service member who is killed or succumbs to his or her injuries or illness in the line of duty if the spouse establishes residency in Arkansas.”; “deployed uniformed service member or spouse” replaces “members of the Armed Forces of the United States who are ordered to active duty outside of this state”; “a uniformed” replaces “an active duty military”; “or a uniformed service veteran” replaces “stationed in the State of Arkansas or a returning military veteran”; “uniformed service” replaces “active duty”; “A uniformed” replaces “An active duty military”; “outside the State of Arkansas” is removed; Description removed; Changed to “b” and “uniformed service member” replaces “person under (1) or (2) above”; and a section was added for waiver extension time.

PUBLIC COMMENT: Because this rule recommends an expedited process for military personnel to attain occupational licensure, this rule underwent review pursuant to Ark. Code Ann. § 17-4-109, as amended by Act 135 of 2021, by the Administrative Rules Subcommittee at its meeting of December 15, 2021. A public hearing was held on March 2, 2022. The public comment expired on March 14, 2022. The agency provided the following summary of comments it received and its responses thereto:

Leonie DeClerk (Email dated 11/8/21)
Comment: Section XI,D.2. – Waiver of Continuing Education – As this reads, the spouse of a uniformed service member can have CE requirement

waived without meeting any other criteria, but a uniformed service member can only have the CE requirement waived if they are deployed. Is this correct? **Response:** Language was added to Section XI, D, 1. b. regarding the spouse of a "deployed uniformed service member" to match the statutory requirements more clearly.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas State Board of Nursing has authority to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87 of the Arkansas Code, concerning nurses. *See* Ark. Code Ann. § 17-87-203(1)(A). In addition, the Board has authority to examine, license, and renew the licenses of qualified applicants for professional nursing, practical nursing, psychiatric technician nursing. *See* Ark. Code Ann. § 17-87-203(14). The proposed rules implement the following Acts of the 2021 Regular Session:

Act 135 of 2021, which was sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created* by Act 135 of 2021. In addition, occupational licensing entities shall extend the expiration date of occupational licensure and allow full or partial exemption from continuing education requirements that are required as a component of licensure, for a deployed uniformed service member or his or her spouse for one hundred eighty (180) days following the date of the uniformed service member's return from deployment. *See* Ark. Code Ann. § 17-4-108.

Act 630 of 2021, which was sponsored by Senator Jim Hendren, amended the law concerning electronic submission of noncriminal background check requests submitted to the Division of Arkansas State Police. *See* Ark. Code Ann. § 12-12-1005(d)(1).

Act 762 of 2021, which was sponsored by Representative Fred Allen, amended the Arkansas Code concerning occupational criminal background checks and to ensure that licensees who were licensed prior to Act 990 of 2019 are allowed to maintain their licenses.

Act 968 of 2021, which was sponsored by Representative Aaron Pilkington, updated the Volunteer Health Care Act, included therapists, addiction specialists, and counselors in the Volunteer Healthcare Program,

and increased continuing education credits under the Volunteer Health Care Act. *See* Ark. Code Ann. § 20-8-803(5).

b. SUBJECT: Chapter Three – Registered Nurse Practitioner

DESCRIPTION: The Arkansas State Board of Nursing is making changes to Chapter Three of its rules concerning nurse practitioners. To update and align with current processes, a section was removed as the agency does not issue paper licenses; and "submit" replaces "be issued a replacement license following submission of" and "request" replaces "form." In accordance with Act 135 of 2021, a section was added.

PUBLIC COMMENT: Because this rule recommends an expedited process for military personnel to attain occupational licensure, this rule underwent review pursuant to Ark. Code Ann. § 17-4-109, as amended by Act 135 of 2021, by the Administrative Rules Subcommittee at its meeting of December 15, 2021. A public hearing was held on March 2, 2022. The public comment expired on March 14, 2022. The agency provided the following summary of comments it received and its responses thereto:

Leonie DeClerk (Email dated 11/8/21)
Comment: Section IV – Licensure for uniformed service members, veterans, and spouses – Seeing as new RNP licenses have not been issued since November 30, 2000, are A and C applicable? Also, I have the same question here as for Chapter 2. **Response:** Changes were made in response to the comment to remove unnecessary language.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas State Board of Nursing has authority to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87 of the Arkansas Code, concerning nurses. *See* Ark. Code Ann. § 17-87-203(1)(A). This rule implements Act 135 of 2021, sponsored by Senator Ricky Hill, which established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Pursuant to the Act, occupational licensing entities shall extend the expiration date of occupational licensure and allow full or partial exemption from continuing education requirements that are required as a component of licensure, for a deployed uniformed service member or his or her spouse for one hundred eighty (180) days following the date of the uniformed service member's return from deployment. *See* Ark. Code Ann. § 17-4-108.

c. **SUBJECT: Chapter Four – Advanced Practice Registered Nurse**

DESCRIPTION: The Arkansas State Board of Nursing is proposing the following changes to Chapter Four of its rules:

- In accordance with Act 607 of 2021, removed requirement for a high school diploma as an admission criteria, added requirement for social security number.
- In accordance with Act 746 of 2021, "or has been issued Federal Form I-766 U.S. Citizenship and Immigration Services-issued Employment Authorization Document" was added.
- In accordance with Acts 412 and 607 of 2021, clarification – added "who do not have full practice authority"; and added renewal of full practice authority. To update and align with current process, Section was removed.
- In accordance with Acts 630 and 762 of 2021, added full CBC process as it was not in this chapter. To updated and align with current processes, "submit" replaces "be issued a replacement license following submission of" and "request" replaces "form."
- In accordance with Act 449 of 2021, we added scope of practice language and consultation requirements; and with Act 412 of 2021, "unless exempt by Section IX" was added. For clarification, we added requirement of protocols.
- In accordance with Act 651 of 2021, we added when an APRN is required to prescribe an opioid antagonist. For clarification, added exception of prescribing of Schedule II opioids; removed "acute pain for," "acute," and "the collaborating"; and added "a."
- In accordance with Act 412 of 2021 and for clarification, added "who does not have full practice authority"; "who does not have full practice authority" and removed "the collaborating"; "If required" and deleted reinstatement requirement. In accordance with Acts 412 and 607 of 2021, Section added to describe full practice authority regulations for CNP & CNM.
- In accordance with Act 767 of 2021, changed "and" to "or"; added standard for professional relationship; and added ability to conduct group therapy via telemedicine.
- In accordance with Act 135 of 2021, Title "Uniformed Service Members, Veterans" replaces "Certain Military Nurses"; "individuals listed in Section XVI(A)(2)" replaces "an active duty military service member or their spouse stationed in the State of Arkansas or a returning military veteran or their spouse applying within one (1) year of his/her discharge from active duty"; "A uniformed" replaces "an active duty military"; "A uniformed service" replaces "a returning military"; "who resides in or establishes residency in the State of Arkansas" replaces "applying within one (1) year of his or her discharge from active duty"; Added "Uniformed service member who is killed or succumbs to

his or her injuries or illness in the line of duty if the spouse establishes residency in Arkansas."; Added "Uniformed service member who is killed or succumbs to his or her injuries or illness in the line of duty if the spouse establishes residency in Arkansas"; "deployed uniformed service member or spouse" replaces "members of the Armed Forces of the United States who are ordered to active duty outside of this state"; "a uniformed" replaced "an active duty military"; "or a uniformed service veteran" replaces "stationed in the State of Arkansas or a returning military veteran"; "uniformed service" replaces "active duty"; "A uniformed" replaces "An active duty military"; "outside the State of Arkansas" is removed; Description removed; Changed to "(1)(b)"; "deployed uniformed service member" replaces "person under (1) or (2) above."; and added waiver extension timeframe.

PUBLIC COMMENT: Because this rule recommends an expedited process for military personnel to attain occupational licensure, this rule underwent review pursuant to Ark. Code Ann. § 17-4-109, as amended by Act 135 of 2021, by the Administrative Rules Subcommittee at its meeting of December 15, 2021. A public hearing was held on March 2, 2022. The public comment expired on March 14, 2022. The agency provided the following summary of comments it received and its responses thereto:

Slade Bridwell, CRNA, MS (Email dated 2/18/22)
Comment: I just want to make sure that "perioperative" includes the pre-operative and post-operative periods as well according to the ASBON. I believe the statute states all 3 phases, pre, intra, and post. I've read definitions that perioperative covers all 3 phases.
Response: No changes were necessary as the statute defines "perioperative."

Leonie DeClerk (Email dated 11/8/21)
Comment: Section III, F, 3&4 – The term used in the legislation is "full independent practice authority." – I think it would be clearer to use those terms throughout Chapter 4.
Response: Act 412 uses the term "full independent practice authority" and Act 607 uses the term "full practice authority." We defined these in Chapter 1 as meaning the same thing. Across the nation these two terms are used interchangeably, and the most common terminology is full practice authority.

Leonie DeClerk (Email dated 11/8/21)
Comment: Section VIII, D, 4 – See above [comment] re: terminology.
Response: Act 412 uses the term "full independent practice authority" and Act 607 uses the term "full practice authority." We defined these in Chapter 1 as meaning the same thing. Across the nation these two terms

are used interchangeably, and the most common terminology is full practice authority.

Leonie DeClerk (Email dated 11/8/21)
Comment: Section VIII, H, 1 – See above [comment] re: terminology.
Response: Act 412 uses the term "full independent practice authority" and Act 607 uses the term "full practice authority." We defined these in Chapter 1 as meaning the same thing. Across the nation these two terms are used interchangeably, and the most common terminology is full practice authority.

Leonie DeClerk (Email dated 11/8/21)
Comment: Section IX, B, 3-7 – See above [comment] re: terminology. The full title of the committee is "Full Independent Practice Credentialing Committee."
Response: References to the Committee were listed as "Full Independent Practice Credentialing Committee."

Leonie DeClerk (Email dated 11/8/21)
Comment: Section IX, 5, a, 1 – The certificate of prescriptive authority is lapsed if the APRN does not have full practice authority, when: a. The licensee's active advanced practice registered nurse licensure is not renewed by the expiration date; b. The national certification upon which licensure is based expires; c. There is not a current collaborative practice agreement on file with the board; or d. The advanced practice license is placed on inactive or retired status. If the APRN has full independent practice authority, they are not in a collaborative practice agreement, so they wouldn't have an active certificate of prescriptive authority. I think the lapse would be if the APRN license was lapsed due to non-renewal, expiration of national certification, or placing the APRN license on inactive or retired status.
Response: Language in this section was changed to outline the lapse of Full Independent Practice Authority.

Leonie DeClerk (Email dated 11/8/21)
Comment: Section XVI, D, 3 – Same comment as Chapter 2.
Response: Language was added regarding the spouse of a "deployed uniformed service member" to match the statutory requirements more clearly.

The Arkansas Affiliate of the American College of Nurse-Midwives (ACNM)
Comment: Section VIII – Prescriptive Authority, page 4-9, A. Initial Applicant. 5. "…The collaborative practice agreement shall include, but not be limited to: b. Methods of management of the collaborative practice, which shall include the use of protocols for prescriptive authority;"

Seeking clarification: Because the requirements for the Collaborative Practice Agreement (page 4-9) do not include a disclaimer for the Certified Nurse Midwife with prescriptive authority for Schedule II Controlled Substances only it appears the Certified Nurse Midwife with Schedule II authority must include all aspects of the practice unrelated to the use of Schedule II Controlled Substances in the Collaborative Practice Agreement. Indeed, there is no disclaimer here for all APRNs who have full practice authority, therefore it appears this rule applies to all APRNs with or without full-practice authority.
Response: The term "unless exempt by Section IX" was added for individuals with full practice authority.

The Arkansas Affiliate of the American College of Nurse-Midwives (ACNM)
Comment: [Section VIII – Prescriptive Authority], page 4-10, C. Protocols for Prescriptive Authority – Protocols shall be made available upon request of the Board. Such protocols shall, at a minimum, include: 1. Indications for and classifications of legend drugs, controlled substances (if prescriber holds a DEA registration number), and therapeutic devices which will be prescribed or administered by the APRN; 2. Date the protocol was adopted or last reviewed, which shall be at least annually.
Response: This matches the current language of the rule.

The Arkansas Affiliate of the American College of Nurse-Midwives (ACNM)
Comment: Section IX – Full Practice Authority, page 4-13, A. Certified Nurse Midwife, 1. "A collaborative practice agreement is not required unless the Certified Nurse Midwife prescribes Schedule II controlled substances." *Question:* CNMs do not need a collaborative agreement for prescriptive authority to include Schedules III-V according to Section IX, page 4-13, where Full Practice Authority for a Certified Nurse-Midwife is defined. For the CNM who has a collaborative practice agreement specific to Schedule II drugs, will the Board accept a Collaborative Practice Agreement with protocols that address only the use of Schedule II Controlled Substances?
Response: The protocols are only required for Schedule II Controlled Substances.

The Arkansas Affiliate of the American College of Nurse-Midwives (ACNM)
Comment: Section IX – Full Practice Authority, page 4-13, B. If delivering infants outside an accredited facility the Certified Nurse Midwife shall have a written agreement, on file, with a licensed physician or facility, or both, which identified an arrangement for referral and consultation in the event of a medical complication. This written

agreement shall be made available to the Board upon request. *Seeking Clarification:* We believe that this requirement is an unnecessary addition to Act 607 and is not an interpretation of it. This was discussed by the legislators as we sought to pass HB 1215 (Act 607). Representative Mary Bentley, who drafted the bill and helped to integrate the changes made by the Health Committee stated that a verbal OR written agreement would be acceptable for CNMs delivering outside of an accredited facility. Accordingly, Act 607 is written that "For a delivery outside of an accredited facility, the certified nurse-midwife shall identify a licensed physician or facility, or both, with which an arrangement has been made for referral and consultation in the event of a medical complication." The purpose of Act 607 was to remove barriers to practice for CNMs who are providing care in Arkansas. It was agreed, and evidence supports, that barriers to practice hinder access to and quality of care for women and infants. To this point, The American College of Obstetrician-Gynecologists (ACOG) and the American College of Certified Nurse - Midwives/Certified Midwives (ACNM) have issued a Joint Statement of Practice Relations Between Obstetrician-Gynecologists and Certified Nurse-Midwives/Certified Midwives (Reaffirmed November 2021; attached) in which the requirement of a written agreement is notably not recommended. While it is understandable that HB 1215 was amended to require a CNM practicing out-of-hospital birth to identify a collaborating facility or physician, Act 607 does not stipulate this must be obtained in writing. Requiring a written agreement would impose an unnecessary barrier to practice for Nurse-Midwives, which was not implied with the passage of Act 607 (cited above). *Question:* Can you explain the Board's justification for the addition of this rule? If it is not justifiable, can the requirement for a written agreement be removed from the Rules of the Nurse Practice Act?
Response: The term "written" was removed from the proposed language.

The Arkansas Affiliate of the American College of Nurse-Midwives (ACNM)
(Email dated 3/10/22)
Comment: Thank you for your thoughtful revisions to the Nurse Practice Act as presented on March 2nd. We were pleased to see that some of our collective concerns were addressed in the updated act. That said, as the members of the Arkansas Affiliate of the American College of Nurse-Midwives, we would like to address our concern that the current wording could still be interpreted that CNMs who prescribe schedule II drugs would require a collaborative agreement to include their entire practice and not just prescriptive authority. Specifically, the wording in the Mark-Up Copy for Chapter Four, Advanced Practice Registered Nurse, page 4-13, Section IX, Full Practice Authority, A. Certified Nurse Midwife. 1. A collaborative practice agreement is not required unless the Certified Nurse Midwife prescribes Schedule II controlled substances. Please consider

adding a statement that clarifies the intent of the rule, such as: The collaborative practice agreement will address only the areas of practice that require the authorization to prescribe a Schedule II controlled substance and satisfies the requirements for a collaborative practice agreement as stated in Section VIII, Prescriptive Authority, #5. Thank you for your attention to this concern. We look forward to your considerate response.
Response: The protocols are only required for Schedule II Controlled Substances.

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

1. Concerning Section III(f)(4), Section VIII(D)(3)(k) and VIII(D)(4), the questionnaire says the change was due to Act 412.
(a) Why did the agency choose the terminology "full practice authority," rather than "full independent practice authority" which is used in the Act?
RESPONSE: Act 412 uses the term "full independent practice authority" and Act 607 uses the term "full practice authority." We defined these in Chapter 1 as meaning the same thing. Across the nation these two terms are used interchangeably and the most common terminology is full practice authority.

(b) The term "full practice authority" is used throughout the rule, rather than just concerning certified nurse midwives (Act 607). Why did the agency structure the rule in this way, as opposed to using "full independent practice authority" for changes related to Act 412?
RESPONSE: It seemed more confusing to use both terms in Chapter 4 and there are several statements that applies to both types of APRN.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas State Board of Nursing has authority to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87 of the Arkansas Code, concerning nurses. *See* Ark. Code Ann. § 17-87-203(1)(A). In addition, the Board has authority to license and renew the licenses of qualified applicants for registered nurse practitioner nursing and advanced practice nursing. *See* Ark. Code Ann. § 17-87-203(15). These rules implement the following Acts of the 2021 Regular Session:

Act 135 of 2021, which was sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members,

Veterans, and Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created* by Act 135 of 2021. In addition, occupational licensing entities shall extend the expiration date of occupational licensure and allow full or partial exemption from continuing education requirements that are required as a component of licensure, for a deployed uniformed service member or his or her spouse for one hundred eighty (180) days following the date of the uniformed service member's return from deployment. *See* Ark. Code Ann. § 17-4-108.

Act 412 of 2021, which was sponsored by Representative Lee Johnson, authorized full independent practice authority for certified nurse practitioners who met certain requirements, and created the Full Independent Practice Credentialing Committee. *See* Act 412 of 2021. Pursuant to the Act, the Committee has authority to promulgate rules as necessary to administer the fees, rates, or charges for application, certification, endorsement, certification for prescriptive authority, certification renewal, and other reasonable services. *See* Ark. Code Ann. § 17-87-316(b).

Act 449 of 2021, which was sponsored by Representative Clint Penzo, amended the definition of "practice of certified registered nurse anesthesia" by removing supervision requirements.

Act 607 of 2021, which was sponsored by Representative Mary Bentley, granted full practice authority to certified nurse midwives. *See* Ark. Code Ann. § 17-87-315.

Act 630 of 2021, which was sponsored by Senator Jim Hendren, amended the law concerning electronic submission of noncriminal background check requests submitted to the Division of Arkansas State Police. *See* Ark. Code Ann. § 12-12-1005(d)(1).

Act 651 of 2021, which was sponsored by Senator Cecile Bledsoe, mandated the co-prescription of an opioid antagonist under certain circumstances and amended the Naloxone Access Act. *See* Act 651 of 2021.

Act 746 of 2021, which was sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals holding federal work permits. Temporary language contained within Act 746 required all occupational or professional licensing entities to promulgate rules necessary to implement the Act. *See* Act 746, § 2(a).

Act 762 of 2021, which was sponsored by Representative Fred Allen, amended the Arkansas Code concerning occupational criminal

background checks and to ensure that licensees who were licensed prior to Act 990 of 2019 are allowed to maintain their licenses. *See* Act 762 of 2021.

Act 767 of 2021, which was sponsored by Representative Aaron Pilkington, clarified the Telemedicine Act, specified that the home of a patient may be an originating site for telemedicine and that group meetings may be performed via telemedicine, and clarified reimbursement of telemedicine services. *See* Ark. Code Ann. § 17-80-402(3).

d. SUBJECT: Chapter Six – Standards for Nursing Education Programs

DESCRIPTION: In accordance with Act 757 of 2021, the requirement for a high school diploma as an admission criteria was removed.

PUBLIC COMMENT: A public hearing was held on March 2, 2022. The public comment expired on March 14, 2022. The agency provided the following summary of comments it received and its responses thereto:

Erika Gee, Wright, Lindsey & Jennings LLP, on behalf of Arkansas Health Care Association (Email dated 3/14/22)
Comment: 1. Failure to Modify Chapter 6 to Implement Act 1759 of 2021 – Act 1759 of 2021 modified existing law for the educational programs for the preparation of licensed practical nurses (LPNs) with an additional section authorizing such programs to be provided by a "post-secondary educational institution, a hospital, or a consortium of five (5) or more skilled nursing facilities." Act 1759 of 2021, Section 1, codified as Ark. Code Ann. § 17-87-304(e). However, the markup for Chapter 6 on "Standards for Nursing Education Programs" completely fails to recognize and incorporate this change to authorize a consortium of skilled nursing facilities to provide such education. *See, i.e.*, Section II(A). We therefore request that the Board modify the proposed changes to the rule to implement Act 1759 of 2021. [Bureau of Legislative Research staff suspects that the author of this comment likely intended to refer to Act 759 of 2021.]
Response: The addition of A(1)(a)(3) covers nursing homes offering a PN program.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas State Board of Nursing has authority to promulgate whatever rules it deems necessary for the

implementation of Title 17, Chapter 87 of the Arkansas Code, concerning nurses. *See* Ark. Code Ann. § 17-87-203(1)(A). The board has authority to prescribe standards and approve curricula for educational programs preparing persons for licensure as registered nurses, advanced practice registered nurses, registered nurse practitioner nurses, licensed practical nurses, and licensed psychiatric technician nurses. *See* Ark. Code Ann. § 17-87-203(8). This rule implements Acts 757 and 759 of 2021.

Act 757 of 2021, which was sponsored by Representative DeAnn Vaught, created the Licensed Practical Nurse Pathway Pilot Program. *See* Act 757 of 2021.

Act 759 of 2021, which was sponsored by Representative Mary Bentley, allowed post-secondary educational institution, a hospital, or a consortium on five (5) or more skilled nursing facilities to provide the educational program for the preparation of licensed practical nurses, and also the training courses for medication assistive persons. *See* Ark. Code Ann. §§ 17-87-704(d) and 17-87-304(e).

e. SUBJECT: Chapter Eight – Medication Assistant - Certified

DESCRIPTION: The Arkansas State Board of Nursing is proposing amendments to its rules concerning medication assistants. The agency provided the following summary of proposed changes:

- For clarification of current requirements, we deleted "as otherwise qualified"; and added requirement for social security number.
- In accordance with Act 746 of 2021, "or has been issued Federal Form I-766 U.S. Citizenship and Immigration Services-issued Employment Authorization Document" was added. Due to duplicate from Section IV, we deleted "any person holding certification as a medication assistant - certified shall have the right to use the title medication assistant - certified and the abbreviation MAC." To update and align with current processes, Section was removed; and "submit" replaces "be issued a replacement license following submission of" and "request" replaces "form."
- In accordance with Act 759 of 2021, added ability for a consortium of nursing homes to provide a MA-C program; Removed "nursing homes" as a required clinical site; Removed nursing home experience as a requirement for instructors; and removed the requirement for skills lab objective to focus on "elderly clients in a nursing home" and added "achieving the course objectives." For clarification, added "during clinical experiences."
- In accordance with Act 135 of 2021, added section to chapter.

Following the expiration of the public comment period, the agency submitted a revised markup, which included the following change:

- For clarification, “Designated facilities” and “designated facility” was added.

PUBLIC COMMENT: Because this rule recommends an expedited process for military personnel to attain occupational licensure, this rule underwent review pursuant to Ark. Code Ann. § 17-4-109, as amended by Act 135 of 2021, by the Administrative Rules Subcommittee at its meeting of December 15, 2021. A public hearing was held on March 2, 2022. The public comment expired on March 14, 2022. The agency provided the following summary of comments it received and its responses thereto:

Leonie DeClerk (Email dated 11/8/21)
Comment: Section XVI, D, 2 – Same comment as for Chapter 2.
Response: Language was added regarding the spouse of a “deployed uniformed service member” to match the statutory requirements more clearly.

Rachel Bunch, Executive Director, Arkansas Health Care Association (Email dated 2/19/22)
Comment: What is the rationale for taking out “nursing homes” under clinical facilities on chapter 8 for the MA-Cs? Also, removing the nursing home experience for the instructor’s requirements? On the language changes to skills lab, is the idea for skills to be taught in a facility or a lab?
Response: We took that out because MACs are now in correctional facilities and will probably continue to expand to other settings.

Erika Gee, Wright, Lindsey & Jennings LLP, on behalf of Arkansas Health Care Association (Email dated 3/14/22)
Comment: 2. Eliminating “nursing homes” from MA-C clinical facilities, Chapter 8, Section XIII(C)(3)(f) – The removal of “nursing homes” under the requirements for clinical facilities is overbroad and results in unnecessary confusion. Under Chapter 8, nursing homes are explicitly identified as a “designated facility” which may use Medication Assistants-Certified (MA-C). As such, it would be appropriate to allow the rule to continue to specify “nursing homes” as facilities responsible for providing clinical facilities for MA-C students. In contrast, simply striking “nursing homes” from this section leaves the verb without a subject and causes confusion about which facilities are qualified to provide clinical facilities for the training program. The proposed rule needlessly causes confusion regarding which facilities may provide clinical facilities for training programs. As such, we request that the Board modify the proposed rule change such that nursing homes are identified as the preferential site for clinical facilities. Alternatively, we request that the Board expressly state that nursing homes are included in the facilities approved for providing clinical learning experiences.

Response: The term "Designated Facility" was added to avoid confusion. Nursing Homes are defined as a Designated Facility in the rules.

Erika Gee, Wright, Lindsey & Jennings LLP, on behalf of Arkansas Health Care Association (Email dated 3/14/22)
Comment: 3. Removal of nursing home experience for training program instructors, Chapter 8, Section XIII(C)(4)(b) – The proposed rule removes the requirement that training program instructors have two (2) years of clinical and/or education experience in a nursing home. The proposed change is not consistent with the purpose of Chapter 8—ensuring that MA-Cs are provided adequate curriculum and learning experiences essential for the expected entry level and scope of work of the MA-C. The current requirement that training program instructors have clinical and/or education experience in nursing homes ensures that the program personnel is credentialed with experience and knowledge relevant to the MA-Cs scope of work, which is primarily in nursing homes. Under the proposed version, an instructor is only required to hold an unencumbered registered nurse license and have two (2) years of any clinical and/or education experience. The quality of the training program is improved by ensuring the instructors have experience in the types of facilities that the majority of the students will work in. As such, we request that the Board modify the proposed rule change to either (i) give potential training program instructors with nursing home experience preferential treatment; or (ii) in the alternative, we ask that you modify this proposed change to substitute "in a designated facility" instead of "in a nursing home," such that the rule requires that training program instructors have two years of clinical and/or education experience in a "designated facility."
Response: The term "Designated Facility" was added to avoid confusion. Nursing Homes are defined as a Designated Facility in the rules.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas State Board of Nursing has authority to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87 of the Arkansas Code, concerning nurses. *See* Ark. Code Ann. § 17-87-203(1)(A). The Board also has authority to: prescribe minimum standards and approve curricula for educational programs preparing persons for certification as medication assistive persons; and to examine, certify, and renew the certification of qualified applicants for medication assistive persons. *See* Ark. Code Ann. §§ 17-87-203(9) and 17-87-203(13). These rules implement the following Acts of the 2021 Regular Session:

Act 135 of 2021, which was sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created* by Act 135 of 2021.

Act 746 of 2021, which was sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals holding federal work permits. Temporary language contained within Act 746 required all occupational or professional licensing entities to promulgate rules necessary to implement the Act. *See* Act 746, § 2(a).

Act 759 of 2021, which was sponsored by Representative Mary Bentley, amended the law concerning medication assistive persons and allowed education programs for licensed practical nurses in certain facilities. Specifically, the educational program for the preparation of licensed practical nurses and the training courses for medication assistive persons may be provided by a postsecondary educational institution, a hospital, or a consortium of five (5) or more skilled nursing facilities. *See* Ark. Code Ann. §§ 17-87-304(e) and 17-87-704(d).

18. DEPARTMENT OF HEALTH, ARKANSAS STATE BOARD OF PHARMACY (John Kirtley, Luke Daniels, Matt Gilmore)

a. SUBJECT: Rule 7 – Drug Products/Prescriptions

DESCRIPTION: Proposed changes to Rule 7 will update language regarding Therapeutic Substitution as outlined in Act 503 of 2021, and establish Prescription Delivery Standards as outlined in Act 922 of 2021.

PUBLIC COMMENT: A public hearing was held on February 9, 2022. The public comment period expired at the conclusion of the public hearing. The board provided the following summary of comments that it received and its responses thereto:

Arkansas Medical Society (Verbal)
Scott Smith – called and requested the addition of the term "equal to" in the wording for the rule regarding substitutions to mirror that language in the statute. **RESPONSE:** This non-substantive change was added to the draft and adopted by the Board.

Wal-Mart
Michael Means, Counsel, submitted a letter with 4 suggestions for changes:

1. Requested the addition of terms "through either a Common, Private, or Contracted Carrier." **RESPONSE:** The Board discussed that the current proposed language matched the statutory intent which would already allow for all entities named in the suggested change which would actually be unintentionally limiting if specific. No Action Taken.

2. Suggestions were made to clarify that a patient can directly request delivery services either verbally or electronically and that notification could be made verbally or electronically. **RESPONSE:** The Board discussed the suggestions and pointed out that the current proposed language would already allow both of these options and that the suggested changes would actually be unintentionally limiting as it would not even allow for written communication methods. No Action Taken.

