ADMINISTRATIVE RULES SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Thursday, October 17, 2024
9:00 a.m.
Room A, MAC
Little Rock, Arkansas

A. Call to Order

B. Reports from the Executive Subcommittee Concerning Emergency Rules

C. Reports from ALC Subcommittees Concerning the Review of Rules

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

1. DEPARTMENT OF CORRECTIONS, POST-PRISON TRANSFER BOARD (Tawnie Rowell)

a. SUBJECT: Executive Clemency

DESCRIPTION: The Department of Corrections, Post-Prison Transfer Board proposes its Executive Clemency Rule. Per the Board, the proposed rule on Executive Clemency sets out the procedure for applying for Executive Clemency, including required information and documentation, eligibility, and the process by which recommendations are made and referred to the Governor's Office. It also sets out specific procedures and additional requirements for death sentences. Rules regarding Executive Clemency were previously addressed in the Arkansas Parole Board Policy, which has been amended to remove references to executive clemency and instead reference this proposed rule.

PUBLIC COMMENT: No public hearing was held for this rule. The public comment period expired on September 14, 2024. The Board has indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Board has indicated that the proposed rule has no financial impact.

LEGAL AUTHORIZATION: The Post-Prison Transfer Board may adopt rules to implement, administer, and enforce Arkansas Code

Annotated §§ 16-93-201 through 16-93-214, which concern the Parole Board. *See* Ark. Code Ann. § 16-93-212. Further, the Board shall promulgate rules that shall establish policies and procedures for the waivers set out in Ark. Code Ann. §§ 16-93-207(c)(3)(A) and 16-93-207(d)(3)(A), which concern applications for pardon, commutation of sentence, and remission of fines and forfeitures. *See* Ark. Code Ann. §§ 16-93-207(c)(3)(B) and 16-93-207(d)(3)(B).

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

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

Act 742, sponsored by Representative Howard M. Beaty, Jr., which amended the law concerning applications for pardon, commutation of sentence, and remission of fines and forfeitures; and authorized the Governor to deny an application for pardon, commutation of sentence, and remission of fines and forfeitures with prejudice.

b. **SUBJECT: Arkansas Parole Board Policy Manual**

DESCRIPTION: The Department of Corrections, Post-Prison Transfer Board seeks to amend it Arkansas Parole Board Policy Manual. Per the Board, the purpose of this rule amendment is to remove clemency from the PPTB Board manual and reference the standalone rule.

PUBLIC COMMENT: No public hearing was held for this rule. The public comment period expired on September 14, 2024. The Board has indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Post-Prison Transfer Board may adopt rules to implement, administer, and enforce Arkansas Code Annotated §§ 16-93-201 through 16-93-214, which concern the Parole Board. *See* Ark. Code Ann. § 16-93-212.

2. DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION (Courtney Salas-Ford)

a. SUBJECT: Rules Governing Public School Choice

DESCRIPTION: The Arkansas Department of Education, Division of Elementary and Secondary Education (DESE) proposes its Rules Governing Public School Choice. The agency provided the following summary of the proposed rule:

Purpose
This rule various school choice provision of State law. The proposed amendment is required to implement statutory changes from the 94th General Assembly. The primary change implemented by this rule is the removal of the net maximum limit of 3% of enrollment under school choice in favor of a limit based on the capacity of the receiving district to educate the students. The changes also include provisions designed to make it easier for children of military families to take advantage of school choice and harmonize the two school choice processes regarding athletics and extracurricular activities. In addition, wherever possible, changes have been made to make the various processes under the legal transfer rule and the school choice rule as uniform as legally permissible. The rule also requires the district to notify DESE if more than 20 percent (20%) of the district's resident students have utilized a school choice or legal transfer provision to attend another school.

Background
The elimination of the 3% net maximum is a provision of the LEARNS Act. A total of four laws were passed which impact this rule; however, Act 129 of 2023 was rendered moot by LEARNS. Act 649 deals with military families. Act 790 deals with military families and with school choice generally. Act 768 implements the provisions governing extracurricular activities and athletics that had been enacted in the Opportunity School Choice law and placed those same provisions in the Public School Choice law.

Key Points
• Eliminates the numerical net maximum limit of 3% of enrollment in favor of a limit solely based on the capacity of the receiving district.
• Military families may immediately transfer out of a low preforming school.
• All school choice transfers have immediate effect. The rule allows the transferring student to choose whether to transfer immediately or to complete the school year at their current school.
• Harmonize the various school choice and legal transfer processes to the extent possible under the law.

Post-Public Comment Changes
No substantive changes were made following the public comment period. Minor changes were made to correct technical errors in drafting or to provide procedural clarity.

PUBLIC COMMENT: A public hearing was held on April 17, 2024. The public comment period expired April 24, 2024. The agency provided a summary of public comments it received. Due to its length, that summary is attached.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions and was provided with the following agency responses:

1) Is there a reason why Sections 2-2.06 and 2-2.07 of the amended rule, which concern participation in extracurricular activities, do not apply to a student who transfers to another public school and only applies to a student who transfers to a nonresident school district, per Arkansas Code Annotated § 6-18-1904(f)? **RESPONSE:** The Arkansas Public School Choice Act of 2015, which is addressed by Chapter 2 of the rule, only contemplates a to transfer to public schools located outside the student's resident district. While the language located in subsection (f) includes "public school" as distinct from "non-resident district" the inclusion of this phrase is in fact surplus language because subsection (f) only addresses the effect and obligations of a transfer and cannot expand to what school a transfers can be obtained.

2) Is there a reason why Section 3-1.14 of the amended rule, which concerns changing schools/athletic participation forms, does not apply to a student who transfers to another public school and only applies to a student who transfers to a nonresident school district, per Arkansas Code Annotated § 6-18-227(m)(1)? **RESPONSE:** Opportunity Public School Choice does allow transfer between public school and the phase "public school or" should have been rendered in Section 3-1.14. However, this issues only arises in a very limited number of districts given that most districts only have a single program version of a AAA regulated activity for the entire district. In the limited circumstances where a district has two schools with AAA regulated activities and a distinct in Level 5 intensive support our an "F" rating, the statutory provision will control over the rule. In the vast majority of cases will be governed by the rule as written.

3) Should Sections 4-1.02 and 4-1.02.1 of the amended rule, which concern applications for the transfer of students of uniformed service members, include provisions for a student who is eighteen (18) years of age or older, per Ark. Code Ann. § 6-18-227(n)(4)? **RESPONSE:** The

language “or the student if the student is eighteen (18) years of age or older” should have been rendered in sections 4-1.02 and 4-1.02.1. In the limited circumstances where a student who has turned 18 and qualifies for the military provisions to this rule, the statutory provision will control over the rule. In the vast majority of cases will be governed by the rule as written.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Education shall adopt any rules necessary for the implementation of Arkansas Code Annotated § 6-18-227, which concerns the Arkansas Opportunity Public School Choice Act, under the Arkansas Administrative Procedure Act, including rules pertaining to the consideration of a school district’s enrollment capacity. *See* Ark. Code Ann. § 6-18-227(k). Further authority for the rulemaking can be found in Ark. Code Ann. § 6-18-227(d)(5), which provides that the Division of Elementary and Secondary Education shall promulgate rules governing the use of school capacity as a basis for denying admission under the Act. Finally, Ark. Code Ann. § 6-18-1907(a) provides that the State Board may promulgate rules to implement the Public School Choice Act of 2015, Ark. Code Ann. §§ 6-18-1901 through 1908.

The proposed changes include those made in light of the following Acts:

Act 237 of 2023, §§ 38 through 39, sponsored by Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood through grade twelve (12) education in the state of Arkansas;

Act 649 of 2023, sponsored by Senator Jane English, which amended the Public School Choice Act of 2015 to provide school choice for children of uniformed service families and amended Acts 2023, No. 237 to amend the eligibility of children of active duty uniformed services personnel to participate in the Arkansas Children’s Educational Freedom Account Program;

Act 768 of 2023, sponsored by Senator Alan Clark, which amended the Public School Choice Act of 2015 and amended the Arkansas Opportunity Public School Choice Act to ensure a student who transfers to a nonresident district is afforded certain opportunities and rights; and

Act 790 of 2023, sponsored by Senator Jane English, which amended provisions of the Arkansas Code concerning the Arkansas Opportunity Public School Choice Act and amended provisions of the Arkansas Code concerning the Public School Choice Act of 2015.

b. **SUBJECT: Rules Governing the Implementation of the Braille and Large Print Textbook Appropriation**

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education proposes an amendment to its Rules Governing the Implementation of the Braille and Large Print Textbook Appropriation. Pursuant to Act 869 of 2023, the Division is charged with promulgating rules regarding moneys appropriated for the purchase of braille and large print textbooks. This proposed amendment allows the Arkansas School for the Blind to use funds from the School for the Blind Fund Account to purchase braille and large print textbooks for public school districts who have blind and visually impaired students when needed.

PUBLIC COMMENT: A public hearing was held on August 12, 2024. The public comment period expired on August 19, 2024. The agency indicated that it received no public comments.

The proposed effective date is November 1, 2024.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-21-105(d)(1), as amended by Act 869 of 2023, §15, the State Board of Education shall make reasonable rules regarding moneys appropriated for the purchase of braille and large print textbooks.

The proposed amendments include those made in light of Act 869 of 2023, § 15, sponsored by the Joint Budget Committee, which made an appropriation for personal services and operating expenses for the Department of Education – Arkansas School for the Blind and Arkansas School for the Deaf for the fiscal year ending June 30, 2024.

3. DEPARTMENT OF EDUCATION, DIVISION OF HIGHER EDUCATION (Courtney Salas-Ford)

a. SUBJECT: Rules Governing the Arkansas Teacher Academy Scholarship Program

DESCRIPTION: The Department of Education, Division of Higher Education proposes its Rules Governing the Arkansas Teacher Academy Scholarship Program. Per the agency, the Program was created pursuant to Ark. Code Ann. §§ 6-82-2201 et seq. and Act 237 of 2023. The Rules establish requirements and processes governing the Arkansas Teacher Academy Scholarship Program. The rules include language stipulating that students must apply for this scholarship via the Division's Scholarship Application Management System (SAMS) portal during the open application period. The rules also establish scholarship amounts along with distribution duties and reporting requirements.

The agency indicated that following non-substantive changes were made to these rules after a review of the rules during the public comment period:

- Replaced reference to Act with cite to Code section.
- Changes were made to multiple sections to correct grammar, more closely mirror the language in statute, and remove unnecessary language, most notably:
    - 3.01.3 (2.01.3) was duplicative of 5.03.1 so was removed.
    - 5.02.1 was added to reflect the limit imposed by AR Code 6-82-2206(a)(1).
    - 5.02.2 is in statute and was moved from 4.04.1.

PUBLIC COMMENT: A public hearing was held on May 20, 2024. The public comment period expired June 6, 2024. The agency indicated that it received no public comments.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions and was provided with the following agency responses:

1) Section 1.02 – Should this section reference the Arkansas Higher Education Coordinating Board or the Division of Higher Education?
RESPONSE: The Higher Education Coordinating Board is the approving body for Division of Higher Education Rules. However, much like the State Board of Education approves Division of Elementary and Secondary Education Rules, the Division is really the one implementing the rule and administering the program.

2) Section 5.04 – What prompted the Division to require applications to be submitted via only the Scholarship Application Management System

(SAMS) portal? **RESPONSE:** This is the only mechanism the Division has for receipt of applications.

3) Section 5.04 – Will the open application period be specified in these rules or elsewhere? **RESPONSE:** The open application period will be posted on the Division's website.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency has indicated that the proposed rules have no financial impact. The agency estimates that the total estimated cost by fiscal year to a state, county, or municipal government to implement these rules is $0 for the current fiscal year and $0 for the next fiscal year. The agency further notes: $12,000,000 is the yearly cost of the full scholarship program, which does not have a self-funding mechanism. Any costs will be borne by the state; however, the rules do not create any additional fiscal impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 6-82-2207(a), the Division of Higher Education shall administer the Arkansas Teacher Academy Scholarship Program Fund and establish criteria for distributing scholarships from the fund. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-82-2207(d), which provides that the Division may promulgate rules to implement the Arkansas Teacher Academy Scholarship Program Act. *See* Ark. Code Ann. §§ 6-82-2201 through 6-82-2207.

The proposed rules implement Act 237 of 2023, §57, sponsored by Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood through grade twelve (12) education in the state of Arkansas.

