ADMINISTRATIVE RULES SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Wednesday, February 19, 2020
9:00 a.m.
Room A, MAC
Little Rock, Arkansas

A. Call to Order.

B. Reports of the Executive Subcommittee.

C. Reports on Administrative Directives Pursuant to Act 1258 of 2015, for the quarter ending December 31, 2019.

1. Department of Corrections

2. Parole Board

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

1. <u>DEPARTMENT OF COMMERCE, ARKANSAS ECONOMIC DEVELOPMENT COMMISSION (AEDC)</u>

a. <u>SUBJECT</u>: Arkansas Rural Connect Broadband Grant Program

<u>DESCRIPTION</u>: The proposed rule sets out the rules and requirements for eligible areas and internet service providers (ISPs) to participate in the Arkansas Rural Connect Broadband Grant Program (hereafter, the "ARC Program").

The ARC Program is a State grant-based program intending to implement the State Broadband Plan. The ARC Program is to be implemented and developed by the State Broadband Manager.

As explained in the proposed rule, the rule is issued by the Director of the Arkansas Economic Development Commission (AEDC). Pursuant to Ark. Code Ann. § 15-4-209(a)(1), AEDC is authorized to administer grants to assist with the economic development in the State. On August 9, 2019, Governor Asa Hutchinson authorized a transfer of funding for the implementation and administration of the ARC Program to AEDC. Due to this transfer, AEDC is authorized to administer the ARC grant and thereby

authorized to establish administrative rules under Ark. Code Ann. § 15-4-209(b)(5) "as a service offered by AEDC."

This proposed rule modifies an earlier proposed rule which limited participation in the program to incorporated municipalities. The newly proposed rule no longer has this restriction and establishes eligibility criteria that an area: (1) have less than 80% served with broadband coverage, (2) have at least 500 people in the project footprint, and (3) have at least 200 people unserved with broadband coverage. The newly proposed rule also provides that county judges may now apply on behalf of unincorporated communities or entire counties, and there is a $3,000 cap per household and an overall project cap of $2 million or 20% of the ARC funding round budget extends eligibility. In addition, as summarized in the earlier-filed rule, this proposed rule:

- Sets out grant application process, timelines, and requirements for eligible areas and ISP partners in the ARC Program;
- Provides extensive deployment and quarterly progress reporting for eligible areas and ISPs for review and monitoring by the Arkansas State Broadband Office (ASBO);
- Provides a fair and transparent process and standards for review and approval of applications of Requests for Applications (RFAs) for participation in the ARC Program;
- Sets out detailed eligibility criteria and procedures for the application submittal process, application review and approval process, and ASBO project monitoring of the program, including penalties to incentivize substantial completion and participation in the program;
- Requires disclosure reports to the ASBO for applying and participating areas pertaining to project connectivity goals, engineering planning, costs, conflicts of interest, financial statements, and other items for adequate ASBO regulation, monitoring, and implementation of this program.

PUBLIC COMMENT: A public hearing was held on January 9, 2020. The public comment period expired on January 9, 2020. The Office of Broadband Manager (OBM) provided the following summary of comments that it received and its responses thereto:

A total of four comments were received during the thirty-day comment period. Two were received by e-mail during the public comment period, one was submitted at the public hearing, and one was provided in a face-to-face meeting with the Broadband Manager and later submitted by e-mail at the Broadband Manager's request. The four public comments received during the second thirty-day public comment period are summarized below, with OBM's responses:

Commenter: Elizabeth Bowles

1. Companies that have been financially vetted by federal agencies and awarded funds can bypass baseline requirements. **RESPONSE:** While this might save time at the application stage, it would be complex to implement. It may be worth revisiting it in the future, but we worry that it might prove too difficult to establish and fix in rule the range of federal programs whose financial vetting processes should be accepted as sufficient warrants for the state to deem a company grant eligible. That said, ARC grant applicants are encouraged to submit documentation related to their financial vetting by and receipt of funds from federal agencies, to facilitate our own decisions regarding financial eligibility.

2. The language pertaining to early project closure "is vague in that it implies that should the service become obsolete or unnecessary, the municipality could…elect at its discretion to penalize the ISP." **RESPONSE:** We do not agree that the language of the rules ever implied that ISPs could be penalized because a municipality, at its own discretion, might deem an ARC grant-funded broadband service obsolete or unnecessary.

3. ARC rules should be technology neutral, as they are now, and not feature a preference for fiber to the home or gigabit speeds, as some advocate. **RESPONSE:** As recommended, the ARC rules remain technology neutral and make no explicit preference for fiber technology or gigabit speeds, though local public officials may have such preferences and act on them through project rankings, as explained below.

Commenter: CenturyLink

1. Some terms, such as "Census-Designated Place," "project closure," "ISP," and "town" would benefit from clearer definition, greater consistency of usage, and/or appropriate internal references linking disparate passages in which these are mentioned.

2. The rules were praised for including a well-defined maximum grant per household connected, providing alternatives to submitting financial statements, and giving the ASBO discretion to make adjustments to complement federal programs.

3. The requirement that applicants demonstrate the financial sustainability of projects after deployment be removed, since it impinges on internal business judgments and forces disclosure of confidential information.

4. Instead of targeting November 2022 as the completion date for deployments, the deployment deadline should be a specified time interval, e.g., 24 months, after awards are announced.

RESPONSE: In response, the OBM made several minor language adjustments to address (1), but did not accept recommendations (3) and (4).

More substantively, concerning (3), the provision requiring scrutiny of projects' financial sustainability reflects the OBM's desire to drive lasting expansion of broadband coverage, rather than temporary expansions that wont's outlast a transient subsidy. However, CenturyLink's concerns are noted, and the OBM will remain on the alert for evidence that ARC requirements demonstrating financial sustainability are excessively burdensome.

Concerning (4), we expect that the release of an RFA and the opening of an application window will proceed expeditiously and not leave applicants unduly in doubt about the length of time that will be available for deployment after grant awards are announced. However, if further rounds of ARC funding are made available after a significant lapse of time, it will be essential to adjust the deployment deadline, and a sliding deadline that depends on the date when grant awards are announced may be an appropriate solution.

Commenter: John Duncan
Citizen John Duncan wrote that Hot Springs Village should be allowed to participate in the grant, because it is larger than many towns.
RESPONSE: Though received during the second thirty-day public comment period, this comment seems to be a response to a previous version of the rules. The current ARC rules would not preclude Hot Springs Village from participating on the basis of its lack of incorporated status.

Commenter: Julie Mullenix
Julie Mullenix's comments, on behalf of the Arkansas Rural Broadband Association, during the January 9, 2020, public hearing are summarized below. The OBM appreciates Ms. Mullenix's comments and responds as follows:

1. ARC grant program should provide higher score to networks that deploy fiber to homes than those with fixed wireless. **RESPONSE:** While the ARC rules do not favor fiber explicitly and directly, they can favor fiber indirectly by giving local public officials the power to influence project selection by ranking projects in order of preference. To the extent that fiber projects are feasible within the budget constraints of the program, local public officials are encouraged to take into account the superior performance that some broadband technologies can plausibly claim to offer, now and perhaps even more in the future if bandwidth demand continues to escalate, and rank projects accordingly. Inasmuch as local public officials accept the case for the superiority of fiber, and rank fiber projects ahead of fixed wireless projects, and find ARC grants to be sufficient, perhaps in conjunction with private co-investment, to fund

them, fiber projects may be able to out-compete fixed wireless projects even if the latter are cheaper. The ARC rules are designed not to prejudge the merits of different technologies, but rather to reveal provider costs and local preference through the competitive grant making process and arrive at the best solution.

2. ARC grant program should not exempt companies with a five-year track record from getting Professional Engineer (PE) stamp. **RESPONSE:** The OBM learned through its consultations with various ISPs, especially in the cable TV industry, that for many well-established providers it is not common practice to get a PE stamp before making major investments in new capacity. Moreover, the OBM itself intends to engage a technical review team with engineers on staff, which will perform a technical vetting of projects, reducing the need for a PE stamp. The PE stamp requirement is retained as an extra safeguard for smaller, less experienced companies as a compromise, but it does not seem necessary for well-established providers.

3. ARC Grant Program should implement a testing requirement for its ISPs. This, according to Mullenix, would prevent companies from under sizing middle-mile and backbone transport facilities or distribution systems to cut expenses. **RESPONSE:** The OBM appreciates the recommendations with respect to testing requirements, but does not think a rule change is needed in order to implement something along these lines. We would draw attention to section 11(C) of the rules, which state, with respect to how the completion of project deployment shall be verified, that "the responsible public officials shall collect, or cause to be collected, with the advice of the [Arkansas State Broadband Office, i.e., OBM] as needed, information sufficient to affirm that the project appears to be complete and broadband service has been made available to at least 95% of project footprint residents, [after which] the ASBO shall review this information as well as evidence from its own desk research, and if the evidence is sufficient, shall announce that the project has completed the main deployment phase, and authorize the release of any remaining disbursable grant funds." The OBM could, at its discretion, advise local public officials to conduct speed and latency tests as described by the Arkansas Rural Broadband Association, and assist them to do so. While there might arguably be benefits specifying this in detail beforehand, broadband mapping is an area where best practices and best available data sources seem likely to evolve rapidly in the near future, so it seems wiser to wait on providing detailed guidance.

4. ARC grant program needs protection that providers will pay back funds if they fail to meet deployment and service requirements during the ten-year grant period. **RESPONSE:** A letter of credit from grant awardees might give the state a bit more protection from ISPs defaulting on

penalties owed for non-compliance than the current rules provide. However, considerable safeguards against abuse of taxpayer money are already in place in the rules, including requirements for applicant ISPs to submit financial statements or alternative documentation, requirements for applicants to demonstrate the financial sustainability of projects, a need to persuade local public officials that applicant ISPs are worthy partners, arrangements to pay out grant funds only as reimbursement for verified deployment-related expenses, and withholding of 20% of grant funds until deployment is verified to be complete. The risk that providers will cease to provide a valued and needed broadband service after deployment is complete is relatively small in any case, since we will only approve projects for which the anticipated revenues from operation exceed the anticipated costs. Requiring a letter of credit would disproportionately burden and might even exclude less highly capitalized companies which, however, might be desirable partners for the state because of their technology and cost structure. If, in future, a letter of credit may be warranted, we will make the needed changes. But at the present time, we deem that existing safeguards are sufficient and an additional letter of credit is not needed.

5. ARC grant program should allow a period for providers to contest grant awards and verify their services. **RESPONSE:** The OBM recognizes the importance of protecting providers from being overbuilt using state broadband grant funds. But the rules deal with this problem in a different way, namely, by asking all the ISPs in the state to submit maps of their coverage areas before the grant application window opens, so that we can make served areas ineligible. At the present time, we deem that to allow grant awards also to be contested *ex post* would impose undue risk on grant applicants and discourage participation, and that the provisions already in the rules sufficiently address the underlying problem. The assumption can be revisited in future as the results of ARC funding rounds are observed.

6. ARC grant program should require each ISP to follow FCC requirements for annual broadband performance obligations and service rates. **RESPONSE:** FCC requirements with respect to broadband performance and pricing are complex, and the OBM does not have sufficient expertise in this area to assess their applicability to ARC grant awardees and then monitor their compliance with them. Also, since FCC rules may change over the duration of an ARC grant project, to impose such requirements on ARC grant awardees would create new risks for them, since the FCC might raise standards in a way that grant awardees could not comply with, without substantial new investments. The ARC program has set its own goals for service quality rather than outsourcing this to the FCC.

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

QUESTION 1: Section 6 (AB) of the rules appears to contemplate a January 1, 2030 full project closure date. Section 8(C)(2) appears to require an earlier November 2022 date of completion of project closure, deployment and establishment of service availability. Could you please clarify? **RESPONSE:** In the version of the rules that was posted online, section 8(C)2 erroneously contained the word "closure" where it should have said "completion." This has been corrected in the latest version. "Closure" is now consistently used to mean the date when the awardee ISP's service obligations will cease and the state will cease to monitor the project. Completion of deployment occurs when the ISP verifies that 95% of locations have been connected.

QUESTION 2: Section 8(C)(5) outlines penalties that ISPs must pay if broadband service ceases to meet standards earlier than January 1, 2030.
(a) Some standards are contemplated in (h). Could there be additional standards which individual communities establish with ISPs?
RESPONSE: No, not that Arkansas Rural Connect would enforce.
(b) Could these standards be different for each project? (i.e., 25/3 for project A; 100/100 for project B) **RESPONSE:** No, not that Arkansas Rural Connect would enforce.
(c) Where and when in the process would standards be established?
RESPONSE: They are established in the rules themselves, e.g., in section 4(6).
(d) How would this change if the FCC changes its definition of "high-speed internet"? **RESPONSE:** It would not change. Arkansas Rural Connect's performance standards will remain fixed.

