

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

**Thursday, December 19, 2024**

**9:00 a.m.**

**Room A, MAC**

**Little Rock, Arkansas**

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- 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 AGRICULTURE (Secretary Wes Ward, Corey Seats)~~**
    - a. ~~Liquid Animal Waste Management Systems~~**

**DESCRIPTION:** ~~The Department of Agriculture proposes its Liquid Animal Waste Management System Rule.~~

**Background**

~~Act 824 of 2023 transferred the authority related to liquid animal waste management systems from the Arkansas Department of Energy and Environment to the Arkansas Department of Agriculture.~~

**Discussion**

~~Act 824 conferred to the Arkansas Department of Agriculture the authority to promulgate rules related to liquid animal waste management systems, to issue and modify permits related to liquid animal waste management systems, approve design plans and site requirements related to liquid animal waste management systems, and to take any other action related to liquid animal waste management systems.~~

**Conclusion**

~~The rule will implement the transfer of authority related to liquid animal waste management systems to the Arkansas Department of Agriculture in accordance with Act 824 of 2023.~~

**PUBLIC COMMENT:** ~~A public hearing was held on August 26, 2024. The public comment period expired on September 2, 2024. The agency~~

~~provided a summary of the public comments it received and its responses thereto. Due to its length, that summary is attached separately.~~

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

~~1) Did the Department consult with the Division of Environmental Quality in promulgating this rule, per Arkansas Code Annotated § 15-20-102(a)?~~

~~**RESPONSE:** Yes, we consulted extensively with ADEQ in this draft.~~

~~2) Are the permit fee amounts contained in Section II(7) of the proposed rule set by statute? **RESPONSE:** The permit fee schedule is not found in statute. The fees in our rule are unchanged from those that were set by ADEQ and are found in their Regulation 9 (Permit Fee Regulations).~~

~~**FINANCIAL IMPACT:** The agency has indicated that the proposed rule does not have a financial impact. In addition, the agency states that the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed rule is \$200.00 for the current fiscal year and \$200.00 for the next fiscal year. Per the agency, the fee for the application, renewal, or modification of a Liquid Animal Waste Management System permit is \$200.00. This amount is unchanged from the fees charged by the Arkansas Department of Environmental Quality when Liquid Animal Waste Management Systems were governed by ADEQ Regulation 5. Further, the agency states that the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule is \$35,000.00 for the current fiscal year and \$35,000.00 for the next fiscal year. Per the agency, this amount represents staff salaries and fringe for Department employees who oversee this program, in addition to other duties.~~

~~**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 15-20-102(a), in consultation with the Division of Environmental Quality, the Department of Agriculture has authority over all liquid animal waste management systems in this state, including without limitation the authority to: promulgate rules related to liquid animal waste management systems; issue and modify permits related to liquid animal waste management systems; approve design plans and site requirements related to liquid animal waste management systems; and take any other action related to liquid animal waste management systems. The Department shall promulgate rules to implement Ark. Code Ann. § 15-20-102, concerning liquid animal waste management systems, and in promulgating such rules, the Department shall consider the Arkansas Water and Air Pollution Control Act, §§ 8-4-101 et seq.~~

~~The proposed amendments are those made in light of Act 824 of 2023, sponsored by Representative DeAnn Vaught, which regarded liquid animal waste management systems; and transferred the authority related to liquid animal waste management systems from the Department of Energy and Environment to the Department of Agriculture.~~

2. **DEPARTMENT OF COMMERCE, ARKANSAS DEVELOPMENT  
FINANCE AUTHORITY (Jake Bleed, Mark Conine)**

a. **Rule Regarding the Reservation of Private Activity Bond Volume Cap & REPEALS: Private Activity Volume Cap Rules and Regulations ID# 800; Neighborhood Stabilization Program (NSP) ID# 848**

**DESCRIPTION:** A number of different drafts of these rules have been adopted over the past several decades, and the most-recent draft of the rules is currently on the Authority’s website. However, the draft posted online and which has been enforced for several years differs from the draft currently on file as being promulgated with the Arkansas Secretary of State. Although the two drafts do not differ greatly, in order to ensure compliance with the Administrative Procedure Act, the proposed rule has been drafted and is presented.

The rule will conform with the requirements of the Authority’s authorizing code, specifically Arkansas Code Annotated Sections 15-5-603(c) and 15-5-605(d). Primary changes include:

1. Combining the rules for the reservation and allocation of volume cap to include both reservations for multi-family applications with those for industrial development, student loans and single-family housing.
2. Clarifying the process used to resolve “shortages” in compliance with Section 15-5-604(d)(3). The proposed rules would authorize the President of the Authority, in consultation with the Department of Commerce, to resolve shortages with various powers, including the forward commitment of volume cap.

The following rules are being repealed in accordance with Executive Order 23-02:

1. Private Activity Volume Cap Rules and Regulations, ID# 800
2. Neighborhood Stabilization Program (NSP), ID # 848

**PUBLIC COMMENT:** A public hearing was held on this rule on August 22, 2024. The public comment period expired on September 17, 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 Arkansas Development Finance Authority shall establish rules regarding allocation of the thirty percent of the aggregate state ceiling not specifically allocated by Arkansas Code § 15-5-603(a), “plus any amounts not used by September 1 in each year[.]” Ark. Code Ann. § 15-5-603(c). “The authority shall promulgate rules to establish criteria to determine priority for multifamily residential housing bonds in accordance with the Arkansas Administrative Procedure Act[.]” Ark. Code Ann. § 15-5-605(d). “The authority shall promulgate rules to provide for the declaring of a volume cap shortage and to reserve and allocate volume cap in cases of a shortage declaration[.]” Ark. Code Ann. § 15-5-604(d)(3).

**3. DEPARTMENT OF COMMERCE, STATE INSURANCE DEPARTMENT  
(Booth Rand, Commissioner Alan McClain)**

**a. Rule 128: Fair and Reasonable Pharmacy Reimbursements**

**DESCRIPTION:** The Department of Commerce, State Insurance Department proposes its Rule 128: Fair and Reasonable Pharmacy Reimbursements. The following summary was provided by the Department:

This is a proposed rule that should stabilize and improve Arkansas pharmacy or pharmacist reimbursement rates for prescription drugs (both generic and brand name). AID has received a significant number of complaints the last four to five months from pharmacies complaining of the lack of commercial or business viability for rates provided by a significant number of health benefit plans and PBMs, operating in this State. The common allegation or complaints is that a number of PBMs are now only paying Arkansas pharmacies a mere fraction above National Average Acquisition Cost (“NADAC”) without a dispensing cost adjustment.

The proposed rule results in essentially that health benefit plans and health insurers shall ensure that pharmacies will at least be paid NADAC minimums but also with a dispensing cost adjustment, in the event, and after review, that the Commissioner determines that a health benefit plan’s current pharmacy reimbursement is not fair and reasonable. The rule envisions that health benefit plans shall submit their cost data and any supporting data to provide a drug dispensing cost adjustment in our review if it is determined that a health plan does not have a fair and reasonable compensation program. In such event, the Commissioner and his actuary

shall review that data and documentation to review, approve or deny the requested or projected dispensing cost adjustment, on an individual health insurer basis. Financial impact would therefore not occur with a dispensing cost adjustment if the health benefit plan already has a fair and reasonable compensation program to sustain viable pharmacy networks.

This permanent rule will apply to health benefit plans on 1-1-2025.

### **Post Public Comment**

This is a summary of changes made to the language in proposed Rule 128 in response to public comments and drafting notes addressing why such language was either added or removed. I will provide the added or removed mark-up first and then explain the change in a comment in italics. These changes to the originally filed rule were made largely in response to various public comments. [Bureau Staff Note: “I” refers to Booth Rand at the State Insurance Department who provided the summary.]

### **I. AUTHORITY**

This Rule is issued by the Arkansas Insurance Commissioner (“Commissioner”) under Ark. Code Ann. § 23-92-509(a)(2)(I), § 23-92-509(a)(2)(D) and § 23-92-509(b)(2)(A). Specifically, under the permissive rule authority of these code provisions, the Commissioner is authorized to adopt rules without limitation to implement the Arkansas Pharmacy Benefits Manager Licensure Act (“PBMLA”) for compensation and pharmacy benefits manager network adequacy. In addition, as it applies to health benefit plans, this Rule is issued under the authority of Ark. Code Ann. § 23-61-108(b)(1) that permits the promulgation of rules necessary for the effective regulation of the business of insurance to be in compliance with federal laws, namely Section 2702(c) of the Public Health Service Act and 45 CFR § 156.230 which require that Qualified Health Plans provide sufficiently accessible medical providers that include pharmacies.

*Comment: Because we are applying these dispensing cost and reviews on “health insurers” or “health benefit plans,” who essentially tell PBMS what to pay or not pay, I’m adding additional language supporting the rule authority under our powers to issue rules for “network adequacy” on health plans, which include a network adequacy requirement for pharmacies.*

### **II. DEFINITIONS**

Unless otherwise defined in this Section, the definitions in the PBMLA shall apply to the provisions in this Rule.

A. ~~“Fair and reasonable cost to dispense” shall mean the Arkansas Insurance Commissioner’s determination of an adequate price or amount for the dispensing of a drug by a pharmacy giving due regard for the cost factors of labor, supplies and other administrative costs of a pharmacy associated with the dispensing of a drug to a subscriber of a health benefit plan.~~

A. “Fair and Reasonable Pharmacy Compensation Program” shall mean the Arkansas Insurance Commissioner’s determination of whether a current or proposed health benefit plan’s pharmacy reimbursements result in an adequate network of pharmacies for a health benefit plan.

B. “Subscriber” shall mean an insured, enrollee or certificate holder of a health benefit plan as defined under Ark. Code Ann. § 23-92-503(2).

