

RULES OF THE ADMINISTRATIVE RULES SUBCOMMITTEE OF THE LEGISLATIVE COUNCIL

Section 1. Review and Approval of State Agency Rules. In accordance with Arkansas Code § 10-3-309, the following procedures shall apply with regard to review and approval of state agency rules:

(a) Definitions. As used in these rules:

(1)(A) “Rule” means a state agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice of a state agency and includes without limitation the amendment or repeal of a prior rule.

(B) “Rule” does not mean:

(i) A statement that concerns the internal management of a state agency and that does not affect the private rights or procedures available to the public;

(ii) A declaratory order or ruling issued under § 25-15-206 or other provision of law applicable to the state agency issuing the declaratory order or ruling; ~~or~~

(iii) Intraagency memoranda; ~~and~~

(iv) A medical code within the Arkansas Medicaid Program that is issued by the Centers for Medicare and Medicaid Services, including without limitation:

(a) Current Procedural Terminology codes;

(b) Healthcare Common Procedure Coding System codes;

(c) International Classification of Diseases codes;

(d) National Uniform Billing Committee Official UB-04 Data Specifications Manual codes; and

(e) National Correct Coding Initiative codes; or

[Effective August 1, 2023] (v) An internal policy or the internal guidelines of a state agency related to a cybersecurity incident involving, or a cyberattack on, a state agency; and

(2)(A) “State agency” means an office, board, commission, department, council, bureau, or other agency of state government having authority to promulgate or enforce rules.

(B) “State agency does not include the following:

(i) The Arkansas State Game and Fish Commission, if the rule is not promulgated under the authority of a statute enacted by the General Assembly;

(ii) The State Highway Commission and the ~~Arkansas State Highway and Transportation Department~~ Arkansas Department of Transportation, if the rule is not promulgated under authority of a statute enacted by the General Assembly; and

(iii) An institution of higher education.

(b) Filing of Rules with the Legislative Council.

(1) A state agency shall file a proposed rule with the Legislative Council at least thirty (30) days before the expiration of the period for public comment on the rule under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., or other laws or policies pertaining to the rulemaking authority of that state agency.

(2) The Legislative Council shall refer all proposed rules filed by a state agency ~~with~~ to the Administrative Rules Subcommittee.

(c) Placement of Rules on the Subcommittee Agenda. In order to have a rule placed on an upcoming Subcommittee agenda, the following requirements must be met:

(1)(A) The public comment period of the state agency's proposed rule shall have expired by the 15th of the month prior to the Subcommittee meeting date at which the state agency would like the proposed rule to appear on the agenda.

(B)(i) A request by a state agency to have a rule appear on a Subcommittee agenda when the public comment period of the state agency's proposed rule had not expired by the 15th of the month prior to that subcommittee meeting date, shall be accompanied by a statement as to why the rule cannot wait to be heard at the next regularly scheduled meeting of the Subcommittee.

(ii) The rule may only be considered by the Subcommittee upon a vote to suspend the rules, which requires an affirmative vote of two-thirds (2/3) of a quorum. Upon passage of the motion to suspend the rules, the Subcommittee may take up consideration of the rule; and

(2) The state agency shall provide the Subcommittee staff by the 15th of the month prior to the Subcommittee meeting date with the following information, which is in addition to the information previously required to have been submitted under subsection (d) of this Rule:

(A) A public comment summary that includes for each comment received: the name of the commenter, if known; a summary of the comment; and a response by the agency to the comment;

(B) A revised markup of the proposed rule that shows changes, if any, that were made subsequent to the initial rule filing with the Subcommittee; and

(C) Any additional information requested by the Legislative Council, including without limitation the state agency's responses to any questions and comments submitted to the state agency by Subcommittee staff concerning the proposed rule.

(d) Materials to be Provided by a State Agency When Filing a Rule. Upon filing of a proposed rule with the Subcommittee, the state agency shall submit the following documentation:

(1) A completed questionnaire on a form approved by the Legislative Council;

(2) A financial impact statement, as required by Arkansas Code § 25-15-204, on a form approved by the Legislative Council;

(3) A summary of the proposed rule; and

(4) The proposed rule and any markup to the proposed rule.

(e) Public Comment. When conducting its review of a state agency rule, the Subcommittee shall allow members of the public a reasonable opportunity to comment

on the proposed rule.