QUESTION 3: Section 8(C)(5)(h) states that penalties can be triggered by sustained degradation of network performance due to intensive utilization. Could you please describe some scenarios which would constitute sustained degradation of network performance due to intensive utilization? **RESPONSE:** If a network built with Arkansas Rural Connect funds were utilized very intensively, congestion might cause speeds originally meeting the 25/3 standard to fall below that standard.
(a) Specifically, would a situation where an area had an increase in utilization (either households, individuals or nature of utilization) resulting in decreased speeds, constitute a situation where an ISP may be subject to penalties? **RESPONSE:** Yes, that situation could trigger penalties within the period when grant obligations are in force.

QUESTION 4: In Section 9(G), what specific documents must the ISP send to the licensed Professional Engineer, and what must that engineer evaluate to determine whether plans are technically adequate?

RESPONSE: That is up to the Professional Engineer to decide. The ISP should provide whatever documents the Professional Engineer deems necessary in order to confirm the sufficiency of the plans to deliver the promised network performance.

QUESTION 5: What is the rationale for obtaining the PE stamp after approval of the grant, rather than before submission? **RESPONSE:** Getting a PE stamp is costly and may involve delays. To require it before submission would probably reduce ISP participation in Arkansas Rural Connect. By allowing the PE stamp to be obtained after the grant is awarded, using grant funds, we will encourage ISP participation while still getting a second opinion on projects originated by relatively new ISPs.

QUESTION 6: Could you please explain Section 10(C)?
(a) Specifically, what type scenarios does the agency anticipate will occur and what type of case by case adjustments would be made pursuant to 10(C)? **RESPONSE:** We do not know what the scenarios will be. But we want to remain flexible and let participants know that we are willing to make rule changes according to the APA should a proper scenario surface.
(b) Would adjustments of this nature be made mid-project or prior to commencement of the project? **RESPONSE:** Both scenarios are possible.
(c) Could you please provide legal authorization for 10(C)?
RESPONSE: We will not make any material changes to the rules without following the APA guidelines.
(d) Do you envision that 10(C) would allow the agency to change terms or definitions outlined in these rules without going through the promulgation process? **RESPONSE:** No. Section 10(C) is not an attempt to carve out an exception to the normal APA rule promulgation process. Rather, we are signaling to ISPs that if they see creative ways to use Arkansas Rural Connect jointly with federal programs, we want to find ways to make that work, within the due processes of state law.

QUESTION 7: Could you please define the term, "deployment?"
RESPONSE: The physical installation of facilities that make it possible to provide broadband service, and related legal and marketing work necessary to achieve effective utilization of such facilities. See Section 11(D).

QUESTION 8: Section 11(F) states, "after the completion of deployment until project closure…"
(a) When is deployment deemed complete? **RESPONSE:** When 95% of locations in the project footprint have access to broadband service. See Sections 11(D) and 6(F). At present, we are working on an internal policy that will require a grant closeout and review from either a Professional Engineer certified in Arkansas or an engineer from UAMS Institute of

Digital Health and Innovation (IDHI). This review will confirm the build has been completed; that the design and installation conforms to all applicable federal, state, and local requirements and standard engineering practice; and that the installed infrastructure will provide the service levels stated in the application.
(b) What ISP activities are contemplated between deployment and closure? **RESPONSE:** Provision of broadband service on demand to residents of the project footprint.

QUESTION 9: What is the process for closing a project following deployment? How and by whom is the closure date determined?
RESPONSE: For the process by which completion of deployment is certified, see the answer to question 8(a). The word "closure" is used in the rules to refer to the termination of grant obligations and project monitoring. This normally occurs on January 1, 2030, as stated in Section 6(AB). Also see section 11(J).

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Act 198 of 2019, sponsored by Senator Breanne Davis, after reasonable notice to the public, a government entity may, on its own or in partnership with a private entity, apply for funding under a program for grants or loans to be used for the construction, acquisition, or leasing of facilities, land or buildings used to deploy broadband services in unserved areas, as defined under the terms of the granting or lending program, and if the funding is awarded, then provide directly or indirectly, voice, data, broadband, video, or wireless telecommunications services to the public in the unserved area. *See* Act 198 of 2019 § 3, codified as Ark. Code Ann. § 23-17-409(b)(5).

The Arkansas Economic Development Commission has authority to administer grants, loans, cooperative agreements, tax credits, guaranties and other incentives, memoranda of understanding, and conveyances to assist with economic development in the state. *See* Ark. Code Ann. § 15-4-209(a)(1). Additionally, AEDC has authority to promulgate rules necessary to implement the programs and services offered by the commission. *See* Ark. Code Ann. § 15-4-209(b)(5).

2. DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION

a. SUBJECT: DESE Rules Governing the Right to Read Act

DESCRIPTION: The Rules Governing the Right to Read Act are new rules and are promulgated to satisfy the requirements of Ark. Code Ann. § 6-17-429, which requires the Arkansas Division of Elementary and Secondary Education to write rules to implement the Right to Read Act.

Consistent with the Right to Read Act, Sections 3.00 and 4.00 of these rules require professional development in scientific reading instruction and require that all educators obtain either a proficiency or awareness credential in the knowledge and practices of scientific reading instruction by the beginning of the 2021-2022 school year.

Sections 5.00 and 6.00 of the rules explain which educators must obtain a proficiency credential and which educators must obtain an awareness credential and outlines the process for completing the credentials.

Section 7.00 outlines how the Division will identify an approved list of materials, resources, and curriculum programs for districts that are supported by the science of reading and based on instruction that is explicit, systematic, cumulative, and diagnostic. Section 7.00 also outlines the process for obtaining approval of an alternative curriculum program.

Section 8.00 of the rules contains the requirements for educator preparation programs to comply with the Right to Read Act.

Section 9.00 of the rules explains the Division's mechanisms for enforcement of the Right to Read Act.

The following changes were made after the public comment period:

- Section 2.03 is changed from "public school" to "public school district."
- Section 3.03 is changed to add accidentally omitted language from Ark. Code Ann. § 6-16-2914(b)(1)(B), as amended by Act 83 of 2019.
- Section 5.02.2.1 is changed to remove the formal name of the exam and replace with "pass a stand alone reading assessment approved by the State Board of Education."
- Section 8.03 is changed to add accidentally omitted language from Ark. Code Ann. § 6-17-429(e), as amended by Act 83 of 2019.
- Section 9.03 changed for clarity.

PUBLIC COMMENT: A public hearing was held on October 24, 2019. The public comment period expired on November 1, 2019. Due to the

belatedness in the issuance of a Commissioner's Memo, a second public hearing was held on November 21, 2019, and the public comment period was extended until December 3, 2019. The Division provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association
Comment (1): Section 2.03: As "public school" is never used in these Rules, I believe that this was intended to be "public school district" instead.
Division Response: Comment considered. Non-substantive change made.

Comment (2): Section 4.03: I would recommend changing "eFinance" to "the Statewide Information System" to more closely match the language in Section 10.01 of the Rules Governing Data Reporting.
Division Response: Comment considered. No change made.

Comment (3): Section 7.06.1.3: There is a "the" missing from between "of" and "alternative."
Division Response: Comment considered. Non-substantive change made.

Comment (4): Section 7.06.2: As there is not a 7.07.1, I believe that this was intended to reference 7.06.1.
Division Response: Comment considered. Non-substantive change made.

Comment (5): Section 7.06.3: As there is not a 7.07.1, I believe that this was intended to reference 7.06.1.
Division Response: Comment considered. Non-substantive change made.

Comment (6): Section 9.01: There appears to be a "that" missing from between "district" and "violates."
Division Response: Comment considered. Non-substantive change made.

Comment (7): Section 9.01.1: I would recommend changing "eFinance" to "the Statewide Information System" to more closely match the language in Section 10.01 of the Rules Governing Data Reporting.
Division Response: Comment considered. No change made.

Commenter Name: Brandie Williams, Trumann School District (12/3/19)

Comment (1): I have concerns about the rules not addressing the possibility of an exception being needed for teachers to complete their RISE proficiency or awareness by the 2021 date. In our district, we are diligently monitoring this process to work to ensure all of our teachers are working towards these goals. But currently, we have a teacher on a maternity leave who has missed some of the training. We have 3 long term substitute teachers filling 2 special education and 1 general education positions. We are working to fill these positions, but if/when we find these teachers, they will most likely be starting the process late in the timeline. I feel that we must be realistic in providing some extensions for special circumstances.
Division Response: Comment considered. The Right to Read Act does not provide for an extension or exception. No change made.

Comment (2): I also believe that only allowing 1 year to meet the proficiency or awareness goal after 2021 is unrealistic for many new teachers. There is no exception in the rules for this need.
Division Response: Comment considered. The Right to Read Act does not provide for an extension or exception. No change made.

Comment (3): My other concern is the lack of criteria established for approval of literacy curriculum(s) that align to the Science of Reading. Evaluating curriculums takes months (minimally), if not years to complete. This is a massive task. Not having established criteria for the review process and/or explicit criteria for those who will be evaluating the curriculums seems to compromise the results of this process.
Division Response: Comment considered. There are two phases of applications for vendors. Both Phase I and Phase II applications describe the criteria, cite the research, and release the scoring rubrics. No change made.

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

(1) Throughout the rules, I noticed that "public school district" is solely referenced when the statutes on which the sections appear based refer to "public school district" and "open enrollment public charter school." I see a definition for "public school"; is this definition intended to cover the term "public school district" as well, so as to include open enrollment public charter schools? **RESPONSE:** Yes, rather than type "public school district and open enrollment public charter school" each time, we defined "public school" to include traditional, open-enrollment, and district conversion schools.

(2) Section 3.02.1 – This section of the rules, which appears to be premised on Ark. Code Ann. § 6-17-429(c)(1)(A), as amended by Act 83

of 2019, § 3, appears to limit only those teachers licensed at the elementary level in K-6 "teaching math, science, social studies, or English language arts" as being required to obtain professional development for one of the prescribed pathways to obtaining a proficiency credential. The statute, however, appears to require such professional development for "teachers licensed at the elementary level in kindergarten through grade six." Is there a reason the Division is limiting the requirement for professional development to only those K-6 teachers teaching the subjects set forth in the rule rather than requiring it for all K-6 teachers licensed at the elementary level as set forth in the statute? **RESPONSE:** Yes. K-6 licensure only applies to math, science, social studies, and English language arts. Those teaching K-6 PE, art, music, etc. will hold a K-12 license in that particular area.

(3) Section 3.03 – It appears that this section is premised on Ark. Code Ann. § 6-15-2914(b)(1)(B), as amended by Act 83, § 2. Should the literacy plan also include a "curriculum program," as well as the professional development program, as referenced in the statute? **RESPONSE:** Yes, it should. That was an accidental omission. Section 3.03 is changed to read "school-level improvement plan that shall include without limitation a curriculum program and a professional development plan that is…"

(4) Section 4.01 – Along the same lines as question (2) above, is there a reason the Division is only requiring the demonstration of proficiency of elementary teachers in K-6 "teaching math, science, social studies, or English language arts," special education teachers, ELL teachers in K-6, and reading specialists, when the statute on which the rule appears based, Ark. Code Ann. § 6-17-429(d)(1)(A), provides that "[a]ll teachers employed in a teaching position that requires an elementary education (K-6) license or special education (K-12) license" shall demonstrate proficiency? **RESPONSE:** Yes. K-6 licensure only applies to math, science, social studies, and English language arts. Those teaching K-6 PE, art, music, etc. will hold a K-12 license in that particular area.

(5) Section 4.03 – Is the reference to "eFinance" correct? **RESPONSE:** Yes.

(6) Section 4.04 – This section of the rules appears to require anyone who renews a license after December 31, 2021, to have an awareness credential; however, shouldn't elementary educators (K-6), special education educators (K-12), and reading specialists (K-12) have a proficiency credential to renew? **RESPONSE:** To renew his or her license, the educator must at least have an awareness credential. In order to teach in an elementary position or special education position, the educator must have a proficiency credential.

(7) Section 7.06.2 – Should the reference for the alternative curriculum program be to "7.06.1" rather than "7.07.1"? **RESPONSE:** Yes, the change has been made.

(8) Section 7.06.3 – Along the same lines as question (7), should the reference to requests for approval be to "7.06.1" rather than "7.07.1"? **RESPONSE:** Yes, the change has been made.