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

DESCRIPTION: The Department of Education, Division of Higher Education seeks to amend its Rules Governing the Arkansas Workforce Challenge Scholarship Program. Per the agency, Act 413 of 2023 amended the law concerning the Arkansas Workforce Challenge Scholarship, which is codified at Ark. Code Ann. §§ 6-85-301 et seq. As part of the amendment, the Act creates an additional provision to allow scholarship recipient students to utilize scholarship funds for enrolling and attending courses offered during a summer term at the postsecondary institution in which the student is enrolled.

PUBLIC COMMENT: A public hearing was held on May 20, 2024. The public comment period expired June 6, 2024. The agency indicated that it received no public comments.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following question and was provided with the following agency response:

1) Section 1.02.3 of the proposed rules adds to the definition of "approved institution of higher education" a public or private vocational-technical school or technical institute. Is there a reason why the rule expands on the definition provided for in Arkansas Code Annotated § 6-85-302(1), which does not include vocational-technical schools or institutes?
RESPONSE: The conditional language was included to account for the referred amendment with the following ballot title in the event the qualified electors of the state vote in favor of the amendment in the upcoming November elections: "An Amendment to the Arkansas Constitution to Provide that Lottery Proceeds May be Used to Fund or Provide Scholarships and Grants to Arkansas Citizens Enrolled in Vocational-Technical Schools and Technical Institutes." The language was included in the rule so it would not require a new definitional change in the event the constitutional amendment becomes effective.

Based on the agency response, a follow-up question was posed:

2) Do you know how the agency anticipates proceeding with this rule in the event that, post January 1, 2025, the constitutional amendment has not passed? **RESPONSE:** ADE has removed this conditional language from these rules.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 6-85-307, the Division of Higher Education shall promulgate rules to implement the Arkansas Workforce Challenge Scholarship Program. *See* Ark. Code Ann. §§ 6-85-301 through 6-85-307. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-80-109(a), which provides that the Division shall promulgate or update existing division rules to allow a student who is a recipient of a scholarship to utilize scholarship funds to enroll in and attend courses offered during a summer term at the postsecondary institution in which the student is enrolled. Rules promulgated under Ark. Code Ann. § 6-80-109, which concerns rulemaking authority for the Division, shall include without limitation

requirements concerning student eligibility and the disbursement and administration of scholarship funds utilized by a student to enroll in and attend courses offered during a summer term. *See* Ark. Code Ann. § 6-80-109(b).

The proposed amendments include those made in light of Act 413 of 2023, sponsored by Representative Julie Mayberry, which concerned rules promulgated by the Division of Higher Education, and required the Division of Higher Education to promulgate certain rules concerning the administration of scholarships funded with state funds and lottery proceeds.

c. SUBJECT: Rules Governing the Governor's Scholars Program

DESCRIPTION: The Department of Education, Division of Higher Education seeks to amend its Rules Governing the Arkansas Governor's Scholars Program. Per the agency, Act 413 of 2023 amended the law concerning the Arkansas Governor's Scholars Program, which is codified at Ark. Code Ann. §§ 6-82-301 et seq. As part of the amendment, the Act creates an additional provision to allow scholarship recipient students to utilize scholarship funds for enrolling and attending courses offered during a summer term at the postsecondary institution in which the student is enrolled.

Post-public comment period, the term "regulation" was removed from the rules.

PUBLIC COMMENT: A public hearing was held on May 20, 2024. The public comment period expired June 6, 2024. The agency indicated that is received no public comments.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following question and was provided with the following agency response:

1) Section 11.08.2 – Should the term "regulations" be removed as it was in other sections of the amended rules? **RESPONSE:** Yes, the change has been made.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-82-304(2), the Division of Higher Education shall administer the

Arkansas Governor's Scholars Program and shall establish and consult as necessary with an advisory committee representing the public and private sectors of postsecondary education and secondary schools in determining guidelines and rules for the administration of the Program. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-80-109(a), which provides that the Division shall promulgate or update existing division rules to allow a student who is a recipient of a scholarship to utilize scholarship funds to enroll in and attend courses offered during a summer term at the postsecondary institution in which the student is enrolled. Rules promulgated under Ark. Code Ann. § 6-80-109, which concerns rulemaking authority for the Division, shall include without limitation requirements concerning student eligibility and the disbursement and administration of scholarship funds utilized by a student to enroll in and attend courses offered during a summer term. *See* Ark. Code Ann. § 6-80-109(b).

The proposed amendments include those made in light of Act 413 of 2023, sponsored by Representative Julie Mayberry, which concerned rules promulgated by the Division of Higher Education, and required the Division of Higher Education to promulgate certain rules concerning the administration of scholarships funded with state funds and lottery proceeds.

d. **SUBJECT: Rules Governing the Arkansas Concurrent Challenge Scholarship Program**

DESCRIPTION: The Department of Education, Division of Higher Education seeks to amend its Rules Governing the Arkansas Concurrent Challenge Scholarship. Per the agency, Act 413 of 2023 amended the law concerning the Arkansas Concurrent Challenge Scholarship, which is codified at Ark. Code Ann. §§ 6-85-401 et seq. As part of the amendment, the Act creates an additional provision to allow scholarship recipient students to utilize scholarship funds for enrolling and attending courses offered during a summer term at the postsecondary institution in which the student is enrolled. Act 438 of 2023 updates the definition of student to now include sophomores in grade ten, in addition to juniors and seniors in grades eleven and twelve.

PUBLIC COMMENT: A public hearing was held on May 20, 2024. The public comment period expired June 6, 2024. The agency indicated that it received no public comments.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions and was provided with the following agency responses:

1) Section 1.02.3.3 of the proposed rules adds to the definition of "approved institution of higher education" a public or private vocational-technical school or technical institute. Is there a reason why the rule expands on the definition provided for in Arkansas Code Annotated § 6-85-402(1), which does not include vocational-technical schools or institutes? **RESPONSE:** The conditional language was included to account for the referred amendment with the following ballot title in the event the qualified electors of the state vote in favor of the amendment in the upcoming November elections: "An Amendment to the Arkansas Constitution to Provide that Lottery Proceeds May be Used to Fund or Provide Scholarships and Grants to Arkansas Citizens Enrolled in Vocational-Technical Schools and Technical Institutes." The language was included in the rule so it would not require a new definitional change in the event the constitutional amendment becomes effective.

Based on the agency response, a follow-up question was posed:

2) Do you know how the agency anticipates proceeding with this rule in the event that, post January 1, 2025, the constitutional amendment has not passed? **RESPONSE:** ADE has removed this conditional language from these rules.

3) Section 1.06 of the proposed rules uses the terms "sophomore, junior or senior" in the definition of "student". Ark. Code Ann. § 6-85-402(4), as amended by Act 438 of 2023, uses the terms "grade ten (10), grade eleven (11), or grade twelve (12)" in its definition of "student". Is there a meaningful difference between the terminology used in the proposed rule and what appears in the Arkansas Code? **RESPONSE:** There is no difference. The Division refers to grade 10 as sophomores, grade 11 as juniors, and grade 12 as seniors.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 6-85-406, the Division of Higher Education shall promulgate rules to implement the Arkansas Concurrent Challenge Scholarship Program. *See* Ark. Code Ann. §§ 6-85-401 through 6-85-406. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-80-109(a), which provides that the Division shall promulgate or update existing division rules to allow a student who is a recipient of a scholarship to utilize scholarship funds to enroll in and attend courses offered during a summer term at the postsecondary institution in which the student is enrolled. Rules promulgated under Ark. Code Ann. § 6-80-109, which concerns

rulemaking authority for the Division, shall include without limitation requirements concerning student eligibility and the disbursement and administration of scholarship funds utilized by a student to enroll in and attend courses offered during a summer term. *See* Ark. Code Ann. § 6-80-109(b).

The proposed amendments include those made in light of the following Acts:

Act 413 of 2023, sponsored by Representative Julie Mayberry, which concerned rules promulgated by the Division of Higher Education, and required the Division of Higher Education to promulgate certain rules concerning the administration of scholarships funded with state funds and lottery proceeds; and

Act 438 of 2023, sponsored by Representative Robin Lundstrum, which amended the definition of a student under the Arkansas Concurrent Challenge Scholarship Program.

e. **SUBJECT: Rules Governing the Sustainable Building Maintenance Program for State-Supported Institutions of Higher Education**

DESCRIPTION: The Department of Education, Division of Higher Education proposes its Rules Governing the Sustainable Building Maintenance Program for State-Supported Institutions of Higher Education. Per the agency, Act 751 of 2023 created the Sustainable Building Maintenance Program for State-Supported Institutions of Higher Education Act, codified at Ark. Code Ann. §§ 6-62-1201 et seq. The Act authorizes money to be loaned from the Sustainable Building Maintenance Program for State-Supported Institutions of Higher Education Revolving Loan Fund to a state-supported institution of higher education. Act 751 of 2023 establishes that the loans under this fun be used for deferred maintenance, critical maintenance, or renovation of state-owned property, in an amount that exceeds $100,000, with a repayment term not exceeding 10 years. Act 751 of 2023 also details the loan approval process, which requires upon approval by the division, legislative review for each loan request before final approval is made.

PUBLIC COMMENT: A public hearing was held on August 21, 2024. The public comment period expired August 28, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-62-1204(a), the Division of Higher Education shall promulgate rules for the implementation of the Sustainable Building Maintenance Program for State-Supported Institutions of Higher Education. *See* Ark. Code Ann. §§ 6-62-1201 through 6-62-1204. The rules promulgated under Ark. Code Ann. § 6-62-1204(a) shall include without limitation: application forms for applicants applying for a loan from the Sustainable Building Maintenance Program for State-Supported Institutions of Higher Education Revolving Loan Fund under § 6-62-1202; eligibility requirements for applicants applying for a loan from the fund under § 6-62-1202; review standards; and requirements for the issuance of a loan from the fund under §§ 6-62-1201 through 6-62-1204. *See* Ark. Code Ann. § 6-62-1204(b).

The proposed rule implements Act 751 of 2023, sponsored by Representative Stetson Painter, which created the Sustainable Building Maintenance Program for State-Supported Institutions of Higher Education.

f. SUBJECT: Rules Governing Military Dependents' Scholarship Program

DESCRIPTION: The Department of Education, Division of Higher Education proposes amendments to its Rules Governing Military Dependents' Scholarship Program.

Act 413 of 2023 amended the law concerning the Military Dependents' Scholarship Program, codified at Ark. Code Ann. § 6-82-601. As part of the amendment, the Act creates an additional section of the rule to allow scholarship recipient students to utilize scholarship funds for enrolling and attending courses offered during a summer term at the postsecondary institution in which the student is enrolled. Act 413 of 2023 establishes the rule shall include student eligibility and disbursement and administration of the funds utilized by a student to enroll in and attend courses offered during a summer term. Act 413 of 2023 also defines "scholarship" within this section to include a scholarship program that is funded with the state funds or lottery proceeds and administered by the division. In addition, Act 413 defines "academic semester" pertaining to scholarships.

Post Public Comment
This rule did not receive any public comments at the hearing held on August 21, 2024, nor during the public comment period, therefore, no substantive changes were made to the rule.

PUBLIC COMMENT: A public hearing was held on August 21, 2024. The public comment period expired August 28, 2024. The agency indicated that it received no public comments.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions and was provided with the following agency responses:

1) Were any of the proposed amendments to the rule based upon Act 387 of 2023, which amended the source of funding for in-state tuition for veterans and military personnel and dependents under certain circumstances? **RESPONSE:** Because Act 387 does not have a regulatory effect on students or institutions of higher education, we felt it was unnecessary to include the language in the rules. The funding mechanism referenced in ACA 6-82-601 will be handled through internal policies and procedures.

2) Section 2.01.1 – Is the definition of the term "approved institution" taken from the Arkansas Code? **RESPONSE:** The definition mirrors the language the division has previously used in the Law Enforcement Dependents' Scholarship rules to standardize scholarship eligibility.

3) Section 2.01.2 – Is there a reason why the definition of the term "dependent child" does not mirror the definition as provided in Ark. Code Ann. § 6-82-601(a)(1)(A), as amended by Act 387 of 2023?
RESPONSE: The definition mirrors the language used in A.C.A. 6-82-601 which includes (a)(1)(B)(ii) which states that a dependent child shall meet the definition of a dependent child as established by the US Department of Education.

