



Arkansas Department of Health

4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000

Governor Asa Hutchinson

José R. Romero, MD, Secretary of Health

September 28, 2021

Senator Terry Rice
Representative Jeff Wardlaw
Arkansas Legislative Council
1 Capitol Mall, Fifth Floor
Little Rock, AR 72201
By Email to Marty Garrity, Director, garritym@blr.arkansas.gov

RE: Proposed Emergency Rule concerning Emergency Medical Services
Arkansas Board of Health and Arkansas Department of Health

Dear Senator Rice and Representative Wardlaw:

On behalf of the Arkansas Board of Health and the Arkansas Department of Health, please find attached a request for review and approval of proposed emergency rule amendments concerning rules for Emergency Medical Services under the process provided for in Ark. Code Ann. § 10-3-309 (d)(2)(B) and ALC Rule 22 (f). The recently expired public health emergency, approved by the General Assembly under Act 403 of 2021, codified in Ark. Code Ann. § 12-75-114, and under the authority of Executive Order 21-14, provided an avenue to suspend certain health-related rules to meet and mitigate the impact of COVID-19 on the Healthcare System of Arkansas. The current circumstances for ambulance services in Arkansas require three of the previously suspended Emergency Medical Services Rules to continue to provide much needed services during the continuing pandemic.

The attached proposed rule amendments provide additional resources and flexibility in three specific areas of the Emergency Medical Services rules. Proposed changes in the current rules will provide a tiered response, an improved ability to quickly upgrade and downgrade, and alternative staffing, which all will improve Emergency Services response. Thus, the Department finds imminent peril to the public health and safety and requests approval through the emergency rule process pursuant to Ark. Code Ann. § 25-15-204 (c) and (g)(2). Further, the attached written statement and summary provides further clarification on the specific changes.

The Department respectfully requests review of the proposed emergency rules concerning Emergency Medical Services. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Laura K. Shue". The signature is fluid and cursive, with the first name "Laura" being the most prominent.

Laura K. Shue
General Counsel
Arkansas Department of Health
4815 West Markham Street
Little Rock, AR 72205-3867
Office (501) 661-2297
Laura.Shue@arkansas.gov

QUESTIONNAIRE
FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY _____
DIVISION _____
DIVISION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ FAX NO. _____ E-MAIL _____
NAME OF PRESENTER AT COMMITTEE MEETING _____
PRESENTER E-MAIL _____

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this
- D. Rule" below.
- E. Submit two (2) copies of the Questionnaire and Financial Impact Statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule?

2. What is the subject of the proposed rule?

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No

If yes, please provide the federal rule, regulation, and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?

Yes No

If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes No

5. Is this a new rule? Yes No If yes, please provide a brief summary explaining the rule.

Does this repeal an existing rule? Yes No If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes No If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled “mark-up.”

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

7. What is the purpose of this proposed rule? Why is it necessary?

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

9. Will a public hearing be held on this proposed rule? Yes No If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. _____

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). _____

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT _____
DIVISION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ FAX NO. _____ EMAIL: _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

- a) How the additional benefits of the more costly rule justify its additional cost;
- b) The reason for adoption of the more costly rule;
- c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Total _____

b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (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;
- (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;
- (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;
- (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
- (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.

Summary for Emergency EMS Rules

Section IV. Ground Ambulance Service Licensure Classification and General Standards C. 1. Tiered Response

Removal of the emergency medical dispatcher certification requirement to allow for services to use internal or outsourced dispatchers to screen non-emergency calls and prioritize emergencies according to Department approved process/protocol. This will help ambulance services use the right level of resources to respond to emergencies.

Removal of all tiered response provisions a.-f.

Section V. Permitting of Ground Emergency Vehicles B. 10. Temporary upgrades and downgrades

Allow for temporary upgrades and downgrades as needed. Removed the requirement for upgrades and downgrades to be for mechanical purposes only and allow for staffing purposes.

Section V. Permitting of Ground Emergency Vehicles C. 1. Paramedic Permitted Ambulance Staffing

Allow for Emergency Vehicle Operators (EVOs) to drive paramedic ambulances for scheduled transfers only. These individuals have emergency vehicle operation training and some first aid training. This will free up an EMT for other staffing needs and not impact patient care.