(9) Section 8.01.1 – This section of the rules appears to be premised on Ark. Code Ann. § 6-17-429(b)(1)(A)(i). Is there a reason the Division has added the language "leading to Elementary (K-6) or Special Education (K-12) licensure" to that in the statute? **RESPONSE:** Although Ark. Code Ann. 6-17-429(b)(1)(A)(i) says "a person who completes a state-approved educator preparation program," Ark. Code Ann. 6-17-429(b)(1)(B) stated that a person who completes a state-approved educator preparation program "other than a teacher of elementary education program shall demonstrate an awareness of the best practices." Therefore, we interpret it to mean that only those seeking licensure in elementary licensure (K-6) must be proficient. K-6 licensure only applies to math, science, social studies, and English language arts. Those teaching K-6 PE, art, music, etc. will hold a K-12 license in that particular area. Given that the law also requires K-12 special education educators to be proficient, we have included that too.

(10) Section 8.01.2 – This section of the rules appears to be premised on Ark. Code Ann. § 6-17-429(b)(1)(A)(ii). Is there a reason the Division has added the language "Elementary (K-6) or Special Education (K-12)" to that in the statute? **RESPONSE:** See reasoning above in #9.

(11) Section 8.02 – Should the reference be to a state-approved "educator" preparation program, as used in Ark. Code Ann. § 6-17-429(b)(1)(B), rather than "education" preparation program? **RESPONSE:** Yes, the change has been made.

(12) Section 8.02 – Is there a reason the language of the rule differs from that in Ark. Code Ann. § 6-17-429(b)(1)(B) of "other than a teacher of elementary education program"? **RESPONSE:** See reasoning above in #9.

(13) Section 8.03 – If this section is premised on Ark. Code Ann. § 6-17-429(e), as amended by Act 83, § 4, should "[a] provider of a" also include "graduate program, or alternative preparation program," as used in the statute? **RESPONSE:** Yes, the change has been made.

(14) Section 9.01.1 – Is the reference to "eFinance" correct?
RESPONSE: Yes.

(15) Section 9.03 – If the section is based on Ark. Code Ann. § 6-17-429(i)(2), as amended by Act 83, § 4, should noncompliance with Ark. Code Ann. § 6-17-429 also subject a provider to penalties? **RESPONSE:** The language has been changed from "that does not comply with the requirements of these Rules" to "does not comply with the requirements of the Right to Read Act, codified in Ark. Code Ann. 6-17-429, or these Rules, or both,…" to clarify.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the proposed rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-17-429(j)(2), the Division of Elementary and Secondary Education shall promulgate rules to implement the statute, which concerns the Right to Read Act. The proposed rule implements Act 83 of 2019, sponsored by Senator Jane English, which required school-level improvement, professional development, curriculum, and graduate studies plans to be in accordance with the science of reading, and Act 1063 of 2017, sponsored by Senator Joyce Elliott, which created the Right to Read Act.

b. SUBJECT: DESE Rules Governing Eye and Vision Screening, Sections 1.0, 2.0, and 11.0

DESCRIPTION: The Division of Elementary and Secondary Education proposes changes to Sections 1.0, 2.0, and 11.0 of the Rules Governing Eye and Vision Screening Report in Arkansas Public Schools. The proposed rules incorporate Act 757 of 2019, § 38, which changes the frequency of reporting by the Commission on Eye and Vision Care of School-Age Children and the Division of Elementary and Secondary Education from "two (2) times per year" to "annually." *See* Section 11.0. Reporting is to the Governor, Legislative Council, and House/Senate Interim Committees on Public Health, Welfare, and Labor. The following de-identified data are to be included in the report: number of students screened, number re-screened, number who did not receive an eye and vision screening, number referred for a comprehensive eye examination, and results of the comprehensive eye exam as either normal or treatment required.

Sections 1.0 and 2.0 change "Arkansas Department of Education" to "Division of Elementary and Secondary Education" (which change will be made throughout the rules at a later date), and contain editorial changes.

Post-public comment changes were made to correct the applicable regulatory authority, changing it from § 6-15-1501 et seq. to § 6-18-1501 et seq., and to change section "6.0" of the Rules to "11.0." Also, until the rules are updated throughout, "Department of Education" will not be changed to "Division of Elementary and Secondary Education," as that change cannot be made when only three sections of the rules are being amended.

PUBLIC COMMENT: A public hearing was held on November 18, 2019. The public comment period expired on December 3, 2019. No comments were received from the public.

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

(1) Section 2.00 – Should the reference to the authority for the rules be to Ark. Code Ann. § "6-18-1501 et seq." rather than "6-15-1501," which concerns "Comprehensive Plan for Consistency and Rigor in Course Work"? **RESPONSE:** Yes, you are correct that Section 2.00 should read 6-18-1501 et seq. instead of 6-15-1501. Comment considered. Non-substantive change made.

(2) It looks like from the summary provided in your rule packet that changes will be made throughout the rule changing "Department of" to "Division of Elementary and Secondary." Is that correct? If so, can you please send me a complete mark-up of the rules showing all changes? **RESPONSE:** Current plans are to propose more in-depth revisions to these rules at a later date. The current limited amendment is to ensure compliance with Act 517 of 2019; the limited amendment of Section 11 was necessitated by the passage of Act 757 of 2019, § 38, which changed the frequency of reporting from twice per year to annually.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-18-1504, the Division of Elementary and Secondary Education, in conjunction with the Arkansas Commission on Eye and Vision Care of School-Age Children, shall adopt rules that establish standards for training school nurses to perform eye and vision screenings. The proposed changes to the rules include revisions made in light of Act 757 of 2019, sponsored by Representative Bruce Cozart, which amended and updated various provisions of the Arkansas Code concerning public education.

c. **SUBJECT: DESE Rules Governing Public Charter Schools**

DESCRIPTION: The Division of Elementary and Secondary Education proposes amendments to its Rules Governing Public Charter Schools. The amendments include:

- Title changed to reflect the change in name of the Division of Elementary and Secondary Education from the Arkansas Department of Education. Throughout, changes are made to reflect the change in name of the Division of Elementary and Secondary Education from the Arkansas Department of Education. Stylistic changes are also made throughout.
- Sections 3.05 and 3.22 are changed to incorporate provisions of Act 933 of 2017.
- Sections 3.09 and 3.12 are added for clarity.
- Sections 4.03.1, 4.03.3, and 6.24 are changed to incorporate provisions of Act 761 of 2019, and Sections 6.25, 9.01.9, and 9.01.10 are added for the same purpose.
- Sections 4.06.2.2, 6.04.2.2, 6.04.2.3, 6.05.1.2.2, and 6.14.2.1 are changed to incorporate provisions of Act 930 of 2017 and Act 757 of 2019.
- Sections 5.06.3.1 through 5.06.3.3, as well as Sections 6.23.3.1 through 6.23.3.3, were added to clarify the hearing procedure.
- Section 5.08 was added to provide clarity on how a district conversion public charter school may voluntarily surrender its charter.
- Sections 6.01.6.5, 6.07.1.14.2.1, 6.10, 6.17.2, 6.17.4.1, and 6.17.5 are changed to incorporate provisions of Act 933 of 2017.
- Section 6.07.1.6.3 is changed to incorporate provisions of Act 990 of 2017.
- Section 6.11.2 is added to incorporate provisions of Act 641 of 2019.
- Section 6.27 is added to incorporate provisions of Act 542 of 2017.
- Section 7.00 is added to incorporate provisions of Act 742 of 2017.
- Sections 8.01.2, 8.04.1, and 8.05.6 are added to ensure protection of public funds and property in the event of a revocation due to misuse, fraud, or theft of public funds.
- Section 8.02.2 is added to incorporate provisions of Act 933 of 2017.
- Sections 8.03.4.1 and 8.03.4.2 are added to clarify how property is redistributed upon revocation of an open-enrollment charter school.
- Section 8.04.2 is added to incorporate provisions of Act 933 of 2017.
- Sections 8.04.4 through 8.04.6 are added to clarify how a vendor may file a claim for payment after a charter is revoked and to incorporate provisions of Act 933 of 2017.
- Section 9.02.1 is changed to incorporate provisions of Act 462 of 2017.
- Section 11.01.8.2.1 is added to incorporate provisions of Act 960 of 2019.

Changes made after the public comment period include:
- Section 3.10 added to define "Commissioner" as the Commissioner of Elementary and Secondary Education and "Commissioner of Education" changed to "Commissioner" throughout.
- "National School Lunch" changed to "Enhanced Student Achievement" throughout in accordance with Act 1083 of 2019.
- Section 6.17.11 deleted in accordance with Act 542 of 2017.
- Grammatical and stylistic changes made throughout.

PUBLIC COMMENT: A public hearing was held on December 9, 2019. The public comment period expired on December 17, 2019. The Division provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association
Comment (1): Section 3.00: I recommend adding a definition for "Commissioner" so that all places in the existing Rule that refer to the "Commissioner of Education" can be shortened. If added, all of my comments regarding the change to "Commissioner of Elementary and Secondary Education" from Act 910 can be ignored.
Division Response: Comment considered. Non-substantive change made.

Comment (2): Section 3.146: The citation to 10.03 should be changed to 11.03.
Division Response: Comment considered. Non-substantive change made.

Comment (3): In various sections: In accordance with Act 910, "Commissioner of Education" should be changed to "Commissioner of Elementary and Secondary Education."
Division Response: Comment considered. Throughout "Commissioner of Education" is changed to "Commissioner." Non-substantive change made.

Comment (4): Sections 4.05.2 and 4.06.1.2: The word "Education" appears to be missing from between "Disabilities" and "Act."
Division Response: Comment considered. Non-substantive change made.

Comment (5): Section 5.01.2.2: The citation to 6-15-429 should be changed to 6-15-2915 or 2916.
Division Response: Comment considered. Changed to Ark. Code Ann. § 6-15-2915. Non-substantive change made.

Comment (6): Section 5.01.3.7: I would recommend removing "and regulations" in accordance with Act 315.
Division Response: Comment considered. Non-substantive change made.

Comment (7): Section 5.06.2: There is a "the" missing from between "chair of" and "authorizing body."
Division Response: Comment considered. Non-substantive change made.

Comment (8): Section 5.07.3: There is an unnecessary "for" between "authorizer" and "regarding."
Division Response: Comment considered. Non-substantive change made.

Comment (9): 6.00 note: The citation to 10.00 should be changed to 11.00.
Division Response: Comment considered. Non-substantive change made.

Comment (10): Section 6.01.6.5: The "in" between "within" and "the" is unnecessary.
Division Response: Comment considered. Non-substantive change made.

Comment (11): 6.07.1.14.3.2: There is a comma missing from between "1972" and "and."
Division Response: Comment considered. Non-substantive change made.

Comment (12): Section 6.10: The "regular session" needs to be pluralized.
Division Response: Comment considered. Non-substantive change made.

Comment (13): 6.10.2: There is a comma missing after "limitation."
Division Response: Comment considered. Non-substantive change made.

Comment (14): Section 6.13.4: "Division of Legislative Audit" should be changed to "Arkansas Legislative Audit."
Division Response: Comment considered. Non-substantive change made.

Comment (15): Various sections: "National School Lunch" should be changed to "Enhanced Student Achievement."
Division Response: Comment considered. Non-substantive change made.

Comment (16): Section 6.17.4.2: I would recommend moving "as specified in State Board rules governing special needs funding" to the end of the subsection and add a "the" between "in" and "State."
Division Response: Comment considered. No change made.

Comment (17): Section 6.17.5: There is an extra "for the" here.
Division Response: Comment considered. Non-substantive change made.

Comment (18): Section 6.17.5.1: There is a comma missing after "operation."
Division Response: Comment considered. Non-substantive change made.

Comment (19): Section 6.17.11: This subdivision through 6.17.11.5 were repealed and replaced with the unused and underutilized facilities lease and purchase provisions of Act 542 of 2019, which is partially covered by the new subsection 6.27 of these rules.
Division Response: Comment considered. Non-substantive change made.

Comment (20): Section 6.23.3.3: The "not" here should be "to."
Division Response: Comment considered. Non-substantive change made.

Comment (21): Section 6.24.3: There is an unnecessary "for" between "authorizer" and"regarding."
Division Response: Comment considered. Non-substantive change made.

Comment (22): Section 7.03.2: I would recommend changing it to read "classified as in need."
Division Response: Comment considered. Non-substantive change made.

Comment (23): Section 8.03.4.2: I would recommend changing this to read "pursuant to the priorities set forth in."
Division Response: Comment considered. Section changed for clarity. Non-substantive change made.

Comment (24): Section 8.04.1: There is a space missing from between the subsection numbers and "upon."
Division Response: Comment considered. Non-substantive change made.

Comment (25): Section 8.04.4.3: There is an unnecessary semicolon after "and."
Division Response: Comment considered. Non-substantive change made.

Comment (26): Section 9.02.1: There is a space missing from between the subsection numbers and "The."
Division Response: Comment considered. Non-substantive change made.

Comment (27): Section ~~10~~11.01.1: There is a space missing from between the subsection numbers and "Pursuant." There is a colon missing at the end of the subsection.
Division Response: Comment considered. Non-substantive change made.