(f) Review and Approval.

(1) Except as set forth in subsection (f)(6) of this Rule, upon conclusion of its review of the proposed rule, the Chair of the Subcommittee shall state, “Without objection, the rule is considered reviewed and approved.”

(2) At this point, the rule is considered reviewed and approved, pending Legislative Council final action, unless a majority of a quorum present at the Subcommittee meeting request that the Subcommittee vote on the issue of approving the rule.

(3)(A) At the time that the motion is made to vote regarding approval, the member making the motion shall state the grounds upon which approval should be denied.

(B) The only viable grounds for not approving a rule shall be if the rule is found to be inconsistent with state or federal law or with legislative intent.

(C) If a rule contains a fee or penalty promulgated in accordance with Arkansas Code § 25-15-105, the Subcommittee may choose not to approve the rule for any reason, and is not required to state the grounds for not approving.

(4) If the Subcommittee votes on the issue of approving the proposed rule, the proposed rule shall be considered approved unless a majority of a quorum present vote for the rule to not be approved.

(5)(A) The Subcommittee shall not exercise line-item review and approval of a proposed rule. Review and approval of the proposed rule shall apply to the entire proposed rule as submitted by the state agency.

(B) If a state agency presenting a proposed rule to the Subcommittee indicates its intent or agreement to revise a proposed rule in response to discussions by the Subcommittee, and revision of the rule in such a manner would not violate any of the requirements of the Administrative Procedure Act, the Subcommittee may review and approve the proposed rule with the revisions agreed to by the state agency.

(6)(A) A proposed rule submitted by the State Board of Health under Arkansas Code § 20-7-604(d)(2)(D), concerning exemptions from the requirements of the Prescription Drug Monitoring Program, shall be considered reviewed and approved by the Subcommittee upon an affirmative vote of three-fourths (3/4) of the members present when a quorum is present.

(B) When considering a rule submitted under this subsection (f)(6)(A), the requirement to state the grounds for not approving a rule under subsection (f)(3)(B) shall not apply.

(7)(A) ~~Effective July 24, 2019~~ If enacted legislation requires or results in more than one (1) state agency adopting, amending, or repealing rules on a similar subject matter:

(i) A state agency or a member of the General Assembly may request that all proposed rules filed with the Legislative Council regarding the enacted legislation be grouped together and considered as a single group;

(ii) A request to group the proposed rules shall be submitted in writing to one of the co-chairs of the Subcommittee at least one (1) business day prior to the meeting of the Subcommittee at which the rules will be considered; and

(iii) Approval of a request to group proposed rules shall be by

affirmative vote of a majority of the members present when a quorum is present.

(B) If the proposed rules are grouped together under subdivision (f)(7)(A) of this section for review, the Subcommittee may:

(i) Separate the proposed rules at the request of a member of the General Assembly or one (1) of the state agencies that promulgated the proposed rules; and

(ii) Elect to consider one (1) or more of the proposed rules separated from the group.

(g) Referral of Proposed Rules.

(1)(A) The Subcommittee may refer a rule to a committee of the General Assembly or another subcommittee of the Legislative Council for the committee's or subcommittee's consideration.

(B) However, in doing so, the Subcommittee shall not delegate its authority to review and approve a rule to that committee or subcommittee.

(2) After the referred rule is presented to a committee of the General Assembly or subcommittee of the Legislative Council and considered, the committee or subcommittee to whom the rule was referred may provide its views and opinions on the rule to the Subcommittee.

(3) Either chair of the Subcommittee may determine that there is an undue delay in the review of the proposed rule by the committee or subcommittee to which it was referred and recall the proposed rule in order to begin the review and approval process by the Subcommittee.

(h) Statutory Requirement for Review by a Specific Subject Matter Committee.

(1) If a statute requires a proposed rule to be reviewed or considered by a specific subject matter committee or subcommittee, the subject matter committee or subcommittee shall consider the proposed rule before the Subcommittee undertakes review and approval of the proposed rule.

(2)(A) Either chair of the Subcommittee may waive the requirement of subsection (h)(1) if he or she determines that prior review by the subject matter committee or subcommittee will or has already resulted in an undue delay in the review and approval process.