4) Section 3.01.6 – Is there a reason why stepchild eligibility in the amended rule includes requirements that are not set out under Ark. Code Ann. § 6-82-601(a)(1)(A)(v), as amended by Act 387 of 2023?
RESPONSE: Section 3.01.6 includes language from ACA 21-5-707, which sets forth the method of establishing a familial relationship between the child and the covered LEO or first responder when the dependent is a stepchild. There is no comparable method of establishing the same familial relationship between stepchild and stepparent in ACA 6-82-601 et seq.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas Higher Education Coordinating Board and the State Board of Education are directed, authorized, and empowered to promulgate and adopt such rules as are necessary to implement the provisions of Arkansas Code Annotated § 6-82-601, which concerns tuition waiver for dependents of certain veterans. *See* Ark. Code Ann. 6-82-601(c). Further rulemaking authority can be found in Ark. Code Ann. § 6-80-109(a), which provides that the Division of Higher Education shall promulgate or update existing division rules to allow a student who is a recipient of a scholarship to utilize scholarship funds to enroll in and attend courses offered during a summer term at the postsecondary institution in which the student is enrolled. Rules promulgated under Ark. Code Ann. § 6-80-109 shall include without limitation requirements concerning student eligibility and the disbursement and administration of scholarship funds utilized by a student to enroll in and attend courses offered during a summer term. *See* Ark. Code Ann. § 6-80-109(b).

The proposed amendments include those made in light of Act 413 of 2023, sponsored by Representative Julie Mayberry, which concerned rules being promulgated by the Division of Higher Education; and required the Division to promulgate certain rules concerning the administration of scholarships funded with state funds and lottery proceeds.

g. SUBJECT: Rules Governing the Financial Aid Appeals Process

DESCRIPTION: The Department of Education, Division of Higher Education proposes amendments to its Rules Governing the Financial Aid Appeals Process. Per the agency, Act 244 of 2023 created the Financial Aid Appeals Process Act codified at Ark. Code Ann. § 6-81-1901. The Act creates a Financial Aid Appeals Committee, in conjunction with the Governor's administration, to be comprised of five representatives of the Division of Higher Education, that shall be responsible for administering the division's appeal process.

Act 244 of 2023 establishes the duties and responsibilities of the Committee, which include: promulgate rules, regulate appeals, determine eligibility of applicants, approve or reject applications, manage, operate, and control all funds, administer final determinations of financial aid appeals made by the committee, and report annually to the General Assembly the number of appeals received and approved. Act 244 of 2023 also details the definitions of terms used in this section and specifies the eligibility for appeals, the exclusions and conditions for appeals, in addition to state board hearing procedures.

Post Public Comment
This rule did not receive any public comments at the hearing held on August 21, 2024, nor during the public comment period, therefore, no substantive changes were made to the rule.

PUBLIC COMMENT: A public hearing was held on August 21, 2024. The public comment period expired August 28, 2024. The agency has indicated that it received no public comments.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following question and received the following agency response:

1) Section 2.02.1.2 – What prompted the agency to adopt the ten (10) calendar day limitation for submitting an appeal application? Is this different from the two (2) academic semester timeline for submitting an appeal application, referenced in Section 3.01.5 of the proposed rules?
RESPONSE: Section 2.02.1.2 concerns the appeal of initial eligibility to the Division while Section 3.01.5 concerns an appeal to reinstate financial aid of a student that was already deemed eligible to participate.

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

LEGAL AUTHORIZATION: There is established the Financial Aid Appeals Committee, in conjunction with the Governor's administration, to be composed of five (5) representatives of the Division of Higher Education, which shall be responsible for administering the division's appeals process. *See* Arkansas Code Annotated § 6-81-1903(a). Members of the committee shall, among other duties set out in § 1903(b), promulgate reasonable rules necessary to execute the provisions of Ark. Code Ann. §§ 6-81-1901 through 6-81-1905, including without limitation rules addressing the requirements, and in conformance with the requirements of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and other appropriate state laws in promulgating and placing rules into effect for a procedure to resolve disputes arising out of or relating to a student who is no longer considered eligible to receive a scholarship or grant. *See* Ark. Code Ann. §§ 6-81-1903(b)(1).

The proposed rule implements Act 244 of 2023, sponsored by Representative Rick Beck, which created a financial aid appeals process and committee for the Division of Higher Education.

h. SUBJECT: Rules Governing the State Teacher Education Program

DESCRIPTION: The Department of Education, Division of Higher Education proposes amendments to its Rules Governing the State Teacher

Education Program. Per the agency, Act 237 of 2023 amended the law concerning the State Teacher Education Program, which is codified at Arkansas Code Annotated §§ 6-81-1601 et seq. As part of the amendment, the Act increases the federal loan repayment from $3,000 to $6,000 per year, for a maximum of three years, for each year that a teacher who graduated from a teacher education program after 2004 and teaches in a public school in this state. Alternatively, teachers who completed an alternative educator preparation program after 2004 and teach in a public school with a critical shortage of teachers, located in a geographical area of the state designated as having a critical shortage of teachers, as designated by the Division of Higher Education in consultation with the Division of Elementary and Secondary Education also qualify for the increase in loan repayment from $3000 to $6000. Act 237 also stipulates that licensed teachers given intensive support status under the Teacher Excellence Support System shall be ineligible for receipt of funds under the State Teacher Education Program.

PUBLIC COMMENT: A public hearing was held on August 21, 2024. The public comment period expired August 28, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-81-1606(c), the Division of Higher Education shall promulgate rules necessary for the implementation of the State Teacher Education Program, codified at Ark. Code. Ann. §§ 6-81-1601 through 6-81-1606. Further, "eligible student" means a student who meets the criteria set out in the Program and is found to be eligible by rules promulgated by the Division of Higher Education. *See* Ark. Code Ann. § 6-81-1602(2).

The proposed amendments include those made in light of Act 237 of 2023, § 56, sponsored by Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood through grade twelve (12) education in the state of Arkansas.

i. SUBJECT: Rules Governing Teacher Opportunity Program

DESCRIPTION: The Department of Education, Division of Higher Education proposes amendments to its Rules Governing Teacher Opportunity Program. Per the agency, Act 413 of 2023 amended the law concerning the Teacher Opportunity Program, codified at Arkansas Code

Annotated §§ 6-81-601 through 6-81-610. As part of the amendment, the Division shall make arrangements to facilitate the use of scholarship funds for upcoming summer courses offered at the postsecondary institution in which the student is enrolled. Act 413 of 2023 also establishes that the term "scholarship" shall include a scholarship program that is funded with state funds or lottery proceeds and administered by the Division. Act 413 of 2023 further specifies for purposes of summer courses at an institution of higher education, a "semester" shall mean the same as is defined by the Division.

PUBLIC COMMENT: A public hearing was held on August 21, 2024. The public comment period expired August 28, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Teacher Opportunity Program shall be administered by the Division of Higher Education, which shall have the authority to establish necessary rules, procedures, and selection criteria for the administration of the program and to designate necessary forms and schedules. *See* Arkansas Code Annotated § 6-81-603(a). Further rulemaking authority can be found at Ark. Code Ann. § 6-80-109(a), which provides that the Division of Higher Education shall promulgate or update existing division rules to allow a student who is a recipient of a scholarship to utilize scholarship funds to enroll in and attend courses offered during a summer term at the postsecondary institution in which the student is enrolled. Rules promulgated under Ark. Code Ann. § 6-80-109 shall include without limitation requirements concerning student eligibility and the disbursement and administration of scholarship funds utilized by a student to enroll in and attend courses offered during a summer term. *See* Ark. Code Ann. § 6-80-109(b).

The proposed amendments include those made in light of Act 413 of 2023, sponsored by Representative Julie Mayberry, which concerned rules being promulgated by the Division of Higher Education and required the Division to promulgate certain rules concerning the administration of scholarships funded with state funds and lottery proceeds.

j. SUBJECT: Rules Governing the Washington Center Scholarship

DESCRIPTION: The Department of Education, Division of Higher Education proposes amendments to its Rules Governing Teacher Opportunity Program. Per the agency, Act 413 of 2023 amended the law

concerning the Teacher Opportunity Program, codified at Arkansas Code Annotated §§ 6-81-601 through 6-81-610. As part of the amendment, the Division shall make arrangements to facilitate the use of scholarship funds for upcoming summer courses offered at the postsecondary institution in which the student is enrolled. Act 413 of 2023 also establishes that the term "scholarship" shall include a scholarship program that is funded with state funds or lottery proceeds and administered by the Division. Act 413 of 2023 further specifies for purposes of summer courses at an institution of higher education, a "semester" shall mean the same as is defined by the Division.

PUBLIC COMMENT: A public hearing was held on August 21, 2024. The public comment period expired August 28, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Teacher Opportunity Program shall be administered by the Division of Higher Education, which shall have the authority to establish necessary rules, procedures, and selection criteria for the administration of the program and to designate necessary forms and schedules. *See* Arkansas Code Annotated § 6-81-603(a). Further rulemaking authority can be found at Ark. Code Ann. § 6-80-109(a), which provides that the Division of Higher Education shall promulgate or update existing division rules to allow a student who is a recipient of a scholarship to utilize scholarship funds to enroll in and attend courses offered during a summer term at the postsecondary institution in which the student is enrolled. Rules promulgated under Ark. Code Ann. § 6-80-109 shall include without limitation requirements concerning student eligibility and the disbursement and administration of scholarship funds utilized by a student to enroll in and attend courses offered during a summer term. *See* Ark. Code Ann. § 6-80-109(b).

The proposed amendments include those made in light of Act 413 of 2023, sponsored by Representative Julie Mayberry, which concerned rules being promulgated by the Division of Higher Education and required the Division to promulgate certain rules concerning the administration of scholarships funded with state funds and lottery proceeds.

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

DESCRIPTION: The Department of Education, Division of Higher Education proposes amendments to its Rules Governing Law Enforcement Officers' Dependents' Scholarship Program. Per the agency, Act 413 of 2023 amended the laws concerning law enforcement officers' dependents' scholarships, codified at Ark. Code Ann. § 6-82-501. As part of the amendment, the Act creates an additional section to allow scholarship recipient students to utilize scholarship funds for enrolling and attending courses offered during a summer term at the postsecondary institution in which the student is enrolled. Act 413 of 2023 establishes the rule shall include student eligibility and disbursement and administration of the funds utilized by a student to enroll in and attend courses offered during a summer term. Act 413 of 2023 also defines "scholarship" within this section to include a scholarship program that is funded with the state funds or lottery proceeds and administered by the division. In addition, Act 413 defines "academic semester" pertaining to scholarships.

PUBLIC COMMENT: A public hearing was held on August 21, 2024. The public comment period expired August 28, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas Higher Education Coordinating Board is directed and empowered to promulgate rules as necessary to administer benefits awarded by the Arkansas State Claims Commission under Arkansas Code Annotated §§ 6-82-501 through 6-82-507, which concern scholarships for children of law enforcement officers. *See* Ark. Code Ann. § 6-82-502. Further rulemaking authority can be found at Ark. Code Ann. § 6-80-109(a), which provides that the Division of Higher Education shall promulgate or update existing division rules to allow a student who is a recipient of a scholarship to utilize scholarship funds to enroll in and attend courses offered during a summer term at the postsecondary institution in which the student is enrolled. Rules promulgated under Ark. Code Ann. § 6-80-109 shall include without limitation requirements concerning student eligibility and the disbursement and administration of scholarship funds utilized by a student to enroll in and attend courses offered during a summer term. *See* Ark. Code Ann. § 6-80-109(b).

The proposed amendments include those made in light of Act 413 of 2023, sponsored by Representative Julie Mayberry, which concerned rules being promulgated by the Division of Higher Education; and required the Division to promulgate certain rules concerning the administration of scholarships funded with state funds and lottery proceeds.

4. DEPARTMENT OF FINANCE AND ADMINISTRATION, ALCOHOLIC BEVERAGE CONTROL (Trent Minner, Christy Bjornson)

a. SUBJECT: Wholesalers to Sell Only to Retailers; Hours of Sale for Wholesalers; Amends 2.13

DESCRIPTION: This proposed amendment changes the time in which deliveries by wholesalers may begin. This proposed amendment is being made at the discretion of the Director.

PUBLIC COMMENT: A public hearing was held on this rule on July 24, 2024. The public comment period ended on August 11, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division "has broad discretionary power to govern the traffic in alcoholic liquor and to enforce strictly all the provisions of the alcohol control laws of this state." Ark. Code Ann. § 3-2-206(d). The Director has power to promulgate rules "as shall be necessary to carry out the intent and purposes of" all alcohol control acts enforced in Arkansas. Ark. Code Ann. § 3-2-206(a). The Division has authority to promulgate rules "for the supervision and control of the manufacture and sale of vinous (except wines), spirituous, or malt liquors throughout the state not inconsistent with law." Ark. Code Ann. § 3-2-205.

b. SUBJECT: Microbreweries to Self-Distribute by Issuance of a Microbrewery-Restaurant Wholesale License; 1.19(48)

DESCRIPTION: The proposed amendment allows microbreweries to self-distribute by obtaining a microbrewery-restaurant wholesale license. This proposed amendment is in response to Act 207 of the 2023 Regular Session of the Arkansas General Assembly.