*Comment: We are requiring an additional dispensing cost here, in actuality, on health benefit plans based on the new underlined A. definition above and not at all related what the total economic costs and administrative overhead is for drug dispensation per transaction. Therefore, we might require a \$6 dollar additional cost or \$9 etc, for example if the data justifies it, or none, or \$10 dollars etc, depending on their data, to raise their overall reimbursement to pharmacies to “ensure an adequate pharmacy network.” It really and legally has nothing to do that it costs in any drug transaction at a pharmacy that it costs in each instance, \$10.50 cents adjusted for inflation. We simply wanted to make that very clear.*

### III. APPLICABILITY

This Rule applies to all health benefit plans as defined in Ark. Code Ann. § 23-92-503(2) and healthcare payors as defined in Ark. Code Ann. § 23-92-503(3). The requirements of this Rule shall not apply to federally regulated health benefit programs, restricted from state regulation under federal law or which are exempted from state regulation under state law.

*Comment: I would prefer NOT to set out a long laundry list of federal and state plans this rule cannot legally apply to. Because we are issuing this Rule under the PBMLA, essentially the rule only applies to what the PBMLA has jurisdiction over. What happens in my experience when you do provide a list of 20-30 exempt plans, a new one will be required to be added due to federal legislation or litigation, or state law, or its erroneously just not listed, and we have to come back and amend the Rule! The rule for example may or may not be apply to Medicare Advantage Plans, depending on how you read an 8<sup>th</sup> Circuit opinion. It will not apply to primary Medicaid, but will apply to Private Option. It will not apply to*

*healthcare ministry plans, direct medical discount plans, boutique medical memberships, and will not apply to the Federal Employees plan, or Tricare for military members, and so on, on out to Tribal Indian Health plans. I would please just leave it with it with the above general exclusions.*

#### IV. FAIR AND REASONABLE REIMBURSEMENTS

A. Pursuant to Ark. Code Ann. § 23-92-506(a)(1), the Commissioner may review and approve the compensation program of a pharmacy benefits manager (“PBM”) from a health benefit plan to ensure that the reimbursement for pharmacist services paid to a pharmacist or pharmacy is fair and reasonable to provide an adequate pharmacy benefits manager network for a health benefit plan. The provisions of this Rule are specifically issued related to cost processes, and not plan benefit design, to help ensure the subject of network adequacy or reasonably sustainable network adequacy of pharmacy services for health benefit plans.

B. The Commissioner finds that current pharmacy reimbursement minimums under the PBMLA, or payments within a close range to minimums of National Average Drug Acquisition Cost (“NADAC”), or maximum allowable cost (“MAC”), that do not also include a reasonable cost to dispense to pharmacies may impair the sustainability of network adequacy for pharmacy services for health benefit plans.

*Comments: We said before in B. under this section that payments at NADAC minimums without a dispensing cost DO or shall impair network adequacy or pharmacies. The reality it MAY or MAY not depending our review of the pharmacy reimbursement data, so I think we change this to “MAY IMPAIR...”*

To ensure an adequate network of pharmacy services for a health benefit plan, or to ensure a reasonably sustainable adequate network for such services, a health benefit plan, through its pharmacy benefits plan or program, may be required to include a fair and reasonable cost to dispense to pharmacies in its administration of drug benefits under its health benefit plan upon and after a review of whether it has a fair and reasonable pharmacy compensation program to ensure an adequate network of pharmacies. For health benefit plans that are required to pay an additional dispensing cost under this Rule, a health benefit plan may not require a subscriber to pay for the dispensing cost outside of the amounts the health benefit plan has designated as the co-pay, co-insurance and deductible.

*Comments: again, “may be required,” not “shall be” depending on how we review the data.*

*The next markup is coming here from the health plans and Blue Cross and some of the concerns already from EBD in my #2 point in this comment.*

*First, our policy on these dispensing costs has been this is not going to be recouped at the counter from the customer. We really have not explored whether the next question of whether it instead can be applied or recovered under co-payment or co-insurance responsibilities. The plans suggest allow providing for it in high deductible health plan cases and very cheap generic RX payment. This is essentially saying it can be in high deductible health plans and very cheap generics if the total pharmacy reimbursement plus the fee IS LESS than a co-payment.*

*Under IRS rules, for high deductible health plans, members in those plans have to pay dollar for dollar for benefits and all costs, to receive tax deductions until they satisfy their deductible. We believe this covers all provider reimbursement billing including any dispensing costs. Under such plans, it may be required for the member to absorb the total charges up to their deductible to qualify for tax deductibility of that high deductible plan. That's number one. Number 2: this comes somewhat under administrative nightmare but what if the drug ingredient cost plus the dispensing fee is under the required co-payment? The plans will have to modulate their whole drug benefit design to lower co-payment amounts especially on cheap generics. I'm posing that we allow for the collection of the cost in the total reimbursement up to co-payment or co-insurance AND NOT OUTSIDE of it or when it would be IN EXCESS of those cost-sharing minimums.*

C. To ensure an adequate network of pharmacy services for a health benefit plan, or to ensure a reasonably sustainable adequate network for such services, a health benefit plan, through its pharmacy benefits plan or program, may be required to shall include a fair and reasonable cost to dispense to pharmacies in its administration of drug benefits under its health benefit plan upon and after a review of whether it has a fair and reasonable pharmacy compensation program to ensure an adequate network of pharmacies. ~~A fair and reasonable cost to dispense shall be calculated commiserate with the time, labor, supplies, and other administrative costs associated with the dispensing of the drug by the pharmacy. This cost to dispense shall be uniform or equally applied to all pharmacies servicing the health benefit plan.~~ For health benefit plans that are required to pay an additional dispensing cost under this Rule, a health benefit plan may not require a subscriber to pay for the dispensing cost outside of the amounts the health benefit plan has designated as the co-pay, co-insurance and deductible. o health insurer, and no pharmacy benefits manager ("PBM") administrating drug benefits for health benefit plans shall recoup or recover any increased costs to dispense from a subscriber at the point of sale through increased cost-sharing requirement



ratios or percentages (“co-insurance, co-payment, or deductibles”) on the health benefits plan member. Every health benefit plan or healthcare payor subject to the Arkansas Pharmacy Benefits Manager Licensure Act insurer shall file with the Commissioner, beginning on November 30, 2024, and no later than by February 17, 2025, by January 1, 2025, a written report describing each healthcare payor’s pharmacy compensation data as required by Bulletin # 18-2024 by AID. calculation amount, and methodology for such calculation, of the cost to dispense as required by this Rule. This requirement shall apply to plan year 2025 and thereafter on such dates March 1 for each succeeding plan year as mandated by the AID implementation Bulletin # 18-2024. Upon receipt of the data as required by AID Bulletin# 18-2024, the Commissioner is authorized to require an additional dispensing cost if the health benefit plan does not already provide a fair and reasonable pharmacy compensation program to ensure an adequate network of pharmacies. The Commissioner shall be authorized to review, approve or deny such dispensing cost requirement, to dispense calculation, in consultation with the actuary for the Arkansas Insurance Department (“AID”). The Commissioner shall make his or her decision to approve or deny such cost calculation within twenty (20) working days of receipt of such report from a healthcare payor and notify the submitting healthcare payor of his or her decision in writing. The Commissioner may extend such time periods for his or her decision in the event that the Commissioner needs additional data from the healthcare payor. The Commissioner shall issue a bulletin with the promulgation of this Rule more specifically addressing the format, procedures and information requirements required for such submissions as required under this Section of this Rule. Bulletin (18-2024) is hereby incorporated as part of this Rule. This Bulletin shall not be amended without filing such amendments as an amended promulgation of this Rule.

*Comments: Making quite a few clarifications here in response to public comments. First, we make it clear the rule and reporting requirements in the bulletin apply both to fully-insured plans (insured by health insurers) as well as self-funded employer plans. This is consistent with the definitions in the PBMLA defining what a health benefit plan is and a healthcare payor. Second, we had a lot of comments complaining that the report filing timing requirements were not clear. We therefore clarified that such reporting timelines will follow AID Bulletin 18-2024 which sets those out in great detail, and we incorporated the bulletin into this rule by reference. No changes will be made by AID to this bulletin without going through full rule-making approval with the legislature.*

E. ——— To the extent it is feasible, legally permitted and does not excessively and adversely impact health plan premium rates, the Commissioner requests that the health benefit plans and healthcare payors strive to reduce any additional costs, associated with the costs to dispense

~~as required by this Rule, by applying all unused brand name rebates to such costs, remaining after compliance with Act 333 of 2023 under the Healthcare Insurer Share the Savings Act, codified at Ark. Code Ann. § 23-79-2501 et seq., and the Pharmacy Benefits Manager Share the Savings Act, codified at Ark. Code Ann. § 23-92-704 et seq.~~

*Comments: We removed the underlined condition in the above, as there have been raised about both the legality of that as well as the cost and feasibility of doing so.*

D. Confidentiality of Data Required By AID Bulletin. Pursuant to Ark. Code Ann. § 23-92-506(a)(2), all data acquired by AID for review of a pharmacy compensation program under Rule 128 or this Bulletin shall be considered proprietary and confidential under Ark. Code Ann. § 23-61-107(a)(4) and § 23-61-207; and shall not be subject to the Arkansas Freedom of Information Act of 1967, § 25-19-101 et seq. However, the average dispensing fee per healthcare payor that is approved will be published annually.

*Comments: This is consistent and already in the insurance code, in the statute in the PBMLA. The last sentence is added however to make it transparent to all of the health benefit plans, what the dispensing cost decisions were by the Commissioner for each health benefit plan.*

**PUBLIC COMMENT:** A public hearing was held on October 22, 2024. The public comment period expired on November 11, 2024. The agency provided a summary of public comments it received and its responses thereto. Due to its length, that summary is attached separately.

This rule was initially filed on an emergency basis and was reviewed and approved by the Executive Subcommittee. The agency indicated that the emergency rule was effective as of September 20, 2024, and expires on January 18, 2025.

The proposed effective date for the permanent rule is January 1, 2025.

**FINANCIAL IMPACT:** The agency has indicated that the proposed rule does have a financial impact. The agency further states that the estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed rule is unknown at this time, and that if such payments are fair and reasonable, there will be no premium impact on the health benefit plans. Finally, the agency states that the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule is also unknown at this time.