3. Suggestions were made to clarify that a pharmacy would only need a policy for appropriate temperature guidelines and that USP (United States Pharmacopeia) guidelines should be used. **RESPONSE:** The Board discussed that this is not something to just have a policy for as medications sent in this manner must adhere to temperature guidelines. They further discussed that the topic of USP guidelines had already been examined and as an overall guideline they neither capture nor reflect the different, specific needs for temperature control for many medications which reflect the actual expectations according to the manufacturer and FDA guidelines for the specific medications. The suggested language would cause a direct conflict with this. No Action Taken.

4. Suggestions were made to change the word "local" to "alternative" for a plan for medication supply when deliveries cannot be accomplished in a timely manner. The letter further asserts that this change would allow other stores in their chain to provide medication. **RESPONSE:** The Board discussed the suggested change and pointed out that there is a major difference between alternative and local and that the point of this rule is that if the entity at distance cannot get the medication to the patient as promised and required that the patient should have the option to obtain their medication locally which could be from the same company or from an alternate company. They also suggested changing the word "done" to "accomplished" in the language for this section. The Board adopted the change to the word "done" to be replaced with the word "accomplished."

<u>Quarles and Brady LLP</u>
Roger N. Morris, Attorney representing unknown mail-order pharmacies, had several requested changes which were reviewed with the Board.

1. They requested that a change be made so that instead of a patient needing to approve any billing or shipping of medications that they would be able to, "notify the patient or caregiver prior to any billing or delivery of medications to inform him or her of the right to cancel the delivery." **RESPONSE:** The Board discussed that this is not the intent of the rule at all and would create situations where silence would equal affirmation of the billing and delivery of medications. The requestor noted CMS guidance that they believed the Board was using to promulgate these rules but the Board pointed out that the language being proposed is based on the discussions and legislative intent of the Arkansas Act not CMS. No Action Taken.

2. They requested that instead of the pharmacy notifying the patient of the delivery plan and expected arrival that the pharmacy could "ensure patients are notified of the delivery plan and expected arrival." **RESPONSE:** The Board discussed that the requestor seemed to believe that a pharmacy notifying the patient of their delivery plan could be duplicative or confusing as someone else might also be sending notifications. The Board made their intent clear that it is the responsibility of the pharmacy to make notification to the patient regarding the plan of delivery for their medications. No Action Taken.

Arkansas Pharmacists Association

John Vinson, CEO and Executive Vice President, submitted a letter of support for these rule changes. Dr. Vinson pointed out several of the common issues seen by patients in Arkansas such as the need for patient choice in the receipt of their prescriptions to help avoid unnecessary delays in their care. He also highlighted the common approach of therapeutic substitution already happening in institutional settings. **RESPONSE:** Dr. Vinson's letter was accepted and entered into the record.

CVS Health

Lauren Paul, Executive Director of Pharmacy Regulatory Affairs, submitted a letter of support for this rule change. **RESPONSE:** The letter was accepted and entered into the record.

Village MD

Allison Hill, Manager, Pharmacy Affairs, submitted a letter of support for the proposed changes to Rule 7 noting that, "As written, the proposed changes will improve patient access to care, enhance patient outcomes, and lower overall healthcare costs. A pharmacist enabled to work in collaboration with a primary care provider is a critical partnership needed for patients to receive safe and effective care. The utilization of therapeutic substitution is proven to improve the efficiency of the health care system and decrease pharmacy costs."

RESPONSE: Her letter was accepted and entered into the record. No Action Taken.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Pharmacy has authority to make reasonable rules, not inconsistent with law, to carry out the purposes and intentions of this chapter and the pharmacy laws of this state that the board deems necessary to preserve and protect public health. *See* Ark. Code Ann. § 17-92-205(a). The proposed rules implement Acts 503 and 922 of 2021.

Act 503 of 2021, which was sponsored by Representative Lee Johnson, allows pharmacists to treat certain conditions, modifies physician dispensing, and allows delegation of physician dispensing. *See* Act 503 of 2021.

Act 922 of 2022, which was sponsored by Representative Michelle Gray, sets standards for prescription delivery. Pursuant to the Act, the Arkansas State Board of Pharmacy shall promulgate and maintain rules defining the standard of care for pharmacies and pharmacists that provide home delivery services in this state. *See* Ark. Code Ann. § 17-92-119(b)(1).

b. SUBJECT: Rule 9 – Pharmaceutical Care/Patient Counseling

DESCRIPTION: Proposed changes to Rule 9 will outline requirements of Act 503 of 2021 to describe how the Board of Pharmacy may establish and publish statewide written protocols, as developed and adopted with consultation and approval of the Arkansas State Medical Board, for the treatment of certain health conditions adopted by rule.

PUBLIC COMMENT: A public hearing was held on February 9, 2022. The public comment period expired at the conclusion of the public hearing. The board provided the following summary of comments that it received and its responses thereto:

Arkansas Pharmacists Association
John Vinson, CEO and Executive Vice President, submitted a letter of support for these rule changes. Dr. Vinson pointed out several of the common issues seen by patients in Arkansas such as the need for patient choice in the receipt of their prescriptions to help avoid unnecessary delays in their care. He also highlighted the common approach of therapeutic substitution already happening in institutional settings.

RESPONSE: Dr. Vinson's letter was accepted and entered into the record.

CVS Health
Lauren Paul, Executive Director of Pharmacy Regulatory Affairs, submitted a letter of support for this rule change. **RESPONSE:** The letter was accepted and entered into the record.

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

1. Act 503 of 2021 provides that "the Arkansas State Board of Pharmacy…*shall adopt by rule*…a formulary of medicinal drugs that a pharmacist may prescribe for treatment of conditions listed in subdivision 17(A)(x)(b) of this section…" Concerning the formulary of medicinal drugs referenced in the statute,
(a) Is this information in a current rule or proposed rule? If so, could you please provide a copy of the rule?
(b) If not, does the Board intend to promulgate the formulary in a future rule?
(c) If the Board does not intent to promulgate the formulary, please explain why.
RESPONSE: We reviewed this language with Representative Johnson to ensure we capture his intent for the law. This rule actually is adopting a formulary as I will attempt to explain. The language in the proposed rule as listed below actually defines the specific medications that are eligible for the formulary via FDA approved indication. A primary concern we all have with this is that if a medication on the protocol is found to be hazardous, pulled from the market, has a change in indications or is completely unavailable, a rule with the specificity down to the level of naming specific medications will actually give bad advice or legalize bad treatment until it can be fixed. At this time we have the following language for the formulary which is exclusive in nature as it limits treatment to this group of medications thus a formulary. We would think that this is the formulary in and of itself "(2) shall include medicinal drugs approved by the United States Food and Drug Administration which are indicated for treatment of these conditions, including without limitation any over-the-counter medication. (3) shall not include any controlled substances in Schedule I-IV."

2. Act 503 of 2021 provides that "the Arkansas State Board of Pharmacy…*shall adopt by rule*…a written statewide protocol for conditions listed in subdivision 17(a)(x)(b) of this section, which shall include without limitation the age of people that can be treated and medications to be used to treat people under this subdivision." Concerning the written statewide protocol, the proposed

Rule 9 states that "The Board of Pharmacy shall publish the statewide written protocol as developed and adopted with consultation and approval of the Arkansas State Medical Board."
(a) Has the protocol been developed? If so, could you please provide a copy?
(b) Is it the agency's intent to promulgate the protocol as a rule?
(c) If not, could you please explain why the agency is choosing not to adopt the protocol as a rule?
RESPONSE: The protocols are not developed at this time and will need to be reviewed by both the Medical Board and the Pharmacy Board as we move forward. As you can see even in this proposal the intent is to have any protocol reviewed and approved by both Boards. Historically we have published these statewide protocols for consistent use with examples of immunization protocols and naloxone protocols. Our plan currently is to continue working through this process and with the Sponsor to ensure we are following the intent of the law.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Pharmacy has authority to make reasonable rules, not inconsistent with law, to carry out the purposes and intentions of this chapter and the pharmacy laws of this state that the board deems necessary to preserve and protect public health. *See* Ark. Code Ann. § 17-92-205(a).

The proposed rules implement Act 503 of 2021, sponsored by Representative Lee Johnson, which allows pharmacists to treat certain conditions, modifies physician dispensing, and allows delegation of physician dispensing. Pursuant to the Act, the Arkansas State Board of Pharmacy, with consultation and upon approval of the Arkansas State Medical Board, shall adopt by rule: (a) a formulary of medicinal drugs that a pharmacist may prescribe for treatment of conditions listed in Ark. Code Ann. § 17-92-101(17)(A)(x)(b), and (b) a written statewide protocol for conditions listed in Ark. Code Ann. § 17-92-101(17)(A)(x)(b), which shall include without limitation age of people that can be treated and medications to be used to treat people. *See* Ark. Code Ann § 17-92-101(17)(A)(x)(d).

19. DEPARTMENT OF HEALTH, ARKANSAS STATE BOARD OF PHYSICAL THERAPY (Nancy Worthen, Matt Gilmore)

a. SUBJECT: State Board of Physical Therapy Rules

DESCRIPTION: The Department of Health's Arkansas State Board of Physical Therapy proposes changes to its Arkansas State Board of Physical Therapy Rules. The amendments are necessary to clarify and update procedures for licensees and to comply with acts passed by the legislature in the 2021 General Session. The continuing education submission procedure is also being amended to add an auditing process instead of licensees submitting continuing education annually. The proposed changes include the following:

- Section III, G – removes reference to "permanently disqualifying offenses" per Act 748 of 2021 (AG's office model language).
- Section III, G – language update, licensure extension, and continuing education requirement waiver language updated/added per Act 135 of 2021 (AG's office model language).
- Section III, H – creates new subsection D that explicitly states licensure eligibility for individuals who hold work permits per Act 746 of 2021 (AG's office model language).
- Section VIII, D – adds language regarding fee waiver for eligible individuals listed in Act 725 of 2021.
- Section XI – revises the continuing education process from all licensees submitting continuing education in a specific timeframe to auditing a percentage of licensees.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on December 21, 2021. Because these rules recommend an expedited process for military personnel to attain occupational licensure, these rules underwent review pursuant to Ark. Code Ann. § 17-4-109, as amended by Act 135 of 2021, by the Administrative Rules Subcommittee at its meeting of November 17, 2021. The Board received no comments.

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

(1) Section VII.C. – I see that you have added a fee of $25.00 for returned checks. As I'm sure you are aware, Ark. Code Ann. § 25-15-105(b)(1), as amended by Act 1101 of 2021, provides that an agency shall not assess a fee or penalty without specific statutory authority to assess a certain type and amount of fee or penalty or impose a fee or penalty in general. On what specific authority does the Board rely for its imposition of a returned-check fee? **RESPONSE:** We will be removing this fee from the Board's proposed rules.

(2) Section VII.D. – This section permits a waiver of an initial licensure fee for certain applicants, including those receiving assistance through the "Arkansas, *or current state of residence equivalent*, Medicaid Program"; however, Ark. Code Ann. § 17-5-104(a)(1), as amended by Act 725 of 2021, § 2, appears to only include the Arkansas Medicaid Program. Is there a reason the rule differs from the statute? **RESPONSE:** The Board adopted the ADH/DHS approved language for compliance with Act 725. The intent was to allow individuals moving to Arkansas from another state to qualify for the waiver by using their state's Medicaid beneficiary information if they have not lived in Arkansas long enough to qualify for Arkansas Medicaid.

(3) Section VII.D.2.b. – Should "Department" be "Division" in light of Act 910 of 2019? **RESPONSE:** Yes, we can make that change.

(4) Section XI – What is prompting or what is the basis for the change in the reporting requirements for proof of continuing education from submission to auditing? **RESPONSE:** The current process requires licensees to submit continuing education to the Board office and personnel manually enters it in the database. The number of licensees has grown to over 4200 through the years and this has become very time consuming. Other state PT Boards have been researched and the majority has an auditing process. Also, there are other Arkansas state agencies that have an auditing process. Submitting continuing education to the Board is also a burden to the licensee. The licensee is required to submit continuing education to the Board office upon completion. Some licensees do not have access to a fax machine or scanner and will mail their continuing education to the Board office. With the auditing process the licensee will attest to meeting continuing education requirements but only a randomly selected 10% will be required to submit it to the Board office.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rules have a financial impact, but that the total estimated cost by fiscal year to any private individual, entity, and business is unknown for both the current and next fiscal years, explaining:

> There will be a positive financial impact for applicants eligible for the fee waiver under Act 725 of 2021 and potential loss of revenue to the agency, but unable to forecast exact values due to lack of statistical information.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 17-93-202(b)(1), the Arkansas State Board of Physical Therapy, in

addition to its other powers and duties set forth in the Arkansas Physical Therapy Act ("Act"), Ark. Code Ann. §§ 17-93-101 to -505, shall adopt reasonable rules and require the payment of license fees adequate to carry out the purposes of the Act. The proposed changes include those made in light of the following acts:

Act 135 of 2021, sponsored by Senator Ricky Hill, which established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021 and modified the automatic occupational licensure requirements for uniformed services members, returning uniformed services veterans, and their spouses;

Act 725 of 2021, sponsored by Senator Ben Gilmore, which created the Workforce Expansion Act of 2021;

Act 746 of 2021, sponsored by Representative Clint Penzo, which authorized occupational or professional licensure for certain individuals; and

Act 748 of 2021, sponsored by Representative Bruce Cozart, which amended occupational criminal background checks.

b. <u>SUBJECT</u>: State Board of Physical Therapy Telehealth Rule

<u>DESCRIPTION</u>: The Department of Health's Arkansas State Board of Physical Therapy proposes changes to its Telehealth Rule. The amendments are necessary to clarify and update procedures for telehealth and to comply with Acts 767 and 829 of 2021. The rule contains revisions to incorporate definitions and relevant provisions of the Telemedicine Act, Ark. Code Ann. §§ 17-80-401 et seq; specify originating site for telemedicine, as required by Act 767 of 2021, and; specify how a professional relationship may be created via telehealth, as required by Act 829 of 2021.

<u>PUBLIC COMMENT</u>: No public hearing was held. The public comment period expired on February 2, 2022. The Board received no comments.

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

<u>Section II.(b)</u> – The rule appears to be premised on Ark. Code Ann. § 17-80-403(b), which references "§ 17-80-402(4)(E) or § 17-80-402(4)(F)," and the rule references its provisions of "Section I.(5)(E) or (F)." It looks like, however, that the only provision of the rule that actually corresponds to the statutory references would be Section I.(5)(E), as Section I.(5)(F)

actually corresponds to § 17-80-402(G). Is this correct? **RESPONSE:** That is correct. The Board will delete the reference to "or (F)" in Section II.b.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 17-93-202(b)(1), the Arkansas State Board of Physical Therapy, in addition to other powers and duties set forth in the Arkansas Physical Therapy Act, Ark. Code Ann. §§ 17-93-101 to -505, shall adopt reasonable rules. The proposed changes include revisions made in light of Act 767 of 2021, sponsored by Representative Aaron Pilkington, which clarified the Telemedicine Act, specified that the home of a patient may be an originating site for telemedicine and that group meetings may be performed via telemedicine, and clarified reimbursement of telemedicine services; and Act 829 of 2021, sponsored by Representative Jim Dotson, which amended the Telemedicine Act and authorized additional reimbursement for telemedicine via telephone.

20. DEPARTMENT OF HEALTH, DIVISION OF PHARMACY SERVICES AND DRUG CONTROL (Shane David, Laura Shue)

a. SUBJECT: List of Controlled Substances

DESCRIPTION:

The proposed listed amendments update the List of Controlled Substances to include these drugs.

1. Valeryl fentanyl and Isobutyryl fentanyl are Schedule I controlled substances. Page 2, (60) and Page 2, (62). To follow DEA, a DEA Controlled Substance Code Number has been set forth opposite of each substance.

2. Crotonyl fentanyl. (E)-N-(1-phenethylpiperidin-4-yl)-N-phenylbut-2-enamide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 3, (79).

3. Cyclopentyl fentanyl. N-(1-phenethylpiperidin-4-yl)-Nphenylcyclopentanecarboxamide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. To

follow DEA scheduling, this drug would be included as Schedule I. Page 3, (80).

4. Para-chloroisobutyryl fentanyl. N-(4-chlorophenyl)-N-(1-phenethylpiperidin4-yl)isobutyramide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 3, (81).

5. Para-methoxybutyryl fentanyl. N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-yl)butyramide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 3, (82).

6. Beta-methyl fentanyl. N-phenyl-N-(1-(2-phenylpropyl)piperidin-4-yl)propionamide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 3, (83).

7. Beta'-phenyl fentanyl. N-(1-phenethylpiperidin-4-yl)-N,3-diphenylpropanamide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 3, (84).

8. 2'-Fluoro ortho-fluorofentanyl. N-(1-(2-fluorophenethyl)piperidin-4-yl)-N-(2-fluorophenyl)propionamide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 3, (85).

9. 4'-Methyl acetyl fentanyl. N-(1-(4-methylphenethyl)piperidin-4-yl)-Nphenylacetamide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 3, (86).

10. Ortho-fluorobutyryl fentanyl. N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 3, (87).

11. Ortho-methyl acetylfentanyl. N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. To

follow DEA scheduling, this drug would be included as Schedule I. Page 3, (88).

12. Ortho-methyl methoxyacetyl fentanyl. 2-methoxy-N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 3, (89).

13. Para-methylfentanyl. N-(4-methylphenyl)-N-(1-phenethylpiperidin-4-yl)propionamide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 3, (90).

14. Phenyl fentanyl. N-(1-phenethylpiperidin-4-yl)-N-phenylbenzamide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 3, (91).

15. Thiofuranyl fentanyl. N-(1-phenethylpiperidin-4-yl)-N-phenylthiophene-2-carboxamide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 3, (92).

16. Fentanyl carbamate. Ethyl(1-phenethylpiperidin-4-yl)(phenyl)carbamate. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 4, (93).

17. Ortho-fluoroacryl fentanyl. N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)acrylamide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 4, (94).

18. Ortho-fluoroisobutyryl fentanyl. N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 4, (95).

19. Para-fluoro furanyl fentanyl. N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)furan-2-carboxamide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized

medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 4, (96).

20. Para-methoxymethamphetamine (PMMA). 1-(4-methoxyphenyl)-Nmethylpropan-2-amine. The DEA has placed this hallucinogenic substance into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 6, (53).

21. Gamma-hydroxybutyric acid and its known precursors and analogs is identified as a Schedule I controlled substance. Page 7, (e), (2). The Arkansas State Crime Laboratory requested update to language to list specific precursor Gamma-butyrolactone. Updated language indicates Precursors include but are not limited to: Gamma-butyrolactone. Page 7, (e), (2).

22. 4,4′-Dimethylaminorex. Some other names: 4,4′-DMAR, 4,5-dihydro-4-methyl-5-(4-methylphenyl)-2-oxazolamine, or 4-methyl-5-(4-methylphenyl)-4,5-dihydro-1,3-oxazol-2-amine. The DEA has placed this stimulant into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I with a subsequent numbering correction to follow in this section. Page 7, (f), (11).

23. N-Ethylpentylone is a Schedule I controlled substance. Page 8, (12), (b), (18). This item has been marked for clean up and to follow DEA, a DEA Controlled Substance Code Number has been set forth opposite of this substance. Page 8, (12), (b), (18).

24. Prefatory language for opium and opiates in Schedule II is updated. Page 8, (b), (1). To follow DEA language, the addition of thebaine-derived butorphanol, naldemedine, naloxegol, 6β-naltrexol, and samidorphan as excluded substances would reflect the following: Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, naldemedine, nalmefene, naloxegol, naloxone, 6β-naltrexol, naltrexone and samidorphan, and their respective salts, but including the following… Page 8, (b), (1).

25. Oliceridine. The FDA approved this drug for the management of acute pain severe enough to require an intravenous opioid analgesic and for patients for whom alternative treatments are inadequate. To follow DEA, this drug would be included as Schedule II. Page 10, (c), (29).

26. Tianeptine. Pursuant to potential adverse health effects when abused, information provided by the Arkansas Poison and Drug Information

Center, availability of this federally unregulated substance, and recent legislation from other states, tianeptine would be included as Schedule II. Page 10, (c), 30.

27. Remimazolam. The FDA approved this drug for use in the induction and maintenance of procedural sedation in adults undergoing procedures lasting 30 minutes or less. To follow DEA, this drug would be included as Schedule IV. Page 17, (c), (59).

28. MMB-CHMICA is a Schedule VI controlled substance. Page 23, (K), (xvi). To follow DEA, a DEA Controlled Substance Code Number has been set forth opposite of this substance.

29. 4-Fluoro-MDMB-BUTINACA is a Schedule VI controlled substance. Page 23, (K), (xxix). This substance is marked for clean up and to follow DEA, a DEA Controlled Substance Code Number has been set forth opposite of this substance.

30. 5F-AB-PINACA. N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide. The DEA has scheduled this synthetic cannabinoid because it has no recognized medical use. This drug would be included as Schedule VI. Page 23, (K), (xxx).

31. 4-CN-CUMYL-BUTINACA. 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1Hindazole-3-carboxamide. The DEA has scheduled this synthetic cannabinoid because it has no recognized medical use. This drug would be included as Schedule VI. Page 23, (K), (xxxi).

32. 5F-CUMYL-P7AICA. 1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1Hpyrrolo[2,3-b]pyridine-3-carboxamide. The DEA has scheduled this synthetic cannabinoid because it has no recognized medical use. This drug would be included as Schedule VI. Page 23, (K), (xxxii).

33. NM2201. Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate. The DEA has scheduled this synthetic cannabinoid because it has no recognized medical use. This drug would be included as Schedule VI. Page 23, (K), (xxxiii).

34. Pursuant to Act 514 of 2021, Arkansas Code § 5-64-215 (b), concerning substances in Schedule VI, Page 24, (b), strikethrough language is removed as the director is replaced with the secretary. In addition, this section is amended to read as follows:

    (b) However, except as provided under subsection (c) of this section, the secretary shall not delete a controlled substance listed in this section from Schedule VI. Page 24, (b).

35. In addition, pursuant to Act 514 of 2021, Arkansas Code § 5-64-215 (b), concerning substances in Schedule VI, Page 24, (c) is amended and strikethrough language is removed as superfluous restatement of law. In addition, this section is amended to read as follows:

(c) A prescription drug approved by the United States Food and Drug Administration under 21 U.S.C. § 355 is excluded from Schedule VI unless the secretary objects under § 5-64-201. Page 24, (c).

PUBLIC COMMENT: A public hearing was held on this proposed rule on March 1, 2022. The public comment period expired on March 1, 2022. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Department of Health administers the Uniform Controlled Substances Act and has authority to add substances to the Controlled Substances List and to delete or reschedule "any substance enumerated in a schedule[.]" Ark. Code Ann. § 5-64-201(a)(1)(A)(i). "The Secretary of the Department of Health shall revise and republish the schedules annually." Ark. Code Ann. § 5-64-216. If a substance is controlled under federal law, the Department "shall similarly control the substance" unless the Secretary objects to inclusion within thirty days of publication in the Federal Register of a final order designating a substance as a controlled substance. Ark. Code Ann. § 5-64-201(d).

This rule implements Act 514 of 2021. Act 514, sponsored by Representative Justin Boyd, concerned the scheduling of a Schedule VI controlled substance and provided for the deletion of a controlled substance from Schedule VI.

21. DEPARTMENT OF HEALTH, ENVIRONMENTAL HEALTH SERVICES (Terry Paul, Ric Mayhan, Laura Shue)

a. SUBJECT: Rules Pertaining to Drip Dispersal Systems

DESCRIPTION:
Background
Pursuant to Act 402 of 1977, the Department, through the Board of Health, has authority to promulgate the Rules Pertaining to Drip Dispersal

Systems. These rules promote health through creating specifications for safe and adequate sewage disposal. The Board of Health voted to move forward with these amendments on July 22, 2021.

Key Points

The proposed rule:

- Updates dispersal specifications
- Cleans up various language
- Provides for the addition of a rules disclaimer

Discussion

The following additions are being proposed for the Rules Pertaining to Drip Dispersal Systems:

- Add summary of rules disclaimer on page 2:

  IMPORTANT!

  These rules are designed for use with individual residential, small commercial, or decentralized wastewater systems (defined as 10,000 gpd or less) utilizing drip dispersal.

  The soil loading rates authorized in this rule shall only be utilized with the water usage tables of Appendix B in Rules and Regulations pertaining to Onsite Wastewater Systems.

  When using these rules for subdivision development with a decentralized wastewater treatment and collection system, an estimated water usage rate of no less than 400 gallons per day per lot shall be utilized. Subdivisions utilizing individual onsite wastewater systems are still required to be designed on standard, conventional systems for subdivision review process.

- Add Table 1 DRIP DISPERSAL FIELD SIZING AND LOADING RATE CHART FOR MODERATE HYDRAULIC CONDUCTIVITY SOILS
- Add Table 2 DRIP DISPERSAL FIELD SIZING AND LOADING RATE CHART FOR LOW HYDRAULIC CONDUCTIVITY SOILS
- Add 3.1.2
  - Low hydraulic conductivity shall include soils with 40% or greater clay. Clay percentage shall be determined from in depth zone extending 6” above and 12” below installed drip tubing depth.
- Add 3.1.3
  - No loading rates are available for low hydraulic conductivity soils with greater than 60% clay.
- Add 3.1.4

    - Systems utilizing drip dispersal must maintain minimum of 9" separation between drip tubing and any rock substrata (consolidated or fractured) for soils that exhibit a moderate and/or long SWT.
- Add 3.1.5
    - Systems utilizing drip dispersal must maintain minimum of 15" separation between drip tubing and any rock substrata (consolidated or fractured) for soils that exhibit only a brief SWT or do not exhibit a SWT.
- Replace "Appendix A" with "Appendix B of the Rules and Regulations Pertaining to Onsite Wastewater Systems" in 5.3
- Add "or dole type" to 13.1
    - The flush valve shall be a solenoid or dole type valve.
- Add 20.4
    - Residential systems utilizing drip dispersal designs shall include a minimum of 500 sq. ft. of absorption area per bedroom regardless of SWT depths.

The following deletions are being proposed:

- Remove "AND REGULATIONS" from Title
- Remove Section 22 Surface Discharging Drip Systems and renumber Sections 23-27
- Remove Table 1 Drip Dispersal Field Size chart
- Remove Appendix A Quantities of Wastewater Flow for Various Types of Establishments
- Remove original 3.1.1
    - The minimum vertical separation between the drip tubing or installed trench bottom and any rock substrata (consolidated or fractured) shall be nine (9) inches or greater of undisturbed, natural soil.
- Remove original 3.1.2
    - The percent clay of a soil may be interpreted as a Seasonal Water Table Class Clay percentage, as it related to seasonal water table interpretation, is cited in Section 8 of the Onsite Wastewater Regulations
- Remove the phrase "For lots three (3) acres or greater, the use of a surface discharge drip system may be considered." (See Surface Discharge Systems) from original 3.1.4
- Remove Section 7.1
    - Timed dosing is the only method for controlling the dose cycles and volumes.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on December 17, 2021. The agency

provided the following summary of the public comments it received and its responses to those comments:

During the public comment period, comments were received from the following:

Mr. Robert Goff, PSC, and Designated Representative
Comment of concern on Section 20.4

Mr. Sam Dunn, Designated Representative
General comments in support and suggested wording changes in Section 7.1 and 13.1.

Mr. Ron Kingston, Designated Representative
Comment of concern on Section 20.4

Mr. and Mrs. David Meints, Designated Representatives
No comments to add on this particular draft rule.

Mr. Tim Tyler, Designated Representative
Concern about Section 20.4 and loading rate chart

Mr. Mike O'Connor, Designated Representative
Concern about Section 20.4
Agreed with deletion of Section 7.1

Thomas Ufer
Concern about Section 20.4

AGENCY RESPONSE: Based on the public comments received, ADH made the following changes to the pending draft rule.

- Section 7.1 Restored back into the regulation instead of stricken. Timed dosing is a major factor in a well-controlled drip system.
- Section 13.1 Changed "dole" valve to "pressure/flow compensating valve." "Dole" is both a generic name and a company name of a manufacturer.
- Section 20.4 The proposed added section, "[R]esidential systems utilizing drip dispersal designs shall include a minimum of 500 sq. ft. of absorption area per bedroom regardless of SWT depths," will not be included in the final proposed rule. The minimum square footage of a drip system will continue to be addressed by the loading rate.
- Chart: The department will add a loading rate chart for high hydraulic conductivity soils at a maximum loading rate of 1.2

gallons per/sq ft/day creating consistency between our Onsite Wastewater Rule and Drip Dispersal Rule.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Department of Health, Division of Environmental Health Protection is authorized to promulgate "rules governing . . . the location, design, construction, installation, and operation of individual sewage disposal systems proposed for or located in subdivisions or in platted or unplatted lots or tracts of land[.]" Ark. Code Ann. § 14-236-107(b)(1). The Division may also promulgate rules related to management practices and procedures. Ark. Code Ann. § 14-236-107(b)(3).

b. SUBJECT: Rules Pertaining to Septic Tank Cleaners

DESCRIPTION:

Background

Pursuant to A.C.A. §§ 17-45-101 to -105, the Department has authority to promulgate the Rules Pertaining to Septic Tank Cleaners. These rules set standards for the business of cleaning and transportation of septic tanks in Arkansas.

Key Points

The proposed rule:
- Makes updates to comply with 2021 legislation.
- Adds alternate methods of record keeping.

Discussion

The Rules Pertaining to Septic Tank Cleaning Operations within the State of Arkansas are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the laws of the State of Arkansas including, Act 71 of 1973 as amended (Ark. Code Ann. § 17-45-101-105) and Act 96 of 1913 (Ark. Code Ann.§ 20-7-101, et seq.).