Comment (28): 11.16.3.3: The "not" here should be "to."
Division Response: Comment considered. Non-substantive change made.

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

(1) Section 6.01.6.5 – Is there a stray "in" following "within"? **RESPONSE:** Yes. Non-substantive change made.

(2) Section 6.04.2.2 – Are there two "in"s? **RESPONSE:** Yes. Non-substantive change made.

(3) Section 6.11.2 – Are there two sections 6.11.2 (and 6.11.2.1 and 6.11.2.2), on pages 38 and 39? **RESPONSE:** The 6.11.2 on page 39 should be 6.11.3 and the subsections should reflect that. Non-substantive change made.

(4) Section 6.27.1 – How were the criteria listed developed or decided upon? **RESPONSE:** We reviewed the criteria for preference in open-enrollment charter school applications outlined in Ark. Code Ann. 6-23-304, as well as the criteria for obtaining a license under Ark. Code Ann. 6-23-101 et seq., and the codified legislative intent of the Arkansas Quality Charter Schools Act of 2013 from Ark. Code Ann. 6-23-102. After

reviewing these sections, we tried to incorporate those priorities into the criteria in Section 6.27.1. No change made.

(5) Section 6.27.2 – Should the review also include the "educational needs" of the charter schools, as set forth in Ark. Code Ann. § 6-21-816(b)(1)(C)? **RESPONSE:** Section 6.27.1 sets out priority that takes into consideration both the comparative status and the educational need of the school. The educational need will be captured by the priority criteria especially in 6.27.1.2 (student growth and achievement). No change made.

(6) Section 7.02.2 – Should the reference be to the "school's agricultural *studies* plan," as provided in Ark. Code Ann. § 6-23-108(b)(2)? **RESPONSE:** Yes. Change made to include the omitted word. Non-substantive change made.

(7) Section 7.02.2.2 – Is there a reason that the language "and the state's agricultural-based economy" as found in Ark. Code Ann. § 6-23-108(b)(2)(B) was omitted from the rule? **RESPONSE:** The language was accidentally omitted. Change made to add the omitted language. Non-substantive change made.

(8) Section 8.02.2 – It appears that this section is premised upon Ark. Code Ann. § 6-23-105(e)(1)(A), which was also amended to include instances of transfer or assignment by Act 761 of 2019, §3. Should these terms be included here? **RESPONSE:** Yes. The words "transfer, or assignment" have been added. Non-substantive change made.

(9) Section 8.04.1 – On what authority does the Division rely for the Commissioner's assertion of control over the funds, even if the charter is still in operation until the end of the school year? **RESPONSE:** Ark. Code Ann. 6-23-506 stated that upon dissolution of a charter, or non-renewal or revocation, the net assets of the open-enrollment charter are deemed property of the state. Typically if a school elects to non-renew, or the Charter Authorizer votes to non-renew, that decision is made in December/January and the school continues to operate until June. The Division and the Commissioner have a responsibility to take all steps necessary to protect and recover any and all state assets. This responsibility has been in the Charter Rules at Section 7.02.2 (now 8.02.3). In 2019, following the voluntary non-renewal of a school, the school was set to remain open until June 30, 2019. Following the voluntary non-renewal, State funds were removed from the operating account, highlighting the importance of immediate action on the part of the Division to protect state funds. No change made.

(10) Sections 9.03 through 9.06.3, 10.01 through 10.04.1.1 – Is there a reason the references to "department" have been changed to "authorizer" when Act 910 of 2019, §§ 1749-1751, appears to have changed the term to "division"? **RESPONSE:** Yes. The Charter Authorizing Panel used to be limited to employees of the Department (now Division), which effectively made all CAP decisions, decisions of the Department. In 2017, the law was changed to allow non-Department personnel to be appointed to the CAP. Now, the CAP is comprised of a majority of non-Division members. The CAP makes decisions to waive provisions of Title 6 and conducts the charter hearings. It is more accurate to state "the authorizer" rather than "the Division." No change made.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to the Arkansas Quality Charter Schools Act of 2013, codified at Arkansas Code Annotated §§ 6-23-101 through 6-23-1008, the State Board of Education is authorized and directed to establish rules for conversion public charter schools, authorized to promulgate rules for the creation of open-enrollment public charter schools, and may adopt rules for adult education public charter schools. *See* Ark. Code Ann. §§ 6-23-206, 6-23-309, and 6-23-1008(a). The State Board shall further adopt rules as necessary to administer Title 6, Chapter 23, Subchapter 7 of the Arkansas Code, concerning the public charter school authorizer, including without limitation the procedure for hearings and administration of the public charter authorizing panel. *See* Ark. Code Ann. § 6-23-702(a). Additionally, the State Board may promulgate rules to implement Ark. Code Ann. § 6-23-105(e), concerning the actions to be taken immediately upon the revocation, transfer, or assignment of an open-enrollment charter by the authorizer. *See* Ark. Code Ann. § 6-23-105(e)(4).

The proposed rules include revisions made in light of several acts, including: Act 641 of 2019, sponsored by Representative Jana Della Rosa, which allowed for extended learning opportunities through unstructured social time, required a certain amount of time for recess, and considered supervision during unstructured social time as instructional; Act 757 of 2019, sponsored by Representative Bruce Cozart, which amended and updated various provisions of the Arkansas Code concerning public education; Act 761 of 2019, sponsored by Representative Grant Hodges, which allowed an authorizer to transfer and assign a public charter school's charter under the Arkansas Quality Charter Schools Act of 2013; Act 960 of 2019, sponsored by Representative Mark Lowery, which amended the law concerning adult education public charter schools to

ensure that more than one (1) adult education public charter school may operate in this state; and Act 1083 of 2019, sponsored by Senator Alan Clark, which amended the name of national school lunch state categorical funding.

Additional revisions were made as a result of Act 462 of 2017, sponsored by Senator Jim Hendren, which allowed individuals from outside of the Department of Education to serve on the public charter authorizing panel; Act 542 of 2017, sponsored by Senator Alan Clark, which granted public charter schools a right of access to unused or underutilized public school facilities; Act 742 of 2017, sponsored by Representative Mary Bentley, which concerned agricultural schools, allowed a public charter authorizer to designate a public charter school as a School for Agricultural Studies, and repealed the Kindergarten through Grade Twelve (K-12) Agriculture School Pilot Program; Act 933 of 2017, sponsored by Senator Alan Clark, which amended provisions of the Arkansas Code concerning the operation and funding of public charter schools; and Act 990 of 2017, sponsored by then-Representative Clarke Tucker, which concerned admissions policies of charter schools and aligned charter school admissions requirements for a student who has been expelled from another school district with admissions requirements for school districts.

3. DEPARTMENT OF EDUCATION, DIVISION OF HIGHER EDUCATION

a. SUBJECT: Arkansas Concurrent Challenge Scholarship Program

DESCRIPTION: The Division of Higher Education's Arkansas Concurrent Challenge Scholarship Program rules are being proposed due to the creation of the program by Act 456 of 2019. The Concurrent Challenge Scholarship program offers up to $125 per course to a high school junior or senior enrolled in an endorsed concurrent course or certificate program. This award is available up to two courses per semester for each student for a maximum total per year of $500 per student. The proposed new rules for the Arkansas Concurrent Challenge Scholarship Program address the student eligibility criteria, method for recipient selection, continuing eligibility requirements, and procedures for making payments to an approved institution of higher education, and other administrative procedures necessary for operation of the program.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on January 14, 2020. The Division received no public comments.

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

(1) *Definitions* 1.a. – Should "Scholarship" follow "Challenge"? **RESPONSE:** Yes, updated.

(2) *Definitions* 1.b. – Should "certificated program" be "certificate program"? **RESPONSE:** Yes, corrected.

(3) *Definitions* of "Eligible Course" and "Certificate Program" – Is the numbering off? **RESPONSE:** Yes, updated and reformatted to be consistent.

(4) *Definitions* 3.b. – It appears this section is premised on Ark. Code Ann. § 6-16-1202(2)(B). Should the reference to § 6-16-1204 be "§ 6-16-1204(b)" to track the statute? **RESPONSE:** Yes, updated.

(5) *Definitions* 5 – It appears that this section is premised on Ark. Code Ann. § 6-15-2911(b), but should it also contain the actual definition of "student success plan" set forth in Ark. Code Ann. § 6-15-2903(12)? Also, is the "and" necessary at the end of 5.d? **RESPONSE:** Yes, I updated to include the definition; fixed.

(6) *Eligibility* 1.A. – Should there be an "or" following "[i]s an Arkansas resident" to track Ark. Code Ann. § 6-85-403(a)(1), as amended by Act 456 of 2019, § 1? **RESPONSE:** Yes, corrected.

(7) *Eligibility* 2.C. – Instead of "subchapter," should the reference be to "program" or "rules" or something of that nature? **RESPONSE:** I like that reference better. Updated.

(8) *Institutional Responsibilities* 4 – I noticed a parenthesis turned backwards in the first line, and in the fourth line, the number "10" seems to be repeated rather than "ten." **RESPONSE:** Yes. Corrected both.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the proposed rules have a financial impact. The agency reports that the additional cost of the state rule for the current fiscal year is $2,000,000 excess lottery proceeds and $5,000,000 excess lottery proceeds for the next fiscal year. The agency estimates that the total cost by fiscal year to state, county, and municipal government to implement the rule is $2,000,000 for the current fiscal year and $5,000,000 for the next fiscal year, explaining that this is a new scholarship program that will begin in the Spring of 2020 for high school students enrolling in endorsed concurrent courses or certificate programs and that the scholarship is funded through remaining prior year net lottery proceeds.

LEGAL AUTHORIZATION: The proposed rules implement Act 456 of 2019, sponsored by Senator James Sturch, which created the Arkansas Concurrent Challenge Scholarship and provided for an additional use of excess lottery proceeds to fund scholarships for certain students who are enrolled in endorsed concurrent enrollment courses or certificate programs. Pursuant to Arkansas Code Annotated § 6-85-406, the Division of Higher Education shall promulgate rules to implement the Arkansas Concurrent Challenge Scholarship Program, codified at Ark. Code Ann. §§ 6-85-401 through 6-85-406.

4. DEPARTMENT OF FINANCE AND ADMINISTRATION, ARKANSAS RACING COMMISSION

a. SUBJECT: Rule 1050(a) Definition of "Objection"

DESCRIPTION: This proposed amendment attempts to clarify the rules on objections for issues that do not occur during a race. It extends the time period for protests and objections by changing the time period for a protest or objection from "two hours prior to" a race to 24 hours after a race or prior to post time of the next live racing date.

PUBLIC COMMENT: A public hearing was held on this rule on December 19, 2019. The public comment period expired December 18, 2019. The agency indicated that it received no public comments.

This rule was filed on an emergency basis and was reviewed and approved by the Executive Subcommittee on January 16, 2020.

The proposed effective date for permanent promulgation is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas Racing Commission exercises "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[.]" *See* Ark. Code Ann. § 23-110-204(a). As part of its duties, the Commission is empowered to grant franchises, approve race dates, issue licenses, establish and collect license fees, hear matters before the commission, and "[t]ake such other action, not inconsistent with law, as it may deem necessary or desirable to supervise and regulate, and to effectively control in the public interest, horse racing in the State of Arkansas." *See* Ark. Code Ann. § 23-110-204(a)(1)–(7). The

Commission has "full, complete, and sole power and authority to . . . promulgate rules." *See* Ark. Code Ann. § 23-110-204(b)(1)(E). It also has the authority to "carry[] out its functions, powers, and duties" by making and amending "all necessary or desirable rules not inconsistent with law." *See* Ark. Code Ann. § 23-110-204(d).

b. SUBJECT: Rule 2169(a) Jockey Mount Fees

DESCRIPTION: This amendment raises mount fees as agreed by the Jockeys' Guild and the owners' association. It changes the standard fees that apply if there is no specific contract between the owner and jockey to amounts agreed to by the Jockeys' Guild and the owners for 2020.

PUBLIC COMMENT: A public hearing was held on this rule on December 19, 2019. The public comment period expired December 18, 2019. The agency indicated that it received no public comments.

This rule was filed on an emergency basis and was reviewed and approved by the Executive Subcommittee on January 16, 2020.

The proposed effective date for permanent promulgation is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule will have a financial impact. It will impact individual horse owners because jockey mount fees will increase for losing mounts if the owner and jockey do not have a specific contract or agreement prior to the race. The agency did not identify any financial impact to state, county, or municipal government.