PUBLIC COMMENT: A public hearing was held on this rule on July 24, 2024. The public comment period expired on August 11, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has power to promulgate rules "as shall be necessary to carry out the intent and purposes of" all alcohol control acts enforced in Arkansas. Ark. Code Ann. § 3-2-206(a). This rule implements Act 207 of 2023. The Act, sponsored by Representative John Maddox, amended the law regarding a microbrewery-restaurant license and authorized certain microbrewery-restaurant licensees to self-distribute.

c. SUBJECT: Addition of Ready-to-Drink Products; Amends Sections 1.20, 2.5.1, 2.53, 2.58, 2.55.2

DESCRIPTION: The proposed amendment allows microbrewery-restaurants to make ready-to-drink products. This proposed amendment is in response to Act 169 of the 2023 Regular Session of the Arkansas General Assembly.

PUBLIC COMMENT: A public hearing was held on this rule on July 24, 2024. The public comment period expired on August 11, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has power to promulgate rules "as shall be necessary to carry out the intent and purposes of" all alcohol control acts enforced in Arkansas. Ark. Code Ann. § 3-2-206(a). This rule implements Act 169 of 2023. The Act, sponsored by Representative David Ray, amended the law regarding microbrewery-restaurants and authorized microbrewery-restaurants to manufacture and sell ready-to-drink products.

d. **SUBJECT: Suppliers and Wholesalers to Conduct Sampling at Permitted Liquor Stores; Amends Rule Prohibiting Samples**

DESCRIPTION: The proposed amendment allows suppliers and wholesalers to conduct sampling at permitted liquor stores. This proposed amendment is in response to Act 319 of the 2023 Regular Session of the Arkansas General Assembly.

PUBLIC COMMENT: A public hearing was held on this rule on July 24, 2024. The public comment period expired on August 11, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has power to promulgate rules "as shall be necessary to carry out the intent and purposes of" all alcohol control acts enforced in Arkansas. Ark. Code Ann. § 3-2-206(a). This rule implements Act 319 of 2023. The Act, sponsored by Representative Andrew Collins, amended the law regarding alcoholic beverages and amended the law regarding tasting events.

e. **SUBJECT: Microbrewery-Restaurant Private Clubs Selling Spirituous Beverages; Amends Rules 5.86, 5.90**

DESCRIPTION: The proposed amendment allows microbrewery-restaurant private clubs to sell spirituous beverages. This proposed amendment is in response to Act 334 of the 2023 Regular Session of the Arkansas General Assembly.

PUBLIC COMMENT: A public hearing was held on this rule on July 24, 2024. The public comment period expired on August 11, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has power to promulgate rules "as shall be necessary to carry out the intent and purposes of" all alcohol control acts enforced in Arkansas. Ark. Code Ann. § 3-2-206(a).

This rule implements Act 334 of 2023. The Act, sponsored by Representative Matt Brown, amended the law regarding alcoholic beverages, amended the law related to microbrewery-restaurant private clubs, permitted a microbrewery-restaurant private club permittee to store and sell spirituous liquor to members for on-premises consumption, provided discretion related to revocation of a microbrewery-restaurant private club permit, and included microbrewery-restaurant private clubs as a type of entity permitted in an entertainment district.

f. **SUBJECT: Private Clubs to Sell To Go and Delivery; Creates 5.71 and Amends 3.24**

DESCRIPTION: The proposed amendment allows private clubs in wet areas to sell food to go or for delivery. This proposed amendment is in response to Act 540 of the 2023 Regular Session of the Arkansas General Assembly.

PUBLIC COMMENT: A public hearing was held on this rule on July 24, 2024. The public comment period expired on August 11, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has power to promulgate rules "as shall be necessary to carry out the intent and purposes of" all alcohol control acts enforced in Arkansas. Ark. Code Ann. § 3-2-206(a). This rule implements Act 540 of 2023. The Act, sponsored by Representative Jack Fortner, amended the law regarding alcoholic beverages and amended the law related to the selling of alcoholic beverages with food purchase for delivery or to be consumed off-premises.

g. **SUBJECT: State Parks to Issue Alcohol Permits; Creates Section 1.19.1**

DESCRIPTION: The proposed amendment allows state parks to issue permits to sell alcohol. This proposed amendment is in response to Act 655 of the 2023 Regular Session of the Arkansas General Assembly.

PUBLIC COMMENT: A public hearing was held on this rule on July 24, 2024. The public comment period expired on August 11, 2024. The agency indicated that it received no public comments.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following question and received the following answer:

Q. The rule requires state parks to give notice to ABC when approved by DPHT to sell or serve alcoholic beverages. Is notice required by statute or is this under the Division's general rulemaking authority? **RESPONSE:** Notice is not required by statute, but under our general rulemaking authority we have added it because parks permits are to follow the same alcohol laws as ABC permit holders and any violations found should be presented to ABC. So essentially, we need some notice of when they issue a permit because we can't monitor it if we don't know it exists!

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Alcoholic Beverage Control Division shall promulgate rules to implement Arkansas Code § 3-9-103, regarding alcoholic beverages and state parks. *See* Ark. Code Ann. § 3-9-103(g), *as created by* Act 655 of 2023.

This rule implements Act 655 of 2023. The Act, sponsored by Senator Missy Irvin, amended the law regarding alcoholic beverages and authorized a state park to sell alcoholic beverages for on-premises consumption without obtaining a permit from the Alcoholic Beverage Control Division.

h. SUBJECT: Liquor Stores May Sell Advertising Materials; Amends Section 1.33(2)

DESCRIPTION: The proposed amendment allows liquor stores to sell clothing products that contain advertising material. This proposed amendment is in response to Act 684 of the 2023 Regular Session of the Arkansas General Assembly.

PUBLIC COMMENT: A public hearing was held on this rule on July 24, 2024. The public comment period expired on August 11, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has power to promulgate rules "as shall be necessary to carry out the intent and purposes of" all alcohol control acts enforced in Arkansas. Ark. Code Ann. § 3-2-206(a). This rule implements Act 684 of 2023. The Act, sponsored by Senator Ronald Caldwell, regarded alcoholic beverages and amended the law related to additional products sold by the holder of a liquor permit.

i. SUBJECT: Sale of Controlled Beverages by Vending Machine; Amends 3.19(8) and Creates 3.35

DESCRIPTION: The proposed amendment makes changes to the prohibition of sale of controlled beverages by vending machines. This proposed amendment is in response to Act 705 of the 2023 Regular Session of the Arkansas General Assembly.

PUBLIC COMMENT: A public hearing was held on this rule on July 24, 2024. The public comment period expired on August 11, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has power to promulgate rules "as shall be necessary to carry out the intent and purposes of" all alcohol control acts enforced in Arkansas. Ark. Code Ann. § 3-2-206(a). This rule implements Act 705 of 2023. The Act, sponsored by Senator Joshua Bryant, amended the law regarding alcoholic beverages, clarified the violation regarding the sale of controlled beverages by vending machine, and authorized the sale through a dispensing machine under certain circumstances.

j. SUBJECT: Permits Certain Distillers, Manufacturers, or Small Farm Wineries in Dry Areas to Exclusively Sell to Wholesalers; Creates 2.76, 2.86

DESCRIPTION: The proposed amendment permits certain distillers, manufacturers, or small farm wineries in dry areas to exclusively sell to wholesalers. This proposed amendment is in response to Act 747 of the 2023 Regular Session of the Arkansas General Assembly.

PUBLIC COMMENT: A public hearing was held on this rule on July 24, 2024. The public comment period expired on August 11, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has power to promulgate rules "as shall be necessary to carry out the intent and purposes of" all alcohol control acts enforced in Arkansas. Ark. Code Ann. § 3-2-206(a). This rule implements Act 747 of 2023. The Act, sponsored by Representative Mark Perry, amended the law regarding alcoholic beverages, amended the law regarding certain permits, and authorized the issuance of a permit to certain distillers, manufacturers, or small farm wineries in a dry area.

k. SUBJECT: Allows Viewing of Consumption of Alcohol for Private Clubs in Dry Areas; Amends 5.55

DESCRIPTION: The proposed amendment clarifies private club advertising to allowing for viewing of consumption of alcohol. This proposed amendment is in response to Act 801 of the 2023 Regular Session of the Arkansas General Assembly.

PUBLIC COMMENT: A public hearing was held on this rule on July 24, 2024. The public comment period expired on August 11, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has power to promulgate rules "as shall be necessary to carry out the intent and purposes of" all alcohol control acts enforced in Arkansas. Ark. Code Ann. § 3-2-206(a). This rule implements Act 801 of 2023. The Act, sponsored by Representative Lee Johnson, amended the law regarding alcoholic beverages and clarified the law regarding private club advertising.

l. SUBJECT: No Approval Necessary to Expand Outdoor Areas of Permitted Businesses; Amends 1.16

DESCRIPTION: The proposed amendment allows bars to expand outdoor operations without getting prior approval. This proposed

amendment is in response to Act 882 of the 2023 Regular Session of the Arkansas General Assembly.

PUBLIC COMMENT: A public hearing was held on this rule on July 24, 2024. The public comment period expired on August 11, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has power to promulgate rules "as shall be necessary to carry out the intent and purposes of" all alcohol control acts enforced in Arkansas. Ark. Code Ann. § 3-2-206(a). This rule implements Act 882 of 2023. The Act, sponsored by Senator Clarke Tucker, amended the law concerning alcoholic beverages and amended the law concerning the expansion of outdoor dining at restaurants to include bars.

5. DEPARTMENT OF HEALTH, ARKANSAS BOARD OF DISPENSING OPTICIANS (Jerry Himes, Matt Gilmore)

a. SUBJECT: Uniformed Service Member Licensure

DESCRIPTION: The Department of Health's Arkansas Board of Dispensing Opticians seeks legislative review and approval of proposed amendments to its Arkansas Board of Dispensing Opticians Rules, Section 20, concerning Uniformed Service Member Licensure. The proposed rule changes implement Act 137 of 2023 to add consideration of national certifications toward initial occupational licensing for uniformed service members and veterans and extends the application to spouses. The proposed changes add Section F to comply with the Act regarding acceptance of relevant and applicable uniformed service education, training, national certification or service-issued credential toward licensure qualifications and/or requirements.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on September 9, 2024. The Board received no comments.

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 § 17-89-203(a)(9), the Arkansas Board of Dispensing Opticians shall adopt rules commensurate with the policies of the Ophthalmic Dispensing Act, Ark. Code Ann. §§ 17-89-101 to -408, and for the purpose of carrying the Act into effect, including, but not limited to, rules that establish ethical standards of ophthalmic dispensing practices, application procedures, and procedures for investigating complaints; following their adoption, the rules shall govern and control the business conduct of every person licensed or registered under the Act in this state engaged in ophthalmic dispensing. *See also* Ark. Code Ann. § 17-89-203(a)(1)(B) (concerning the Board's powers and duties in evaluating qualifications and supervising the examination of applicants for licensure or registry under the Act).

The proposed changes include those made in light of Act 137 of 2023, sponsored by Senator Ricky Hill, which amended the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021; added consideration of national certifications toward initial occupational licensure and extended the application to spouses; and eliminated the one-year limit for veterans to apply service education, training, or certifications toward initial occupational licensure.

6. DEPARTMENT OF HEALTH, ARKANSAS BOARD OF EXAMINERS IN COUNSELING (Lenora Erickson, Matt Gilmore)

a. SUBJECT: IX. Licensing Under Special Conditions

DESCRIPTION: The Department of Health, Arkansas Board of Examiners in Counseling, proposes amendments to its Rules of the Arkansas Board of Examiners in Counseling, specifically part IX. Licensing Under Special Conditions. The amendment implements Acts 137 and 457 of 2023. Per Act 137, the proposed rule amendment will allow the board to accept relevant and applicable uniformed service education, training, national certification, or service-issued credential toward licensure qualifications or requirements when considering an application for initial licensure of an individual listed in Arkansas Code Annotated § 17-4-104. Per Act 457, the proposed rule amendment will allow automatic licensure for certain individuals who met the criteria listed in the Act.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on August 5, 2024. The agency indicated that it received no public comments.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions and was provided with the following responses:

1) Section 9.5(a)(6)(i) of the amended rules provides that the board shall grant automatic licensure upon receipt of payment of the initial application and licensure fee. Is that fee amount set within these, or other Board rules? **RESPONSE:** Section 13 of our rules outlines the fees. The licensure fee is pro-rated based on what month a person gets licensed. The pro-rated fees go down $10 each moth of the fiscal year.