The following changes and updates are proposed:

1. Updated rule to reflect requirements of Act 135 of the 2021 General Assembly.
2. Updated rule to reflect changes in Act 725 of the 2021 General Assembly.
3. Section C: added requirement to review land application sites and soil testing every five years.

4. Section C: added clarification when a storage tank is required for a Cleaner.
5. Section C: changed set back from sinkholes to 100 feet.
6. Section H: added wording for alternate methods of record keeping.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on December 31, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Department of Health has authority to promulgate rules for the administration of Title 17, Chapter 45 of the Arkansas Code, addressing septic tank cleaners. *See* Ark. Code Ann. § 17-45-102. These rules implement Acts 135 and 725 of 2021.

Act 135, sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created by* Act 135.

Act 725, sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

c. SUBJECT: Rules Pertaining to Retail Food Establishments

DESCRIPTION: In addition to necessary changes to the effective date and Secretary of Health name, the following changes are recommended for the Rules Pertaining to Retail Food Establishments:

1. Page 19 – Definition of "Retail Food Establishment" does not include food prepared under the Food Freedom Act.

   (3) "Retail Food Establishment" does not include:

   a. An establishment that offers only pre-PACKAGED FOODS that are not TIME/TEMPERATURE CONTROL FOR SAFETY FOODS;

b. A produce stand that only offers whole, uncut fresh fruits and vegetables;

c. A FOOD PROCESSING PLANT; including those that are located on the premises of a RETAIL FOOD ESTABLISHMENT;

d. A kitchen in a private home if only FOOD that is not TIME/TEMPERATURE CONTROL FOR SAFETY FOOD is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by Arkansas Code Annotated 1403;

e. A kitchen in a private home if only FOOD that is not TIME/TEMPERATURE CONTROL FOR SAFETY FOOD is prepared for sale or service in accordance with the Food Freedom Act (Arkansas Code Annotated § 20-57-504).

f. An area where FOOD that is prepared as specified in Subparagraph (3)(d) of this definition is sold or offered for human consumption.

2. Page 25 – § 2-102.12 updated to reflect that newly permitted establishments have one year to comply.

2-102.12 Certified Food Protection Manager

(A) At least one EMPLOYEE that has supervisory and management responsibility and the authority to direct and control FOOD preparation and service shall be certified FOOD protection manager who has shown proficiency of required information through passing a test that is part of an ACCREDITED PROGRAM. ~~(Note: Existing RETAIL FOOD ESTABLISHMENTS have 1 year from the effective date of THIS REGULATION to comply with this section).~~ (Note: Establishments permitted after the effective date of this Rule have 12 months from date the permit is issued to comply with this section.)

3. Page 41 – § 3-201.11 clarified that Food Freedom Foods can be sold at retail food establishments.

3-201.11 Compliance with Food Law.

(A) FOOD shall be obtained from sources that comply with LAW.

(B) Except for non-TIME/TEMPERATURE CONTROL FOR SAFETY FOOD sold in accordance with the Food Freedom Act (Ark.

Code Ann. § 20-57-504), FOOD prepared in a private home may not be used or offered for human consumption in a RETAIL FOOD ESTABLISHMENT.

4. Page 141 – § 8-401.10 removed requirement for ADH to contact retail food establishment every 6 months to confirm that the nature of the operation has not changed.

(B) The REGULATORY AUTHORITY may increase the interval between inspections beyond 6 months if:

(1) The RETAIL FOOD ESTABLISHMENT is fully operating under an APPROVED and validated Hazard Analysis Critical Control Point (HACCP) PLAN as specified under § 8-201.14 and §§ 8-103.12(A) and (B);

(2) The RETAIL FOOD ESTABLISHMENT is assigned a less frequent inspection frequency based on a written RISK-based inspection schedule that is being uniformly applied throughout the jurisdiction ~~and at least once every 6 months the establishment is contacted by telephone or other means by the REGULATORY AUTHORITY to ensure that the establishment manager and the nature of FOOD operation are not changed~~; or

PUBLIC COMMENT: No public hearing was held on these proposed rules. The public comment period expired on January 27, 2022. The agency provided the following public comment summary:

During the public comment period, comments were received from the following:

Mr. Jeffery Hugo – National Fire Sprinkler Association
Mr. William Hyde – Rogers Arkansas Fire Marshall
Mr. Brent Gleghorn – Fire Chief – Batesville, AR
Mr. Gary Yarno – Director of Fire Services – Benton County, AR

All individuals listed above referenced the following comment from Mr. Hugo with the National Fire Sprinkler Association:

> This public comment references the changes to the retail food rules, specifically the mention of leaking sprinklers in several sections, such as, but not limited to 3-305.11, 4-401.11, and 4-903.12. While the National Fire Sprinkler Association (NFSA) agrees retail food should not be stored under leaking sprinklers, where leaking sprinklers are found, they are required to be

replaced immediately per the fire code. The 2012 Arkansas Fire Prevention Code per Section 901.6 require fire sprinkler systems to be inspected, tested, and maintained to the (referenced) 2011 edition of NFPA 25 (Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems). NFPA 25, Section 5.2.1.1.1 and 5.2.1.1.2 states, "Sprinklers shall not show signs of leakage…any sprinkler with leakage shall be replaced…" Sprinklers are not manufactured to leak, at all, and when leaks are found, it often is a clue to a much larger problem with the establishment's fire protection system. The fire code requires frequent inspections on fire sprinkler systems. The retail food rules protect retail food, however, it should not ignore other state and local codes that protect consumers by other codes and standards. Where retail food inspections find leaking sprinklers, it should trigger the local code official, or state fire marshal to investigate and enforce the AR fire code to remedy the status of the fire protection system.

AGENCY RESPONSE:
The Arkansas Department of Health received a comment from the National Fire Sprinkler Association (NFSA), and several similar comments referencing the NSFA comment, from local fire officials in Arkansas. The Department contacted Mr. Gary West with the NFSA with assistance from Arkansas State Fire Marshall Major Lindsey Williams. In discussion with Mr. West, the concern from the association was the redundant references to leaking fire sprinklers, which could be interpreted as a common problem. The Department agrees, due to the very rare occasion of this type of malfunction, the wording should be updated.

CONCERN:
The Arkansas Retail Food Establishment rules are verbatim language from a recent version of the FDA Food Code with edits that are state specific. The Department uses this wording to maintain consistency with the FDA Food Code, as do other states. Most states and local jurisdictions at the city level use a version of the FDA Code.

SOLUTION:
The Department is facilitating the introduction of this concern to the Conference of Food Protection Officials by the NFSA, through Mr. West, to consider rewording these rule sections. If consensus is reached, the effort would result in a recommendation to FDA from the conference to update the wording. This would be the best solution for NFSA and Mr. West agrees.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that these rules have no financial impact.

LEGAL AUTHORIZATION: The Secretary of the Arkansas Department of Health has "authority to prevent the proliferation of infections, contagious and communicable diseases resulting from unsanitary food service operations" as well as control over foodborne-illness-prevention sanitary measures. Ark. Code Ann. § 20-57-203. The Department also has permitting authority over food service establishments within the state. Ark. Code Ann. § 20-57-204(a).

Per the agency, these rules implement Act 306 of 2021, sponsored by Representative Jim Dotson. The Act provided that sales by a cottage food production operation through the Internet are exempt from the definition of "food service establishment."

These rules also implement Act 1040 of 2021. The Act, sponsored by Senator Breanne Davis, created the Food Freedom Act and exempted certain producers of homemade food or drink products from licensure, certification, and inspection.

d. SUBJECT: Plumbing Licenses

DESCRIPTION: The agency provided the following summary of the changes to these rules:

Section III – Definitions
- Serviceperson replaces Serviceman.

Section IV – Examination Fees
- Examination Fees have been replaced with Application/Examination Fees. Reciprocal licenses may not be subject to examinations but will require additional administrative actions that are equivalent to the creation and administration of examinations.
- Supervisor replaces the term Supervising to align with the licensing title used by the Department.

Section VI – Qualifications for Initial Licensure Fees Waiver
- This Section was inserted to comply with Act 725 of 2021, outlining the qualifications and requirements for certain individuals to acquire a fee waiver for their initial licensing.

Section VII – XVIII
- Have been renumbered to accommodate the insertion of Section VI – Qualifications for Initial Licensure Fees Waiver.

Section XVI – Plumbing and Gas Code

- Revised the title and language of this Section to remove the outdated fees. The cost of these publications has gone up over the years and this Department does not stock or sell code books. The publishing company holds the copyrights to these publications. We do post these codes online for public access in a read-only format per our agreement with the publisher.

Section XVIII – Temporary Permits / Provisional Licensing

- The title "Master" was followed by "and/or plumber." As this rule doesn't seem to exclude other types of plumbing or restricted plumbing licenses, the words "Master and/or" have been stricken.

Section XIX – Uniform Service Members Licensure

- Replaces Licensing of Active-Duty Service Members, Veterans, and Spouses.
- This section details the parameters and process to comply with laws pertaining to the licensing of uniformed service members under Act 135 of 2021.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on February 25, 2022. The agency indicated that it received no public comments.

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

Q. The rule changes based on Act 725 state that eligible applicants are applicants that "are receiving assistance through the Arkansas, or current state of residence equivalent, Medicaid Program," while Act 725 only lists the Arkansas Medicaid Program. Where did the additional language making applicants eligible if they received Medicaid assistance from another state come from? **RESPONSE:** This is from standard language ADH used in all of our Rules that needed to implement Act 725. We added that because after conversation with DHS, we all realized that there may be people that are in the process of establishing residency and do not have their AR Medicaid documentation back. This was to ensure newcomers to Arkansas do not slip through the cracks. It is not explicitly in the Act, but is within the intent of the Act.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Health has the power to adopt "rules as to the qualifications, examination, and licensing of master plumbers and journeyman plumbers and for the registration of apprentice plumbers[.]" Ark. Code Ann. § 17-38-201(a)(3), (d)(1). These rules implement Acts 135 and 725 of 2021.

Act 135, sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created by* Act 135.

Act 725, sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

e. SUBJECT: Rules Pertaining to Onsite Wastewater Systems

DESCRIPTION: The agency provided the following summary of the changes to the Rules Pertaining to Onsite Wastewater Systems:

1. Updated rules to reflect requirements of Act 135 of the 2021 General Assembly. (Section 3.5 through Section 3.51)

2. Updated rules to reflect requirements of Act 725 of the 2021 General Assembly. (Section 16.6 through Section 16.12)

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on February 24, 2022. The agency indicated that it received no public comments.

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

Q. The rule changes based on Act 725 state that eligible applicants are applicants that "are receiving assistance through the Arkansas, or current state of residence equivalent, Medicaid Program," while Act 725 only lists the Arkansas Medicaid Program. Where did the additional language making applicants eligible if they received Medicaid assistance from another state come from? **RESPONSE:** This is from standard language ADH used in all of our Rules that needed to implement Act 725. We added that because after conversation with DHS, we all realized that there may be people that are in the process of establishing residency and do not have their AR Medicaid documentation back. This was to ensure

newcomers to Arkansas do not slip through the cracks. It is not explicitly in the Act, but is within the intent of the Act.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas Department of Health has authority to certify wastewater system installers, designated representatives, and certified maintenance personnel. Ark. Code Ann. § 14-236-116(b)-(d), -115(a), -119(a). These rules implement Acts 135 and 725 of 2021.

Act 135, sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created by* Act 135.

Act 725, sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

f. SUBJECT: Rules Pertaining to Restricted Plumber Gas Fitter License and Gas Utility

DESCRIPTION: The agency provided the following summary of changes:

This proposal removes the word regulation and replaces it with "rule."

Section III – Definitions
- Serviceperson and Servicepersons replace the terms Serviceman and Servicemen.
- Supervisor replaces the term Supervising to align with the licensing title used by the Department.

Section VI – Applications and Examinations
- Paragraphs (c) and (d) titled "Gas Fitter and Supervisor Gas Fitter" were added to define which applicant types are being addressed.
- Paragraph (e) was added to outline the application and renewal methods for Gas Utility Servicepersons licenses.

- Paragraph (f) was added to address transferability as this license is issued to the Serviceperson in conjunction with the Utility Company.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on February 25, 2022. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

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

22. DEPARTMENT OF HEALTH, PUBLIC HEALTH LABORATORY (Laura Bailey, Laura Shue)

a. SUBJECT: Arkansas Rules for Alcohol Testing

DESCRIPTION:

Background

Pursuant to Ark. Code Ann. § 5-65-201, the Department has authority to promulgate the Arkansas Rules for Alcohol Testing. These rules set specifications and procedures for alcohol testing equipment and personnel.

Key Points

The proposed rule:

- Updated the list of approved instrumentation and methods for alcohol testing
- Removed redundant information
- Updated certification information for senior operator and operator

Discussion

This proposal removes the word "regulation" and replaces it with "rule" and makes the following changes:

- Updated the list of approved instrumentation and methods for alcohol testing: a new instrument was approved for use in evidential breath testing in mobile setting and a new calibration device was approved.
- Definitions not referenced in the document were removed.
- Redundant information was removed.
- Certification information for senior operator and operator were updated.
- Changes suggested by the BLR Code of Rules project as part of its ongoing verification process were adopted: references to regulations were removed pursuant to Act 315 of 2019, therefore "regulations" was changed to "rules."
- The Office of Alcohol Testing is referred to as "the Office" and not "Department."

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on December 21, 2021. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: "The Department of Health may promulgate rules reasonably necessary to carry out the purposes of" Title 5, Chapter 65, Subchapter 2 of the Arkansas Code, addressing the chemical analysis of body substances under the Omnibus DWI or BWI Act. Ark. Code Ann. § 5-65-201.

23. DEPARTMENT OF HEALTH, STATE BOARD OF EXAMINERS OF ALCOHOLISM & DRUG ABUSE COUNSELORS (Pam Fite, Andrew Beavers, Matt Gilmore)

a. SUBJECT: Rules Governing Alcoholism and Drug Abuse Counselors

DESCRIPTION: The Board amends Rule 4 to revise military licensure (Act 135); remove permanently disqualifying offenses regarding background checks (Act 748); add language for licensees with a "work permit" (Act 746); add volunteer services provided under Volunteer Healthcare Act to continuing education criteria (Act 968); and add waiver of initial licensure fee and remove any language of Registered Clinical Supervisors (Act 725).

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on December 31, 2021. The Board indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: "The State Board of Examiners of Alcoholism and Drug Abuse Counselors shall administer and enforce the provisions of" Title 17, Chapter 27, Subchapter 4 of the Arkansas Code, regarding licensing of alcoholism and drug abuse counselors. Ark. Code Ann. § 17-27-406(a). The Board "shall adopt rules consistent with [the subchapter's] provisions, including a code of ethical practice." Ark. Code Ann. § 17-27-406(a). These rules implement Acts 135, 725, 746, 748, and 968 of 2021.

Act 135, sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created by* Act 135.

Act 725, sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

Act 746, sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals holding federal work permits. Temporary language contained within Act 746 required all occupational or professional licensing entities to promulgate rules necessary to implement the Act. *See* Act 746, § 2(a).

Act 748, sponsored by Representative Bruce Cozart, amended occupational criminal background checks.

Act 968, sponsored by Representative Aaron Pilkington, updated the Volunteer Health Care Act, included therapists, addiction specialists, and counselors in the Volunteer Healthcare Program, and increased continuing education credits under the Volunteer Health Care Act.

24. DEPARTMENT OF HEALTH, STATE BOARD OF HEALTH (Derica Mack, Chuck Thompson, item a; Lynda Lehing, Laura Shue, item b; Beth Williams, Paula Day, Chuck Thompson, items c-g; Christy Kresse, Laura Shue, item h)

a. SUBJECT: Licensed Lay Midwifery

DESCRIPTION: The following revisions are being made in compliance with Act 135 of 2021:

- Table of Contents – Revised title of Section 208
- Section 103. Definitions – Added "Automatic Licensure," "Uniformed Service Member," and "Uniformed Service Veteran."
- Section 208:
  - Updated title to reflect new wording used in Act 135
  - Added sections supplied by ADH legal:
    - Applicability
    - Automatic Licensure
    - Credit Toward Initial Licensure
    - Expiration Dates and Continuing Education
  - Deleted language that was covered in the revised wording or definitions

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on January 6, 2022. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Health has the power to license lay midwives in Arkansas. Ark. Code Ann. § 17-85-107(a). The Board also has the power to promulgate rules related to licensure. Ark. Code Ann. § 17-85-107(a)(1). These rules implement Act 135 of 2021, sponsored by Senator Ricky Hill. The Act established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created by* Act 135.

b. SUBJECT: Rules for the Administration of Vital Records

DESCRIPTION: The following changes are being proposed to the Rules for the Administration of Vital Records:

Title Page: changed "Nathaniel Smith, MD, MPH" to "Jose R. Romero, MD."

Rule 8.1, page 15: changed "24 hours" to "48 hours." This addresses the timeline for embalming a dead body as adopted by Act 132 of 2021.

Rule 12.0, page 17: added language referencing "non-chemical" induced termination of pregnancy. Act 560 of 2021 requires additional reporting requirements for chemical induced abortions. As a result, the current report will be utilized for reporting of non-chemical abortions. A new form was developed for reporting of chemical induced abortions.

Rule 12.1, page 18: added the following language:

> RULE 12.1 REPORTS OF CHEMICAL INDUCED TERMINATION OF PREGNANCY
>
> (a) Chemical induced terminations of pregnancy are to be reported on Vital Records form VR-29b, which is attached hereto as Appendix B pursuant to Act 560 of 2021. The chemical induced termination of pregnancy report is an official record and shall remain confidential except that a disclosure may be made to law enforcement officials upon an order of a court after an application showing good cause. These reports are incorporated into the official records of the Office of Vital Records and are submitted by the healthcare facility to the Center of Health Statistics within fifteen days after each month's end.
>
> (b) The number of chemical induced terminations of pregnancy by trimester are to be reported quarterly on Vital Record form VR-29c, which is attached hereto as Appendix C pursuant to Act 560 of 2021. Quarterly reports of the number of chemical induced terminations of pregnancy by trimester are statistical reports and are not incorporated into the official records of the Office of Vital Records. These reports are to be submitted by the healthcare facility performing chemical abortions within fifteen days after each quarter's end. These reports will be maintained and retained in the same manner as described in Rule 12.0.

Act 560 of 2021 requires additional reporting requirements for chemical induced abortions that requires two forms. The VR-29b is an individual report and is an official document. The VR-29c is an aggregated report and is a statistical report.

Rule 12.2, page 18: formatting change

Certification, page 26: changed "Nathaniel Smith, MD, MPH" to "Jose R. Romero, MD" and "Director" to "Secretary."

Appendix A: created VR-29a from old VR-29. Added additional language referencing non-chemical induced termination of pregnancy. Added additional questions regarding whether an abortion was performed to save the life of the mother or due to rape or incest, as required by Act 787 of 2021. There was a reference correction for number 18 and format changes – data items were re-numbered.

Appendix B: The VR-29b has the same information as the original VR-29 with the additional language required for chemical abortions. Act 787 of 2021 requires facilities to report if an abortion was performed to save the life of the mother or due to rape or incest. Act 560 of 2021 requires an official report for each chemical abortion performed. The information includes specific reason for the abortion, the specific chemical regime, complications, and physician signature. Additionally, the form instructions contain a reference correction for number 20 and formatting changes – data items were renumbered.

Appendix C: The VR-29c is a new report. The report collects the total number of chemical abortions performed in each trimester of pregnancy during the quarter. Act 560 of 2021 requires facilities to report on the total number of chemical abortions on a quarterly basis.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on February 21, 2022. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: "The State Board of Health may adopt, amend, and repeal rules for the purpose of carrying out" the Vital Statistics Act. Ark. Code Ann. § 20-18-202. These changes implement Acts 132, 560, and 787 of 2021.

Act 132, sponsored by Representative Mike Holcomb, amended the timeline for embalming a dead body in the state.

Act 560, sponsored by Representative Robin Lundstrum, created the Informed Consent for Chemical Abortion Act. "The State Board of Health

shall adopt rules to implement" the Act. Ark. Code Ann. § 20-16-2506(a)(1), *as created by* Act 560.

Act 787, sponsored by Senator Blake Johnson, amended the laws regarding abortion reporting and inspections of abortion facilities and required that certain documentation be presented before performing an abortion when the pregnancy is a result of rape or incest.

c. SUBJECT: Rules for Perfusionists

DESCRIPTION: The Rules for Perfusionists in Arkansas are duly adopted and promulgated by the Arkansas Board of Health pursuant to the authority expressly conferred by the laws of the State of Arkansas including, without limitation, the Perfusionist Licensure Act, specifically Ark. Code Ann. § 17-104-101 et seq.

There were two legislative acts – Act 135 and Act 725 – which required modification to the Rules for Perfusionists in Arkansas: modification for the automatic licensure requirements for uniformed service members for Act 135; provision of waiver of initial fees associated with professional and occupational license for Act 725.

The following changes are proposed:

Section 3 – Definitions: The following definitions were added for the Bureau of Legislative Research (BLR) unless otherwise noted:

- Automatic licensure (Act 135)
- ABCP
- BLS
- CPS
- ECMO
- PADCAB
- PALS
- Uniformed service member (Act 135)
- Uniformed service veteran (Act 135)
- VAD

Section 4 – Licensure

- Deleted "and/or" and replaced with one or the other throughout the document (BLR)
- Moved notification regarding address change to "Requirement" from "Display of License" (BLR)
- Added military licensure requirements (Act 135)
- Added extension of license renewal (Act 135)
- Added extension of timeframe for continuing education (Act 135)

- Added initial licensure fee waiver (Act 725)

Section 5 – Code of Ethics
- Deleted "and/or" and replaced with one or the other throughout the document (BLR)

PUBLIC COMMENT: No public hearing was held on the proposed rule. The public comment period expired on March 2, 2022. The agency indicated it received no public comments.

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

Q. The rule changes based on Act 725 state that eligible applicants are applicants that "are receiving assistance through the Arkansas, or current state of residence equivalent, Medicaid Program," while Act 725 only lists the Arkansas Medicaid Program. Where did the additional language making applicants eligible if they received Medicaid assistance from another state come from? **RESPONSE:** This is from standard language ADH used in all of our Rules that needed to implement Act 725. We added that because after conversation with DHS, we all realized that there may be people that are in the process of establishing residency and do not have their AR Medicaid documentation back. This was to ensure newcomers to Arkansas do not slip through the cracks. It is not explicitly in the Act, but is within the intent of the Act.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Health has authority to promulgate "rules that it deems necessary to carry out the provisions of" the Perfusionists Licensure Act. Ark. Code Ann. § 17-104-103. These changes implement Acts 135 and 725 of 2021.

Act 135, sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created by* Act 135.

Act 725, sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required

licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

d. <u>SUBJECT</u>: Rules for Hospitals and Related Institutions

<u>DESCRIPTION</u>: The Rules for Hospitals and Related Institutions in Arkansas are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the authority expressly conferred by the laws of the State of Arkansas in Ark. Code Ann. §§ 20-9-201 et seq., 20-7-123, and other laws of the State of Arkansas.

There were six legislative acts – Acts 226, 311, 449, 598, 949, and 1055 – which required modification to the Rules for Hospitals and Related Institutions in Arkansas.

The following changes are proposed:

Section 4: Licensure and Coding
- 4.L – granting of waiver during PHE (Act 1055)

Section 7: General Administration
- 7.D – adds visitation requirements (Act 311)
- 7.S – adds prohibition of abortions in hospitals (Act 949)

Section 14: Health Information Services
- 14.D.3 – adds consent for do-not-resuscitate for minors (Simon's Law) (Act 226)

Section 29: Specialized Services: Anesthesia Services
- 29.C.3 – removed under physician supervision for CRNA practice (Act 449)

Section 30: Specialized Services: Labor, Delivery, LRD, LDRP, Post-Partum, and Maternal-Child
- 30.C.8.a & b – requirement for Hepatitis C testing (Act 598)
- 30.D.2 – adds physician available for consult for CRNA practice (Act 449)
- 30.F.12 – requirement for Hepatitis C counseling (Act 598)

Section 31: Specialized Services: Nursery Services
- 31.F – requirement for pulse oximetry screening in newborns (A.C.A. § 20-9-103)
- 31.G – requirement for genetic testing
- 31.H – requirement for hearing loss testing

After the public comment period and in response to legislative concern, the Department reworked Section 7.D, addressing visitation requirements, and added the text of Act 311 as Appendix A.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on March 2, 2022. The agency provided the following summary of the single public comment it received and its response to that comment:

Commenter's Name: Martha Hill

COMMENT: In particular, in Section 29 (C) (3), where you struck "under the supervision of a physician", the proposed nursing regulations do not substitute that language with the new statutory requirement of "consultation". In order for the nursing regulations to be consistent throughout the regulations, we would urge addition of the new statutory standard. **RESPONSE:** Recommended changes completed. See Hospital Rules Section 29.

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

1. Section 7.D.2 lists conditions that qualify a patient as disabled. The list includes deafness, but does not include "being hard of hearing, or other communication barriers" as listed in Act 311. Is there a reason these conditions were not included in § 7.D.2? **RESPONSE:** Revision to Hospital Section 7 attached with changes.

2. Per Act 226, parental consent for a do-not-resuscitate order or withdrawing treatment of a minor is not required if the minor is in DHS custody. Why was "in the custody of the Department of Human Services" excluded from § 14.D.3.b? **RESPONSE:** Revisions to Hospital Section 14 attached with changes.

3. Act 226 also provides that the parental consent requirements do not apply "if a reasonably diligent effort of at least 72 hours without success has been made to contact and inform each known parent or guardian[.]" Why was this provision omitted from the proposed rules? **RESPONSE:** Revisions to Hospital Section 14 attached with changes.

4. 31.F, 31.g, and 31.H all include citations to the Arkansas Code that do not appear to point to the correct sections. Could you confirm that the correct citations are as follows?

Section 31.F: A.C.A. § 20-9-103
Section 31.G: A.C.A § 20-15-302
Section 31.H: A.C.A. § 20-15-1504

RESPONSE: Revisions to Hospital Section 31 attached with changes.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas Department of Health has the authority to inspect, regulate, and license hospitals and institutions. Ark. Code Ann. § 20-9-204(b)(3). The Department may promulgate rules as necessary to accomplish the purposes of Ark. Code Ann. §§ 20-9-201 to -223, which relate to health facilities services. Ark. Code Ann. § 20-9-205(b). This rule implements Acts 226, 311, 449, 598, 949, and 1055 of 2021.

Act 226, sponsored by Representative Jim Dotson, established Simon's Law and clarified the requirement for parent or legal guardian consent for end-of-life medical procedures for minors.

Act 311, sponsored by Representative Julie Mayberry, created the No Patient Left Alone Act and concerned visitation rights of patients.

Act 449, sponsored by Representative Clint Penzo, amended the definition of "practice of certified registered nurse anesthesia" by removing supervision requirements.

Act 598, sponsored by Representative Justin Boyd, required Hepatitis C screening during pregnancy.

Act 949, sponsored by Senator Charles Beckham, modified laws concerning abortion clinics.

Act 1055, sponsored by Senator Missy Irvin, modified the authority of the Department of Health and deferred the authority of the Department of Health to the Centers for Medicare and Medicaid Services concerning the Hospitals Without Walls program.

e. SUBJECT: Rules for Critical Access Hospitals

DESCRIPTION:
Background
Pursuant to A.C.A. §§ 20-9-201 et seq., the Department has authority to promulgate Rules for Critical Access Hospitals. These rules establish a criterion for minimum standards for licensure, operation and maintenance of critical access hospitals in Arkansas that is consistent with current trends in patient care practices. These standards are not static and are

subject to periodic revisions in the future as new knowledge and changes in patient care trends become apparent.

Key Points
The proposed rule:
- Adds requirement for pulse oximetry screening in newborns
- Makes changes to comply with Acts 226, 311, 449, 598, 949, and 1055 of 2021
- Updates the grievance process

Discussion
The Rules for Critical Access Hospitals in Arkansas are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the authority expressly conferred by the laws of the State of Arkansas in Act 414 of 1961, as amended by Act 258 of 1971, Act 190 of 1975, Act 536 of 1977, Act 273 of 1983, Act 980 of 1985, and Act 516 of 1987, along with Acts 143 of 1987, 348 of 1987, and 399 of 1987 covered under these regulations. There were six legislative acts – Acts 226, 311, 449, 598, 949, and 1055 – which required modification to the Rules for Critical Access Hospitals in Arkansas.

The following changes are proposed:

Section 4: Licensure and Coding
4.L. – Granting of waiver during PHE. (Act 1055)

Section 7: General Administration
7.D.2-5. – Adds visitation requirements (Act 311)
7.P.4&5. – Updated QAPI requirements for grievance process
7.S. – Adds prohibition of abortions in hospitals (Act 949)

Section 14: Health Information Services
14.D.3. – Add consent for do-not-resuscitate for minors (Simon's Law) (Act 226)

Section 29: Specialized Services: Anesthesia Services
29.C.3. – Removed under physician supervision for CRNA practice (Act 449)

Section 30: Specialized Services: Labor, Delivery, LRD, LDRP, Post-Partum, and Maternal-Child
30.C.8.a&b. – Requirement for Hepatitis C testing (Act 598)
30.D.2. – Add physician available for consult for CRNA practice (Act 449)
30.F.12. – Requirement for Hepatitis C counseling (Act 598)

Section 31: Specialized Services: Nursery Services
31.F. – Requirement for pulse oximetry screening in newborn (A.C.A. § 20-9-103)
31.G. – Requirement for genetic testing
31.H. – Requirement for hearing loss testing

PUBLIC COMMENT: No public hearing was held on these proposed rules. The public comment period expired on March 2, 2022. The agency provided the following summary of the single public comment it received and its response to that comment:

Commenter's Name: Martha Hill

COMMENT: In particular, in Section 29 (C) (3), where you struck "under the supervision of a physician", the proposed nursing regulations do not substitute that language with the new statutory requirement of "consultation". In order for the nursing regulations to be consistent throughout the regulations, we would urge addition of the new statutory standard. **RESPONSE:** Recommended changes completed. See Critical Access Hospital Rules Section 29.