LEGAL AUTHORIZATION: The Arkansas Racing Commission exercises "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[.]" *See* Ark. Code Ann. § 23-110-204(a). The Commission has "full, complete, and sole power and authority to . . . promulgate rules." *See* Ark. Code Ann. § 23-110-204(b)(1)(E). It also has the authority to "carry[] out its functions, powers, and duties" by making and amending "all necessary or desirable rules not inconsistent with law." *See* Ark. Code Ann. § 23-110-204(d). Per the agency, the changes to this rule have been agreed upon by the Jockeys' Guild and the owners' association.

c. SUBJECT: Rule 2212(b) Entries

DESCRIPTION: This amendment changes the rule regarding coupling of entries for horses with the same owner or trainer. It requires the trainer to declare a preference for entry when multiple horses with common ties enter a race.

PUBLIC COMMENT: A public hearing was held on this rule on December 19, 2019. The public comment period expired December 18, 2019. The agency indicated that it received no public comments.

This rule was filed on an emergency basis and was reviewed and approved by the Executive Subcommittee on January 16, 2020.

The proposed effective date for permanent promulgation is pending legislative review and approval.

FINANCIAL IMPACT: Per the agency, this rule has no financial impact.

LEGAL AUTHORIZATION: The Arkansas Racing Commission exercises "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[.]" *See* Ark. Code Ann. § 23-110-204(a). As part of its duties, the Commission is empowered to grant franchises, approve race dates, issue licenses, establish and collect license fees, hear matters before the commission, and "[t]ake such other action, not inconsistent with law, as it may deem necessary or desirable to supervise and regulate, and to effectively control in the public interest, horse racing in the State of Arkansas." *See* Ark. Code Ann. § 23-110-204(a)(1)–(7). The Commission has "full, complete, and sole power and authority to . . . promulgate rules." *See* Ark. Code Ann. § 23-110-204(b)(1)(E). It also has the authority to "carry[] out its functions, powers, and duties" by making and amending "all necessary or desirable rules not inconsistent with law." *See* Ark. Code Ann. § 23-110-204(d).

d. SUBJECT: Rule 2224(c) Entries

DESCRIPTION: This amendment permits the use of new technology for identifying horses using microchips and digital tattoos in compliance with national Thoroughbred Racing Protective Bureau (TRPB) protocols.

PUBLIC COMMENT: A public hearing was held on this rule on December 19, 2019. The public comment period expired December 18, 2019. The agency indicated that it received no public comments.

This rule was filed on an emergency basis and was reviewed and approved by the Executive Subcommittee on January 16, 2020.

The proposed effective date for permanent promulgation is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas Racing Commission exercises "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[.]" *See* Ark. Code Ann. § 23-110-204(a). As part of its duties, the Commission is empowered to grant franchises, approve race dates, issue licenses, establish and collect license fees, hear matters before the commission, and "[t]ake such other action, not inconsistent with law, as it may deem necessary or desirable to supervise and regulate, and to effectively control in the public interest, horse racing in the State of Arkansas." *See* Ark. Code Ann. § 23-110-204(a)(1)–(7). The Commission has "full, complete, and sole power and authority to . . . promulgate rules." *See* Ark. Code Ann. § 23-110-204(b)(1)(E). It also has the authority to "carry[] out its functions, powers, and duties" by making and amending "all necessary or desirable rules not inconsistent with law." *See* Ark. Code Ann. § 23-110-204(d).

e. SUBJECT: Rule 2359 Protests

DESCRIPTION: This proposed rule amends the procedure for protests and objections for issues not occurring during the running of a race. It extends the protest period to 24 hours after a race becomes official or prior to post time of the next live racing date.

PUBLIC COMMENT: A public hearing was held on this rule on December 19, 2019. The public comment period expired December 18, 2019. The agency indicated that it received no public comments.

This rule was filed on an emergency basis and was reviewed and approved by the Executive Subcommittee on January 16, 2020.

The proposed effective date for permanent promulgation is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas Racing Commission exercises "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[.]" *See* Ark. Code Ann. § 23-110-204(a). As part of its duties, the Commission is empowered to grant franchises, approve race dates, issue licenses, establish and collect license fees, hear matters before the commission, and "[t]ake such other action, not inconsistent with law, as it

may deem necessary or desirable to supervise and regulate, and to effectively control in the public interest, horse racing in the State of Arkansas." *See* Ark. Code Ann. § 23-110-204(a)(1)–(7). The Commission has "full, complete, and sole power and authority to . . . promulgate rules." *See* Ark. Code Ann. § 23-110-204(b)(1)(E). It also has the authority to "carry[] out its functions, powers, and duties" by making and amending "all necessary or desirable rules not inconsistent with law." *See* Ark. Code Ann. § 23-110-204(d).

f. SUBJECT: Rule 2426-A Claiming

DESCRIPTION: This proposed rule would change the time period from ninety (90) days since the horse's last official start to sixty (60) days when the owner requests a horse be ineligible to be claimed.

PUBLIC COMMENT: A public hearing was held on this rule on December 19, 2019. The public comment period expired December 18, 2019. The agency indicated that it received no public comments.

This rule was filed on an emergency basis and was reviewed and approved by the Executive Subcommittee on January 16, 2020.

The proposed effective date for permanent promulgation is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas Racing Commission exercises "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[.]" *See* Ark. Code Ann. § 23-110-204(a). As part of its duties, the Commission is empowered to grant franchises, approve race dates, issue licenses, establish and collect license fees, hear matters before the commission, and "[t]ake such other action, not inconsistent with law, as it may deem necessary or desirable to supervise and regulate, and to effectively control in the public interest, horse racing in the State of Arkansas." *See* Ark. Code Ann. § 23-110-204(a)(1)–(7). The Commission has "full, complete, and sole power and authority to . . . promulgate rules." *See* Ark. Code Ann. § 23-110-204(b)(1)(E). It also has the authority to "carry[] out its functions, powers, and duties" by making and amending "all necessary or desirable rules not inconsistent with law." *See* Ark. Code Ann. § 23-110-204(d).

5. DEPARTMENT OF HEALTH, CENTER FOR HEALTH PROTECTION

a. SUBJECT: Rules Pertaining to Arkansas Prescription Drug Monitoring Program

DESCRIPTION: The agency provided the following summary of the amendments to the Rules Pertaining to the Arkansas Prescription Drug Monitoring Program (PDMP):

- Removed the word "regulation" on pages 1 and 3 to comply with Act 315 of 2019.
- Updated the PDMP's new branch as the Department of Health's Substance Misuse and Injury Prevention Branch on page 1.
- Corrected the Table of Contents to include Section XIII.
- Inserted language allowing access by the Arkansas Medicaid Prescription Drug Program, as per Act 46 of 2017.
- Inserted language for mandatory usage of the Arkansas PDMP by prescribers, as mandated by Act 820 of 2017.
- Added two new members to the Arkansas Prescription Drug Monitoring Advisory Committee, as mandated by Act 820 of 2017.
- Inserted language allowing access by the Arkansas Office of Medicaid Inspector General, as mandated by Act 141 of 2019.
- Inserted language for development of prescribing criteria for controlled substances and reports to be generated to prescribers, dispensers, and licensing boards based upon this criteria, as mandated by Act 820 of 2017.
- Inserted language for implementation of real-time reporting by the Arkansas PDMP if funding and technology are available, as per Act 820 of 2017.
- Inserted additional language regarding information provided for research, as mandated by Act 688 of 2017.
- Inserted language regarding providing information to insurance carriers for the purpose of verifying prescriber or dispenser registration with the Arkansas PDMP, as mandated by Act 688 of 2017.
- Added language allowing for the exchange of data between the Arkansas PDMP and federal prescription drug monitoring programs, as mandated by Act 605 of 2019.
- Inserted language regarding the penalty for failure to use the PDMP, as mandated by Act 820 of 2017.

PUBLIC COMMENT: A public hearing was held on this rule on September 24, 2019. The public comment period expired on September 24, 2019.

The agency provided the following summary of the comments it received at the public hearing:

COMMENTER'S NAME: Rodney Baker
COMMENT #1: Mr. Baker asked if the date of January 1, 2019 in Section VII(a)(1)(D) was an accurate date for the rule update.
RESPONSE: As mandated in Act 820 of 2017, "On or before January 1, 2019, the department shall contract with a vendor to make the Prescription Drug Monitoring Program interactive and to provide same-day reporting in real-time, if funding and technology are available."

COMMENT #2: Mr. Baker questioned how a veterinarian is to query a patient in the Prescription Drug Monitoring Program web portal, specifically if the vet is mandated to query to animal patient or the human owner. **RESPONSE:** To comply with the mandatory use law enacted by Act 820 of 2017, the veterinarian is to search the web portal using the animal's name as the first name, the owner's last name, and the animal's date of birth. Searching in this manner will report only prescriptions filled under the animal's name and not human patient information.

COMMENT #3: In Section IV(d)(2)(C)(ii)(a), the language mentions "palliative care." Mr. Baker asked if a definition of "palliative care" could be added to the rules. On 9/27/2019 at 11:02 AM, Mr. Baker followed up via email on a suggested definition for "palliative care." "Palliative care" means an interdisciplinary approach to specialized medical and nursing care for patients with chronic conditions. It focuses on providing relief from the symptoms, pain, physical stress, and mental stress at any stage of illness. The goal is to improve quality of life for both the patient and their family.

RESPONSE: After reviewing Mr. Baker's suggestion on a definition and internal research on definitions for "palliative care" in current statute, the program suggests the addition of the definitions below:

"Hospice" or "hospice care" means an autonomous, centrally administered, medically directed, coordinated program providing a continuum of home, outpatient, and home-like inpatient care for the terminally ill patient and family, employing an interdisciplinary team to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social and economic stresses which are experienced during the final stages of illness and during dying and bereavement, with such care being available 24 hours a day, 7 days a week and provided on the basis of need regardless of ability to pay.

"Palliative care" means patient-centered and family-centered medical care offered throughout the continuum of an illness that optimizes quality of life by anticipating, preventing, and treating the suffering caused by a serious illness to address physical, emotional, social, and spiritual needs

and facilitate patient autonomy, access to information, and choice, including without limitation:

(A) Discussion of the patient's goals for treatment;
(B) Discussions of treatment options appropriate to the patient, including hospice care, if needed; and
(C) Comprehensive pain and symptom management.

COMMENT #4: Mr. Baker pointed out the word "regulation" was found throughout the markup rules and commented that this needed to be changed to "rule." **RESPONSE:** The program will remove the word "regulation" when referencing the Arkansas Code throughout the rules as mandated by Act 315 of 2019.

COMMENT #5: Mr. Baker pointed out that the information in Section VII(a)(2)(A) and the information in Section VII(a)(2)(B) was redundant. **RESPONSE:** The language in Section VII(a)(2)(A) – (B) is from past language and will not be edited.

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

QUESTION: In § IV(d)(2)(D) and again in § VII(a)(1)(A)(i), the proposed rules reference the Director of the Department of Health. However, Act 910 of 2019 replaced "Director" with "Secretary" in the statutes that these sections are based on. Did the Department intentionally maintain the old language, or was this an oversight? **RESPONSE:** Oversight. Thank you!

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Health has authority to promulgate rules implementing the Prescription Drug Monitoring Program Act. *See* Ark. Code Ann. § 20-7-613. These rule amendments implement provisions of various 2017 and 2019 acts that amended the Prescription Drug Monitoring Program Act.

Act 46 of 2017, sponsored by Representative Justin Boyd, amended the Prescription Drug Monitoring Program Act to allow access to the Arkansas Medicaid Prescription Drug Program. Act 688 of 2017, sponsored by Senator Missy Irvin, allowed insurance carriers to obtain practitioner and dispenser information maintained by the Prescription

Drug Monitoring Program and allowed prescriber data to be used for research purposes. Act 820 of 2017, sponsored by then-Senator Jeremy Hutchinson, amended the Prescription Drug Monitoring Program to mandate that prescribers check the information in the Program when prescribing certain medications.

Act 141 of 2019, sponsored by Representative Boyd, amended the Prescription Drug Monitoring Program to allow access to the Office of Medicaid Inspector General. Act 605 of 2019, also sponsored by Representative Boyd, amended the law regarding information exchange with other prescription drug monitoring programs to authorize information exchange with federal prescription drug monitoring programs.

6. DEPARTMENT OF HEALTH, HEALTH FACILITY SERVICES

a. SUBJECT: Rules for Perfusionists in Arkansas

DESCRIPTION: The Department of Health is updating these rules as follows:

- Eliminate the word "regulations" throughout the document as required by Act 315 of 2019;
- Add military licensing requirements and a definition of "returning military veteran" as per Act 820 of 2019;
- Add "in good standing" to reciprocity rules as per Act 1011 of 2019;
- Add criminal history background disqualifications as per Act 990 of 2019;
- Add a severability clause for continuity with other Department of Health.

PUBLIC COMMENT: The agency held a public hearing on this rule on January 15, 2020. The public comment period expired January 15, 2020. The agency indicated that it received no public comments.