Arkansas Department of Health

4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000
Governor Asa Hutchinson
José R. Romero, MD, Secretary of Health

Emergency Medical Services

The Department of Health (ADH), under the authority granted to it by the General Assembly and the Arkansas Board of Health, is requesting Proposed Amendments to its Emergency Medical Services Rules as an Emergency Rule, and respectfully requests review and approval of emergency rules under Ark. Code Ann. § 10-3-309 (d)(2)(B) and ALC Rule 22. Pursuant to Ark. Code Ann. § 25-15-204 (c) and (g)(2), ADH finds that imminent peril to the public health, safety, or welfare of Arkansans requires adoption of an emergency rule. A brief statement of the reasons for the findings includes the following:

1. Tiered Response

This proposed rule change will allow services to send the most appropriate level ambulance to emergencies. Current rules, which had been suspended during the public health emergency, require services to send their highest level of permitted ambulance on every call regardless of the nature of the call. This is not in the best interest of the patient or good use of resources. This change would allow the service to use a dispatch process that would allow that service to send the Basic Life Support (BLS) crew on BLS calls and Advanced Life Support (ALS) crews on ALS calls, thus making better use of limited resources. Revises Section IV, Ground Ambulance Service Licensure Classification Standards C. 1. a.–f. (page 17-18).

2. Upgrade/Downgrade

Proposed revisions allow the permitted ambulances to use them in the manner in which they can staff. Currently, if an ALS ambulance can't be staffed, ADH would not allow for it to be used as a BLS ambulance. In the past, this was only for mechanical reasons. Allowing this during the recent suspended-rule time period has greatly helped services better manage resources, and it does not impact patient care. Revises Section V. Permitting of Ground Emergency Vehicles B. Vehicle General Standards B. Ground Vehicle General Standards 10 (Page 25).

3. Staffing using Emergency Vehicle Operators (EVOs)

Allows EMS providers to use EVOs to drive the ambulances. These individuals have emergency vehicle operation training and some first aid training. This change would allow them to not only drive for basic transfers but also allow for them to drive for ALS transfers. Current rules, which had been suspended, require an EMT to be the driver on ALS transfers. This will free up an EMT for other staffing needs and not impact patient care. Education requirements will not change. Revises Section V. Permitting of Ground Emergency Vehicles B. Vehicle General Standards C. Ambulance Staffing Requirements 10 (Page 28).

- a. delegate other physicians or qualified healthcare professionals designated by the medical director to monitor and supervise the medical field performance of each EMS agency's EMSPs. However, the medical director shall retain ultimate authority and responsibility for the monitoring and supervision, for establishing protocols and standing orders and for the competency of the performance of authorized medical acts.
- b. annually review all service protocols/guidelines and ensure that they are appropriate for the licensure level of each EMSP to whom the performance of medical acts is delegated and authorized, and compliant with accepted standards of medical practice and in line with the Department's minimum patient care guidelines. The medical director shall be familiar with the training, knowledge and competence of each of the EMSP to whom the performance of such acts is delegated.
- c. notify the Department within fourteen (14) business days prior to his or her cessation of duties as medical director.
- d. ensure the licensed services, for which direction is provided is in compliance with these Rules.
- e. have the authorization to limit the scope of practice or remove their affiliation of any EMSP under their direction. Medical directors who limit or remove their affiliation from an EMSP shall immediately notify the Department in writing outlining why these steps were taken.
- f. Have knowledge and oversight of their EMS Service who is participating in EMSP field/clinical times and ensure that students are at all times under the direct supervision of an Arkansas licensed EMSP at or above the level of the EMSP's course of training.

Physicians acting as medical directors for EMS education programs recognized by the Department that require clinical and field internship performance by students shall be permitted to delegate authority to a student-in-training during their performance of program-required medical acts and only while under the control of the education program.

C. Tiered Response

1. A licensed ambulance service ~~which that~~ has either its own dispatch center or utilizes an outsourced or commercial dispatch service. The dispatch service must use a dispatch process ~~with certified emergency medical dispatchers~~ that is nationally recognized or approved by the Department and is reliably able to differentiate and categorize the severity of the emergency call and assign the appropriate level of ambulance to that call.