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 response and written findings:

*Is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?*

RESPONSE: Yes, possibly, if the Commissioner requires a dispensing cost to be paid to pharmacies under health benefit plans, after reviewing RX payment and network data, because he decides that pharmacy compensation by the health benefit plan is not fair and reasonable, there may be an increased drug costs on an individual plans, depending on the size of the plan exceeding 100K. However, the Commissioner may after reviewing the data determine the RX reimbursement program is already fair and reasonable and there is no need for a dispensing cost, and there no plan impact of \$100k a year in increased drug costs.

*(1) a statement of the rule's basis and purpose;*

RESPONSE: The purpose of this rule is to require all health benefit plans to submit drug reimbursement data pursuant to a bulletin and rule requirement for the Commissioner to determine whether a health plan's pharmacy reimbursement program is fair and reasonable, and if not, to require an additional drug dispensing cost.

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

RESPONSE: The proposed rule is in response to pharmacy complaints, letters and emails complaining of non-sustainable rates of RX payments sufficient for pharmacies to stay in network with health benefit plans, and to determine whether such reimbursement is fair and reasonable and sustainable.

*(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;*

RESPONSE: Complaint data, RX payment adjustment data from the AID PBM division.

*(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;*

RESPONSE: See earlier answers to this survey that AID is adopting a review of applying either no fee, or a graduated fee, as a least costly option to a fixed RX dispensing cost applied uniformly to all plans.

*(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;*

RESPONSE: Again, we chose the least costly alternative and did not adopt and are not adopting a policy applying a uniform dispensing cost upon all plans, the Commissioner may, once again, decide to require a dispensing cost or may not depending up his review of the RX data as required by this Rule and implementational bulletin.

*(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;*

RESPONSE: No.

*and (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:*

*(a) the rule is achieving the statutory objectives;*

*(b) the benefits of the rule continue to justify its costs; and*

*(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.*

RESPONSE: We will review this issue and objectives each year.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 23-61-108, the Insurance Commissioner, in consultation with the Secretary of the Department of Commerce, shall have the authority to promulgate rules necessary for the effective regulation of the business of insurance or as required for this state to be in compliance with federal laws. Additionally, Pursuant to Ark. Code Ann. § 23-92-509(a)(1), the Commissioner may adopt rules regulating pharmacy benefits managers that are not inconsistent with the Arkansas Pharmacy Benefits Manager Licensure Act. *See* Ark. Code Ann. §§ 23-92-501 through 23-92-511. Rules that the Commissioner may adopt under the Act include without

limitation rules relating to licensing, application fees, financial solvency requirements, pharmacy benefits manager network adequacy, prohibited market conduct practices, data reporting requirements under Ark. Code Ann. § 4-88-803, compliance and enforcement requirements under Ark. Code Ann. § 17-92-507 concerning Maximum Allowable Cost Lists, rebates, compensation, and lists of health benefit plans administered by a pharmacy benefits manager in this state. *See* Ark. Code Ann. § 23-92-509(a)(2). In addition, rules adopted under the Act shall set penalties or fines, including without limitation monetary fines, suspension of licensure, and revocation of licensure for violations of the Act and rules adopted thereunder. *See* Ark. Code Ann. § 23-92-509(b)(1).

Additional authority for the rulemaking can be found in Ark. Code Ann. § 23-92-504(b), which provides that the Commissioner shall issue rules establishing the licensing, fees, application, financial standards, penalties, compliance and enforcement requirements, and reporting requirements of pharmacy benefits managers under the Arkansas Pharmacy Benefits Manager Licensing Act.

Concerning network adequacy, the Commissioner shall adopt rules relating to a pharmacy benefits manager's network adequacy, which shall require that an individual covered by a health benefit plan have access to a community pharmacy at a standard no less strict than the federal standards established under Tricare or Medicare Part D, 42 U.S.C. §§ 1395w-101 – 1395w-154, as it existed on January 1, 2021, if that standard requires, on average: (i) At least ninety percent (90%) of individuals covered by a health benefit plan in an urban area served by the health benefit plan to live within two (2) miles of a network pharmacy that is a retail community pharmacy; (ii) At least ninety percent (90%) of individuals covered by a health benefit plan in suburban areas served by the health benefit plan to live within five (5) miles of a network pharmacy that is a retail community pharmacy; and (iii) At least seventy percent (70%) of individuals covered by a health benefit plan in a rural area served by the health benefit plan to live within fifteen (15) miles of a network pharmacy that is a retail community pharmacy. *See* Ark. Code Ann. § 23-92-509(b)(2).

**4. DEPARTMENT OF CORRECTIONS, BOARD OF CORRECTIONS  
(Tawnie Rowell)**

**a. Earned Release Credits Committee**

**DESCRIPTION:** The Department of Corrections, Board of Corrections proposes its Earned Release Credits Committee rule. The proposed rule establishes the Earned Release Credits Committee in accordance with Arkansas Law. The committee will develop guidelines by which inmates may accrue Earned Release Credits.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on October 19, 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 rule does not have a financial impact.

**LEGAL AUTHORIZATION:** Subject to rules promulgated by the Board of Corrections, an inmate eligible to accrue earned release credits may accrue earned release credits against the time spent in confinement pursuant to a sentence to the Division of Correction by the sentencing court. *See* Arkansas Code Annotated § 12-29-702(a). The Board of Corrections shall promulgate rules, and the Division of Correction shall administer rules that set guidelines for accrual of earned release credits for work practices, job responsibilities, good behavior, and involvement in rehabilitative activities while in the custody of the Division of Correction. *See* Ark. Code Ann. § 12-29-702(b)(1). The rules shall provide for uniform application of authorizing release to post-release supervision for an inmate who successfully completes programs determined to reduce recidivism and has met behavioral expectations while incarcerated. *See* Ark. Code Ann. § 12-29-702(b)(2). Further authority for the rulemaking can be found in Ark. Code Ann. § 12-29-703(a)(1), which provides that the Board of Corrections shall establish an earned release credit classification committee, and members of the committee shall be selected by wardens or supervisors of the various units, facilities, or centers of the Division of Correction and Division of Community Correction according to rules adopted by the board governing the selection of members. The additional days of earned release credits described in Ark. Code Ann. § 12-29-703(b)(1) shall be accrued as provided in the rules promulgated by the Board. *See* Ark. Code Ann. § 12-29-703(b)(2)(A). The Board may add, amend, change, or alter the rules adopted under Ark. Code Ann. § 12-29-703 in accordance with the Arkansas Administrative Procedure Act, §§ 25-15-201 et seq.

The proposed rule implements Act 659 of 2023, 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.

5. **DEPARTMENT OF EDUCATION, COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION, DIVISION OF PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION (Courtney Salas-Ford)**

a. **Rule Governing the Academic Facilities Distress Program**

**DESCRIPTION:** The Department of Education, Commission for Arkansas Public School Academic Facilities and Transportation, seeks to amend its Rule Governing the Academic Facilities Distress Program.

**Background**

Pursuant to Act 237 of 2023, the Division is charged with promulgating rules regarding the Academic Facilities Distress Program Act, which is codified at Ark. Code Ann. § 6-21-811(g)(6). The Department is charged with evaluating, assessing, identifying, and addressing those school districts in academic facilities distress, for which the Department believes that rulemaking is required.

**Key Points**

- Removes two exceptions to waive the application of Arkansas law or the corresponding State Board of Education rules.
- Updates numerical sections and capitalization within the rule.

**Discussion**

Act 237, Section 45, of 2023, amended a section of the Academic Facilities Distress Program Act codified at Ark. Code Ann. § 6-21-811(g)(6). As part of the amendment, the Act removes two exceptions (Teacher Fair Dismissal Act of 1983 and Public School Employee Fair Hearing Act) to waive the application of Arkansas law or the corresponding State Board of Education rules pertaining to steps the Division of Public School Academic Facilities and Transportation may take when a public school district is classified as being in facilities distress under the Academic Facilities Distress Program.

**Post-Public Comment**

Public comments were received, and no substantive changes were made based on the comments.

**PUBLIC COMMENT:** A public hearing was held on May 24, 2024. The public comment period expired June 6, 2024. The agency provided the following public comment summary:

Commenter Name: Lucas Harder, Arkansas School Board Association, Policy Services Director, 5/10/24

**COMMENT:** 8.00: The third “i” is missing in “Facilities”.

**RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** Section 6.03 is about the process of ordering a special election following a failed millage. How does that process work with the new laws that limit school board elections including millage elections to the March/May spring primary election or the November general election? It could work to a district’s advantage if they failed a November millage election, and the Commission/Division directed the district to conduct a special election in say August? **RESPONSE:** Comment considered. No changes made. The Commission could order a district to hold its special election in the March/May time frame in addition to its regularly scheduled November election. Additionally, both the rule and statute allow the Commission “to extend the date beyond seven (7) months.”

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

1) The title of the amended rule refers to the “Division of Arkansas Public School Academic Facilities and Transportation”. Is this the same entity as the “Division of Public School Academic Facilities and Transportation” created in Ark. Code Ann. § 6-21-112? **RESPONSE:** Yes.

2) Should the following sections of the amended rule refer to the “Commission *for* Arkansas Public School Academic Facilities and Transportation”? (Emphasis added): Sections 1.00, 6.01.2, 7.00, 8.00, 9.04, 10.01, 12.02. **RESPONSE:** Yes, this was a typographical error that was corrected.

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 § 6-21-114(e)(2)(A), the Commission for Arkansas Public School Academic Facilities and Transportation may adopt, amend, and rescind rules as necessary or desirable for the administration of the Arkansas Public School Academic Facilities Program and any other related program. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-21-804(b), which provides that the Commission shall promulgate rules necessary to administer the Arkansas Public School Academic Facilities Program, all its component and related programs, and the



provisions of the Arkansas Public School Academic Facilities Program Act (“Act”), Ark. Code Ann. §§ 6-21-801 through 6-21-816, which shall promote the intent and purposes of the Act and assure the prudent and resourceful expenditure of state funds with regard to public school academic facilities throughout the state. *See also* Ark. Code Ann. § 6-21-811 (concerning the Academic Facilities Distress Program).