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

COMMENT #1: The word "her" (as in "his or her") is missing from § 4(C)(1)(b). **RESPONSE:** Changed.

COMMENT #2: The proposed rules require an applicant to submit evidence that he or she holds ABCP certification. The relevant Act requires that the applicant hold a "substantially similar" license in another state. How do these two things compare? Do most other states use ABCP

certification? **RESPONSE:** Perfusionists operate heart-lung bypass equipment during open-heart surgeries. Board certification is a common method for states to assure that licensees are current in knowledge and practice skills.

Review of ***American Board of Cardiovascular Perfusion's Annual Report 2018***:
The following states currently require the ABCP to supply certification information for licensure: Arkansas; Connecticut; Georgia; Illinois; Louisiana; Maryland; Massachusetts; Missouri; Nebraska; Nevada; New Jersey; New York; North Carolina; Oklahoma; Pennsylvania; Tennessee; Texas; and Wisconsin.

COMMENT #3: Does the phrase "or its successor" in the first sentence of § 4(F) modify "the ABCP" or "a current certification"? I assume it modifies "the ABCP," but I wanted to double-check as the sentence structure seems slightly odd. **RESPONSE:** Modifies "the ABCP".

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Health has authority to promulgate rules that it deems necessary to carry out the Perfusionist Licensure Act. Ark. Code Ann. § 17-104-103. The Department of Health is authorized to issue and renew perfusionist licenses and collect licensure fees. Ark. Code Ann. § 17-104-104(4)–(5). These proposed amendments implement Acts 426, 820, 990, and 1011 of 2019.

Act 426, sponsored by Representative Bruce Cozart, created the Red Tape Reduction Expedited Temporary and Provisional Licensure Act and authorized occupational licensing entities to grant expedited temporary and provisional licensing for certain individuals. The Act required occupational licensing entities to promulgate rules adopting "the least restrictive requirements" for occupational licensure for certain individuals. *See* Act 426, § 3(b).

Act 820, sponsored by Senator Missy Irvin, amended the law concerning the occupational licensure of active duty service members, returning military veterans, and their spouses to provide for automatic licensure. The Act required occupational licensing agencies, including the Department of Health, to grant automatic occupational licensure to certain individuals. *See* Act 820, § 2(b).

Act 990, sponsored by Senator John Cooper, amended the laws regarding criminal background checks for professions and occupations to obtain consistency regarding criminal background checks and disqualifying offenses for licensure. The Act required licensing entities to promulgate rules to implement the Act. *See* Act 990, § 2.

Act 1011, sponsored by Representative Jim Dotson, amended the law concerning licensing, registration, and certification for certain professions and established a system of endorsement, recognition, and reciprocity for licensing, registration, and certification for certain professions.

7. DEPARTMENT OF HUMAN SERVICES, DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES (DDS)

a. SUBJECT: Autism Waiver and the Autism Waiver Medicaid Provider Manual

DESCRIPTION: The Autism Waiver and the Autism Waiver Medicaid Provider Manual are amended to:

- Update language to reflect Autism Spectrum Disorder (ASD), current program, and service names;
- Update requirements for providers and consultants under Enrollment Criteria;
- Pursuant to Acts 2019, No. 874, § 15, expand capacity to provide intensive early intervention treatment for 30 additional children diagnosed with ASD;
- Increase the unduplicated number to account for the increased slots;
- Update benefit limits;
- Combine Plan Implementation and Monitoring service with Individual Assessment services to create one service description: Individual Assessment/Plan Development/Team Training/Monitoring;
- Change scope of coverage's maximum age to "through seven (7) years";
- Recognize that evidence-based practices are from updated National Autism Center's National Standards Project;
- Reflect that the Division of Developmental Disabilities Services took over the administration of the Autism Waiver and is now the operating agency.

PUBLIC COMMENT: A public hearing was held on this rule on January 7, 2020. The public comment period expired January 10, 2020. The agency provided the following summary of the public comments it received and its responses to those comments:

Commenter's Name: Brittany Hale, M.Ed., BCBA

COMMENT #1: I, Brittany Hale, M.Ed., BCBA am writing to comment on the proposed Arkansas Autism Waiver policy update for March 1st 2020. Please consider the following comments for the revision of the Arkansas Autism Waiver Medicaid Provider Manual. **RESPONSE:** Thank you for your comment.

COMMENT #2: [Section 210.00 Program Coverage: 211.00 Scope] The description of where services should be rendered is inaccurate and should state "When providing services to children under the Autism Waiver, only natural and community settings that provide inclusive opportunities for the child with ASD will be utilized. Such settings include the home, parks, grocery stores, library, restaurants, ball parks or other settings that are not segregated." **RESPONSE:** Thank you for your comment. The second sentence of the second paragraph of Section 211.000 of the Autism Waiver Medicaid Manual will be amended in its entirety to read: "The setting will primarily be the child's home; but other community locations, identified by the parent (such as the park, grocery store, church, etc.) may be selected based on the skills and behaviors of the child that need to be targeted."

COMMENT #3: [Section 220.000: 220.100 Intensive ASD Intervention Provider] A. 2. - The list of Evidence-Based Practices is incomplete, as it only lists the 2nd Edition, leaving all Evidence-Based Practices approved in the 1st Edition out of the policy. Referencing the National Autism Center's National Standards Project would be effective in providing the listing that is regularly updated to reflect the most current established, emerging and not established treatment practices. **RESPONSE:** Thank you for your comment. The third and fourth sentences of Section 220.100(A)(2) will be combined to read "The evidence-based practices that will be utilized in the program are those recognized in the National Autism Center's National Standards Project, which include, but are not limited to: . . . ."

COMMENT #4: [Section 220.000: 220.100 Intensive ASD Intervention Provider] C.– Per proposed policy, the removal of the consultant role found in the redacted Section C, removes the ongoing oversight of the treatment team, ongoing family training, their ability to address strategies with staff, monthly on site monitoring of the treatment of fidelity of programming, and their ability to modify the treatment plan to best meet the needs of the child.

The role of the consultant is defined in the 1915(c) document on page 66, "This service also includes the oversight of implementation of evidence-based intervention strategies by the lead therapist, the line therapist and the family; ongoing education of family members and key staff regarding treatment; monthly on-site (in-home and community settings) monitoring

of treatment effectiveness and implementation fidelity; modification of the ITP, as necessary; and modification of assessment information, as necessary. Monitoring under this service is for the purpose of modifying the ITP and is conducted monthly by the Consultant."

RESPONSE: Thank you for your comment. A Section 220.100(A)(3) of the Proposed Autism Waiver Provider Manual will be added which reads, "Monitoring services will be performed by the Consultant on at least a monthly basis. Monitoring responsibilities will include the oversight of the implementation of evidence-based intervention strategies by the lead therapist, the line therapist and the family; educating family members and key staff regarding treatment; on-site reviewing of treatment effectiveness and implementation fidelity; use data collected to determine the clinical progress of the child and the need for adjustments to the ITP, as necessary; and modifying assessment information, as necessary." Additionally, the title of 220.100 will be changed to "Autism Waiver Services" and Section 220.300 will be deleted and be moved to create Section 220.100(E) since Consultative Clinical and Therapeutic Services are one of the five services offered under the Autism Waiver.

Commenter's Name: Renee Holmes, RN, Director of Autism Services, Partners for Inclusive Communities

COMMENT #1: Thank you for the opportunity to address items listed in the AUTISM 1-19 document. Please see the items below that I would like to address as inconsistent with the language and scope of the 1915(c) Home and Community Based Waiver Application. **RESPONSE:** Thank you for your comment.

COMMENT #2: [202.100 C- Per proposed policy, "This criterion also applies to any non-profit organization formed as a collaborative organization."] The language in the 1915(c) document removed the non-profit status in 2017. This can be first found in the 1915(c) on page 67, "Includes any organization formed as a collaborative organization made up of a group of licensed/certified providers, as described above." **RESPONSE:** Thank you for your comment. Section 202.100 of the Autism Waiver Medicaid Manual will be amended by removing Section 202.100(B), and removing in its entirety the paragraph in Section 202.100 that begins with "This criterion also applies…" and ends with "…the organization to participate in the program." Additionally, Page 67 of the Autism Waiver Application in the "Other Standard" section will be amended to remove the first sentence "Must have a minimum of three years' experience providing services to individuals with ASD." Page 70 of the Autism Waiver Application in the "Other Standard" section will be amended to remove the first sentence "The organization must have a minimum of three (3) years' experience providing services to individuals

with ASD." Finally, Page 72 of the Autism Waiver Application in the "Other Standard" section will be amended to remove the first sentence "Must have a minimum of two (2) years' experience providing services to children with ASD."

COMMENT #3: [210.00 Scope- Per proposed policy, "When providing services to children under the Autism Waiver, only natural home and community settings that provide inclusive opportunities for the child with ASD will be utilized. Such settings include the home, schools or daycares, parks, etc."] The locations in the 1915(c) are listed on page 89, "The settings include locations such as the child's home, church, places where the family shops, restaurants, ball parks, etc., all of which meet the new settings definition. There are no segregated settings utilized in this program." Parental presence and participation is a requirement through the autism waiver. This is noted in several instances in the 1915(c) document, as an example from page 94, "Since the parent/guardian will be present and actively involved in treatment provided through the Autism Waiver," the parent is required to remain at any natural community location with the child. **RESPONSE:** Thank you for your comment. The second sentence of the second paragraph of Section 211.000 of the Autism Waiver Medicaid Manual will be amended in its entirety to read: "The setting will primarily be the child's home; but other community locations, identified by the parent (such as the park, grocery store, church, etc.) may be selected based on the skills and behaviors of the child that need to be targeted."

COMMENT #4: [220.100 Intensive ASD Intervention Provider- Per proposed policy, "A Consultant, hired by the Division of Developmental Disabilities Services (DDS) or its contracted vendor, community-based organization, performs this service."] A consultant in the autism waiver program is not hired by the Division of Developmental Disabilities or its contracted vendor. They are hired by the community-based billing organization. The proposed policy language does not reflect the wording of the 1915(c) document that can be found on page 66, "A Consultant, hired by the Arkansas Autism Partnership (AAP) provider, community-based organization." **RESPONSE:** Thank you for your comment. Section 220.100 will be amended by deleting the introductory paragraph starting with "A Consultant, hired by…" and ending with "…which includes the following components:", and inserting an introductory paragraph at the top of Section 220.100(A) above Section 220.100(A)(1) which reads, "A Consultant hired by the ASD Intensive Intervention community provider performs this service, which include the following components:". Additionally, the first sentence of Page 66 of the Autism Waiver Application will be amended to read "A Consultant hired by the ASD Intensive Intervention community provider performs this service, which include the following components: . . . ."

COMMENT #5: [220.100 A. 2.] The list of Evidence Based Practices is incomplete, as it only lists the 2nd Edition, leaving all Evidence Based Practices approved in the 1st Edition out of the policy. Referencing the National Autism Center's National Standards Project would be effective in providing the listing that is regularly updated to reflect the most current established, emerging and not established treatment practices.
RESPONSE: Thank you for your comment. The third and fourth sentences of Section 220.100(A)(2) will be combined to read "The evidence-based practices that will be utilized in the program are those recognized in the National Autism Center's National Standards Project, which include, but are not limited to: . . . ."

COMMENT #6: [220.100 C.] Per proposed policy, the removal of the consultant role found in the redacted Section C, removes the ongoing oversight of the treatment team, ongoing family training, their ability to address strategies with staff, monthly on site monitoring of the treatment of fidelity of programming, and their ability to modify the treatment plan to best meet the needs of the child. The role of the consultant is defined in the 1915(c) document on page 66, "This service also includes the oversight of implementation of evidence-based intervention strategies by the Lead therapist, the Line therapist and the family; ongoing education of family members and key staff regarding treatment; monthly on-site (in-home and community settings) monitoring of treatment effectiveness and implementation fidelity; modification of the ITP, as necessary; and modification of assessment information, as necessary. Monitoring under this service is for the purpose of modifying the ITP and is conducted monthly by the Consultant." **RESPONSE:** Thank you for your comment. A Section 220.100(A)(3) of the Proposed Autism Waiver Provider Manual will be added which reads, "Monitoring services will be performed by the Consultant on at least a monthly basis. Monitoring responsibilities will include the oversight of the implementation of evidence-based intervention strategies by the lead therapist, the line therapist and the family; educating family members and key staff regarding treatment; on-site reviewing of treatment effectiveness and implementation fidelity; use data collected to determine the clinical progress of the child and the need for adjustments to the ITP, as necessary; and modifying assessment information, as necessary." Additionally, the title of 220.100 will be changed to "Autism Waiver Services" and Section 220.300 will be deleted and be moved to create Section 220.100(E) since Consultative Clinical and Therapeutic Services are one of the five services offered under the Autism Waiver.

