

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

Thursday, June 16, 2022

9:00 a.m.

Room A, MAC

Little Rock, Arkansas

- A. Call to Order.**
- B. Reports of the Executive Subcommittee.**
- C. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309.**
 - 1. ARKANSAS STATE POLICE RETIREMENT SYSTEM (Allison Woods)**
 - a. SUBJECT: Rule 11 – DROP Provisions**

DESCRIPTION: The Arkansas State Police Retirement System (“ASPRS”) proposes changes to its Rule 11, the Deferred Retirement Option Plan (“DROP”) Rule, to comply with Act 415 of 2021, which decreases the number of years from 30 to 28 for a member of ASPRS Tier I or Tier II to be eligible to enter the DROP. In addition, changes are being made to align the Rule with current law to provide that interest on the DROP account is applied as allowed by law. The proposed amendments to Rule 11 are consistent with Act 415 of 2021, and no other substantive change in DROP provisions has been made. Non-substantive changes include relocating the historical acts within the document and one grammatical correction that was previously promulgated in the rule.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on March 24, 2022. ASPRS received no comments.

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

Is the change from within five to within seven years of the date participation begins, in which a member must terminate his or her employment from the Arkansas State Police and start receiving a retirement benefit, being made to comply with the change that was made by Act 1969 of 2005, as codified at Ark. Code Ann. § 24-6-306(a)?

RESPONSE: That is correct. We noticed this needed to be changed to conform to law as we were making amendments to comply with the recent 2021 session act.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-6-204(f)(1), the Board of Trustees of the State Police Retirement System shall make all rules from time to time as it shall deem necessary in the transaction of its business and in administering the State Police Retirement System, in addition to other duties that are imposed upon the Board by Title 24, Chapter 6, Subchapter 2 of the Arkansas Code, concerning the State Police Retirement System. The proposed changes include those made in light of Act 415 of 2021, sponsored by Representative Les Warren and which concerned voluntary retirement, deferred retirement, employer contributions, the benefit multiplier, the election to participate, the Board of Trustees of the State Police Retirement System, and System costs.

ASPRS states that the rule is also required to comply with a federal statute, rule, or regulation, specifically, that the System must follow its plan provisions found in Arkansas law to comply with its governmental plan status under I.R.C. § 401(a).

2. **DEPARTMENT OF AGRICULTURE, COMMISSION ON WATER WELL CONSTRUCTION (Chris Colclasure, Blake Forrest, Wade Hodge)**

a. **SUBJECT: Supervision Rule**

DESCRIPTION: The Department of Agriculture’s Water Well Construction Commission (“AWWCC”) proposes changes to its Supervision Rule, requiring on-site supervision of all water well construction, installation, or repair activities (“Proposed Rule”). Currently, AWWCC Rule 3.2 provides the following: “3.2 *Supervision.* During the construction, alteration, or repair of a water well, or installation or repair of pumping equipment there must be, within a two-hour drive, a person who has obtained a registration certificate and has been certified in the type of construction engaged. The person who has obtained a registration certificate or an apprentice with proper supervision as defined by Rule 3.10.1.1 shall remain informed and have knowledge of the status of the work being accomplished.”

AWWCC has traditionally interpreted AWWCC Rule 3.2 to require either an AWWCC-certified person or an apprentice to be on-site during water well construction, alteration, and repair or water pump installation. However, upon further review it has been determined that the current rule can be interpreted to only require an AWWCC-certified person or apprentice be within two hours' drive of the site. Therefore, AWWCC voted at its regular meeting on April 2, 2021, to initiate rulemaking to clarify the Proposed Rule.

Changes to the rule include the following:

- The Proposed Rule requires an AWWCC-certified person or apprentice to be on-site at all times during the construction, alteration, or repair of a water well.
- On-site apprentices must remain under the personal supervision of an AWWCC-certified person, meaning the AWWCC-certified supervisor must be at the job site with the apprentice or within two hours' traveling distance of the apprentice whenever the apprentice is working in well construction or pump installation.
- When the apprentice's supervisor is not on-site, he or she must be aware at all times of the progress of the work being performed and reachable by wireless phone or radio.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on July 16, 2021. The Commission received no public comments. At the September 14, 2021 meeting of the Administrative Rules Subcommittee, this rule was deferred by the Subcommittee for consideration by the Legislative Council; however, the Commission pulled the rule from consideration at the Council's September 17, 2021 meeting. On April 30, 2022, the Commission notified Bureau Staff that it had recently voted to go forward with the rule, and it requested placement on the Subcommittee's agenda for legislative review and approval. Following receipt of the request, Rebecca Miller-Rice, an attorney for the Bureau of Legislative Research, asked the following question:

No additional changes were made? **RESPONSE:** Correct.

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 § 17-50-204(a), the Commission on Water Well Construction shall be responsible for the administration of Title 17, Chapter 50 of the Arkansas Code, concerning water well constructors, and shall adopt, and from time

to time amend or repeal, necessary rules governing the installation, construction, repair, and abandonment of water wells and pumping equipment. The Commission may further adopt, and from time to time amend or repeal, rules governing applications for water well contractor licenses. *See* Ark. Code Ann. § 17-50-305(a)(1).

3. **DEPARTMENT OF AGRICULTURE, VETERINARY MEDICAL EXAMINING BOARD** (Cara Tharp, Dr. Paul Turchi, Wade Hodge)

a. **SUBJECT: Veterinary Telehealth and Telemedicine**

DESCRIPTION: The Department of Agriculture’s Veterinary Medical Examining Board proposes its Veterinary Telehealth and Telemedicine Rule. Act 130 of 2021 authorized the Board to promulgate rules regarding telehealth and telemedicine. Department staff engaged with large and small animal practitioners, local and national veterinary associations, and a representative of multiple national companies to gather input regarding the proposed rule. A stakeholder meeting was held on November 9, 2021, and the Board reviewed the proposed rule on December 9, 2021, and decided that another stakeholder meeting should be held. Accordingly, another stakeholder input meeting was held on January 13, 2022, and the Board approved the proposed rule on February 3, 2022.

The stakeholder meetings have been an important part of the process in developing the proposed rule. Separate groups reached out to Department staff regarding how the veterinarian-client-patient relationship (“VCPR”) should be established. National corporations that own veterinary clinics across the country believe that the VCPR may be established virtually, while the veterinary associations believe that it should be established through an in-person examination of the animal. After discussion at the stakeholder meetings, as well as discussion by the Board at its meetings, the current version of the proposed rule requires the VCPR to be established through an in-person examination. Most other states that provide a telemedicine option also require, either by law or by rule, that the VCPR be established in-person.

The proposed rule:

- Requires that veterinarians delivering telemedicine service to a patient located in Arkansas must be licensed in Arkansas;
- Requires that a veterinarian-client-patient relationship (“VCPR”) be established by an in-person examination;
- Provides for limited exceptions to the requirement of establishing an in-person VCPR for emergencies; and
- Provides definitions of key terms such as “telehealth,” “telemedicine,” and “teletriage.”

PUBLIC COMMENT: A public hearing was held on February 25, 2022. The public comment period expired on March 12, 2022. The Board provided the following summary of the comments that it received and its responses thereto:

FOR:

American Veterinary Medical Association

Specifically support the requirement that a veterinarian providing a telemedicine service must have established a veterinary-client-patient relationship because of the many issues that can arise if such a relationship does not exist. This ensures compatibility with federal laws and regulations, and conflicting state and federal regulations can lead to confusions and enforcement challenges.

RESPONSE: The Board appreciates your comments and believes the rule reflects the intent of the law.

AGAINST:

Dr. Judith Cychol, DVM; Dr. Stephenie Kessler, DVM; Dr. Ashley Lackey, DVM

Expressed concerns that veterinarians may allow the certified veterinary technician to see the patient prior to the VCPR being established and without the veterinarian being on-site at the veterinary facility. Concerned that this may be especially true in emergency clinics or situations. Concerned that the certified veterinary technician is being used to perform the physical examination to establish the VCPR. Also concerned about teletriage being performed by televisit.

RESPONSE:

A VCPR can only be established by the veterinarian with an in-person examination. Further, Ark. Code Ann. § 17-101-306(g) states that “a licensed veterinarian shall not establish a separate office or clinic in a location other than his or her regular office and place the separate office or clinic under the control or supervision of a veterinary technician or veterinary technologist.” Teletriage authorizes veterinarians to identify patient medical emergencies, advise owners as to the appropriate steps for addressing the medical emergency, and to refer the patient to in-person emergency services. Teletriage does not authorize veterinarians to provide nonemergency medical care without establishing a VCPR through an in-person examination.

Carol Wrape

Opposed due to concerns that the pet owner cannot clearly explain their pet’s health issue to a veterinarian via a telemedicine visit, and that any treatment prescribed should be administered by the veterinarian and not

the pet owner. She stressed the importance of an in-person examination by the veterinarian.

RESPONSE:

Veterinarians will be responsible for determining whether telemedicine is an appropriate method of care based on a detailed patient history. Veterinarians engaging in telemedicine will be subject to the standards set forth in the Arkansas Veterinary Medical Practice Act and Board rules.

At the May 18, 2022 meeting of the Administrative Rules Subcommittee, these rules were deferred by the Subcommittee for consideration by the Legislative Council; however, the Board pulled the rules from consideration at the Council's May 20, 2022 meeting. On May 26, 2022, the Board requested that the rules be placed back on the Subcommittee's agenda for legislative review and approval. Following receipt of the request, Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following question:

No additional changes were made? **RESPONSE:** No change.

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 § 17-101-203(12)(B), as amended by Act 130 of 2021, § 1, the Veterinary Medical Examining Board shall have the power to promulgate rules outlining the use of telehealth and telemedicine in the practice of veterinary medicine. The proposed rules implement Act 130, which was sponsored by Representative DeAnn Vaught and authorized the Veterinary Medical Examining Board to promulgate rules regarding telehealth and telemedicine and to issue restricted licenses for veterinarians and replaced references to the secretary-treasurer and the executive secretary of the Board with the director of the Board.

**4. DEPARTMENT OF COMMERCE, STATE INSURANCE DEPARTMENT
(Dan Honey)**

a. SUBJECT: Rule 69 – Viatical Settlement Regulation REPEAL

DESCRIPTION: The State Insurance Department (“SID”) is proposing a repeal of Rule 69 concerning viatical settlement regulation, as it is obsolete. Rule 69 was originally promulgated to implement Act 490 of 1997. Act 490 of 1997 was later repealed and replaced by Act 796 of

2009. Although Act 769 of 2009 provided permissive authority to SID to promulgate a rule, the Commissioner has determined that the legislation included sufficient detail and directives, and is therefore self-executing.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on May 10, 2022. The agency received no comments.

The proposed effective date is July 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: 1) may make reasonable rules necessary for or as an aid to effectuation of any provision of the Arkansas Insurance Code and 2) has 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(a)(1), (b)(1).

The Insurance Commissioner may also promulgate rules implementing Title 23, Chapter 81, Subchapter 8 of the Arkansas Code, concerning the Life Settlements Act, regulating the activities and relationships of providers, brokers, insurers, and their agents, subject to statutory limitations on administrative rulemaking. *See* Ark Code Ann. § 23-81-812(a).

5. DEPARTMENT OF CORRECTIONS (Solomon Graves)

a. SUBJECT: Extended Juvenile Jurisdiction Transfers and Access to Confidential Juvenile Records

DESCRIPTION: Act 187 of 2021, now codified at Ark. Code Ann. § 9-28-217(a), requires the Board of Corrections to promulgate rules to establish the manner in which juvenile records will be used and procedures for requesting access to these records. This Act provides that the Department of Corrections (“DOC”) may access confidential records for the purpose of creating risk assessments, treatment plans, classification plans, or supervision plans for each juvenile who has been sentenced pursuant to Extended Juvenile Jurisdiction and comes under the supervision or enters the custody of the DOC as an adult from the Division of Youth Services (“DYS”).

The proposed rule defines juvenile records and sets out a broad framework for accessing these records. It also establishes the manner in which confidential juvenile records will be used by the DOC, a designated custodian, and a framework through which DYS will provide juvenile records in order to maintain the confidentiality of these sensitive records.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on May 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: Act 187 of 2021, sponsored by Representative Charlene Fite, allowed confidential juvenile records to be released to the Department of Corrections in certain circumstances. Pursuant to the Act, the Department of Corrections shall promulgate rules for the implementation, which shall prescribe the procedure for requesting confidential juvenile records under this section and the manner in which the records shall be used. *See* Ark. Code Ann. § 9-28-217(a)(19)(B).

6. **DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION (Whitney James)**

a. **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.

After the public comment period, the rules were amended to state that the Division of Elementary and Secondary Education shall cooperate with the Arkansas Council for Military Children to develop a guidance document to assist parents with the applications and provisions of the Arkansas Military Child School Transitions Act and these 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): 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		Table of Contents – 10-25-21 dkb Version	
Chapter 2 – Public School Duties		Chapter 2 – Public School Duties	
2-1.00	School Transition of Children of Military Families <i>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.</i> <i>Which ToC version better reflects statute?</i> <i>The markup version ^^</i> ... or the one on the right >>>?	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
2-2.00	Reporting	2-12.00	New Student Reception Programs – School District Military Family Education Coordinators (DMECs)
2-3.00	New Student Recognition Programs and School District Coordinators	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. **Division Response:** Comment considered. Please see commenter’s draft (attached). [Bureau Staff Note: A copy of the commenter’s proposed draft of rules was provided to Bureau Staff.] 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.”

