ADMINISTRATIVE RULES SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Wednesday, July 20, 2022
2:00 p.m.
Room A, MAC
Little Rock, Arkansas

A. Rules filed pursuant to Ark. Code Ann. § 10-3-309

1. DEPARTMENT OF HEALTH, ARKANSAS STATE BOARD OF NURSING (Amy Embry, Sue Tedford, Matt Gilmore)

a. SUBJECT: Chapter Eleven – Full Independent Practice Credentialing Committee

DESCRIPTION: In accordance with Act 412 of 2021, this chapter establishes Rules for the Full Independent Practice Credentialing Committee.

Following expiration of the public comment period, the agency submitted a revised markup, which included the following changes:

- Section III A(2) – reduced the number of letters of reference from three to one;
- Section III A(5) – added the requirement for all applicants to submit a notarized affidavit attesting to the number of clinical practice hours; and
- Section III A(6)(a) and (b) – deleted the affidavit from the collaborating physician and other documents required to prove the number of clinical practice hours.

The agency then made additional revisions to the rule following the Administrative Rules Subcommittee meeting on June 16, 2022:

- Section III A(2) – changed the number of letters of reference to two;
- Section III A(5) – deleted the requirement for all applicants to submit a notarized affidavit attesting to the number of clinical practice hours;
- Section III A(6)(a) and (b) – deleted the affidavit from the collaborating physician and other documents required to prove the number of clinical practice hours;

- Section III (A)(5)(a)(b) – added requirement of documentation showing minimum 6,240 hours of practice under a collaborative practice agreement; and
- Section III (A)(6) – added requirement of any other relevant documents requested by Committee in support of application.

PUBLIC COMMENT: A public hearing was held on March 2, 2022. The public comment expired on March 14, 2022. The agency provided the following summary of comments it received and its responses thereto:

Karen Reynolds (Email dated 11/7/21)
Comment: "We [are] still going through everything but the BIG thing we think we should ask before these go out is change verbiage from "full practice authority" to "full independent practice" like the Act calls it and like the Committee calls it to decrease confusion of NPs on so many levels. I don't want APRNs to be confused that it is full practice authority."
Response: All references were changed to "full independent practice authority" to be consistent with the language in the statute creating the Full Independent Practice Credentialing Committee.

Barbara McDonald, FNP-BC, MSN, BSN (Letter dated 2/15/22)
Comment: "Thank you for allowing me to comment on Chapter eleven full independent practice credentialing committee pursuant to Ark. Code Ann. 17-87-314, et seq. I am an Advanced Practice Nursing (APN) with almost twelve years' experience in both the military and civilian sector. In the U.S. Air Force, this Family Nurse Practitioner was able to prescribe all medications except Schedule 1 and specifically identified medications without a physician's co-signature or a collaborating practice agreement. APNs in the military are trusted to safely provide care including prescribing medications and durable medical equipment (DME) to members of the Armed Forces and their family members without a collaborating practice agreement or physician's co-signature. This APN is in full support of Chapter Eleven Full Independent Practice Credentialing Committee except for requiring a minimum of 6,240 hours of practicing under a collaborating practice agreement to qualify for full independent practice. I will provide supporting evidence on why an APN should not be required to have a collaborating practice agreement to prescribe medications. In summary this APN is in support of Chapter eleven full independent practice credentialing committee except for the requirement of 6,240 hours under a collaborative practice agreement prior to being able to apply for full independent practice." *Purpose and Authority* – The full Independent Practice Credentialing Committee should be allowed to review and act on applications for full independent practice and any complaints filed against those granted full independent practice. Allowing the Full Independent Practice Credentialing Committee to make these

decisions follows Article Four, Section Three of the U.S. Constitution (Hudspeth & Klein, 2019). This article gives the state of Arkansas the responsibility and the ability to select this committee to approve scope of practice for healthcare professionals. Dr. Loretta Ford (founding NP) and Dr. Henry Silver (Pediatrician) both envisioned the APN working autonomously as primary care providers (Peacock & Hernandez, 2020). The APN role was created to overcome primary care provider shortages and healthcare disparities, issues that continue to exist in Arkansas (Arkansas Center for Health Improvement [ACHI], 2021; Peacock & Hernandez, 2020). According to the American Association of Nurse Practitioners (AANP), "state practice and licensure law [provides] for all nurse practitioner to evaluate patients, diagnose, order, and interpret diagnostic tests, initiate, and manage treatments- including [prescribing medications]- under the exclusive licensure authority of the State Board of Nursing" (2018, para. 2). The Full Independent Credentialing committee being a part of the Arkansas State Board of Nursing would meet the intent recommended by the AANP. *Section III, Qualifications for Full Independent Practice* - The APN should be required to apply for full independent practice and attaining 3 letters of recommendation as part of the application process. The APN must possess an active unencumbered Arkansas APN license and unencumbered prescriptive authority certificate or equivalent in the state of licensure. This APN does not agree with the requirement of having an affidavit from the collaborating physician(s) attesting that the APN has practiced a minimum of 6,240 hours under a collaborative practice agreement. The AANP affirms that the education the APN receives both clinically and academically prepares the APN to practice and pass standardized national certification exams (American Association of Nurse Practitioners [AANP], 2020). Arkansas continues to be above the national average of 1,320:1 in primary care providers to patient ratio with the state average of 1,510:1 to as high as 14,850:1 in some underserved areas (University of Wisconsin Population Health Institute & Robert Wood Johnson Foundation, 2021). APNs can improve healthcare access and health outcomes to the people of Arkansas especially those traditionally living in underserved area. The APN scope of practice includes the management of healthcare from preventative medicine to treatment of chronic diseases and follow up care in primary care, mental health, pediatrics, women's health, geriatrics, and acute patient care (Barnett et al., 2021). The APN is prepared to educate, diagnose, order diagnostic testing, and treat the patient (includes prescribing medications and durable medical equipment). Requiring the APN to have 6,240 hours of prior collaborative practice agreement with a collaborating physician creates another barrier to the time when APNs can impact health disparities in Arkansas.