The proposed rule implements Act 237 of 2023, §45, 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. Rules Governing the Academic Facilities Partnership Program**

**DESCRIPTION:** The Department of Education, Commission for Arkansas Public School Academic Facilities and Transportation, seeks to amend their Rules Governing the Academic Facilities Partnership Program.

**Background**

Pursuant to Act 237 of 2023, the Commission for Arkansas Public School Academic Facilities and Transportation is charged with promulgating rules regarding the requirements of a school safety expert. Additionally, the Division has identified several areas of the rule where amending the rule would grant districts greater flexibility.

**Key Points**

- Establishes requirements for a school safety expert.
- Removes unnecessary requirements for schematic drawings.
- Identifies legal requirements for legislation with respect to school district storm shelters.

**Discussion**

Act 237 of 2023 added a requirement that all new construction by school districts must be reviewed and approved by a school safety expert. The Act charged the Commission with promulgating the requirements for an individual to qualify as a school safety expert. Act 764 of 2023 establishes requirements, beginning January 1, 2025, for each school district that must have a storm shelter. A provision was added to require that to be eligible for Partnership Program funding, new construction projects must comply with the requirements in Act 764. Additionally, the rule removes a requirement that single line drawings include all outside dimensions, including all offsets and overall gross square footage. Under the existing rule, a district might be ineligible for Partnership Program funding even if the proposed project is completely unrelated to the outside dimension of the facility, simply because the overall square footage was not included in

the proposal. This change corrects that idiosyncrasy. The Division is promulgating this rule to implement both Acts, make corrections that remove unnecessary restrictions on districts, and make comprehensive technical changes in advance of the Code of Arkansas Rules.

### **Post-Public Comment**

Public comments were received, and no substantive changes were made based on comments.

**PUBLIC COMMENT:** A public hearing was held on May 24, 2024. The public comment period expired June 6, 2024. The agency provided the following public comment summary:

Commenter Name: Lucas Harder, Arkansas School Board Association, Policy Services Director, 5/10/24

**COMMENT:** Title: There is a space missing from between “Of” and “Arkansas”. **RESPONSE:** Comment considered. A nonsubstantive change was made.

Commenter Name: Lucas Harder, Arkansas School Board Association, Policy Services Director, 5/10/24

**COMMENT:** 3.41.1.4: The phrase “for state financial partnership” appears twice here back-to-back. **RESPONSE:** Comment considered. A nonsubstantive change was made.

Commenter Name: Lucas Harder, Arkansas School Board Association, Policy Services Director, 5/10/24

**COMMENT:** 6.02: There does not appear to be anything under this section as it immediately goes to 6.02.1. **RESPONSE:** Comment considered. A nonsubstantive change was made.

Commenter Name: Arkansas Public School Resource Center, 6/10/24

**COMMENT:** Section 3.20, Page 6: “Maximum funding factor” means seventy-five percent (75%) of the maximum listed on the most recent facilities funding factor report. **RESPONSE:** Comment considered. No changes made. 75% of the most recent maximum funding factor would drastically lower the funding cap.

Commenter Name: Charles Stein, Arkansas Professional Engineer, 5/14/24

**COMMENT:** Section 3.26.2: 3.36 in last sentence should be 3.39. **RESPONSE:** Comment considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 3.27: 3.271 should be 3.27.1. **RESPONSE:** Comment considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 3.32: 3.39.1 should be 3.41.1 and 3.39.2 should be 3.41.2.1.a. **RESPONSE:** Comment considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 3.39.3.6: 3.38.1 should be 3.39.3. **RESPONSE:** Comment considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 3.39.4.3.a: 3.38.3.5.a should be 3.39.3.5.a. **RESPONSE:** Comment considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 3.39.4.4: 3.35.2(l) should be 3.39.4.1 and not struck-through. **RESPONSE:** Comment considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 3.39.4: 3.39.4 should be 3.39.5. **RESPONSE:** Comment considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 3.40: Delete “The means”. **RESPONSE:** Comment considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 3.41.1.9, 3.41.1.10, and 3.41.1.12: These sections apply to security systems and should be sub-sections to 3.41.1.7. **RESPONSE:** Comment considered. No changes made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 3.41.2.3: 3.41.2.3 should be 3.41.2.2. **RESPONSE:**  
Comment considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 3.41.2.3.a: 3.41.2.3.a should be 3.41.2.2.1. **RESPONSE:**  
Comment considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 3.41.2.4: 3.41.2.4 should be 3.41.2.3. **RESPONSE:**  
Comment considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 4.07.2: 3.38.1 should be 3.39.3. **RESPONSE:** Comment  
considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 4.09.3.4: 3.39.1.7 should be 3.41.1.8. **RESPONSE:**  
Comment considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 4.05.8: 4.05.8 should be 4.09.8. **RESPONSE:** Comment  
considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 4.09.8: 4.09.8 should be 4.09.9. **RESPONSE:** Comment  
considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 4.09.8: 3.37 should be 3.39. **RESPONSE:** Comment  
considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 4.09.8: 4.09.8.1 should be 4.09.9.1. **RESPONSE:**  
Comment considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 4.09.8: 4.09.8.2 should be 4.09.9.2. **RESPONSE:**  
Comment considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 4.09.8: 4.09.8.3 should be 4.09.9.3. **RESPONSE:**  
Comment considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** First 5.03: First 5.03 should be 5.02.1. **RESPONSE:**  
Comment considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 5.04: 3.38 should be 3.39. **RESPONSE:** Comment  
considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 5.05.5.2: “warm” should be “Warm”. **RESPONSE:**  
Comment considered. A nonsubstantive change was made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 6.02.4: 6.02.4 should be 6.02.3.1. **RESPONSE:** Comment  
considered. No changes made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 6.02.5: 6.02.5 should be 6.02.4. **RESPONSE:** Comment  
considered. No changes made.

Commenter Name: Charles Stein, Arkansas Professional Engineer,  
5/14/24

**COMMENT:** 6.05.2: Line 2 (i) should be 6.05.1. **RESPONSE:**  
Comment considered. A nonsubstantive change was made.

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

1) The title of the amended rule refers to the “Division of Arkansas Public School Academic Facilities and Transportation”. Is this the same entity as

the “Division of Public School Academic Facilities and Transportation” created in Ark. Code Ann. § 6-21-112? **RESPONSE:** Yes.

2) Section 3.08.2 – This section cites to “a Warm, Safe, and Dry Security System project as defined in 3.37.1(ii).” Is this citation correct?

**RESPONSE:** The correct reference should be to Section 3.41.1.7. This was a typographical error and has been corrected.

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 § 6-20-2512, the Commission for Arkansas Public School Academic Facilities and Transportation shall promulgate rules necessary to administer the Arkansas Public School Academic Facilities Funding Act (“Act”), Ark. Code Ann. §§ 6-20-2501 through 6-20-2517, which shall promote the intent and purposes of the Act and assure the prudent and resourceful expenditure of state funds with regard to public school academic facilities throughout the state. *See also* Ark. Code Ann. § 6-20-2507 (establishing the Academic Facilities Partnership Program). Further authority for the rulemaking can be found in Ark. Code Ann. § 6-21-114(e)(2)(A), which provides that the Commission may adopt, amend, and rescind rules as necessary or desirable for the administration of the Arkansas Public School Academic Facilities Program and any other related program. Finally, Ark. Code Ann. § 6-15-1303(f) provides that a public school district or open-enrollment public charter school shall have a school safety expert review and advise on architectural plans for a public school facility before the new construction of the public school facility, and the requirements for a school safety expert shall be established by the Commission for Arkansas Public School Academic Facilities and Transportation by rule.

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

Act 237 of 2023, § 8, 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; and

Act 764 of 2023, sponsored by Senator Ronald Caldwell, which provided for certain requirements related to storm shelters for educational facilities under the Arkansas Fire Prevention Code.

c. **Rule Governing the Transportation Modernization Grant Program**

**DESCRIPTION:** The Department of Education, Commission for Arkansas Public School Academic Facilities and Transportation, seeks to amend their Rule Governing the Transportation Modernization Grant Program.

**Background**

Pursuant to Act 237 of 2023, the Division is charged with promulgating rules regarding the Transportation Modernization Grant Program, which is codified at Arkansas Code §§ 6-20-2701 et seq.

**Key Points**

- Provides definition of rural and remote schools, for which 25% of the grants awarded under the program must be provided.
- Establishes a priority schedule for awarding grants.
- Establishes reporting requirements for grant recipients.

**Discussion**

Act 237 of 2023 created the Transportation Modernization Grant Program to provide more efficient transportation to public school students. This rule implements the program, including clarifying priority for rural and remote schools and establishing reporting requirements for grant recipients. This rule defines rural and remote school districts, sets out a priority schedule for awarding grants and establishes reporting requirements for grant recipients.

**Post-Public Comment**

Public comments were received, and no substantive changes were made based on the comments.

**PUBLIC COMMENT:** A public hearing was held on May 24, 2024. The public comment period expired June 6, 2024. The agency provided the following public comment summary:

Commenter Name: Lucas Harder, Arkansas School Board Association, Policy Services Director, 5/10/24

**COMMENT:** 3.01.9: There is a “the” missing in front of the “Division”.

**RESPONSE:** Comment considered. A nonsubstantive change was made.

Commenter Name: Lucas Harder, Arkansas School Board Association, Policy Services Director, 5/10/24

**COMMENT:** 5.00: There does not appear to be a “4.00” so these should all be one number lower. **RESPONSE:** Comment considered. A nonsubstantive change was made.

Commenter Name: Arkansas Public School Resource Center, 6/10/24

**COMMENT:** Section 2.00, Page 1: Provide a definition of “insufficient number of applications”, such as the lesser of twenty-five percent (25%) or a smaller number to ensure that the dollars go out. **RESPONSE:** Comment considered. No changes made. Section 3.05 of the rule indicates that an insufficient number of applications would be less than 25%.