At the April 20, 2022 meeting of the Administrative Rules Subcommittee, the rules were pulled from consideration at the agency's request. On May 12, 2022, the Division requested that the rules be placed back on the Subcommittee's agenda for legislative review and approval. Upon receiving this request, Ms. Miller-Rice asked the following questions:

(1) Just to be clear, the only change made to the rules since they were pulled from the Subcommittee's agenda was the inclusion of Section 3-5.00, Guidance for Parents, providing that DESE will cooperate with the Arkansas Council for Military Children to develop a guidance document to assist parents? **RESPONSE:** Yes, this is correct.

(2) Can you please provide me with a copy of the guidance document developed? **RESPONSE:** It is my understanding that the guidance is in the process of being drafted and I will certainly send you a copy once it is finished.

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, which was sponsored by Senator Jane English, created the Arkansas Military Child School Transitions Act of 2021, and advanced achievement of educational success on behalf of children of military families.

7. **DEPARTMENT OF EDUCATION, DIVISION OF HIGHER EDUCATION**
(Whitney James)

a. **SUBJECT: Rules Governing the Star-Spangled Banner Act**

DESCRIPTION: The Department of Education's Division of Higher Education proposes its Rules Governing the Star-Spangled Banner Act. The rules outline the requirements per Act 958 of 2021 regarding the broadcast and performance of "The Star-Spangled Banner" at the commencement of school-sanctioned sporting events. The rules also include requirements regarding the permissible versions or arrangements of "The Star-Spangled Banner" that state-supported institutions of higher education may select for broadcast or performance.

PUBLIC COMMENT: A public hearing was held on February 8, 2022. The public comment period expired on February 16, 2022. The Division received no comments.

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 958 of 2021, sponsored by Representative Mark Berry, which created the Star-Spangled Banner Act. Pursuant to Arkansas Code Annotated § 6-60-116(e), as amended by Act 958, § 2, the Division of Higher Education shall promulgate rules to implement the Star-Spangled Banner Act, Ark. Code Ann. § 6-60-116.

8. DEPARTMENT OF HEALTH, ARKANSAS STATE BOARD OF NURSING (Amy Embry, Sue Tedford, Matt Gilmore)

a. SUBJECT: Chapter Eleven – Full Independent Practice Credentialing Committee

DESCRIPTION: In accordance with Act 412 of 2021, this chapter establishes Rules for the Full Independent Practice Credentialing Committee.

Following expiration of the public comment period, the agency submitted a revised markup, which included the following changes:

- Section III A(2) – reduced the number of letters of reference from three to one;
- Section III A(5) – added the requirement for all applicants to submit a notarized affidavit attesting to the number of clinical practice hours; and
- Section III A(6)(a) and (b) – deleted the affidavit from the collaborating physician and other documents required to prove the number of clinical practice hours.

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:

Karen Reynolds (Email dated 11/7/21)

Comment: “We [are] still going through everything but the BIG thing we think we should ask before these go out is change verbiage from “full practice authority” to “full independent practice” like the Act calls it and

like the Committee calls it to decrease confusion of NPs on so many levels. I don't want APRNs to be confused that it is full practice authority."

Response: All references were changed to "full independent practice authority" to be consistent with the language in the statute creating the Full Independent Practice Credentialing Committee.

Barbara McDonald, FNP-BC, MSN, BSN (Letter dated 2/15/22)

Comment: "Thank you for allowing me to comment on Chapter eleven full independent practice credentialing committee pursuant to Ark. Code Ann. 17-87-314, et seq. I am an Advanced Practice Nursing (APN) with almost twelve years' experience in both the military and civilian sector. In the U.S. Air Force, this Family Nurse Practitioner was able to prescribe all medications except Schedule 1 and specifically identified medications without a physician's co-signature or a collaborating practice agreement. APNs in the military are trusted to safely provide care including prescribing medications and durable medical equipment (DME) to members of the Armed Forces and their family members without a collaborating practice agreement or physician's co-signature. This APN is in full support of Chapter Eleven Full Independent Practice Credentialing Committee except for requiring a minimum of 6,240 hours of practicing under a collaborating practice agreement to qualify for full independent practice. I will provide supporting evidence on why an APN should not be required to have a collaborating practice agreement to prescribe medications. In summary this APN is in support of Chapter eleven full independent practice credentialing committee except for the requirement of 6,240 hours under a collaborative practice agreement prior to being able to apply for full independent practice." *Purpose and Authority* – The full Independent Practice Credentialing Committee should be allowed to review and act on applications for full independent practice and any complaints filed against those granted full independent practice. Allowing the Full Independent Practice Credentialing Committee to make these decisions follows Article Four, Section Three of the U.S. Constitution (Hudspeth & Klein, 2019). This article gives the state of Arkansas the responsibility and the ability to select this committee to approve scope of practice for healthcare professionals. Dr. Loretta Ford (founding NP) and Dr. Henry Silver (Pediatrician) both envisioned the APN working autonomously as primary care providers (Peacock & Hernandez, 2020). The APN role was created to overcome primary care provider shortages and healthcare disparities, issues that continue to exist in Arkansas (Arkansas Center for Health Improvement [ACHI], 2021; Peacock & Hernandez, 2020). According to the American Association of Nurse Practitioners (AANP), "state practice and licensure law [provides] for all nurse practitioner to evaluate patients, diagnose, order, and interpret diagnostic tests, initiate, and manage treatments- including [prescribing medications]- under the exclusive licensure authority of the State Board of

Nursing” (2018, para. 2). The Full Independent Credentialing committee being a part of the Arkansas State Board of Nursing would meet the intent recommended by the AANP. *Section III, Qualifications for Full Independent Practice* - The APN should be required to apply for full independent practice and attaining 3 letters of recommendation as part of the application process. The APN must possess an active unencumbered Arkansas APN license and unencumbered prescriptive authority certificate or equivalent in the state of licensure. This APN does not agree with the requirement of having an affidavit from the collaborating physician(s) attesting that the APN has practiced a minimum of 6,240 hours under a collaborative practice agreement. The AANP affirms that the education the APN receives both clinically and academically prepares the APN to practice and pass standardized national certification exams (American Association of Nurse Practitioners [AANP], 2020). Arkansas continues to be above the national average of 1,320:1 in primary care providers to patient ratio with the state average of 1,510:1 to as high as 14,850:1 in some underserved areas (University of Wisconsin Population Health Institute & Robert Wood Johnson Foundation, 2021). APNs can improve healthcare access and health outcomes to the people of Arkansas especially those traditionally living in underserved area. The APN scope of practice includes the management of healthcare from preventative medicine to treatment of chronic diseases and follow up care in primary care, mental health, pediatrics, women’s health, geriatrics, and acute patient care (Barnett et al., 2021). The APN is prepared to educate, diagnose, order diagnostic testing, and treat the patient (includes prescribing medications and durable medical equipment). Requiring the APN to have 6,240 hours of prior collaborative practice agreement with a collaborating physician creates another barrier to the time when APNs can impact health disparities in Arkansas.

Response: The 6,240 hour requirement is part of the statute and cannot be changed by rule.

Donna Gullette, PhD, APRN, AGACNP-BC, FAANP, Professor, College of Nursing, Associate Dean for Practice (Email dated 2/17/22)

Comment: “Hi Dr. Tedford, first I would like to thank the Board of Nursing for working so hard to make these revisions. I am looking forward to independent practice. In chapter 4, the words in Section 3 F. “full practice authority” is used. Then in proposed chapter 11, the words “full independent practice” is used. Shouldn’t they be the same in both?”

Response: The term “full independent practice authority” was used in Chapter 11 to be consistent with the language in the statute creating the Full Independent Practice Credentialing Committee.

Charlotte Denton (Email dated 2/17/22)

Comment: I highly recommend APN private practice without collaboration with physicians. Thank you.

Response: No response is required as the comment is in support of the new statute.

Jessica Mobley, APN (Email dated 3/1/22)

Comment: “I am writing to you in support of Full Practice Authority for nurse Practitioners. NPs provide comprehensive care and are the preferred provider for many patients. The rural areas of our state are very underserved medically and NPs are a great way to serve this need. Again, I am in full support and look forward to the process being completed so that NPs can provide the care patients deserve without having to worry about paying collaborative practice physicians, many of whom they do not actually need input from in order to provide a high level of care. Please count this email as another in support of FPA.”

Response: No response is required as the comment is in support of the new statute.

Freddie Mobley (Email dated 3/1/22)

Comment: “I offer my full support of the full practice authority. Rural Arkansas is in need of having more and better access the healthcare. It is becoming more challenging to attract doctors to practice medicine in rural areas. Thank you for considering this opportunity for nurse practitioners.”

Response: No response is required as the comment is in support of the new statute.

Austin Berry, BSN, SRNA (Email dated 2/24/22)

Comment: “My name is Austin Berry BSN, SRNA. I am a student currently seeing my Doctor of Nursing Practice (DNP). The DNP education has provided me knowledge to critically analyze health care policies with the goal of advocating for the nursing profession and the individuals effected by the nursing profession (American Association of Colleges of Nursing, 2006). I am writing this comment letter to oppose the membership structure of the Chapter 11: Full Independent Practice Credentialing Committee under Act 412, Arkansas Code § 17-87-314. Currently the Full Independent Practice Credentialing Committee is to consist of three faculty Physicians, one Physician at large, three faculty Nurse Practitioners (NPs) from Arkansas nursing schools, and one certified NP from Arkansas at large. I propose that the committee instead include eight NPs; four faculty NPs (one each from the University of Arkansas, University of Arkansas for Medical Sciences, University of Central Arkansas, and Arkansas State University) and four NPs from Arkansas at large. My concern is that the current committee structure consisting of Physicians and NPs may foster unneeded conflict and decrease committee collaboration. According to David Farris of Inside Higher Ed who has worked in higher education for nearly 13 years and conducted doctoral research on behaviors in administrative committees, increased position stratification within committees can negatively impact

collaboration between committee members (Farris, 2017). Committee position stratification between physicians and NPs can potentially impair committee member collaboration via biases amongst the physicians and NPs. Physicians and their professional organizations actively oppose movements towards Advanced Practice Registered Nurses (APRNs) attaining full practice authority and I am concerned that these biases and views could infiltrate the committee. Furthermore, through review of literature, Schirle et al. (2018) found that barriers to optimal APRNs practice environment included poor physician and administrative relations and policy restrictions on practice. The inclusion of physicians in the committee could bring unnecessary bias and poor inter-professional relations that consequently could decrease committee member collaboration. Decreased collaboration could lead to decreased efficiency and decreased number of certifications for full independent practice authority. In the circumstance of these possibilities becoming reality, the United States (U.S.) health care system and U.S. citizens could be negatively impacted. Reducing the number of independently practicing NPs further depletes an already depleted pool of primary care providers, decreases access to primary care, and increases health disparities in health professional shortage areas. Lack of access to primary care causes worse health care and patient mortality incurred by the U.S. health care system (Bosse et al., 2017). Independently practicing NPs can combat this because they provide care associated with lower costs compared to physicians, increased routine checkups, increased health care utilization, significantly fewer emergency room visits, decreased hospitalization rates, and improved patient satisfaction (Bosse et al., 2017; Depriest et al., 2020). Allowing APRNs to practice independently has shown to improve healthy equity at decreased cost to patients, U.S. health care systems, and payers (Boss et al., 2017). We should do what we can to mitigate barriers allowing APRNs to practice independently so that our healthcare system and our patients can benefit. With the current committee structure, there's potential barriers, and for that reason, I ask that the current Full Independent Practice Credentialing Committee membership be amended from Physicians and NPs to instead include eight NPs; four faculty NPs (one each from the University of Arkansas, University of Arkansas for Medical Sciences, University of Central Arkansas, and Arkansas State University) and four NPs from Arkansas at large. Thank you for your time and consideration."

Response: The membership structure of the Full Independent Practice Credentialing Committee is outlined in the statute and it cannot be changed by rule.

Rhonda Finnie, University of Central Arkansas (Attended Public Comment Hearing on 3/2/22)

Comment: Finnie stated she was "excited to see a collaboration. This does not change the population I care for or the knowledge that I have."

Response: Ms. Tedford thanked Ms. Finnie for attending the public hearing and for her comments.

Eddy Hord, MD, President, Arkansas Academy of Family Physicians (Email dated 3/14/22)

Comment: The Arkansas Academy of Family Physicians is concerned about the language included in the proposed rules specifically as it applies to “prescriptive authority” and “area of practice.” The ambiguity is presented in Section II (A) regarding definition of terms. The language is then implicit through the remainder of the document. We are uneasy that the rules imply that the approved nurse practitioners will only be able to practice in their specific areas of training, but the document does not expressly limit them as such. The proposal only directly addresses prescribing drugs and devices but does not prohibit consulting with, examining or otherwise managing patients outside of their area of education and training. The Academy is respectfully asking for clarity from the committee regarding this matter.

Response: A Certified Nurse Practitioner who is granted Full Independent Practice Authority will still be required to comply with the Nurse Practice Act, including those sections that apply to scope of practice.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions and received the following answers thereto:

1. Is the Arkansas State Board of Nursing (ASBN) promulgating these rules on behalf of the Full Independent Practice Credentialing Committee (FIPCC)?

