ADMINISTRATIVE RULES SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Wednesday, November 17, 2021
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 September 30, 2021.

1. Department of Corrections (Ms. Lindsay Wallace)

2. Parole Board (Ms. Brooke Cummings)

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

1. <u>DEPARTMENT OF AGRICULTURE, ARKANSAS LIVESTOCK AND POULTRY COMMISSION</u> (Mr. Wade Hodge, Mr. Patrick Fisk)

a. <u>SUBJECT</u>: Arkansas Swine Rule

<u>DESCRIPTION</u>: The Arkansas Department of Agriculture ("Department") is seeking review of proposed amendments to the Arkansas Livestock and Poultry Commission's ("Commission") Swine Rule. Under Ark. Code Ann. § 2-33-107, the Commission has the authority to promulgate rules to control, suppress, and eradicate livestock and poultry diseases. The Commission's Swine Rule outlines procedures to prevent and control the spread of diseases in Arkansas swine populations. The rule regulates commercial production swine management plans, imported swine, in-state domestic swine, and feral swine. Earlier this year, the Arkansas General Assembly passed Act 692 of 2021, which amends the law regarding feral swine and authorized the Commission to administer civil penalties for violation of that law. On July 15, 2021, the Commission voted to adopt amendments to the rule.

The proposed amendments:

- Eliminate exceptions to certain diagnostic testing for swine imported into Arkansas, which allowed imported swine to be treated more leniently than in-state swine and increased the potential for importing disease into Arkansas.
- Provide greater guidance on commercial production management plans and commercial commuter agreements.
- Authorize the Commission to administer civil penalties for violation of applicable law and rules.
- Eliminate provisions in the rule pertaining to terminal facilities, which are no longer provided for in the law.

The current rule provides that Arkansas swine were subject to certain testing requirements for which imported swine could be exempt. For example, swine imported into Arkansas from a Brucellosis-free state are exempt from testing for Brucellosis. However, because all states are currently considered Brucellosis-free states, all imported swine are exempt from testing for Brucellosis, whereas in-state swine must test negative prior to sale. The proposed amendment removes that inequity and requires the same testing for imported and in-state swine.

The current rule provides that commercial production swine must follow a management plan that has "adequate facilities and practices to prevent exposure to either traditional production of feral swine," but did not provide any details on what might be considered "adequate" and what might "prevent exposure" to other swine. The proposed amendments outline the requirements in detail. The requirements are not new; they are the same details that have always been required, they are just now placed in the rule in order to give proper notice to those subject to the rule.

The proposed amendments also provide for the imposition of administrative penalties as provided for in Act 692 of 2021. These administrative penalties may be imposed in lieu of or in addition to criminal charges for transportation of feral swine. Additionally, provisions in the law dealing with terminal facilities for feral swine have been repealed, so the proposed amendments repeal a large portion of the rule dealing with terminal facilities.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on September 11, 2021. The Commission received no comments.

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

The proposed rules now impose an administrative penalty for the violation of "any" rule or law concerning feral hogs. The rule proposes that for an initial violation, the Commission may issue a warning letter and an administrative penalty not to exceed $500.00, and that for any additional violations, the Commission may impose an administrative penalty not to exceed $5,000.00. However, Ark. Code Ann. § 2-38-505(3)(A), as amended by Act 692 of 2021, § 4, provides that the Commission may impose administrative penalties not to exceed $1,000 per feral hog against a person violating Arkansas Code, Title 2, Chapter 38, Subchapter 5 or a rule adopted under the subchapter. Can you explain the variation in language between the proposed rule and the statute? **RESPONSE:** The $5,000 is meant as a cap. If someone is transporting six feral hogs, the penalty would still be capped at $5,000 instead of $6,000.
FOLLOW-UP QUESTION: So, although the rule does not state it, each violation would be considered per feral hog? **RESPONSE:** Correct, since that is what the law states. However, the Commission could certainly combine them into one. For example, if someone is transporting a load of hogs to market and he doesn't have his paperwork with him, technically, those are to be considered feral hogs. But if we determine the individual just made a mistake, we could simply issue one warning letter, regardless of the amount of hogs he is transporting.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the only financial impact will be the administrative penalties and that the impact is expected to be minimal.

LEGAL AUTHORIZATION: The proposed amendments to the rule incorporate changes made in light of Act 692 of 2021, sponsored by Representative DeAnn Vaught, which amended the law regarding feral hogs; amended the definition of "feral hog"; amended the law regarding the capturing and killing of feral hogs; amended the law regarding transporting and releasing feral hogs; and clarified the powers and duties of the Arkansas Livestock and Poultry Commission related to feral hogs. Pursuant to Arkansas Code Annotated § 2-33-107(c), the Commission shall have the authority to make, modify, and enforce such rules and orders, not inconsistent with law, as it shall from time to time deem necessary to effectively carry out the functions performable by it. *See also* Ark. Code Ann. § 2-33-107(a) (vesting authority for the control, suppression, and eradication of livestock and poultry diseases and pests and supervision of livestock and poultry work in this state in the Commission). Further authority for the rulemaking can be found in Ark. Code Ann. § 2-38-505(1), as amended by Act 692, § 4, which permits the Commission to make, modify, and enforce the rules and orders the Commission deems necessary to effectively carry out Title 2, Chapter 38,

Subchapter 5 of the Arkansas Code, concerning feral hogs. In addition, the Commission may impose administrative penalties not to exceed one thousand dollars ($1,000) per feral hog against a person who violates the subchapter or a rule adopted by the Commission under the subchapter. *See* Ark. Code Ann. § 2-38-505(3)(A), as amended by Act 692, § 4.

b. **SUBJECT: Feral Hog Airborne Eradication Rule**

DESCRIPTION: The Arkansas Department of Agriculture ("Department") is seeking review of proposed amendments to the Arkansas Livestock and Poultry Commission's ("Commission") Feral Hog Airborne Eradication Rule. In this year's General Assembly, the Arkansas Legislature passed Act 692, amending the law regarding feral hogs, Ark. Code Ann. § 2-38-501 et seq. Act 692 authorizes the Commission to establish and collect reasonable fees to administer and enforce the existing feral hog airborne eradication program. Prior to Act 692, the Commission was authorized to establish an airborne eradication program for feral hogs in accordance with federal statute 16 U.S.C. § 742j-l. That law authorizes states to allow the shooting of feral hogs from aircraft if there is a bona fide need for protection of land, water, wildlife, livestock, domesticated animals, human life, or crops. However, Arkansas law did not allow the Commission to charge a fee in association with the program. On July 15, 2021, the Commission voted to adopt amendments to the rule.

Changes to the rule include the following:

- The Department will be able to collect a permit fee to help defray the costs of administration of the program.
- The amendment shifts the burden of producing information and obtaining a permit from the individual landowners to the commercial owners and operators of aircraft used in eradication.

The current airborne eradication rule allows landowners to obtain a permit for airborne eradication activities. The burden is on the landowner to obtain the permit and submit information to the Department, including an affidavit explaining the need for the activity, a description of the land on which the activity will take place, the approximate number of hogs to be managed, and a description of the aircraft to be used. The amendments shift the burden of producing information on airborne eradication activities from the landowner to the aircraft owner or operator. That change reduces the obstacles of Arkansas farmers and landowners who need the airborne eradication program.

The proposed amendment requires the aircraft owner or operator to obtain a yearly permit from the Department by submitting the aircraft information and payment of a $250 fee. Then, the aircraft owner or operator must seek authorization from the Department before each activity

by submitting further information about the specific activity, including the justification for the activity. Once the aircraft owner and operator obtain authorization, they can then proceed with the activity. Post activity removal data must be submitted to the Department within 14 days following the activity.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on September 11, 2021. The Commission received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the only financial impact will be the permit fee and that the impact is expected to be minimal.

LEGAL AUTHORIZATION: The proposed amendments to the rule incorporate changes made in light of Act 692 of 2021, sponsored by Representative DeAnn Vaught, which amended the law regarding feral hogs; amended the definition of "feral hog"; amended the law regarding the capturing and killing of feral hogs; amended the law regarding transporting and releasing feral hogs; and clarified the powers and duties of the Arkansas Livestock and Poultry Commission related to feral hogs. Pursuant to Arkansas Code Annotated § 2-38-505(1), as amended by Act 692, § 4, the Commission may make, modify, and enforce the rules and orders the Commission deems necessary to effectively carry out Arkansas Code Title 2, Chapter 38, Subchapter 5, concerning feral hogs. The Commission may further establish and collect reasonable fees to administer and enforce Ark. Code Ann. § 2-38-502(a)(3), concerning the issuance of a permit for the capturing and killing of feral hogs. *See* Ark. Code Ann. § 2-38-505(2), as amended by Act 692, § 4.

2. DEPARTMENT OF AGRICULTURE, VETERINARY MEDICAL EXAMINING BOARD (Mr. Wade Hodge, Ms. Cara Tharp)

a. SUBJECT: Fees

DESCRIPTION: The Department of Agriculture's Veterinary Medical Examining Board proposes amendments to its Fees rule. The Board met to consider changes to its Fees rule in response to Acts 130 and 135 of 2021. Act 130 established a restricted license for veterinarians. Act 135 modified the automatic occupational licensure requirements for uniformed services members, returning uniformed services members, returning uniformed services veterans, and their spouses. The proposed amendments were approved by the Board on May 25, 2021.

The amended rule:

- Establishes the fee for a restricted license.
- Updates the reference to the code section for Military Automatic Licensure.

Act 130 of 2021 established a process for the Board to issue a restricted license to a veterinarian who has graduated veterinary school but has not yet passed the North American Veterinary Licensing Examination. Part of that process requires the applicant to submit a fee established by the Board for the restricted license.

The Board waives the application fee for anyone applying for Military Automatic Licensure. There was a change in the code section for the waiver following the passing of Act 135 of 2021, so the Board is updating the rule to reflect this change.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on August 30, 2021. The Board received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Board states that the amended rule has a financial impact that will be minimal. According to the Board, the amendment will establish a $50.00 fee for a restricted license, which will likely only apply to a handful of veterinarians each year.

The Board estimates that the total cost by fiscal year to any private individual, entity, and business subject to the amended rule will be $50.00 for the current fiscal year and $50.00 for the next fiscal year. The Board explains:

> A veterinarian who graduated veterinary school but did not pass the North American Veterinary Licensing Examination ("NAVLE") during their fourth year of veterinary school would be eligible to apply to the Board for a restricted license. This would allow them to practice veterinary medicine in Arkansas under the direct supervision of a licensed veterinarian while studying to take the NAVLE the next time it is offered. The NAVLE is only offered twice per year.

With respect to the total estimated cost by fiscal year to state, county, and municipal government to implement the rule, the Board states that because office procedures are already in place for licensing veterinarians, there is no cost to the agency to administer the amendment to this rule.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 17-101-203(7), the Veterinary Medical Examining Board shall have the power to promulgate and enforce rules necessary to establish recognized standards for the practice of veterinary medicine and to carry out the provisions of the Arkansas Veterinary Medical Practice Act, Ark. Code Ann. §§ 17-101-101 through 17-101-318. Arkansas Code Annotated § 17-101-318(b), as amended by Act 130 of 2021, § 8, authorizes the issuance of a restricted license upon receipt by the Board of, among other things, a restricted license fee established by the Board.

The proposed changes to the rule include those made in light of Act 130 of 2021, sponsored by Representative DeAnn Vaught, which authorized the Board to promulgate rules regarding telehealth and telemedicine and to issue restricted licenses for veterinarians. Additional changes include those made in light of Act 135 of 2021, sponsored by Senator Ricky Hill, which established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021 and modified the automatic occupational licensure requirements for uniformed services members, returning uniformed services veterans, and their spouses.