Commenter Name: Arkansas Public School Resource Center, 6/10/24

**COMMENT:** Sections 3.01.7 and 3.01.8, Page 1: These groups of entities are not contained in the statute. What is the rationale for adding them as eligible entities? **RESPONSE:** Comment considered. No changes made. Arkansas Code § 6-20-2702(4) as well as Section 3.01.9 of the rule clearly gives the Division authority to add eligible entities. In accordance with that authority, the Division has chosen to include education service cooperatives and non-profit organizations as eligible entities in the rule.

Commenter Name: Arkansas Public School Resource Center, 6/10/24

**COMMENT:** Sections 3.04.1 and 3.04.2, Page 2: Under what authority are these criteria listed, as they do not appear in the statute? **RESPONSE:** Comment considered. No changes made. Arkansas Code § 6-20-2703(d)(3) authorizes the Department to consider “other relevant criteria” when distributing grant money under the program. In accordance with that authority, the Division has chosen to include cost effectiveness and student safety as other relevant criteria in the rule.

Commenter Name: Arkansas Public School Resource Center, 6/10/24

**COMMENT:** Section 3.06.5, Page 2: Does this mean the parents could double-dip or are they prevented from using these grant dollars? **RESPONSE:** Comment considered. No changes made. Arkansas Code § 6-20-2704(5)(A) and this section of the rule authorizes transportation modernization grant recipients to use grant funding in place of grants otherwise given to parents (e.g. for transporting a student using school choice).

Commenter Name: Arkansas Public School Resource Center, 6/10/24

**COMMENT:** Section 3.06.8, Page 3: Under what authority is this criterion listed, as the language does not appear in statute? **RESPONSE:** Comment considered. No changes made. Arkansas Code § 6-20-2704(8) authorizes grants to be used for “other relevant grant activities as determined by the Division of Elementary and Secondary Education.” In accordance with that authority, the Division has chosen to include reducing chronic student absenteeism as a relevant grant activity in the rule.



Commenter Name: Arkansas Public School Resource Center, 6/10/24

**COMMENT:** Sections 5.01 and 5.02, Pages 3-4: What is the basis for the language in this section, as it is not contained in statute? **RESPONSE:** Comment considered. No changes made. Under Arkansas Code § 6-20-2703(a)(3), the Department is required to report information about the program to the Governor and the General Assembly. To comply with that requirement, the Department needs to collect the relevant information required in the report.

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

1) The title of the rule refers to the “Division of Arkansas Public School Academic Facilities and Transportation”. Is this the same entity as the “Division of Public School Academic Facilities and Transportation” created in Arkansas Code Annotated § 6-21-112? **RESPONSE:** Yes.

2) Should Section 1.01 of the proposed rule refer to the “Commission for *Arkansas* Public School Academic Facilities and Transportation”? (emphasis added) **RESPONSE:** Yes, this was a typographical error that will be corrected.

3) Section 5.03 of the proposed rule appears to be premised upon Ark. Code Ann. § 6-20-2703, which concerns Department of Education duties and reporting under the Transportation Modernization Grant Program. Is there a reason why this section of the proposed rule does not include the interim report and corresponding deadline of December 15 that is set out in the Arkansas Code? **RESPONSE:** The Department generally includes statutory language in rules for the benefit of stakeholders. Because we included the annual reporting requirement and deadline in the rule, we felt that inclusion of the interim report requirement and deadline would not be necessary. We intend to comply with the deadline and make the report available to the public.

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:** The Department of Education shall develop a modernization grant application and application procedures for the Transportation Modernization Grant Program, including defining which public school districts are rural and remote, that require a grant applicant to explain how the grant applicant would use grant moneys to:  
1) improve access to transportation for students attending a public school

district, an open-enrollment public charter school, or a licensed childcare center serving publicly funded students; and 2) support transportation innovations and efficiency solutions. *See* Ark. Code Ann. § 6-20-2703(a)(1). Authority for the rulemaking can be found in Ark. Code Ann. § 6-21-114(e)(2)(A), which provides that the Commission for Arkansas Public School Academic Facilities and Transportation may adopt, amend, and rescind rules as necessary or desirable for the administration of the Arkansas Public School Academic Facilities Program and any other related program.

The proposed rule implements Act 237 of 2023, §44, 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.

**6. DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY (Kesia Morrison, Bailey Taylor, items a-b; Basil Hicks, item a; Dan Pilkington, item b)**

**~~a. Rule No. 6: Rules for State Administration of the National Pollutant Discharge Elimination System (NPDES)~~**

~~**DESCRIPTION:** The Department of Energy and Environment and the Division of Environmental Quality (DEQ) propose this rulemaking to modify Regulation 6: Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES). The Arkansas Pollution Control and Ecology Commission has general rulemaking authority through Ark. Code Ann. §8-1-203(b)(1)(A), and specific authority to promulgate this rule through Ark. Code Ann. § 8-4-202(a).~~

**~~Background~~**

~~The purpose of Regulation 6 is to adopt the federal regulations necessary to qualify the State of Arkansas to receive and maintain authorization to implement the state water pollution control permitting program, in lieu of the federal NPDES program, pursuant to the federal Clean Water Act, 33 U.S.C. §§ 1251 et seq. In order for DEQ to maintain its delegated authority to administer the NPDES permit program, DEQ must have rules as stringent as the federal program administered by the United States Environmental Protection Agency.~~

**~~The Proposed Rule Amendments~~**

~~The DEQ proposes this rulemaking to Regulation 6 before the Arkansas Pollution Control and Ecology Commission: to adopt federal revisions to the NPDES program, incorporate statutory revisions made by the Arkansas General Assembly, and make corrections and stylistic and formatting updates throughout the regulation. Regulation 6 establishes the~~

parameters for the state water pollution control permitting program in lieu of the federal NPDES program and pursuant to the federal Clean Water Act, 33 U.S.C. §§ 1251 et seq. The state legislative acts prompting the regulatory amendments are Acts 94 and 575 of 2015, Acts 987 and 1037 of 2017, 315 and 910 of 2019, Act 441 of 2021, and Act 46 of 2023. The federal regulatory changes prompting the amendments are 40 C.F.R. §§ 122.21(e)(3), 122.44(i)(1)(iv), 136.1(e), 125(I) and (J), 423, 122, 123, 127, and 401.17.

Proposed changes to Rule 6 include:

**Incorporation of Updates to Federal Regulations.** Amendments to Regulation 6.104 to incorporate changes made to federal regulations;

**Incorporation of Updates to Arkansas Law.** Acts 94 and 575 of 2015, Acts 987 and 1037 of 2017, 315 and 910 of 2019, Act 441 of 2021, and Act 46 of 2023, were enacted by the Arkansas General Assembly and require revisions to Regulation 6;

**Amendments to Provide Clarification and Minor Corrections.** Corrections to the rule, including adding necessary definitions and corrections to be consistent with other state rules; and

**Amendments to Chapter 6.** To amend Chapter 6 to be consistent with the Department of Agriculture's rule for Liquid Animal Waste Management Systems.

**Stylistic and Formatting Corrections.** To make minor, non-substantive stylistic and formatting corrections throughout the regulation.

#### **Necessity and Practical Impact of Rule Amendments**

DEQ must have rules as stringent as the federal program administered by the United States Environmental Protection Agency to maintain its delegated authority to administer the NPDES permit program. Pursuant to 40 C.F.R. § 123.62(e), states administering the NPDES program must make revisions to its rules to conform to the federal regulations within one year of the date of promulgation of the federal regulation, with the exception that if a state must amend or enact a statute in order to make the required revision, the revision shall take place within two years of promulgation of the federal regulations. The risk of not updating this rule is that EPA could attempt to remove Arkansas's delegated authority to issue NPDES permits under the federal Clean Water Act. Loss of delegated authority would result in EPA becoming the permitting authority for Arkansas.

**PUBLIC COMMENT:** A public hearing was held on August 26, 2024. The public comment period was set to expire on September 5, 2024. The comment period was extended by the agency and ultimately expired on September 16, 2024. The agency provided a summary of public

comments it received and its responses thereto. Due to its length, that summary is attached separately.

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

1) Will the agency still recognize the NPDES financial assurance exceptions which were removed from Sections 6.205(B) and (D) of the amended rules, and those which are enumerated in Arkansas Code Annotated § 8-4-203(b)(1)(C), as amended by Act 46 of 2023?

**RESPONSE:** Yes.

2) What was the agency's reasoning for amending the permit restrictions under Section 6.602 of the proposed rules, which concerns the Buffalo National River Watershed? **RESPONSE:** The amendments to Section 6.602 do not change the current permit restrictions under that section. The amendments reflect the movement of the permitting program for Liquid Animal Waste Management Systems to Department of Agriculture. In addition, these amendments to Chapter 6 are consistent with the Department of Agriculture's rule for Liquid Animal Waste Management Systems.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency has indicated that the amended rule does not have a financial impact. The agency further states that implementing the revised federal rules and clarification/correction of various sections of this rule is not expected to cause an increase in costs to private entities because permittees were expected to comply with these requirements prior to incorporation. Implementing the revised state rule should result in reduced costs to non-municipal domestic sewage treatment works permittees. Changes to the general permit process are expected to reduce costs to facilities.

**LEGAL AUTHORIZATION:** The Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules implementing or effectuating the powers and duties of the Division of Environmental Quality and the commission under the Arkansas Water and Air Pollution Control Act, codified in Title 8, Chapter 4 of the Arkansas Code. See Ark. Code Ann. § 8-4-202(a). Without limiting the generality of this authority, these rules may, among other things, prescribe:

1) Effluent standards specifying the maximum amounts or concentrations and the physical, thermal, chemical, biological, and radioactive nature of the contaminants that may be discharged into the waters of this state or

~~into publicly owned treatment facilities; 2) Requirements and standards for equipment and procedures for monitoring contaminant discharges at their sources, including publicly owned treatment facilities and industrial discharges into such facilities, the collection of samples, and the collection, reporting, and retention of data resulting from such monitoring; and 3) Water quality standards, performance standards, and pretreatment standards. See Ark. Code Ann. § 8-4-202(b).~~

~~The proposed amendments include those made in light of Act 46 of 2023, sponsored by Representative Richard McGrew, which amended the Arkansas Water and Air Pollution Control Act; and exempted certain property owners' associations and homeowners' associations from certain permit actions related to National Pollutant Discharge Elimination System permits or state permits for a municipal domestic sewage treatment works.~~

~~Per the agency, the amended rules are required to comply with federal law, specifically, 40 C.F.R. §§ 122.21(e)(3), 122.44(i)(1)(iv), 125 Subparts I and J, 127, and 136.1(e).~~

**b. Rule No. 36: Tire Accountability Program**

**DESCRIPTION:** The Department of Energy and Environment, Division of Environmental Quality, Arkansas Pollution Control and Ecology Commission, proposes amendments to its Rule No. 36: Tire Accountability Program.