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

1. Section 7.D.2 lists conditions that qualify a patient as disabled. The list includes deafness, but does not include "being hard of hearing, or other communication barriers" as listed in Act 311. Is there a reason these conditions were not included in § 7.D.2? **RESPONSE:** Revision to CAH Section 7 attached with changes.

2. Per Act 226, parental consent for a do-not-resuscitate order or withdrawing treatment of a minor is not required if the minor is in DHS custody. Why was "in the custody of the Department of Human Services" excluded from § 14.D.3.b? **RESPONSE:** Revisions to CAH Section 14 attached with changes.

3. Act 226 also provides that the parental consent requirements do not apply "if a reasonably diligent effort of at least 72 hours without success has been made to contact and inform each known parent or guardian[.]" Why was this provision omitted from the proposed rules? **RESPONSE:** Revisions to CAH Section 14 attached with changes.

4. 31.F, 31.g, and 31.H all include citations to the Arkansas Code that do not appear to point to the correct sections. Could you confirm that the correct citations are as follows?

Section 31.F: A.C.A. § 20-9-103

Section 31.G: A.C.A § 20-15-302
Section 31.H: A.C.A. § 20-15-1504

RESPONSE: Revisions to CAH Section 31 attached with changes.

5. Is there a specific source for the updated grievance procedures?
RESPONSE: The change was made to have the CAH rules mimic the hospital rules for this as CMS has this requirement. There is documentation which indicates this change was made to the hospital rules in 2004. The documentation indicates the same changes should have occurred to the CAH rules. The CAH Rules did not reflect this change. The documentation does not reference a state law for the change. The change does align the rules with CMS requirements.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas Department of Health has the authority to inspect, regulate, and license hospitals and institutions. Ark. Code Ann. § 20-9-204(b)(3). The Department may promulgate rules as necessary to accomplish the purposes of Ark. Code Ann. §§ 20-9-201 to -223, which relate to health facilities services. Ark. Code Ann. § 20-9-205(b). This rule implements Acts 226, 311, 449, 598, 949, and 1055 of 2021.

Act 226, sponsored by Representative Jim Dotson, established Simon's Law, clarified the requirement for parent or legal guardian consent for end-of-life medical procedures for minors, and prohibited healthcare facilities or healthcare professionals from instituting end-of-life medical procedures on a minor without consent of a parent or legal guardian.

Act 311, sponsored by Representative Julie Mayberry, created the No Patient Left Alone Act and concerned visitation rights of patients.

Act 449, sponsored by Representative Clint Penzo, amended the definition of "practice of certified registered nurse anesthesia" by removing supervision requirements.

Act 598, sponsored by Representative Justin Boyd, required Hepatitis C screening during pregnancy.

Act 949, sponsored by Senator Charles Beckham, modified laws concerning abortion clinics.

Act 1055, sponsored by Senator Missy Irvin, modified the authority of the Department of Health and deferred the authority of the Department of Health to the Centers for Medicare and Medicaid Services concerning the Hospitals Without Walls program.

f. SUBJECT: Rules for Free-Standing Birthing Centers

DESCRIPTION:

Background

Pursuant to A.C.A. § 20-9-401 et seq., the Department has authority to promulgate the Rules for Free-Standing Birthing Centers in Arkansas. These rules establish minimum standards for licensure, operation and maintenance of Free-Standing Birthing Centers. These standards are not static and are subject to periodic revisions.

Key Points

The proposed rule:
- Adds requirements for genetic testing in newborns.
- Makes changes to comply with Acts 598 and 607 of 2021.

Discussion

The Rules for Free-Standing Birthing Centers in Arkansas are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the authority expressly conferred by the laws of the State of Arkansas in Ark. Code Ann. § 20-9-401 et seq.

A Free-Standing Birthing Center is any facility that is organized to provide family-centered maternity care in which births are planned to occur in a home-like atmosphere away from the mother's usual residence following a low-risk pregnancy. The facility shall not provide operative obstetrics, including use of forceps, vacuum extractions, Caesarean sections, or tubal ligations. The Free-Standing Birthing Center must be located within thirty (30) minutes of a hospital (via ambulance) which offers obstetric and nursery services, and which maintains an on-call team to provide emergency C-sections and stabilization of infants.

There were 2 legislative acts – Act 598 and Act 607 – which required modification to the Rules for Free-Standing Birthing Centers in Arkansas.

These revisions were:
- Added requirement for Hepatitis C testing/counseling during pregnancy
- Omitted the requirement for physician supervision of a Certified Nurse Midwife
- Added requirements for genetic testing in newborns

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on March 2, 2022. The agency indicated that it received no public comments.

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

1. 31.F, 31.g, and 31.H all include citations to the Arkansas Code that do not appear to point to the correct sections. Could you confirm that the correct citations are as follows? (This is in **Section 9** in FSBC, Section 31 in Hospital Rules)

Section 31.F: A.C.A. § 20-9-103
Section 31.G: A.C.A § 20-15-302
Section 31.H: A.C.A. § 20-15-1504

RESPONSE: Revision to FSBC Section 9 attached with changes.

2. The rule summary indicates that changes were made to comply with Act 607, regarding full practice authority for certified nurse midwives. Could you point me to where in the rule these changes were made? I do not see them in the markup. **RESPONSE:** Revision to FSBC Section 3 attached with changes.

3. The definition of "certified nurse midwife" requires an arrangement with a physician. However, § 1 of Act 607 grants certified nurse midwives full practice authority. Is there a reason the former language was retained? **RESPONSE:** Revision to FSBC Section 3 attached with changes.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Department of Health has the authority to promulgate rules "[s]etting minimum standards for the construction, maintenance, and operation of a freestanding birthing center[.]" Ark. Code Ann. § 20-9-403(a)(1). This rule implements Acts 598 and 607 of 2021.

Act 598, sponsored by Representative Justin Boyd, required Hepatitis C screening during pregnancy. Act 607, sponsored by Representative Mary Bentley, granted full practice authority to certified nurse midwives.

g. SUBJECT: Rules for Orthotic, Prosthetic, and Pedorthic Providers

DESCRIPTION:

Background

Pursuant to A.C.A. § 17-107-101 et seq., the Department has authority to promulgate the Rules for Orthotic, Prosthetic, and Pedorthic Providers in Arkansas. These rules protect the health and safety of individuals receiving orthotic, prosthetic, or pedorthic services in Arkansas.

Key Points

The proposed rule:

- Updates licensure requirements.
- Makes changes to comply with Acts 135, 445, 725 and 881 of 2021.

Discussion

The Rules for Orthotic, Prosthetic, and Pedorthic Providers in Arkansas are duly adopted and promulgated by the Arkansas Board of Health pursuant to the authority expressly conferred by the laws of the State of Arkansas including, without limitation, the Arkansas Orthotics, Prosthetics, and Pedorthics Practice Act, specifically Ark. Code Ann. § 17-107-101 et seq.

There were four legislative acts – Act 135, Act 445, Act 725 and Act 811 – which required modification to the Rules for Orthotic, Prosthetic, and Pedorthic Providers in Arkansas.

The following changes are proposed:

- Modification for the automatic licensure requirements for uniformed service members for Act 135.
- Modifies the licensure requirements for Orthotic Assistants, Orthotic Prosthetic Assistants and Prosthetic Assistants from Act 445.
- Provision of waiver of initial fees associated with professional and occupational license for Act 725.
- Allows individuals to work and earn a paycheck while also fulfilling licensing requirements for Act 811.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on March 2, 2022. The agency indicated that it received no public comments.

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

1. Section 6.D.3 requires an applicant for certification to practice as an assistant to have 2 years' experience in the field "as an assistant." Is this language mistakenly carried over from Act 445's phrasing "the field in which the individual is seeking licensure as an assistant," or must the applicant have experience as an assistant to receive a license to practice as an assistant? **RESPONSE:** Applicant required to have minimum 3 years of experience in the field in which the person is seeking license as an assistant or 2 years' experience in the field of orthotics and/or prosthetics as an assistant and has a minimum of 3 semester hours of higher learning. Revisions for OPP Section 6 attached.

2. Section 6.G.2 defines apprenticeship as a program that meets the federal guidelines as existing on 3/1/2021 and is approved by the U.S. Office of Apprenticeship. Act 811 defines apprenticeship as a program that meets the federal guidelines as existing on 3/1/2021 "and existing programs currently implementing work requirements as approved by the United States Office of Apprenticeship as meeting the requirements of an apprenticeship." Is it the Department's position that U.S. Office of Apprenticeship approval is a separate requirement and not an alternative means of meeting the Act's definition? **RESPONSE:** Correct. No revisions needed.

3. Section 6.G.2.b requires documentation that a program meets the federal requirements and has approval by the U.S. Office of Apprenticeship or the Arkansas Department of Workforce Services. Why is the Department of Workforce Services included here but not in the definition of apprenticeship? **RESPONSE:** It is our understanding that some state entities act as the approving arm for the U.S. Office of Apprenticeship. It is also our understanding that DWS is that entity in Arkansas. We wanted flexibility in receipt of documentation approving the apprenticeship program.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Health has the authority to promulgate rules prescribing "[p]rocedures for the issuance, renewal, inactivation, restoration, suspension, and revocation of a license or certification" for an orthotist, pedorthist, or prosthetist. Ark. Code Ann. § 17-107-204(a)(1). These proposed rules implement Acts 135, 445, 725, and 811 of 2021.

Act 135, sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and

Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created by* Act 135.

Act 445, sponsored by Senator Missy Irvin, modified the application process for certification to practice as an orthotic assistant, orthotic/prosthetic assistant, or prosthetic assistant.

Act 725, sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

Act 811, sponsored by Representative Joshua Bryant, created the Earn and Learn Act and allowed individuals to work and earn a paycheck while also fulfilling licensing requirements and gaining the skills to fill the needs of an expanding workforce. Temporary language contained within the Act required all licensing entities covered by the Act to promulgate rules as necessary for its implementation. *See* Act 811, § 2.

h. SUBJECT: Rules for Emergency Medical Services

DESCRIPTION:

Table of Contents

- Renumbering of page numbers and the Table of Contents
- Added words to match the subtopic title of the document
- Deleted a subtopic title that was moved under the appropriate subtopic
- Added Apprenticeship Section- Act 811

Section I. Definitions

Corrected grammatical errors (capitalization, punctuation, and typographical errors)

Section III. Licensure of Ambulance Services

- Corrected grammatical errors (capitalization, punctuation, and typographical errors)
- Added the following (page 12): Act 827
  1. Patient's choice of nearest appropriate medical facility

  A patient who is diagnosed with a specific health condition that is listed as rare by the National Institutes of Health, and that could be fatal for which a patient seeks specialized care may request to be transported to an alternative destination facility that is farther away than the nearest facility as set forth in Arkansas Code § 20-13-216.

Section IV. Ground Ambulance Service Licensure Classification and General Standards

- Corrected grammatical errors (capitalization, punctuation, and typographical errors)
- Amended Rule (page 18-19): Removal of the emergency medical dispatcher certification requirement to allow for services to use internal or outsourced dispatchers to screen nonemergency calls and prioritize emergencies according to Department approved process/protocol. Removal of all tiered response provisions a.-f. This will help ambulance services use the right level of resources to respond to emergencies.

Section V. Permitting of Ground Emergency Vehicles

- Corrected grammatical errors (capitalization, punctuation, and typographical errors)
- Amended Rule (page 26-27) Section V. Permitting of Ground Emergency Vehicles B. 10. Temporary upgrades and downgrades: Allow for temporary upgrades and downgrades as needed. Removed the requirement for upgrades and downgrades to be for mechanical purposes only and allow for staffing purposes.
- Amended Rule (page 29-30) Section V. Permitting of Ground Emergency Vehicles C. 1. Paramedic Permitted Ambulance Staffing: Allow for Emergency Vehicle Operators (EVOs) to drive paramedic ambulances for scheduled transfers only. These individuals have emergency vehicle operation training and some first aid training. This will free up an EMT for other staffing needs and not impact patient care.

Section VI. Air Ambulance Service Licensure Classification Standards
Corrected grammatical errors (capitalization, punctuation, and typographical errors)

Section VII. Permitting of Air Ambulance Vehicles
Corrected grammatical errors (capitalization, punctuation, and typographical errors)

Section VIII. Approved Emergency Medical Services Personnel Skills

- Added the following (page 43): Act 790 of 2021
  ~~1.~~ EMSPs may transport a police dog injured in the course of a law enforcement or correctional agency's work to a veterinary hospital or clinic if there is not a person requiring immediate medical attention or transport at the time as set forth by Arkansas Code Ann. § 20-13-217. ~~EMSPs may provide emergency medical care to the police dog, including without limitation:~~
    ~~a. Opening and manually maintaining an airway;~~

~~b. Giving mouth-to-snout or mouth-to-barrier ventilation;~~
~~c. Administering oxygen;~~
~~d. Managing ventilation by mask;~~
~~e. Controlling hemorrhage with direct pressure;~~
~~f. Immobilizing fractures;~~
~~g. Bandaging;~~
~~h. Administering naloxone hydrochloride, if administering naloxone hydrochloride has been authorized in accordance with a written protocol established and provided by a veterinarian or in consultation with a veterinarian; or~~
~~i. Providing euthanasia.~~

- Added the following (page 43): Act 827
  2. EMSPs may administer prescription medications to patients with a health condition that is listed as rare by the National Institutes of Health and a condition that could be fatal for which a patient seeks specialized healthcare as set forth in Arkansas Code §20-13-216. Prescription medications administered are:
     a. Carried by a patient;
     b. Administered via routes of delivery that are within the scope of training for the EMSP;
     c. Intended to treat specific health condition; and
     d. Not listed on the drug formulary set out by the Department of Health.

<u>Section IX. Education, Testing, and Licensure of Medical Personnel</u>

- Corrected grammatical errors (capitalization, punctuation, and typographical errors)
- Added the following (page 44-45): Act 725
  a. Pursuant to Act 725 of 2021, an applicant may receive a waiver of the initial licensure fee, if eligible. Eligible applicants are applicants who:
     1) Are receiving assistance through the Arkansas, or current state of residence equivalent, Medicaid Program, the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants, and Children (SSNP), the Temporary Assistance for Needy Families Program (TEA), or the Lifeline Assistance Program (LAP).
     2) Were approved for unemployment within the last twelve (12) months; or
     3) Have an income that does not exceed two hundred percent (200%) of the federal poverty income guidelines.

b. Applicants shall provide documentation showing their receipt of benefits from the appropriate State Agency.
    1) For Medicaid, SNAP, SSNP, TEA, or LAP, documentation from the Arkansas Department of Human Services (DHS), or current state of residence equivalent agency;
    2) For unemployment benefits approval in the last twelve (12) months, the Arkansas Department of Workforce Services, or current state of residence equivalent agency; or
    3) For proof of income, copies of all United States Internal Revenue Service Forms indicating applicant's total personal income for the most recent tax year e.g., "W2," "1099," etc.

c. Applicants shall attest that the documentation provided under (b) is a true and correct copy and fraudulent or fraudulently obtained documentation shall be grounds for denial or revocation of license.

- Added the following (page 47-48): Act 135

1. Uniform Service Members

a. "Automatic licensure" means granting the occupational licensure without an individual having met occupational licensure requirements provided under the Arkansas Code or by other provisions in these Rules.

b. "Uniformed service member" means an active or reserve component member of the United States Air Force, United States Army, United States Coast Guard, United States Marine Corps, United States Navy, United States Space Force, or National Guard; an active component member of the National Oceanic and Atmospheric Administration Commissioned Officer Corps; or an active or reserve component member of the United States Commissioned Corps of the Public Health Service.

c. "Uniformed service veteran" means a former member of the United States uniformed services discharged under conditions other than dishonorable.

d. Applicability applies to a:
    i. Uniformed service member stationed in the State of Arkansas;
    ii. Uniformed service veteran who resides in or establishes residency in the State of Arkansas;
    iii. The spouse of (1) or (2) including a:
        - uniformed service member who is assigned a tour of duty that excludes the spouse from accompanying the uniformed service and the spouse relocates to Arkansas;

        - uniformed service member who is killed or succumbs to his or her injuries or illness in the line of duty if the spouse establishes residency in Arkansas.

e. Automatic Licensure shall be granted to persons listed in Section IX. A. 11. d. if:
    - The person is a holder in good standing of occupational licensure with similar scope of practice issued by another state, territory, or district of the United States, holds a NREMT certification and;
    - The person pays the criminal history background fees.

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

g. Expiration Dates and Continuing Education
    i. A license expiration date shall be extended for a deployed uniformed service member or spouse for one hundred eighty (180) days following the date of the uniformed service member's return from deployment.
    ii. A uniformed service member or spouse shall be exempt from continuing education requirements in Section IX.D. for one hundred eighty (180) days following the date of the uniformed service member's return from deployment.
    iii. Any uniformed service member or spouse exercising the exemption shall provide evidence of completion of continuing education evidence of before renewal or grant of a subsequent license.

- Removed Military Personnel and Returning Military Veterans (page 58) due to legislative changes and updated language found on page as stated above.

<u>Section XI. General Training Site and Education Requirements</u>
Corrected grammatical errors (capitalization, punctuation, and typographical errors)

<u>Section XII. EMS Education Program Requirements</u>
Corrected grammatical errors (capitalization, punctuation, and typographical errors)

Section XIII. EMSP Education Standards and Licensure Requirements
Corrected grammatical errors (capitalization, punctuation, and typographical errors)

Section XIV. Drugs and Pharmaceuticals
Corrected grammatical errors (capitalization, punctuation, and typographical errors)

Section XV. Guidelines for Traumatically Injured Patients
Corrected grammatical errors (capitalization, punctuation, and typographical errors)

Section XVI. Violations
Corrected grammatical errors (capitalization, punctuation, and typographical errors)

Section XVII. Apprenticeship
Added this section and the following (page 85): Act 811

Section XVIII. Data Collection and Evaluation System
Added this section and the following (page 85-86): Act 707

Section XIX. Severability
Renumbered Section due to addition of Sections above

Section XX. Repeal
Renumbered Section due to addition of Sections above

Appendix

- AEMT Equipment Lists- updated by removing 10, 12, 14 gauge catheter (3.25 inches in length, A commercial chest decompression device can be substituted for the above.)
- Air Ambulance- Fixed-Wing List- updated by removing Magill Forceps Adult/Pediatric due to duplicated listing

Certification
Page number revision

PUBLIC COMMENT: A portion of this rule was filed on an emergency basis and was reviewed and approved by the Executive Subcommittee on September 30, 2022. With respect to permanent promulgation, a public hearing was held on these rules on March 7, 2022. The public comment period expired on March 7, 2022. The agency indicated that it received one public comment via letter from the Arkansas Ambulance Association (Amanda Newton, President) supporting the proposed rules.

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

1. The rule changes based on Act 725 state that eligible applicants are applicants that "are receiving assistance through the Arkansas, or current state of residence equivalent, Medicaid Program," while Act 725 only lists the Arkansas Medicaid Program. Where did the additional language making applicants eligible if they received Medicaid assistance from another state come from? **RESPONSE:** This is from standard language ADH used in all of our Rules that needed to implement Act 725. We added that because after conversation with DHS, we all realized that there may be people that are in the process of establishing residency and do not have their AR Medicaid documentation back. This was to ensure newcomers to Arkansas do not slip through the cracks. It is not explicitly in the Act, but is within the intent of the Act.

2. Section III.A.1 of the proposed rules applies to a patient "who is diagnosed with a specific health condition that is listed as rare by the National Institutes of Health, and that could be fatal for which a patient seeks specialized care[.]" Is it the Department's position that a "specific health condition" must meet both these criteria? **RESPONSE:** Yes.

3. Section VIII.B.3 allows EMSPs to administer prescription medications under certain conditions. Is it the Department's position that EMSPs may only administer prescription medications to a patient with a "specific health condition" as defined in A.C.A. § 20-13-202(13)? Arkansas Code § 20-13-216? **RESPONSE:** Yes.

4. Section IX.A.11.e requires a uniformed service member/veteran or spouse to hold a NREMT certification in order to obtain automatic licensure. Is this a statutorily required certification? **RESPONSE:** Yes.

5. The summary indicates that the proposed rules add a new Section XVIII: Data Collection and Evaluation System to comply with Act 707. My copy of the proposed rule does not have this section. Was this included in the summary in error? If not, could you provide me with an updated markup? **RESPONSE:** Attached.

6. Section 6.G.2 defines apprenticeship as a program that meets the federal guidelines as existing on 3/1/2021 and is approved by the U.S. Office of Apprenticeship. Act 811 defines apprenticeship as a program that meets the federal guidelines as existing on 3/1/2021 "and existing programs currently implementing work requirements as approved by the United States Office of Apprenticeship as meeting the requirements of an apprenticeship." Is it the Department's position that U.S. Office of

Apprenticeship approval is a separate requirement and not an alternative means of meeting the Act's definition? **RESPONSE:** Correct.

7. Section 6.G.2.b requires documentation that a program meets the federal requirements and has approval by the U.S. Office of Apprenticeship or the Arkansas Department of Workforce Services. Why is the Department of Workforce Services included here but not in the definition of apprenticeship? **RESPONSE:** It is our understanding that some state entities act as the approving arm for the U.S. Office of Apprenticeship. It is also our understanding that DWS is that entity in Arkansas. We wanted flexibility in receipt of documentation approving the apprenticeship program.

The proposed effective date for permanent promulgation is June 1, 2022.

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

LEGAL AUTHORIZATION: The State Board of Health has the authority to promulgate rules "which it deems necessary to carry out the provisions of" the Arkansas Emergency Medical Services Act. Ark. Code Ann. § 20-13-208. The Arkansas Department of Health is tasked with administering the Act, certifying emergency medical services personnel, and issuing and renewing licenses to such personnel. Ark. Code Ann. § 20-13-209. These rule revisions implement provisions of Acts 135, 707, 725, 790, 811, and 827 of 2021.

Act 135, sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created by* Act 135.

Act 707, sponsored by Representative Lee Johnson, provided for data collection and evaluation of emergency medical care and initial time-critical diagnoses and procedures and ensured confidentiality to help improve health outcomes and prompt treatment. "The State Board of Health shall promulgate rules for the department to implement" a data collection and evaluation process. Act 707, § 1(b)(2), *codified at* Ark. Code Ann. § 20-13-216(b)(1).

Act 725, sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

Act 790, sponsored by Representative Jimmy Gazaway, created Gabo's Law and allowed for emergency medical care to be provided to injured police dogs.

Act 811, sponsored by Representative Joshua Bryant, created the Earn and Learn Act and allowed individuals to work and earn a paycheck while also fulfilling licensing requirements and gaining the skills to fill the needs of an expanding workforce. Temporary language contained within the Act required all licensing entities covered by the Act to promulgate rules as necessary for its implementation. *See* Act 811, § 2.

Act 827, also sponsored by Representative Johnson, authorized emergency medical services personnel to administer certain emergency prescription medications to a patient who has a specific health condition, allowed participation in care coordination by emergency medical services, and ensured appropriate transport of a patient who has a specific health condition.

~~**25. DEPARTMENT OF HEALTH, STATE KIDNEY DISEASE COMMISSION**~~

~~**a. SUBJECT: Arkansas Kidney Disease Commission Rules**~~

26. DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILD CARE AND EARLY CHILDHOOD EDUCATION (Mark White, Tonya Williams, Dawn Jeffery, Ebony Russ)

a. SUBJECT: Minimum Licensing Standards for Child Welfare Agencies (Placement and Residential)

DESCRIPTION:
Statement of Necessity
The Minimum Licensing Standards for Child Welfare Agencies (Placement and Residential) are being revised to meet the requirements of the Families First Prevention Services Act (Public Law 115-123) established for Arkansas as well as Acts 269, 673, and 772 of the 93rd General Assembly Regular Session of 2021. The standards would impact the foster families of Arkansas and residential facilities that have direct involvement with Transitional Living.

Updates to grammar and formatting in both manuals were made throughout for consistency.

Summary of Changes for Placement

- **Section 102 Organization & Administration:** Corporal punishment is now prohibited for all licenses.
- **Section 103 Central Registry & Criminal Record Checks:** The rule about who undergoes a record check with the Federal Bureau of Investigation was modified. Language was clarified, and formatting changed, concerning individuals required to do both an Arkansas State Police background check and an FBI background check.
- **Section 207 Content of the Home Study:** The rule has been changed so that "The agency shall conduct at least one (1) scheduled in-home interview for each household member to observe family functioning and assess the family's capacity to meet the needs of children in foster care." The requirements of social history to be included in the Home Study was changed. In addition, the following information was added to this section: "The placement agency may require further documentation or evaluation to determine the suitability of the home."
- **Section 208 Physical Requirements of the Home:** Clarifying language was added to the rule regarding types of acceptable housing structures, upkeep standards, dangerous or hazardous materials, trash and recycling, pest control, amenities, HVAC systems, smoke and carbon monoxide detectors, first aid supplies, emergency services and contact information, and safety plans. DCCECE adds pool safety measures including the requirement for adult supervision as well as a water safety plan for supervision of children during water activities.
- **Section 209 Sleeping Arrangements:** The rule was amended to require that each child have a safe bedroom and that all sleeping materials be in good condition and like those given to other household members. Language regarding co-sleeping and bedsharing was also added.
- **Section 210 Approval of Foster Homes:** Amendments were made to the rule regarding the requirements for references, pre-service training, and communication and literacy levels of foster parents.
- **Section 212 Continued Training of Foster Parents:** Clarifying language regarding types of ongoing training required and allowed was added.
- **Section 213 Foster Parent Responsibilities:** Changes were made to clarify that foster parents shall comply with and adhere to the rules and authority of the placement agency and placement agreements. Language was added to clarify that foster parents shall not abuse illegal substances, drugs of any kind, or alcohol. The following was added: "Foster parents shall adhere to the placement agency's reasonable and prudent parent standard."
- **Section 214 Medications:** Language was added regarding the handling and storing of medications in a foster home, as well as the accessibility of these medications to the foster children in the home.

- **Section 218 Monitoring & Re-evaluation:** Language was added to clarify that the quarterly monitoring requirement does not apply to foster homes for infants in short-term foster care awaiting adoptive placement (before a child can be placed in such a foster home, a monitoring visit shall be done within the three (3) months prior to placement).
- **Sections 302 and 303:** These sections were reformatted for consistency; no changes were made to the text.
- **Section 307 Content of the Home Study:** This section was reformatted for consistency. Also, the rule language regarding household interviews and determination and evaluation of a home was updated.
- **Section 308 Physical Requirements of the Home:** Clarifying language was added to the rule regarding types of acceptable housing structures, upkeep standards, dangerous or hazardous materials, trash and recycling, pest control, amenities, HVAC systems, smoke and carbon monoxide detectors, first aid supplies, emergency services and contact information, and safety plans. DCCECE adds pool safety measures including the requirement for adult supervision as well as a water safety plan for supervision of children during water activities.
- **Section 309 Sleeping Arrangements:** The rule was amended to require that each child have a safe bedroom and that all sleeping materials be in good condition and like those given to other household members. A rule regarding co-sleeping and bedsharing was also added.
- **Section 310 Approval of Foster Homes:** Amendments were made to the rule regarding the requirements for references, pre-service training, and communication and literacy levels of foster parents.
- **Section 312 Continued Training of Foster Parents:** Clarifying language regarding types of ongoing training required and allowed was added.
- **Section 313 Therapeutic Foster Parent Responsibilities:** The following was added: “Foster parents shall adhere to the placement agency’s reasonable and prudent parent standard.”
- **Section 314 Medications:** Language was added regarding the handling and storing of medications in a foster home, as well as the accessibility of these medications to the foster children in the home.
- **Sections 401, 402, 403 and 404:** These sections were reformatted for consistency; no changes were made to the text.
- **Section 408 Content of the Home Study:** The rule language regarding household interviews and determination and evaluation of a home was updated.
- **Section 409 Physical Requirements of the Home:** Clarifying language was added to the rule regarding types of acceptable housing structures, upkeep standards, dangerous or hazardous materials, trash and recycling, pest control, amenities, HVAC systems, smoke and

carbon monoxide detectors, first aid supplies, emergency services and contact information, and safety plans. DCCECE adds pool safety measures including the requirement for adult supervision as well as a water safety plan for supervision of children during water activities.

- **Section 410 Sleeping Arrangements:** The rule was amended to require that each child have a safe bedroom and that all sleeping materials be in good condition and like those given to other household members. A rule regarding co-sleeping and bedsharing was also added.
- **Section 411 Approval of Foster Homes:** Amendments were made to the rule regarding the requirements for references, pre-service training, and communication and literacy levels of foster parents.
- **Section 413 Continued Training of Foster Parents:** Changes were made to clarify that foster parents shall comply with and adhere to the rules and authority of the placement agency and placement agreements. Language was added to clarify that foster parents shall not abuse illegal substances, drugs of any kind, or alcohol.
- **Section 415 Medications:** Language was added regarding the handling and storing of medications in a foster home, as well as the accessibility of these medications to the foster children in the home.