Response: The 6,240 hour requirement is part of the statute and cannot be changed by rule.

Donna Gullette, PhD, APRN, AGACNP-BC, FAANP, Professor, College of Nursing, Associate Dead for Practice (Email dated 2/17/22)
Comment: "Hi Dr. Tedford, first I would like to thank the Board of Nursing for working so hard to make these revisions. I am looking forward to independent practice. In chapter 4, the words in Section 3 F. "full practice authority" is used. Then in proposed chapter 11, the words "full independent practice" is used. Shouldn't they be the same in both?"
Response: The term "full independent practice authority" was used in Chapter 11 to be consistent with the language in the statute creating the Full Independent Practice Credentialing Committee.

Charlotte Denton (Email dated 2/17/22)
Comment: I highly recommend APN private practice without collaboration with physicians. Thank you.
Response: No response is required as the comment is in support of the new statute.

Jessica Mobley, APN (Email dated 3/1/22)
Comment: "I am writing to you in support of Full Practice Authority for nurse Practitioners. NPs provide comprehensive care and are the preferred provider for many patients. The rural areas of our state are very underserved medically and NPs are a great way to serve this need. Again, I am in full support and look forward to the process being completed so that NPs can provide the care patients deserve without having to worry about paying collaborative practice physicians, many of whom they do not actually need input from in order to provide a high level of care. Please count this email as another in support of FPA."
Response: No response is required as the comment is in support of the new statute.

Freddie Mobley (Email dated 3/1/22)
Comment: "I offer my full support of the full practice authority. Rural Arkansas is in need of having more and better access the healthcare. It is becoming more challenging to attract doctors to practice medicine in rural areas. Thank you for considering this opportunity for nurse practitioners."
Response: No response is required as the comment is in support of the new statute.

Austin Berry, BSN, SRNA (Email dated 2/24/22)
Comment: "My name is Austin Berry BSN, SRNA. I am a student currently seeing my Doctor of Nursing Practice (DNP). The DNP education has provided me knowledge to critically analyze health care policies with the goal of advocating or the nursing profession and the individuals effected by the nursing profession (American Association of Colleges of Nursing, 2006). I am writing this comment letter to oppose the membership structure of the Chapter 11: Full Independent Practice

Credentialing Committee under Act 412, Arkansas Code § 17-87-314. Currently the Full Independent Practice Credentialing Committee is to consist of three faculty Physicians, one Physician at large, three faculty Nurse Practitioners (NPs) from Arkansas nursing schools, and one certified NP from Arkansas at large. I propose that the committee instead include eight NPs; four faculty NPs (one each from the University of Arkansas, University of Arkansas for Medical Sciences, University of Central Arkansas, and Arkansas State University) and four NPs from Arkansas at large. My concern is that the current committee structure consisting of Physicians and NPs may foster unneeded conflict and decrease committee collaboration. According to David Farris of Inside Higher Ed who has worked in higher education for nearly 13 years and conducted doctoral research on behaviors in administrative committees, increased position stratification within committees can negatively impact collaboration between committee members (Farris, 2017). Committee position stratification between physicians and NPs can potentially impair committee member collaboration via biases amongst the physicians and NPs. Physicians and their professional organizations actively oppose movements towards Advanced Practice Registered Nurses (APRNs) attaining full practice authority and I am concerned that these biases and views could infiltrate the committee. Furthermore, through review of literature, Schirle et al. (2018) found that barriers to optimal APRNs practice environment included poor physician and administrative relations and policy restrictions on practice. The inclusion of physicians in the committee could bring unnecessary bias and poor inter-professional relations that consequently could decrease committee member collaboration. Decreased collaboration could lead to decreased efficiency and decreased number of certifications for full independent practice authority. In the circumstance of these possibilities becoming reality, the United States (U.S.) health care system and U.S. citizens could be negatively impacted. Reducing the number of independently practicing NPs further depletes an already depleted pool of primary care providers, decreases access to primary care, and increases health disparities in health professional shortage areas. Lack of access to primary care causes worse health care and patient mortality incurred by the U.S. health care system (Bosse et al., 2017). Independently practicing NPs can combat this because they provide care associated with lower costs compared to physicians, increased routine checkups, increased health care utilization, significantly fewer emergency room visits, decreased hospitalization rates, and improved patient satisfaction (Bosse et al., 2017; Depriest et al., 2020). Allowing APRNs to practice independently has shown to improve healthy equity at decreased cost to patients, U.S. health care systems, and payers (Boss et al., 2017). We should do what we can to mitigate barriers allowing APRNs to practice independently so that our healthcare system and our patients can benefit. With the current committee structure, there's potential barriers, and for that reason, I ask that the current Full