(a) If so, could you please specifically identify the statutory rulemaking authority that ASBN is relying upon in promulgating rules for FIPCC?

(b) Section 1(B) of the rules cites Ark. Code Ann. § 17-87-314 et seq. as “legal authority” for these rules. In addition, the Administrative Procedure Act is identified as rulemaking authority on the questionnaire. Could you please identify the specific statutory rulemaking provision that is being relied upon by ASBN to promulgate these rules?

RESPONSE: Ark. Code Ann. § 17-87-314 and 316 were placed into the Nurse Practice Act. There is nothing in either statute that states where the rules should be published. We consulted with the AG’s office and it was determined to house the rules under the Nursing Board Rules, since the FIPCC statutes are part of the Nurse Practice Act. The authority is contained in Ark. Code Ann. § 17-87-203(1)(A) which states that “the Arkansas State Board of Nursing shall have the powers and responsibilities to promulgate whatever rules it deems necessary for the implementation of this chapter.” The FIPCC statutes are part of this chapter.

2. Ark. Code Ann. § 17-87-316 states that FIPCC “may promulgate rules as necessary to administer fees, rates, or charges for application, certification, endorsement, certification for prescriptive authority, certification renewal, and other reasonable services as determined by the committee.” In light of this language, could you please explain ASBN’s authority to promulgate rules concerning FIPCC fees?

RESPONSE: The FIPCC is the entity who determined the fees and promulgated the rules. The Board of Nursing simply voted to approve and promulgate what the FIPCC had previously promulgated and created. Because the FIPCC statutes are part of the Nurse Practice Act, the rules are being submitted as part of the Nursing Board Rules.

3. The markup does not appear to match the clean copy of the rule in section III(A)(5)(a). Could you please explain this discrepancy or provide a revised markup? **RESPONSE:** In reference to Section III(A)(5)(a), it appears a line was omitted on the mark-up copy and the clean copy is correct. [A revised markup was submitted.]

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the proposed rules have a financial impact of \$5,095 for the current fiscal year and \$8,568 for the next fiscal year, explaining that the fiscal cost for implementation of Act 412 is related to the per diem and mileage paid to the Committee members. There was no cost associated with reprogramming the licensure database to include the applications for independent practice.

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). These rules implement Act 412 of 2021, sponsored by Representative Lee Johnson, which 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).

9. **DEPARTMENT OF HEALTH, ARKANSAS STATE MEDICAL BOARD**
(Amy Embry, Matt Gilmore)

a. **SUBJECT: Rule Changes Pursuant to Act 990 of 2019**

DESCRIPTION: The Arkansas Department of Health, Arkansas State Medical Board is seeking review of proposed changes to rules concerning the Medical Practices Act. This rule amendment will change the term “regulation” to “rule” throughout, and remove references to “immoral” and “moral turpitude” pursuant to Act 990 of 2019.

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

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas State Medical Board has authority to make and adopt all rules and bylaws not inconsistent with the laws of this state or of the United States and necessary or convenient to perform the duties and to transact the business required by law. *See* Ark. Code Ann. § 17-95-303(1). In addition, the board has authority to promulgate and put into effect such rules as are necessary to carry out the purposes of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and the intentions expressed therein. *See* Ark. Code Ann. § 17-95-303(2).

b. **SUBJECT: Rule No. 36: Rules Governing Procedures for Abortions**

DESCRIPTION: The Arkansas State Medical Board is seeking review of an amendment to the rules governing procedures for abortions. The board voted to combine Rule 26 (Governing Informed Consent for an Abortion) with Rule 36 (Regulations Governing Procedures for Abortions). Once combined, amendments were made pursuant to Act 560 of 2021, Act 562 of 2021, Act 498 of 2021, Act 801 of 2019, Act 740 of 2021, Act 953 of 2019, Act 383 of 2017, and Act 522 of 2019. Key points include changes due to legislative acts, changes to chemical abortions and abortion-inducing drugs, additional instructions regarding procedures prior to informed consent pursuant to Act 498, and changes to informed consent requirements.

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

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas State Medical Board has authority to make and adopt all rules and bylaws not inconsistent with the laws of this state or of the United States and necessary or convenient to perform the duties and to transact the business required by law. *See* Ark. Code Ann. § 17-95-303(1). In addition, the board has authority to promulgate and put into effect such rules as are necessary to carry out the purposes of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and the intentions expressed therein. *See* Ark. Code Ann. § 17-95-303(2). This rule implements Acts 498, 560, 562, and 740 of 2021.

Act 498 of 2021, which was sponsored by Senator Cecile Bledsoe, amended the right to view ultrasound images before an abortion and created the Right-To-Know-And-See Act. *See* Act 498 of 2021.

Act 560 of 2021, which was sponsored by Representative Robin Lundstrum, created the Informed Consent for Chemical Abortion Act. Pursuant to the Act, the Arkansas State Medical Board shall promulgate rules to ensure that physicians who perform abortions, referring physicians, or agents of either physician comply with all the requirements of the Informed Consent for Chemical Abortion Act. *See* Ark. Code Ann. § 20-16-2506(b).

Act 562 of 2021, which was sponsored by Representative Sonia Eubanks Barker, amended the Abortion-Inducing Drugs Safety Act. *See* Act 562 of 2021.

Act 740 of 2021, which was sponsored by Senator Ben Gilmore, amended the laws concerning abortion facilities, required abortion facilities to post information regarding human trafficking and to provide Laura's Card to patients, amended the definition of "abortion" within the Cherish Act, required written agreements between an abortion facility and a hospital, and required written agreements between an abortion facility and an ambulance service. *See* Act 740 of 2021.

c. **SUBJECT: Rule No. 38: Telemedicine**

DESCRIPTION: The Arkansas Department of Health, Arkansas State Medical Board is seeking review of a proposed rule amendment. Pursuant to Act 1112 of 2021, the proposed rules allow the use of telemedicine to recertify a patient for a medical marijuana registry card if a patient/provided relationship has been established under Rule 2.8.

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

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas State Medical Board has authority to make and adopt all rules and bylaws not inconsistent with the laws of this state or of the United States and necessary or convenient to perform the duties and to transact the business required by law. *See Ark. Code Ann. § 17-95-303(1).* In addition, the board has authority to promulgate and put into effect such rules as are necessary to carry out the purposes of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and the intentions expressed therein. *See Ark. Code Ann. § 17-95-303(2).*

This rule implements Act 1112, sponsored by Senator Greg Leding, which amended the definitions of “professional relationship” and “telemedicine” within the Telemedicine Act and allowed telehealth certification for medical marijuana. *See Ark. Code Ann. § 17-80-402.*

d. **SUBJECT: Rule No. 42: Licensure for Uniformed Service Members, Veterans, and Spouses**

DESCRIPTION: The Arkansas Department of Health, Arkansas State Medical Board is seeking review of a proposed amendment to Rule 42 of the Medical Practices Act rules regarding licensing requirements governing military, veterans, and spouses.

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 April 20, 2022. A public hearing was held on March 22, 2022. The

public comment period expired on March 22, 2022. The board received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas State Medical Board has authority to make and adopt all rules and bylaws not inconsistent with the laws of this state or of the United States and necessary or convenient to perform the duties and to transact the business required by law. *See* Ark. Code Ann. § 17-95-303(1). In addition, the board has authority to promulgate and put into effect such rules as are necessary to carry out the purposes of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and the intentions expressed therein. *See* Ark. Code Ann. § 17-95-303(2).

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 and modified the automatic occupational licensure requirements for uniformed services members, returning uniformed services veterans, and their spouses.

e. **SUBJECT: Rule No. 46: Administrative Fees and Renewal Fees**

DESCRIPTION: The Arkansas Department of Health, Arkansas State Medical Board is seeking review of a proposed rule regarding administrative and renewal fees. The proposed changes were required by Acts 725 of 2021, 1101 of 2021, and 803 of 2021 to provide information regarding any required waivers, administrative fees and costs, and a multi-year license for physicians.

PUBLIC COMMENT: A public hearing was held on March 22, 2022. The public comment period expired on March 22, 2021. The board received no comments.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses thereto:

1. Does this rule propose any new fees? **RESPONSE:** Only one; the \$440 fee for a two-year renewal for physicians per Act 803 of 2021.

FOLLOW-UP: Other than the new fee pursuant to Act 803, are any fees being added or removed by this rule? **RESPONSE:** No.

FOLLOW-UP: Are any existing fee amounts being increased or decreased by this rule? **RESPONSE:** No.

2. Concerning the return check fee and the replacement wall certificate fee listed under the miscellaneous section, could you please provide statutory authority for these fees? **RESPONSE:** The returned check fee is not part of the Medical Board statutes. When a check is returned to the Treasury/Department of Health due to insufficient funds, they are notified by the Department of Health and the statutes listed are 5-37-302 through 5-37-307. This has been included on the fee list to inform the applicants that an additional fee will be charged. In regards to the wall certificate, there is not authority. This can be removed if necessary. [A revised markup was submitted removing the fee.]

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 Medical Board has authority to make and adopt all rules and bylaws not inconsistent with the laws of this state or of the United States and necessary or convenient to perform the duties and to transact the business required by law. *See* Ark. Code Ann. § 17-95-303(1). In addition, the board has authority to promulgate and put into effect such rules as are necessary to carry out the purposes of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and the intentions expressed therein. *See* Ark. Code Ann. § 17-95-303(2). The proposed rules implement Acts 725, 803, and 1101 of 2021.

Act 725 of 2021, which was sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021.

Act 803 of 2021, which was sponsored by Representative Monte Hodges, authorized a multi-year license or registration for a physician by the Arkansas State Medical Board.

Act 1101 of 2021, which was sponsored by Representative Justin Gonzales, provided that: (1) an agency shall not assess a fee or penalty without specific statutory authority to assess a certain type of fee or penalty, or specific statutory authority to impose a fee or penalty in general, and (2) an agency assessing or imposing a fee or penalty shall promulgate the fee or penalty by rule. *See* Ark. Code Ann. § 25-15-105. However, an agency is not required to promulgate a fee or penalty by rule if the specific amount of the fee or penalty is set by statute. *See* Ark. Code Ann. § 25-15-105(2)(B).

f. **SUBJECT: Rule No. 34: Requirement of Licensed Physicians in Completing Death Certificates**

DESCRIPTION: The Arkansas Department of Health, Arkansas State Medical Board is seeking review of a proposed amendment to Rule 34 of the Arkansas Medical Practices Act rules regarding the filing of death certificates. This amendment is necessary due to Act 674 of 2021. It removes from the waiver requirements the lack of reliable internet and the lack of training or technical assistance from the ADH division on the use of the system. It increases the number of medical certifications from fewer than five per month to fewer than 10 per year.

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

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas State Medical Board has authority to make and adopt all rules and bylaws not inconsistent with the laws of this state or of the United States and necessary or convenient to perform the duties and to transact the business required by law. *See* Ark. Code Ann. § 17-95-303(1). In addition, the board has authority to promulgate and put into effect such rules as are necessary to carry out the purposes of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and the intentions expressed therein. *See* Ark. Code Ann. § 17-95-303(2).

This rule implements Act 674 of 2021, sponsored by Representative Mark Perry, which amended the death certificate registration process for the signature of the medical certificate.

10. **DEPARTMENT OF HEALTH, STATE BOARD OF OPTOMETRY (Tanya Ford, Matt Gilmore)**

- a. **SUBJECT: Chapter I Article III – Entrance Examination; Chapter I Article IV – Reciprocity, Licensure by Endorsement, Military Personnel; Chapter I Article VIII – Continuing Education; and Chapter IX Article I – Pre-Licensure Criminal Background Check**

DESCRIPTION: The State Board of Optometry has authority to make rules for the administration and enforcement of Title 17, Chapter 90 of the Arkansas Code concerning optometrists. The revised rule proposes the following changes:

- Chapter I, Article III – Section 3 adds the fee for the initial license and the waiver of the initial license fee for those individuals listed in Act 725; Section 4 adds language regarding applicants with “work permits” in accordance with Act 746.
- Chapter I, Article IV – removes outdated language regarding reciprocity as required by Act 143 of 2017; removes reference to “moral reputation and character” from license qualification in accordance with Act 990 of 2019; adds fee for background checks; amends the Board’s current language regarding military personnel licensure in accordance with Act 135.
- Chapter I, Article VIII – adds the fee for the Board’s jurisprudence continuing education course in accordance with Act 1101.
- Chapter IX, Article I – 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 April 19, 2022. The agency received no comments.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses thereto:

1. Please provide fee-making authority for the \$38.50 background check fee referenced in Chapter 1, Article IV, Section III of the rules.

RESPONSE: Ark. Code Ann. § 17-90-302(b).

2. Please provide fee-making authority for the \$35 online jurisprudence course fee referenced in Chapter 1, Article VIII, Section I of the rules.

RESPONSE: Ark. Code Ann. § 17-90-301(c).

The proposed effective date is July 1, 2022.

FINANCIAL IMPACT: The agency indicated that the proposed rules have a financial impact, with an estimated cost of \$450 for the current fiscal year and \$900 for the next fiscal year. The agency 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 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 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. For the current fiscal year, the average number of new applicants was cut in half since the rule would not be applicable until January 1, 2022.