**Purpose and Authority**

The Department of Energy and Environment and the Division of Environmental Quality (“DEQ”) propose this rulemaking in regard to Rule 36: “Tire Accountability Program.” This rulemaking is necessary to amend the current rule to implement new requirements set forth in Act 713 of 2023, which amended Arkansas law regarding the collection and recycling of used tires. The Arkansas Pollution Control and Ecology Commission (“APC&EC” or “Commission”) has general rulemaking authority through Ark. Code Ann. § 8-1-203(b)(1)(A), and specific authority to promulgate amendments to this rule through Ark. Code Ann. § 8-9-414.

**Background**

APC&EC Rule 36, “Tire Accountability Program,” regulates the collection and recycling of used tires in the State of Arkansas. If not properly disposed of, used tires pose a threat to human health and safety as they are known to host disease transmitting vectors, pose a fire risk, and pose a threat to a safe and healthy environment. The used tire program provides incentives for the collection and recycling of used tires in order to encourage recycling and safe collection and disposal. The program also

provides accountability by requiring use of an electronic used tire manifest system and review of business plans of boards charged with collecting used tires.

#### The Proposed Rule Amendments

The proposed rulemaking regarding Rule 36, “Tire Accountability Program,” amends the rule to conform to new requirements which were established in Act 713 of 2023. This Act requires that the used tire collection be implemented by four (4) used tire programs. These programs are each governed by an accountability board. Because of these legislative changes, DEQ will make the following amendments to Rule 36: (1) the rule will be amended to reflect that used tire collection, storage, and recycling will be implemented by four (4) tire programs; (2) each of the four (4) used tire programs will be governed by a tire accountability board; (3) the tire accountability boards and programs may enter into an interlocal agreement; (4) the boards will be required to draft and revise business plans, and if the business plan results in a rate increase, the plan must be approved by the Legislative Council; (5) the tire retailers, tire generators, and tire importers will be subject to the business closure procedures of Ark. Code Ann. §§ 26-18-1001 et seq.; (6) disposal facilities operated by used tire programs will not be required to pay permit fees or permit transfer fees to the Division of Environmental Quality; (7) other amendments of nomenclature to comply with Act 910 of 2019; and (8) additional non-substantive or clerical revisions are proposed throughout Rule 36 for consistency and clarity.

#### Necessity and Practical Impact of Rule Amendments

The amendments to Rule 36 are necessary to implement changes in statutory requirements enacted in Act 713 of 2023. The amendments implement the statutory structure for tire accountability boards and the legislative plan for review of board actions. The rule amendments are required in order to fully carry out the legislative intent of the act.

**PUBLIC COMMENT:** A public hearing was held on October 30, 2024. The public comment period expired on November 9, 2024. The agency indicated that it received no public comments.

The proposed effective date is March 30, 2025.

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

**LEGAL AUTHORIZATION:** The Arkansas Pollution Control and Ecology Commission shall promulgate rules to carry out the intent and purposes of the Used Tire and Recycling Accountability Act (“the Act”), codified in Arkansas Code Annotated §§ 8-9-401 through 8-9-415. *See*

Ark. Code Ann. § 8-9-414(a). The rules shall, except as provided under Ark. Code Ann. § 8-9-414(b)(1)(B), provide for the administration of permits for tire processing facilities, tire collection centers, commercial generators, and any other person or entity that collects, receives, processes, recycles, or disposes of used tires regulated under the Act with the maximum permit fee not to exceed two hundred fifty dollars (\$250) annually. *See* Ark. Code Ann. § 8-9-414(b)(1)(A). The maximum permit fee under Ark. Code Ann. § 8-9-414(b)(1) shall not apply to tire transporters. *See* Ark. Code Ann. § 8-9-414(b)(1)(B).

The rules shall further establish standards for tire processing facilities, tire collection centers, tire transporters, and beneficial use projects; establish procedures for administering reimbursements to used tire programs under Ark. Code Ann. § 8-9-405; unless otherwise provided by law, authorize the final disposition of waste tires at a permitted solid waste disposal facility if the waste tires have been cut into sufficiently small parts for proper disposal and in compliance with the Act and all other applicable provisions in Title 8 of the Arkansas Code, which concerns Environmental Law; establish procedures for administering the electronic uniform used tire manifest system; establish accountability procedures for the sustainability of used tire programs operated under the Act; and establish the number of tires that each individual who is a resident of a regional solid waste management district may discard monthly without a fee. *See* Ark. Code Ann. § 8-9-414(b)(2)–(b)(7)(A). The maximum number of tires under Ark. Code Ann. § 8-9-414(b)(7) shall not be more than four (4) tires per month. *See* Ark. Code Ann. § 8-9-414(b)(7)(B).

Further rulemaking authority can be found in Ark. Code Ann. § 8-9-414(c)(2), which provides that the Commission may promulgate rules that are necessary to administer the fees and reimbursement rates for services provided under the Act by the used tire programs. Finally, a tire accountability board shall, among other duties enumerated under Ark. Code Ann. § 8-9-410(c), develop bylaws to govern the tire accountability board, including without limitation rules related to the replacement of members of the tire accountability board in the event of a vacancy. *See* Ark. Code Ann. § 8-9-410(c)(1)(B).

The proposed amendments include those made in light of Act 713 of 2023, sponsored by Senator John Payton, which amended the Used Tire Recycling and Accountability Act and amended the Used Tire Programs.

7. **DEPARTMENT OF FINANCE AND ADMINISTRATION, ARKANSAS RACING COMMISSION (John Campbell, Byron Freeland)**

a. **REPEAL: Rules and Regulations Governing Greyhound Racing**

**DESCRIPTION:** The Arkansas Racing Commission is repealing all greyhound racing rules presently in force in the state of Arkansas. The last day of greyhound racing in Arkansas was December 31, 2022, and there is no longer a need for the rules.

**PUBLIC COMMENT:** A public hearing was held on this rule on October 10, 2024. The public comment period expired on October 10, 2024. The agency provided the following comment report:

**Commenter's Name:** Walter Ebel, Attorney for Oaklawn.

**COMMENT:** Mr. Ebel spoke on behalf of Oaklawn and the HBPA and in support of the Rule changes/repeal.

There were no comments made by the Public at the ARC meeting or received by the ARC in writing about any of the proposed Rule changes.

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

**Q.** I understand that these rules are being repealed because, as of December 31, 2022, there is no longer greyhound racing taking place in Arkansas. However, Arkansas Code § 23-111-203(c)(5) provides that the Racing Commission “shall promulgate rules to implement” Arkansas Code § 23-111-203(c), regarding fingerprint and background checks for greyhound owner or trainer license applicants. How does the Commission reconcile the repeal of all greyhound rules with the statutory language indicating that the Commission “shall promulgate” certain greyhound rules? **RESPONSE:** Per our telephone conversation, there has been no greyhound racing in Arkansas for over two years. As a result, the Rules for Greyhound Racing have not been used for two years. There are no plans to resume greyhound racing in Arkansas. If greyhound racing resumes the ARC will have to adopt a revised set of rules. The ARC has not issued any type of greyhound owner or trainer license for over two years. If racing resumes the ARC will comply with Arkansas Code Annotated 23-111-203 and any other applicable statutes.

The ARC complied with Arkansas Code Annotated 23-111-203 when there was greyhound racing and promulgated the required rules. Now there is no purpose in keeping the Rules when there are no plans to resume greyhound racing. The ARC will not issue an owner's or trainer's license without complying with Arkansas law. The ARC does not believe the



legislature intends for the Commission to retain rules that are not used, and for which there are no plans to use.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** Subject to any limitations and conditions in law, “the Arkansas Racing Commission shall have sole jurisdiction over the business and the sport of greyhound racing in the state where the racing is permitted for any stake, purse, or reward.” Ark. Code Ann. § 23-111-203(a). “The commission shall promulgate rules to implement” Arkansas Code § 23-111-203(c), regarding background checks for greyhound owner or trainer license applicants. Ark. Code Ann. § 23-111-203(c)(5). “The Arkansas Racing Commission shall have full, complete, and sole power and authority to promulgate rules and orders and prescribe conditions under which greyhound racing shall be conducted by a franchise holder, but the power and authority so granted shall be exercised by the commission in a reasonable manner.” Ark. Code Ann. § 23-111-204(a). “The commission shall establish appropriate rules to assure compliance with the provisions of” Arkansas Code § 23-111-503, regarding additional racing days for benefit of city general fund and Division of Developmental Disabilities Services. Ark. Code Ann. § 23-111-503(d). “The commission shall establish appropriate rules to assure compliance with the provisions of” Arkansas Code § 23-111-515, regarding additional racing days for the benefit of small municipalities and community colleges. Ark. Code Ann. § 23-111-515(c).

**b. Horse Racing Rule 2148**

**DESCRIPTION:** This amendment will allow a person to register more than one stable name if that person’s name is listed with each registered horse that is racing.

**PUBLIC COMMENT:** A public hearing was held on this rule on October 10, 2024. The public comment period expired on October 10, 2024. The agency provided the following comment report:

**Commenter’s Name:** Walter Ebel, Attorney for Oaklawn.

**COMMENT:** Mr. Ebel spoke on behalf of Oaklawn and the HBPA and in support of the Rule changes/repeal.

There were no comments made by the Public at the ARC meeting or received by the ARC in writing about any of the proposed Rule changes.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Arkansas Racing Commission has “sole jurisdiction over the business and the sport of horse racing in this state where the racing is permitted for any stake, purse, or reward[.]” Ark. Code Ann. § 23-110-204(a). The Commission has “full, complete, and sole power and authority” to promulgate rules related to its duties and may “make, amend, and enforce all necessary or desirable rules not inconsistent with law.” Ark. Code Ann. § 23-110-204(b)(1)(E), (d).