(B) A waiver shall not be granted if the state agency has not provided the required information under subsections (c)(2) and (d) of this Rule.

(C) Issuance of a waiver by either chair of the Subcommittee does not remove the statutory requirement of review or consideration by the subject matter committee or subcommittee, and the state agency shall still comply with all statutory requirements regarding review by legislative committees.

(i) Review and Approval of Emergency Rules. The following procedures apply with regard to the review and approval of proposed emergency rules:

(1) A state agency shall file a proposed emergency rule with the Executive Subcommittee of the Legislative Council.

(2) A proposed emergency rule may be considered reviewed and approved by the Executive Subcommittee in one of two ways:

(A)(i) The proposed emergency rule is reviewed and approved at a meeting of the Executive Subcommittee.

(ii) Upon conclusion of the Executive Subcommittee's review of the proposed emergency rule, the rule shall be considered approved unless a majority of a quorum present request a vote regarding approval of the proposed emergency rule. If the Executive Subcommittee votes on the issue of approval, the proposed emergency rule shall be approved unless a majority of a quorum present vote for the proposed emergency rule not to be approved.

(iii)(a) At the time that the motion is made to vote regarding approval, the member making the motion shall state the grounds upon which approval should be denied.

(b) The only viable grounds for not approving a rule shall be if the rule is found to be inconsistent with state or federal law or legislative intent.

(c) If an emergency rule contains a fee or penalty promulgated in accordance with Arkansas Code § 25-15-105, the Executive Subcommittee may choose not to approve the rule for any reason, and is not required to state the grounds for not approving.

(B) A majority or more of the members of the Executive Subcommittee approve the proposed emergency rule in writing.

(3)(A) If possible, the proposed emergency rule shall be sent electronically to the members of the Legislative Council at least one (1) day before the Executive Subcommittee considers the emergency rule for review and approval.

(B) Either chair of the Legislative Council or a majority of the members of Legislative Council may call a meeting to be held within one (1) day after review and approval by the Executive Subcommittee of the emergency rule to request reconsideration of the emergency rule by the Executive Subcommittee.

(4) A proposed emergency rule approved by the Executive Subcommittee shall be reported to the Administrative Rules ~~and Regulations~~ Subcommittee and to the Legislative Council.

(j) Review and Approval of Rules Concerning Occupational Licensure of Active Duty Service Members, Returning Military Veterans, and Their Spouses.

(1) An occupational licensing entity requesting review and approval of proposed rules recommending an expedited process and procedure for occupational licensure of ~~active duty~~ uniformed service members, ~~returning military~~ uniformed service veterans, and their spouses shall file the proposed rules with the Subcommittee before the proposed rules are promulgated under the Administrative Procedure Act, Arkansas Code § 25-15-201, et seq.

(2) If an occupational licensing entity files proposed rules recommending an expedited process and procedure for occupational licensure of ~~active duty~~ uniformed service members, ~~returning military~~ uniformed service veterans, and their spouses, pursuant to Arkansas Code § 17-4-101, et seq., with the Legislative Council, the Subcommittee shall:

(A) Review the proposed rules of the occupational licensing entity as submitted for public comment at least thirty (30) days before the public comment period ends; and

(B) Conduct a review and approval process regarding the proposed rules based on:

(i) A determination of whether the expedited process and procedure provide the least restrictive means of accomplishing occupational licensure; and

(ii) Any other criteria the Subcommittee determines necessary to achieve the objectives of Arkansas Code § 17-4-101, et seq.

(k) Promulgation of Rules Following a Regular Session.

(1) No later than sixty (60) days following the sine die adjournment of a regular session of the General Assembly, the Bureau of Legislative Research shall file with the Subcommittee a report identifying the rules required by newly enacted laws that it has determined shall be filed for adoption on or before June 1 of the year following a regular session of the General Assembly. The report shall only include rules specifically required by a newly enacted law.

(2)(A) The executive head of an agency or his or her designee shall provide monthly written updates to the Subcommittee on the agency's progress in promulgating a rule it determines is required as a result of the agency's review under Arkansas Code § 25-15-216(a)(1), including without limitation, a rule identified in the report under (k)(1) until the final version of the new, amended, or repealed rule is filed for adoption with the Secretary of State, which shall be:

(i) On or before June 1 of the year following the regular session or fiscal session at which the law requiring promulgation was enacted; or

(ii) On or before the one hundred eightieth day following sine die adjournment of the special session at which the law requiring promulgation was enacted.