Services utilizing a tiered response dispatch process shall met the following provisions:

- a. ~~Each emergency call must be answered and screened by a certified Emergency Medical Dispatcher (EMD). EMD Certification must be obtained and maintained by a National Recognized Certifying body that is recognized by the Department. EMD Certification or License shall be made available for review during EMS service inspections.~~
- b. ~~The EMD Center must have medical director oversight.~~
- c. ~~The service shall be required to have a quality improvement program in place to ensure compliance with their service tiered response protocols and shall be reviewed by the medical director within thirty (30) days of the call date.~~
- d. ~~All tiered responses that require a higher level intercept shall be tracked separately and reported to the Department on a quarterly basis.~~
- e. ~~The service shall have a process in place that would specifically and reliably identify which calls are appropriate for less than the highest level of permitted ambulance and track all calls in which this dispatch process is implemented.~~
- f.a. ~~All requirements are met for the ambulance that is responding to include equipment, personnel and licensure standards set forth in regulation.~~

Formatted: Indent: Left: 2.1", Right: 1.08", Space Before: 3.95 pt

Formatted: List Paragraph, Indent: Hanging: 0.5", Right: 0.39", Numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 2.41" + Indent at: 2.65", Tab stops: 2.65", Left + 2.65", Left

Formatted: List Paragraph, Indent: Hanging: 0.5", Numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 2.41" + Indent at: 2.65", Tab stops: 2.65", Left + 2.65", Left

Formatted: Space Before: 0.05 pt

Formatted: List Paragraph, Justified, Indent: Hanging: 0.5", Right: 0.41", Numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 2.41" + Indent at: 2.65", Tab stops: 2.65", Left

Formatted: List Paragraph, Indent: Hanging: 0.5", Right: 0.8", Numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 2.41" + Indent at: 2.65", Tab stops: 2.65", Left + 2.65", Left

Formatted: List Paragraph, Indent: Hanging: 0.5", Right: 0.48", Numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 2.41" + Indent at: 2.65", Tab stops: 2.65", Left + 2.65", Left

D. Quality Improvement and Service Records

1. Each licensed emergency medical services agency shall conduct a quality improvement program. The quality improvement program shall evaluate patient care and personnel performance for compliance with the current standards of practice as set forth in the services medical protocols/guidelines, and standards of Emergency Medical Services scope of practice. Reviews should be conducted at least quarterly, to assess, monitor, and evaluate the quality of patient care provided. Documentation for the quality improvement program and review shall include the following:
 - a. The criteria used to select audited runs;
 - b. Ambulance encounter form review;
 - c. Problem identification and resolution
 - d. Investigation of complaints or incident reports;
 - e. Date of review;
 - f. Attendance at the review;
 - g. A summary of the review discussion.
2. Any authorized representative of the Department shall have the right to enter the premises of any service or permitted ambulance at any time in order to make whatever inspection necessary in accordance with the minimum standards and

- b. Community Paramedic
 - c. AEMT
 - d. EMT
 - e. Advanced Response
 - f. EMT-Volunteer (EMT-V)
 - g. EMT-Specialty (EMT-S)
 - h. Stretcher
2. A vehicle may not be permitted by the Department or operated as an ambulance prior to the submission and approval of all required documentation, fees and a Department inspection.
 3. Vehicles must meet applicable requirements set forth in these Rules prior to receiving or retaining a vehicle permit.
 4. Permits shall be for a period not to exceed one (1) year.
 5. New ambulances replacing a permitted vehicle or being added to an existing service license must be inspected and permitted prior to being placed in service.
 6. Any medical equipment carried on an ambulance outside the approved equipment list, shall have prior written approval by the Department. No equipment or supplies shall be carried on an ambulance which would permit an EMSP to render care beyond the scope of practice and/or violate these Rules.
*Excludes community paramedic
 7. Ambulances used for the transportation of patients must have supplies and equipment for the protection of personnel and patients from infectious diseases and for personal safety.
 8. Ambulances shall be equipped with fasteners of the quick-release type to secure the cot to the floor or side walls that meet Ambulance Manufacturing Division (AMD) standard 004. Stretcher mounts must be capable of fastening the stretcher to the vehicle to prevent any movement of the stretcher when in its fastened position.
 9. Only ambulances of a paramedic or AEMT Service shall be equipped with ALS Equipment unless a prior request for an upgrade has been made and approved by the Department.
 10. Temporary upgrades and downgrades of permitted ambulances are for mechanical and staffing reasons only purposes and must be for a temporary period of time. Notice shall be made in writing on approved forms to the Department prior to any changes in equipment or staffing of permitted ambulances. ~~Upgrades and downgrades are not permitted for the purposes of staffing.~~ Permanent upgrades and downgrades shall follow the same guidelines as a new vehicle permit.
 11. Each permitted ambulance must have the ambulance service name clearly displayed in contrasting color(s) on each side and rear of the ambulance such that it is easily