3. DEPARTMENT OF COMMERCE, ARKANSAS ECONOMIC DEVELOPMENT COMMISSION (Mr. Steven Porch, item a; Mr. Jim Hudson, Ms. Renee Doty, items b-d)

a. SUBJECT: Addendum to Arkansas Rural Connect Coronavirus Rule

DESCRIPTION: The Department of Commerce's Arkansas Economic Development Commission ("AEDC") and the Arkansas Broadband Office are promulgating an Addendum to the Arkansas Rural Connect ("ARC") Coronavirus Rule to conform with the Interim Final Rule for the Coronavirus State and Local Fiscal Recovery Funds issued by the U.S. Treasury. Due to the urgent need for broadband for distance learning, telemedicine, and the need for telework, necessitated by the COVID-19 pandemic, this addendum to the ARC Coronavirus Rule is being issued so that funds may be disbursed and to accelerate the continued deployment of broadband network infrastructure in rural Arkansas.

The Arkansas Broadband Office promulgated an Addendum to the ARC Coronavirus Rule under emergency rule procedures. The emergency rule will expire on November 26, 2021. This proposed permanent addendum will go into effect after the emergency period expires. In 2020, AEDC issued the Arkansas Rural Connect Broadband Rule to implement the Arkansas Rural Connect Program. This Broadband Rule was promulgated prior to the issuance of State and Federal public health guidelines responding to the COVID-19 pandemic. The federal government

instituted a major relief effort under the CARES Act. The State benefitted from the CARES Act, but still was in need. The federal government then passed the American Rescue Plan Act ("ARPA"). These funds allowed states to broaden and strengthen its broadband infrastructure in unserved or underserved areas. Federal guidance as it relates to dispensing ARPA funds for the expansion of broadband network infrastructure has resulted in the need to promulgate this addendum to conform the Arkansas Rural Connect Program.

Key points of the rule include the following:

- ARPA funds must be used in unserved and underserved areas of Arkansas.
- ARPA approved projects must be able to provide synchronous bandwidths of 100mbps download and 100mbps upload speed.
- Where impractical due to geographical, topographical, or financial constraints, upload speed can be between 20mbps and 100mbps.
- An internet service provider must submit a letter to Commerce detailing why the required speed cannot be obtained at 100mbps. Commerce will determine if the letter is approved for the requested bandwidth modification.
- Priority attention will be given to projects that contain detailed and aggressive times for completion and reasonable pricing schedules approved by the Mayor/County Judge.
- Guidance issued by the U.S. Treasury with the promulgation of its interim final rule indicates that only fiber optic infrastructure may be used to build out broadband networks using ARPA funds.
- The Broadband Office has requested clarification as to whether fixed wireless infrastructure may be used when funded through ARPA funds.

PUBLIC COMMENT: This rule received legislative review and approval by the Executive Subcommittee at its meeting of July 1, 2021, for emergency promulgation.

For the permanent promulgation, a public hearing was held via Zoom on October 4, 2021. The public comment period expired that same day. The Commission received no comments.

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

FINANCIAL IMPACT: The Commission states that the proposed rule has a financial impact. It estimates that the cost to implement the federal rule or regulation is $300,000,000.00 in federal funds for the current fiscal year and no cost for the next fiscal year.

LEGAL AUTHORIZATION: In accordance with state and federal law, the Arkansas Economic Development Commission shall assist rural communities and agencies with funding, educational opportunities, and technical assistance to enhance the quality of life in rural areas of Arkansas. *See* Ark. Code Ann. § 15-4-209(a)(5). Pursuant to Ark. Code Ann. § 15-4-209(b)(5), the Commission may promulgate rules necessary to implement the programs and services offered by the Commission.

The Commission states that this rule is required to comply with a federal statute, rule, or regulation, namely, the American Rescue Plan Act, 31 C.F.R. § 35.6.

b. SUBJECT: Military Affairs Grant Program

DESCRIPTION: The Department of Commerce's Arkansas Economic Development Commission ("AEDC") seeks to promulgate an amended rule for the agency's existing Military Affairs Grant Program Rule. The proposed rule will conform the existing rule to Act 522 of 2021, which codified AEDC's existing Military Affairs Grant Program in the Arkansas Military Affairs Council Act at Ark. Code Ann. § 15-4-3908. The existing rule defines the process by which AEDC administers the discretionary grant program. The program grants funding to eligible applicants for programs and projects that strengthen and sustain military installations in Arkansas. The rule outlines the application and approval process, disbursement of grant funds, and reporting requirements by a grantee.

The proposed rule makes changes to the existing rule to conform with Act 522 of 2021. Changes are as follows:

- Clarifies the definition of Council to mean the Arkansas Military Affairs Council;
- Adds a definition of "executive director" to mean the executive director of AEDC;
- Amends the definition of "Military Community Council" to reflect language in Act 522 of 2021;
- Amends the rule to include rulemaking authority to administer the program provided to AEDC in Act 522 of 2021; and
- Makes various technical corrections to the rule.

PUBLIC COMMENT: A public hearing was held on October 1, 2021. The public comment period expired that same day. The Commission received no comments.

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

(1) Section IV, *Application Review and Approval* – In subsection (2), the rules appear to provide that the applications be forwarded to the Military Affairs "Council" ahead of the next "Committee" meeting, yet Ark. Code Ann. § 15-4-3908, as amended by Act 522 of 2021, § 2, provides that the grant applications shall be forwarded to the "committee." That statute further provides that the AEDC shall "[a]ssign the Governor's Military Affairs Committee to assist the Military Affairs Director in evaluating grant applications." Ark. Code Ann. § 15-4-3908(a)(2)(B), as amended by Act 522.

(a) Does the Governor's Military Affairs Committee as referenced in Ark. Code Ann. § 15-4-3908, as amended by Act 522, still exist? **RESPONSE:** The Governor's Military Affairs Committee became the Arkansas Military Affairs Council. There is not a separate "committee" within the Military Affairs Council.

(b) If yes, is there a reason that the rules provide that the applications will be forwarded to the Council, rather than the Committee? **N/A**

(2) Section IV, *Application Review and Approval* – Along the same vein as question (1), subsection (3) of the rules provides that the Council shall review each application; however, Ark. Code Ann. § 15-4-3908(d), as amended by Act 522, provides that the "committee" shall do so. Is there a reason that the rules provide the Council shall review the applications, rather than the Governor's Military Affairs Committee? **RESPONSE:** AEDC has revised the proposed rule in this section and replaced "committee" with "Council."

(3) Section IV, *Application Review and Approval* – Also in subsection (3), the rules provide that the recommendations of the Council shall be made to the Executive Director, defined in the rules as the Executive Director of AEDC. However, Ark. Code Ann. § 15-4-3908(d)(2) and (e), as amended by Act 522, provides that the recommendations shall be returned to the Military Affairs Director, who shall conduct the final review and forward the application to the Executive Director for approval. Is there a reason that the rules appear to differ from the procedure set forth in the statute? **RESPONSE:** AEDC has revised the proposed rule to be consistent with the Code.

(4) Section IV, *Application Review and Approval* – Subsection (4) of the rules reference a review of the "Council's" recommendations; however, Ark. Code Ann. § 15-4-3908(d), as amended by Act 522, provides that it is the Committee that makes the recommendations. Is there a reason for

the difference? **RESPONSE:** The Governor's Military Affair's Council replaced the former term "Committee." There is no separate committee that reviews and recommends projects for grant funding.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The proposed amendments include changes made in light of Act 522 of 2021, sponsored by Senator Jane English, which created the Arkansas Military Affairs Council Act and established the Military Affairs Grant Program. Pursuant to Arkansas Code Annotated § 15-4-3910, as amended by Act 522, the Military Affairs Division shall adopt rules to implement and administer the Arkansas Military Affairs Council Act, Ark. Code Ann. §§ 15-4-3901 to 15-4-3910, including without limitation rules regarding the application process for grants provided under the Military Affairs Grant Program, disbursement of grant funds, and reporting required by an eligible applicant that receives grant funds.

c. SUBJECT: Arkansas Public Roads Tax Credit Program

DESCRIPTION: The Department of Commerce's Arkansas Economic Development Commission ("AEDC") seeks to promulgate a proposed amended administrative rule for the Public Roads Improvements Tax Credit Program. The amended rule is necessary to implement changes to the program made by Act 628 of 2021.

Act 1347 of 1999 created the Arkansas Public Roads Improvements Credit Act that established the Public Roads Tax Credit Program. The program provides a tax credit to individuals and corporations who donate to the Public Roads Incentive Fund. The Public Roads Incentive Fund may be used to fund approved public roads projects. Act 628 of 2021 amended the existing program.

The proposed amended rule makes the following changes to the existing Arkansas Public Roads Improvements Tax Credit Program:

- Sets the tax credit at 33% of a taxpayer's contribution to the Public Roads Incentive Fund;
- Increases the amount of tax credits a taxpayer may use to offset their tax liability in any one year from 50% to 100%;
- Extends the carry forward period for unused tax credits from three years to ten years; and

- Clarifies definitions and makes various technical corrections to the rule.

PUBLIC COMMENT: A public hearing was held on October 1, 2021. The public comment period expired that same day. The Commission received no comments.

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

(1) Section II.H. – The proposed change in this definition changes the name of the State Highway Commission to the Arkansas Department of Transportation; however, Ark. Code Ann. § 15-4-2303(8)'s definition of "governing authority" continues to retain reference to the State Highway Commission. A similar change was made later in the rules in Section III.B.4.a. Is there a reason for the change in entity? **RESPONSE:** AEDC has revised both proposed rule sections referenced in this question to "Arkansas State Highway Commission."

(2) Section V.B. – The rule provides that the credit allowed shall not exceed 100% of the taxpayer's net Arkansas state income tax liability "after all other credits and reductions in tax have been calculated"; however, Act 628 of 2021, § 1, specifically struck that quoted language. Is there a reason that the Commission is retaining it? **RESPONSE:** AEDC has revised the proposed rule to strike the language referenced in this question.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The amended rules include changes made in light of Act 628 of 2021, sponsored by Senator Jonathan Dismang, which amended the Arkansas Public Roads Improvements Credit Act ("Act") and increased the use of the program created under the Act by making it easier to use the tax credit provided under the Act. Pursuant to Arkansas Code Annotated § 15-4-2307(4), the Arkansas Economic Development Commission shall administer the provisions of the Act, Ark. Code Ann. §§ 15-4-2301 to 15-4-2307, and shall have the power and duty to promulgate rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., necessary to carry out the provisions of the Act.

d. SUBJECT: Spay and Neuter Pet Grant Program

DESCRIPTION: The Rural Services Division of the Arkansas Economic Development Commission ("AEDC") seeks to promulgate an amendment to the Spay and Neuter Pet Grant Program Rule. The amendment would increase the maximum amount of matching grant funds that may be awarded per project.

Act 494 of 2019 appropriated funds to AEDC's Rural Services Division to provide matching grants to organizations that provide spay and neuter services for cats and dogs. Applicants may be cities of the first class, cities of the second class, incorporated towns, or counties of the State of Arkansas. The existing program has a maximum amount of matching grant funds of $3,000 per project. The program requires a match of at least 50% of the total project costs. Funding priority will be given to rural communities, rural cities, and rural counties.

The proposed amended rule would increase the maximum amount of matching funds that may be awarded from $3,000 per project to $6,000 per project and makes technical changes and corrections.

PUBLIC COMMENT: A public hearing was held on October 1, 2021. The public comment period expired that same day. The Commission received no comments.

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

What prompted the Commission's decision to increase the maximum amount of matching funds from $3,000 to $6,000? **RESPONSE:** The decision to increase the maximum amount of matching funds for the Spay and Neuter Pet Grant Program came from recommendations from program applicants and grantees in past grant cycles. Some areas have significant need of funds of this type, and an increase in the maximum amount would allow them to scale up programs that can have a greater impact in their communities.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: In accordance with state and federal law, the Arkansas Economic Development Commission shall 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). Act 494 of 2019 appropriated funds to the Commission for statewide grants to organizations that provide spay and neuter services. Pursuant to Ark. Code Ann. § 15-4-209(b)(5), the Commission may promulgate rules necessary to implement the programs and services offered by the Commission.