Independent Practice Credentialing Committee membership be amended from Physicians and NPs to instead include eight NPs; four faculty NPs (one each from the University of Arkansas, University of Arkansas for Medical Sciences, University of Central Arkansas, and Arkansas State University) and four NPs from Arkansas at large. Thank you for your time and consideration."
Response: The membership structure of the Full Independent Practice Credentialing Committee is outlined in the statute and it cannot be changed by rule.

Rhonda Finnie, University of Central Arkansas (Attended Public Comment Hearing on 3/2/22)
Comment: Finnie stated she was "excited to see a collaboration. This does not change the population I care for or the knowledge that I have."
Response: Ms. Tedford thanked Ms. Finnie for attending the public hearing and for her comments.

Eddy Hord, MD, President, Arkansas Academy of Family Physicians (Email dated 3/14/22)
Comment: The Arkansas Academy of Family Physicians is concerned about the language included in the proposed rules specifically as it applies to "prescriptive authority" and "area of practice." The ambiguity is presented in Section II (A) regarding definition of terms. The language is then implicit through the remainder of the document. We are uneasy that the rules imply that the approved nurse practitioners will only be able to practice in their specific areas of training, but the document does not expressly limit them as such. The proposal only directly addresses prescribing drugs and devices but does not prohibit consulting with, examining or otherwise managing patients outside of their area of education and training. The Academy is respectfully asking for clarity from the committee regarding this matter.
Response: A Certified Nurse Practitioner who is granted Full Independent Practice Authority will still be required to comply with the Nurse Practice Act, including those sections that apply to scope of practice.

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

1. Is the Arkansas State Board of Nursing (ASBN) promulgating these rules on behalf of the Full Independent Practice Credentialing Committee (FIPCC)?

(a) If so, could you please specifically identify the statutory rulemaking authority that ASBN is relying upon in promulgating rules for FIPCC?

(b) Section 1(B) of the rules cites Ark. Code Ann. § 17-87-314 et seq. as "legal authority" for these rules. In addition, the Administrative Procedure Act is identified as rulemaking authority on the questionnaire. Could you please identify the specific statutory rulemaking provision that is being relied upon by ASBN to promulgate these rules?
RESPONSE: Ark. Code Ann. § 17-87-314 and 316 were placed into the Nurse Practice Act. There is nothing in either statute that states where the rules should be published. We consulted with the AG's office and it was determined to house the rules under the Nursing Board Rules, since the FIPCC statutes are part of the Nurse Practice Act. The authority is contained in Ark. Code Ann. § 17-87-203(1)(A) which states that "the Arkansas State Board of Nursing shall have the powers and responsibilities to promulgate whatever rules it deems necessary for the implementation of this chapter." The FIPCC statutes are part of this chapter.

2. Ark. Code Ann. § 17-87-316 states that FIPCC "may promulgate rules as necessary to administer fees, rates, or charges for application, certification, endorsement, certification for prescriptive authority, certification renewal, and other reasonable services as determined by the committee." In light of this language, could you please explain ASBN's authority to promulgate rules concerning FIPCC fees?
RESPONSE: The FIPCC is the entity who determined the fees and promulgated the rules. The Board of Nursing simply voted to approve and promulgate what the FIPCC had previously promulgated and created. Because the FIPCC statutes are part of the Nurse Practice Act, the rules are being submitted as part of the Nursing Board Rules.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the proposed rules have a financial impact of $5,095 for the current fiscal year and $8,568 for the next fiscal year, explaining that the fiscal cost for implementation of Act 412 is related to the per diem and mileage paid to the Committee members. There was no cost associated with reprograming the licensure database to include the applications for independent practice.

LEGAL AUTHORIZATION: The Arkansas State Board of Nursing has authority to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87 of the Arkansas Code, concerning nurses. *See* Ark. Code Ann. § 17-87-203(1)(A). The proposed rules implement Act 412 of 2021, sponsored by Representative Lee Johnson, which authorized full independent practice authority for certified nurse practitioners who met certain requirements, and created the Full Independent Practice Credentialing Committee to review and approve applications for full independent practice authority for certified nurse

practitioners. Pursuant to the Act, the Committee may promulgate rules as necessary to administer the fees, rates, or charges for application, certification, endorsement, certification for prescriptive authority, certification renewal, and other reasonable services. *See* Ark. Code Ann. § 17-87-316(b), as created by Act 412 of 2021.

B. Adjournment