LEGAL AUTHORIZATION: Concerning rules, the State Board of Optometry has authority to make rules for the administration and enforcement of Title 17, Chapter 90 of the Arkansas Code, concerning optometrists. *See* Ark. Code Ann. § 17-90-204(a). Concerning fees, all persons applying for examination and registration shall be required to pay the secretary-treasurer of the State Board of Optometry a fee in a reasonable amount to be fixed by the board. *See* Ark. Code Ann. § 17-90-301(c). The proposed rules implement Acts 135, 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 and modified the automatic occupational licensure requirements for uniformed service members, returning uniformed service veterans, and their spouses.

Act 725 of 2021, which was sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021.

Act 746 of 2021, which was sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals.

Act 748 of 2021, which was sponsored by Representative Bruce Cozart, amended occupational criminal background checks.

Act 1101 of 2021, which was sponsored by Representative Justin Gonzales, amended Arkansas law concerning administrative fees and

penalties and amended the law concerning review of agency rules by the Legislative Council.

11. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES** (Mark White, Melissa Weatherton)

a. **SUBJECT: Occupational Therapy, Physical Therapy, and Speech-Language Pathology State Plan Amendment**

DESCRIPTION:

Statement of Necessity

This amendment updates the Arkansas Medicaid State Plan with the new occupational therapy, physical therapy, and speech-language pathology services rate review methodology and most recent rate review results.

Rule Summary

This rule updates the occupational therapy, physical therapy, and speech-language pathology services rate review methodology. It also includes a timeframe for implementing rate adjustments related to the most recent rate review.

PUBLIC COMMENT: A public hearing was held on this rule on April 18, 2022. The public comment period expired on May 7, 2022. The agency provided the following summary of the public comments it received and its responses to those comments:

Commenter's Name: Dana Warren, Program Coordinator, ABC Children's Academy & Recovery Zone Pediatric Therapy

1. How does Medicaid plan to retroactive bill the rate increase as providers cannot hold billing due to operational costs?

RESPONSE: Thank you for your comment. Once all final approvals for the State Plan Amendment are received, the Division of Medical Services will perform a retroactive mass adjustment to all applicable procedure codes for service dates on or after April 1, 2022. If on the date of the mass adjustment, a provider has already been paid (at the current rate) for one of the applicable procedure codes with a service date on or after April 1, 2022, then the provider will automatically receive a payment for the difference between the new higher rate and the amount already paid at the old rate. The mass adjustment will occur automatically for all such claims

without any provider action. The new rates will be uploaded into MMIS on July 1, 2022. So, if on the date of the mass adjustment, a provider had not already billed one of the applicable procedure codes for a service date on or after April 1, 2022, then the provider would submit the claim through the MMIS portal (as per standard operating procedures) and any such claims would pay at the new rate.

2. Voiding and Rebilling claims makes sense but a lot of unnecessary work. Is it possible to move forward with correct payment now? Or will there be a difference payment check issued for services rendered from April 1st to June 30th that were paid out on the lower amount?

RESPONSE: Thank you for your comment. Once all final approvals for the State Plan Amendment are received, the Division of Medical Services will perform a retroactive mass adjustment to all applicable procedure codes for service dates on or after April 1, 2022. If, on the date of the mass adjustment, a provider has already been paid (at the current rate) for one of the applicable procedure codes with a service date on or after April 1, 2022, then the provider will automatically receive a payment for the difference between the new higher rate and the amount already paid at the old rate. The mass adjustment will occur automatically for all such claims without any provider action. The new rates will be uploaded into MMIS on July 1, 2022. So, if on the date of the mass adjustment, a provider had not already billed one of the applicable procedure codes for a service date on or after April 1, 2022, then the provider would submit the claim through the MMIS portal (as per standard operating procedures) and any such claims would pay at the new rate.

Commenter's Name: Morgan Hegi, DPT

COMMENT: To whom it may concern, I am writing to you in regards to the proposed rule to amend the Medicaid fee schedule rates for occupational therapy, physical therapy, and speech therapy treatment services. I urge you to please support this proposal.

These rates have not been increased since 2008. Over the last 14 years, our economy has seen significant inflation and rising costs of living as well as rising costs of education. For example, the average cost for annual in-state tuition of a public physical therapy doctorate program for the 2007-2008 academic year in the United States was \$11,410. For 2020-2021, this average cost was \$19,847. Medicaid fee schedule rates of treatment services for occupational, physical, and speech therapies should reflect these increased costs over the years as it costs more to obtain degrees, operate therapy clinics and facilities, hire staff, and provide the best patient care possible.

Physical, occupational, and speech therapies are necessary medical services to help improve patients' functioning within society as well as increase quality of life. I strongly encourage you to support the proposed increase in Medicaid fee schedule rates for these therapy treatment services to better the care and lives of many Arkansans.

RESPONSE: Thank you for your comments.

Commenter's Name: Melinda Lunn, Owner, Cross Therapy Services

COMMENT: I just wanted to say that I fully support this because I've had this clinic for 24 years now. And there's only been one increase in payment in the 24 years and the cost of our equipment goes up, the cost of insurance, cost of living, all continues to increase, but that the increase in our treatment sessions have not taken place, and so I am in full support of raising the pay rate.

RESPONSE: Thank you for your comments.

The proposed effective date is July 1, 2022, with a retroactive date to April 1, 2022.

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

Per the agency, the total cost to implement this rule is \$6,745,537 for the current fiscal year (\$1,914,383 in general revenue and \$4,831,154 in federal funds) and \$52,277,913 for the next fiscal year (\$14,836,472 in general revenue and \$37,441,441 in federal funds). The total estimated cost by fiscal year to state, county, and municipal government as a result of this rule is \$1,914,383 for the current fiscal year and \$14,836,472 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 Ark. Code Ann. §§ 20-76-201, 20-77-107, and 25-10-129.

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

The purpose of this Rule is to implement the requirements of Ark. Code Ann. §§ 20-76-201, 20-77-107, and 25-10-129.

- (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 purpose of this Rule is to implement the requirements of Ark. Code Ann. §§ 20-76-201, 20-77-107, and 25-10-129.

- (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;*

There are no less costly alternatives.

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

N/A

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

N/A

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

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

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program

(Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

b. **SUBJECT: Developmental Therapy Services Medicaid Manual Section II**

DESCRIPTION:

Statement of Necessity

The Division of Developmental Disabilities Services amends the Developmental Therapy Services Medicaid Manual to conform to other division Medicaid manuals and create a clearer and more readable manual. It also aligns the requirements with existing federal regulations under Part C of the Individuals with Disabilities Education Act.

Rule Summary

The proposed rule:

- Changes the name of services from “rehabilitation therapy” to “developmental therapy”;
- Reorganizes the manual into sections mirroring other Division of Developmental Disabilities Services Medicaid manuals;
- Updates the table of contents to reflect new document organization;
- Directs that therapeutic activities must include the parent, family member, or other designated care giver;
- Removes billing procedures that are covered in other Medicaid manuals; and
- Provides clarification concerning minimum requirements for:
 - Service documentation;
 - Prescription for developmental therapy services;
 - Qualifying diagnosis or developmental delay criteria; and
 - Individual service plan content.

PUBLIC COMMENT: A public hearing was held on this rule on April 28, 2022. The public comment period expired on May 9, 2022. The agency provided the following summary of the public comments it received and its responses to those comments:

Commenter's Name: Holly Johnson, Senior Assistant Attorney General, Medicaid Fraud Control Unit, Office of Arkansas Attorney General Leslie Rutledge

1. Pursuant to the directions outlined for public comments in the April 7, 2022, Memorandum (Developmental Therapy Services Manual Section II), please find the following response to the proposed rule revisions:

I recommend adding language under 202.000, Developmental Therapy Service Documentation, as part (B), to match language in the Outpatient Behavioral Health Services (OBHS) II Manual. The language is in OBHS, Section 226.100 (Documentation), parts A and E. The recommended language to be added under part (B) service documentation is:

A. Must be individualized to the beneficiary and specific to the services provided duplicated notes are not allowed; and

E. The setting in which the services were provided. For all settings other than the provider's enrolled sites, the name and physical address of the place of service must be included.

The highlighted (underlined) parts are the most important.

RESPONSE: Thank you for your comment. A new Section 202.000(B)(4) of the Developmental Therapy Services Manual will be added that states, "A description of the setting where the developmental therapy service is provided, which must include a physical address;". The current Section 202.000(B)(4) and (5) will be changed to become Section 202.000(B)(5) and (6) respectively, with Section 202.000(B)(6) being changed to read "Written progress notes signed or initialed by the person(s) providing the developmental therapy service describing the client's status with respect to his or her IFSP goals and objectives; duplicative or cut and paste progress notes are not permitted."

2. In addition, as to deleting 215.100 – Extension of Benefits, is this section generically addressed somewhere else with respect to requesting benefit extensions, approval or denial of such requests, and obtaining appropriate forms, e.g.?

RESPONSE: Thank you for your comment. There is no Medicaid funded extension of benefits available for developmental therapy services.

The proposed effective date is July 1, 2022.

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

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

c. **SUBJECT: Rules for the Division of Developmental Disabilities Services First Connections Program Under Part C of IDEA**

DESCRIPTION:

Statement of Necessity

The Division of Developmental Disabilities Services (DDS) establishes standards governing the certification and monitoring of First Connections service providers.

Summary

These standards will condense into a single document the current minimum standards for First Connections service providers covering all topics related to certification and monitoring. DDS repeals Policies and Procedures for Arkansas First Connections Early Intervention under IDEA, Part C, and DDS Certification Standards for Early Intervention Services.

PUBLIC COMMENT: A public hearing was held on this rule on April 21, 2022. The public comment period expired on May 9, 2022. The agency provided the following summary of the public comments it received and its responses to those comments:

Commenter's Name: Danita Pitts, Arkansas Department of Education

COMMENT: Suggestion on Rules for DDS First Connection Program Under Part C of IDEA: It would be nice to include some type of documentation component that indicates parents have been provided with information regarding Part B services/transition to help with this process.

RESPONSE: Thank you for your comment. Rule 306 requires every child with an IFSP to be referred to the appropriate local education agency (LEA). Each LEA would reach out to provide information regarding Part

B services to all referred children. Additionally, Rule 307(2)'s required transitioning planning would generically inform parents of the existence of Part B services as part of the required discussion concerning the transitional service and activities necessary to support the child and family's transition out of First Connections; however, any specific inquiries about Part B services would need to be directed to and answered by LEA/Part B representatives.

Commenter's Name: Allison Davis

1. General Comment (full document): Will the new data system still be called "CDS?" Propose replacing this term with "state-approved data system" throughout the document. **RESPONSE:** Thank you for your comment. The new data system will still be called CDS.

2. In Rules section 103: Definition of "daycare" is needed here so that all involved are aware that a regular daycare must have at least 51% typically developing children in the classroom with the child with a disability (or more). Other programs/facilitates may call themselves "daycare" or "childcare" but if the majority of pupils are children with a disability, they are not actually daycares or childcare facilities.

RESPONSE: Thank you for your comment. The word "daycare" is not used anywhere in the proposed Rules, so there would not be a need to define the term.

3. Regarding Rules definition 103 (h): Evaluation reports must be provided to the family in their native language whenever possible. If the evaluator cannot attend the program eligibility or the IFSP meeting, a person qualified to interpret evaluation results, go over the evaluation report with the family and other IFSP team members, and assist the family in developing a functional IFSP may attend in the evaluator's place. Initial developmental evaluation is used as one of various sources of information by the IFSP team to determine initial program eligibility. Annual re-evaluation(s) are used in conjunction with functional assessment results, progress notes, observation of the child engaged in typical activities is used by the IFSP team to determine ongoing program eligibility as part of annual review. Annual re-evaluations are conducted as part of ongoing assessment during delivered service sessions.

RESPONSE: Thank you for your comment. All written notices (Rule 103(dd)), parental communications (Rule 311(a)(3)), and all aspects of an evaluation (Rule 505(b)(3)), must be communicated in the client and family's native language. Rule 507(b)(2) requires the evaluator who conducted the age-appropriate standardized developmental evaluation instrument, or a knowledgeable representative, to attend the IFSP meeting

and assist the family in developing the IFSP. Rule 506 requires a comprehensive multi-disciplinary developmental evaluation (CMDE) as part of an eligibility determination prior to the initial IFSP meeting and each annual IFSP review. Rule 508(a)(8) specifically requires the IFSP to include the CMDE results.

4. Regarding Rules definition 103 (t)(2) explaining what natural environment is not: It is important to clarify that just seeing the child at an EHS or ABC is not “natural environment” if the child is removed from the classroom setting and activities and taken down the hall to a therapy room. “Push in” services meet natural environment requirements and EI therapists are supposed to consult with, coach, and train other adults as the classroom teacher/teacher assistant on how to implement IFSP strategies within typical classroom activities so that this person has the tools to promote the child’s development even when the therapist is not present. § 303.12(b)(3)

RESPONSE: Thank you for your comment. Rule 601(b)(2) requires a parent or other caregiver to attend and participate in each session of Early Intervention Services. Rule 103(t)(1) will be changed to state “Natural Environment” means activities in which a same-aged child without a disability would participate at appropriate home and community-based settings, such as the family home, parks, libraries, churches, and grocery stores.” Rule 103(t)(2) will be changed to state,

“Natural Environment” does not mean:

- (i) A clinic, hospital, Service Provider’s office, early intervention day treatment center, or other facility in which the majority of individuals are not typically developing; or
- (ii) Removing a child from an integrated setting or room to provide Early Intervention Services in an isolated setting or room.