4. DEPARTMENT OF COMMERCE, STATE INSURANCE DEPARTMENT (Mr. Dan Honey, items a, e; Ms. Crystal Phelps, items b, c; Mr. Jim Brader, item d)

a. SUBJECT: Rule 106: Network Adequacy Requirements for Health Benefit Plans (Revision)

DESCRIPTION:

Legislative Authority for Rule
The proposed rule revises and updates existing AID Rule 106, setting forth network adequacy requirements for health plans. Authority for the rule is pursuant to Ark. Code Ann. § 23-61-108(a)(1) and by Ark. Code Ann. § 23-61-108(b)(1) to promulgate rules necessary for the effective regulation of the business of insurance and as required for this State to be in compliance with federal laws, namely Section 2702(c) of the Public Health Service Act and 45 CFR § 156.230, which require that Qualified Health Plans provide sufficiently accessible medical providers.

Background and Purpose of Rule
The purpose of revisions to existing Rule 106 is to update the Rule to accurately reflect AID processes and procedures regarding review and enforcement.

Explanation of the Proposed Rule
The proposed rule amends existing AID Rule 106 by: (1) reflecting processes and procedures to accurately reflect AID enforcement; (2) clarifying definitions to include all dental plans; (3) clarifying time and distance standards regarding network adequacy requirements.

AID Rule 106 was effective January 1, 2015. Since then, AID has updated its processes and procedures regarding the implementation and enforcement of the rule. Namely, AID has tightened up and more closely monitored network adequacy based on provider type taxonomy codes as defined by the National Uniform Claim Committee (NCCU) taxonomy codes. This is to ensure that the taxonomies associated with a particular provider type adequately convey the scope of said provider type. As opposed to the submission by plans of access maps and compliance

percentages, the updated Rule requires submission of more detailed data in order to facilitate a common and uniform understanding of each provider's provider type(s) classification.

The proposed amendments also clarify definitions to apply the rule to all dental plans, whether embedded or stand-alone, and both on and off the Marketplace Exchange.

Finally, time and distance standards as they relate to network adequacy requirements are clarified by the amended rule, telemedicine is defined, and language was added, providing the Commissioner authority and discretion to establish guidelines

PUBLIC COMMENT: A public hearing was held on August 26, 2021. The public comment period expired on August 26, 2021. The State Insurance Department provided the following summary of comments it received and responses thereto:

The following include comments received by the Department from Zane Chrisman and Frank Sewall at Arkansas Blue Cross Blue Shield, and the agency's respective responses:

Comment #1: Section 5(M) allows the commissioner discretion to publish more detailed time/distance standards as well as guidelines related to telemedicine in SERFF and/or in the annual bulletin. We believe that this should be done through the Rule Promulgation Process which would allow this line to be struck, or that a company be given a minimum time period of a year to comply with any new standards so that our reporting, contracting, and systems can meet any new requirements. We recommend the following change if this portion is to be retained:

"The Commissioner may publish more detailed and specific network adequacy time/distance standards, as well as guidelines regarding the use of telemedicine to meet network adequacy standards, though publication via SERFF Network Adequacy Data Submission Instructions and the annual bulletin for setting forth certification requirements for ACA Submissions. Such new standards will become effective for review on January 1 of the following year."

Agency Response: The Department finds this request reasonable and has incorporated suggested language into Section 5(M) of the rule.

Comment #2: Section 6 (A)(5) states that the health carrier shall provide accurate provider practice addresses to the Department and that such addresses will be current at the time of submission. The concern is that if a provider does not update or comply with the new federal Provider

Directory regulations, then the company could be punished for the provider's non-compliance. We would recommend that this be changed to: "Health carriers shall verify practice addresses at least once every ninety (90) days."

Agency Response: The Department finds this request reasonable and has incorporate language similar to that suggested into Section 6(A)(5) of the rule.

The proposed effective date is January 1, 2022.

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

LEGAL AUTHORIZATION: The Insurance Commissioner, in consultation with the Secretary of the Department of Commerce, may make reasonable rules necessary for or as an aid to the effectuation of any provision of the Arkansas Insurance Code. *See* Ark. Code Ann. § 23-61-108(a). In addition, the commissioner, in consultation with the Secretary of the Department of Commerce, shall have the authority to promulgate rules necessary for the effective regulation of the business of insurance or as required for this state to be in compliance with federal laws. *See* Ark. Code Ann. § 23-61-108(b).

b. SUBJECT: Rule 107: Regulation of Medication Step Therapy Protocols

DESCRIPTION:

Legislative Authority for Rule
This proposed Rule implements Act 97 of 2021, § 7(a), which requires the Arkansas Insurance Department to issue rules implementing Act 97.

Background and Purpose of Rule
The purpose of this Rule is to implement Act 97 of 2021, which requires healthcare insurers to base medication step therapy protocols on appropriate clinical practice guidelines or published peer-reviewed medical literature, and to offer a fair, transparent process for requesting a step therapy protocol exception.

Explanation of the Proposed Rule
Health insurers often control healthcare costs through implementing medication step therapy protocols to encourage insureds to choose lower-priced medications before taking more expensive drugs. A health insurer may not cover the higher-priced medication until patient experience demonstrates that lower-priced options do not work for the patient.

Sometimes requiring a person to follow a step therapy protocol may have adverse or dangerous consequences for a patient who may be forced to take an inappropriate drug prior to coverage of a more expensive drug. Step therapy protocols may also interfere with a health care provider's right to make treatment decisions.

These protocols are becoming more common and are not always applied consistently. This proposed Rule establishes standards for developing clinical review criteria for medication step therapy protocols. It also describes the process for requesting an exception to a step therapy protocol and the circumstances that require an insurer to grant an exception. The Rule provides a timeline for responding to exception requests and deems any insurer who fail to respond to a request within a specified time period to have approved the request for exception.

Violations of this rule are considered to be unfair or deceptive acts under Ark. Code Ann. § 23-66-206, the Trade Practices Act. Therefore, the penalties, actions, or orders, including but not limited to monetary fines, suspension, or revocation of license, as authorized under Ark. Code Ann. §§ 23-66-209 and 23-66-210, apply to violations of this Rule.

PUBLIC COMMENT: A public hearing was held in this matter on August 26, 2021. The public comment period expired on August 27, 2021. The State Insurance Department received no public comments.

The proposed effective date is November 1, 2021.

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

LEGAL AUTHORIZATION: Act 97 of 2021, sponsored by Senator Cecile Bledsoe, regulates step therapy protocols utilized by insurers through requiring clinical review criteria, transparency, a process for requesting exceptions to step-therapy protocols, an appeals process, and timelines. Temporary language contained in § 7 of the Act authorizes the Insurance Commissioner to promulgate rules necessary to implement § 2 of the Act. *See* Act 97 of 2021. This rule also implements Act 645 of 2021, sponsored by Senator Cecile Bledsoe, which clarified the applicability of step-therapy protocols and amended the definition of "health benefit plan" to include individual qualified health insurance plans. *See* Act 645 of 2021.

c. SUBJECT: Rule 120: Coverage for Early Refills of Prescription Eye Drops

DESCRIPTION:

Legislative Authority for Rule
Section 2(a)(1) of Act 357 of 2021 requires the Arkansas Insurance Department ("AID") to issue rules implementing Act 357.

Background and Purpose of Rule
The purpose of this Rule is to implement Act 357 of 2021, which describes circumstances under which health benefit plans are required to provide coverage for early refills of prescription eye drops.

Explanation of the Proposed Rule
Patients suffering from glaucoma and other degenerative eye diseases use daily prescription eye drops to prevent further harm. Many patients, particularly older patients, either spill some portion of the prescription eye drops or waste some portion of the drops due to failure to properly aim the drop into the eye. Such patients are then at risk of running out of their drops before a health benefit plan will provide coverage for a refill. Without the availability of early coverage, patients would either have to pay full price for an early refill or go without the drops and risk further endangering their vision. This rule explains when insurers are required to allow early refills.

According to the American Academy of Ophthalmology, more than 50% of the United States offers early refills of prescription eye drops. Oklahoma and Tennessee also allow early refills of prescription eye drops. The Centers for Medicare and Medicaid Services have similar guidelines for refilling eye drops for the Medicare Part D program.

Violations of this rule are considered to be unfair or deceptive acts under Ark. Code Ann. § 23-66-206, the Trade Practices Act. Therefore, the penalties, actions or orders, including but not limited to monetary fines, suspension, or revocation of license, as authorized under Ark. Code Ann. §§ 23-66-209 and 23-66-210, apply to violations of this Rule.

PUBLIC COMMENT: A public hearing was held on August 26, 2021. The public comment period expired on August 27, 2021. The State Insurance Department received no public comments.

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

1. In Section 1, concerning authority, it appears that this Act ended up being codified as Ark. Code Ann. § 23-79-2201. Will the Department provide a revised version correcting this? **RESPONSE:** [A revised markup was provided].

2. The rulemaking authority for this rule is contained in temporary language, and as such, is not codified as indicated in the authority section. Will the Department provide a revised version clarifying where the rulemaking authority is contained? **RESPONSE:** [A revised markup was provided].

3. In Section 5, concerning enforcement,
(a) Could you please identify the specific section of Ark. Code Ann. § 23-66-206 which would make violations of this rule constitute an unfair or deceptive act?

(b) Is the Department relying upon authority contained in Ark. Code Ann. § 23-66-207(a) to define violation of the rule as an unfair or deceptive act? **RESPONSE:** An insurer that covers prescription eye drops under a health benefit plan and makes a practice of failing to provide coverage for early refills of prescription eye drops is engaging in an unfair claims settlement practice pursuant to Ark. Code Ann. § 23-66-206(13) or unfair discrimination pursuant to Ark. Code Ann. § 23-66-206(14)(B). If there is any doubt that this practice would not be considered to be plainly covered by either of these defined practices, then AID, in accordance with Ark. Code. Ann. § 23-66-207, provided notice of this rule and a hearing to identify this practice as being a specific method of competition, act, or practice prohibited by Ark. Code Ann. § 23-66-206.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Act 357 of 2021, sponsored by Representative Stephen Magie, required a health benefit plan to provide coverage for early refills of prescription eye drops and established the Arkansas Coverage for Early Refills of Prescription Eye Drops Act. Temporary language contained in the act authorized the Insurance Commissioner to promulgate rules necessary to implement the Act. *See* Act 357 of 2021, § 2.

d. SUBJECT: Rule 126: Insurance Business Transfers

DESCRIPTION:

Legislative Authority for Rule
Act 1018 of 2021; Also, *see* Ark. Code Ann. §§ 23-69-502 through 512.

Background and Purpose of Rule
The Insurance Business Transfer ("IBT") rule implements Act 1018 of 2021, which creates a process for one insurance company ("transferring insurer") to develop and implement a plan, subject to approval by the Insurance Commissioner, to transfer some or all of its rights, obligations, and risks on a group of insurance policies, typically older "legacy" policies, to another company ("assuming insurer").

Such a transfer results in a novation of the transferred contracts of insurance or reinsurance resulting in the assuming insurer becoming directly liable to the policyholders or reinsurers of the transferring insurer and extinguishing the transferring insurer's insurance obligations or risks under the contracts. The transfer must be reviewed and approved by both the Insurance Commissioner and a circuit court, who both evaluate the transfer to avoid any adverse impact to policyholders.

The proposed statutory process to accomplish such a transfer and novation includes filing a plan with the Insurance Commissioner, providing notice to all policyholders holding policies that are part of the subject business; the chief insurance regulator in each jurisdiction in which the applicant holds or has ever held a certificate of authority, and in which policies that are part of the subject business were issued or policyholders currently reside; national guaranty associations and reinsurers who have impacted agreements; and by publication in a newspaper of general circulation in the state in which the applicant has its principal place of business, and any other publication as required by the Commissioner.

An independent expert will be appointed by the Commissioner who will conduct a thorough review of the plan, including examination of financial audits and statements, and will offer an opinion on the financial condition of the transferring insurer and the likely effect, if any, on the policyholders. The Commissioner then accept or rejects the plan. If accepted, the plan is submitted to a circuit court in Pulaski County through a petition by the transferring applicant with the Commissioner as a party, and a hearing is then to be scheduled following a public comment period. Assuming the implementation plan is acceptable and the Court finds no materially adverse effects on policyholders, an implementation order is the final result.