2) Section 9.5(a)(8) of the amended rules provides that an applicant who is granted an automatic occupational license under the rules shall be granted no more than one (1) year to complete any of the other licensure requirements necessary for the license type, including but not limited to the board's criminal background check requirements. What was the agency's reasoning for allowing up to one (1) year for an automatic license applicant to complete the necessary licensing requirements, including a criminal background check? **RESPONSE:** We worked with our attorney to apply Act 457 of 2023 to our rules. The board elected to go with this time frame. The one-year timeframe allows applicants to meet the requirements as required of Arkansas residents. Additionally, the National Compact will soon be in effect and allow additional opportunities for working and licensing in Arkansas.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas Board of Examiners in Counseling shall adopt rules and procedures as it deems necessary for the performance of its duties. *See* Ark. Code Ann. § 17-27-203(b). Further authority for the rulemaking can be found in Ark. Code Ann. § 17-27-313(j), which provides that the board shall adopt the necessary rules to fully implement the provisions of Ark. Code Ann. § 17-27-313, which concerns criminal background checks.

The amendments include those made in light of the following Acts:

Act 137 of 2023, sponsored by Senator Ricky Hill, which amended the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021; added consideration of national certifications toward initial occupational licensure and extended the application to spouses; and eliminated the one-year limit for veterans to apply service education, training, or certifications toward initial occupational licensure; and

Act 457 of 2023, also sponsored by Senator Ricky Hill, which created the

Automatic Occupational Licensure for Out-of-State Licensure Act; and authorized occupational licensing entities to provide for automatic licensure for new residents who are licensed in another state, territory, or district of the United States.

7. DEPARTMENT OF HEALTH, ARKANSAS STATE BOARD OF NURSING (Sue Tedford, David Dawson, Matt Gilmore)

a. SUBJECT: Chapter Four: Advanced Practice Registered Nurse

DESCRIPTION: The following is a summary of the proposed changes to Chapter Four of the Arkansas State Board of Nursing Rules:

- The license type of Clinical Nurse Specialist was added as required to renew their certificate of full independent practice every three years to align with Act 872 of 2023.
- The effective date for starting the continuing education requirement was removed as it is no longer pertinent.
- Section VIII(A)(7) was deleted as it is duplicated.
- The ability of an APRN to prescribe, dispense and supply an opioid antagonist to any person authorized by ACA 20-13-1804 was added per Act 586 of 2023.
- Editorial changes were made.
- The restrictions on who an APRN can delegate checking the PDMP were removed.
- The requirement that the APRN shall check the PDMP when prescribing a Schedule II stimulant for the first time and every six months afterwards was added.
- The license type of Clinical Nurse Specialist as qualified to apply for full independent practice was added per Act 872 of 2023.
- Eligibility for full independent practice was clarified per Act 872 of 2023.
- Requirements for an affidavit for practice hours were clarified per Act 872 of 2023.
- The license type of Clinical Nurse Specialist was added per Act 872 of 2023.
- We corrected the reference to correct section in the chapter.
- We changed “Expedited” to “automatic” and added education and national certification and removed the one-year limitation for veteran application per Act 137 of 2023.

PUBLIC COMMENT: A public hearing was held on this rule on August 12, 2024. The public comment period expired on August 19, 2024. The agency provided the following public comment summary:

Commenter's Name: Leonie DeClerk, APRN, on behalf of the ANPA
COMMENT: The ANPA supports the changes to Chapter 4. She further states that the requirement to check the PDMP will increase patient safety.
RESPONSE: Mrs. Tedford stated she appreciates the support.

On August 15, 2024, ASBN received written comments on the proposed changes to Chapter 4. The comments were as follows:

In relation to Chapter Four, the Arkansas Nurse Practitioner Association supports the following revisions:

- Section VIII, D (p. 4-10). This revision increases public safety by providing increased access to opioid antagonists when needed.
- Section VIII, K (p. 4-12). This revision increases public safety and optimizes use of the Arkansas Prescription Drug Monitoring Program (PDMP). Stimulants from Schedule II, prescribed for conditions such as attention deficit disorder and narcolepsy, are the only class of medication tracked by the PDMP that had an increase in prescriptions filled in 2022 compared to 2021. Although these prescriptions and any dose changes must be initiated by a physician, and a physician must evaluate the patient every 6 months, advanced practice registered nurses (APRNs) can refill those prescriptions. We believe that this rule change, which requires the APRN to review the patient's PDMP report every 6 months, has the potential to improve public safety by detecting persons using multiple prescribers or prescription stimulants.
- Section IX (p. 4-12 & 13). This revision accurately reflects Act 872 of 2023.

RESPONSE: Mrs. Tedford stated she appreciates the support.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas State Board of Nursing has the power to "promulgate whatever rules it deems necessary for the implementation of" Title 17, Chapter 87 of the Arkansas Code, regarding nurses. Ark. Code Ann. § 17-87-203(1)(A). This rule implements Acts 137, 586, and 872 of 2023.

Act 137, sponsored by Senator Ricky Hill, amended the Arkansas Occupational Licensure of Uniformed Service Members, Veterans, and Spouses Act of 2021, added consideration of national certifications toward initial occupational licensure and extended the application to spouses and eliminated the one-year limit for veterans to apply service education, training, or certifications toward initial occupational licensure.

Act 586, sponsored by Representative Bart Schulz, amended the Naloxone Access Act and increased availability and accessibility of an opioid antagonist.

Act 872, sponsored by Senator Kim Hammer, allowed full independent practice authority for clinical nurse specialists and authorized experience in another state to qualify for full independent practice authority.

b. SUBJECT: Chapter Five: Delegation

DESCRIPTION: The following is a summary of the proposed changes made to Chapter Five of the Arkansas State Board of Nursing Rules:

- Editorial changes were made to improve readability by removing each license type and substituting with an all-inclusive term of licensed.
- We changed the word "must" to "shall" to be consistent with preferred language in Arkansas rules and statues.
- Delegation by a nurse cannot violate statutes or rule by any regulatory agency was clarified.
- An exclusion to delegation restrictions, the administration of seizure rescue medication, and use of a vagus nerve stimulator magnet were added as permitted in Act 286 of 2023.
- The definition of health maintenance activities was clarified.
- The restriction that the competent adult or caretaker had to hire to designated care aide was removed to provide greater access to care for the individual in the home setting.
- The inclusion of oral medication as a task that a designated care aide can provide was added.
- An editorial change was made by adding "registered".

PUBLIC COMMENT: A public hearing was held on this rule on August 12, 2024. The public comment period expired on August 19, 2024. The agency provided the following public comment summary:

Commenter's Name: Leonie DeClerk, APRN, on behalf of the ANPA **COMMENT:** The Associations appreciates the work the Board has done toward allowing delegation to Medical Assistants (MA), as they are well trained. Delegation to Medical Assistants does not decrease patient safety but will increase access to care. **RESPONSE:** Mrs. Tedford stated she appreciates the support, and the Board will continue to study the feasibility of modifying APRN delegation.

Commenter's Name: Melinda Rhynes, on behalf of the Arkansas Society of Medical Assistants
COMMENT: Ms. Rhynes read a letter signed by Donald Balasa, JD, CEO and Legal Counsel for the American Association of Medical Assistants, Misty Ross, CPPM, MCA, President of the Arkansas Society of Medical Assistants, and herself in support of the proposed changes allowing delegation by APRNs to Medical Assistants. Included with the letter was additional letters of support from APRNs and MAs.
RESPONSE: Mrs. Tedford stated she appreciates the support, and the Board will continue to study the feasibility of modifying APRN delegation.

On August 15, 2024, ASBN received written comments on the proposed changes to Chapter 5. The comments were as follows:

In relation to Chapter Five, the Arkansas Nurse Practitioner Association supports the revisions.

In the future, we encourage the Arkansas State Board of Nursing to allow licensed nurses to delegate the performance of nursing practices to a qualified and properly trained person (commonly known as medical assistants) who is not licensed or otherwise specifically authorized by the Arkansas Code to perform the practice or task, similar to ACA 17-95-208 and Arkansas State Medical Board Rule 31, which authorize physicians to delegate medical practices. Specifically, we would like the Arkansas State Board of Nursing to consider allowing APRNs to delegate nursing tasks to medical assistants.

Currently, APRNs cannot delegate many of the tasks in which medical assistants are trained to them. This decreases access to primary care in areas where there are few LPNs and RNs because the APRN must complete tasks such as immunizations. The current delegation rule effectively limits the number of patient visits, or one nurse must complete these tasks for multiple providers. In some cases, the scarcity of licensed nurses to fill office positions may make it infeasible to maintain an office in a rural or underserved community. Arkansas has numerous medical assistant programs offered through community colleges and other institutions, providing a well- trained, readily available healthcare workforce. Allowing APRNs to delegate to medical assistants would increase access to healthcare without compromising safety. Healthcare is best performed in teams; therefore, allowing each team member to practice to the top of their education will provide better healthcare access and outcomes for Arkansans.
RESPONSE: Mrs. Tedford stated she appreciates the support, and the Board will continue to study the feasibility of modifying APRN delegation.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas State Board of Nursing has the power to "promulgate whatever rules it deems necessary for the implementation of" Title 17, Chapter 87 of the Arkansas Code, regarding nurses. Ark. Code Ann. § 17-87-203(1)(A). This rule implements Act 286 of 2023. The Act, sponsored by Representative Denise Jones Ennett, created the Seizure Safe Schools Act.

8. DEPARTMENT OF HEALTH, STATE BOARD OF HEALTH (Laura Shue and Craig Smith, items a-b; Christy Kresse, item a; Ashley Mason, item b)

a. SUBJECT: Rules for Emergency Medical Services

DESCRIPTION: The purpose of these Rules is to provide a framework to enhance the care provided to the ill or injured by Emergency Medical Services Personnel. The proposed amendments to the existing rule are to comply with the requirements of Act 54 of 2023, which affects the required hours for the Community Paramedic license, and Act 258 of 2023, which creates the license for Emergency Medical Responders.

PUBLIC COMMENT: A public hearing was held on this rule on July 30, 2024. The public comment period expired on July 30, 2024. The agency provided the following public comment summary:

Commenter's Name: Clayton Goddard, MEMS
COMMENT: Over the past year, MEMS has been working to improve EMS response within our service communities by providing both EMT and AEMT courses to our partner Fire Department agencies. These Fire Departments have expressed interest in enhancing their response capability by elevating all or part of their department's current EMS certification level. MEMS fully supports their mission as more often than not Fire/Rescue almost always arrives on the scene before the ambulance.

In working with our Fire/Rescue partners, we (MEMS) feel strongly that creating this additional tier of Fire/EMS response and the advanced skills associated with it would encourage more Arkansas fire departments primarily to enhance their response capabilities leading to:

- (Most importantly) Improved patient care within a shorter amount of time.

- Minimization of wear/tear on actual fire apparatus for those departments that currently do not run a non-transport EMS response
- Opportunity to expand medical care at a much lower cost than the current "paramedic-level" only non-transport response vehicles
- Possible increased grant funding for FDs who want to improve their department's capability.
- Others TBD

Proposed Change: Change the current definition of Advanced Response permitted vehicles to Paramedic Response permitted vehicles

a. Vehicles shall be permitted at the ~~paramedic~~ Advanced EMT level only and shall always be staffed by a minimum of one (1) licensed ~~paramedic~~ AEMT.
b. Patient care must be transferred to a licensed transporting service. ~~Paramedical~~ Advanced EMT or higher level of care must be maintained throughout transport if paramedic level of care is initiated.

RESPONSE: We appreciate the comment and the efforts to work with emergency response partners. The Department will review this new suggestion, discuss with industry members, and consider the proposed change in the next rule promulgation.

Commenter's Name: Amanda Newton, Arkansas Ambulance Association (ArAA)

COMMENT: The requirement for a Department of Health-approved CPR certification must follow current American Heart Association (AHA) guidelines and require a hands-on skills component designed specifically for healthcare providers. The ArAA has requested that the Red Cross be referenced as well.