Summary of Changes for Residential

- **Section 102 Organization & Administration:** Corporal punishment is now prohibited for all licenses pursuant to Ark Code Ann. § 9-28-405.
- **Section 103 Central Registry & Criminal Record Checks:** Language was clarified concerning individuals required to do both an Arkansas State Police background check and an FBI background check.
- **Section 901 Licensing Approval & Monitoring:** Language about functioning capacity, nonoperational periods, and recommendations to the Child Welfare Agency Review Board was added to the rule.

PUBLIC COMMENT: A public hearing was held on this rule on March 2, 2022. The public comment period expired on March 14, 2022. The agency indicated that it received no public comments.

The proposed effective date is June 1, 2022.

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

LEGAL AUTHORIZATION: The Child Welfare Agency Review Board has authority to promulgate rules regarding child welfare agency licensure and operation. Ark. Code Ann. § 9-28-405(a)(1). These rules implement Acts 269, 673, and 772 of 2021.

Act 269, sponsored by Representative Charlene Fite, defined "childcare institution" under the Child Welfare Agency Licensing Act and amended the law concerning criminal record and child maltreatment checks under the Child Welfare Agency Licensing Act.

Act 673, sponsored by Representative Karilyn Brown, repealed provisions of the law concerning the authority of the Child Welfare Agency Review Board to promulgate or enforce certain rules.

Act 772, sponsored by Senator Bart Hester, clarified the regulation of psychiatric residential treatment facilities.

27. DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILDREN AND FAMILY SERVICES (Mark White, Mischa Martin, Christin Harper)

a. SUBJECT: Promoting Successful Transitions to Adulthood

DESCRIPTION:

Statement of Necessity

Pursuant to Acts 316 and 791 of the 93rd General Assembly, Regular Session (the Acts), the Division of Children and Family Services revises rules regarding services provided to youth eighteen (18) through twenty-one (21) years of age who aged out of foster care or who continue to participate in the Extended Foster Care Program, as detailed below. DCFS also formalizes current practice guidance regarding youth sponsors and aftercare payments and makes formatting and technical corrections.

Rule Summary

Effective pending legislative review and approval, the Division of Children and Family Services implements the following changes to the listed rules:

- Policy VIII-B: Extended Foster Care
    - To update the definition of and the eligibility requirements for extended foster care pursuant to the Act, to include reentry requirements
    - To clarify that participation in extended foster care does not impede or otherwise alter any right afforded to youth by virtue of their age of majority pursuant to the Act
    - To add that a six-month review hearing is not required for a juvenile who is over eighteen (18) years of age and has elected to remain in extended foster care or return to extended foster care pursuant to the Act

    - To include existing practice guidance regarding the definition of and eligibility criteria for Transitional Youth Services Sponsors for youth participating in the Extended Foster Care Program
    - To make formatting improvements and technical corrections
- Policy VIII-C: After Care Services and Support
    - To clarify eligibility requirements for aftercare services
    - To formalize existing practice guidance into rules regarding aftercare eligibility for youth who initially participate in the Extended Foster Care Program but then choose to leave the program prior to twenty-one (21) years of age
    - To make formatting improvements and technical corrections

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on March 12, 2022. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Department of Human Services, Division of Children and Family Services shall provide services to dependent-neglected children and their families and may promulgate rules to that effect. Ark. Code Ann. § 9-28-103(a)(2), (b). The Department has the authority to promulgate rules implementing the Child Maltreatment Act. Ark. Code Ann. § 12-18-105. This rule implements Acts 316 and 791 of 2021.

Act 316, sponsored by Representative Sonia Eubanks Barker, amended the law concerning certain disclosures of information by children and concerned foster youth transitions. Act 791, sponsored by Representative Tony Furman, amended the law concerning the right of a juvenile to remain in foster care after reaching the age of majority.

b. SUBJECT: Providing Information to and Gathering Information from Resource Parents

DESCRIPTION:
Statement of Necessity
These revised rules are necessary to update the Division of Children and Family Services' policy and procedure regarding sharing information with and gathering information from resource parents pursuant to Acts 317 and

814 of the 93rd General Assembly, Regular Session. The rules will also update the procedures regarding resource parents traveling with children placed in their home to align with current practice.

Rule Summary

The Division of Children and Family Services implements the following revised rules:

- Policy VII-H: Providing Information to and Gathering Information From Resource Parents
    - VII-H1 was removed as this information can be handled with internal procedures.
    - To revise policy to allow for currently or previously licensed resource parents (i.e., foster parents) receiving records concerning a child who was previously placed in their resource home that are relevant to the period of time in which the child was placed in that resource home and for which the resource parent has a legitimate need as determined by DCFS pursuant to Act 317 of the 93rd General Assembly, Regular Session
    - To update policy to reflect the requirement that all resource parents must be called as a witness when providing information to the court about a child placed in their home pursuant to Act 814 of the 93rd General Assembly, Regular Session
    - To make formatting improvements and technical corrections
- Procedure VI-H9: Travel Not Related to the Interstate Compact on the Placement of Children
    - To update the procedure to better align with other sections of policy regarding encouraging normalcy, such as travel with a resource parent
    - To clarify that DHS has the right to consent to the child's travel on vacation or similar trips as per A.C.A. § 9-27-353(e)
    - To formalize existing practice guidance in writing regarding allowing resource parents to transport children in foster care for an overnight stay (or more) outside of Arkansas with prior DHS approval, and that DCFS will not pay for vacation expenses
    - To make formatting improvements and technical corrections

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on March 14, 2022. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Department of Human Services, Division of Children and Family Services has the power and responsibility to investigate reports of child maltreatment, provide services to dependent-neglected children, and "[e]nsure the health, safety, and well-being of children when the [D]ivision is responsible for the placement and care of a child[.]" Ark. Code Ann. § 9-28-103(a). The Division may promulgate rules necessary to accomplish these duties. Ark. Code Ann. § 9-28-103(b).

These rule changes implement Acts 317 and 814 of 2021. Act 317, sponsored by Representative Sonia Eubanks Barker, amended the law concerning the release of confidential information under the Child Welfare Agency Licensing Act. Act 814, sponsored by Representative Jimmy Gazaway, concerned the opportunity to be heard in certain hearings held under the Arkansas Juvenile Code of 1989 and amended the definition of "parent" under the Arkansas Juvenile Code of 1989.

c. SUBJECT: Updates to Child Maltreatment Investigation Policies and Procedures

DESCRIPTION:

Statement of Necessity

These revised rules are necessary to align the Division of Children and Family Services' policy and procedure related to child maltreatment investigations pursuant to Acts passed during the 93rd General Assembly, Regular Session, to reflect current practice as it relates to child maltreatment investigations, and to make technical corrections.

Summary

The Division of Children and Family Services implement the following revised rules:

- Policy II-D: Investigation of Child Maltreatment Reports and related procedures
    - To revise language regarding child maltreatment investigation initiation timeframes to directly mirror the language in A.C.A. § 12-18-602: Initiation of the investigation.

    - To formalize existing practice guidance to staff as it relates to the legal representation for a child in foster care who is named as an alleged offender.
    - To update policy to reflect that the DCFS Assistant Director or designee as designated by the DCFS Director or designee has final approval of all investigation extension requests.
    - To update policy per Act 270 of the 93rd General Assembly Regular session which allows the Department to make an inactive determination if unable to locate or identify the alleged offender or alleged victim and the report cannot be determined to be true or unsubstantiated without interviewing the alleged offender or alleged victim.
    - To provide guidance to staff regarding how to proceed when an alleged offender or alleged victim named in a previous child maltreatment investigation determined to be inactive is located in a subsequent child maltreatment report.
    - To make formatting and technical corrections.
- Procedure II-J1: DDS Early Intervention Services Referrals
    - To remove obsolete referral instructions and insert updated instructions for early intervention services referrals for children under the age of three (3) involved in a substantiated child maltreatment investigation.
    - To make technical corrections.
- Policy VII-K: Child Maltreatment Allegations Concerning Out-of-Home Placements
    - To remove information regarding allegations in which a child in foster care is named as the alleged offender and provide a policy cross-reference to Policy II-D: Investigation of Child Maltreatment Reports where information regarding this topic will now be located.
    - To make technical corrections.
- Policy XIII-A: Child Maltreatment Central Registry and related procedures
    - To update procedure pursuant to Act 896 of the 93rd General Assembly, Regular Session which ensures an adult offender shall permanently remain on the Child Maltreatment Central Registry if the adult offender is convicted of a criminal offense for an act or omission that constitutes child maltreatment and for which the adult offender is named in the registry regardless of any subsequent expungement of the offense from the adult offender's criminal record, the adult offender's conviction for the criminal offense has not been reversed or vacated, and the adult offender's name is placed in the registry for severe maltreatment.
    - To update procedure pursuant to Act 896 of the 93rd General Assembly, Regular Session which ensures an offender who

was a juvenile at the time of the offense shall not be removed from the Child Maltreatment Central Registry if the offender is convicted of a felony as adult for an act or omission that is the same act or omission or which the offender is named on the registry regardless of any subsequent expungement of the offense from the adult offender's criminal record, the offender's conviction for the felony has not been reversed or vacated, and the offender's name is placed in the registry for severe maltreatment.

- To update that the DCFS Release of Information Unit is responsible for managing and responding to Child Maltreatment Central Registry record requests.
- To make formatting updates and technical corrections.

- Appendix 1: Glossary
  - To update the definition of an inactive determination to mirror definition language in Act 270 of the 93rd General Assembly, Regular Session.
  - To update the list of mandated reporters to match language in Act 556 of the 93rd General Assembly Regular Session to include any full-time or part-time employee of a public or private school.
  - To add an individual not otherwise identified in the list of mandated reporters who is engaged in performing his or her employment duties with a nonprofit charitable organization other than a nonprofit hospital as per A.C.A. § 12-18-402.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on March 14, 2022. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Department of Human Services has authority to promulgate rules implementing the Child Maltreatment Act. Ark. Code Ann. § 12-18-105. These rule changes implement Acts 270, 556, and 896 of 2021, all of which amended the Child Maltreatment Act.

Act 270, sponsored by Representative Charlene Fite, amended the law concerning the closure of investigations and investigative determinations under the Child Maltreatment Act.

Act 556, sponsored by Representative Brian Evans, amended the law concerning individuals listed as mandated reporters under the Child Maltreatment Act.

Act 896, sponsored by Senator Alan Clark, amended the law concerning the removal of an offender's name from the Child Maltreatment Central Registry.

d. SUBJECT: Development of Resource Homes and Support to Resource Parents

DESCRIPTION:

Statement of Necessity

This rule revision is necessary to allow the Division of Children and Family Services ("DCFS") to come into compliance with the federal National Model Licensing Standards for Foster Family Homes (see Title IV-E, Section 471(a)(36) of the Social Security Act). In addition, the rules within this packet update policy to reflect that the terms "resource parent" and "resource homes" refer to those individuals who provide either foster or adoptive services to children in the custody of the Department of Human Services ("DHS") and the homes that are approved by DHS to provide foster or adoptive services to children in the custody of DHS, respectively.

Rules have also been updated to reflect changes in staff responsibility related to the opening of resource homes and to incorporate current practices and other requirements, set forth in Executive Directives, into written rule.

Other technical changes have also been made to improve formatting and organization, as well as to delete references to obsolete forms and publications. The corresponding PUB-30: Resource Parent Handbook has also been completely revised to align with the changes to rules in the DCFS Policy and Procedure Manual described above; to provide general updates as requested by the DCFS Resource Parent Advisory Council or otherwise needed due to current practices of working with resource parents and parents of children in foster care; and to update overall organization, tone, and format resulting in the request to rescind the current version of PUB-30 Resource Parent Handbook and replace with the new version proposed in this packet.

Rule Summary

Policy V-C: Family Support Fund

- To clarify amount of incidental expenses that may be covered for resource families, as well as associated documentation required; and

- To delete references to obsolete procedures and make other technical changes.

Procedure VI-A5: Out-of-Home Placement Support
- To make technical corrections.

Policy VI-J: Trust Accounts for Children in Foster Care and related procedures
- To add into rule existing practice of adjusting board payment accordingly when resource parent is the payee for other benefits that a child in foster care may receive, such as Supplemental Security Insurance, to avoid duplicated federal funds being paid to the resource parent;
- To clarify that the Social Security Administration is the decision-making entity, regarding payees for Supplemental Security Insurance and Social Security Administration benefits;
- To delete references to obsolete forms and procedures outside the scope of DCFS; and
- To make formatting and other technical changes.

Policy VII-A: Resource Home Definitions and Roles
- To define the terms "resource home" and "resource parent" and make technical changes throughout Section VII to update the rule with "resource home" and "resource parent" terms;
- To clarify the difference between a provisional relative or fictive kin resource home and a fully approved relative or fictive kin resource home;
- To include existing allowance for waiver of non-safety Minimum Licensing Standards and policy for relatives and fictive kin per the federal Fostering Connections Act;
- To delete obsolete publication references; and
- To improve formatting and organization.

Policy VII-B: Recruitment and Retention of Resource Homes and related procedures
- To include language emphasizing the importance of conducting diligent search and assessment of relatives and fictive kin throughout the life a dependency-neglect case;
- To insert references to text application and the resource parent portal as supports to resource parents;
- To acknowledge in rule that all traditional resource home applications must be submitted online in order to better track and monitor applications and approval; and
- To improve formatting and organization and make other technical changes.

Policy VII-C: Resource Home Assessment Process and related procedures

- To remove maximum age limit for resource parents (must be assessed on case by case basis);
- To amend resource home approval and maintenance requirements with federal National Model Licensing Standards and forthcoming Minimum Licensing Standards for Child Placement Agencies, with the exception that applicants may still secure an exemption (medical, religious, or philosophical) in accordance with the Arkansas Department of Health;
- To clarify that, if provisional State Police Criminal Record Check enters pending status, DCFS staff may work with local law enforcement to obtain local verification of criminal record in an effort to expedite placement with a relative or fictive kin;
- To reflect that the Arkansas Child Maltreatment Central Registry form is now generated through an online process;
- To add timeframes regarding submission of FBI Criminal Background Checks for provisional and fictive kin placements, and the name search process when fingerprint submissions are rejected;
- To reflect new, expedited training curriculum requirements specific to relative and fictive kin applicants;
- To clarify consideration of CPR and First Aid certifications for various healthcare providers;
- To update continuing education requirements for approved resource homes, consistent with feedback received from current resource homes;
- To require that all home study components be retained in the provider file; and
- To improve formatting and organization and make other technical changes.

Policy VII-D: Denial of a Resource Home and related procedures

- To update requirements regarding notice to a resource parent applicant when background check results show criminal history per Federal Bureau of Investigation ("FBI") audit findings and subsequent corrective actions that are implemented; and
- To improve formatting and organization and make other technical changes.

Policy VII-E: Resource Home Reevaluation and related procedures

- To delete references to obsolete forms; and
- To improve formatting and organization and make other technical changes.

Policy VII-F: Resource Home Reopening

- To specify elements that must be given consideration when a former resource home requests to be reopened;

- To include references to the Resource Family Review Committee (already outlined in DCFS Policy VII-K);
- To update specific requirements to reopen a resource home based on the length of time for which a resource had been closed;
- To insert reference to the streamlined adoption process per A.C.A. § 9-9-701; and
- To improve formatting and organization and make other technical changes.

Policy VII-G: Alternate Care

- To provide additional guidance regarding balancing extracurricular activities with school work and family time for children in foster care;
- To allow for extended placement of a child in foster care with the resource parents' approved Resource Family Support System during extenuating circumstances approved by the DCFS Area Director; and
- To improve formatting and organization and make other technical changes.

Procedure VII-N1: When a Child is Reported Missing from an Out-of-Home Placement

- To make a technical correction regarding the name of the motion requested and associated order when a child goes missing from an out-of-home placement; and
- To add requirement for order regarding the missing child to be sent to Central Office designee upon receipt to assist with locating the child.

Appendix 3: Resource Home Records

- To update appendix with resource parent and resource home terminology and make other technical corrections.

Appendix 4: Case Record Order (Out-of-Home Placement Cases)

- To delete references to obsolete forms and make technical corrections.

Appendix 8: Alternative Compliance and Policy Waiver Protocol

- To specify issues requiring a policy waiver;
- To add, per A.C.A. § 9-28-409(f)(3)(B)(iii)(b)(1)-(7), considerations to be made when requesting an alternative compliance;
- To add notification procedures for appearance by resource parents at Child Welfare Agency Review Board meetings per Federal Bureau of Investigation ("FBI") audit findings and subsequent corrective actions that are implemented;
- To insert information regarding the existing process for temporary alternative compliance approvals for provisional resource parent applicants; and

- To make formatting and organizational changes and other technical corrections including renumbering of this appendix based on deletion of what is currently Appendix 6 (see below for more information).

Appendix 6: Foster/Adoptive Parent Application & Assessment Process Infographic

- To rescind because the flowchart is no longer accurate.

Appendix 7: Safeguards for Child Victims Testifying in Judicial and Administrative Proceedings

- No content changes. Technical change only to update the appendix number based on the deletion of what is currently Appendix 6.

Appendix 9: Arkansas Health and Safety Factors

- No content changes. Technical change only to update the appendix number based on the deletion of what is currently Appendix 6.

Publication ("PUB") 30: Resource Parent Handbook: To rescind the current version of PUB-30: Resource Parent Handbook and replace with the new version of PUB-30: Resource Parent Handbook, which includes the following changes:

- To define the terms "resource home" and "resource parent" and make technical changes throughout the handbook to update the rule with "resource home" and "resource parent" terms in alignment with Section VII: Development of Resource Homes & Support to Resource Parents described above;
- To clarify the difference between a provisional relative or fictive kin resource home and a fully approved relative or fictive kin resource home in alignment with Section VII: Development of Resource Homes & Support to Resource Parents described above;
- To reflect new training curriculum requirements specific to relative and fictive kin applicants;
- To add information regarding the role of DCFS staff in ensuring that provisional relative homes successfully transition to fully approved homes, or otherwise put plans in place to reduce trauma to children placed there in alignment with Section VII: Development of Resource Homes & Support to Resource Parents described above;
- To include more information about the role that resource parents play in supporting reunification with the parents of children in foster care;
- To provide general updates and additional information as per the request of the DCFS Advisory Council (for example, texting application for placement and Resource Parent Portal information and how to prepare for a first placement);
- To provide more detail regarding what resource parents may expect in daily living when a child in foster care is placed with them;

- To include language about the existing mandated reporter requirement for resource parents;
- To update staff roles and responsibilities in relation to opening and support of DCFS resource homes; and
- To improve tone, formatting, and organization.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on March 14, 2022. The agency indicated that it received no public comments.

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

1. The proposed rules state that all household members who will have contact with infants "are encouraged to" have an up-to-date Tdap vaccination. The Model Standards state that all household members who will have contact with infants "must" have an up-to-date Tdap vaccination. Is there a specific reason for the deviation from the model language? **RESPONSE:** We made this change based on public comments received from current foster parents and others when we attempted to promulgate this rule in October 2020. It is correct that this does not align with the Model Standards, so the Children's Bureau will note that this is one piece with which the state is not in full compliance.

2. The proposed rules require a family member with no valid Arkansas driver's license to apply for and receive an Arkansas driver's license within 20 days or to provide a written explanation as to why they do not wish to receive an Arkansas driver's license. Does this apply to all family members of driving age without an Arkansas license or only to those who hold an out-of-state driver's license? **RESPONSE:** This only applies to those who hold out-of-state driver's licenses. For those of driving age without an Arkansas license, it would depend on the applicant type and other factors. A traditional applicant without an Arkansas's driver's license would not make it past the initial screening phase. However, we do at times have relatives who do not have a current AR driver's license who wish to open for their relative children who have come into foster care. Local staff would assess the reason for which they do not have a current license and, if appropriate, work with the family to ensure there are adequate transportation plans in place for the child to attend school, doctor's appointments, court, etc. This might include other appropriate relatives in the area providing transportation, public transportation, etc.

The proposed effective date is June 1, 2022.

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

LEGAL AUTHORIZATION: The Department of Human Services, Division of Children and Family Services has the power and responsibility to investigate reports of child maltreatment, provide services to dependent-neglected children, and "[e]nsure the health, safety, and well-being of children when the [D]ivision is responsible for the placement and care of a child[.]" Ark. Code Ann. § 9-28-103(a). The Division may promulgate rules necessary to accomplish these duties. Ark. Code Ann. § 9-28-103(b).

These proposed rules implement model standards prescribed by the federal Department of Health and Human Services ("HHS"). *See* Children's Bureau, U.S. Dep't of Health & Human Servs., *National Model Foster Family Home Licensing Standards* (Feb. 4, 2019), https://www.acf.hhs.gov/sites/default/files/documents/cb/im1901.pdf.

Under the Bipartisan Budget Act of 2018, in order to be eligible for Title IV-E funding, a state must indicate to HHS whether its licensing standards comply with the model standards. 42 U.S.C. § 671(a)(36)(A). If the state's standards are noncompliant, the state must indicate "the reason for the specific deviation and a description as to why having a standard that is reasonably in accord with the corresponding national model standards is not appropriate for the State[.]" 42 U.S.C. § 671(a)(36)(A).

28. DEPARTMENT OF HUMAN SERVICES, DIVISION OF COUNTY OPERATIONS (Mark White, Mary Franklin, Kelley Jackson)

a. SUBJECT: SNAP Policy 3502.2 and 3502.3

DESCRIPTION:

Statement of Necessity

This change is necessary to update the policy manual in accordance with Act 419.

Rule Summary

Added language that is in accordance with Act 419 eliminating discretionary exemptions for all except those in foster care and battered women's shelters.

Summary of changes

Business process removal clean-up

- Grammar changes have been made to clarify policy and correct errors that were previously missed
- Deleted "personal exemptions" and replaced with "discretionary exemptions"

Section 3502.2

- 3502.2: changed heading from "15 Percent Exemptions" to "Discretionary Exemptions"
- 15 percent was changed to 12 percent
- Reworded the entire section for simplicity and flow of information
- Deleted the second paragraph in current version as it is no longer applicable

Section 3502.3

- Changed the heading from "Assignment of 15 Percent Personal Exemptions" to "Assignment of Discretionary Exemptions"
- Reworded this section for simplicity and flow
- Removed "individuals who are exiting Prison and/or Half-Way Houses" and "Individuals who are exiting Drug and/or Alcohol Rehabilitation Centers"
- Removed last sentence in current version related to prison and rehabilitation centers

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on March 12, 2022. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and may promulgate rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(1), (12). This rule implements Act 419 of 2021. The Act, sponsored by Representative Kendon Underwood, amended the Employment Opportunities for Able-Bodied Adults Act of 2019 and eliminated no-good-cause exemptions to the work requirement for SNAP benefits.

b. SUBJECT: SNAP Updates Pursuant to Act 780

DESCRIPTION:
Statement of Necessity
The change is necessary to update the policy manual in accordance with Act 780.

Rule Summary

Added language that is in accordance with Act 780 requiring six-month certifications for limited reporting households.

Summary of Changes

- Business process removal clean-up.
- Grammar changes have been made to clarify policy and correct errors that were previously missed.
- Eligibility worker has replaced case worker in the entire section.

Policy Revisions by Section

- 8142 – Removed language regarding transferring to another county.
- 8150 – Sentence structure updated.
- 8200 – Sentence updated to reflect that face-to-face interviews are at the household's request.
- 8250 – Sentence updated to reflect that face-to-face interviews are at the household's request.
- 8501.1 – Updated clarification on missed appointment.
- 8610 – Added additional clarification for prorating benefits.
- 8710 – Removing language regarding 12-month certification or semi-annual reporting as appropriate, with the six-month certification period becoming effective 9/1/2022.
- 8720 – Removing language regarding 12-month certification or semi-annual reporting as appropriate, with the six-month certification period becoming effective 9/1/2022.
- 8730 – Removing language regarding 12-month certification or semi-annual reporting as appropriate, with the six-month certification period becoming effective 9/1/2022.
- 8820 – Removing language regarding 12-month certification or semi-annual reporting as appropriate, with the six-month certification period becoming effective 9/1/2022.
- 8821 – Removing language regarding 12-month certification or semi-annual reporting as appropriate, with the six-month certification period becoming effective 9/1/2022.
- 8830 – Removing language regarding 12-month certification or semi-annual reporting as appropriate, with the six-month certification period becoming effective 9/1/2022.
- 11100 – Removing language regarding 12-month certification or semi-annual reporting as appropriate, with the six-month certification period becoming effective 9/1/2022.
- 11200 – Removing language regarding 12-month certification or semi-annual reporting as appropriate, with the six-month certification period becoming effective 9/1/2022.
- 11340 – Removing language regarding 12-month certification or semi-annual reporting as appropriate, with the six-month certification period becoming effective 9/1/2022.

- 11342 – Removing language regarding 12-month certification or semi-annual reporting as appropriate, with the six-month certification period becoming effective 9/1/2022.
- 11410 – Updated the language from $50 to $100.
- 11500, 11510, 11520, 11530 – DELETED.
- 11560 – Removing language regarding 12-month certification or semi-annual reporting as appropriate, with the six-month certification period becoming effective 9/1/2022.
- 11570 – DELETED.
- 11571 – Removing language regarding 12-month certification or semi-annual reporting as appropriate, with the six-month certification period becoming effective 9/1/2022.
- 11620 – Updated the language from $50 to $100.

PUBLIC COMMENT: A public hearing was held on this rule on March 3, 2022. The public comment period expired on March 14, 2022. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

Per the agency, the estimated cost to implement this rule is $251,400 for the current fiscal year ($71,347 in general revenue and $180,053 in federal funds) and $0 for the next fiscal year. The total estimated cost to state, county, and municipal government as a result of this rule is $71,347 for the current fiscal year and $0 for the next fiscal year.

LEGAL AUTHORIZATION: This rule implements Act 780 of 2021. The Act, sponsored by Senator Scott Flippo, amended the Medicaid eligibility verification system. The Act required the Department of Human Services to adopt certain procedures to verify Medicaid eligibility for participation or receipt of benefits in the Supplemental Nutrition Assistance Program. Act 780, § 2(a), *codified at* Ark. Code Ann. § 20-76-215(a).

29. DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES (Mark White, Elizabeth Pitman)

a. SUBJECT: Preferred Drug List Pool and Value-Based Purchasing

DESCRIPTION:

Statement of Necessity

Given the rising cost of pharmaceuticals in America and specifically in the Arkansas Medicaid Program, the Division of Medical Services ("DMS") is looking for innovative ways to decrease costs of the program while still providing Medicaid beneficiaries with quality care and access to drugs.

Working with a Preferred Drug List ("PDL") pool allows for higher supplemental rebates from the manufacturers, due to "buying power" as more states participate. The state estimates a savings of two million dollars ($2,000,000) per year by joining a PDL pool, versus remaining an independent state in rebate negotiations.

Additionally, Value-Based Purchasing ("VBP") allows for discount agreements with manufacturers on high-cost medications that can be tied to patient outcomes. Value-based and outcomes-based purchasing agreements are recommended by our federal partners as ways to realize savings and promote quality of care.

1. Currently, Arkansas is in contract with Magellan to negotiate state supplemental rebates for many drug classes on the Preferred Drug List ("PDL"). Manufacturers give us state supplemental rebates (which are in addition to federal rebates required by CMS) on medications, to ensure their product is preferred within our plan. Arkansas acts as an independent state when it comes to negotiations. Arkansas Medicaid "owns" the rebate contracts. Magellan is responsible for obtaining bids for supplemental rebates, monitoring the rebate contracts, and the upkeep of the PDL. The Drug Review Committee reviews the PDL drug classes for safety and efficacy while the Drug Cost Committee reviews the rebate bids and overall net cost to the state. Both committee recommendations are considered when deciding the preferred drug list. Ultimately, the Medicaid program decides which drug classes will be on the PDL, which rebate bids will be accepted, and which products will be listed as preferred or nonpreferred. By joining a PDL pool, the influence of multiple states in the pool drives the supplemental rebates received.

2. Value-Based Purchasing ("VBP") is a rather new concept first started by Oklahoma. VBP allows Medicaid programs to contract directly with manufacturers (outside of PDL) for discounts/rebates. Arkansas will use a template contract that CMS approved previously for other states when

entering VBP agreements. Basically, there are 2 methods of negotiations with manufacturers.
A) VBP can be used as a discount only with negotiated agreements around approval of the drug (these high-priced drugs usually require prior authorizations).
B) VBP can be tied to patient outcome. Example: A contract might state that if the patient has no response or dies while on this medication or within a certain timeframe, the manufacturer will refund some of the cost (usually a prorated amount depending on length of time since approval).

Rule Summary
Provision 1: DMS adds that the state may join a PDL pool to maximize state supplemental rebates. The state will continue to select products participating in the Federal rebate program that will be in its PDL Program and will only receive state supplemental rebates for manufacturer's supplemental covered products included on the PDL list.

Provision 2: DMS adds that the state may enter value-based contracts with manufacturers on a voluntary basis. These contracts will be executed on the model agreement entitled "Value-Based Supplemental Rebate Agreement." The state may enter into outcome-based contracts with manufacturers on a voluntary basis, the conditions of which would be agreed upon by both the state and the manufacturer.