5. Regarding Rule 307(a): Transition plan may be developed as early as nine months prior but not later than 90 days prior to 3rd birthday; wording is not clear or specific enough. **RESPONSE:** Thank you for your comment. Rule 307(a)(1) will be changed to state, “Each child must have a transition plan developed and included in their IFSP between nine (9) months and ninety (90) days prior to their third birthday.” The remainder of Rule 307 covers the specific requirements related to a child’s transition plan.

6. Regarding Rule 307(a)(2)(ii): Transition plans must have a minimum of 5 steps. At least one step must be designed to prepare the child for transition. At least one step must be an activity or action that the parent or

other caregiver will carry out. Recommend including that: Documentation of service coordinator providing the parent with the Transition Guide must be present in the Transition Plan. Documentation that the service coordinator provided the parent with the Part B 3-5 information/brochure must be present in the child record. Documentation of a referral to the Title V CHC program for all children receiving IFSP services (unless parent refuses) is present in the Transition Plan.

RESPONSE: Thank you for your comment. Rule 307(a)(2)(i) will be changed to remove the word “and” at the end. Rule 307(a)(2)(iii) will be added to read “A specific action step that will be taken by the parent or other caregiver to prepare the child for the changes in service delivery and learning environment;” Rule 307(a)(2)(iv) will be added to read, “Documentation that the Service Coordinator provided the Parent with a copy of the Transition Guide;” Rule 307(a)(2)(v) will be added to read, “Documentation that the Service Coordinator provided the Parent with LEA contact information concerning Part B services; and”. Rule 307(a)(2)(vi) will be added to read, “Documentation that the Service Coordinator referred the child to the DDS Children with Chronic Health Conditions program or that the Parent declined the referral.”

7. Regarding section 308: There is an “a” but not a “b.” **RESPONSE:** Thank you for your comment. The Rule 308 formatting and numbering will be changed to reflect this.

8. Regarding Rule 307(b)(3): In developing the transition plan, the IFSP team should attempt to include other individuals familiar with the child’s early learning and development. Examples include, current service providers, childcare provider or classroom teacher, other service providers (MIECHV Home Visitor, Title V CHC care coordinator, etc.).

RESPONSE: Thank you for your comment. While the inclusion of others familiar with the child’s early learning and development may be encouraged, the final decision as to participants is left up to the parent.

9. Regarding Rule 308(a)(2)(ii): It’s not just a “child’s service record.” Part C services are provided to the family of a program-eligible child and the record also documents the family goal, family priorities and concerns, plans for transition, functional child/family assessment, child progress. Recommend using words like “child/family record” or “family’s electronic record.”

RESPONSE: Thank you for your comment. “Service record” is a term of art across Arkansas DHS programs. The term is generally stated as “client service record” which includes all documentation related to a client that is required to be maintained pursuant to the rules and requirements of the particular DHS program. In this instance the First Connections program

decided to use “child” instead of “client” in front of the words “service record” for clarity purposes since all First Connections participants are children. As a result, the term “child service record” encompasses all documentation required to be maintained related to the services a child receives through First Connections, including “the family goal, family priorities and concerns, plans for transition, functional child/family assessment,” and other documentation required throughout these Rules.

10. Regarding Rule 308(a)(5)(ii): Program policy indicates that participants must receive written notice of a Transition Conference at least 14 days in advance. The referral packet (child records) must be sent to the LEA at least 3 weeks in advance of the Transition Conference (with parent consent)...don’t see this referenced in the rules.

RESPONSE: Thank you for your comment. Rule 308(a)(5)(ii) will be changed to read, “Written Notice of the transition conference must be provided to all participants at least fourteen (14) days in advance. Rule 310(a) shall be changed to read, “If Written Notice involves a proposed action, meeting, or refusal to act, then unless otherwise stated in these Rules, the Written Notice must be delivered at least seven (7) Calendar Days prior to the proposed action, meeting, or refusal to act described in the Written Notice.”

11. Regarding Rule 310(a): IDEA, Part C requires all written notices to parents to state a proposed action or refusal to act. **RESPONSE:** Thank you for your comment. Rule 103(dd)(1) requires a Written Notice to a parent or service provider to state an action taken, not taken, or proposed to be taken or not taken.

12. Regarding section 314 System of Payments: A big issue in the State is that a family is referred directly to a provider program, and the provider charges the parent for evaluations and begins providing services. When the family runs out of money or their private insurance no longer pays (and the family has been forced to pay copays for each visit), then the provider tells the parent about “Part C funding” that will cover these services and makes the referral to Part C. A few providers do this all the time, and parents can’t do anything about it or request reimbursement or legal recourse after paying for services federally guaranteed to them as part of FAPE because the services they paid for were not on an IFSP even though those services are guaranteed to program-eligible children under IDEA. Some kind of requirements or language to protect families is needed!

RESPONSE: Thank you for your comment. Rule 305(a) requires a provider to refer to the DDS First Connections Central Intake Unit within two (2) Business Days of first contact with all infants and toddlers from

birth to thirty-six (36) months of age for whom there is a diagnosis or suspicion of a developmental delay or disability.

13. Regarding Section 315 (a)(1-2): Service coordinators are responsible for documenting reason for exit and entering final COS rating, not the service provider.

RESPONSE: Thank you for your comment. Rule 315(a) will be changed to remove subsections (1), (2), and (5) and the remaining subsections will be renumbered to reflect the removal. Rule 315(b) will be changed to become Rule 315(c). A new Rule 315(b) will be added which reads:

Upon the exiting of a child from First Connections, the Service Coordinator must ensure the following are entered or uploaded into CDS:

- (1) The reason for exit;
- (2) Final Child Outcomes Summary Rating; and
- (3) A complete Parent family rating unless there is a documented refusal signed by the Parent or documented repeated attempts to obtain.

14. Regarding Section 315 (a)(5): The program does not have a form or process to document parent refusal to complete program exit requirements, and a record cannot be closed in the system without completing this portion of the exit conference.

RESPONSE: Thank you for your comment. The First Connections program does have a form to document Family Delay as a reason for failure to have an exit conference. A provider, service coordinator, or anyone else cannot be held responsible for failing to hold a transition or exit conference when a parent refuses to participate in or is unable to be reached to schedule such conferences.

15. Regarding Section 315 (a)(5) and (b)(1): The Service Provider is not responsible for these things. The Service Coordinator is responsible for ensuring completion of family rating as part of exit and for scheduling and facilitating the exit conference (which is often held later than the transition conference which must be held no later than 90 days prior to the 3rd birthday).

RESPONSE: Thank you for your comment. The proposed Rule 315(b) which will be amended to be Rule 315(c) pursuant to a prior comment, will be changed to read “If a child exits First Connections and does not

have a transition conference, then the Service Coordinator must hold an exit conference.”

16. Regarding Section 315 (b)(2): The current service providers are required to attend an exit conference to complete #3 and #4 of section 315(a) and to assist in transition planning and final COS rating.

RESPONSE: Thank you for your comment. Rule 315(b)(2)(ii) will be changed to remove the “and” at the end. Rule 315(b)(2)(iii) will be changed to state, “Service Provider; and”. Rule 315(b)(2)(iv) will be added that states, “Any other individual the Parent requests to attend.”

17. Regarding Section 315 (b)(3): Unclear and not accurate. Delay in conducting the transition conference no later than 90 days before the 3rd birthday can be justified by documented family delay. An exit conference can be held any time (even after the child turns 3). There is no justification for a failure to hold either conference.

RESPONSE: Thank you for your comment. Family Delay must be a justification for failure to hold a transition conference or exit conference. A provider, service coordinator, or anyone else cannot be held responsible for failing to hold a transition or exit conference when a parent refuses to participate in or is unable to be reached to schedule such conferences.

18. Regarding Section 316 (a): “Refusal to Serve” current approved program policy says the provider has 5 business days to notify the SC if the provider cannot serve. **RESPONSE:** Thank you for your comment. The program has elected to enforce a more stringent requirement with Rule 316(a).

19. Regarding Rule 505 (c)(2), Rule 610 (e), Rule 611 (e), Rule 616 (e): Evaluation reports must be keyed in and may not just be uploaded/attached. **RESPONSE:** Thank you for your comment. For any evaluation, Rule 505(c)(2) currently requires the complete evaluation report to be uploaded into CDS and the evaluation results to be keyed into the child’s service record.

20. Regarding Rule 508 (a)(4): Currently, minimum program quality standards require an IFSP to have five child goals. A well-developed IFSP has 5-10 child level goals.

RESPONSE: Thank you for your comment. Rule 508(a)(4) will be changed to state “A list of at least five (5) specific child functional outcomes, which must be specific, functional, family-driven, linked to child and family activities and routines, and measurable in a range of months not to exceed six (6);”

21. Regarding Rule 508 (a)(4): Currently, minimum program quality standards require IFSP goals to clearly support child participation in typical child/family activities (contextualized; linked to typical child and family routines). **RESPONSE:** Thank you for your comment. Rule 508(a)(4) currently requires a child’s IFSP outcomes to be linked to child and family activities and routines.

22. Regarding Rule 508 (a)(5): Currently, minimum program quality standards require that action steps must be clearly linked to typical child/family activities (contextualized). Objectives or action steps must support child participation in typical activities. Objectives or action steps must be worded so that parents and other caregivers know how to implement these strategies between therapy sessions within typical activities. Actions steps must support parents and other caregivers in knowing how to help their child learn and develop.

RESPONSE: Thank you for your comment. Rule 508(a)(5) will be changed to “The specific action step(s) that will be taken by the Parent or other caregivers within typical child and family activities to reach each functional outcome;”

23. Regarding Rule 601: A section on minimum requirements for delivered services notes must be included since notes meeting minimum requirements is required for payment. Suggest adding a section 4 under (b):

- (4) (i) Delivered services notes are entered into the child record no later than thirty (30) days after a service session.
- (ii) Delivered services notes describe how therapist worked with the adult caregiver present at the session.
- (iii) Delivered services notes describe the objective(s) or goal(s) worked on in the service session.

RESPONSE: Thank you for your comment. A Rule 601(e) will be added that reads, “Any Early Intervention Service documentation required to be entered or uploaded into a child’s service record must be completed no later than thirty (30) days after the Early Intervention Service was completed.” Rules 604(c), 606(b), 607(c), 608(c), 609(c), 612(c), and 618(c) will each have a new subsection (4) added that reads, “A narrative of the instruction, training, and interaction provided to the participating Parent or other caregiver;”. Each of those Rule subsections will be renumbered to account for the addition.

24. Regarding Rule 602 (c)(2)(v): Evaluation reports must be keyed into the family’s electronic record and cannot just be uploaded or attached. Also, the service coordinator monitors the provision of services but is not

responsible for this task and cannot “make” a provider meet their 21-day timeline.

RESPONSE: Thank you for your comment. Rule 505(c)(2) requires the complete evaluation report to be uploaded into CDS and the evaluation results to be keyed into the child’s service record. The Rules do not place on the service coordinator the responsibility for keying evaluation results or uploading an evaluation report with twenty-one (21) days.

25. Regarding Rule 602 (d)(2): Service coordinators are responsible (federal requirements) for ensuring that families know their rights and for preparing families to participate in early intervention by going over the Parent Participation Agreement so that families understand their active role in early intervention. Service coordinators are responsible for explaining the process, options, and next steps so that parents can effectively advocate for their child and family. Service coordinators are responsible for making appropriate referrals to programs, services, and resources outside of Part C so that families access resources to meet family-identified needs and goals. Service coordinators are responsible for coordinating various funding sources to meet Payor of Last Resort requirements.

RESPONSE: Thank you for your comment. Rule 602(d)(2)(ix) will be changed to state “Informing families of their rights and procedural safeguards and explaining the Parent Participation Agreement.” Rule 602(d)(2)(ii) specifically requires service coordinators to assist families in obtaining access to early intervention and other services, including making necessary referrals and appointments.

The proposed effective date is July 1, 2022.

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

LEGAL AUTHORIZATION: The Department of Human Services is the lead agency designated by the Governor for carrying out “[t]he general administration and supervision of programs and activities receiving assistance under [the federal Individuals with Disabilities Education Act (IDEA)] and the monitoring of programs and activities used by the state to carry out [the Act], whether or not such programs or activities receive [federal] assistance” Ark. Code Ann. § 20-14-503(b)(9). The Department has the authority to administer assigned forms of public assistance and to make rules as necessary to accomplish this duty. Ark. Code Ann. § 20-76-201(12). The Department and its divisions may also promulgate rules as necessary to conform to federal law and receive federal funding. These rules implement Part C of IDEA, regarding early

intervention services for infants and toddlers with disabilities. *See* 20 U.S.C. §§ 1431-45.