PUBLIC COMMENT: A public hearing was held in this matter on August 26, 2021. The public comment period expired on August 26, 2021. The State Insurance Department provided the following summary of comments it received:

1. Stephen DiCenso and Luann Petrellis, Milliman, Inc.
These commenters noted several places in the proposed rule where language was included that was not specifically related to Insurance Business Transfers ("IBTs") but rather to another similar type of transaction known as a Division. For example, the term "resulting insurer" is not one that is defined in the IBT Act and is related to divisions. Another example is found in several references to "allocation of liabilities," another concept that is from the division statutes but not found in IBTs. The commenting party recommended changing the terms to "transferring and assuming insurers" and removal of the term "allocation." **RESPONSE:** The Department agrees with these comments and has incorporated suggested replacement language or removed confusing terms from the proposed rule.

2. Paul Martin, Reinsurance Association of America
This commenter requested that the term "reinsurers" be added to several sections of the rule where "policyholders and claimants" were listed. The requesting party felt that this would ensure that the safeguards and protections for policyholders and claimants would then also be extended to reinsurers. **RESPONSE:** The Department has considered these comments and has no objection. The suggested language has been incorporated into the proposed rule.

3. Derrick Smith, Representing the American Council of Life Insurers
This commenter asked AID to consider differences in guaranty association coverage levels when determining whether an IBT presents a material adverse impact on policyholders. The commenter noted that in that rare circumstance, when the assuming insurer has demonstrated an extraordinary event, preventing it from being licensed in the same state as the transferring insurer, in that case -- and the assuming insurer were to later become insolvent, the Arkansas Guaranty Fund would provide guaranty coverage. Where it becomes a possibility of material adverse impact is that some states have varying levels of guaranty fund coverage. For instance: Connecticut, Minnesota, New Jersey, and New York all have $500,000 limits for life insurance death benefits, while Arkansas has a limit of only $300,000. Again, in a rare circumstance where the assuming insurer is licensed in Arkansas, but is assuming risks in one of those states, who's not licensed in that state, then the guaranty fund coverage for the individuals would presumably be $300,000 as opposed to the $500,000 if they kept -- if they stayed with their existing insurer. **RESPONSE:** The Department has considered these comments and agrees with the concern.

However, it believes existing provisions of the rule and the underlying legislation adequately address the issues raised. In any IBT transaction conducted in Arkansas, the independent expert appointed by the Commissioner would certainly determine whether there was any guaranty fund coverage differential for policy holders in other states and, should the differential be determined to be material, would likely not recommend that the transfer plan be approved by the Commissioner for submission to a circuit court.

4. Joe Woods, American Property Casualty Insurance Association
A) This commenter expressed concerns regarding the time frames for public comment periods and for providing notice to regulators, guaranty funds, policyholders, and reinsurers in other states. Specifically, the commenter felt that the sixty-day (60) time frame for public comments was too short, and that the default notice period of 15 days if not otherwise specified was inadequate.
B) The commenter expressed concern with the confidentiality provisions in Section 8 of the proposed Rule. **RESPONSE:** A) The Department has considered these comments and notes that the time frames in the rules match exactly and are governed by the time frames set out in the underlying legislation, Act 1018 of 2021. The Department also notes that that Act was patterned on the NCOIL Model Law on IBTs, and no changes were made to time frames in the Act nor in this proposed rule.
B) The confidentiality provisions were brought into the rule for purposes of clarification, but already exist in the Insurance Code and are applicable to most transactions in which a company submits proprietary information to the Department. The Department proceeds with all interactions with regulated entities in a manner that is as transparent as possible, while at the same time safeguarding trade secrets and other information of such entities that could give an unfair competitive advantage to a rival. The Department also notes that statue cited in the rule provides discretion to the Commissioner to disclose such information to persons aggrieved or affected by the investigation or examination. Ark. Code Ann. § 23-61-103(d)(5)(A)(i).

5. Jon Schnauz, National Association of Mutual Insurance Companies
This commenter expressed concern over the proposed rule's lack of requiring general notification by the Insurance Department when an applicant seeks an IBT. In other words, beyond the notice requirements found in the statute and the rule with regards to those that must be made as an IBT is processed, this commenter requested that the Department provide general notice of an application being filed by posting notice on its website and through its routine email distribution system to interested parties in the industry. **RESPONSE:** The Department has considered these comments and agrees that such early notification to the industry

would be useful. Language has been added to the rule to effectuate such occurrences.

6. Frank W. Folger, Nationwide Insurance Company
This Commenter requested that the Department provide early general notification when it receives an application for an IBT. The commenter also recommended allowing potentially impacted parties early access to analysis used by an insurer to seek an IBT. **RESPONSE:** The Department has considered these comments and agrees that such early notification to the industry would be useful. Language has been added to the rule to effectuate such occurrences. As for early access to documentation, the Department does not believe that language is needed in light of the response to comment 4, section B above.

The proposed effective date is January 1, 2022.

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

LEGAL AUTHORIZATION: Act 1018 of 2021, which was sponsored by Senator Jason Rapert, established the Arkansas Insurance Business Transfer Act. The Act established the requirements for notice and disclosure, as well as standards and procedures for the approval of an insurance business transfer and novation by the Insurance Commissioner and the Pulaski County Circuit Court under an insurance business transfer plan. *See* Act 1018 of 2021, § 1, codified as Ark. Code Ann. § 23-69-502(b)(1). The Insurance Commissioner has authority to promulgate rules to implement the Act. *See* Act 1018 of 2021, § 1, codified as Ark. Code Ann. § 23-69-512.

e. SUBJECT: Rule 127: Authorization of Off-Label Use for Drug Treatments for Pediatric Acute-Onset and Autoimmune Neuropsychiatric Syndrome

DESCRIPTION:

Legislative Authority for Rule
Act 1054 of 2021, codified at Ark. Code Ann. § 23-79-1903, which requires the Arkansas Insurance Department ("AID") to issue rules for the implementation and administration of coverage of off-label use for drug treatments for pediatric acute-onset neuropsychiatric syndrome ("PANS"), and pediatric autoimmune neuropsychiatric disorders associated with streptococcal ("PANDAS") infection.

Background and Purpose of Rule

The purpose of this Rule is to enforce Act 1054 of 2021, codified at Ark. Code Ann. § 23-79-1903, pertaining to insurance coverage for off-label use of drug treatments for pediatric acute-onset neuropsychiatric syndrome ("PANS"), and pediatric autoimmune neuropsychiatric disorders associated with streptococcal ("PANDAS") infection. (hereafter, Act 1054).

Explanation of the Proposed Rule
The proposed Rule implements Act 1054 of 2021. The proposed rule:
1. creates a mechanism to review and evaluate coverage for off-label drug treatment for PANS and PANDAS insurance adjudications;
2. permits fees or charges for reimbursement from insurers for the off-label drug treatment for PANS and PANDAS; and also
3. provides needed definitions not in Act 1054 of 2021

PUBLIC COMMENT: A public hearing was held on September 30, 2021. The public comment period expired on September 30, 2021. The State Insurance Department indicated that it received no public comments.

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

1. Act 1054 of 2021 was codified as Ark. Code Ann. § 23-79-1905. This differs from the Act. (Please see the updated code version, which is available on Lexis.) The proposed rule references Ark. Code Ann. § 23-79-1903. Could you please amend the rule to reflect the correct section throughout the rule? **RESPONSE:** Thanks for catching that. See corrected attachment.

2. Concerning the definition of "healthcare service" and "healthcare provider" in Section 2 of the rule:
(a) Do these definitions appear in Act 1054? If so, could you please identify the section of Act where they appear? **RESPONSE:** No
(b) If not, did SID define these terms for the purpose of these rules? **RESPONSE:** Yes
(b) If there was a particular source/code section from where these definitions came from, you please identify the source/code section? **RESPONSE:** These are relatively generic terms. Our purpose here is to specify that for purposes of this rule these terms refer to services and providers as they relate to PANS/PANDAS.

The proposed effective date is January 1, 2022.

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

LEGAL AUTHORIZATION: These rules implement Act 1054 of 2021, sponsored by Senator Kim Hammer. The Act, codified as Ark. Code Ann. § 23-79-1905, authorized the Insurance Commissioner to develop and promulgate rules for the implementation and administration of the section, concerning off-label use of drug treatment to treat pediatric acute-onset neuropsychiatric syndrome and pediatric autoimmune neuropsychiatric disorders associated with streptococcal infection.

5. DEPARTMENT OF COMMERCE, STATE INSURANCE DEPARTMENT, STATE BOARD OF EMBALMERS, FUNERAL DIRECTORS, CEMETERIES, AND BURIAL SERVICES (Ms. Amanda Gibson)

a. SUBJECT: Rule 1: Rule Pertaining to Embalmers, Funeral Directors, Funeral Establishments, Crematories, Crematory Retort Operators, and Transport Services

DESCRIPTION:

Legislative Authority for Rule:

The proposed Rule implements various provisions of Ark. Code Ann. § 17-29-301 et seq.

Background and Purpose of Rule:

The proposed amendments to the existing rule add overdue updates required by previously enacted legislation, correct grammatical and typographical errors, and add a code of ethics, record retention requirements, and require the use of universal precautions when handling the human dead.

Key Provisions in the Rule

- Clarifies the required amounts of insurance coverage for funeral establishments;
- Adds requirements for the construction of crematories and requires those who operate a crematory retort to become licensed;
- Simplifies apprenticeship requirements;
- Clarifies requirements for reciprocal licenses;
- Adds requirements for automatic licensure of military service members, veterans and spouses;
- Clarifies and reduces the requirements of those individual licenses that become delinquent and need to be reinstated, to include a lower reinstatement fee;
- Adds requirements that universal precautions be used when handling the human dead;
- Adds record retention requirements; and

- Adds a code of ethics and minimum standards of service and professional conduct.

PUBLIC COMMENT: A public hearing was held in this matter on September 21, 2021. The public comment period expired on September 21, 2021. The State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services received no public comments.

The proposed effective date is January 1, 2022.

FINANCIAL IMPACT: The board indicated that the proposed rules have a financial impact. Specifically, the board estimated a cost of $2,000 for the next fiscal year and provided the following explanation:

The Board has received 9 applications for crematory authorities (Type C licensure) in the last five years. Estimating 2 applications per year, the sum would be $50.00 paid in construction permit fees per fiscal year. A fee for the permit is required pursuant to Ark. Code Ann. § 17-29-313(a)(2)(B)(ii)(c). Further, there are approximately 40 crematories licensed in the State. Arkansas Code Annotated § 17-29-314(a) requires any person who operates a retort to be licensed as a crematory retort operator, and in order to be issued a license to operate a retort, the applicant must pay a fee as required by subsection (a)(3). The Board is proposing a $50 fee for the application to become licensed as a retort operator. If all crematories license one of their personnel, whether the fee is paid by the individual retort operator or by the crematory authority, 40 crematories multiplied by (one) $50 retort operator license application fee totals $2,000.00 per fiscal year.

The proposed raise in delinquency fees (from $50 per quarter to $450 per quarter) for all establishment types (business licenses) will cost licensees more only if they renew late. On average, only a handful of establishments are delinquent in renewing the establishment license.

The increased insurance coverage requirement for transport services will affect no more than approximately twenty licensed transport service establishments (Type D licensure).
Any costs to implement record retention requirements, training on using universal precautions, and training on the proposed code of ethics and professional standards should be minimal. Most funeral establishments already implement these factors in the normal course of running their businesses.