**c. Horse Racing Rule 2444**

**DESCRIPTION:** This proposed amendment makes changes to the claiming preference rule time period and the posting of owners that hold claiming preferences. This amendment is proposed by the Oaklawn Horsemen.

**PUBLIC COMMENT:** A public hearing was held on this rule on October 10, 2024. The public comment period expired on October 10, 2024. The agency provided the following comment report:

**Commenter’s Name:** Walter Ebel, Attorney for Oaklawn.

**COMMENT:** Mr. Ebel spoke on behalf of Oaklawn and the HBPA and in support of the Rule changes/repeal.

There were no comments made by the Public at the ARC meeting or received by the ARC in writing about any of the proposed Rule changes.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Arkansas Racing Commission has “sole jurisdiction over the business and the sport of horse racing in this state where the racing is permitted for any stake, purse, or reward[.]” Ark. Code Ann. § 23-110-204(a). The Commission has “full, complete, and sole power and authority” to promulgate rules related to its duties and may “make, amend, and enforce all necessary or desirable rules not inconsistent with law.” Ark. Code Ann. § 23-110-204(b)(1)(E), (d).

**8. DEPARTMENT OF HUMAN SERVICES, DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES (Melissa Weatherton, Jennifer Brez'ee, Thomas Tarpley, Lori McDonald)**

**a. Autism Services for Children on Medicaid & REPEALS: FBI Background Check Form; First Connections Program Under Part C of the Individuals with Disabilities Act**

**DESCRIPTION:**

Statement of Necessity

Children diagnosed with autism spectrum disorder (ASD) currently receive autism-related services through two Medicaid programs:

1. The Autism Waiver provides intensive one-on-one intervention services in natural environments to children from eighteen (18) months to eight (8) years of age with an ASD diagnosis. Parent/guardian participation is required to enroll in the Autism Waiver.
2. Applied behavior analysis therapy services (ABA therapy) are intervention services available to children with a primary diagnosis of Autism who are enrolled in the Children's Health Services (Early Periodic Screening, Diagnostic and Treatment or EPSDT) program. A beneficiary receiving Autism Waiver services is prohibited from receiving ABA therapy services.

The Autism Waiver is a 1915(c) Medicaid Waiver, which must be renewed every 5 years. The original renewal date for the waiver was December 6, 2022, but the waiver operated under an extension from the Centers for Medicare & Medicaid Services (CMS) while DHS conducted an autism services rate study, as discussed below. Recently, CMS approved the renewal application for the waiver with an effective date of July 1, 2024.

In 2018, CMS required Arkansas to come into compliance with federal regulations by offering specific services for children with autism spectrum disorder (ASD) under the Children's Health Services (EPSDT) program. While Arkansas has been offering Applied Behavior Analysis therapy services (ABA therapy) under the EPSDT program since 2018 to meet this CMS requirement, there has been no formal Medicaid Manual developed or promulgated establishing the eligibility, clinician qualifications, supervision, service delivery, service delivery documentation, billing, and extension of benefit requirements in connection with the performance of these ABA therapy services. ABA therapy utilization under the EPSDT program has increased from less than \$100,000 in state fiscal year (SFY) 2018 to more than \$30 million in SFY 2024 during this time when there

was no formalized ABA therapy Medicaid manual in place establishing programmatic parameters.

There had never been an independent, third-party rate study performed on the Autism Waiver program. Despite the Autism Waiver and ABA therapy programs delivering similar intervention services to children with ASD that were performed by similarly credentialed professionals, there was significant variance in the Arkansas Medicaid rates the two programs paid. DHS engaged an independent actuary to conduct a rate study on both programs during the summer of 2023 to determine if a rebasing of rates for either program was appropriate and what the financial impact of any rebasing would be. Ultimately, it was determined that a rebasing of Arkansas Medicaid rates for the Autism Waiver program was appropriate.

The financial impact of the rebasing of the Autism Waiver rates in conjunction with the establishment of an ABA therapy services Medicaid is cost neutral.

#### Rule Summary

The Arkansas Medicaid rates for the Autism Waiver program will be rebased. The rate study considered direct wages (using Arkansas-specific May 2021 Bureau of Labor Statistics data), indirect and transportation costs, employee related expenses, and supervisor time, and used an independent rate model approach that captured the average expected costs a reasonably efficient Arkansas provider would incur while delivering services under each program. Ultimately, it was determined that a rebasing of Arkansas Medicaid rates for the Autism Waiver program was appropriate. The newly rebased rates are reflected throughout the Autism Waiver rules detailed below. It is anticipated that the financial impact of the rebasing of the Autism Waiver rates in conjunction with the establishment of an ABA therapy services Medicaid manual would be cost neutral.

#### **Autism Waiver Renewal**

1. The Autism Waiver 5-year renewal was approved by CMS with an effective date of July 1, 2024. The renewal includes required updates that have occurred since the last amendment, updated cost neutrality demonstration based on the rebasing of rates, and other clarifying information throughout; and
2. The Autism Waiver Medicaid Manual is revised to include the updates and changes included within the approved Autism Waiver during the renewal process.

#### **ABA Therapy Addition to State Plan**

1. A new ABA Therapy Medicaid Manual establishes eligibility, clinician qualifications, supervision, service delivery, service delivery

documentation, billing, extension of benefit, and benefit limit parameters in connection with the performance of ABA therapy services;

2. Inclusion of ABA Therapy services as an Arkansas Medicaid state plan service; and
3. New ABA Therapy specific forms DMS-641 ER and DMS-641 TP will be created for physicians to use for all referrals for evaluations and treatment prescriptions for ABA therapy services. The forms are included here for reference and review but will not be promulgated as forms are not rules.

Repeals pursuant to the Governor's Executive Order 23-02:

1. FBI Background Check Form
2. First Connections Program Under Part C of the Individuals with Disabilities Act

**PUBLIC COMMENT:** A public hearing was held on this rule on September 4, 2024. The public comment period expired on September 21, 2024. The agency provided the following public comment summary:

**Commenter's Name:** S. Laundau, Compliance, MBH Services LLC

**COMMENT:** First, thanks for providing the opportunity to raise voices. Please see our public comment below on the proposed ABA Therapy Medicaid Manual:

We are dismayed that, under section 223.000 Telemedicine Services of the proposed ABA Medicaid manual, only Family adaptive behavior treatment services may be delivered through telemedicine, and the rest of the ABA services will need to be conducted in person.

Currently, Medicaid allows Adaptive Behavior Treatment with Protocol Modification/Supervision/Training the RBT to be rendered via telehealth and Family adaptive treatment (as referenced in the first attachment). With Medicaid finally publishing an ABA manual with all its specific policies, it would be fair to add all other ABA services as appropriate for delivery via telehealth. Instead, the proposed manual introduces further restrictions by removing the allowance of protocol modification/supervision while multiple states across the country fully allow all these services via telehealth, citing extensive evidence, especially during COVID, that ABA is equally effective when delivered via telehealth as it is in person. The efficacy is further supported as effective by the Council of Autism Service Providers (CASP), which has established the appropriateness of ABA treatment via telehealth (see second attachment, pages 42 and 44).

Moreover, removing protocol modification with supervision, which has been proven effective in the ABA industry, poses a significant challenge

for rural beneficiaries in dire need of care. These individuals might struggle to access necessary services due to a lack of local resources and specialists. The absence of protocol modifications diminishes treatment flexibility, potentially reducing the quality and effectiveness of care for those in remote areas.

Given the evidence presented, we ask that you reconsider adding the telehealth benefit to all ABA services or at least keep it for ABA protocol modification/supervision.

**RESPONSE:** Thank you for your comment. The State agrees with your comment and will revise the proposed Medicaid manual to allow for the performance of adaptive behavior treatment with protocol modification services via telemedicine.

The proposed effective date is January 1, 2025.

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

**LEGAL AUTHORIZATION:** “The Department of Human Services shall maintain a Medicaid waiver from the Centers for Medicare & Medicaid Services to provide intensive early intervention treatment to any eligible child who has a primary diagnosis of an autism spectrum disorder.” Ark. Code Ann. § 20-77-124(b)(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).

**9. DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES (Elizabeth Pitman, Lori McDonald)**

**a. Emergency Medical Technicians as Other Licensed Practitioners**

**DESCRIPTION:**

Statement of Necessity

The Division of Medical Services (DMS) amends the Medicaid state plan to allow licensed emergency medical technicians (EMT) to be reimbursed as a provider in the transportation program when they render services as defined within the scope of their license. These services include the treatment of Medicaid beneficiaries at the scene when it is medically necessary to do so without transport to a medical facility.

The Centers for Medicare and Medicaid Services (CMS) requested this update following the promulgation of rules implementing Act 480 of 2023. Those rules created the Emergency Triage, Treatment, and Transport program. The amendment enables the state to draw the federal match for claims made for EMTs providing the described services.

Summary of Changes

To implement the above, DMS amends coverage pages within the Arkansas Medicaid State Plan. EMTs shall be added to the list of other licensed practitioners when practicing within the scope of their licensure.

**PUBLIC COMMENT:** A public hearing was held on this rule on July 10, 2024. The public comment period expired on July 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 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).

**10. DEPARTMENT OF PUBLIC SAFETY, DIVISION OF EMERGENCY MANAGEMENT, OFFICE OF FIRE PROTECTION SERVICES (Joan Shipley)**

**a. Arkansas Fire Prevention Code**

**DESCRIPTION:** Pursuant to Act 841 of 2023, the Arkansas State Fire Marshal within the Office of Fire Protection Services shall adopt rules for the administration of the Arkansas Comprehensive Fire Protection Act of 1993. The State Fire Marshal shall adopt rules for the keeping, storing, using, manufacture, selling, handling, transportation, or other disposition of highly inflammable materials and rubbish, gunpowder, dynamite, crude petroleum or any of its products, explosives or compounds, or any other explosive, including fireworks, and firecrackers, and he or she may prescribe the materials and construction of receptacles and buildings to be used for any of those purposes. The rules initially promulgated by the

Division of Arkansas State Police regarding fire enforcement, the Fire Prevention Act, §§ 12-13-101 et seq. or the Arkansas Fire Code remain in effect until adopted by the State Fire Marshal as rules of the Office of Fire Protection Services.