12. **DEPARTMENT OF LABOR AND LICENSING, DIVISION OF LABOR, BOILER INSPECTION DIVISION** (Ralph Hudson, Denise Oxley)

a. **SUBJECT: Rules of the Boiler Inspection Section, Division of Labor – Rule 010.01-008 Licensing**

DESCRIPTION: The Boiler Inspection Section of the Department of Labor and Licensing is proposing amendments to its rules to comply with changes from the 2019 and 2021 legislative session. The proposed amendments would accomplish the following:

1. Amend the division’s rule on license and examination fees to provide for an initial fee waiver for certain individuals pursuant to Act 725 of 2021;
2. Amend the division’s rule to provide automatic licensure for military personnel and their spouses to conform to Act 135 of 2021;
3. Amend the licensing rule for recognition of apprenticeship programs for a boiler operator license pursuant to Act 811 of 2021; and
4. Amend the division’s rule on reciprocity and temporary and provisional licensing to comply with Act 426 and Act 1011 of 2019.

PUBLIC COMMENT: A public hearing was held on April 5, 2022. The public comment period expired on April 5, 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 the amended rules have a financial impact. The agency stated that Act 725 of 2021, dealing with a fee waiver for certain low income individuals, will have a negative impact on revenues. However, the extent or amount is unknown, as the board has no historical data concerning the economic status of its applicants. The agency clarified that the rule itself will have no economic impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 11-2-108, the Director of the Division of Labor shall have the power, jurisdiction, and authority to administer and enforce all laws, rules, and regulations that are the duty of the Division of Labor to administer and enforce. Concerning boiler safety, all boilers and pressure vessels installed or in

operation in this state shall conform to those rules and standards that shall from time to time be adopted by the Boiler Inspection Division with the approval of the director. *See Ark. Code Ann. § 20-23-301(a)(2)*. The proposed rules implement Acts 135, 725, and 811 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, and modified the automatic occupational licensure requirements for uniformed service members, returning uniformed service veterans, and their spouses. *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 811 of 2021, 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. *See Act 811 of 2021*.

13. **DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS AND COMMISSIONS, ARKANSAS APPRAISER LICENSING AND CERTIFICATION BOARD (Diana Piechocki, Denise Oxley)**

a. **SUBJECT: Appraiser Licensing and Certification Board Rules 21-0006**

DESCRIPTION: The Arkansas Appraiser Licensing and Certification Board is proposing changes to its rules. The revisions proposed by the board mirror the requirements of the Appraiser Qualifications Board (“AQB”). At the start of the COVID-19 pandemic, the AQB temporarily reduced the requirements for “virtual” educational offerings. The changes were well received by the jurisdictions, education providers, and appraisers. They reduced the cost of presenting meaningful education and increased the opportunity for appraisers to take continuing education that might not be offered in his or her area. It did so allowing the instructor and students to be safe from the spread of COVID-19. The proposed rule changes make these temporary changes permanent.

In addition, the following changes were made pursuant to Acts passed during the 2021 General Session:

- Act 135 – The Board’s current Military Veterans Rules were revised to comply with Act 135 of 2021. After discussion, the Board voted to change from expedited credentialing to an automatic credential for Uniformed Service Members and his or her spouse. In addition, clarification was added regarding the continuing education requirements.
- Act 725 – The Workforce Expansion Act allowed for the waiver of initial credentialing fees in certain circumstances. The Board’s current rules do not allow for the waiver. The adoption of these rules is necessary for compliance with the Act and will primarily apply to an individual applying for a State Registered or Registered Apprentice appraiser credential. At this time the cost to the Board is unknown. However, the Board predicts that the impact will be minimal.
- Act 746 – The addition of this section clarified that the Board shall grant a credential to an applicant who meets the Arkansas requirements for an appraiser credential and holds a Federal Form I-766. A copy of the documentation will be required at the time of application.
- Acts 748, 762 and 826 of 2021 — The Board’s background check rules were revised to comply with Acts 748, 762, and 826 of 2021. The changes removed the permanently disqualifying offenses and allowed the applicant to seek a waiver from the Board.

PUBLIC COMMENT: A public hearing was held on April 6, 2022. The public comment period expired on April 15, 2022. The agency provided the following summary of comments it received and its responses thereto:

Commenter: Jonathan Baumgardner, Appraiser (Received April 15, 2022 at approximately 12:15 pm via telephone)

Summary of the Comment: The commenter would like to add that only a credentialed appraiser can complete the inspection of a property to the rule change.

Response to the Comment: The Board appreciates your comments. The change requested is not a part of the current proposed rule changes, and would require a change to the Appraiser Licensing and Certification Board statutes. Therefore, we cannot address the issue at this time.

Commenter: Scott Dibiasio, Appraisal Institute (April 15, 2022 at approximately 1:30 pm via e-mail)

Summary of the Comment: One area for potential clarification is in relation to the mentors that will be working with aspiring appraisers who are going through an AQB-approved PAREA program. The proposed language states that “Mentors shall be state-certified appraisers...” We would appreciate a minor clarification that mentors that are working with aspiring appraisers who are intending to use completion of a PAREA

program to become licensed or certified in Arkansas do not themselves need to be state-certified in Arkansas. Successful completion of an AQB-approved PAREA program is intended to permit an aspiring appraiser to satisfy the experience requirements in any state that has adopted PAREA as an alternative to the traditional supervisor/trainee model. It would be impractical for a mentor who may be working with multiple PAREA participants in different states to have a license in each of those states. In addition, while completion of a PAREA program involves the development of USPAP compliant appraisal reports, the mentor is not actually supervising the aspiring appraiser in the development of those appraisal reports and the reports are not intended to be used in an actual real-estate related financial transaction with a “real” client. Therefore, it is not necessary for the mentor to sign the report or to otherwise take responsibility for those reports.

Response to the Comment: The Board appreciates your comments. The Arkansas Appraiser Licensing and Certification Board has considered your comments at a meeting on May 4, 2022. The Board voted to remove Section IV - Practical Applications of Real Estate Appraisal (PAREA) from the proposed rule changes for further discussion and consideration. The Board is not adopting the PAREA program at this time.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses thereto:

1. The Financial Impact Statement disclosed a \$200.00 cost for this fiscal year and next fiscal year, but there is no explanation of the cost. Could you please explain this figure? **RESPONSE:** The \$200 financial impact is regarding the fee waiver as mandated by Act 725 of 2021. The waiver will primarily apply to applicants for a State Registered or Registered Apprentice credential. Currently, the cost to the Board is unknown. However, the Board predicts that the impact will be minimal. We estimated the impact to be one credential per year.

2. What is “Bio-metric proctoring?” **RESPONSE:** Bio-metric proctoring process provides that the student identity is continually verified through processes, such as facial recognition, consistency in keystroke cadence, and the observation of activity in the testing location. Aberrant behavior or activity can be readily observed. Using this process will allow the appraiser to take the test for qualifying education online.

3. On page 22 of the markup, you stated that a “(full/partial) exemption from continuing education requirements will be allowed for a deployed uniform service member or spouse...” Could you please clarify whether it will be a full or partial exemption, and any specifications as to which will be allowed in a particular circumstance? **RESPONSE:** The continuing education required would be calculated on a case-by-case basis. It will

depend on the date the uniformed service member or spouse returns from deployment as to where that date falls within a credential holder's education cycle.

4. In the questionnaire, you cited changes made pursuant to 12 U.S.C. 3331-3356, Title XI of the Financial Institutions Recovery, Reform, and Enforcement Act of 1989, as amended. Could you please tell me which of the proposed changes are made pursuant to this? **RESPONSE:** The comments on page 10, the revisions to the education requirements on page 14, 15, 17, and 18. And, the section on page 25 adding the Practical Applications of Real Estate Appraisal. [The Board elected to remove the language concerning PAREA following the public comment period.]

The proposed effective date is July 1, 2022.

FINANCIAL IMPACT: The agency indicated that the amended rules have a financial impact. Specifically, the agency disclosed a \$200.00 cost per year for the current and next fiscal years due to the fee waivers mandated by Act 725 of 2021. The waiver will primarily apply to applicants for a State Registered or Registered Apprentice credential. Currently, the cost to the Board is unknown. However, the Board predicts that the impact will be minimal—one credential per year.

LEGAL AUTHORIZATION: The Arkansas Appraiser Licensing and Certification Board has authority to establish by rule the minimum examination, education, experience, and continuing education requirements for state-registered, state-licensed, registered apprentice, and state-certified appraisers. *See* Ark. Code Ann. § 17-14-203(6)(A). Promulgated rules shall be equivalent to the minimum appraiser-qualification criteria as promulgated by the Appraiser Qualifications Board of the Appraisal Foundation for state-licensed, registered apprentice, and state-certified appraisers performing federally related transactions. *See* Ark. Code Ann. § 17-14-203(6)(C). The rules shall at all times require minimum examination contents that are equivalent to the national uniform examination content as promulgated by the Appraisal Qualifications Board of the Appraisal Foundation and utilize a testing service acceptable to the foundation. *See* Ark. Code Ann. § 17-14-203(6)(D). The board is also authorized to adopt and enforce such administrative rules as may be necessary to comply with state law and federal law with specific reference to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as it exists today and as it may be amended and adopted by the Appraisal Subcommittee. *See* Ark. Code Ann. § 17-14-203(11). The proposed rules implement Acts 135, 725, 746, 748, 762, and 826 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, and modified the automatic occupational licensure requirements for uniformed service members, returning uniformed service veterans, and their spouses.

Act 725 of 2021, which was sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021.

Act 746 of 2021, which was sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals.

Act 748 of 2021, which was sponsored by Representative Bruce Cozart, amended occupational criminal background checks.

Act 762 of 2021, which was sponsored by Representative Fred Allen, amended the Arkansas Code concerning occupational criminal background checks and ensured that licensees who were licensed prior to Act 990 of 2019 are allowed to maintain their licenses.

Act 826 of 2021, which was sponsored by Representative Justin Gonzales, added an additional permanent disqualifying offense on criminal background checks for professions and occupations.

b. SUBJECT: Appraisal Management Company Rules 21-0007

DESCRIPTION: The Arkansas Appraiser Licensing and Certification Board is proposing amendments to its rules concerning appraisal management companies. Specifically, the board's background check rules are being revised to comply with Act 748, 762, and 826 of 2021. The changes remove the permanently disqualifying offenses, and allow the applicant to seek a waiver from the board.

PUBLIC COMMENT: A public hearing was held on April 6, 2022. The public comment period expired on April 15, 2022. The agency received no comments.

The proposed effective date is July 1, 2022.

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

LEGAL AUTHORIZATION: The Appraisal Management Company Registration Act, codified as Ark. Code Ann. § 17-14-401 et seq., defines the registration requirements for appraisal management companies in Arkansas. The Appraiser Licensing and Certification Board has authority

to adopt rules to implement, administer and enforce the subchapter, including authority to prescribe: (1) forms and procedures for submitting information to the board; (2) standards of practice for a person registered under this subchapter; and (3) standards for the operation of appraisal management companies. *See* Ark. Code Ann. § 17-14-404. The proposed rules implement Acts 748, 762, and 826 of 2021.

Act 748 of 2021, which was sponsored by Representative Bruce Cozart, amended occupational criminal background checks.

Act 762 of 2021, which was sponsored by Representative Fred Allen, amended the Arkansas Code concerning occupational criminal background checks and ensured that licensees who were licensed prior to Act 990 of 2019 are allowed to maintain their licenses.

Act 826 of 2021, which was sponsored by Representative Justin Gonzales, added an additional permanent disqualifying offense on criminal background checks for professions and occupations.

14. DEPARTMENT OF PARKS, HERITAGE, AND TOURISM, DIVISION OF ARKANSAS HERITAGE (Leslie Fiskens, Jim Andrews)

a. SUBJECT: Rules Pertaining to the Arkansas State Capitol and Historical Monument Protection Act

DESCRIPTION: The Department of Parks, Heritage, and Tourism, Division of Arkansas Heritage, is promulgating rules pursuant to Act 1003 of 2021. The Act provides for preservation of historical monuments on public property and the State Capitol area and limits the removal of these monuments. The Arkansas History Commission, a part of the Division of Heritage, is directed to implement rules, guidelines, and a process to ensure preservation of historical monuments, as well as grant waivers under the Act.

PUBLIC COMMENT: A public hearing was held in this matter on February 11, 2022. The public comment period expired on February 17, 2022. The agency provided the following summary of comments received, and its responses thereto:

Commenter: Sharon Madison

Summary: Inquired as to what the Historical Monument Act is and when it was passed. Commenter emailed a follow up email regarding the Act and rules advising that if Act and rules could apply to Confederate monuments, believes that all monuments putting a light on the Confederacy should be removed.

ADPHT Response: The comment regarding types of monuments that should not be protected by the Act would require changing enabling legislation. ADPHT acknowledged receipt of the comment, advised that consideration was given to the comment during the rule promulgation process pursuant to the Arkansas Administrative Procedure Act, and thanked commenter.

Commenter: Sharon Madison

Summary: Submitted a quote from Robert E. Lee in 1869, “I think it wiser not to keep open the sores of war, but to follow the examples of those nations who endeavored to obliterate the marks of civil strife to commit to oblivion the feelings engendered.”

ADPHT Response: This comment does not include a specific comment regarding the Act or the rules. ADPHT acknowledged receipt of the comment, advised that consideration was given to the comment during the rule promulgation process pursuant to the Arkansas Administrative Procedure Act, and thanked commenter.

Commenter: Pam Butler

Summary: These statues are our history and beautiful. Please do not remove or move or destroy our history.