The state estimates an annual savings of $2,000,000, of which $570,200 is state general revenue.

PUBLIC COMMENT: A public hearing was held on this proposed rule on February 15, 2022. The public comment period expired on February 21, 2022. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

Per the agency, implementing this rule will reduce costs by $1,833,333 for the current fiscal year ($522,683 in general revenue and $1,310,650 in federal funds) and $2,000,000 for the next fiscal year ($570,200 in general revenue and $1,429,800 in federal funds). The total estimated cost reduction by fiscal year for state, county, and municipal government is $1,833,333 in the current fiscal year and $2,000,000 in the next fiscal year.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is

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

b. SUBJECT: PCP Visits and Act 569 of 2021

DESCRIPTION:

Statement of Necessity

Beginning with date of service July 1, 2022 and after, this Rule will increase the number of service benefit visits for Medicaid clients who are assigned to a provider enrolled in the Primary Care Case Management Program ("PCCM"). The limit is being increased from twelve (12) visits to sixteen (16) visits per State Fiscal Year ("SFY"). Each SFY runs from July 1 through June 30.

Rule Summary

The Rule implements the requirements of Act 569 of 2021. Act 569 designates Advanced Practice Registered Nurses ("APRN") as PCPs when enrolled in the PCCM Program. Under Ark. Code Ann. § 17-87-302, APRN includes the following nurse types: Certified Nurse Practitioner ("CNP"); Certified Registered Nurse Anesthetist ("CRNA"); Certified Nurse Midwife ("CNM"); and Clinical Nurse Specialist ("CNS").

Summary of Changes

Medicaid is updating Section I of all provider manuals, along with Section II of the Physician, Nurse Practitioner, Federally Qualified Health Center ("FQHC"), and Rural Health Clinic ("RHC") provider manuals. Other updates clarify APRNs may enroll as a PCP.

Amendments to the SPA mirror the updated provider manual changes.

PUBLIC COMMENT: A public hearing was held on this rule on March 8, 2022. The public comment period expired on March 14, 2022. The agency provided the following summary of the public comments it received and its responses to those comments:

Commenter's Name: Elizabeth Smith, Arkansas Medicaid Inspector General

1. Can an APRN have their own office? If so, should we add that too?
   RESPONSE: APRNs can have their own office, and language was added where necessary.

2. Use the word twelve and (12). **RESPONSE:** Grammatical change made throughout the documents.

3. Remove the number and just say "not counted against the limit" as stated in the later sections of the draft. **RESPONSE:** Grammatical change made throughout the documents.

4. What is an itemized obstetric office visit and why wouldn't that be in the global? **RESPONSE:** Question was for informational purposes and was answered directly to the writer. No changes were required based on this question.

5. Would a related APRN Services need to be added here? **RESPONSE:** Language pertaining to APRN services were added as needed throughout the documents.

6. Is this supposed to be APRN or is this different? **RESPONSE:** All documents were reviewed and corrected for consistent language in reference to advanced practice nurse practitioner, APRN, or applicable grammatical versions of it.

7. What about extension of benefits for APRN services? Should PCP be changed to primary care provider instead of "physician"? **RESPONSE:** Extension of benefit language was clarified, and Primary Care Physician changed to Primary Care Provider throughout the documents.

8. Need to review this definition. **RESPONSE:** Definition pertaining to Direct Supervision of Psychotherapy Services provided by Qualified Practitioners was reviewed and removed.

9. May want to move this paragraph to E below where UAMS Regional Programs, FQHCs and other clinics are already listed. **RESPONSE:** Formatting issues were corrected.

10. Should we also add CUMG which is the group for UAMS physicians at ACH? **RESPONSE:** No need to add. CUMG is encompassed within "a Medical College Physicians Group."

11. Do we need to add Advanced Practice Registered Nurses here in the title too? Maybe also have sections for APRN and Section for RNP and PAs delineating them separately. **RESPONSE:** Grammatical changes made to clarify intent. No need to have separate sections.

12. Should we add that these providers also must be enrolled in PCCM? **RESPONSE:** Providers who can be enrolled in PCCM are described in Section 1 of the Medicaid Provider Manual. Some providers described within the physician visit limit are not Primary Care Providers. The visit limit applies to clients rather than those providers who are in PCCM.

13. Do you want to use encounter instead of visit? **RESPONSE:** Documents reviewed and revised for consistent language where needed.

14. This link is good but not listed everywhere that MAT is mentioned. Maybe copy this and insert there as well. **RESPONSE:** Documents reviewed, and link added where needed.

15. These are not the 7 listed above. **RESPONSE:** Revised terminology used to be consistent with listings throughout documents as needed.

16. This is stated in the paragraph above. Either remove it there or remove this statement. **RESPONSE:** Documents reviewed, and duplicative language removed.

17. Title this extension of benefit. **RESPONSE:** Title revised and other grammatical changes to titles made upon review of documents.

The proposed effective date is July 1, 2022.

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

Per the agency, the estimated cost to implement this rule is $424,957 for the current fiscal year ($120,603 in general revenue and $304,354 in federal funds) and $849,915 for the next fiscal year ($241,206 in general revenue and $608,709 in federal funds). The total estimated cost to state, county, and municipal government to implement this rule is $120,603 for the current fiscal year and $241,206 for the next fiscal year.

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

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

A revision of the Medicaid State Plan and Rules is necessary to increase state fiscal year service visit limits from twelve (12) to sixteen (16) for Medicaid adult clients who are assigned to a provider enrolled in the Primary Care Case Management Program ("PCCM"). The revision allows APRNs to enroll as a Primary Care Physician per Act 569 of 2021.

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

The agency seeks to improve access to primary care services by including APRNs in its program and to eliminate administrative burden by increasing the service visit limit per year. Act 569 of 2021 requires Medicaid to allow APRNs to enroll as PCPs.

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

The changes described above will improve access to primary healthcare for adults. They will encourage primary providers to see Medicaid clients by reducing administrative burden and financial risk of seeing patients by increasing yearly coverage before requiring a records review to establish medical need for extended benefits.

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

No less costly alternatives were identified.

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

No alternatives are proposed at this time.

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

Not Applicable

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

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

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

This rule implements Act 569 of 2021. The Act, sponsored by Representative Jeff Wardlaw, authorized the Arkansas Medicaid Program to recognize an advanced practice registered nurse as a primary care provider.

c. SUBJECT: Vagus Nerve Stimulation Therapy; SPA 2022-0004

DESCRIPTION:
Statement of Necessity
The purpose of this Rule is to implement the requirements of Act 830 of 2021. Act 830 requires that all Arkansas hospitals shall be paid based on 100% of the Medicare average comprehensive payment rate as of June 1, 2022, for the vagus nerve stimulation therapy, device, and procedure. A Prior Authorization ("PA") will be required.

Summary of Changes
DHS is updating the physician and hospital provider manuals and amending the Medicaid State Plan coverage pages to comply with Act 830.

The Medicaid State Plan will be updated to include the rate methodology and coverage criteria.

PUBLIC COMMENT: A public hearing was held on this rule on February 3, 2022. The public comment period expired on February 21, 2022. The agency indicated that it received no public comments.

The proposed effective date is June 1, 2022.

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

Per the agency, the additional cost of this rule is $54,167 for the current fiscal year ($15,373 in general revenue and $38,794 in federal funds) and $650,000 for the next fiscal year ($184,470 in general revenue and $465,530 in federal funds). The total estimated cost by fiscal year to state, county, and municipal government to implement this rule is $15,373 for the current fiscal year and $184,470 for the next fiscal year.

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

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

The purpose of this rule is to implement the requirements of Arkansas Act 830 of 2021.

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

Act 830 of 2021 requires that Vagus Nerve Stimulation, therapy, device, and procedure be covered by Arkansas Medicaid and defines how each component is to be covered.

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

Vagus Nerve Stimulation provides safe and effective therapy for those who require use of the device for their condition and will help qualifying clients to control their diagnosis in a manner that will assist them in managing their symptoms.

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

No less costly alternatives were identified.

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

No alternatives are proposed at this time.

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

N/A

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

The agency monitors State and Federal rules and regulations for opportunities to reduce and control cost.

LEGAL AUTHORIZATION: This rule implements Act 830 of 2021. The Act, sponsored by Representative Howard Beaty, Jr., required certain reimbursement rates in the Arkansas Medicaid program for vagus nerve stimulation therapy system devices. Per the Act, "[t]he Department of Human Services shall establish separate vagus nerve stimulation therapy system device reimbursement rates for all acute care hospitals who are Medicaid providers." Act 830, § 1(a), *codified at* Ark. Code Ann. § 20-77-145(a).

30. DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS AND COMMISSIONS, ARKANSAS FIRE PROTECTION LICENSING BOARD (Patricia White, Miles Morgan)

a. SUBJECT: Rules for Portable/Fixed Systems

DESCRIPTION: The proposed rule changes will bring the existing Rule into conformance with the applicable requirements set forth by legislation enacted by the 93rd General Assembly. Items concern Act 135 of 2021, Ark. Code Ann. § 17-4-101 et seq.; Act 725 of 2021, Ark. Code Ann. § 17-5-101 et seq.; and Ark. Code Ann. § 20-22-607 regarding the size of tags. Specific changes include:

Section 3. Standards. The amendment of this section makes grammatical changes and removes obsolete languages.

Section 4.12. Individual License. The amendment of this section adds a new subsection to provide expedited licensure for uniformed service members pursuant to Act 135 of 2021, and Ark. Code Ann. §§ 17-4-101 – 17-4-109. It also makes some corrections of cross-references and grammar.

Section 5.8.Initial Fee Waiver for Eligible Applicants. This is a new subsection that establishes an initial license fee waiver for certain qualifying individuals pursuant to Act 725 of 2021.

Section 7. Requirement of Service Tags. The amendment of this section changes the size of service tags.

PUBLIC COMMENT: A public hearing was held in this matter. The public comment period expired on March 14, 2022. The agency received no comments.

Because this rule recommends an expedited process for military personnel to attain occupational licensure, this rule underwent review pursuant to Ark. Code Ann. § 17-4-109, as amended by Act 135 of 2021, by the Administrative Rules Subcommittee at its meeting on January 26, 2022.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the proposed rules have a financial impact. Specifically, the portion of the rules providing a fee waiver for certain low income individuals pursuant to Act 725 of 2021 will have a negative impact on revenues.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 20-22-607(1), the Arkansas Fire Protection Licensing Board has authority to formulate and administer policies as may be determined necessary for the protection and preservation of life and property in regard to the examination and licensure of persons applying for a license to install, inspect, or service portable fire extinguishers and of a person applying for a license to install, inspect, or service fixed fire protection systems. The proposed rules implement the following Acts of the 2021 Regular Session:

Act 135 of 2021, which was sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created* by Act 135 of 2021. In addition, occupational licensing entities shall extend the expiration date of occupational licensure and allow full or partial exemption from continuing education requirements that are required as a component of licensure, for a deployed uniformed service member or his or her spouse for one hundred eighty (180) days following the date of the uniformed service member's return from deployment. *See* Ark. Code Ann. § 17-4-108.

Act 725 of 2021, which was sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

b. SUBJECT: Rules for Sprinkler Systems

DESCRIPTION: The proposed rule changes will bring out existing Rule into conformance with the applicable requirements set forth by legislation enacted by the 93rd General Assembly. Items concern Act 135 of 2021, Ark. Code Ann. § 17-4-101 et seq.; Act 725 of 2021, Ark. Code Ann. § 17-5-101 et seq.; and Ark. Code Ann. § 20-22-607 regarding the size of tags. Specific changes include:

Section 3. Standards. The amendment of this section makes grammatical changes and removes obsolete languages.

Section 4.12. Individual License. The amendment of this section adds a new subsection to provide expedited licensure for uniformed service members pursuant to Act 135 of 2021, and Ark. Code Ann. §§ 17-4-101 – 17-4-109. It also makes some corrections of cross-references and grammar.

Section 5.8.Initial Fee Waiver for Eligible Applicants. This is a new subsection that establishes an initial license fee waiver for certain qualifying individuals pursuant to Act 725 of 2021.

Section 7. Requirement of Service Tags. The amendment of this section changes the size of service tags.

PUBLIC COMMENT: A public hearing was held in this matter. The public comment period expired on March 14, 2022. The agency received no comments.

Because this rule recommends an expedited process for military personnel to attain occupational licensure, this rule underwent review pursuant to Ark. Code Ann. § 17-4-109, as amended by Act 135 of 2021, by the Administrative Rules Subcommittee at its meeting on January 26, 2022.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the proposed rules have a financial impact. Specifically, the portion of the rules providing a fee waiver for certain low income individuals pursuant to Act 725 of 2021 will have a negative impact on revenues.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 20-22-607(1), the Arkansas Fire Protection Licensing Board has authority to formulate and administer policies as may be determined necessary for the protection and preservation of life and property in regard to the examination and licensure of persons applying for a license to install, inspect, or service portable fire extinguishers and of a person applying for a license to install, inspect, or service fixed fire protection systems. The proposed rules implement the following Acts of the 2021 Regular Session:

Act 135 of 2021, which was sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created* by Act 135 of 2021. In addition, occupational licensing entities shall extend the expiration date of occupational licensure and allow full or partial exemption from continuing education requirements that are required as a component of licensure, for a deployed uniformed service member or his or her spouse for one hundred eighty (180) days following the date of the uniformed service member's return from deployment. *See* Ark. Code Ann. § 17-4-108.

Act 725 of 2021, which was sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

31. DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS AND COMMISSIONS, ARKANSAS STATE BOARD OF PUBLIC ACCOUNTANCY (Jimmy Corley)

a. SUBJECT: Board Rule 3 "Examinations"

DESCRIPTION: This rule simply updates the names of university accreditation organizations that are recognized by the Board. Over the past 10-15 years, some of these organizations have modified their names.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on February 11, 2022. The board provided the following summary of comments that it received and its responses thereto:

Shane Warrick, Board Member & Individual Licensee, 1/7/2022: Under current accrediting industry standards/practices, the term "regional" is no longer being used.
RESPONSE: We agree and will remove the term "regional" from the proposed changes to Rule 3. We do not believe this is a substantial change that requires re-promulgation under the APA.

James Hanson, Individual Licensee, 1/18/2022: I vote yes.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Accountancy may adopt, and amend from time to time, rules for the orderly conduct of its affairs and for the administration of Title 17, Chapter 12 of the Arkansas Code, concerning accountants. *See* Ark. Code Ann. § 17-12-203.

b. **SUBJECT: Board Rule 10 "Registration"**

DESCRIPTION: Rule 10.6 has a reference to Board Rule 19, which must be updated because of changes being made to Rule 19.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on February 11, 2022. The board provided the following summary of comments that it received and its responses thereto:

James Hanson, Individual Licensee, 1/18/2022: I vote yes.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Accountancy may adopt, and amend from time to time, rules for the orderly conduct of its affairs, and for the administration of Title 17, Chapter 12 of the Arkansas Code, concerning accountants. *See* Ark. Code Ann. § 17-12-203.

c. **SUBJECT: Board Rule 12 "Fees"**

DESCRIPTION: Act 1101 of 2021 required the State Board of Accountancy to promulgate rules to waive fees for license applicants who receive certain state benefits or fall below 200% of the federal poverty line.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on February 11, 2022. The board provided the following summary of comments that it received and its responses thereto:

Jim Searcy, Individual Licensee, 1/13/2022: I spent 8 years riding submarines in the U.S. Navy. For that service, the nation paid me more to go to school to receive my education. Just because most people now feel guilty about dodging their military service doesn't mean we need to relax any of the qualifications any other person has to do to be a CPA. If the low-income people will get a job, which they will have no problem doing if they have an accounting degree, then they can raise their income level. This is supposed to be a nation of equal opportunity yet we are trying to give certain individuals special privileges because either they or their parents are too damn lazy to get a job. **RESPONSE:** These comments

seem more directed toward the Acts that required rulemaking, rather than the rule changes themselves.

James Hanson, Individual Licensee, 1/18/2022: I vote yes.

Ian Mensik, Individual Licensee, 2/4/2022: Why limit waiver of fees for initial licensures? What about being plain 'ole unemployed? The 'labor shortage' is a myth, at least in the field of accounting. Some of us seem to be unemployable. **RESPONSE:** This comment does not appear to be in support or opposition of the proposed rule change and is directed towards the Act that required rulemaking. We are not authorized to waive license renewal fees under Act 725 of 2021.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules have a financial impact. Specifically, the board disclosed potential lost revenue of less than $2,000 per year to the board.

LEGAL AUTHORIZATION: The Arkansas State Board of Accountancy may adopt, and amend from time to time, rules for the orderly conduct of its affairs and for the administration of Title 17, Chapter 12 of the Arkansas Code, concerning accountants. *See* Ark. Code Ann. § 17-12-203. These rules implement Acts 725 and 1101 of 2021:

Act 725 of 2021, sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021. The Act created a waiver of initial professional licensure fees for individuals who are receiving assistance through certain programs, were approved for unemployment benefits in the last 12 months, or have income below 200% of the federal poverty income guidelines. *See* Ark. Code Ann. § 17-5-104(a). The waiver of the initial fee does not include fees for a criminal background check, an examination or test, and a medical or drug test. *See* Ark. Code Ann. § 17-5-104(b). Licensing entities have authority to promulgate any necessary rules to implement the Workforce Expansion Act of 2021. *See* Ark. Code Ann. § 17-5-105(2).

Act 1101 of 2021, sponsored by Representative Justin Gonzales, amended Arkansas law concerning administrative fees and penalties. Pursuant to the Act, agencies shall not assess a fee or penalty without statutory authority, and agencies assessing or imposing fees or penalties shall promulgate the fee or penalty by rule. *See* Ark. Code Ann. § 25-15-105.

d. SUBJECT: Board Rule 13 "Continuing Education"

DESCRIPTION: The State Board of Accountancy is making changes to its Rule 13 to relax the requirements for CPE credits. The minimum period for acceptable CPE is currently 50 minutes. The board is changing that to 25 minutes, as requested by some licensees.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on February 11, 2022. The board provided the following summary of comments that it received and its responses thereto:

James Hanson, Individual Licensee, 1/18/2022: I vote yes.

David Wyatt, Individual Licensee, 1/19/2022: I'm writing to let you know if I'm understanding the proposed Rule Change correctly for Rule 13.3 I strongly oppose this. I would oppose the minimum period for acceptable CPE to be reduced to 25 minutes from 50 minutes. I'm not opposed to reducing the minimum time period by 5 minutes to say 45 minutes but giving an hour's worth of CPE credit for 25 minutes seems absurd. I would also think this would allow for potential of rampant abuse by CPA's who would only attend 25 minutes for each CPE Class and therefore only truly obtain 20 hours of CPE versus approx. 40 hours of CPE under the current standard. I also think this has the potential to lead to a less currently educated populous of CPAs in the State as well. I have never voiced an opinion of a Rule Change before since being a CPA since 2006 but again I do strongly oppose Rule 13.3. If you could provide feedback or more of a reason or logic behind the proposed Rule 13.3 change I would appreciate it as well. **RESPONSE:** We believe the licensee misunderstood the proposed rule changes. We are not allowing 25 minute classes to count as full credit hours, but are relaxing the minimum time for any continuing professional education course to count from 50 minutes to 25 minutes. We have communicated this to the licensee. Credit will continue to be awarded on a time based methodology, where 50 minute = 1 CPE hour, and 25 minutes = 1/2 CPE hour.

Dean Vohs, Individual Licensee, 1/31/2022: I think lowering the time limit from 50 minutes to 25 minutes is ridiculous. I am against this idea. **RESPONSE:** There may be some confusion involved with this comment as well. We are not imposing any limits but relaxing the requirement that any CPE class has to be 50 minutes in length for credit to be awarded down to 25 minutes. We have communicated this to the licensee.

Ernst & Young, LLP, Firm Licensee, 2/9/2022: Ernst & Young LLP (EY) supports the proposed change that would allow awarding of one-half credit CPE for learnings equal to 25 minutes, excluding meal time and business

session. EY currently offers to our professionals instructionally sound one-half credit self-study courses that have been developed to meet The Statement on Standards for Continuing Professional Education (CPE) Programs jointly issued by the AICPA and NASBA. Granting credit for these courses to our Arkansas CPAs would greatly benefit them by making more courses available to them and providing them more flexibility in fulfilling their CPE requirements, all while advancing their professional competence. By allowing certain nano learning to qualify for CPE credit, effective January 1, 2020, the Arkansas Board provided flexibility to its CPAs. The current proposed change would be consistent with that beneficial approach.

David Vade, Individual Licensee, 2/9/2022: My personal views are similar to the comments from Ernst and Young. The rule change provides more flexibility for all CPAs to obtain flexibility in how the required annual education is met. It also allows for focused content on a new topic (legislation, accounting guidance or other) that may not warrant a full hour session. I also don't believe it significantly adds to the burden of the CPA or the State Board in reporting their hours. So in short, the benefit of flexibility in how hours are obtained and having a focus on discrete topics in a shorter time-frame outweigh any additional effort to report or audit the hours.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Accountancy may adopt, and amend from time to time, rules for the orderly conduct of its affairs and for the administration of Title 17, Chapter 12 of the Arkansas Code, concerning accountants. *See* Ark. Code Ann. § 17-12-203.

e. SUBJECT: Board Rule 19 "Licensure for Uniformed Service Members, Veterans, and Spouses

DESCRIPTION: The proposed rule change is being promulgated to comply with Act 135 of 2021, changing the language in the rule to match language in the Act. The proposed rule also clarifies that expedited licensure is not only available to those who have a CPA license from another state, but also to those who are applying for an original license with the Board.

PUBLIC COMMENT: Because this rule recommends an expedited process for military personnel to attain occupational licensure, this rule

underwent review pursuant to Ark. Code Ann. § 17-4-109, as amended by Act 135 of 2021, by the Administrative Rules Subcommittee at its meeting of November 17, 2021. A public hearing was not held in this matter. The public comment period expired on February 11, 2022. The board provided the following summary of comments that it received and its responses thereto:

Jim Searcy, Individual Licensee, 1/13/2022: I spent 8 years riding submarines in the U.S. Navy. For that service, the nation paid me more to go to school to receive my education. Just because most people now feel guilty about dodging their military service doesn't mean we need to relax any of the qualifications any other person has to do to be a CPA. If the low-income people will get a job, which they will have no problem doing if they have an accounting degree, then they can raise their income level. This is supposed to be a nation of equal opportunity yet we are trying to give certain individuals special privileges because either they or their parents are too damn lazy to get a job. **RESPONSE:** These comments seem more directed toward the Acts that required rulemaking, rather than the rule changes themselves.

James Hanson, Individual Licensee, 1/18/2022: I vote yes.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Accountancy may adopt, and amend from time to time, rules for the orderly conduct of its affairs and for the administration of Title 17, Chapter 12 of the Arkansas Code, concerning accountants. *See* Ark. Code Ann. § 17-12-203(a).

The proposed rules implement Act 135 of 2021, sponsored by Senator Ricky Hill, which established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021, and required automatic or expedited licensure for certain individuals.

32. DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS AND COMMISSIONS, AUCTIONEER'S LICENSING BOARD (Kelli Black, Miles Morgan)

a. SUBJECT: Rules 9 and 10

DESCRIPTION: The following changes are being made to the Arkansas Auctioneer's Licensing Board Rules:

Rule 9.4.1: removes reference to "good moral character" in accordance with Act 990 of 2019

Rule 9.4.9: corrects a spelling error

Rule 9.4.13: removes reference to permanently disqualifying offenses in regards to background checks as required by Act 748 of 2021

Rule 9.4.14: adds the waiver of the initial licensing fee for those individuals listed in Act 725 of 2021

Rule 9.13: adds language regarding applicants with "work permits" in accordance with Act 746 of 2021

Rule 10.7: amends the Board's current language regarding military personnel licensure. The language is taken directly from Act 135.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on January 7, 2022. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

Per the agency, the total estimated cost to state, county, and municipal government to implement this rule is $1,400 for the current fiscal year and $2,800 for the next fiscal year. The agency provided the following explanation for these numbers:

The above numbers are the most extreme numbers. Act 725 for 2021 requires the waiver of the initial licensing fee for individuals who meet certain criteria, i.e. receives SNAP benefits or other state aid; been on unemployment or are below the federal poverty line. This criteria could potentially be met by all new licensees. The above numbers are based on

the average number of new applicants each year and the cost of the license fee that could be waived. As the Board has no true way of knowing just how many applicants will avail themselves of the waiver, there is no true way of knowing at this time just what the financial impact will actually be or if there will be one. For the current fiscal year, the average of new applicants was cut in half since the rule would not be applicable until January 1, 2022.

LEGAL AUTHORIZATION: The Auctioneer's Licensing Board has authority to promulgate rules implementing Title 17, Chapter 17 of the Arkansas Code, regarding auctioneers. Ark. Code Ann. § 17-17-207. These rules implement Acts 135, 725, 746, and 748 of 2021.

Act 135, sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created by* Act 135.

Act 725, sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

Act 746, sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals holding federal work permits. Temporary language contained within Act 746 required all occupational or professional licensing entities to promulgate rules necessary to implement the Act. *See* Act 746, § 2(a).

Act 748, sponsored by Representative Bruce Cozart, amended occupational criminal background checks.

33. DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS AND COMMISSIONS, PROFESSIONAL BAIL BOND COMPANY AND PROFESSIONAL BAIL BONDSMAN LICENSING BOARD (Randy Murray, Miles Morgan)

a. SUBJECT: Rule 1 – Regulation of the Bail Bond Business

DESCRIPTION: The Professional Bail Bondsman Licensing Board is making the following changes due to Acts of the 2021 General Session:

- Updating language to the automatic licensure provisions for uniformed service members, veterans, and their spouses in accordance with Act 135
- Language update to criminal background section pursuant to Act 748
- Adding a new section for fee waivers for licensee applicants with financial hardships as mandated by Act 725.

PUBLIC COMMENT: A public hearing was held on March 11, 2022. The public comment period expired on March 11, 2022. The board received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules have a financial impact, specifically, a positive financial impact for applicants eligible for fee waiver under Act 725 of 2021. However, the board was unable to forecast exact values due to lack of statistical information.

LEGAL AUTHORIZATION: The Professional Bail Bondsman Licensing Board shall adopt such reasonable rules as it shall deem necessary to assure the effective and efficient administration of Ark. Code Ann. §§ 17-19-107, 17-19-212, and 17-19-401, concerning licensure, education requirements and continuing education. *See* Ark. Code Ann. § 17-19-108. These rules implement Acts 135, 725, and 748 of 2021.

Act 135 of 2021, which was sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created* by Act 135 of 2021. In addition, occupational licensing entities shall extend the expiration date of occupational licensure and allow full or partial exemption from continuing education requirements that are required as a component of licensure, for a deployed uniformed service member or his or her spouse for one hundred eighty (180) days following the date of the uniformed service member's return from deployment. *See* Ark. Code Ann. § 17-4-108.

Act 725 of 2021, which was sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

Act 748 of 2021, which was sponsored by Representative Bruce Cozart, amended occupational criminal background checks. The Act allowed agencies to grant waivers for certain criminal offenses which would have previously resulted in permanent disqualification from occupational licensure. *See* Ark. Code Ann. §§ 17-3-201(e) and 17-3-201(g).

34. DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS AND COMMISSIONS, STATE BOARD OF BARBER EXAMINERS (Phyllis Jacobsen, Miles Morgan)

a. SUBJECT: Rule 4; Rule 5 – Miscellaneous; Rule 8 – Barber College/Barber School Curriculum; Rule 10 – Automatic Licensure Uniformed Service Veterans; Rule 15 – Pre-Licensure Criminal Background Check; Rule 16 – Fees

DESCRIPTION: Rules 5, 8, 10, 15, and 16 are proposed to be in compliance with legislative changes from the 2021 General Assembly. The rule amendments are required under Act 135, Act 724, Act 725, Act 746, Act 748, and Act 1101.

- Rule 4: Adds language that makes it clear that a barber establishment is not permitted in a residence, however, it may be connected to a residence if all other establishment standards are met.
- Rule 5: Adds language regarding applicants with "work permits" in accordance with Act 746.
- Rule 8: Adds information regarding online/distance education for barber colleges/schools in accordance with Act 724.
- Rule 10: Amends the Board's current language regarding military personnel licensure. The language is taken directly from Act 135.
- Rule 15: Removes reference to permanently disqualifying offenses in regards to background checks as required by Act 748.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 12, 2022. The board indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules have a financial impact. The board disclosed an estimated cost of $7,500 for the current fiscal year and $10,000 for the next fiscal year to state, county and municipal governments.

The board provided the following explanation: The proposed rule in response to Act 725 of 2021, may have a financial impact on state government and the above numbers are the most extreme numbers. Act 725 requires the waiver of the initial licensing fee for individuals who meet certain criteria, i.e. receives SNAP benefits or other state aid; been on unemployment or are below the federal poverty line. This criteria could potentially be met by all new licensees. The above numbers are based on the average number of new applicants each year and the cost of the license fee that could be waived. As the Board has no true way of knowing just how many applicants will avail themselves to the waiver, there is no true way of knowing at this time just what the financial impact will actually be or if there will be one.