COMMENT #7: [230.20 Autism Waiver Procedure Codes] Requesting verification that the procedure codes utilized for the Autism Waiver services will be intensive early intervention codes. The Autism Waiver is

an intensive early intervention program and not an Applied Behavior Analysis service. This is defined on page 5 of the 1915(c) document in the Brief Waiver Description, "The Autism Waiver provides intensive one-on-one treatment for children ages 18 months through 7 years with a diagnosis of autism spectrum disorder (ASD). The therapy services are habilitative in nature and are not available to children through the AR Medicaid State Plan. These services are designed to maintain Medicaid eligible participants at home in order to preclude or postpone institutionalization. Specifically, these services are offered to children with ASD who meet the institutional level of care criteria, are the appropriate age, and whose parent's agree to actively participate in the treatment plan. **RESPONSE:** Thank you for your comment. Section 230.200 "Autism Waiver Procedure Codes" will remain a section in the Autism Waiver Medicaid Manual, but that Section will include only the sentence "Click here to view the Autism Waiver procedure codes.", which will have a hidden hyperlink to the a webpage containing the Autism Waiver procedure codes.

COMMENT #8: The services offered through the Autism Waiver program are 1) Individual Assessment/Plan Development/Team Training/ Monitoring; 2) Therapeutic Aides and Behavioral Reinforcers; 3) Lead Therapy; 4) Line Therapy; and 5) Consultative Clinical and Therapeutic Services. The first four services are provided by Intensive Intervention providers. Consultative Clinical and Therapeutic Services are provided by Clinical Services Specialists working with a four-year university program. The goal is to design a system for delivery of intensive one-on-one interventions for young children that 1) utilize proven strategies and interventions that are positive, respectful and safe; 2) include and empower parents/guardians to participate; 3) prepare children with functional skills in natural environments; 4) include independent checks and balances; and 5) provide services in the most effective and cost efficient way." I appreciate your time and consideration of the above comments. **RESPONSE:** Thank you for your comment.

Commenter's Name: Leigh Ann VanGorder, Partners for Inclusive Communities, Regional Waiver Coordinator-Western AR

COMMENT #1: 202.100 C- Per proposed policy, "This criterion also applies to any non-profit organization formed as a collaborative organization." Good Evening, I would like to address and submit items that I feel are inconsistent with the language and scope of the Arkansas Autism Waiver program. Currently the programs that serve Arkansas Autism Waiver are both for profit and non -profit organizations. They must meet criteria as a collaborative organization utilizing licensed and certified personnel. I believe both types of organizations can be effective providers of the Arkansas Autism Waiver program provided they hire and

utilize the appropriately licensed and trained staff required in the current Medicaid manual. **RESPONSE:** Thank you for your comment. Section 202.100 of the Autism Waiver Medicaid Manual will be amended by removing Section 202.100(B), and removing in its entirety the paragraph in Section 202.100 that begins with "This criterion also applies…" and ends with "…the organization to participate in the program." Additionally, Page 67 of the Autism Waiver Application in the "Other Standard" section will be amended to remove the first sentence "Must have a minimum of three years' experience providing services to individuals with ASD." Page 70 of the Autism Waiver Application in the "Other Standard" section will be amended to remove the first sentence "The organization must have a minimum of three (3) years' experience providing services to individuals with ASD." Finally, Page 72 of the Autism Waiver Application in the "Other Standard" section will be amended to remove the first sentence "Must have a minimum of two (2) years' experience providing services to children with ASD."

COMMENT #2: 210.00 Scope- Per proposed policy, "When providing services to children under the Autism Waiver, only natural home and community settings that provide inclusive opportunities for the child with ASD will be utilized. Such settings include the home, schools or daycares, parks, etc." The locations in the 1915(c) are listed on page 89, "The settings include locations such as the child's home, church, places where the family shops, restaurants, ball parks, etc., all of which meet the new settings definition. There are no segregated settings utilized in this program."

I have worked in the roles of provider liaison, line therapist, lead therapist and consultant for the Autism Waiver program since the program was started. I have seen the positive impact that the program has with children and their families. This is the only program funding ABA that requires services to be provided in the home or community setting. Home and community setting are where children and parents have the most difficulty, partially because it is where they spend, they majority of their time and some skills that they learn in a "school setting" do not generalize to a home or community environment. This program also requires parents to participate in a minimum of 14 hours per week of programming in addition to the programming the child receives from the team of line, lead and consultant therapist. Having a parent participate 14 hours per week would be next to impossible for a working or a two working parent home if services were offered in a clinic setting. The current wrap around approach is what makes such a functional impact in the children's lives. The therapist is there in the home or natural environment when the melt downs happen and not only guide the child but coach the parent on how to handle a behavior or dangerous situation when it is happening. The parents learn valuable life changing skills and are coached in how to reinforce

their children's behaviors they want to improve and how not to reinforce inadvertently ones they want to extinguish.

I have also worked in a large EIDT program for over 23 years. I have the unique experience of working in both settings. I strongly believe this program gives a child more bang for their buck so to speak in the natural environment and community setting than I believe providing ABA in a school setting would.

RESPONSE: Thank you for your comment. The second sentence of the second paragraph of Section 211.000 of the Autism Waiver Medicaid Manual will be amended in its entirety to read: "The setting will primarily be the child's home; but other community locations, identified by the parent (such as the park, grocery store, church, etc.) may be selected based on the skills and behaviors of the child that need to be targeted."

COMMENT #3: 220.100 Intensive ASD Intervention Provider- Per proposed policy, "A Consultant, hired by the Division of Developmental Disabilities Services (DDS) or its contracted vendor, community-based organization, performs this service." Providers hire all employees of this program. They are not hired by DDS or the contracted vendor. The provider must follow all regulations for staffing requirements in experience, training and background checks. **RESPONSE:** Thank you for your comment. Section 220.100 will be amended by deleting the introductory paragraph starting with "A Consultant, hired by…" and ending with "…which includes the following components:" and inserting an introductory paragraph at the top of Section 220.100(A) above Section 220.100(A)(1) which reads, "A Consultant hired by the ASD Intensive Intervention community provider performs this service, which include the following components: . . . ." Additionally, the first sentence of Page 66 of the Autism Waiver Application will be amended to read "A Consultant hired by the ASD Intensive Intervention community provider performs this service, which include the following components: . . . ."

COMMENT #4: 220.100 A. 2.- The list of Evidence Based Practices is incomplete, as it only lists the 2nd Edition, leaving all Evidence Based Practices approved in the 1st Edition out of the policy. Referencing the National Autism Center's National Standards Project would be effective in providing the listing that is regularly updated to reflect the most current established, emerging and not established treatment practices.
RESPONSE: Thank you for your comment. The third and fourth sentences of Section 220.100(A)(2) will be combined to read "The evidence-based practices that will be utilized in the program are those recognized in the National Autism Center's National Standards Project, which include, but are not limited to: . . . ."

COMMENT #5: 220.100 C.- Per proposed policy, the removal of the consultant role found in the redacted Section C, removes the ongoing oversight of the treatment team, ongoing family training, their ability to address strategies with staff, monthly on site monitoring of the treatment of fidelity of programming, and their ability to modify the treatment plan to best meet the needs of the child.

The role of the consultant is an important role for the integrity and functionality of the team. The consultant is the person that completes the evaluation and writes the intervention strategies that are used by the team individualized for the child's specific needs. Training the lead, line and parents how to implement the evidence-based strategies is an additional important function of the consultant. Removing this role would eliminate the ability to train staff and family members and monitor the effectiveness of the programming.

RESPONSE: Thank you for your comment. A Section 220.100(A)(3) of the Proposed Autism Waiver Provider Manual will be added which reads, "Monitoring services will be performed by the Consultant on at least a monthly basis. Monitoring responsibilities will include the oversight of the implementation of evidence-based intervention strategies by the lead therapist, the line therapist and the family; educating family members and key staff regarding treatment; on-site reviewing of treatment effectiveness and implementation fidelity; use data collected to determine the clinical progress of the child and the need for adjustments to the ITP, as necessary; and modifying assessment information, as necessary." Additionally, the title of 220.100 will be changed to "Autism Waiver Services" and Section 220.300 will be deleted and be moved to create Section 220.100(E) since Consultative Clinical and Therapeutic Services are one of the five services offered under the Autism Waiver.

COMMENT #6: 230.20 Autism Waiver Procedure Codes- Requesting verification that the procedure codes utilized for the Autism Waiver services will be intensive early intervention codes. The Autism Waiver is an intensive early intervention program and not an Applied Behavior Analysis service. Applied Behavior Analysis utilizes scientifically based techniques to provide intensive one on one treatment. I have copied and included the brief waiver description from 1915 (c) below for reference.

"The Autism Waiver provides intensive one-on-one treatment for children ages 18 months through 7 years with a diagnosis of autism spectrum disorder (ASD). The therapy services are habilitative in nature and are not available to children through the AR Medicaid State Plan. These services are designed to maintain Medicaid eligible participants at home in order to preclude or postpone institutionalization. Specifically, these services are offered to children with ASD who meet the institutional level of care

criteria, are the appropriate age, and whose parent's agree to actively participate in the treatment plan. The services offered through the Autism Waiver program are 1)Individual Assessment/Plan Development/Team Training/ Monitoring; 2)Therapeutic Aides and Behavioral Reinforcers; 3)Lead Therapy; 4)Line Therapy; and 5) Consultative Clinical and Therapeutic Services. The first four services are provided by Intensive Intervention providers. Consultative Clinical and Therapeutic Services are provided by Clinical Services Specialists working with a four-year university program. The goal is to design a system for delivery of intensive one-on-one interventions for young children that 1) utilize proven strategies and interventions that are positive, respectful and safe; 2) include and empower parents/guardians to participate; 3) prepare children with functional skills in natural environments; 4) include independent checks and balances; and 5) provide services in the most effective and cost efficient way."

RESPONSE: Thank you for your comment. Section 230.200 "Autism Waiver Procedure Codes" will remain a section in the Autism Waiver Medicaid Manual, but that Section will include only the sentence "Click here to view the Autism Waiver procedure codes[,]" which will have a hidden hyperlink to the a webpage containing the Autism Waiver procedure codes.

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

QUESTION #1: Has the proposed waiver been approved by CMS? If not, do you have any idea what the timeline on that approval might be? **ANSWER:** It has not been approved by CMS. Once any changes based on public comment have been made, the proposed waiver will be submitted to CMS for approval. CMS would then have a 90 day "clock" to review and approve. We can ask for retrospective approval in the same quarter that we submitted the waiver for certain amendments, like adding slots.

QUESTION #2: Pages 67 and 70 of the waiver application indicate that Intensive Intervention Providers must have a minimum of three years' experience providing services to individuals with ASD. However, page 72 of the waiver and § 202.100(B) of the proposed rules only require two years of experience. Is there a reason for this discrepancy? Why did DHS decide to reduce the amount of experience ASD Intervention Providers must have from three years to two? **ANSWER:** The waiver and manual will be amended so that the years' experience requirement will be removed from the Intensive Intervention provider type (i.e. at the organization level) and will apply only to the individual based on the particular service that is being provided (i.e. Individual

Assessment/Treatment Development/Monitoring, Lead Therapy Intervention, or Line Therapy Intervention).

QUESTION #3: Is there specific authority behind the independence requirement in § 202.500(B)? **ANSWER:** All home and community based waivers require independent case management functions (called conflict free case management). One of the four pillars of conflict free case management is independent service monitoring. Because the consultant acts as a monitor of the treatment plan and services being provided to the beneficiary, DDS felt that the conflict free requirement should apply to them.

QUESTION #4: Ark. Code Ann. § 20-77-124 states that "intensive early intervention treatment" occurs "in the home of the child." Why do the rule amendments expand this definition to include other settings, such as schools and parks? **ANSWER:** The proposed waiver, on page 66, states, "The location will be primarily the child's home but other community locations, identified by the parent, such as the park, grocery store, church, etc. might be included." Section 211.000 will be amended to reflect the language as it appears in the proposed waiver.

QUESTION #5: The benefit limits in § 220.200 are now presented in "hours" rather than "units." Why has this language changed? **ANSWER:** The units are still included in the service description boxes that tell the procedure codes and modifiers to be billed; however, procedure codes and units are subject to change by CMS and NCCI without any input from the state, so the state chose not to include the units in the descriptions, only the total amount of time that the service can be received.

QUESTION #6: Why has the maximum benefit limit for line therapy decreased? **ANSWER:** This was part of the change that was approved by CMS in 2017; this change must happen to be consistent with our current Waiver.

The proposed effective date is pending legislative review and approval.