ADPHT Response: This comment is supportive of the protections provided by the Act. The comment did not provide any specific comments related to the rules. ADPHT acknowledged receipt of the comment, advised that consideration was given to the comment during the rule promulgation process pursuant to the Arkansas Administrative Procedure Act, and thanked commenter.

Commenter: David and Jennifer Blankenship

Summary: Please preserve our history by keeping our monuments intact, in their designated place and do not let Arkansans be crowd followers but leaders in protecting our past.

ADPHT Response: This comment is supportive of the protections provided by the Act. The comment did not provide any specific comments related to the rules. ADPHT acknowledged receipt of the comment, advised that consideration was given to the comment during the rule promulgation process pursuant to the Arkansas Administrative Procedure Act, and thanked commenter.

Commenter: Dr. Whitney Williams

Summary: Opposed to any action that will result in altering, cancelling, or destruction of historical monuments.

ADPHT Response: This comment is supportive of protections provided by the Act. The comment did not provide any specific comments related to the rules. ADPHT acknowledged receipt of the comment, advised that consideration was given to the comment during the rule promulgation

process pursuant to the Arkansas Administrative Procedure Act, and thanked commenter.

Commenter: Darwood Stow

Summary: Preserve our history and make this a law to retain our history and our landmarks.

ADPHT Response: This comment is supportive of the Act. The comment did not provide any specific comments related to the rules. ADPHT acknowledged receipt of the comment, advised that consideration was given to the comment during the rule promulgation process pursuant to the Arkansas Administrative Procedure Act, and thanked commenter.

Commenter: Kay Tatum

Summary: Supportive of the Act and advises that the History Commission should follow this law to preserve history.

ADPHT Response: This comment is supportive of the protections provided by the Act. The comment did not provide any specific comments related to the rules. ADPHT acknowledged receipt of the comment, advised that consideration was given to the comment during the rule promulgation process pursuant to the Arkansas Administrative Procedure Act, and thanked commenter.

Commenter: Edward Ward

Summary: Supportive of the protections provided to Historical Monuments by the Act. The History Commission needs to follow the intent of the legislature and use objective criteria provided in the Act when considering whether to grant a waiver.

ADPHT Response: This comment is supportive of the protections provided by the Act. ADPHT acknowledged receipt of the comment, advised that consideration was given to the comment during the rule promulgation process pursuant to the Arkansas Administrative Procedure Act, and thanked commenter.

Commenter: Bev Gregory

Summary: Supportive of the Act and advised that the rules need to follow the intent of legislature that was provided in the Act.

ADPHT Response: This comment is supportive of the protections and intent of the Act. ADPHT acknowledged receipt of the comment, advised that consideration was given to the comment during the rule promulgation process pursuant to the Arkansas Administrative Procedure Act, and thanked commenter.

Commenter: Marcella Grimmett

Summary: Supportive of the Historical Monument Act of 2021 and advised to leave the monuments the way they are and use as examples for future endeavors.

ADPHT Response: This comment is supportive of the protections provided by the Act. The comment did not provide any specific comments related to the rules. ADPHT acknowledged receipt of the comment, advised that consideration was given to the comment during the rule promulgation process pursuant to the Arkansas Administrative Procedure Act, and thanked commenter.

Commenter: Terry Casey

Summary: Supportive of the protections provided to Historical Monuments by the Act. The History Commission needs to follow the intent of the legislature provided in the Act.

ADPHT Response: This comment is supportive of the protections provided by the Act. ADPHT acknowledged receipt of the comment, advised that consideration was given to the comment during the rule promulgation process pursuant to the Arkansas Administrative Procedure Act, and thanked commenter.

Commenter: Rex and Jan Cowherd

Summary: Supportive of the proposed rules and advised that it is important to preserve historical monuments.

ADPHT Response: This comment is supportive of the protections provided by the Act. The comment did not provide any specific comments related to the rules. ADPHT acknowledged receipt of the comment, advised that consideration was given to the comment during the rule promulgation process pursuant to the Arkansas Administrative Procedure Act, and thanked commenter.

Commenter: Kay Southerland

Summary: Supportive of the proposed rules and advises to not destroy historical monuments.

ADPHT Response: ADPHT acknowledged receipt of the comment, advised that consideration was given to the comment during the rule promulgation process pursuant to the Arkansas Administrative Procedure Act, and thanked commenter.

Commenter: Dora Kate Lee

Summary: Supports the act and advises that changing the rules is not needed as this could change the intent of the legislature.

ADPHT Response: This comment is supportive of the protections provided by the Act and requested that no changes be made to the rules. These are new rules, and no changes were made to the rules. ADPHT acknowledged receipt of the comment, advised that consideration was given to the comment during the rule promulgation process pursuant to the Arkansas Administrative Procedure Act, and thanked commenter.

Commenter: Lovell Lee

Summary: Supportive of the Historical Monument Act of 2021 and requests that the rules remain in place.

ADPHT Response: ADPHT acknowledged receipt of the comment, advised that consideration was given to the comment during the rule promulgation process pursuant to the Arkansas Administrative Procedure Act, and thanked commenter.

Commenter: Joey McCutchen

Summary: Supportive of the Act and the proposed rules. Requested that the guidelines for the process be incorporated into the rules.

ADPHT Response: Acknowledged receipt of the comment and incorporated guidelines into the rules that were initially incorporated by reference, and thanked commenter.

Commenter: Mark Johnson

Summary: Requested that the guidelines for the processes be incorporated into the rules so that the process developed by the agency will be an objective process. Requested adding a separate and specific provision in the rules for emergency waivers on a temporary basis.

ADPHT Response: Acknowledged receipt of the comment, incorporated guidelines into the rules that were initially incorporated by reference. Added a separate and specific provision related to the emergency waiver on a temporary basis, and thanked commenter.

Commenter: Joey McCutchen

Summary: Requested that the guidelines for the processes be incorporated into the rules so that the process developed by the agency will be an objective process. Requested adding a separate and specific provision in the rules for emergency waivers on a temporary basis.

ADPHT Response: Acknowledged receipt of the comment and incorporated guidelines into the rules that were initially incorporated by reference. Added a separate and specific provision related to the emergency waiver on a temporary basis, and thanked commenter.

Commenter: Janine Perlman and James Fuscoe

Summary: Local governments should have the power to make this correct decision, and help bring Arkansas into a less racist future.

ADPHT Response: The comment regarding opposition to the protection of monuments would require changing enabling legislation. ADPHT acknowledged receipt of comment and advised that consideration was given to the comment during the rule promulgation process pursuant to the Arkansas Administrative Procedure Act, and thanked commenter.

Commenter: Paul D. Kelly

Summary: Opposes the Historical Monument Act of 2021 and believes that the Act denies local governments control.

ADPHT Response: The comment regarding opposition to the protection of monuments would require changing enabling legislation. ADPHT acknowledged receipt of comment and advised that consideration was given to the comment during the rule promulgation process pursuant to the Arkansas Administrative Procedure Act, and thanked commenter.

Commenter: Stu (no last name provided)

Summary: Advised that the protections given to these monuments is outrageous.

ADPHT Response: The comment regarding opposition to protecting monuments provided by the Act would require changing enabling legislation. ADPHT acknowledged receipt of the comment, advised that consideration was given to the comment during the rule promulgation process pursuant to the Arkansas Administrative Procedure Act, and thanked commenter.

Commenter: Ed DeLauter

Summary: The rule changes to the Monument Protection Act enacted during the last legislative session are concerning. Fails to understand why legislators believe it is the best interests of Arkansans to make removal of controversial statutory all the more difficult. Actions and injustices by our government in the past are an embarrassment to our country and state.

ADPHT Response: This comment is specific to the Act and rule changes. The comment regarding opposition to the protection of monuments would require changing enabling legislation. Additionally, this is a new rule and no changes are being proposed to the rules. ADPHT acknowledged receipt of the comment, advised that consideration was given to the comment during the rule promulgation process pursuant to the Arkansas Administrative Procedure Act, and thanked commenter.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses thereto:

1. In Section 3.04 of the rule, the definition of “historical monument” seems to mirror the definition in Act 1003 of 2021, except that the rule uses the language “gravestone marker,” rather than the statutory language of “gravestone plate.” Could you please explain why the agency chose not to mirror the statutory language with respect to this?

RESPONSE: Based on advice and guidance of historians with ADPHT, “gravestone plate” is an ambiguous term when referencing memorials. A “gravestone marker” is a broader term used with memorials and cemeteries that includes a gravestone plate as well as other markers to recognize gravestone headstones, memorial plaques, individual and group funerary monuments, as well as plaques with historical significance affixed to such markers. We believe the intent of the Act was to include

markers related to a gravestone and ADPHT utilized this language in the rules to encompass that intent.

2. Section 3.04 of the rule also provides that guidelines containing examples of historical events accompany these rules. The guidelines do not appear to be included with the rules.

a. Could you please provide a copy of the guidelines?

[A copy of the guidelines were provided; the guidelines were later incorporated into the revised rules.]

b. Could you please explain why the agency chose not to promulgate the guidelines, given the language in Ark. Code Ann. § 22-3-2105(e)? (“The commission shall promulgate rules...to...establish guidelines...”)

RESPONSE: The guidelines mirror the rules. ADPHT did not include the guidelines in the rules as we would like to maintain the guidelines within the History Commission as part of the internal processes with the State Archives within ADPHT. This will allow us to make modifications, if needed, to the guidelines and to better serve applicants. These guidelines represent our intent to serve applicants and support their needs and questions concerning waiver applications and advisory opinions. We will refine the guidelines based on experience and comments from applicants. Any modifications or additions made would be technical in nature and would not change the substance of the guidelines.

Additionally, if there are any updates or modifications made to the forms, having the flexibility to make updates and have the updated forms available online on a timely basis will best serve applicants. [The agency later submitted a revised rule incorporating the guidelines.]

c. Examples of historical events are included in Ark. Code Ann. § 22-3-2102 (1)(A)(i)(a-q). What additional events does the agency contemplate including in the guidelines?

RESPONSE: None. These are meant to be illustrative, not exclusive, or comprehensive.

3. Section 5.01 of the rule uses the language “gravestone marker,” rather than the statutory language of “gravestone plate” contained in Ark. Code Ann. § 22-3-2104(d). Could you please explain why the agency chose not to mirror the statutory language with respect to this? **RESPONSE:** Based on advice and guidance of historians with ADPHT, “gravestone plate” is an ambiguous term when referencing memorials. A “gravestone marker”

is a broader term used with memorials and cemeteries that includes a gravestone plate as well as other markers to recognize gravestone headstones, memorial plaques, individual and group funerary monuments, as well as plaques with historical significance affixed to such markers. We believe the intent of the Act was to include markers related to a gravestone and ADPHT utilized this language in the rules to encompass that intent.

4. Section 5.01 of the rule contemplates guidelines which provide parameters for the designation of historical monuments.

a. Could you please provide a copy of the guidelines?

[A copy of the guidelines were provided; the guidelines were later incorporated into the revised rules.]

b. Could you please explain why the agency chose not to promulgate the guidelines, given the language in Ark. Code Ann. § 22-3-2105(e)? (“The commission shall promulgate rules...to...establish guidelines...”)

RESPONSE: The guidelines mirror the rules. ADPHT did not include the guidelines in the rules as we would like to maintain the guidelines within the History Commission as part of the internal processes with the State Archives within ADPHT. This will allow us to make modifications, if needed, to the guidelines and to better serve applicants. These guidelines represent our intent to serve applicants and support their needs and questions concerning waiver applications and advisory opinions. We will refine the guidelines based on experience and comments from applicants. Any modifications or additions made would be technical in nature and would not change the substance of the guidelines.

Additionally, if there are any updates or modifications made to the forms, having the flexibility to make updates and have the updated forms available online on a timely basis will best serve applicants. [The agency later submitted a revised rule incorporating the guidelines.]

5. Section 5.01.1 of the rule directs the reader to a website to find the “historic designation application” for an advisory opinion. I was unable to find the form on the website. Could you please give me a link directly to the form, or in the alternative, provide directions on how to access it from the link provided? **RESPONSE:** Please see attached document. The form is not yet available on the website. The forms will be available on the internet through the State Archives website. Applicants will be able to download and print the application from the website. State Archives website may be found at

<https://www.arkansasheritage.com/arkansasstatearchives/home>.

6. Section 5.02 of the rule omits the word “itself” in Ark. Code Ann. § 22-3-2104(b)(1). Could you please explain why the agency chose to reword this? **RESPONSE:** Section 5.02 follows the language of Act. Removal of the word “itself” was to provide clarity to that section.

7. Section 5.02.2 of the rule states that applicants may complete a Petition for Waiver form provided by the Arkansas State Archives.

a. Could you please provide a copy of this form?

Please see attached document. [A copy of the form was provided.]

b. Can this form be accessed via the internet, or will applicants have to obtain a physical copy from the State Library? If available electronically, could you please provide the website at which it is/will be available?

RESPONSE: The forms will be available on the internet through the State Archives website. Applicants will be able to download and print the application from the website. The form is not yet available on the website. State Archives website may be found at:
<https://www.arkansasheritage.com/arkansasstatearchives/home>.

8. Section 5.02.3.1 states, “application for a waiver depends on the duration of the waiver and/or the type of repair or removal that will be made.”

a. Will the application itself be different based upon these factors, or are these factors that will affect whether the waiver is granted or denied?