LEGAL AUTHORIZATION: The State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services was created within the State Insurance Department pursuant to Ark. Code Ann. § 23-61-1102. It was

subsequently transferred to the Department of Commerce along with the State Insurance Department pursuant to Ark. Code Ann. § 25-43-302(a)(24). The board has authority to:

- Promulgate appropriate rules for the transaction of business of the board, for the betterment and promotion of the standards of service and practice, and to establish the standards of practice and a code of ethics for persons licensed to or authorized under Ark. Code Ann. § 17-29-301 *et seq.*, Ark. Code Ann. § 20-17-1001 *et seq.*, or Ark. Code Ann. § 23-78-101 *et seq.* *See* Ark. Code Ann. § 23-61-1103(a)(3);
- Promulgate appropriate rules to establish qualifications necessary to practice the science of embalming, engage in the business of funeral directing, practice cremation, transport human remains, and operate a funeral establishment, mortuary service, crematorium, retort, or transport service firm to transport human remains. *See* Ark. Code Ann. § 23-61-1103(a)(3)(D);
- Develop, establish by rule, and administer a mandatory or voluntary continuing education program and its requirements for persons licensed or authorized by the board. *See* Ark. Code Ann. § 23-61-1103(a)(4)(A);
- Promulgate rules and publish forms to enforce and administer laws governing embalmers, funeral directors, and funeral establishments (under Ark. Code Ann. §§ 17-29-301 *et seq.*, 17-29-401 *et seq.*, and 17-29-501 *et seq.*); burial associations (under Ark. Code Ann. § 23-78-101 *et seq*.); and cemetery companies (under Ark. Code Ann. §§ 20-17-1001 *et seq.* and 20-17-1301 *et seq.*). *See* Ark. Code Ann. § 23-61-1103(a)(5);
- Adopt bylaws and rules in connection with the care and disposition of human remains in this state. *See* Ark. Code Ann. § 23-61-1103(b); and
- Establish and collect reasonable fees. *See* Ark. Code Ann. § 23-61-1103(a)(12).

b. SUBJECT: Rule 2: Withdrawal from Permanent Maintenance Fund

DESCRIPTION: This rule is needed to implement Section 1 of Act 343 of 2021, which amends Ark. Code Ann. § 20-17-1013 by adding subsection (g). The statute and proposed rule allow cemetery companies to make a withdrawal from the principal balance of the permanent maintenance fund, no more than 20% of the balance, once every ten years. The withdrawals can only be used to fund expenditures to make infrastructure repairs and capital improvements to the perpetual care cemetery.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on September 30, 2021. The State

Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services received no public comments.

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: Act 343 of 2021 ("the Act"), sponsored by Senator Missy Irvin, modified the Cemetery Act for Perpetually Maintained Cemeteries and the Insolvent Cemetery Grant Fund Act. A cemetery company may make a withdrawal from the permanent maintenance fund for the purpose of making infrastructure repairs and capital improvements to the perpetual care cemetery no more than one time every ten years. A withdrawal shall not be made without prior approval from the board. *See* Act 343 of 2021, § 1.

Pursuant to temporary language in § 4 of the Act, the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services shall promulgate rules necessary to implement this Act. *See* Act 343 of 2021, § 4.

6. DEPARTMENT OF EDUCATION, COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION (Ms. Lori Freno)

a. SUBJECT: CAPSAFT Rules Governing the Academic Facilities Partnership Program, Including Appendix "A" Excerpts and Appendix "B"

DESCRIPTION: The Department of Education's Commission for Arkansas Public School Academic Facilities and Transportation ("CAPSAFT") proposes changes to its Rules Governing the Academic Facilities Partnership Program, including Appendix A excerpts and Appendix B. Act 801 of 2017 charged the Advisory Committee on Public School Academic Facilities with assisting the Division of Public School Academic Facilities and Transportation ("DPSAFT") with conducting a comprehensive review of the Academic Facilities Partnership Program ("Partnership Program") and other academic facilities programs. Concerning the Partnership Program, the review included analysis of the current and long-term viability of the program, the efficacy of the academic facilities wealth index, project ranking and prioritization, and program rules. Many of the amendments to these rules result from Committee recommendations, several of which were adopted by the CAPSAFT.

The rules provide that the DPSAFT will develop two academic facility Statewide Needs Lists: (1) "Warm, Safe, and Dry," and (2) "Space/Growth." Within these lists, academic facilities will be ranked based upon highest need to lowest need. This will enable the DPSAFT to reach out to school districts with the greatest facility needs. The criteria considered for the Warm, Safe and Dry List are: (1) campus value, and (2) facility condition index. The criteria considered for the Space/Growth List are: (1) projected enrollment growth percentage, (2) projected enrollment growth, (3) district suitability, and (4) district suitability percentage.

The amendments also change project prioritization, or ranking. There will be two prioritization lists; one for Warm, Safe, and Dry, and another for Space/Growth. The criteria considered for both lists are: (1) wealth index ranking, (2) Statewide Facilities Needs List ranking, and (3) percentage district revenue spent on maintenance of academic facilities for the last five years.

The rules also change the method of project funding. There will be two separate categories of funds: one for Warm, Safe, and Dry, and the other for Space/Growth. The available funds will be split between the two categories. The projects are funded in rank order in each category until all funds are allocated or until all projects are funded. If funds remain in one category after all projects in that category are funded for that cycle, the remaining funds will transfer to cover any unfunded projects in the other category.

The amended rules also require a facility to have a facility condition index ("FCI") of 65% to qualify for State financial participation, where in the past the DPSAFT would qualify a facility for decommissioning due to age alone. They also require that the DPSAFT will use five-year growth projections instead of ten-year growth projections in determining fundable space in additions and new facilities. Other significant changes include the use of Division enrollment projections only, elimination of State Financial Participation for any gym space used for competition, and the disallowing of excess space funding.

The amendments to Appendix "A," Arkansas Public School Academic Facility Manual, update outdated portions of the Manual that apply to Career and Technical Education spaces. The amendments include new space plates and a revised POR to bring them in line with current CTE programs.

The amendments to Appendix "B," Project Agreement, clarify that school districts may start certain Partnership Program Project activities prior to

CAPSAFT funding of a project (at the district's own risk that funding might not be available). Districts also will have an extra year to complete the final "punch list" and request final payment from the State. The amendments also clarify that funded projects must be and remain for academic purposes only and that the DPSAFT may monitor to ensure compliance. Districts also must submit contract costs for each project separately and may not combine projects on the same pay request.

Changes Made Following the Public Comment Period

Clarifications and corrections were made in language throughout the rules. The following is a summary of the modifications made to the proposed rules as a result of feedback received during the public comment period. None of the changes are substantive.

• Under the definition of "Additions," a couple of items related to funding of certain spaces originally proposed were deleted. This will give districts more flexibility to construct needed spaces.

• Under the definition of "Suitability" for a new construction project on an existing campus, the requirement that PORs be completed for all campuses in the district was changed back to requiring PORs only for the campus at which the construction will take place. For construction projects on new campuses, the requirement for PORs was modified to include all other campuses capable of serving the same grade(s).

• Under the definition of Warm, Safe, and Dry Systems Replacement, the limit originally proposed to POR required space size for current campus enrollment was removed.

• Section 4.05.10, which has been added to the proposed rules, was removed when the Division became aware that the Districts already submit this information to ADE, thus saving time for both the District and Division.

• In Section 7.02, the phrase "during normal school operating hours" was eliminated. Similar language was removed from the Project Agreement. This statement was deemed unnecessary and could have led to confusion with other parts of the rule.

• For consistency, the proposed Project Agreement will go into effect in the 2023-2025 funding cycle along with the proposed Partnership Program Rules.

• Under scope of project in the proposed Project Agreement, language was struck referring possible repayment of funds. The language was deemed unnecessary.

PUBLIC COMMENT: A public hearing was held on August 5, 2021. The public comment period expired on August 20, 2021. Due to the volume of comments received, the public comment summary can be found electronically on the paperclip for the November 17, 2021 meeting of the Administrative Rules Subcommittee.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Commission for Arkansas Public School Academic Facilities and Transportation ("CAPSAFT") shall promulgate rules necessary to administer the Arkansas Public School Academic Facilities Funding Act, Ark. Code Ann. §§ 6-20-2501 through 6-25-2517, which shall promote the intent and purposes of the Act and assure the prudent and resourceful expenditure of state funds with regard to public school academic facilities throughout the state. *See* Ark. Code Ann. § 6-20-2512. Established within the Act is the Academic Facilities Partnership Program under which the Division of Public School Academic Facilities and Transportation shall provide state financial participation based on a school district's academic facilities wealth index in the form of cash payments to a school district for eligible new construction projects. *See* Ark. Code Ann. § 6-20-2507(a). *See also* Ark. Code Ann. § 6-21-114(e)(2)(A) (providing that the CAPSAFT may adopt, amend, and rescind rules as necessary or desirable for the administration of the Arkansas Public School Academic Facilities Program and any other related program).

7. DEPARTMENT OF FINANCE AND ADMINISTRATION, ARKANSAS RACING COMMISSION (Mr. Byron Freeland)

a. SUBJECT: Thoroughbred Rule 1217 Medication and Prohibited Foreign Substances

DESCRIPTION: The proposed amendment to Thoroughbred Rule 1217 extends the prohibition on administration of clenbuterol and other B-2 agonists from 60 to 120 days before a race and changes other provisions of the existing rule to more closely align with industry practices and the latest model rules in the industry.

PUBLIC COMMENT: A public hearing was held on this rule on October 14, 2021. The public comment period expired on October 14, 2021. The agency indicated that it received no public comments.

The proposed effective date is December 1, 2021.

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

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

b. SUBJECT: Thoroughbred Rule 1217.1 Anabolic Steroids

DESCRIPTION: This proposed amendment is to more closely align with current industry practice and current model rules on anabolic steroids.

PUBLIC COMMENT: A public hearing was held on this rule on October 14, 2021. The public comment period expired on October 14, 2021. The agency indicated that it received no public comments.

The proposed effective date is December 1, 2021.

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

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

c. SUBJECT: Thoroughbred Rule 1217.5 Uniform Guidelines for Foreign Substances and Recommended Penalties Model Rule

DESCRIPTION: The proposed amendment contains the most current Association of Racing Commissioners International Model Rules for foreign substances and recommended penalties.

PUBLIC COMMENT: A public hearing was held on this rule on October 14, 2021. The public comment period expired on October 14, 2021. The agency indicated that it received no public comments.

The proposed effective date is December 1, 2021.

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

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

d. SUBJECT: Thoroughbred Rule 1232(5) Medication: Furosemide (Lasix)

DESCRIPTION: Amends Rule 1232(5) to specify the penalty for use of Lasix in a race designated as Lasix-free by the franchise holder.

PUBLIC COMMENT: A public hearing was held on this rule on October 14, 2021. The public comment period expired on October 14, 2021. The agency indicated that it received no public comments.

The proposed effective date is December 1, 2021.

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

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

e. SUBJECT: Thoroughbred Rule 2169 Jockey Mount Fees

DESCRIPTION: This amendment provides for a specified payment to a jockey who finishes in fourth place and sets a minimum dollar amount

jockey fee for finishing second or third in races with a purse less than $25,000. This proposed amendment is consistent with industry practices.

PUBLIC COMMENT: A public hearing was held on this rule on October 14, 2021. The public comment period expired on October 14, 2021. The agency indicated that it received no public comments.

The proposed effective date is December 1, 2021.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact. The agency indicated that, under this amendment, an owner must pay a jockey mount fee for fourth place finishers, which is a common practice in the industry. Per the agency, there is no way to estimate or forecast the estimated additional cost of this proposed amendment.

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

f. SUBJECT: Thoroughbred Rule 2426 Claiming

DESCRIPTION: The proposed amendment to Thoroughbred Rule 2426 allows an owner to more easily claim a horse and removes some of the previous minor requirements for eligibility for claiming horses. The Amendment also changes the time period for use of a claiming certificate until 24 hours after the application was approved by the Stewards. It addresses issues that have arisen with claiming in the past and addresses the concerns of the franchiseholder and horsemen.

PUBLIC COMMENT: A public hearing was held on this rule on October 14, 2021. The public comment period expired on October 14, 2021. The agency indicated that it received no public comments.