Typos should read in bold:

Page 8- Mutual aid definition should read "An agreement **between** services…"

Page 10- Stretcher definition should read "Any apparatus that is **used**…"

Page 64- E. Records of controlled substances should read "The ambulance service medical director is responsible for maintaining accurate and complete records of such drugs received and a record of all such drugs administered, or professionally used otherwise. Hospital-based ambulance services follow the **hospital's**…"

Page 64- 5. Patient Medication records shall consist of the following:

a. **Physician's**

Page 64- 6. (**Remove apostrophe**) The disposition record must reflect the actual dosage administered to the patient, the **patient's**…
Page 66- B. Urgent trauma transfers
The process for interfacility trauma transfers applies to those services participating in the state's trauma system. Services not participating shall have written protocols addressing procedures for the timely interfacility transfer of urgent trauma patients as defined below to appropriate adult or pediatric trauma centers based on the patient's medical needs. Any deviation from the service's …

RESPONSE: The Arkansas Heart Association (AHA) is responsible for researching and establishing CPR guidelines, which are then used by other organizations. The Red Cross follows the AHA guidelines. The noted typos were reviewed and corrected as required.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Health has authority to promulgate rules "which it deems necessary to carry out the provisions of" Title 20, Chapter 13, Subchapter 2 of the Arkansas Code, regarding the Emergency Medical Services Act. Ark. Code Ann. § 20-13-208(a)(1). "The Department of Health shall establish a voluntary licensure program for emergency medical responders." Ark. Code Ann. § 20-13-219(a), *as created by* Act 258 of 2023.

This rule implements Acts 54 and 258 of 2023. Act 54, sponsored by Representative Lee Johnson, reduced the number of hours of training required for licensure of a community paramedic. Act 258, also sponsored by Representative Johnson, allowed emergency medical responders to be licensed and authorized emergency medical responders to be reimbursed by insurance companies and the Arkansas Medicaid Program.

b. SUBJECT: Rules Pertaining to Lead-Based Paint Activities

DESCRIPTION: The Arkansas Department of Health is seeking review and approval of proposed amendments to the Rules for Lead-Based Paint Activities.

The Department of Health is tasked with regulating the licensing and training programs for lead-based paint activities, pursuant to Ark. Code Ann. § 20-27-2501, et seq. and 40 CFR § 745.220, et seq. The purpose of this rule is to do the following: (A) Establish procedures and requirements for the licensing of lead-based paint activities training programs,

(B) Establish procedures and requirements for the licensing of lead-based paint activities contractors and consultants, (C) Establish procedures and requirements for the certification of individuals engaged in lead-based paint activities, (D) Establish work practice standards for performing lead-based paint activities, (E) Require that all lead-based paint activities performed in target housing or child-occupied facilities be performed by a licensed lead-based paint consultant or contractor and certified individuals.

The proposed rule amends the Rules for Lead-Based Paint Activities to comply with Act 137 of 2023 regarding military licensure.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on July 30, 2024. The agency indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Health has the authority "to make all necessary and reasonable rules of a general nature for . . . [t]he proper control of chemical exposures that may result in adverse health effects to the public." Ark. Code Ann. § 20-7-109(a)(E). The Arkansas Department of Health has the authority to "[e]nforce rules necessary or appropriate to the implementation of [the Arkansas Lead-Based Paint Hazard Act of 2011.]" Ark. Code Ann. § 20-27-2505(3).

This rule implements Act 137 of 2023. The Act, sponsored by Senator Ricky Hill, amended the Arkansas Occupational Licensure of Uniformed Service Members, Veterans, and Spouses Act of 2021, added consideration of national certifications toward initial occupational licensure and extended the application to spouses and eliminated the one-year limit for veterans to apply service education, training, or certifications toward initial occupational licensure.

9. DEPARTMENT OF HUMAN SERVICES, DIVISION OF COUNTY OPERATIONS (Mary Franklin, Mitch Rouse, Janet Mann)

a. SUBJECT: Workers with Disabilities Eligibility Choices

DESCRIPTION: The Division of County Operations (DCO) amends the Medical Services Policy Manual to clarify services allowed Workers with Disabilities (WWD). The rule allows WWD the option to access services through the ARChoices Waiver or the Community and Employment

Support (CES) Waiver provided the medical and financial criteria for either waiver has been met. These updates align the Medical Services Policy Manual with the requirements as stated in the waivers.

Summary of Changes
DCO revises the Medical Services Policy Manual as follows:

1. Section B-330 Workers with Disabilities:
    a. Added "Community Employment Support (CES) or" to comply with Waiver requirements;
    b. Added "or CES" throughout to comply with Waiver requirements;
    c. Corrected format of policy reference;
    d. Corrected sentence format by adding "If" and lower case "a"; and
    e. Removed information about procedures;
2. I-570 Workers with Disabilities Eligible to Receive ARChoices and CES Waiver Services:
    a. Added "Refer to Health Care Procedures Manual for more information";
    b. Added "and Community Employment Support (CES)" to make clear;
    c. Added "or CES" to include this option as a service choice for WWD;
    d. Added reference to policy "MS B-317";
    e. Added "Recipients will be able to access services through ARChoices or CES Waivers provided the medical criteria for ARChoices or CES have been met as well as the financial criteria of the Workers with Disability group. Refer to MS C-240 for guidance and procedures regarding the medical assessment process.";
    f. Removed information regarding business process to go into the business procedure manual;
    g. Updated "his/her" to "individual's" for simplicity of language in the policy; and
3. Global changes include changing "Medicaid" to "Health Care Program", removed "pin" graphics before notes for formatting consistency with other sections of the manual, and updated grammar and style to match other manual sections not part of this rule.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on September 15, 2024. The agency indicated that it received no public comments.

The proposed effective date is March 22, 2025.

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

Per the agency, the total estimated cost to implement this rule is $275,000 for the current fiscal year ($77,000 in general revenue and $198,000 in federal funds) and $0 for the next fiscal year. The total estimated cost by fiscal year to a state, county, or municipal government to implement this rule is $77,000 for the current fiscal year and $0 for the next fiscal year.

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

10. DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES (Elizabeth Pitman, Mitch Rouse, Janet Mann)

a. SUBJECT: Life360 State Plan Amendment: Target Case Management

DESCRIPTION: DHS amends its fee-for-service Medicaid State Plan to include the Life360 HOMES services under the Arkansas Health and Opportunity for ME (ARHOME) program. The Life360 HOMES Medicaid Provider Manual, effective November 1, 2023, established services to be provided by eligible Arkansas Medicaid-enrolled hospitals to ensure clients in target populations are connected to medical services and nonmedical supports in their communities to address their health-related social needs (HRSN) through intensive care coordination.

This rule conforms the Medicaid State Plan to the Life360 program. The amendment to the plan provides a targeted case management benefit to Medicaid eligible pregnant women with intensive care coordination services. The benefit ensures these beneficiaries have an opportunity to connect to medical services and nonmedical supports in their communities and to address their social determinants of health (SDOH) needs. Approval of the state plan amendment (SPA) by the Centers for Medicare and Medicaid (CMS) is necessary for targeted case management of high-risk pregnant women who are eligible for traditional fee for service Medicaid. These services will:

- Reduce the maternal and infant mortality rates in the state and reduce long-term costs;

- Reduce the additional risk for disease and premature death associated with living in a rural county;
- Strengthen financial stability of small, rural hospitals, and enhance access to medical services in rural counties;
- Fill gaps in continuum of care for individuals with serious mental illness and substance use disorders;
- Increase their engagement in educational and employment opportunities among Medicaid beneficiaries most at risk for poor health outcomes associated with poverty;
- Reduce inappropriate and preventable utilization of emergency departments and inpatient hospital settings; and
- Increase the use of preventative care and health screenings.

To achieve the above, the Division of Medical Services amended the Medicaid State Plan to provide women with high-risk pregnancies who are eligible for Medicaid but are not in the New Adult Medicaid Expansion Group the opportunity to receive home-visiting services through the Life360 HOMES program. The amendment allows for hospitals approved to provide Maternal Life360 HOMES services to receive $300 per member per month for women enrolled in the Maternal Life 360 HOMES program through fee for service traditional Medicaid. The SPA conforms to the recently promulgated Life360 HOMES provider manual.

PUBLIC COMMENT: A public hearing was held on this rule on July 17, 2024. The public comment period expired on August 3, 2024. The agency indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Department of Human Services shall administer the Arkansas Health and Opportunity for Me Program "as approved by the Centers for Medicare and Medicaid Services." Ark. Code Ann. § 23-61-1004(a)(1)(B)(ii). The Department shall adopt rules necessary to implement Title 23, Chapter 61, Subchapter 10 of the Arkansas Code, regarding the Arkansas Health and Opportunity for Me Act of 2021. Ark. Code Ann. § 23-61-1012. 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: Private Hospital Access Payment State Plan Amendment

DESCRIPTION: The Department of Human Services (DHS) proposes changes to the Medicaid state plan regarding the calculation of supplemental inpatient access payments for private hospitals. The changes allow DHS to draw additional funds for the payments through federal reimbursements.

Summary of Changes
The calculation for inpatient access payments will change from the number of discharges to the number of days. The state plan amendment implements the change by deleting the requirement to apply Respective Case Mix Indexes (CMI) to both the base Medicare per discharge rates and base Medicaid per discharge rates for comparison to the Medicare-related UPL.

PUBLIC COMMENT: A public hearing was held on this rule on July 24, 2024. The public comment period expired on August 12, 2024. The agency indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

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

Per the agency, the total estimated cost to implement this rule is $93,750,000 for the current fiscal year ($67,500,000 in federal funds and $26,250,000 in other funding) and $375,000,000 for the next fiscal year ($267,581,250 in federal funds and $107,418,750 in other funding). The total estimated cost by fiscal year to a state, county, or municipal government is $26,250,000 for the current fiscal year and $107,418,750 for the next fiscal year. The agency indicated that it will use hospital assessment fee funding to pay for 100% of the state share of the cost.

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;

Delete requirement to apply Respective Case Mix Indexes (CMI) to both the base Medicare per discharge rates and base Medicaid per discharge rates for comparison to the Medicare-related UPL.

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

The current audit methodology does not align with Medicare cost settlement principles and reduces funding opportunities for hospitals participating in the Upper Payment Limit program.

(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 rule uses the Hospital Assessment Fee Funding to pay 100% of the State share, making it feasible to draw on federal funding to distribute a UPL in alignment with Medicare.

(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;

None.

(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

The existing rule requires an additional step to apply Respective Case Mix Indexes (CMI) to both the base Medicare per discharge rates and base Medicaid per discharge rates for comparison to the Medicare-related UPL. By deleting this step, the agency is able to use the Medicare-related UPL.

(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).

c. SUBJECT: Hospital Cost Settlement Reopening Process

DESCRIPTION: The Division of Medical Services (DMS) seeks to ensure federal claiming can be completed within the same rules and timelines as Medicare for reporting and claiming federal funding for hospital cost settlements. To do so, DMS aligns its rules and timeframes to require a minimum of $10,000 difference in costs for a hospital cost settlement to be reopened based on the date the Notice of Program Reimbursement (NPR) was issued.

The proposed rule is a result of an identified efficiency in expending state and federal funding in the Medicaid program. It aligns Medicaid cost settlement reporting and federal claiming with the rules and timelines used by Medicare. The rule reduces the risk of paying federal funding amounts from State General Revenue (SGR) prior to finalizing a Hospital Cost Settlement Report, which currently can occur when reopened but not completed within the current timeframes.

Summary of Changes
DMS amends the Hospital Provider Manual by adding section 257.100 regarding the process for cost settlement reopening to ensure federal claiming can be completed within the same rules and timelines as Medicare. Requests must be in writing and must be received no later than three (3) years after the date of the determination or decision that is the subject of the reopening. The request must reflect a reimbursement impact that totals a cumulative amount of at least a $10,000 increase due to new and material issues within the individual cost report. Each issue cited must be reviewed and determined as new and material to be counted in the cumulative total. These updates also require submission of an amendment to the Arkansas Medicaid State Plan Methods and Standards for Establishing Payment Rates to the Centers for Medicare & Medicaid Services.

PUBLIC COMMENT: A public hearing was held on these rules on July 24, 2024. The public comment period expired on August 12, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The 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).

d. SUBJECT: Transition of Dental Services

DESCRIPTION: Dental services provided by the Arkansas Medicaid Children's Health Insurance Program (CHIP) currently operate under a managed care waiver plan titled Healthy Smiles. After careful consideration of dental service utilization, total program cost, and the work underway to ensure a holistic, efficient, and sustainable Medicaid delivery system for all Arkansans, Arkansas Medicaid decided to end the Healthy Smiles Dental Managed Care program and transition to Fee-for-Service (FFS) dental services. This change helps ensure the best access to care for Medicaid beneficiaries and potentially saves state resources. Arkansas Medicaid will end Healthy Smiles and transition dental services to a fee-for-service (FFS) program effective November 1, 2024. To effectuate the change, an amendment to the CHIP state plan is necessary.

Summary
This rule amends the CHIP State Plan to reflect the new FFS program for dental services in the Arkansas Medicaid program.