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

According to the agency, the purpose of this rule is to implement a federal rule or regulation. The total cost to implement that federal rule or regulation is $782,340 for the current fiscal year ($234,702 in general revenue and $547,638 in federal funds) and $1,587,466 for the next fiscal year ($476,240 in general revenue and $1,111,226 in federal funds).

The total estimated cost by fiscal year to state, county, and municipal government to implement the amended rule is $234,702 for the current fiscal year and $476,240 for the next fiscal year. The agency indicated that this 1915(c) waiver has a 70/30 federal-state match and that the state will incur 30% of the costs while the federal government will incur 70%.

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 business, state government, county government, municipal government, or to two (2) or more of those entities combined. It provided the following written findings:

(1) a statement of the rule's basis and purpose
Acts 2019, No. 874, § 15 provides that DDS "shall budget, allocate, and expend up to one million dollars ($1,000,000) for the elimination of the Autism Waiver Services Program waiting list." No additional funding was provided for this purpose. Therefore, DDS is expanding the number of Waiver slots to include all children on the waitlist.

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute
DDS will eliminate the Waitlist for Autism Waiver services by increasing the slots.

(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
As of the time Act 874 was passed, there were approximately 30 children on the Autism Waiver waitlist. By increasing the number of slots, DDS will be able to serve all children on the waitlist, as mandated by Act 874. Evidence suggests that children served through the Autism Waiver will need less intensive services later in life.

(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
Because we were mandated to eliminate the waitlist, there is no less costly alternative.

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

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

CMS requires the state to state a number of "slots" or individuals that will be served by a home and community-based waiver, such as the Autism Waiver. To increase the number of children served, therefore, DDS must increase the number of slots through the public comment and promulgation process.

(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

CMS requires DDS to renew the Autism Waiver every five years, so this Waiver is continuously being reviewed to ensure that it is meeting CMS requirements and meeting the needs of Arkansas families.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance. *See* Ark. Code Ann. § 20-76-201(1). It is specifically authorized to maintain an indigent medical care program. Ark. Code Ann. § 20-77-107(a)(1). The Department is also required to "seek a Medicaid waiver from the Centers for Medicare and Medicaid Services to provide intensive early intervention treatment to any eligible child who has been diagnosed with an autism spectrum disorder." Ark. Code Ann. § 20-77-124(b)(1). This responsibility applies "only as funding becomes available for that purpose." Ark. Code Ann. § 20-77-124(c)(1).

The Department has the authority to make rules that are needed or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions have the authority to promulgate rules as necessary to conform programs they administer to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

Portions of this rule implement Act 874 of 2019, which made an appropriation for personal services and operating expenses for the Division of Developmental Disabilities Services for the fiscal year ending June 30, 2020. The Act required the Division to "budget, allocate, and expend up to one million dollars ($1,000,000) for the elimination of the Autism Waiver Services Program waiting list." Act 874, § 15 (2019).

8. DEPARTMENT OF PARKS, HERITAGE AND TOURISM, DIVISION OF HERITAGE

a. SUBJECT: Rules Governing the Addition of "Criterion E" and the Addition of the "Arkansas Heritage Site" Designation to the Arkansas State Register of Historic Places Program

DESCRIPTION: These proposed rules will provide eligibility for historic geographic areas within Arkansas (e.g., Washington, Arkansas, "Birthplace of the Bowie Knife") to be included in the state's historic register through the addition of "Criterion E" to the existing rules. Like existing state rules criteria A-D, "Criterion E" mirrors the rules for a listing in the national historic register and is otherwise necessary for the inclusion of historic geographic areas in the state's historic register. This proposed "Criterion E" would be an addition to the existing rules.

These proposed rules also establish eligibility for historic sites and geographic areas to be designated as an "Arkansas Heritage Site." Said designation was first created with the passage of Act 818 of 2019. Accordingly, there are no existing rules on point. These proposed rules on point will be new rules.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on January 15, 2020. The Division of Heritage indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Division of Heritage states that this rule has a financial impact. Specifically, it is anticipated that the implementation of the rule by the Arkansas Department of Transportation and by the Arkansas Department of Parks, Heritage and Tourism can be accomplished with existing staff and existing resources. However, the costs to the Arkansas Department of Transportation and to the Arkansas Department of Parks, Heritage and Tourism for creating and erecting a sign as required under Ark. Code Ann. § 1-4-139(d) are not known, but are not anticipated to be material. No costs are anticipated to accrue to any private individual, entity or businesses.

LEGAL AUTHORIZATION: Act 818 of 2019, which was sponsored by Senator Larry Teague, designates Washington, Arkansas as the birthplace of the Bowie Knife. Additionally, the Arkansas Department of Transportation, in consultation with the Department of Parks and Tourism and the University of Arkansas Community College at Hope-Texarkana, shall designate a sign that displays the words and any logo for the

"Birthplace of the Bowie Knife, Arkansas Heritage Site." *See* Ark. Code Ann. § 1-4-139(d)(1). The Department of Arkansas Heritage shall promulgate rules necessary to implement this section. *See* Ark. Code. Ann. § 1-4-139(e)(1).

9. DEPARTMENT OF PUBLIC SAFETY, CRIME VICTIMS REPARATIONS BOARD

a. SUBJECT: Crime Victims Reparations Board Rules

DESCRIPTION: Changes made to state law as a result of the 2019 session of the General Assembly are addressed in the proposed rule changes. Specific rule change proposals are as follows:

Act 315 of 2019 requires that all agencies discontinue the use of the word "Regulation" (and Specifications) and refer to all agency rules as "rules." Accordingly, all references to "regulations" have been removed.

Act 910 of 2019 (the "Transformation Bill") created the "Department of Public Safety" and moved the Crime Victims Reparations Board under the direction of the Secretary of the Department of Public Safety. Throughout the rule changes, the Secretary and/or Department of Public Safety has been substituted for the Office of Arkansas Attorney General.

Rule 1. Title and Operative Date of the Act
- Removes reference to regulations.

Rule 2. Definitions
- Proposed language change at 2.3(D) includes an additional person to be included in the term victim. The language is necessary to be consistent with statutory changes that were approved by Act 548 of 2001 to Ark. Code Ann. § 16-90-703.
- Proposed language change to 2.9 – allowable expense changes the maximum compensation for funeral expenses from $5,000 to $7,500. The language change is necessary to make the dollar amount for funeral expenses consistent with Rule 10 which was approved in 2004. Also removes reference to regulations.

Rule 4. Membership and Officers of the Board
- Proposed language change restructures the make-up of the Board. The language change is necessary to be consistent with statutory changes that were approved by Act 773 of 1995 to Ark. Code Ann. § 16-90-705.

Rule 6. Powers and Duties of the Board
- Proposed language change to 6.4 removes reference to regulations.

- Proposed language change to 6.15 changes the language from Office of the Attorney General to Department of Public Safety.

Rule 7. Meetings of the Board
- Proposed language at 7.1 reflects the current meeting schedule of the Board. Proposed language specifically lists the months in which the Board will meet to hear appeal claims. Language was part of an emergency rule effective 10/24/94.
- Proposed language at 7.4 reflects the current practice of the Board in regards to a quorum and acting with consent decrees. Language was part of an emergency rule effective 10/20/94.
- Proposed language at 7.7 removes restrictions of voting by proxies. Language was part of an emergency rule effective 10/20/94.

Rule 8. Eligibility Criteria for Compensation
- Proposed language change at 8.12 removes reference to regulations.

Rule 10. Maximum Compensation Amounts and Methods of Payments
- Proposed language change to 10.5 removes reference to regulations.

Rule 15. Board Staff
- Proposed language changes the language from Office of the Attorney General to Department of Public Safety.

Rule 17. Amendment to Rules and Regulations
- Proposed language change removes reference to regulations.

Rule 20. Conflict of Interest
- Proposed language defines conflict of interest for the administrative staff of the Board. This language is necessary as the staff reviews all claims submitted to the Board and the language provides a procedure for addressing conflicts of interest.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on December 23, 2019. The Crime Victim's Reparations Board indicated that it received no public comments.

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

QUESTION 1: In Rule 2, the term 'victim' is expanded to include the "minor child, whether by blood, adoption, or marriage, of an eligible victim." This language mirrors Ark. Code Ann. § 16-90-703(11)(B)(i) for the most part. However, the words 'minor' and 'eligible,' which are absent from the statute, are added to the rule. Could you please explain the reason for the differences? **RESPONSE:** The phrases "minor" and

"eligible" have been in the board rules since at least 2011. The language from the previous rules was copied as closely as possible in order to be consistent with the language the board has been operating under for the extended period of time.

QUESTION 2: In Rule 2, expenses for funeral, cremation and burial are allowed not in excess of $7,500. In the summary, you indicated that number was being changed to be consistent with Rule 10. "Allowable expense," pursuant to Ark. Code Ann. § 16-90-703(1)(B), includes a "reasonable and necessary amount for expenses related to funeral, cremation, or burial." Could you please provide any additional statutory authority for the Board to set the amount at $7,500 and also explain the reason why that amount was chosen? **RESPONSE:** There is no statutory authority that sets the specific amount, only the caps on the overall amounts the board can award. The $7,500 amount was set by a rule change in 2004. The amount before 2004 was $5,000. Rule 10 was changed in 2004 but the board missed changing the amount in Rule 2, so you had a rule that allowed for $7,500 and a definition that only allowed for $5,000.

QUESTION 3: Rule 7.1 appears to indicate that all meetings, including those which are not specifically stated but may be called by the Chairperson, will commence at 9:30 a.m. Was this the Board's intention? **RESPONSE:** I will confirm with the board at its next meeting that it intends to have its meeting time set by rule. The board has had some scheduling issues with board members in the past so they may have chosen a definite time for member scheduling purposes.

QUESTION 4: Could you please provide statutory authority for Rule 7.4? **RESPONSE:** 16-90-706(2)(B) discusses the panel of 3. The language was contained in the 1999 version of the board's rules which was the last complete copy of the rules that were on file with the State Library and which were the basis for several of the changes throughout the rules. Some language was simply added back from the 1999 rules.

QUESTION 5: Could you please explain why the board eliminated provision 7.7 regarding proxy voting? **RESPONSE:** The removal was based on the 1999 rules.

QUESTION 6: In Question 2 of the BLR Questionnaire, you mentioned that this proposed rule included "necessary changes as a result of the Act 781 of 2017 rule review." Could you please identify the changes that were made due to this Act? **RESPONSE:** Most of the changes that were made were a result of the Act 781 rule review. For example, Rule 7 had changes that the board had "enacted" over the years but were never promulgated. All of these discrepancies have been corrected in this rule change.

The proposed effective date of the rule is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 16-90-706(b), the Crime Victim's Reparation Board may regulate its own procedure except as otherwise provided in this subchapter, adopt rules to implement the provisions of this subchapter, and define any term not defined in this subchapter. The Board is proposing changes to its rules based in part on the following Acts of the 2019 Regular Session:

Act 315 of 2019, sponsored by Representative Jim Dotson, provided for the uniform use of the term "rule" for an agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of an agency. *See* Act 315 of 2019.

Act 910 of 2019, sponsored by Representative Andy Davis, created the Department of Public Safety as a cabinet-level department. *See* Ark. Code Ann. § 25-43-1401. The administrative functions of the Crime Victims Reparations Board were transferred to the Department of Public Safety by a cabinet-level transfer. *See* Ark. Code Ann. § 25-43-1402(a)(8).

E. Agency Updates on Delinquent Rulemaking under Act 517 of 2019.

1. Department of Agriculture, Arkansas Bureau of Standards (Act 501)

2. Department of Agriculture, Veterinary Medical Examining Board (Act 169)

3. Department of Commerce, State Insurance Department (Acts 500, 698, 823)

4. Department of Commerce, Office of Skills Development (Act 179)

5. Department of Corrections, Arkansas Correctional School (Act 1088)

6. Department of Education, Division of Elementary and Secondary Education (Acts 536, 640, 843)

7. Department of Education, Division of Higher Education (Acts 456, 549)

8. Department of Energy and Environment, Pollution Control and Ecology Commission (Act 1067)

9. **Department of Finance and Administration, Alcoholic Beverage Control Division (Act 691)**

10. **Department of Finance and Administration, Director (Act 822)**

11. **Department of Health (Acts 216, 708, 811)**

12. **Department of Health, Division of Health Related Boards and Commissions, State Board of Chiropractic Examiners (Act 645)**

13. **Department of Health, Division of Health Related Boards and Commissions, State Board of Nursing (Act 837)**

14. **Department of Health, Division of Health Related Boards and Commissions, Arkansas Board of Podiatric Medicine (112)**

15. **Highway Commission (Act 468)**

16. **Department of Parks, Heritage, and Tourism, Division of Heritage (Act 818)**

17. **Department of Transformation and Shared Services, Office of State Procurement (Act 422)**

F. Adjournment.