The proposed effective date is December 1, 2021.

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

LEGAL AUTHORIZATION: The Arkansas Racing Commission has "sole jurisdiction over the business and the sport of horse racing in this state where the racing is permitted for any stake, purse, or reward[.]" Ark.

Code Ann. § 23-110-204(a). The Commission has "full, complete, and sole power and authority" to promulgate rules related to its duties and may "make, amend, and enforce all necessary or desirable rules not inconsistent with law." Ark. Code Ann. § 23-110-204(b)(1)(E), (d).

g. SUBJECT: Thoroughbred Rule 2426-A Claiming

DESCRIPTION: The proposed amendment to Thoroughbred Rule 2426-A allows, subject to certain conditions, an owner to take advantage of a second waiver, making a horse ineligible to be claimed for a second race, after a first waiver has been executed under the existing Rule.

PUBLIC COMMENT: A public hearing was held on this rule on October 14, 2021. The public comment period expired on October 14, 2021. The agency indicated that it received no public comments.

The proposed effective date is December 1, 2021.

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

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

h. SUBJECT: Thoroughbred Rule 2430 Claiming

DESCRIPTION: The proposed amendment to Thoroughbred Rule 2430 allows claims by one stable/owner which has the same trainer. This is an effort to make the existing Rule more clear and avoid questions that have arisen in the past.

PUBLIC COMMENT: A public hearing was held on this rule on October 14, 2021. The public comment period expired on October 14, 2021. The agency indicated that it received no public comments.

The proposed effective date is December 1, 2021.

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

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

i. SUBJECT: Thoroughbred Rule 2440 Claiming

DESCRIPTION: The proposed amendment to Thoroughbred Rule 2440 adds language in an attempt to make the existing Rule more clear when transfer of ownership of a claimed horse becomes effective to more clearly align with other Rules allowing revocation and voiding of claims in certain circumstances under other Rules.

PUBLIC COMMENT: A public hearing was held on this rule on October 14, 2021. The public comment period expired on October 14, 2021. The agency indicated that it received no public comments.

The proposed effective date is December 1, 2021.

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

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

j. SUBJECT: Thoroughbred Rule 2458 Claiming

DESCRIPTION: The proposed amendment to Thoroughbred Rule 2458 allows the Racing Secretary to approve, in certain cases, exceptions to the Rule 2458(a) waiting period for eligibility of a horse to run at other racetracks after being claimed at Oaklawn.

PUBLIC COMMENT: A public hearing was held on this rule on October 14, 2021. The public comment period expired on October 14, 2021. The agency indicated that it received no public comments.

The proposed effective date is December 1, 2021.

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

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

8. DEPARTMENT OF HEALTH, CENTER FOR HEALTH PROTECTION (Mr. Chuck Thompson, Mr. Bernard Bevill, item a; Ms. Laura Shue, Ms. Jamie Turpin, item b)

a. SUBJECT: Rules for Control of Sources of Ionizing Radiation

DESCRIPTION: The Radiation Control Section is initiating the process for the revision of the Arkansas State Board of Health Rules for Control of Sources of Ionizing Radiation. The Section regulates the possession and use of X-ray machines, accelerators, and radioactive material in the state of Arkansas. Revisions to radioactive material rules are driven by our agreement with the U.S. Nuclear Regulatory Commission (NRC). The state of Arkansas, as an Agreement State, must have rules that are compatible with NRC regulations. The following revisions are being proposed.

Revisions concerning NRC regulation amendments:

Miscellaneous Corrections Amendments (3) – 10 CFR Parts 1, 2, 21, 34, 37, 40, 50, 52, 70, 71, 73, 110, and 140:

The objective of these three rules is to make miscellaneous corrections concerning office, division, and agency references and functions; remove a follow-up reporting instruction; correct cross reference, typographical, and grammatical errors; add a certification recipient and clarifying language; remove obsolete language; and correct mailing, email, and web page addresses. (Sections 2, 3, 4, and 12)

Revisions due to Act 268 of 2021:

Changes include those provisions presented in Section 1 (Registration of Sources of Radiation), definitions of "person" and "physician," and provisions presented in Section 5 (Rules of Practice).

Revisions not in conjunction with a particular NRC regulation amendment (general clean up):

Changes include deletion or revision of two radioactive material healing arts definitions, correction of references found in RH-7083.b, and addition of form numbers to RH-23.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on September 30, 2021. The agency provided the following summary of the single public comment it received and its response to that comment.

Commenter's Name: Dr. James Raker

COMMENT: The term "physician" in AR legally means MD, DO, and DC. Make sure that legal definition is used in your Rule definition of a "physician."

RESPONSE: The definition of "physician" in the Rules for Control of Sources of Ionizing Radiation is taken verbatim from the Arkansas Code at A.C.A. § 20-21-203 (26) which is the area of AR Code setting forth State policy and requirements for Rules concerning Ionizing Radiation Sources, such as Nuclear Materials. This portion of AR law also reflects the requirements of the US Nuclear Regulatory Commission. These Rules govern the requirements for radioactive material for diagnostic or therapeutic purposes - for example, radiation therapy for a cancer patient. These Rules are not applicable to, or affect, Chiropractors and their use of x-ray machines in their practice. Chiropractors are governed by and listed with other Practitioners in a separate area of the AR Code known as the "Consumer-Patient Radiation Health and Safety Act" at A.C.A. § 17-106-103(5). The definition in our Rules and the AR Code for Ionizing Radiation Sources does not modify or change the broader definition of Physician found in the AR Chiropractic Practices Act at A.C.A. § 17-81-101 et seq.

The proposed effective date is December 1, 2021.

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

LEGAL AUTHORIZATION: "The State Board of Health is designated as the State Radiation Control Agency." Ark. Code Ann. § 20-21-206(a). As such, the Board "shall provide by rule for licensing of radioactive material, or devices or equipment utilizing such material, and for licensing or registration of radiation equipment." Ark. Code Ann. § 20-21-213(a). Portions of this rule implement Act 268 of 2021, sponsored by

Representative Jack Ladyman. The Act amended and updated the Arkansas Code regarding regulation of ionizing radiation to comply with federal laws and regulations.

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

DESCRIPTION: The Arkansas Department of Health is amending the Rules Pertaining to the Arkansas Prescription Drug Monitoring Program. These rule amendments provide clarification of various language throughout the rule. The changes also provide alternate means of reporting and allow the Department to request prescription copies from dispensers for evaluation of data.

PUBLIC COMMENT: A public hearing was held on this rule on October 1, 2021. The public comment period expired October 1, 2021. The agency indicated that it received no public comments.

The proposed effective date is December 1, 2021.

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

LEGAL AUTHORIZATION: The Arkansas Department of Health maintains the Prescription Drug Monitoring Program database. *See* Ark. Code Ann. § 20-7-606(b)(1). As such, the Department may prescribe "transmission methods and frequency" for dispensers' submission of required information regarding controlled substance prescriptions. Ark. Code Ann. § 20-7-604(f). The State Board of Health has authority to promulgate rules implementing the Prescription Drug Monitoring Program Act. *See* Ark. Code Ann. § 20-7-613.

9. STATE HIGHWAY COMMISSION (Mr. Gill Rogers)

a. SUBJECT: Rules for Transportation-Related Research and Workforce Development Grant Program

DESCRIPTION: Act 705 of 2017, codified at Ark. Code Ann. § 27-65-145, created the Transportation-Related Research Grant Program ("TRRGP") and gave the Arkansas Department of Transportation authority to promulgate rules necessary to implement the grant program. The "Rules for Transportation-Related Research Grant Program" set out procedures for selection committees, scoring criteria, award processes, and reporting requirements for grants awarded from the Future Transportation Research Fund for the TRRGP.

Act 884 of 2021 amended the program to include workforce development as an eligible category for grant awards, creating the Transportation-Related Research & Workforce Development Grant Program ("TRR&WDGP"). The Draft Rules have been updated to include grant awards for Workforce Development in addition to Transportation Related Research.

PUBLIC COMMENT: A public hearing was held on September 10, 2021. The public comment period expired on September 7, 2021. No comments were received.

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

Section 2.1 – Should "and Workforce Development" follow "Research" in the name of the fund to coincide with Act 884 of 2021, § 1?
RESPONSE: You are correct; the words "and Workforce Development" should follow Research in § 2.1. Attached are the revised documents.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the amended rules do not have a financial impact. The agency, however, estimates a total cost of $500,000 for the current fiscal year and $500,000 for the next fiscal year to state, county, and municipal government to implement this rule, explaining: If interest income from funds of the Arkansas Department of Transportation, and other revenues authorized by law are available, then up to $500,000 each year shall be used by the Arkansas Department of Transportation for distributing grants under the Transportation-Related Research and Workforce Development Grant Program.

LEGAL AUTHORIZATION: These rules implement changes brought about by Act 884 of 2021, sponsored by Representative Rick Beck, which amended the law concerning the Future Transportation Research Fund and the Transportation-Related Grant Program. Pursuant to Arkansas Code Annotated § 27-65-145(e), the Arkansas Department of Transportation and the State Highway Commission shall promulgate rules to implement and administer Ark. Code Ann. § 27-65-145, concerning the Transportation-Related Research and Workforce Development Grant Program, including without limitation the application process, disbursement of grant funds, and criteria required under Ark. Code Ann. § 27-65-145(d) for awarding a grant to a publicly funded institution of higher education.

b. **SUBJECT: Amendment to Permits for Overweight Vehicles Carrying Agronomic or Horticultural Products**

DESCRIPTION: Pursuant to Act 1085 of 2017, codified at Ark. Code Ann. § 27-35-210(q), the Arkansas Department of Transportation in cooperation with the Arkansas Department of Agriculture created Permit Rules for Overweight Vehicles Carrying Agronomic or Horticultural Products to provide a process for ARDOT and AHP to issue permits to allow qualified overweight agricultural trucks to carry up to 100,000 pounds.

The Rules allow for a permit for one tractor and multiple, identical, trailers to be issued for five different origin and destination routes. Each tractor and trailer is required to undergo a safety inspection prior to issuance of the permit, and the rule calls for additional driver requirements.

Permit fees were initially set at $1,000. However, during the 2021 Session of the Arkansas General Assembly, members raised questions about the amount of the fee. After meeting with members of the Arkansas General Assembly, the Arkansas Department of Transportation agreed to reduce the permit fees to $800.

PUBLIC COMMENT: A public hearing was held on September 10, 2021. The public comment period expired on September 7, 2021. No comments were received.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicates that the amended rule has a financial impact. The agency estimates the total cost to any private individual, entity, and business subject to the amended rule will result in a savings of $200 for the current fiscal year and no change in the next fiscal year, explaining that carriers of farm products will pay $200 less in fees per year. The agency estimates that the total cost by fiscal year to state, county, and municipal government to implement the rule will result in a loss of $2,200 for the current fiscal year and $4,400 for the next fiscal year.

LEGAL AUTHORIZATION: The State Highway Commission may issue a special permit valid for one (1) year authorizing the movement of a truck tractor and semi-trailer combination, or a truck tractor and semi-trailer-trailer combination, with a minimum of five (5) axles hauling agronomic or horticultural crops in their natural state that exceed the maximum gross weight as provided in Ark. Code Ann. § 27-35-203 but do not exceed a total gross weight of one hundred thousand pounds (100,000 lbs.). *See* Ark. Code Ann. § 27-35-210(q)(1). Pursuant to Ark. Code Ann.

§ 27-35-210(q)(3), the Arkansas Department of Transportation in coordination with the Department of Agriculture shall promulgate rules necessary to implement Ark. Code Ann. § 27-35-210(q), including without limitation the criteria required to qualify for the issuance of a special permit. The Commission is further vested with the power and shall have the duty to "establish by properly promulgated and adopted rules reasonable fees that are necessary to carry out the powers and duties of the commission for applications, permits, licenses, and other administrative purposes including but not limited to driveways, logos, billboards, signage, sign visibility, and weight restricted roadway maintenance to support the administration and operation of programs for which the fees are assessed." Ark. Code Ann. § 27-65-107(a)(17).

10. DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES (Mr. Mark White, Ms. Elizabeth Pittman, Ms. Patricia Gann)

a. SUBJECT: Extension of Benefits for Acute Crisis Units and Substance Abuse Detoxification, and Telemedicine for Specific Services

SUBJECT: Extension of Benefits for Acute Crisis Units and Substance Abuse Detoxification, and Telemedicine for Specific Services

DESCRIPTION:

Statement of Necessity

The Division of Medical Services (DMS) revises the Outpatient Behavioral Health (OBH) Provider Manual and amends the State Plan to incorporate an extension of benefits to replace previous hard limits so that clients can access medically necessary services. Correspondingly, DMS adds provisions allowing for telemedicine for certain services. Finally, DMS updates Section III of all provider manuals to reflect the telemedicine changes.

Rule Summary

DMS revises the OBH provider manual to incorporate an extension of benefit process when it is medically necessary for a client to exceed ninety-six (96) hours per admission in an Acute Crisis Unit, and when it is medically necessary to exceed six (6) encounters per State Fiscal Year of Substance Abuse Detoxification. The State Plan was amended to reflect the changes.

Correspondingly, updates to the manual include provisions allowing for telemedicine for:

- Group Behavioral Health Counseling, ages eighteen (18) and above
- Marital/Family Behavioral Health Counseling with Beneficiary Present
- Marital/Family Behavioral Health Counseling without Beneficiary Present
- Mental Health Diagnosis, under age twenty-one (21)
- Substance Abuse Assessment
- Crisis Intervention

The following changes to the OBH provider manual and Section III of all provider manuals:

- Section 252.111 is revised to remove the GT informational modifier for telemedicine.
- Section 252.112 is revised to include use of telemedicine for ages eighteen (18) and over.
- Section 252.113 is revised to include use of telemedicine.
- Section 252.114 is revised to include use of telemedicine.
- Section 252.115 is revised to remove the GT informational modifier for telemedicine.
- Section 252.117 is revised to remove age limitations for use of telemedicine for mental health diagnoses, and to remove the GT informational modifier for telemedicine.
- Section 252.118 is revised to remove the GT informational modifier for telemedicine.
- Section 252.119 is revised to include the use of telemedicine.
- Section 252.121 is revised to remove the GT informational modifier for telemedicine.
- Section 252.122 is revised to remove the GT informational modifier for telemedicine.
- Section 255.001 is revised to include use of telemedicine.
- Section 255.003 is revised to include extension of benefits for additional days when medically necessary and duplication of rule is deleted.
- Section 255.004 is revised to include extension of benefits for additional encounters when medically necessary.
- Section 305.000 is revised to remove references to the GT modifier when billing for telemedicine.

PUBLIC COMMENT: A public hearing was held on this rule on June 29, 2021. The public comment period expired June 29, 2021. The agency provided the following summary of the public comments it received and its responses to those comments:

Commenter's Name: Joel Landreneau, Crochet & Landreneau, PLLC

1. Okay, I have two comments to make about the proposed rules, the proposed changes in 252 and the billing codes for outpatient behavioral health services. During the COVID pandemic and the emergency rule suspensions that were put into place during that time, there were somewhat different treatment for different codes, with respect to audio only telemedicine, some and the COVID emergency promulgated manual that came out in early April, also, made a specific provision, say, for example, for marital and family counseling which could be done audio only, but then some of the other telemedicine approved services, such as crisis intervention, made no specific mention of audio only and whether or not audio only was or was not permitted.

And so individual therapy was also one that was not specifically addressed in that manual and it isn't here either, and so I would request that if there is going to be an allowance for audio only for some or all of the billing codes, that the manual would reflect, that so that unless that's addressed somewhere else I don't see it here, it looks like telemedicine is just that, a term is just used. I guess the definition of that term would be as Arkansas law now defines telemedicine. I think it's Act 829 that allowed audio only, but then it has a qualification in it that says, "if it meets the standards for the service," or something along those lines, it looks like it might be a payor decision whether or not audio only does or does not substantially meet the standards for that service, so I would request that clarification be made. I get that question a lot.

I'm sorry, I didn't even introduce myself, I'm Joel Landreneau, I'm Executive Director of Behavioral Health Providers Association and I get this question a lot, "is audio only allowed or not allowed for this or that service," and it would be very helpful if that was clarified.

RESPONSE: Thank you for your comment and questions. The comments and questions related to Act 829 and other telemedicine acts will be reviewed separately from this rule. We will consider what revisions may need to be promulgated and implemented during that review.

2. The second comment I would like to make is, with respect to who the authorized performing providers are. The proposed changes allow for, say, for example, individual behavioral health counseling 90832, 90834, 90837, have modifiers for substance abuse U4 and U5 and those services can be in our judgment, delivered by people who hold the AADC credential. These are master's degree therapists who are specifically trained and supervised in the delivery of substance abuse services.

It doesn't appear, I think, historically, they haven't been permitted to provide individual psychotherapy, even when substance abuse is the primary diagnosis, and I would request that the AADC's, of which there are little more than 100 in the state who have that credential. It is a nationally recognized credential and it is, it qualifies them to render substance abuse services, so it would, I think that would appear to individual behavioral health counseling the 90832, 34, 37, U4 and U5 modifiers, it would also apply to the group behavioral health counseling and 90853 U4 and U5 and marital and family, there's a substance abuse modifier at 90847.

So I would request, some of the AADC's also have LPC and LCSW credentials, which would enable them to do this, but not all of them do, but all a AADC's have Master's degrees and to the extent that there are those out there who have Master's degrees and the requisite training in substance abuse treatment, they should be reimbursed for Medicaid, when they render substance abuse treatment.

And that concludes my remarks.

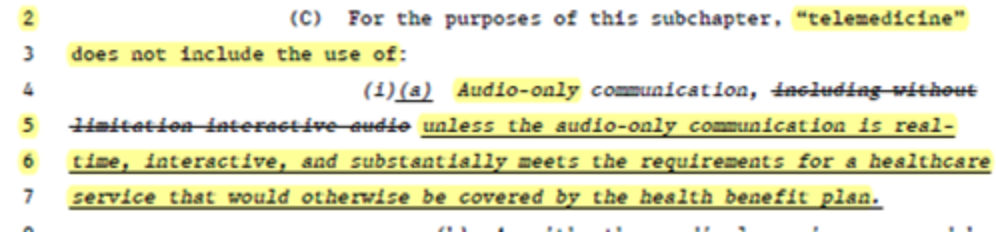
RESPONSE: Thank you for your comments. Your request is outside the scope of this proposed rule change. No changes were proposed regarding allowed performing providers. For a list of currently authorized providers see section 211.200 Staff Requirements in Section II of the Outpatient Behavioral Health Services manual.

Commenter's Name: Joel Landreneau, on behalf of the Behavioral Health Providers' Association

1. The removal of the telemedicine modifier from certain codes is a welcome development. It has been a needless effort by providers and a needless expense for the state to require separate authorizations for the same service according to delivery modality. Our understanding of this change is that one authorization will be required for a service, which will then be interchangeable between face-to-face and telemedicine, and identifiable by the place of service codes. Please confirm that this understanding is correct.

RESPONSE: Under the proposed change, one authorization will be required for a service to be provided. Separate authorizations for face-to-face or telemedicine provision of services will not be required.

2. There needs to be a distinction made clear between those services that can be delivered via telemedicine audio-only, and those that cannot. Act 829 of 2021 amended the definition of "telemedicine" to read as follows:



(C) For the purposes of this subchapter, "telemedicine" does not include the use of:

(i)(a) Audio-only communication, ~~including without limitation interactive audio~~ unless the audio-only communication is real-time, interactive, and substantially meets the requirements for a healthcare service that would otherwise be covered by the health benefit plan.

This definition of "telemedicine" applies to each and every service. In all cases, telephone-only is "real-time" and "interactive." These rules should establish bright-line rules for when a service "substantially meets the requirements for a healthcare service that would otherwise be covered by the health benefit plan." Our reading of this language is that the payors determine when audio-only "substantially meets the requirements for a healthcare service." The present rules, as enacted and as proposed, do not make these determinations, leaving providers uncertain regarding when audio-only can or cannot be used in service delivery. Act 829 had an emergency clause, and thus it has been law since April 21, 2021. These rules should be revised to clarify when audio-only is permitted or prohibited.

RESPONSE: Thank you for your comment and questions. Comments and questions related to Act 829 and other telemedicine acts will be reviewed separately from this rule. We will consider what revisions may need to be promulgated and implemented during that review.

3. Codes with Substance-Abuse modifiers should add LADAC's and AADC's to the list of Allowable Performing Providers. Behavioral Health Agencies ("BHA's") in this state are facing great difficulties in recruiting and retaining Independently Licensed Practitioners who are willing to do the work required of therapists in BHA's, such as supervision of paraprofessionals. Some agencies are in such straits that they are unable to assign a therapist to a new patient for weeks at a time. There are strong incentives for therapists to leave BHA's and establish independent practices, including a billing rate that is equal to that paid to BHA's, but without the added, uncompensated responsibilities therapists are need for in agencies.

There are several policy changes that are needed to address this situation, which is beginning to approach crisis levels. One simple change that could be made in this draft is for Medicaid to recognize Licensed Alcoholism and Drug Abuse Counselors (LADAC's) and Advanced Certified Alcohol Drug Counselor (AADC's) for those codes that have a Substance Abuse modifier, and recognize these practitioners for services requiring that modifier. LADAC's and AADC's both require a Master's Degree in a Behavioral Science or Human Services field with a clinical application from an accredited university. AADC's require a 300-hour supervised

practicum and 2,000 hours of supervised work experience under a Master's Level supervisor. LADAC's likewise require a Master's degree in a health or behavioral services field, along with 3 years' clinically supervised work experience in the field of Substance Abuse and Mental Health. Many of these professionals also hold certifications as LCSW's or LPC's, but there is a sizeable number within the state that do not. This means that Medicaid will not pay for a certified substance abuse practitioner with a Master's Degree to render Individual Therapy to SUD-primary patients, even though they are qualified to do so within the scope of their practice.

As of July 13, 2021, there are presently 120 AADC's in the State of Arkansas who are qualified to serve SUD patients, but who are not reimbursed by Medicaid for doing so unless they also hold an LCSW or an LPC. There is no public policy reason who Master's-level treatment professionals should be excluded from serving Medicaid patients, especially in this time when recruiting and retaining LCSW's and LPC's is so difficult for BHA's. I would ask that this request be treated as a request for rule promulgation under Ark. Code Ann. § 25-15-204(d).

RESPONSE: Your request is outside the scope of this proposed rule change. No changes were proposed regarding allowed performing providers. For a list of currently authorized providers see section 211.200 Staff Requirements in Section II of the Outpatient Behavioral Health Services manual.

4. Mental Health Diagnosis should be increased to a maximum of two hours per encounter. Mental Health Diagnosis was reduced in rate in the 2018 transformation to an equivalent of one hour of service in the old rate. Practitioners routinely tell me that they take about two (2) hours at a minimum to do a thorough intake, which they regard as vital to arrive upon an accurate diagnosis and well-informed plan of care. The one single encounter, at the rate at which it is paid, is not sufficient to meet the needs of the patient, and more often than not, the practitioners simply perform the thorough intake anyway, and accept the inadequate payment. I would ask that this request be treated as a request for rule promulgation under Ark. Code Ann. § 25-15-204(d).

RESPONSE: Thank you for your comment. Your requested change is outside of the scope of this proposed rule change. This proposed rule change does not address the encounter or rate for Mental Health Diagnosis service but is limited only to changes regarding telemedicine service for Medicaid beneficiaries who are under age 21.

The proposed effective date is pending legislative review and approval.

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

Per the agency, the total estimated cost to implement this rule is $163,170 for the current fiscal year ($46,308 in general revenue and $116,862 in federal funds) and $217,560 for the next fiscal year ($61,744 in general revenue and $155,816 in federal funds). The total estimated cost by fiscal year to state, county, and municipal government to implement this rule is $46,308 for the current fiscal year and $61,744 for the next fiscal year.