PUBLIC COMMENT: A public hearing was held on this rule on August 7, 2024. The public comment period expired on August 17, 2024. The agency provided the following public comment summary:

Commenter's Name: Kyndall Rogers, Director, Government Relations, Delta Dental of Arkansas
COMMENT: Delta Dental of Arkansas (DDAR) is appreciative of the opportunity to publicly comment on DHS' amendment to the Arkansas Medicaid Children's Health Insurance Program (CHIP) State Plan.

Delta Dental of Arkansas is honored to have supported the Healthy Smiles Dental Managed Care Program in Arkansas since its inception in 2018, partnering with DHS to serve as one of the two dental managed care organizations serving the Medicaid population. As the leading dental insurer in the state of Arkansas, the Healthy Smiles Dental Managed Care Program is an extension of our mission to improve the oral health of all Arkansans by serving our state through our work with our members, providers, and partner organizations.

Delta Dental of Arkansas is proud of the impact the Healthy Smiles Dental Manage Care Program had on access to care and providing Medicaid beneficiaries the oral care they need. Since 2018, Delta Dental of Arkansas has managed benefits for an average of 325,000 beneficiaries, with children comprising over 70% of our total enrollment. The organization handled over 2.2 million dental claims while acting as steward for the program and DHS through above-and-beyond outreach, education, and community service for our beneficiaries. The Dental Managed Care Program successfully navigated the challenges of the COVID-19 pandemic and Public Health Emergency, supporting DHS during record high enrollment and throughout the redetermination process since 2023.

Overall, the Dental Managed Care Program in Arkansas was successful, especially in driving improved dental health outcomes for child beneficiaries. Notably, utilization of dental services outpaced national Medicaid and commercial averages, increasing by 9% since the beginning of Dental Managed Care Program compared to -5% for national Medicaid.

According to CMS, utilization rates across all core categories of care, Arkansas' national ranking improved since 2019, with the state's ranking rising from 47th to 13th overall. Delta Dental of Arkansas is proud to have supported DHS in achieving these care improvements, as both organizations leveraged their respective expertise to promote utilization of necessary oral health care.

As DHS undergoes the transition from managed care to fee-for-service, we encourage that patients and providers remain the priority for the state and the dental Medicaid program going forward. Medicaid beneficiaries are among the state's most vulnerable, and the fee-for-service program and associated processes must ensure their oral health needs are met

without undue burden or complexity. We hope that enrollment, provider credentialing, and other core functions are seamlessly implemented, and that the state continues to prioritize increasing utilization of quality dental care despite the impacts of the change to a fee-for-service model.

While Delta Dental of Arkansas is disappointed in the decision to return the state to a fee-for-service model in November 2024, our organization continues to fulfill our contract requirements and stands ready to support any future opportunities to serve this important Program. We thank all our partners, providers, and beneficiaries who entrusted their oral health care in Delta Dental of Arkansas and look forward to continuing our role as dental champions in Arkansas.

RESPONSE: The Department of Human Services appreciates the feedback from Delta Dental of Arkansas to its proposed amendment to the Arkansas Medicaid Children's Health Insurance Program (CHIP) State Plan. DHS appreciates Delta Dental's partnership in the Healthy Smiles program and its continued cooperation and assistance as Arkansas Medicaid transitions from offering dental services through a managed care model to traditional fee for service. Further we appreciate the services Delta Dental provided for its Medicaid beneficiaries and for helping them navigate dental services even through the COVID-19 pandemic that began in 2020.

We would like to clarify the statistics Delta Dental offered in its public comment and provide some additional context. We believe Delta Dental is relying on data collected by CMS to monitor state Medicaid programs' Early and Periodic Screening Diagnostic, and Treatment (EPSDT) services for children. CMS develops the EPSDT report by pulling data from Arkansas Medicaid's data system. The data for 2018 appears to be an anomaly, perhaps due to the change in our claims system newly receiving data from Delta Dental and MCNA, rather than relying on traditional Medicaid claims data. Excluding 2018, it's clear there has been little improvement over time in the children's utilization of dental services (percent of eligible beneficiaries who received any dental services).

	2017	**2018**	**2019**	**2020**	**2021**
US	50%	50%	50%	42%	45%
AR	49%	41%	50%	44%	49%

While Arkansas's state ranking may have improved due to the 2018 data anomaly and the circumstances in other states, our results have not trended upward.

Adult utilization of dental preventive services does not appear to have improved either. The table below shows the results reported annually by

each dental managed care organization to Medicaid's independent reviewer.

	2019	2020	2021	2022
Delta Dental	12.8%	9.8%	11.1%	10.2%
MCNA	11.2%	9.1%	8.9%	8.5%

Arkansas Medicaid must serve as a good fiscal steward of the limited dollars the state has and ensure spending for dental services results in improved care. We understand the move to fee for service may present some operational challenges, as all change does, but we are working tirelessly to ensure a smooth transition that ultimately benefits our beneficiaries, dental providers and Arkansas taxpayers.

The proposed effective date is November 1, 2024.

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).

11. DEPARTMENT OF HUMAN SERVICES, DIVISION OF PROVIDER SERVICES AND QUALITY ASSURANCE (Martina Smith, Mitch Rouse, Janet Mann)

a. SUBJECT: Updates to Rules for Nursing Homes

DESCRIPTION: Acts 313 and 503 passed during the 94th Arkansas General Assembly of 2023. Act 313 requires providers and healthcare facilities to post a notice that attacking a healthcare worker is a felony. Act 503 revises Arkansas Code Annotated § 20-10-101 by requiring the update of language referring to individuals with disabilities. The changes in this rule update the Rules for Nursing Homes to comply with the statutes, ensure consistent terminology and formatting, and reflect the current organization of the Division of Provider Services and Quality Assurance (DPSQA), patient room classifications, and infection control rules.

Summary of Changes

DPSQA amends the Nursing Home manual to incorporate directives from Acts 313 and 503 and, as stated above, to update terminology, ensure consistent formatting, and reflect current organizational structures and internal operations. In regard to Act 313 specifically, DPSQA amends the rule to require the following notice be posted at entrances used by patients and visitors and in patient waiting areas for a healthcare facility, emergency department, clinic, or long-term care facility:

> We respect you. Please respect our staff. Attacking a healthcare worker is a FELONY*.
> *Arkansas Code Annotated § 5-13-202.

As to Act 503, DPSQA removes disrespectful language that refers to individuals as mentally or physically deficient. Instead, the rule refers to them as individuals with disabilities.

Following the public comment period, DPSQA amended Section 303.96(b) to read "notice" rather than "digital poster".

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on August 12, 2024. The agency provided the following public comment summary:

Commenter's Name: Robbie Bradshaw, Director of Government, IICRC
COMMENT: IICRC Public Comment on Department of Human Services' Amendments to its Rules for Nursing Homes: The Institute of Inspection, Cleaning, and Restoration Certification (IICRC) offers the Arkansas Department of Human Services this comment in response to its Notice of Rulemaking relating to Rules for Nursing Homes.

The IICRC is a non-profit organization, founded in 1972, that develops certifications and standards for the inspection, cleaning, and restoration industries. We work diligently to establish and advance globally recognized standards, credentials, and certifications for the industries and constituents we serve. Our standards are voluntary consensus-based and are developed in accordance with the American National Standards lnstitute's accreditation process, better known as ANSI.

Among the IICRC's most recognized standards is the ANSI/IICRC Sl00 Standard for Professional Cleaning of Textile Floor Coverings. The ANSI/IICRC Sl00 describes the procedures, methods, and systems to be followed when performing professional commercial and residential textile floor coverings (e.g., carpet and rugs) maintenance and cleaning. This standard is widely regarded as the benchmark for professional carpet cleaning and is used by industry professionals worldwide.

Based upon the existence of the ANSI/IICRC Sl00 and the methodologies outlined within the standard, the IICRC believes the following changes should be made to the Rules for Nursing Homes:

> 411.1 Floors:
>
> *In nursing homes where carpet is installed, the home must furnish equipment ~~and have written cleaning procedures~~ to clean and maintain the carpet* ***in accordance with the ANSI/IICRC S100 Standard for Professional Cleaning of Textile Floor Coverings, or its successor publication****. This equipment must include, as a minimum, a ~~shampooer and wet/dry vacuum.~~* ***portable extraction equipment with wand and a mechanical pile agitation device.***

The ANSI/IICRC Sl00 Standard encompasses a comprehensive set of guidelines that cover all aspects of carpet cleaning, from the initial assessment of the carpet's condition to the appropriate cleaning methods and necessary equipment. By adopting this standard, the Arkansas Department of Human Services can ensure that all nursing homes within the state adhere to a universally recognized, evidence-based approach to the cleaning of carpets.

Furthermore, the IICRC wishes to address what appears to be the underlying sentiment within the current regulations, and what has been the prevailing misconception in our world today. The regulations state that if carpet is not maintained properly, it should be "removed and replaced with a hard smooth surface." There is a common belief that carpets are detrimental to indoor air quality; however, carpets can actually be better for indoor air quality than hard surfaces. Carpets act as filters, trapping dusts, allergens, and other particulates, which can then be effectively removed through proper cleaning. Hard surfaces, on the other hand, allow these particulates to remain airborne, potentially exacerbating respiratory issues.

Additionally, carpet plays a crucial role in reducing fall risks, which is especially important in nursing homes. The soft and textured surface of carpet provides better traction and cushioning, thereby minimizing the likelihood of slips and falls. This is a significant safety advantage over hard surfaces, which can be slippery and pose a greater risk of injury in the event of a fall.

The incorporation of the ANSI/IICRC Sl00 standard would be consistent with the Department's use of standards, as outlined in Section 426 of these regulations. Given the significant advantages that the ANSI/IICRC S100 Standard offers, we strongly recommend that the Arkansas Department of

Human Services incorporate this standard into its regulations for nursing homes as it has done with others in the past.

Doing so will not only align with industry best practices but also demonstrate the Department's commitment to maintaining the highest standards of cleanliness and safety for its residents.

We thank you for considering this important recommendation and we stand ready to assist in any way we can.
RESPONSE: Thank you for your response. During this particular revision of the manual, we did not revise the physical environment sections related to ceilings, walls, and floors. However, we will keep your comments on record and consider them during our next revision of the manual.

Lacey Johnson, an attorney with the Bureau of Legislative Research, made the following observation and received the following response:

Q. Section 303.9(b) references a "digital" poster. Just wanted to flag that because it seems odd in context.
RESPONSE: I got to the bottom of the "digital poster" mystery. We are going to change that to state simply "notice". This is why. The persons drafting the rule were following the language of the Act. The Act contains what appears to be a drafting irregularity. Act 313 states:

> (c)
>
> (1) The Arkansas Nurses Association shall provide the Department of Health a digital poster design that shall be used by a healthcare facility.
> (2) The text of the digital poster described under subdivision (c)(1) of this section shall read:
>
> > "We respect you. Please respect our staff. Attacking a healthcare worker is a FELONY*. *Arkansas Code Annotated § 5-13-202."

So, apparently it is a matter where the language of c(1) either was misunderstood or did not get carried over to c(2) in full.

The nurses association provides a "digital poster design" to DoH for use by the facilities. I take this to mean an electronic file that DoH can then easily distribute to the facilities to create posters, signs, etc. Someone took that to mean a digital poster (leaving off design). It would have been better to just state "The text of the [notice]…". As 303.9 in the rule discusses posting a Notice, we are going to change "digital poster" to "notice".

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b). This rule implements Acts 313 and 503 of 2023.

Act 313, sponsored by Senator Kim Hammer, required posting of a written notice that attacking a healthcare professional is a felony and allowed a healthcare professional to use a work address when reporting certain offenses.

Act 503, sponsored by Representative Jimmy Gazaway, made technical corrections to the Arkansas Code concerning the use of respectful language when referring to individuals with disabilities.

12. DEPARTMENT OF INSPECTOR GENERAL, TAX APPEALS COMMISSION (Matt Boch)

a. SUBJECT: Rules of Procedure of the Arkansas Tax Appeals Commission

DESCRIPTION: The Arkansas Tax Appeals Commission of the Department of Inspector General is proposing revisions to its Rules of Procedure of the Arkansas Tax Appeals Commission, which are authorized under Ark. Code Ann. §§ 25-15-203; 26-18-1112; 26-18-1115; and 26- 18-1120.

The current Rules of Procedure were adopted in December 2022. After over a year of operations, the Commission proposes revisions to increase fairness, efficiency, and proceeding effectiveness. The revisions reflect practices and procedures; reduce prehearing requirements in small cases; provide standards for common filings; conform to 2023 legislation; adopt plain language; streamline procedures and forms; and provide special forms for joint refund offsets.

PUBLIC COMMENT: A public hearing was held on this rule on August 20, 2024. The public comment period expired on September 3, 2024. The

agency provided a public comment summary which, due to its length, is attached separately.