LEGAL AUTHORIZATION: The State Board of Barber Examiners has authority to make and promulgate reasonable rules for the administration of Title 17, Chapter 20 of the Arkansas Code concerning Barbers. *See* Ark. Code Ann. § 17-20-206(a). In addition, the board also has authority to by rule establish reasonable registration fees, renewal fees, examination fees, and such other fees as it deems necessary and appropriate to fulfill its duties. *See* Ark. Code Ann. § 17-20-201(a). The proposed rules implement Acts 135, 724, 725, 746, 748, and 1101 of 2021.

Act 135 of 2021, which was sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, "[a]n occupational licensing entity shall grant automatic occupational licensure to" certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created* by Act 135 of 2021. In addition, occupational licensing entities shall extend the expiration date of occupational licensure and allow full or partial exemption from continuing education requirements that are required as a component of licensure, for a deployed uniformed service member or his or her spouse for one hundred eighty (180) days following the date of the uniformed service member's return from deployment. *See* Ark. Code Ann. § 17-4-108.

Act 724 of 2021, which was sponsored by Senator Linda Chesterfield, authorized virtual instruction for barber schools and cosmetological schools. *See* Ark. Code Ann. § 17-20-407(e).

Act 725 of 2021, which was sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021, and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

Act 746 of 2021, which was sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals holding federal work permits. Temporary language contained within Act 746 required all occupational or professional licensing entities to promulgate rules necessary to implement the Act. *See* Act 746, § 2(a).

Act 748 of 2021, which was sponsored by Representative Bruce Cozart, amended occupational criminal background checks. The Act allowed agencies to grant waivers for certain criminal offenses which would have previously resulted in permanent disqualification from occupational licensure. *See* Ark. Code Ann. §§ 17-3-201(e) and 17-3-201(g).

Act 1101 of 2021, which was sponsored by Representative Justin Gonzales, provided that a rule assessing or imposing a fee or penalty shall promulgate the fee or penalty by rule. *See* Ark. Code Ann. § 25-15-105(2)(A).

35. DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS AND COMMISSIONS, STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS (Heather Richardson, Miles Morgan)

a. SUBJECT: Rules of the Board of Licensure for Professional Engineers and Professional Surveyors

DESCRIPTION: The Department of Labor and Licensing's State Board of Licensure for Professional Engineers and Professional Surveyors ("Board") proposes changes to its Rules of the Board. The amendments to the existing Rules of the Board comply and incorporate statutory amendments passed during the 2021 legislative session by the 93rd General Assembly. Pursuant to A.C.A. § 17-30-101 (Engineers) and A.C.A. § 17-48-101 (Surveyors), the Board has the authority to promulgate rules regarding the licensure of engineers and surveyors.

The proposed amendments to the Rules of the Board would amend Article 8.1 Military Licensure pursuant to Act 135 of 2021. The Board proposes to clarify that an Engineer Intern ("E.I."), Professional Engineer ("P.E.") and/or Surveyor Intern ("S.I.") licenses be "automatically" awarded to comity (reciprocity) applicants who comply with the rule; whereas the Professional Surveyor ("P.S.") comity (reciprocity) applicant licensure be "expedited" due to the requirement of passing the Arkansas State Specific Exam. The proposed amendment also clarifies the rule to include "uniformed service member," "Uniformed Services" and "uniformed service veteran," and adds Article 8.3.ii Military Temporary License.

The proposed amendments to the Rules of the Board would amend Article 21 Pre-Licensure Criminal Background Check Waiver Request pursuant to Act 748 of 2021. The Board proposes to clarify and amend the rule by removing the "previous permanently disqualifying offenses found in A.C.A § 17-3-102(e)."

The proposed amendments to the Rules of the Board would create Article 9.B.d Fee Waiver pursuant to Act 748 of 2021. The proposed rule details the eligibility of an applicant for a fee waiver and informs the applicant of the necessary documents required to determine if an applicant is low income. The new rule will have a financial impact on the Board due to the initial application/licensure fee being waived; however, the exact amount cannot be determined at this time. The Board believes that if there is any impact, it would be minimal.

PUBLIC COMMENT: Because this rule recommends an expedited process for military personnel to attain occupational licensure for professional surveyor applicants, this rule underwent review pursuant to Ark. Code Ann. § 17-4-109, as amended by Act 135 of 2021, by the Administrative Rules Subcommittee at its meeting of December 15, 2021. No public hearing was held. The public comment period expired on January 25, 2022. The Board provided the following summary of the sole comment received and its response thereto:

Comments of Carole Garner, Public Policy Coordinator for Arkansas Academy of Nutrition Dietetics commented that the acronyms for 2 of the programs listed (Special Supplemental Nutrition Program for Women, Infants, and Children and Temporary Assistance for Needy Families Program) were incorrect.
Board Response: On March 8, 2022, the Board discussed and voted to edit and correct the acronyms for Special Supplemental Nutrition Program for Women, Infants, and Children and Temporary Assistance for Needy Families Program.

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

Section 9.B.d.iii. – Should the reference to subsection "(b)" be to "(ii)"?
RESPONSE: Yes. The correction will be made.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Board states that the amended rules have a financial impact due to the initial application/licensure fee being waived in accord with Act 725 of 2021; however, the exact amount cannot be

determined at this time. The Board believes that if there is any impact, it would be minimal.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 17-30-203(b), the State Board of Licensure for Professional Engineers and Professional Surveyors may determine the persons entitled to be licensed and those whose licenses shall be suspended or revoked; shall fix the fees and renewal fees; shall hold examinations for applicants for licensure not less than two (2) times a year; and may do any other things necessary to its duties, including the adoption of rules not inconsistent with Title 17, Chapter 30 of the Arkansas Code that concerns engineers, the Arkansas Constitution, and other laws. Pursuant to Ark. Code Ann. § 17-48-104(a), (e), the State Board of Licensure for Professional Engineers and Professional Surveyors may adopt and amend all bylaws and rules of procedure not inconsistent with the Arkansas Constitution and laws of this state or Title 17, Chapter 48 of the Arkansas Code, concerning surveyors, that may be reasonably necessary for the proper performance of its duties and the regulations of its proceedings, meetings, records, examinations, and the conduct thereof; the Board may further establish application fees, certificate fees, renewal fees, license reinstatement fees, examination fees, penalties for late renewals or cancellations, and any other fees it deems necessary within the guidelines of the State of Arkansas.

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

Act 135 of 2021, sponsored by Senator Ricky Hill, which established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021 and modified the automatic occupational licensure requirements for uniformed services members, returning uniformed services veterans, and their spouses;

Act 725 of 2021, sponsored by Senator Ben Gilmore, which created the Workforce Expansion Act of 2021; and

Act 748 of 2021, sponsored by Representative Bruce Cozart, which amended occupational criminal background checks.

36. DEPARTMENT OF PUBLIC SAFETY, DIVISION OF ARKANSAS STATE POLICE (Captain Stacie Rhoads, Joan Shipley, item a; Jami Cook, Joan Shipley, item b)

a. SUBJECT: Cold Case Tax Credit

DESCRIPTION: The Tax Credit for Retired Law Enforcement Officers who work on Cold Cases for the Arkansas State Police was created in the General Assembly as Act 841 of 2021. The purpose of these joint proposed rules of the Department of Finance and Administration and the Department of Public Safety is to give a tax credit to retired law enforcement officers who volunteer, or who work as a temporary or part-time employee to investigate cold cases. It is necessary to encourage officers who may want to investigate one of these cases, allowing the Arkansas State Police to gain from their valuable experience as a retired officer, and to possibly solve an unsolved cold case, giving closure to victims and families. These rules establish eligibility criteria and requirements to allow for the implementation and administration of Act 841 of 2021.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on February 22, 2022. The agency indicated that it received no comments.

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

1. In Question 1 of the Financial Impact Statement, you indicated that the proposed rules have a financial impact, but you do not disclose an impact anywhere else in the FIS. Is there a financial impact? If so, could you please explain the financial impact? **RESPONSE:** The legislation sets out that the total amount that can be given as tax credits by ASP is $25,000 per year. It is an error that I did not indicate that the impact to the 2022 General Revenue Fund will be no more than $25,000.

2. In your markup and clean copy, in Rule 4(b), there are some highlighted stars at the end. What is the significance of these stars? Additionally, in your markup and clean copy- Rule 8, there is an incomplete highlighted statement in brackets at the end ("[Per DFA – the certificate shall include…]"). What is the significance of this statement? **RESPONSE:** I have attached a copy of the document without the concerns in this question. I do not have an explanation as to how these occurred. They were not in my hard copy.

3. The first sentence in Rule 5 (introductory) appears to be a run-on. **RESPONSE:** The copy attached also corrects this poorly worded

sentence to read: "A Cold Case Investigator, any retired law enforcement officer who seeks to volunteer or work for the ASP Cold Case Squad as an Investigator under these Rules, must satisfy the following requirements."

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the proposed rules have a financial impact. In response to a question, the agency explained that pursuant to legislation, the total amount that can be given as tax credits by the Arkansas State Police is $25,000 per year for this fiscal year and the next fiscal year.

LEGAL AUTHORIZATION: Pursuant to Act 841 of 2022, which was sponsored by Representative Jon Eubanks, the Director of the Arkansas State Police shall promulgate rules to implement Ark. Code Ann. § 26-51-515 concerning work on cold cases by retired law enforcement officers. *See* Ark. Code Ann. § 26-51-515(f)(1).

b. SUBJECT: Law Enforcement Family Relief Fund

DESCRIPTION: The Law Enforcement Family Relief Check-off Program and Law Enforcement Family Relief Trust Fund were created in the General Assembly as Act 765 of 2021. These are the joint proposed rules of the Department of Finance and Administration and the Department of Public Safety. These rules establish eligibility criteria and requirements to allow for the implementation, funding mechanisms, and various provisions related to the administration of Law Enforcement Relief Trust Fund, also created in the General Assembly as Act 765 of 2021.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on February 22, 2022. The agency indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Act 765 of 2021, which was sponsored by Representative Mark Berry, established the Law Enforcement Family Relief Check-Off Program and the Law Enforcement Family Relief Trust Fund. The Secretary of the Department of Public Safety has authority to promulgate all rules necessary to implement the grant program which was created therein. *See* Act 765 of 2021, *codified as* Ark. Code Ann. §§ 19-5-1155(c) and 26-51-2511(d)(4).

37. STATE BOARD OF ELECTION COMMISSIONERS (Daniel Shults, Chris Madison)

a. SUBJECT: Rules of Procedure for Citizen Complaint Regarding Violations of State Election and Voter Registration Laws

DESCRIPTION:

Purpose

This amendment is necessary to bring the existing law into compliance with the modifications to the State Board of Election Commissioners ("SBEC") complaint process made by Act 756 of 2021 and Act 974 of 2021. The most significant of these modifications involves three new statutory sanctions which the SBEC may impose if it finds a violation of election law has occurred. In addition, the time to file a complaint and the jurisdiction of the SBEC were expanded by the act and incorporated in the rule. Other amendments to the rule revise the procedures to increase clarity, and to provide a mechanism by which the Staff and the Board may transparently prioritize the level of resources allocated to each complaint.

Background

The modification to the SBEC complaint process established in these Acts appear to be designed to ensure that any complaint filed by an Arkansas voter is heard and will not be dismissed due to technical or jurisdictional deficiencies. In addition, the local and national focus on election integrity appears to have led the legislature to provide more tools to the SBEC designed to ensure Arkansas's elections are administered lawfully.

Summary of Key Changes

In § 601, the definition section is updated to modify or create new definitions in order to implement the modifications to the complaint process established in Act 759 and Act 974. In addition, the definition of Election Official has been included which articulates the statutory definition and then adds an explanation section to the statutory definition that takes into account other provisions of code that provide functions which can only be conducted by an election official despite those functions not being explicitly addressed in the statutory definition.

In § 604, the rule is modified to implement the expanded time period to file a complaint under Act 759. The Act provides that the complaint shall be filed no earlier than the date established by law for the delivery or mailing of absentee ballots to a voter which in rule has been defined as the UOCAVA deadline under state law of 46 days prior to the election "affected or associated with the complaint." The close of the filing period is set by the Act as 30 days following the certification of the election.

In § 605, the rule provides the procedures for processing the complaint. This procedure was required to be amended due to the inclusion of a period to cure a procedurally deficient complaint in Act 759. Additional modifications were made to the text of the rule to provide clarity to the process and to eliminate the mandatory inquiry regarding the Respondent's preferences in the outcome to the complaint. Finally, the time for a complaint to be placed on the agenda by a member to modify a staff recommendation is reduced from 7 business days to 5 business days. This is in part due to all commissioners using electronic mail.

In § 606, the investigation process is divided into two tiers of review with investigation through documentary submissions being less formal, allowing an efficient and streamlined investigation of simpler or less consequential allegations. This is designed to free up more agency resources for the formal investigation which will require the use of interrogatories and allows the SBEC staff to place witnesses or respondents under oath. The rule provides that the Director has the authority to convert an informal investigation into a formal investigation if this is deemed necessary. The purpose of this structure is to allow the Board and the Staff to prioritize the severity of various complaints and allocate resources accordingly. Finally, the time for an investigated complaint to be placed on the agenda by a member to modify a staff recommendation to resolve a complaint without a finding of a violation of law is reduced from 7 business days to 5 business days.

In § 607, the rule is clarified that subpoenas may be issued and witnesses may be placed under oath by the staff of SBEC. This clarification ensures that a full meeting of the Board is not necessary. The rule also adds new language regarding how a subpoena is issued on the behalf of a Respondent in the complaint process.

In § 612, the rule provides additional structure for the new statutory sanction "institute corrective actions." The corrective action sanction has been interpreted as a conditional resolution to a complaint which will allow the SBEC to resolve the complaint with a lesser sanction and require changes which, if implemented, will resolve the complaint. This resolution will also provide that greater sanctions will be imposed should the required changes not be implemented so long as the requirements are clear, and it is possible to complete the requirements prior to the expiration of the SBEC's jurisdiction over the complaint. The section further provides that a CBEC member will satisfy his or her obligation to accept a conditional offer by acting or voting in a manner consistent with implementation of the corrective action even if the measure fails in a vote or for want of a second on a motion. Finally, if a required change cannot be implemented before the SBEC loses jurisdiction, the SBEC may inform

the respondent of the sanction which would be imposed should the issue come before the SBEC in a future complaint.

In § 613, the rule provides additional structure for the new statutory sanction "decertification of an election official." The rule defines two tiers of decertification. Under the general decertification, the SBEC may disqualify an individual from service as a county election official for a period not less than 2 federal election cycles and not more than 7 federal election cycles. Also, with additional findings that the violation of law which is being sanctioned was intentional, severe, and of a nature that undermines the public confidence in the integrity of the election process, the respondent can be permanently barred from service as an election official in the State of Arkansas.

In § 614, the rule provides additional structure for the new statutory sanction involving the direct administration of a county's election. In addition to certain notice and procedural considerations, the rule provides that the SBEC may retain control of the county's election for no more than two federal election cycles. Control may terminate at any time prior to the cutoff by vote of the SBEC. The rule also provides a framework in which the SBEC will fulfill the county's election responsibilities should the sanction be implemented. The rule further provides that in order for the SBEC to exercise this control with respect to the CBEC's role in the election, the CBEC must unanimously accept the offer of settlement or a hearing must be conducted with respect to any members rejecting the offer of settlement.

Additional Discussion
Any change not analyzed above is limited to technical corrections, minor modifications to the text, or restructuring the rule to better comply with the codification requirements of the Bureau of Legislative Research.

PUBLIC COMMENT: A public hearing was held on February 7, 2022. The public comment period expired on February 22, 2022. The State Board of Election Commissioners received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: Ark. Code Ann. § 7-4-101(f)(5) authorizes the State Board of Election Commissioners to promulgate rules for even and consistent application of the voter registration laws and fair and orderly election procedures. Additionally, Ark. Code Ann. § 7-4-101(f)(9) authorizes the board to investigate alleged violations, render

findings, and impose disciplinary action pursuant to Ark. Code Ann. § 7-4-120 for violation of election and voter registration laws. This rule implements Acts 756 and 974 of 2021.

Act 756 of 2021, which was sponsored by Representative Mark Lowery, established the Arkansas Balloting Integrity Act of 2021, amended Arkansas law concerning election expense allocation, amended the complaint process for election law violations, and amended the authority and duties of the board. *See* Act 756 of 2021.

Act 974 of 2021, which was sponsored by Senator Kim Hammer, amended the law concerning investigations by the State Board of Election Commissioners. *See* Act 974 of 2021.

b. SUBJECT: Rules for County Election Commissioners Training

DESCRIPTION:

Purpose

This amendment is to update the current rule governing county election commissioner training to comply with the testing requirements of Act 1051 of 2021.

Background

The State Board of Election Commissioners ("SBEC") currently trains the county election commissioners for each county prior to the preferential primary every two years. Currently commissioners are compensated for attending the training and remaining in office until the certification of the preferential primary. The lead senate sponsor of Act 1051 determined that it would be beneficial to require those officials tasked with conducting elections to demonstrate competency through a test as a part of this training program.

Summary of Key Provisions

The substantive modification made in this amendment is in section § 704 of the rule, which provides that the election commissioner is required to take a test of essential skills and shall be certified if they pass this test. Pursuant to § 705, a commissioner who fails to pass this test is still eligible to serve as an election commissioner, but will not receive the compensation for attending the training.

The amendment also increases the compensation for a CBEC member attending training from $100 to $300. This is done in large part to provide a meaningful incentive to becoming certified as the failure to pass the test established under Act 1051 does not prohibit commissioners from service. In addition, the $200 increase in incentives encourages county commissioners to remain in office between the time they are trained and

the certification of the primary election. Turnover in this timeframe has been a problem in the past. It also recognizes the indispensable role commissioners are called upon to play and notes that, while the responsibilities of conducting elections covered in the training are ever increasing, the compensation for training has remain unchanged since 2005.

PUBLIC COMMENT: A public hearing was held on February 7, 2022. The public comment period expired on February 22, 2022. The State Board of Election Commissioners received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the proposed rules have a financial impact. The agency disclosed an additional cost of $45,000 for the current fiscal year, and explained that SBEC will pay an additional $200 to three people in each of the 75 counties once every two years.

In addition, the agency indicated that this rule was not determined to be the least costly rule it considered. The agency provided the following information concerning its decision to adopt the more costly rule:

(a) How the additional benefits of the more costly rule justify its additional cost

Arkansas law places the duty to prepare and conduct every election on the county election commission. These quasi-volunteer officials are responsible for a highly technical and intricately detailed legal process for which they receive one day of mandatory training every two years. Increasing the compensation to attend this training by $200 is designed to encourage service as a CBEC member and to provide a more meaningful incentive to pass the test.

(b) The reason for adoption of the more costly rule

The requirements of Act 1051 could have been implemented with no change in the amount of compensation. However, given this rate has remained unchanged since 2005 while the obligation and potential legal liabilities for the failure to correctly implement the election training are ever increasing, the SBEC determined that the increase from $100 to $300 was in the best interest of the State of Arkansas. The mechanism through which this interest is most immediately served is that the increase makes the commissioners more likely to take seriously the test established in Act 1051.

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain

The rule is designed to benefit the public welfare by ensuring that each county has qualified and motivated commissioners to conduct the elections for that county. The rule also seeks to make the testing and certification process as effective as possible under the law though monetary incentives.

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain
The SBEC is explicitly required to determine the "method and amount" of compensation under Ark. Code Ann. § 7-4-109.

LEGAL AUTHORIZATION: The State Board of Election Commissioners has authority to adopt all necessary rules regarding statewide training for election officers and county election commissioners, and to develop procedures for monitoring attendance. *See* Ark. Code Ann. § 7-4-101(f)(2) and (f)(3). Act 1051 of 2021, sponsored by Senator Kim Hammer, amended the law concerning County Boards of Election Commissioners and how they take their oaths. Pursuant to the Act, election officials including county election commissioners, shall attend training coordinated by the State Board of Election Commissioners and pass an examination of essential skills. The State Board of Election Commissioners was given authority to promulgate rules concerning the training requirements, materials, and examination of essential skills (*See* Ark. Code Ann. § 7-4-109(e)(2)(D)), and authority to determine the method and amount of compensation for attending the training. (*See* Ark. Code Ann. § 7-4-109(e)(2)(A)).

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

DESCRIPTION: The State Board of Election Commissioners ("SBEC") met on November 3, 2021, and approved changes to the "Rules on Poll Watchers, Vote Challenges, and Provisional Voting." This proposed amendment is being promulgated to update the existing rule to reflect changes made to the Voter ID laws during the 93rd General Assembly.

Purpose
This update is required by Act 249 of 2021, which eliminated the optional identity affirmation from the process of verifying a voter's registration with a photo ID and the subsequent provisional voting process for an ID related provisional ballot. The second major purpose of this amendment is to provide "reasonable restrictions" to the process of poll watchers inspecting ballots and absentee voter statements pursuant to Act 727 of 2021. The tertiary purpose of this amendment is to provide a textual basis for offering a voter, who is marked as already voted, a provisional ballot.

The amendment also eliminates forms from the rule pursuant to the requirements of the codification of rules.

Background
Prior to Act 249, a voter who could not satisfy the photo ID requirement was able to sign an optional identity affirmation that required the CBEC to count the ballot so long as there were no issues unrelated to the ID requirement.

Regarding the inspections by poll watchers and Act 727, the legislature appears to have reacted to instances in Arkansas and nationally in which the role of poll watchers and others in the canvassing process required additional clarity.

Regarding voters who are marked as having already voted, the SBEC has long instructed that such voters should be offered a provisional ballot. State law explicitly requires a voter who is identified as having been sent an absentee ballot to vote provisionally but is silent in this case. The SBEC has seen situations in which older voters simply forgot they had early voted and were allowed to vote again, as well as situations where the primary election's poll book was fielded in the general election causing the poll workers to believe that every voter who voted in the primary was ineligible to cast a general election ballot.

Summary of Key Changes
Because Act 249 of 2021 eliminated the optional affirmation process from the Code and from Amendment 51, the proposed amendment is being promulgated in order to eliminate these provisions from the Rule governing this provisional voting process as it relates to ID issues.

Pursuant to Act 727, § 904(c)(1) provides rules for the observation and inspection of the absentee ballot canvassing process by poll watchers. The first key provision requires a poll watcher to be no less than 3 feet from the canvassing process and prohibits election officials from requiring poll watchers to be more than 6 feet from the process. In addition, a poll watcher may inspect an absentee voter statement; however, the poll watcher may not use the ability to inspect voter statements to obstruct the canvassing process. A procedure is established to remove a poll watcher by a unanimous vote of the CBEC if the poll watcher is acting in bad faith.

With respect to the counting of ballots, § 904(c)(2) governs this process as it relates to poll watchers. The fundamental rule established by existing law is that a poll watcher may never take physical possession of a ballot. They may, however, be permitted to inspect a ballot upon request so long as they do not touch it. In addition, poll watchers are required to be able to view the entire counting process. To ensure this is the case, the rule

establishes a new procedure which requires ballots to be taken to and from the public counting area in a sealed container.

Regarding voters marked as having already voted, § 903(c) provides that a voter for whom the PVR List shows has voted but who asserts they have not voted must be allowed to cast a provisional ballot. This provisional ballot is to be counted unless the CBEC determines that the voter cast more than one ballot in that election, or the ballot is disqualified for an unrelated reason. The CBEC is required to report any provisional ballots that fall into this category to the SBEC due to the high degree of likelihood that fraud or a procedural error has occurred in such an instance.

The final key provision is in § 914 and provides that, rather than the relevant forms for this rule being promulgated, they will simply be adopted by the SBEC outside the APA process and referenced by the rule.

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

PUBLIC COMMENT: A public hearing was held on February 7, 2022. The public comment period expired on February 22, 2022. The State Board of Election Commissioners received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Election Commissioners has authority to formulate, adopt, and promulgate all necessary rules to assure even and consistent application of voter registration laws and orderly election procedures. *See* Ark. Code Ann. § 7-4-101(f)(5). In addition, the State Board of Election Commission is authorized to promulgate rules necessary to implement Ark. Const. Amend. 51 § 13(b), concerning verification of voter registration. This rule implements Acts 249 and 727 of 2021.

Act 249 of 2021, which was sponsored by Representative Mark Lowery, amended the law concerning voter identification, verification of provisional ballots, and Amendment 51 of the Arkansas Constitution. *See* Act 249 of 2021.

Act 727 of 2021, which was sponsored by Senator Kim Hammer, permitted the State Board of Election Commissioners to prescribe reasonable restrictions on poll watchers. *See* Ark. Code Ann. § 25-19-105(b)(27)(B).

d. SUBJECT: Rules of Practice and Procedure

DESCRIPTION: The State Board of Election Commissioners ("SBEC") met on September 29, 2021, and approved changes to the "Rules of Practice and Procedure." This proposed amendment is being promulgated to incorporate two areas into the SBEC's procedure rule that has been promulgated to satisfy the requirements of the APA under A.C.A. § 25-15-203.

Purpose
The first portion of these changes is required by Act 1063 of 2021 in order to establish the administrative process for implementing the appeal of a polling site closure. This Act provides that a registered voter may appeal the reduction in the total number of polls by a county election commission prior to a primary or general election. The second portion of the Rule added provisions governing the process of reviewing ballot titles and popular names. This responsibility was given to the SBEC by Act 376 of 2019, which interpreted Article 5, §1 of the constitution and requires the SBEC to determine whether ballot titles and popular names are misleading or are worded in such a way that a vote yields the opposite outcome from the voter's intent.

Background
The portion of the rule dealing with the appeal of polling site closures is designed to implement a process that was developed as a compromise with the sponsor of Act 1063. The bill, as originally filed, would have required the SBEC to review all polling site closures and the staff worked with the sponsor to develop an appeals process in place of the automatic review. The final Act left some of the procedural details and the standard of review to be developed in rule. The portion of the rule dealing with ballot language is included based on the SBEC's experience in implementing Act 376 of 2019 prior to the 2020 General Election and finding the process in need of more structure than the Act or the constitution provided.

Summary of Key Changes
In § 1108, the rule establishes the procedural requirements for filing an appeal requiring the appellant to include his or her name, address, phone number/email (if available), and that the appellant attest to a statement of facts and circumstance which form the basis of the appeal under oath. The

section also addresses the deadline to file and requires electronic submissions including a facsimile of the appellant's signature.

In § 1109, the rule establishes the action required of the SBEC and the SBEC Director when an appeal is filed as well as setting up a process for dismissing facially deficient appeals without requiring a meeting of the SBEC. One of the key elements added to the process in rule is the requirement that the CBEC whose actions are being appealed to be notified of the appeal and have the opportunity to respond.

In § 1110, the rule establishes the standard of review for an appeal requiring that the county's decision be upheld unless the closure is unlawful or causes an undue burden on the ability of voters to access the polls on election day. The section also establishes a set of 10 factors, which the board must consider in making this determination.

In § 1111, the rule addresses the applicability of this process. The provision stating that the appeal process does not apply to an emergency polling site change is based on an analysis and interpretation of the Act. Staff noted to the SBEC that, if unlawful polling site changes are alleged, they can be addressed through other mechanisms even if they are untimely for the appeal process.

In § 1112, the rule establishes the action required of the SBEC and the SBEC Director when a proposed ballot title and popular name are received from the Secretary of State under A.C.A. § 7-9-111(i)(1). The key provision put in place under this section is the process by which the sponsors receive notice of the SBEC's consideration of the provisions and how information is provided to the SBEC and the sponsors.

In § 1113, the rule establishes the process by which the sponsor and other outside parties may submit documents advocating for or opposing the certification of a ballot title or popular name. Key provisions of this section include: the sponsor must file its brief within three business days of filing the petition, other third parties must file within 7 days, and the sponsor is entitled to reply to the third-party briefs within 12 days. There are also form and page count provisions established for all briefs except the sponsor's reply brief. A brief must satisfy the requirements of the rule to be submitted to the SBEC.

In § 1114, the rule establishes provisions governing the conduct of the meeting in which the certification of the ballot title and popular name are considered. This section provides that if public testimony is heard, the sponsor shall be allowed speak first followed by alternating testimony against and in favor of certification in the order the speakers sign up to speak. The section also provides that the SBEC may limit the time of

testimony it hears and may end public testimony by a two-thirds vote of the members present.

One additional change was made by deleting a sentence from § 1105 which described the proper use of the declaratory order process. This policy statement has proven to add more confusion than clarity to the declaratory order process.

PUBLIC COMMENT: A public hearing was held on February 7, 2022. The public comment period expired on February 22, 2022. The State Board of Election Commissioners received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Election Commissioners has authority to formulate, adopt, and promulgate all necessary rules to assure even and consistent application of voter registration laws and orderly election procedures. *See* Ark. Code Ann. § 7-4-101(f)(5).

This rule implements Act 1063 of 2021, sponsored by Representative Jack Ladyman, which authorized the State Board of Election Commissioners ("SBEC") to consider an appeal filed to challenge a reduction in the number of polling sites in a county by a county board of election commissioners. *See* Ark. Code Ann. §7-4-101(f)(15). It further authorized SBEC to formulate, adopt, and promulgate rules for governing the appeal of a county board of election commissioners' reduction in the number of polling sites in a county. *See* Ark. Code Ann. § 7-4-101(f)(16).

e. SUBJECT: Rules for Verification of Voter Registration

DESCRIPTION: The State Board of Election Commissioners ("SBEC") met on September 29, 2021, and approved changes to the "Rules for the Verification of Voter Registration." This proposed amendment is being promulgated to update the existing rule, which reflect changes made to the Voter ID laws during the 93rd General Assembly.