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on November 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 no financial impact.

**LEGAL AUTHORIZATION:** This rule implements Act 841 of 2023. The Act, sponsored by Representative Lee Johnson, abolished the State Fire Prevention Commission, amended the duties and membership of the Arkansas Fire Protection Services Board, created the position of State Fire Marshal, and created the Arkansas Fire Protection Services Grant Program. Special language within the Act required the State Fire Marshal to adopt “[a]ll rules promulgated by the Division of Arkansas State Police concerning fire enforcement or the Fire Prevention Act or the Arkansas Fire Code” as rules of the Office of Fire Protection Services. *See* Act 841, § 47(b).

11. **NORTHEAST ARKANSAS REGIONAL SOLID WASTE MANAGEMENT DISTRICT (Robert Thompson, Joseph Pence)**

a. **Northeast Arkansas Regional Solid Waste Management District Rules and Regulations**

**DESCRIPTION:** The purpose of the proposed amended rules and regulations by the Northeast Arkansas Regional Solid Waste Management District (the “District”) is to make technical and grammatical corrections to its rules; to make minor changes to the procedures and standards associated with the granting of a waste hauler license; to lower the fees charged for waste hauler licenses; and to lower potential fees for waste haulers who haul waste outside the District.

These rules changes will impact the public and private waste haulers, whose fees will be lowered and who will supply additional information regarding the vehicles hauling solid waste. The proposed rules apply to all professional solid waste haulers but do not impose different standards or fees for waste haulers of different sizes. The changes in fees should reduce costs for public and private waste haulers.



Under the proposed rules and regulations, professional waste haulers will provide additional vehicle identification for each vehicle used to haul waste and drivers license information for each driver hauling solid waste. The fees charged to waste haulers will be reduced from \$30 per vehicle to \$20 per vehicle. The fees charged to waste haulers who haul waste outside the District are reduced to \$2.00 per metric ton, twenty-five cents (25¢) per uncompacted cubic yard, or forty-five cents (45¢) per compacted cubic yard, to comply with Ark. Code Ann. § 8-6-714.

**PUBLIC COMMENT:** A public hearing was held on this rule on October 22, 2024. The public comment period expired on October 22, 2024. The agency indicated it received no comments.

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

1. The term “regulation” appears in Sections 1.01 and 7.06 of the proposed rules. In light of Act 315 of 2019, which concerned the uniform use of the term “rule” throughout the promulgation process, is there a reason these sections use “regulation” rather than “rule”?  
**RESPONSE:** [The agency amended the proposed rules to use the term “rule” rather than “regulation”.]
2. In light of Arkansas Code § 25-43-602(a)(2), which indicates that the Department of Environmental Quality is “now to be known as the ‘Division of Environmental Quality,’” is there a reason the proposed rules still refer to the Department rather than the Division?  
**RESPONSE:** [The agency amended the proposed rules to use the term “Division of Environmental Quality” rather than “Department of Environmental Quality”.]

The proposed effective date is January 1, 2025.

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

**LEGAL AUTHORIZATION:** Regional solid waste management boards may adopt rules “as are reasonably necessary” to administer their duties and ensure public participation in their findings and rulings. Ark. Code Ann. § 8-6-704(a)(6). Per Ark. Code Ann. § 8-6-714(a)(1)(A),

A regional solid waste management board may fix, charge, and collect rents, fees, and charges of no more than two dollars (\$2.00) per ton of solid waste related to the movement or disposal of solid waste within the regional solid waste management district, including without limitation fees and charges:

- (i) Related to the district’s direct involvement with the district’s disposal or treatment; or
- (ii) That support the district’s management of the solid waste needs of the district.

**E. Agency Updates on the Status of Outstanding Rulemaking from the 2023 Regular Session Pursuant to Act 595 of 2021<sup>1</sup>**

1. **Department of Agriculture (Secretary Wes Ward, Corey Seats)**  
*Rules Outstanding as of December 1, 2024, as Reported and Updated by the Agency*
  - **\*Liquid Animal Waste Management Systems Rule (Act 824 of 2023)**
  
2. **Department of Commerce, Arkansas Economic Development Commission (Jake Windley)**  
*Rules Outstanding as of December 1, 2024, as Reported and Updated by the Agency*
  - **Consolidated Incentive Act Rules (Act 834 of 2023)**
    - This rule is not currently in any stage of rulemaking as internal discussions are ongoing as to whether the existing rule should be amended or repealed in its entirety. The Act does not require rules promulgation, and the current version largely restates the statute. No anticipated date for placement on the Subcommittee’s agenda.
  
3. **Department of Corrections (Tawnie Rowell)**  
*Rules Outstanding as of December 1, 2024, as Reported and Updated by the Agency*  
*Secretary of Corrections*
  - **Visitation (Act 659, § 112 of 2023)**
    - This rule will be promulgated by the Secretary of Corrections, who has approved it. It is anticipated that review and approval will be sought in February 2025.  
*Board of Corrections*
  - **\*Earned Release Credits (Act 659, § 112 of 2023)**  
*Post-Prison Transfer Board*
  - **Transfer to Post Release Supervision (Act 659, § 2 of 2023)**
    - This rule is being promulgated by the Post-Prison Transfer Board, and its drafting is in progress. It is anticipated that review and approval will be sought in March 2025.
  - **Revocation from Supervision (Act 659, § 2 of 2023)**
    - This rule is being promulgated by the Post-Prison Transfer

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<sup>1</sup> Outstanding rules that are on the current agenda for legislative review and approval are designated by an asterisk (\*).

Board and is in public comment. It is anticipated that review and approval will be sought in January 2025.

**4. Department of Education (Courtney Salas-Ford)**

***Rules Outstanding as of December 1, 2024, as Reported and Updated by the Agency***

*Commission for Arkansas Public School Academic Facilities and Transportation*

- **\*Rule Governing the Transportation Modernization Grant Program (Act 237, § 44 of 2023)**
- **\*Rules Governing the Academic Facilities Partnership Program (Act 237, § 8 of 2023)**

*Arkansas State Library*

- **Rules Governing the Standards for State Aid to Public Libraries (Act 566, § 11 of 2023)**
  - This amendment has been drafted and is undergoing agency staff review. It is anticipated the final rule will be submitted for legislative review in March.

*Division of Career and Technical Education*

- **Rules Governing the Approval of Computer Science-Related Career and Technical Education Course (Act 654, § 4 of 2023)**
  - This amendment has been drafted and is undergoing agency staff review. It is anticipated the final rule will be submitted for legislative review in March.
- **Rules Governing the Vocational Start-Up Grant Program (Act 867, § 7 of 2023)**
  - This amendment has been drafted and is undergoing agency staff review. It is anticipated the final rule will be submitted for legislative review in March.

*Division of Elementary and Secondary Education*

- **Rules Governing the Child Sexual Abuse and Human Trafficking Prevention Program (Act 237, § 16 of 2023)**
  - This amendment has been drafted and is undergoing agency staff review. It is anticipated the final rule will be submitted for legislative review in March.
- **Rules Governing School District Waivers (Act 347, § 1 of 2023)**
  - This amendment has been drafted and is undergoing agency staff review. It is anticipated the final rule will be submitted for legislative review in March.
- **Rules Governing Grading and Course Credit (Act 654, §§ 2, 4 of 2023)**
  - This rule has been authorized by the State Board of Education to be released for public comment in its November 7th meeting.

*State Board of Education*

- **Rules Governing the Course Choice Program (Act 237, § 20 of**

**2023)**

- This amendment has been drafted and is undergoing agency staff review. It is anticipated the final rule will be submitted for legislative review in March.
- **Rules Governing Dyslexia Screenings in Schools (Act 237, § 51 of 2023)**
  - This rule has completed a public comment period and is anticipated to start a new round of public comment in October. It is anticipated that the final rule will be submitted for legislative review in March.
- **Rules Governing Implementation of the Inpatient and Residential Facilities Appropriation (Act 572, § 11 of 2023)**
  - This rule has been authorized by the State Board of Education to be released for public comment in its November 7th meeting.
- **Rules Governing Implementation of the Juvenile Detention Facilities Appropriation (Act 572, § 12 of 2023)**
  - This rule has been authorized by the State Board of Education to be released for public comment in its November 7th meeting.
- **Rules Governing Public Charter Schools (Act 237, § 49 of 2023)**
  - This amendment has been drafted and is undergoing agency staff review. It is anticipated the final rule will be submitted for legislative review in March.

*Division of Higher Education*

- **Rules Governing Universal Academic Credit (Act 237, § 54 of 2023)**
  - This amendment has been drafted and is undergoing agency staff review. It is anticipated the final rule will be submitted for legislative review in March.

5. **Department of Energy and Environment (Kesia Morrison)**  
*Rules Outstanding as of December 1, 2024, as Reported and Updated by the Agency*
  - **\*Rule 36: Tire Accountability Program (Act 713 of 2023)**
  
6. **Department of Finance and Administration, Revenue Division (Paul Gehring, Alicia Austin Smith)**  
*Rules Outstanding as of December 1, 2024, as Reported and Updated by the Agency*
  - **Waterways Investment Tax Credit (Act 881 of 2023)**
    - This act creates a new Waterways Investment Tax Credit. The Waterways Investment Tax Credit is an income tax credit for the cost of making capital improvements to a facility or property related to using water transportation.

The draft rule was approved by DFA and the Governor's Office. The public comment hearing is currently scheduled for December 17, 2024. DFA anticipates requesting that the rule be placed on the earliest available agenda in 2025.

- 7. Department of Public Safety (Joan Shipley)**  
*Rules Outstanding as of December 1, 2024, as Reported and Updated by the Agency*
- **\*State Fire Marshal Rule (Arkansas Fire Prevention Code) (Act 841 of 2023)**

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

**G. Adjournment**