29. Licensed services shall ensure that all outdated, misbranded, adulterated or deteriorated fluids, supplies and medications are removed from an ambulance immediately.
30. The interior of the ambulance, including all storage areas, must be kept clean so as to be free from dirt, grease, and other offensive or contaminated matter.
31. The Department may, at its sole discretion, inspect each permitted ambulance subject to the requirements of these Rules. The Department may inspect an ambulance or its maintenance records at any time or place to determine if the ambulance is being operated safely and in compliance with these Rules.
32. Each vehicle shall meet the basic medical and extrication equipment requirements. If an ambulance service does not provide extrication services a letter shall be submitted to the Department from an agency that provides extrication capabilities within the service area of the ambulance service. The letter shall be submitted with the ambulance services initial and annual renewal application.
33. Each permitted vehicle shall keep a current copy, either in print or electronic, of the services approved medical director approved protocols/guidelines in the ambulance at all times.
34. EMSP shall perform only those skills at the level of the permitted vehicle.

**Does not apply to Stretcher Ambulances*

C. Ambulance Staffing Requirements

1. Paramedic Permitted Ambulances

- a. Each paramedic permitted ambulance shall be staffed at all times by a minimum of two (2) licensed individuals, one (1) of whom shall be a paramedic. The remaining individual may be a paramedic, AEMT, or EMT. The paramedic shall staff the patient compartment at all times during patient transport.
- b. Permitted ambulances that are providing general patient transfers and not primary 911 emergency responses may staff their ambulances in the following manner.
 - Each permitted ambulance shall be staffed at all times by a minimum of two (2) individuals, one (1) of whom shall be a paramedic in the patient compartment at all times during patient transport. The second individual must be at a minimum trained as an emergency vehicle operator (EVO).



**STATE OF ARKANSAS
BUREAU OF
LEGISLATIVE RESEARCH**

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Tim Carlock, Assistant Director
for Information Technology
Matthew Miller, Assistant Director
for Legal Services
Estella Smith, Assistant Director
for Research Services

MEMORANDUM

TO: Members, ALC – Executive Subcommittee

CC: Marty Garrity, Director, Bureau of Legislative Research;
Jessica Whittaker, Administrator, Administrative Rules Review Section, Legal
Services Division

FROM: Lacey Johnson, Legislative Attorney, Administrative Rules Review Section,
Legal Services Division

DATE: September 29, 2021

SUBJECT: Legal Authorization for the Arkansas Department of Health’s Emergency
Promulgation of a Rule Regarding Emergency Medical Services

The State Board of Health has authority to “promulgate and implement rules and standards which it deems necessary to carry out the provisions of” the Emergency Medical Services Act. Ark. Code Ann. § 20-13-208(a)(1). Such rules include standards for ambulance and advanced life support rescue personnel licensure, standards for emergency medical services response vehicles and their equipment, ambulance and advanced life support rescue services operational standards, and “procedures for summoning and dispatching aid.” Ark. Code Ann. § 20-13-207(a).

The Arkansas Department of Health has the authority to issue operational permits for ambulances and licenses for emergency medical services and advanced life support rescue services personnel. Ark. Code Ann. § 20-13-209(5)-(6)(a). The Department also has the authority to “enforce the rules and standards promulgated by the State Board of Health for the administration and enforcement of” the Emergency Medical Services Act. Ark. Code Ann. § 20-13-209(2).