(B)(i) If an agency fails to file the final version of the new, amended, or repealed rule for adoption by the deadlines set out in subdivision (k)(2)(A) of this rule, the executive head of the agency at issue or his or her designee shall then appear before the Subcommittee on a monthly basis until the final version of the rule is filed for adoption with the Secretary of State.

(ii) The appearance in person required by subdivision (k)(2)(B)(i) shall be in lieu of a monthly written update.

(iii) When appearing in person before the Subcommittee, the executive head of the agency shall:

(a) Describe why the agency has been unable to file the rule for adoption by the deadlines established by Arkansas Code § 25-15-216 (b)(1);

(b) Provide an update on the current status of the necessary rule changes;

(c) Describe the steps the agency is taking to address the failure to file the rules for adoption; and

(d) Provide an anticipated date for when the final version of the new, amended, or repealed rule will be filed for adoption with the Secretary of State.

(C)(i) An agency shall not be required to appear before the Subcommittee under subdivision (k)(2)(B) of this rule, if the agency provides the Subcommittee with written notification that the newly enacted law requiring the new,

amended, or repealed rule is the subject of litigation.

(ii) The agency shall provide the Subcommittee with written notification when the litigation is resolved.

(D)(i) If an agency believes that a rule required by a newly enacted law is not necessary for the operation of the newly enacted law, the agency may submit a written request to the Subcommittee:

(a) Notifying the Subcommittee of the agency's intent to not adopt the required rule; and

(b) Requesting that the rule be excluded from the reporting requirements set forth in subdivisions (k)(2)(A)-(C) of this rule.

(ii) The Subcommittee may, by an affirmative vote of a majority of the members present when a quorum is present, exclude an agency from the requirements of subdivisions (k)(2)(A)-(C) of this rule if the Subcommittee determines that the required rule is not necessary, including without limitation determining that the required rule would merely restate the newly enacted law.

Section 2. Appeals of Rule Codification Decisions. Under Act 662 of 2019, the Bureau of Legislative Research was tasked with compiling, formatting, and indexing a codification of the general and permanent rules of agencies to be known as the "Code of Arkansas Rules". An agency that objects to the form of the codification of a rule or a technical correction made by the Bureau of Legislative Research may appeal the codification of the rule to the Subcommittee, as follows:

(a) Notification of Appeal.

(1) An agency may file an appeal of a codification decision or a technical correction made by the Bureau of Legislative Research to the Subcommittee.

(2) The appeal shall be filed in writing with the Subcommittee on the appeal form approved by the Subcommittee.

(3)(A) In order to have the appeal placed on the next regularly scheduled Subcommittee meeting agenda, the appeal form and all supporting documentation shall have been submitted to the Subcommittee staff no later than ten (10) calendar days prior to the scheduled Subcommittee meeting.

(B) An appeal submitted after the submission date shall only be considered by the Subcommittee at its next regularly scheduled meeting upon a suspension of the rules, which requires an affirmative vote of two-thirds (2/3) of a quorum.

(C) This option shall only be exercised upon a written showing that there is imminent need for the appeal to be considered that cannot wait until the next regularly scheduled meeting of the Subcommittee.

(D) Otherwise the appeal shall appear on the following Subcommittee meeting agenda.

(4) Upon submission of an appeal of a codification decision or technical correction to the Subcommittee, the Bureau of Legislative Research shall cease all codification work related to the rule that is the subject of the appeal until such time that the appeal has been resolved and final approval given by the Legislative Council.

(b) Subcommittee Consideration and Recommendation.

(1) The agency who has filed the appeal shall appear before the Subcommittee to present its appeal.

(2) The Subcommittee, by a majority vote of the members present when a quorum is present, shall adopt a recommendation to the Legislative Council regarding the resolution of the appeal, and shall submit its recommendation to the Legislative Council in a written report.

(c) Final Determination by Legislative Council. The Legislative Council shall make the final determination regarding an agency's appeal of a codification decision or technical correction by the Bureau of Legislative Research based on the recommendation and documentation provided to it by the Subcommittee. The determination of the Legislative Council is final.