RESPONSE: The required application forms vary according to the anticipated duration of the contemplated work and/or the type or nature of the contemplated repair, modification, or removal. These factors will be considered by the History Commission as part of the application review and decision.

b. Could you please clarify what this statement means? **RESPONSE:**

The required application forms vary according to the anticipated duration of the contemplated work and/or the type or nature of the contemplated repair, modification, or removal. When applicants apply for a waiver, the applicant will select to apply for a temporary waiver or a permanent waiver. If there is a clear, defined amount of time for removal of the historical monument for the repair, cleaning etc., then the applicant could apply for a temporary waiver that would allow for the removal of the historical monument while the work is completed on the historical monument. If the applicant is seeking to remove an historical monument permanently such as an historical monument that cannot be repaired, then the applicant would apply for a permanent waiver. Each application will include details and factors specific to that historical monument.

Examples of different types of waivers are provided below:

- Temporary Waiver: Temporary relocation to facilitate utility or road construction; Temporary relocation to clean or paint an historical marker; and Temporary repairs to historical monument which are likely to take longer than 60 days.
- Permanent Waiver: Permanent retirement of the historical monument from its site or removal to another site, either public or private; and Amendment or alteration of the historical monument’s interpretive or thematic content.

9. Section 5.03 states that “all applicants shall utilize processes and forms developed by Arkansas State Archives.”

a. Could you please provide a copy of the forms? **RESPONSE:** [A copy of the forms was provided.]

b. What “processes” does the agency contemplate applicants utilizing?

RESPONSE: Applicants will complete forms and submit them electronically to State Archives. State Archives will communicate with applicants regarding review and consideration by the History Commission.

c. Could you please explain why the agency chose not to promulgate the processes, given the language in Ark. Code Ann. § 22-3-2105(e) (“The commission shall promulgate rules...to...establish a process...”)?

RESPONSE: The general processes of the Act are provided in the rules. ADPHT did not include the forms in the rules as the evaluation and determination of each application will be conducted by the History Commission and State Archives as part of ADPHT. ADPHT will refine the forms, if needed, based on experience and comments from applicants. Any modifications or additions made to the forms would be technical in nature and would not change the substance of the processes.

10. Section 5.05 states that “The decision will include reasonable conditions and instructions.” However, Ark. Code Ann. § 22-3-2104 (b)(3)(B) includes additional language (“include reasonable conditions and instructions to ensure that the historical monument is preserved to the greatest extent possible.”). Why was the additional statutory language omitted in the proposed rule? **RESPONSE:** This language was included in Section 7.01 of the rules. ADPHT believes that this language was appropriate in Section 7.01 under the “Waiver Granted” section.

11. Concerning Section 5.05,

a. How often does the Commission meet? **RESPONSE:** The Commission meets quarterly.

b. How long does the agency anticipate it will take between the submission of an application and providing the applicant a decision?

RESPONSE: The application and decision process will take up to three months. This is based on timing of receipt of an application and documentation and quarterly Commission meetings.

12. Section 7.02 appears to contemplate guidelines concerning a waiver for the removal of a historical monument.

a. Could you please provide a copy of the guidelines? **RESPONSE:** [A copy of the guidelines was provided.]

b. Could you please explain why the agency chose not to promulgate the guidelines, given the language in Ark. Code Ann. § 22-3-2105(e)? (“The commission shall promulgate rules...to...establish guidelines for the disposition...”)
RESPONSE: The guidelines mirror the rules. ADPHT did not include the guidelines in the rules as we would like to maintain the guidelines within the History Commission as part of the internal processes with the State Archives within ADPHT. This will allow us to make modifications, if needed, to the guidelines and to better serve applicants. These guidelines represent our intent to serve applicants and support their

needs and questions concerning waiver applications and advisory opinions. We will refine the guidelines based on experience and comments from applicants. Any modifications or additions made would be technical in nature and would not change the substance of the guidelines. Additionally, if there are any updates or modifications made to the forms, having the flexibility to make updates and have the updated forms available online on a timely basis will best serve applicants. [The agency provided a revised markup incorporating the guidelines as part of the rules.]

13. Ark. Code Ann. § 22-3-2105(e)(2) provides that, “The commission shall promulgate rules...to...create a process for the approval of a temporary waiver on an emergency basis.”

a. Is this included in the proposed rules? If so, where? **RESPONSE:** “Emergency basis” permits are effectively pre-approved for short term repairs of an historical monument that require 60 days or less for completion. The rules provide that if a government entity needs more than sixty days for repairs of an historical monument, the government entity may apply for a temporary waiver in order to have more time to complete repairs. Essentially, the proposed rules, in following the language of the Act, provide an automatic approval of short-term repairs which will not permanently alter the historical monument.

The rules provide for a temporary and a permanent waiver. Analysis and development of the language in the application for a waiver provided that using language for both a “temporary waiver” and “temporary waiver on an emergency basis” would be redundant. In an effort to provide for streamlined rules and simplified process, ADPHT used only the term “temporary waiver.” A “temporary waiver” encompasses any kind of temporary waiver, including a temporary waiver based on an emergency basis, whether there is an application for a temporary waiver regardless of the basis of the situation.

For example, an application for a temporary waiver based on a car crashing into an historical monument or an application for a temporary waiver based on the need to make repairs to an historical monument based on weathering over a number of years will both be handled through a temporary waiver application and will be submitted to the History Commission for their next regularly scheduled meeting.

b. If not, will this be forthcoming in a future rule? **RESPONSE:** The language for a temporary waiver includes any type of waiver on a temporary basis, including a temporary waiver based on an emergency basis, regardless of the basis for the application for a waiver.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The proposed rules implement Act 1003 of 2021, sponsored by Senator Mark Johnson, which created the Arkansas State Capitol and Historical Monument Protection Act. Pursuant to Act 1003, the Arkansas History Commission shall promulgate rules under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to:

- (1) Establish a process for the application for a waiver;
 - (2) Create a process for the approval of a temporary waiver on an emergency basis;
 - (3) Establish guidelines regarding what will be designated as a historical monument;
 - (4) Create an application process for registering historical monuments erected after April 28, 2021;
 - (5) Establish guidelines for the disposition of historical monuments if a waiver is granted to remove a historical monument; and
 - (6) Otherwise effectuate the purposes of this subchapter.
- See Ark. Code Ann. § 22-3-2105(e).*

15. SALINE COUNTY REGIONAL SOLID WASTE MANAGEMENT DISTRICT BOARD

- a. Saline County Regional Solid Waste Management District Rule 22.202 Regarding Requirements for Solid Waste Hauler Licenses and Vehicle Permits**

16. STATE BOARD OF FINANCE (Debbie Rogers, T.J. Fowler)

- a. SUBJECT: State Treasury Money Management Trust Investment Policy**

DESCRIPTION: These proposed rules for the State Board of Finance reflect changes to the State Treasury Money Management Trust Policies and Procedures Manual. The amendments (1) remove duration requirements for commercial paper (as long as they are rated “investment grade” by any two NRSROs); (2) extend duration to 10 years for corporate bonds (as long as they are rated “investment grade” by at least two NRSROs); (3) permits the purchase of GO Bonds of cities, counties, municipalities, and other subdivisions as long as they hold an “investment grade” rating; and (4) removes ambiguity around investment pools made of permissible assets. The State Board of Finance believes these requested

rule changes are needed to manage the STMMT’s investments under a “modern portfolio” approach.

PUBLIC COMMENT: A public hearing was held on this rule on April 25, 2022. The public comment period expired on April 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 Finance has the responsibility to “establish, maintain, and enforce all policies and procedures concerning the management and investment of funds in the State Treasury and the State Treasury Money Management Trust, including . . . an investment policy[.]” Ark. Code Ann. § 19-3-704(a)(4). “The board may make, amend, adopt, and enforce rules and policies to regulate board procedure and execute board functions.” Ark. Code Ann. § 19-3-704(e).

b. SUBJECT: Arkansas State Treasury Investment Policy

DESCRIPTION: This amendment contains (1) stylistic changes to comport with the new “Code of Arkansas Rules” style guide; (2) substantive changes that expand the Treasury’s permissible investments under a “modern portfolio theory” (described in greater detail below); and (3) an added requirement that the SPF review these rules at least annually.

The State Board of Finance believes these requested rule changes are needed to manage the State’s investment portfolio under a “modern portfolio” approach that promotes diversification and a wholistic view of society.

Those proposed substantive changes fall into six groups: (1) removing duration requirements for commercial paper (as long as they are rated “investment grade” by any two NRSROs); (2) extending duration to 10 years for corporate bonds (as long as they are rated “investment grade” by at least two NRSROs); (3) permitting the purchase of GO Bonds of cities, counties, municipalities, and other subdivisions as long as they hold an “investment grade” rating; (4) removing ambiguity around investment pools made of permissible assets; (5) duration changes to the total portfolio limits (total portfolio maturity limit will be measured as “weighted” average maturity, as opposed to straight average maturity, exempting Treasuries and Agencies from the 10 year, per-individual-asset,

limit, and extending CMOs and mortgage-backed securities to a 15-year average life); and (6) removing TCDIP CD rates from the rule to avoid lag.

PUBLIC COMMENT: A public hearing was held on this rule on April 25, 2022. The public comment period expired on April 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 proposed amendments remove the section regarding CD rates. However, Ark. Code Ann. § 19-3-518(a)(2)(B)(iv) states, “Interest on bank certificates of deposit shall be paid at competitive rates according to the investment policy established by the State Board of Finance.” Is there another existing Board of Finance policy addressing establishment of “competitive rates”? If not, does the Board intend to draft a new policy, or does the Board consider itself otherwise in compliance with § 19-3-518?

RESPONSE: The CD rate chart impacted by the proposed rule change is actually unrelated to the Treasury’s purchase of CDs (and thus, is not controlled by Ark. Code Ann. 19-3-518(a)(2)(B)(iv)). That chart falls under Section III of the rule. Section III governs the “State Treasury Certificate of Deposit Investment Program” (STCDIP). Any confusion about that section is entirely understandable, as the nomenclature is misleading. However, it is nomenclature prescribed by law, so we are stuck with it. The STCDIP authorizes the SBF to make direct investments in CDs, using Treasury funds, and without Treasury involvement. In other words, the STCDIP is separate and distinct from Treasury’s placement of CDs. Statutory authority for the STCDIP program comes from Ark. Code Ann. 19-3-519. To my knowledge, that program has never been used during my tenure. All that said, your core question remains valid, because 19-3-519(g) and (h)(2) contain similar provisions requiring SBF oversight of STCDIP CD rates.

In order to fully answer your question, some background is required: Volatility in fixed-income markets over the last 8 years has rendered it impossible for CD rates to be set by administrative rulemaking. By the time revised rates complete APA review (which has, historically, taken the SBF between 4-9 months), they are out-of-date. As a result, the Treasury experienced substantive periods where it was unable to place CDs with Arkansas banks—to the mutual detriment of banks and the taxpayers’ returns. The SBF initially responded by setting rates via resolution at quarterly meetings. However, even that approach created an unmarketable lag. As a result, the SBF and Treasury stopped setting CD rates for Treasury CD investments by rule or resolution some time ago. Instead, in

2018, the SBF approved (and the Treasury implemented) a blind bidder program known as the “Arkansas Transparent Treasury Auction” (ATTA). <https://www.artreasury.gov/inside-the-vault/arkansas-transparent-treasury-auction/>. That program creates a portal by which all Arkansas banks can competitively bid on CDs. The result is a current, marketable interest rate, while still offering the best possible return for the Arkansas taxpayer. Auction results are available to the general public (<https://auctions.artreasury.gov/closed>) as well as the SBF and the SBF’s compliance officer.

The rule revision giving rise to your question simply brings the STCDIP rule in-line with the Treasury’s current CD investment rate rules. Presumably, if the SBF decided to employ the STCDIP (which would require an affirmative vote at a board meeting), it could contemporaneously either set a then-current floor interest rate, or elect to use the ATTA program.

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 State Board of Finance has the responsibility to “establish, maintain, and enforce all policies and procedures concerning the management and investment of funds in the State Treasury and the State Treasury Money Management Trust, including . . . an investment policy[.]” Ark. Code Ann. § 19-3-704(a)(4). “All purchases and sales of securities by the Treasurer of State shall be made using a competitive procedure that: [i]s approved by the State Board of Finance” Ark. Code Ann. § 19-3-518(b)(3)(B).

- D. Agency Updates on the Status of Outstanding Rulemaking Pursuant to Act 595 of 2021.**
- 1. Department of Agriculture (Wade Hodge, Scott Bray)**
 - 2. Department of Commerce, State Insurance Department (Booth Rand)**
 - 3. Department of Energy and Environment (Shane Khoury)**
 - 4. Department of Education (Courtney Salas-Ford)**
 - 5. Department of Finance and Administration, Revenue Division (Paul Gehring)**

- 6. Department of Health, Division of Health-Related Boards and Commissions (Matt Gilmore)**
 - 7. Department of Health, State Board of Health (Laura Shue)**
 - 8. Department of Labor and Licensing (Denise Oxley)**
 - 9. Department of Public Safety (Cody Hiland, Joan Shipley)**
 - 10. Department of Transformation and Shared Services (Mitch Rouse)**
 - 11. Office of Arkansas Lottery (Brent Standridge)**
- E. Monthly Written Agency Updates Pursuant to Act 595 of 2021.**
- F. Adjournment.**