Purpose
This update is required by Act 249 of 2021, which eliminated the optional identity affirmation from the process of verifying a voter's registration with a photo ID.

Background
Prior to the Act, a voter who could not satisfy the photo ID requirement was able to sign a more tightly worded affirmation in addition to the standard voter statement affirming, under penalty of perjury, that the voter was registered and eligible to vote using the information provided. The CBEC was then required to find that the voter's provisional ballot satisfied the voter ID requirements and, unless an issue unrelated to the ID requirement arose, the ballot would be automatically counted.

Summary of Key Changes
Because Act 249 of 2021 eliminated the optional affirmation process from the Code and from Amendment 51, the proposed amendment is being promulgated in order to eliminate these provisions from the Rule governing this process. The required changes are made in § 806.

Additional Discussion
This is the only substantive change to the rule; however, the amendment does include some updating of the identification of subsections to better comply with the codification of rules by the Bureau of Legislative Research.

PUBLIC COMMENT: A public hearing was held on February 7, 2022. The public comment period expired on February 22, 2022. The State Board of Election Commissioners received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Election Commissioners has authority to formulate, adopt, and promulgate all necessary rules to assure even and consistent application of voter registration laws and orderly election procedures. *See* Ark. Code Ann. § 7-4-101(f)(5). In addition, the State Board of Election Commission is authorized to promulgate rules necessary to implement Ark. Const. Amend. 51 § 13(b), concerning verification of voter registration. This rule implements Act 249 of 2021, sponsored by Representative Mark Lowery, which amended the law concerning voter identification, verification of provisional ballots, and also Amendment 51 of the Arkansas Constitution. *See* Act 249 of 2021.

f. SUBJECT: Rules for Poll Worker and County Clerk Training

DESCRIPTION: The State Board of Election Commissioners ("SBEC") met on November 3, 2021, and approved changes to the "Rules for Poll Worker & County Clerk Training."

Purpose
This amendment is to update the current rule governing the poll worker training program to comply with the testing requirements of Act 1051 of 2021. The Rule also provides additional policies designed to ensure each poll worker who serves in a poll in the State of Arkansas has received the training necessary to lawfully conduct the election.

Background
The SBEC currently trains two certified poll worker trainers who are appointed by the CBEC in each county prior to the preferential primary every two years. In addition, the SBEC trains the county clerk or the clerk's designee so that the clerk may train the poll workers appointed by the clerk to conduct early voting. Currently, there is no legal requirement that election officials appointed by the county clerk be trained prior to service in the election. With respect to the compensation of officials trained under this rule, the SBEC has repeatedly received requests for the number of training sessions for which the certified trainer can be compensated to be increased. In addition, given the length of training received by county officials, the SBEC has been asked on several occasion to increase the compensation to poll workers for attending training.

Summary of Key Provisions
The substantive modification required by the changes in the law made by Act 1051 provide that poll workers are required to take a test of essential skills and shall be certified if they pass this test. Poll workers who fail to pass this test will still be eligible to serve as a poll worker, but will not receive the compensation for attending the training.

An additional policy shift made in this proposed amendment changes the regulatory definition of poll worker to include early voting election officials who work the poll during county clerk run early voting. This will require that the early voting officials be trained and tested pursuant to the same requirements as the election-day officials.

The amendment also increases the number of training sessions for which a certified trainer can be compensated from two session to four sessions. The rate per session will remain unchanged at $50; however, this will represent a $100 total increase in the amount which the certified trainer can be compensated. This change was made to encourage counties to offer smaller training sessions which tend to be more effective than a larger

session. This will also help accommodate the larger counties that are required to train substantially more poll workers than the smaller counties.

The final component of this rule is the formalization of the two-tier training program including the basic poll worker training and an advanced poll worker training. Under the rule, all poll workers must receive the basic poll worker training. The rule further provides that the CBEC or county clerk must ensure no fewer than two poll workers in each poll have received the advanced training curriculum as well. Under the current rule, all poll workers receive $25 dollars for being trained. The amendment provides that poll workers who receive the basic training will receive $35 and up to two poll workers per polling site who attend the advanced training will receive $55.

Additional Analysis of the Amendment

The two-tier training program is designed to ensure the fundamental principles of the poll worker's responsibility, the processing of voters into the poll, and the operation of the voting equipment during voting hours as the focus of front-line poll worker's training. The advanced training curriculum addresses the remaining portions of the poll's operations including the process of provisional voting, the opening and closing of the poll, instruction on how to address problems that may arise, and other miscellaneous procedures for less common eventualities.

The increase in compensated trainings comes at the repeated request of counties to have more flexibility to hold more than two training sessions per certified trainer or for the two trainers to work as a team without the county being limited to two compensated trainings. It is the opinion of the SBEC that this is good policy and that the structure of compensation under the rule should encourage these practices.

The increase in the compensation to each poll worker is also increased at the request of county officials who have, for many years, noted that the current $25 payment is insufficient to cover an hourly rate of compensation leaving the county with what amounts to an unfunded mandate to cover any difference or to violate the SBEC's rules regarding the content of the training. The increase is also designed to incentivize the passage of the test given that the failure to do so does not prohibit the commissioners from service. It also recognizes the indispensable role poll workers are called upon to play and acknowledges that, while the responsibilities of conducting elections covered in the training are ever increasing, the compensation level for training has remain unchanged since 2003.

PUBLIC COMMENT: A public hearing was held on February 7, 2022. The public comment period expired on February 22, 2022. The State Board of Election Commissioners received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the proposed rules have a financial impact. The agency disclosed a current fiscal year cost of $143,420 to state, county, and municipal government. The full cost will be paid as a reimbursement to the county election officials through the county treasurer's office. Regarding poll workers, the agency estimates there are 6,047 CBEC appointed poll workers and, of those, 2,400 are estimated to be one of the two advanced poll workers with the remaining estimated 3,647 serving as general poll workers. This represents an increase of $72,000 in the compensation for advanced training and $36,470 in the compensation of basic level poll workers. An additional 490 clerk-run early voting training officials not previously required to be trained but would be trained under this amendment require an additional estimated training stipend of $19,950. The final $15,000 represents the additional two $50 payment of conducting county training by certified poll worker trainers authorized in this amendment to the rule.

In addition, the agency indicated that this rule was not determined to be the least costly rule it considered. The agency provided the following information concerning its decision to adopt the more costly rule:

(a) How the additional benefits of the more costly rule justify its additional cost

The compensation for attending training has remained unchanged for 19 years at $25. This is despite the length and complexity of training increasing. Counties have repeatedly complained that the $25 stipend is insufficient and is less than minimum wage for the roughly 5 hours of training that the State required. The rule cuts the length of the curriculum for basic poll workers and adds $10 to the stipend. Each poll must also have a supervisor and a backup for which the curriculum cannot be shortened. Consequently, the stipend for these officials is increased by $30.

(b) The reason for adoption of the more costly rule

The increase in poll worker training compensation was adopted for the reasons described above. In addition, the new rule increases the number of training sessions for which a certified poll worker trainer can be compensated from 2 sessions to 4 sessions. This change is at the request of the counties and is necessary to ensure poll workers have reasonably sized classes in which they are trained and that they are able to work as a team. Each county has 2 certified trainers who receive $50 per session making

the theoretical maximum increase in expenditure due to this change $15,000.

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain
The rule is designed to benefit the public welfare by ensuring that each county has qualified, motivated, and well-trained poll workers to conduct the elections for that county. The rule also seeks to make the testing and certification process as effective as possible under the law through the monetary incentivization.

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain
The SBEC is explicitly required to determine the "method and amount" of compensation under A.C.A § 7-4-109.

LEGAL AUTHORIZATION: The State Board of Election Commissioners has authority to adopt all necessary rules regarding statewide training for election officers and county election commissioners. *See* Ark. Code Ann. § 7-4-101(f)(2), (f)(3). The Board also has authority to promulgate rules concerning the training requirements, materials, and examination of essential skills. *See* Ark. Code Ann. § 7-4-109(e)(2)(D). This rule implements Act 1051 of 2021, sponsored by Senator Kim Hammer, which amended Arkansas law concerning county boards of election commissioners. Specifically, Act 1051 added election coordinators were added to the list of election officials trained by the State Board of Election Commissioners, and established the testing requirement for all poll workers. *See* Act 1051 of 2021.

g. SUBJECT: Rules for County Election Coordinator Training

DESCRIPTION: The State Board of Election Commissioners ("SBEC") met on November 3, 2021, and approved the promulgation of these "Rules for County Election Coordinator Training."

Purpose
This new rule will provide for the training of election coordinators, which is established as a new category of training to be conducted by the SBEC under Act 1051 of 2021.

Background
The SBEC already directly trains the County Election Commissioners, Certified Election Monitors, the County Clerk or Clerk's designee, and two Certified Poll Worker Trainers for each county. The Certified Poll Worker Trainers are then responsible for training the county's appointed election officials. County election coordinators is a concept that is utilized

in several counties to assist the CBEC with the fulfillment of its statutory duties. Prior to this act, the term has had no formal meaning, no consistent duties or requirements, and no training or certification.

Summary of Key Provisions
While a new rule, the coordinator training rule is modeled closely after the commissioner training rule. The rule defines the statutory requirements for an election official, provides that the SBEC will provide training materials, requires the county officials to comply with this training, and requires that the coordinator pass an examination of essential skills in order to be compensated for attending training.

Unique to coordinator training, the CBEC must select the person to receive coordinator training. If that person is hired and supervised by another county official, the other official must agree that the coordinator will only receive direction related to the election from the CBEC.

The rule provides deadlines to appoint a coordinator and provides that the CBEC must fill the coordinator position should the position fall vacant and provides that the coordinator will be compensated $500 plus mileage for attending training and serving through the preferential primary.

PUBLIC COMMENT: A public hearing was held on February 7, 2022. The public comment period expired on February 22, 2022. The State Board of Election Commissioners received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the proposed rules have a financial impact. The agency disclosed an additional cost of $44,296, and explained that SBEC will pay an additional $500 to one person in each of the 75 counties once every two years. This totals $37,500 plus an estimated $6,796 in mileage. This totals $44,296 as an estimated cost of the training program per two-year election cycle.

In addition, the agency indicated that this rule was not determined to be the least costly rule it considered. The agency provided the following information concerning its decision to adopt the more costly rule:

(a) How the additional benefits of the more costly rule justify its additional cost
The election coordinator training will ensure that at least one person in every county has a comprehensive understanding of the election equipment and processes. The rate of $500 was set to provide a meaningful incentive to (1) take on a different role, (2) pass the test

established by Act 1051, and (3) remain in office after training to serve in the preferential primary.

(b) The reason for adoption of the more costly rule
In this rule, the SBEC is required to set the level of compensation for the biennial training for election coordinators. Therefore, having set the amount at $500 plus mileage, any rule setting the amount less than $500 would qualify as a less costly rule. The SBEC set the rate at $500 for the reasons stated above.

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain
The rule is designed to benefit the public welfare by ensuring that each county has an individual certified as having received technical training in the full operation of the election equipment and processes associated with the election.

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain
The SBEC is explicitly required to determine the "method and amount" of compensation under A.C.A. § 7-4-109.

LEGAL AUTHORIZATION: The State Board of Election Commissioners has authority to adopt all necessary rules regarding statewide training for election officers and county election commissioners. *See* Ark. Code Ann. § 7-4-101(f)(2), (f)(3). The Board also has authority to promulgate rules concerning the training requirements, materials, and examination of essential skills. *See* Ark. Code Ann. § 7-4-109(e)(2)(D). This rule implements Act 1051 of 2021, sponsored by Senator Kim Hammer, which amended the Arkansas law concerning county boards of election commissioners. Specifically, Act 1051 added election coordinators were added to the list of election officials trained by the State Board of Election Commissioners. *See* Act 1051 of 2021.

38. TREASURER OF STATE (Grant Wallace, John Peace)

a. SUBJECT: The Arkansas Tax-Deferred Tuition Savings Program

DESCRIPTION:
Background
Pursuant to Ark. Code Ann. § 6-84-101 et seq., the Arkansas Tax-Deferred Tuition Savings Program was created and established pursuant to 26 U.S. Code § 529 to be administered by the Section 529 Plan Review Committee (the "Committee") through the adoption of rules for the administration of the program. Pursuant to Ark. Code Ann. § 6-84-105(b)

and (c), the Committee has authority to adopt such rules as it deems necessary and proper to administer the program to ensure compliance with 26 U.S. Code § 529. The Committee voted to adopt the proposed amended rules on November 16, 2021.

Key Points
The proposed amended rule:
• Changes the name of the program to the Brighter Future Fund Plan
• Removes references to "regulation"
• Removes/revises obsolete terms
• Removes reference to Aspiring Scholars Matching Grant

Summary
The Arkansas 529 Program allows individuals to invest and grow savings tax deferred and later withdraw the funds tax-free to pay for qualified education costs like tuition, room and board, and supplies. The Committee adopted rules to govern the operation of Arkansas's 529 Program, which is designed to satisfy the requirements of 26 U.S. Code § 529. The proposed amended and restated rules address statutory changes made to the program's name pursuant to Act 966 of 2021 and eliminate unnecessary references to the word "regulation" pursuant to Act 315 of 2019. The amended rules also clarify obsolete defined terms and removed references to Aspiring Scholars Matching Grants that are no longer offered under the program.

PUBLIC COMMENT: A public hearing was held on this rule on February 14, 2022. The public comment period expired on February 14, 2022. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Section 529 Plan Review Committee has authority to "adopt such rules as it deems necessary and proper to administer" Title 6, Chapter 84 of the Arkansas Code, regarding the Arkansas Brighter Future Fund Plan, and to ensure the plan's compliance with federal law. Ark. Code Ann. § 6-84-105(b). The Committee also has power to promulgate "rules for the general administration of the plan." Ark. Code Ann. § 6-84-105(c)(2).

This rule implements Act 966 of 2021. Act 966, sponsored by Representative Karilyn Brown, amended the Arkansas Tax-Deferred Tuition Savings Program Act, adopted recent changes contained in the

Internal Revenue Code related to the program, and changed the name of the program.

39. DEPARTMENT OF COMMERCE, STATE INSURANCE DEPARTMENT (Booth Rand, items a, b; Jim Brader, items c, d)

a. SUBJECT: Rule 118: Pharmacy Benefits Managers Regulation

DESCRIPTION: This proposed rule implements Act 665 of 2021 pertaining to requiring the Insurance Commissioner to issue a rule to administer and enforce the Pharmacy Audit Bill of Rights. The proposed rule also makes rule changes to definitions as well as network adequacy standards consistent with language in Act 665.

PUBLIC COMMENT: A public hearing was held on this rule on December 14, 2021. The public comment period expired on December 14, 2021. The agency provided the following summary of the public comments it received and its responses to those comments.

> AID received no written or oral comments before the record closed during this Rule promulgation. The record closed on the date of the public hearing, December 14, 2021.
>
> However, following the close of the record, Arkansas Blue Cross and Blue Shield and PCMA, a national lobbying organization for the PBM industry, contacted the Department, and later expressed concerns over changes made to the originally filed Rule, specifically in Section 9 C, regarding reporting of rebates and spread pricing data. The proposed Rule requires the PBMs to report rebate and spread pricing data to the administrator of APCD, or ACHI, Arkansas Center for Health Improvement. Thereafter, the Department proceeded to have an industry phone call with the PBM industry and with the health carriers to discuss issues. As proposed in the Rule, AID will develop a data submission guide and describe the timing and formatting of the submitted information and maintain the confidentiality of such data, pursuant to a Bulletin later issued by the Insurance Commissioner, and possibly execute a Memorandum of Understanding with ACHI related to safeguard and protecting the confidentiality of the information.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: This rule implements Act 665 of 2021. The Act, sponsored by Representative Brian Evans, amended the Arkansas Pharmacy Audit Bill of Rights and amended the Arkansas Pharmacy Benefits Manager Licensure Act. The Act required the Insurance Commissioner to "adopt rules relating to a pharmacy benefits manager's network adequacy." Act 665, § 7, *codified at* Ark. Code Ann. § 23-92-509(b)(2)(A). Per the Act, the Insurance Commissioner also has authority to promulgate rules to implement the Pharmacy Audit Bill of Rights. Act 665, § 1, *codified at* Ark. Code Ann. § 17-92-1201(h)(2).

b. SUBJECT: Rule 111: Craniofacial Anomaly Reconstructive Surgery Coverage – "Wendelyn's Craniofacial Law"

DESCRIPTION:

Legislative Authority for Rule

The proposed Rule implements Ark. Code Ann. § 23-79-1503, which requires the State Insurance Department to issue rules for the implementation and administration of coverage for craniofacial anomaly reconstructive surgery under Ark. Code Ann. § 23-79-1501 et seq.

Background and Purpose of Rule

The purpose of this Rule is to help implement recent changes to Arkansas craniofacial law made this last session in Act 955 of 2021, "An Act to Modify the Law Concerning Craniofacial Coverage and to Establish Wendelyn's Craniofacial Law" (hereafter, Act 955).

Explanation of the Proposed Rule

The proposed Rule implements the new amendments by (1) clarifying that surgical team members may provide authorizations for services; (2) creating time frames consistent with Act 955 of 2021 for reviews and evaluations of craniofacial services for insurance adjudications; (3) permitting fees or charges to insurers for evaluations of proposed services to help resource and pay for ACPA team efforts to review and approve services; (4) providing additional incidental mandates for eye services and out of network charges; (5) providing an authorization form to help simplify approvals for services; and (6) providing needed definitions not in Act 955 of 2021 to help clarify the craniofacial coverage laws.

PUBLIC COMMENT: A public hearing was held on this rule on December 10, 2021. The public comment period expired on December 10, 2021. Following the public hearing, the agency made further changes to the rule and opened a second public comment period. A second public

hearing was held on February 24, 2022. The second public comment period expired on March 4, 2022.

The agency provided the following summary of the public comments it received during the first public comment period and its responses to those comments:

Commenter's Name: Ozark Prosthodontics, December 9, 2021

1: The proposed rule conflicts with the statute in Act 955 of 2021, the statute only requires that the proposed services be authorized by a surgical member of an ACPA team; however, the proposed rule changes the authorization requirement to not only require authorization but also that the recommended services shall initiate from a referral to the medical provider in proposed Section 5 of the rule. **RESPONSE:** We agree and deleted the initiated language and made changes throughout the rule to only require authorization from a surgical member of an APCA team using the attestation form exhibit attached to the proposed rule.

2: The proposed rule is flawed because it contemplates that the surgical member of an ACPA approved team will submit the preauthorization request to a health insurer, even for services that are to be provided by a provider that is not a member of the team. **RESPONSE:** We do not believe the rule requires this procedure. The intent and language of the rule is that once an outside APCA provider obtains the authorization form from the ACPA surgical member, the provider submits this form to approval to the health insurer for a 2 day review.

3: The use of the undefined terms, "craniofacial provider" and "non craniofacial provider" appear unnecessary and will create an ambiguity in the rule. **RESPONSE:** We delete those from the Section headings and agreed with your proposed markup.

4: Complained of the notarization requirement in the Attestation Form and the M.D. or D.O requirement in the form as well as the board certified surgeon. **RESPONSE:** We removed those requirements including the notarization requirement.

Commenter's Name: American Society of Plastic Surgeons, November 30, 2021
COMMENT: In support of the proposed rule.

Commenter's Name: Ms. Wendelyn Osborne, December 10, 2021
COMMENT: In support of the proposed rule.

Commenter's Name: Arkansas Blue Cross and Blue Shield, December 1, 2021

1: The proposed rule only requires the proposed Attestation form to be used by noncraniofacial providers and should be used by all providers. **RESPONSE:** We disagree. The reason and intent of the changes have related to problems with authorization or lack of authorization from non APCA medical providers and not from APCA direct claims to the health insurers.

2: We propose that health benefit plans enter into contracts with an approved craniofacial team based on expected hours of effort of various team members to perform comprehensive evaluations to arrive at an appropriate determination as well as offer longitudinal oversight to the provider of services. **RESPONSE:** We agree and intend to issue bulletins on the coding fee reimbursement standards outlined in Section 6 of the proposed rule.

3: Add a definition of an administrator of the health benefit plan. **RESPONSE:** We believe this is inferred and already clearly means "to the health insurer."

4: Remove "for a non-life threatening condition." This is unnecessary and confusing because one of the reasons that a condition is urgent is a serious threat to life. **RESPONSE:** We believe the language is necessary to provide clarification to the terms, urgent and non urgent care.

5: Delete the sentences with the phrase, "the standards in this section shall follow the Prior Authorization Transparency Initiative," and identify which standards. **RESPONSE:** We disagree and want ALL standards of the Prior Authorization statute to apply to the claims procedures here.

6: Although ABCBS and other health plans are subject to this Rule, we believe we are not subject to Sections 4 and 5 obligations. **RESPONSE:** We agree.

The agency provided the following public comment summary for the second public comment period:

> We received both written and oral comments on the above proposed amended rule. AID held a hearing on the proposed rule on February 24, 2022 at 1:30 PM conducting it both live in person and through Zoom conferencing. The record closed on March 4, 2022. We received two (2) written comments, and we received one public oral comment during the February 24, 2022 hearing.

#1. We received a written comment, or letter, on February 23, 2022 from Mr. Grant Fortson, Esq., representing Ozark Prosthodontics. His letter was in support of the proposed amended changes in Rule 111.

#2. We received (2) two written comments from Ms. Wendelyn Osborne, both emails dated February 18th, 2022, and January 27, 2022. Ms. Osborne also testified against the proposed changes in the February 24, 2022 hearing. The nature of her objections are, as I understand them, that all of the proposed changes are against the legislative statute and intent of the statutes and laws governing craniofacial coverage, including but not limited to Act 955 of 2021. A brief background on the dispute between Ozark Prosthodontics and Ms. Osborne is important here. The parties are disputing on (1) "who" can authorize approval of medical provider services for craniofacial patients outside APCA teams. Ozark takes the position that any "surgical member of the ACPA team," can authorize services pursuant to the literal language of Act 955 which states that healthcare services must be "recommended by a surgical member of an ACPA team." This includes any APCA team member with surgery experience as surgery is permitted or understood in that particular medical specialty, such as in prosthodontia, or orthodontics. Ms. Osborne on the other hand believes that the surgical member must be a board certified medical-physician surgeon. The Commissioner in his amendments sided with Ozark and interprets surgery to mean any member with surgical experience in a particular field. The parties are also disputing (2) "how" referrals are permitted for approval of outside services. Ms. Osborne contends that all referrals for outside services (services by medical providers not on APCA approved teams) must initiate from an APCA team member, Ozark, on the other hand, argues that the craniofacial statute and Act 955 do not limit referrals in such manner, and argue that referrals can originate and be sent to the APCA approved teams by outside providers themselves, in the instance of them requesting approval from the team for services. [Bureau Staff Note: In addition to its summary, the agency provided the written comments in full, which have been attached separately.]

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions about the initially proposed rule changes and received the following responses:

1. Is there a specific source for the definitions of "acquired craniofacial anomaly" and "urgent healthcare service," or were these definitions

created for this rule? **RESPONSE:** We are supplying them in this Rule because the statute does not.

2. Section 3(c), which lists out what health benefit plans must cover, mostly tracks with the list provided in Ark. Code Ann. § 23-79-1502(d). However, the statute states that a health benefit plan must include coverage "if medically necessary." Is there a reason the language regarding medical necessity was not included in the rule? **RESPONSE:** We will consider adding that.

3. Ark. Code Ann. § 23-79-1502(d)(3) provides coverage for a dehumidifier every four years. Is there a reason this item was omitted from the list in the proposed rule? **RESPONSE:** No, we are just adding items not in the statute.

4. I asked that third question because I noticed that § 3(c)-(e) of the proposed rules specifically lists out everything included in A.C.A § 23-79-1502(d) except the dehumidifier. To clarify, the Insurance Department still requires health benefit plans to cover a dehumidifier as required by Act 955? **RESPONSE:** I may put that in the rule just to repeat it. Thanks for catching that.

Ms. Johnson asked the following questions about the rule changes made following the initial public comment period. She received the following responses:

1. Section 2(7): The revised markup removes the word "surgical" from the phrase "means a surgical member of an American Cleft Palate-Craniofacial Association ("ACPA") . . . ." It now reads, "means a member of an American Cleft Palate-Craniofacial Association ("ACPA")." However, Act 955 consistently uses the phrase "surgical team member." Why was this language changed? **RESPONSE:** We will go by the statute. As I understand it, as it was explained to me, it was done to avoid the confusion that a member of a surgical team has to in fact be a surgeon. We interpret the statute to mean, only that the person be a surgical "team" member. A person can be member of surgical team and still qualify.

2. Section 3(f)(A) and (B): The revised markup adds, "or by a medical provider that is not on a nationally approved cleft-craniofacial team if the request is accompanied by an Attestation in the form established by this Rule that is signed by a surgical team member of an APCA Approved Team[.]" Does the Insurance Department consider this Attestation the equivalent of a recommendation/authorization under Act 955, § 6(c)? **RESPONSE:** Yes.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: This rule implements Act 955 of 2021. The Act, sponsored by Senator Missy Irvin, modified the law concerning craniofacial coverage and established Wendelyn's Craniofacial Law. "The State Insurance Department shall promulgate rules for the implementation and administration of" Wendelyn's Craniofacial Law. *See* Ark. Code Ann. § 23-79-1503(a).

c. SUBJECT: Rule 56: Companies Financial Regulation Fees

DESCRIPTION:
Legislative Authority for Rule
Ark. Code Ann. §§ 23-100-106 and 23-61-108.

Background and Purpose of Rule
This rule governs the financial regulation fee insurers must pay annually pursuant to Ark. Code Ann. § 23-61-703. It also clarifies that the method of submitting the amount to AID is electronically through the "OptIns" System.

The statute was amended in 2009 by Act 726, § 9, to make the fee due on or before June 1 of each year. The current AID Rule 56 became effective in 1993, and still reflects the due date of June 30 from the former statute; this amendment will align the dates.

PUBLIC COMMENT: A public hearing was held on March 8, 2022. The public comment period expires on March 14, 2022. The agency received no comments.

The proposed effective date is June 1, 2022.

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

LEGAL AUTHORIZATION: The Insurance Commissioner, in consultation with the Secretary of the Department of Commerce, may make reasonable rules necessary for or as an aid to the effectuation of any provision of the Arkansas Insurance Code. *See* Ark. Code Ann. § 23-61-108(a)(1). The commissioner, in consultation with the Secretary of the Department of Commerce, shall have the authority to promulgate rules necessary for the effective regulation of the business of insurance or as required for this state to be in compliance with federal laws. *See* Ark. Code Ann. § 23-61-108(b)(1).

d. **SUBJECT: Rule 5: Companies Antifraud Fees**

DESCRIPTION: The purpose of the proposed amendment to Rule 5 is to align the rule with Ark. Code Ann. § 23-100-104, which governs when and how insurance companies submit the annual antifraud fee. The governing statute was amended in 2017 by Act 283, § 22, which moved the due date from June 30 to June 1 each year. Current AID Rule 5 became effective in 1999 prior to that legislative change; this amendment to the rule properly aligns the due date with date in the statute. It also clarifies that the method of submitting the amount to the Arkansas Insurance Department is electronically through the "OptIns" System.

PUBLIC COMMENT: A public hearing was held on March 8, 2022. The public comment period expired on March 14, 2022. The agency received no comments.

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

QUESTION: Could you please provide the statutory fee-making authority for the penalty of $100/day under §3(C)(3)? **RESPONSE:** The statutory authority of the late fee of $100 per day is in Ark. Code Ann. § 23-100-102(a)(2).

The proposed effective date is June 1, 2022.

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

LEGAL AUTHORIZATION: The Insurance Commissioner, in consultation with the Secretary of the Department of Commerce, may make reasonable rules necessary for or as an aid to the effectuation of any provision of the Arkansas Insurance Code. *See* Ark. Code Ann. § 23-61-108(a)(1). Additionally, the Commissioner also has authority to promulgate reasonable rules deemed necessary for the administration of Title 23, Chapter 100 of the Arkansas Code, concerning the State Insurance Department Criminal Investigation Division Trust Fund Act. *See* Ark. Code Ann. § 23-100-106.

Concerning fee-making authority, Ark. Code Ann. § 23-100-102(a)(2) provides that "absent the commissioner's approval of such an extension for good cause, licensed insurers failing timely to pay the antifraud assessment shall be subject to a penalty of one hundred dollars ($100) per day for each day of delinquency, payable to the State Insurance Department Criminal Investigation Division Trust Fund."

E. Proposed Rules Recommending Expedited Process for Occupational Licensure Pursuant to Ark. Code Ann. § 17-4-109, as Amended by Act 135 of 2021.

1. DEPARTMENT OF HEALTH, ARKANSAS STATE MEDICAL BOARD (Amy Embry, Matt Gilmore)

a. Rule 42: Licensure for Uniformed Service Members, Veterans, and Spouses

2. DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS AND COMMISSIONS, CONTRACTORS LICENSING BOARD (Greg Crow)

a. Rules of the Residential Contractors Committee

b. Rules for Commercial Contractors

3. DEPARTMENT OF PUBLIC SAFETY, DIVISION OF ARKANSAS STATE POLICE (Major Lindsey Williams, Captain Mike Moyer, Joan Shipley)

a. Expedited Licensing for Veterans and Spouses; Fee Waivers for Certain Licenses

b. Used Motor Vehicle Dealer Licensing Rules

F. Monthly Written Agency Updates Pursuant to Act 595 of 2021.

G. Adjournment.