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

1. Ark. Code Ann. § 26-18-1113(e)(2)(A) states that "the Chief Commissioner of the Tax Appeals Commission shall assign the proceeding to one (1) commissioner or to all available commissioners sitting en banc[.]" However, Section 5-102 of the rules states that either the Chief Commissioner or "staff of the Commission at the Chief Commissioner's direction" shall assign the case to one or all commissioners. Why was this additional phrase regarding Commission staff included? **RESPONSE:** We added the additional phrase because Ark. Code Ann. § 26-18-1120(2) requires the Commission to promulgate rules governing the way its statutory duties are carried out. For case assignment, the Chief Commissioner created an overall process, Ark. Code Ann. § 26-18-1106(b)(6), then delegated the day-to-day clerical work to staff (authorized by Ark. Code Ann. § 26-18-1109(a)(1)). It would be impossible for the Chief Commissioner to review and assign each proceeding himself individually due to the high case volume.

2. Section 5-201(e)(7) states that the Commission does not have jurisdiction over "an appeal from a final assessment for which a notice of proposed assessment was previously issued." Does this exception to the Commission's jurisdiction come from a particular statute? **RESPONSE:** Yes. It comes from Ark. Code Ann. § 26-18-406 and Ark. Code Ann. § 26-18-1113(a). Specifically, a taxpayer must file an administrative appeal with the Tax Appeals Commission from a notice of proposed assessment within 90 days. Ark. Code Ann. § 26-18-1113. If a taxpayer fails to appeal and DFA makes the assessment final without changes, the taxpayer must take its appeal to the circuit court instead of TAC. Ark. Code Ann. § 26-18-406.

3. Section 5-204(d)(2) states that taxpayers cannot petition the Commission to dispute the validity or amount of the debt to the claimant agency. Is this based on a specific statutory provision? **RESPONSE:** Yes. Under Ark. Code Ann. § 26-36-309, taxpayers can only challenge the validity or amount of a debt with the claimant agency. What taxpayers may challenge with TAC is an offset imposed by DFA to collect the debt. Ark Code Ann. § 26-36-315(c).

4. Is there specific statutory justification for the delegation of pre-hearing conferences and reports to Commission staff, as provided for in § 5-402(c)? **RESPONSE:** Yes. Ark. Code Ann. § 26-18-1120(2) requires the Commission to promulgate rules governing the way its statutory duties

are carried out. For pre-hearing conferences, the Chief Commissioner created an overall process, Ark. Code Ann. § 26-18-1106(b)(6), then delegated the associated administrative tasks to staff (authorized by Ark. Code Ann. § 26-18-1109(a)(1)). This is necessary for TAC to adjudicate appeals efficiently given its high case volume.

5. Where does the $10,000 threshold regarding efforts to stipulate come from (in § 5-403)? **RESPONSE:** It mirrors the $10,000 threshold for DFA appeals from small sales tax cases. Ark. Code Ann. § 26-18-1117 (Act 165 of 2024).

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 Tax Appeals Commission shall promulgate rules to "carry out the intent and purpose" of the Independent Tax Appeals Commission Act and to "implement the duties assigned to the commission[.]" Ark. Code Ann. § 26-18-1120. This rule implements Acts 251 and 346 of 2023.

Act 251, sponsored by Senator Blake Johnson, clarified the effective date of filing by mail with the Tax Appeals Commission. Act 346, also sponsored by Senator Johnson, amended the appointment procedure for the Tax Appeals Commission to provide for the filling of vacancies on the commission.

13. DEPARTMENT OF LABOR AND LICENSING, AUCTIONEER'S LICENSING BOARD (Lacie Kirchner, Kelli Black)

a. SUBJECT: Arkansas Auctioneer's Licensing Board Rules

DESCRIPTION: Act 677 of 2023 revised the Auctioneer Licensing Board statutes to include online auctions and estate sales for purposes of licensure. The main amendments made to the Board's rules follow the changes made by Act 677 of 2023. Additionally, the Board made some technical and grammatical changes that were necessary to ensure consistency with existing statutes.

- Rule 3 cleaned up language regarding the Director and his or her responsibilities.
- Rule 7 was amended to clarify exemptions from licensure for individuals selling their own goods and internet auctions, as well as remove language regarding emergency auctioneers.
- Rule 9 was amended to ensure that online auctions and estate sales licensees do not have to take a verbal test for licensure, as long as

the applicant attests to only be able to perform online auctions or estate sales.

- Rule 10 was amended to correct language regarding uniformed service members and to comply with Act 457 of 2023.
- Rule 12 & 16 were amended to reduce the grace period for late renewals from 120 days to 30 days.

PUBLIC COMMENT: No public hearing was held on these rules. The public comment period expired on August 26, 2024. The agency indicated it received no comments.

The proposed effective date is pending legislative review and approval.

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

Per the agency, the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed rule is $336.25 for the current fiscal year and $336.25 for the next fiscal year. The agency indicated that this amount represents the total initial licensing cost, including licensing fee, examination fee, background check cost, and recovery fund payment, for online auctioneers and estate sale providers. There is a $100 renewal fee for these licensees.

LEGAL AUTHORIZATION: The Auctioneer's Licensing Board has authority to promulgate rules "as may be necessary to implement" Title 17, Chapter 17 of the Arkansas Code, regarding auctioneers. Ark. Code Ann. § 17-17-207. This rule implements Acts 457 and 677 of 2023.

Act 457, sponsored by Senator Ricky Hill, created the Automatic Licensure for Out-of-State Licensure Act and authorized occupational licensing entities to provide for automatic occupational licensure for new residents who are licensed in another state, territory, or district of the United States.

Act 677, sponsored by Senator Missy Irvin, provided consumer protection for in-state internet auction sales and estate sales, amended the law concerning the Auctioneer's Licensing Board, and amended the Auctioneer's Licensing Law.

14. DEPARTMENT OF PUBLIC SAFETY, DIVISION OF ARKANSAS STATE POLICE (Lt. Col. Jason Aaron, Lt. Dennis Overton, Joan Shipley)

a. SUBJECT: Rules for License-Plate Readers

DESCRIPTION: The License Plate Reader rules have been written to allow the Arkansas State Police to begin to use license plate readers in its mission to keep the citizens of Arkansas safe. These rules meet the requirement set out in A.C.A. § 12-12-1805 as a condition to use the license plate readers.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on August 13, 2024. The agency indicated that it received no comments.

The proposed effective date is November 1, 2024.

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

LEGAL AUTHORIZATION: An entity using license plate readers under the Arkansas Code shall promulgate rules concerning "the manner and method of obtaining, retaining, and destroying captured plate data, including without limitation specific rules and policies concerning retention of material in excess of one hundred fifty (150) days under [Arkansas Code] § 12-12-1804(b)…" Ark. Code Ann. § 12-12-1805(b)(4)(A).

15. SECRETARY OF STATE (Michael Harry)

a. SUBJECT: Rules to Ensure the Security and Accuracy of the Statewide Voter Registration List

DESCRIPTION: The Secretary of State proposes its Rules to Ensure the Security and Accuracy of the Statewide Voter Registration List. These rules direct the Secretary of State to ensure the accuracy of the voter registration rolls, identify deceased voters, verify voter addresses, and aid in the verification of the citizenship of registered voters. Specifically, the rule authorizes:

1. Cooperation between jurisdictions to compare voter registration lists;
2. Use of Social Security Administration data to identify deceased voters; and
3. The creation of a process to verify address information for voters who have recently updated their addresses with the United States Postal Service.

These rules are necessary because Act 441 of 2023 requires the Secretary to issue rules to implement it.

Following the public comment period, changes were made for clarification. The rules previously ordered the counties to remove deceased voters. They were changed to better reflect the spirit of the rules: to assist counties in their compliance with the National Voting Rights Act.

PUBLIC COMMENT: A public hearing was held on July 8, 2024, and the public comment period expired that same day. The Secretary of State received no public comments.

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

(1) Section II.B. – Ark. Const. amend. 51, § 7(j)(2)(B), as amended by Act 441 of 2023, § 3, provides that the SOS shall "[h]ave the authority to utilize any services available to establish and implement a system for the verification of citizenship status for a person registering to vote." The proposed rules echo the requirement established by Act 441, but do not appear to establish or spell out the system in these rules that will be used for verification.
(a) Will the SOS be establishing that system by rule?
(b) If yes, when?
(c) If not, why not?
RESPONSE: There currently is no such system available to utilize; this language will be fleshed out when that program is established on the national level.

(2) Section II.D.i. and ii. – Ark. Const. amend. 51, § 7(j)(2)(D), as amended by Act 441 of 2023, § 3, provides that the SOS shall "[e]stablish and implement a process for the verification of address information . . . [s]ubmitted by a person registering to vote [and] . . . (ii) [s]ubmitted by a registered voter updating his or her address." The proposed rules echo the requirement established by Act 441, but do not appear to establish or spell out the process in these rules that will be used for verification.
(a) Will the SOS be establishing that process by rule?
(b) If yes, when?
(c) If not, why not?
RESPONSE: This language has been cleaned up to remove the unnecessary parts and make clear what the system is for verifying address information.

(3) Section II.E.i. and ii. – It appears that a word might be missing at the beginning of each section as the rule currently reads: "The Secretary of

State shall: All confidential…" and "The Secretary of State shall: County boards of election commissioners…"
RESPONSE: The numbering has been updated to remove any confusion.

Upon receipt of a revised markup, follow-up questions were posed:

(1) Section II.D. – Is there possibly a word missing at the beginning of the section as the rule currently reads: "The Secretary of State shall: Voter registration address information shall be verified by the following process:"?
RESPONSE: The wording has been updated to read correctly.

(2) Section II.D. – Arkansas Const. amend. 51, § 7(j)(2)(D) provides that the Secretary of State shall "[e]stablish and implement a process for the verification of address information: (i) submitted by a person registering to vote; (ii) submitted by a registered voter updating his or her address; and (iii) provided through undeliverable mail by the [USPS] concerning a person registering to vote or a registered voter." The proposed rules provide for a process whereby the SOS will receive a monthly report from the USPS change-of-address program and send voter registration application forms to those voters who have recently updated their address through the program. Will this same process be used to verify the address information of individuals falling within subsections (i) and (ii) of Ark. Const. amend. 51, § 7(j)(2)(D)?
(a) If so, how?
(b) If not, what process will be used to verify such address information?
RESPONSE: Yes, but I have added language to incorporate the other verification process outlined in Subsection (A) to help it flow/read correctly.

(3) Section III.B. – Ark. Const. amend. 51, § 7(j)(2)(F) provides that the SOS shall allow "view-only access to the voter registration files *and data* to all county board of election commissioners." (Emphasis added.) Is there a reason that the term "data" was omitted from the rule?
RESPONSE: That was an omission on our part; it has been corrected.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Secretary of State states that the proposed rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Constitution, Amendment 51, § 7(j)(3), as amended by Act 441 of 2023, § 3, the Secretary of State shall promulgate rules under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., necessary to implement the requirements of the section, which concerns registration

record files; and ensure the security, accuracy, and integrity of the statewide voter registration system; supporting technologies utilized by the counties to maintain and record voter registration information; secure user access requirements established by the Secretary of State; and election audit logs.

The rule implements Act 441 of 2023, sponsored by Representative Rick McClure, which created the Voter Registration and Secure Voter Records Act of 2023; amended Arkansas Constitution, Amendment 51; amended the law concerning audits of voter registration information; and amended the duties of the Secretary of State.

E. Agency Updates on the Status of Outstanding Rulemaking from the 2023 Regular Session Pursuant to Act 595 of 2021

1. Department of Agriculture (Secretary Wes Ward, Corey Seats)

2. Department of Commerce, Arkansas Economic Development Commission (Jake Windley)

3. Department of Commerce, State Insurance Department (Booth Rand)

4. Department of Corrections (Tawnie Rowell)

5. Department of Education (Courtney Salas-Ford)

6. Department of Energy and Environment (Kesia Morrison)

7. Department of Finance and Administration, Regulatory Division (Trent Minner, Christy Bjornson)

8. Department of Finance and Administration, Revenue Division (Paul Gehring, Alicia Austin Smith)

9. Department of Health (Laura Shue)

10. Department of Inspector General, Tax Appeals Commission (Matt Boch)

11. Department of Labor and Licensing (Lacie Kirchner)

12. Department of Public Safety (Joan Shipley)

13. Secretary of State (Michael Harry)

F. Agency Monthly Written Updates Pursuant to Act 595 of 2021 Concerning Rulemaking from the 2024 Fiscal Session

G. Adjournment