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

Portions of this rule implement Act 624 of 2021. The Act, sponsored by Representative Lee Johnson, ensured that reimbursement in the Arkansas Medicaid Program for certain behavioral and mental health services provided via telemedicine continues after the public health emergency caused by COVID-19. Per the Act, Arkansas Medicaid must reimburse for "crisis intervention services; substance abuse assessments; mental health diagnosis assessments for" beneficiaries under age 21; group therapy for beneficiaries 18 and older; and "counseling and psychoeducation provided by" certain licensed personnel. Act 624, § 1(b).

b. SUBJECT: State Plan Amendment 2021-0004 Long-Acting Reversible Contraceptives (LARCs); Physician 1-21

DESCRIPTION:

Statement of Necessity

The Division of Medical Services revises the Medicaid State Plan rate methodology for family planning to replace the term Intrauterine Device (IUD) with Long-Acting Reversible Contraceptives (LARCs). This change acknowledges the possible use of other types of LARCs as they become available. This SPA will also update the reimbursement rates for currently covered LARCs.

Rule Summary

Adding language to the State Plan rate methodology for family planning to increase flexibility and to allow for the addition of new LARCs in a timely manner. The updated rates will be based on Wholesale Acquisition Cost.

Making technical corrections to the manuals below:

Section II of the Physician manual.
243.500 Contraception:
- 243.500(B) – replaced Etonogestrel (contraceptive) implant with Contraceptive Implant Systems.
- 243.500(B1) – deleted etonogestrel and replaced "system" with "systems."
- 243.500(C) – deleted the word "prescription"

Section II of the Hospital manual:
216.513 Contraception:
- 216.513(B) – replaced Etonogestrel (contraceptive) implant with Contraceptive Implant Systems.
- 216.513(B1) – deleted etonogestrel and replaced "system" with "systems."
- 216.513(C) – deleted the word "prescription"

Section II of the Rural Health Clinic manual:
217.220 Other Contraceptive Methods:
- Replaced "The Norplant System, its implementation" with "Contraceptive implant systems, their implementations . . ."

Section II of the Nurse Practitioner manual:
214.333 Contraception:
- 214.333(B) – replaced Etonogestrel (contraceptive) implant with Contraceptive Implant Systems.
- 214.333(B1) – deleted etonogestrel and replaced "system" with "systems."
- 214.333(C) – deleted the word "prescription."

Section II of the Certified Nurse-Midwife manual:
215.250 Contraception:
- 215.250 (B) – replaced Etonogestrel (contraceptive) implant with Contraceptive Implant Systems.
- 215.250 (B1) – deleted etonogestrel and replaced "system" with "systems."
- 215.250 (C) – deleted the word "prescription"

PUBLIC COMMENT: A public hearing was held on this rule on September 15, 2021. The public comment period expired September 25, 2021. The agency provided the following summary of the public comments it received and its responses to those comments:

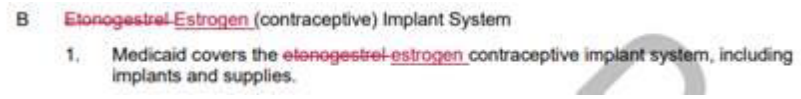
Commenter's Name: Nancy Allison, Practice Manager, Creekside Center for Women, on behalf of OB/GYN Provider Medicaid Group #134004002

COMMENT: I am writing on behalf of OB/GYN Provider Medicaid group #134004002 in regards to the August 24, 2021 memorandum with the subject State Plan Amendment 2021-004 Long-Acting Reversible Contraceptives (LARCs); Physician 1-21. We were led to understand that Kyleena 19.5mg Levonorgestrel-Releasing Intrauterine Contraceptive System was also going to be added to the LARCs list that Arkansas Medicaid would reimburse for. Is there an update on that discussion or a date of when it may be added?

RESPONSE: Kyleena is included as part of this SPA. The language has been changed to clarify that all FDA approved IUDs and implants will be included.

Commenter's Name: William J. Mazanec, PharmD, MBA, Account Executive, Organon

COMMENT: The language in 243.500 Contraception



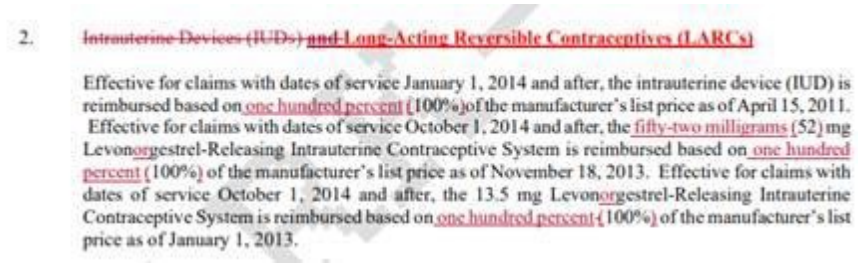
B ~~Etonogestrel~~ Estrogen (contraceptive) Implant System

1. Medicaid covers the ~~etonogestrel~~ estrogen contraceptive implant system, including implants and supplies.

NEXPLANON (etonogestrel implant)

Highlights of Prescribing Information

INDICATIONS AND USAGE section states NEXPLANON is a progestin indicated for use by women to prevent pregnancy. NEXPLANON is not an estrogen.



2. ~~Intrauterine Devices (IUDs) and Long-Acting Reversible Contraceptives (LARCs)~~

Effective for claims with dates of service January 1, 2014 and after, the intrauterine device (IUD) is reimbursed based on one hundred percent (100%) of the manufacturer's list price as of April 15, 2011. Effective for claims with dates of service October 1, 2014 and after, the fifty-two milligrams (52) mg Levonorgestrel-Releasing Intrauterine Contraceptive System is reimbursed based on one hundred percent (100%) of the manufacturer's list price as of November 18, 2013. Effective for claims with dates of service October 1, 2014 and after, the 13.5 mg Levonorgestrel-Releasing Intrauterine Contraceptive System is reimbursed based on one hundred percent (100%) of the manufacturer's list price as of January 1, 2013.

NEXPLANON is a long-acting (up to 3 years), reversible, hormonal contraceptive method and if other LARCs are included in this section NEXPLANON should be included.

RESPONSE: Nexplanon is included as part of this SPA. The language has been changed to clarify that all FDA approved IUDs and implants will be included.

Commenter's Name: Dr. Timothy J. Bell

COMMENT: Please consider adding Kyleena into the approved Medicaid options/fee schedule for patients. This is a LARC (long-acting reversible contraception) as recommended by ACOG. This device has lower levels of hormone and a smaller size to the device that helps several patients that have suffered from cramps or who have never been pregnant, where a larger IUD may cause patient discomfort. Thank you for considering this added product.

RESPONSE: Kyleena is included as part of this SPA. The language has been changed to clarify that all FDA approved IUDs and implants will be included.

Commenter's Name: Brandee Litty, CPPM, Clinic Office Manager, on behalf of Dr. Maureen Flowers and Dr. William Smith, BRMC Urology Clinic

COMMENT: I would like to request on behalf of both my OB/GYN's, Dr. Maureen Flowers and Dr. William Smith that Kyleena be added to the Medicaid fee schedule and ARKids. We serve a rural, low-income area, and we need to be able to provide adequate family planning to all our patients. Please consider adding Kyleena to the fee schedule, so that we are not limiting our patients' care.

RESPONSE: Kyleena is included as part of this SPA. The language has been changed to clarify that all FDA approved IUDs and implants will be included.

The proposed effective date is December 1, 2021.

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

Per the agency, the additional cost of this rule is $681,899 for the current fiscal year ($68,190 in general revenue and $613,709 in federal funds) and $1,168,970 for the next fiscal year ($116,897 in general revenue and $1,052,073 in federal funds). The total estimated cost by fiscal year to

state, county, and municipal government to implement this rule is $68,190 for the current fiscal year and $116,897 for the next fiscal year.

The agency indicated that there is a new or increased cost or obligation of at least $100,000 to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

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

Reimbursements for IUDs and LARCs will be based on Wholesale Acquisition Costs.

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

Reimburse providers for cost of the device.

(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;

Reimbursement is less than cost.

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

None.

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

None at this time.

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

N/A

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule, including, without limitation, whether:
(a) the rule is achieving the statutory objectives;
(b) the benefits of the rule continue to justify its costs; and
(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

The Agency monitors State and Federal rules and policies for opportunities to reduce and control cost.

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

11. DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS AND COMMISSIONS, STATE BOARD OF COLLECTION AGENCIES (Mr. Boyd Maher, Ms. Denise Oxley)

a. SUBJECT: State Board of Collection Agencies Rules (Rev. 2021)

DESCRIPTION: The State Board of Collection Agencies is proposing a variety of updates to make its rule consistent with both statute and current practice. The last update to the Board's rules was promulgated in 1997, but the past quarter century has seen numerous revisions to its enabling statute (such as the Arkansas Fair Debt Collection Practices Act of 2009) and to statutes affecting state agencies generally (such as the Transformation and Efficiencies Act of 2019). The proposed revisions to the rules seek to incorporate these statutory changes. Additionally, the Board's daily operations have evolved since 1997, and the proposed changes would make the agency's rules consistent with current practice. Finally, the proposed updates seek to eliminate confusing, outdated, and redundant language and to incorporate a format that will lend itself to the upcoming Code of Arkansas Rules effort.

Revisions to the rules include the following:

- Defines the relationship between the Board & professional staff following the 2019 Transformation Act.
- Allows for reciprocal licenses from other states in accordance with Act 426 of 2019.
- Incorporates fees and penalties authorized by Act 1023 of 2013 (Ark. Code Ann. § 17-24-305(a)) and Act 1249 of 2015 (Ark. Code Ann. § 17-24-103).
- Eliminates a late fee not authorized by statute.
- Removes a requirement for a written exam not authorized by statute.
- Establishes/clarifies procedures for license application, renewals, denials, sanctions, and appeals.
- Incorporates rules for licensee conduct arising from the 2009 Arkansas Fair Debt Collection Practices Act of 2009 (Ark. Code Ann. § 17-24-501 et seq.).
- Cleans up format for easy transition to the Code of Arkansas Rules.

PUBLIC COMMENT: A public hearing was held on August 18, 2021. The public comment period expired on September 7, 2021. The Board received no comments.

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

Section 2-5(C) – This section, under License Denial, appears to provide that any funds remitted to the Board may be returned to the applicant upon written request, but that a fifty-dollar nonrefundable processing fee may be retained by the Board. As I'm sure you're aware, Ark. Code Ann. § 25-15-105(b) provides that "[a]n agency shall not assess a fee or penalty without specific statutory authority to: (A) [a]ssess a certain type and amount of fee or penalty; or (B) [i]mpose a fee or penalty in general." On what authority does the Board rely for this nonrefundable processing fee?
RESPONSE: I have reviewed the language and concur that the $50 processing fee is not authorized by statute. The attached marked-up copy of the proposed rule no longer includes the sentence in question at the end of Sec.2-5(C). I've also attached a clean copy reflecting this change.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Collection Agencies shall have the authority to promulgate rules to implement the provisions of Title 17, Chapter 24 of the Arkansas Code, concerning collection agencies. *See* Ark. Code Ann. § 17-24-203(a).

Pursuant to Ark. Code Ann. § 17-24-103(b)(1), the Board may impose monetary fines as civil penalties to be paid for failure to comply with Title 17, Chapter 24 of the Arkansas Code or the rules promulgated by the Board under the chapter. Concerning collection activities without a license, Ark. Code Ann. § 17-24-103(a)(1), (2) provides that a collection agency that engages in the business activities of a collection agency without a license issued under the chapter may be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), and each day of a violation of the chapter is a separate offense. If a collection agency participates in collection activities without a license, the collection agency may pay a civil penalty to the Board of ten thousand dollars ($10,000.00) in order to be considered retroactively licensed under the chapter. *See* Ark. Code Ann. § 17-24-103(a)(3)(A).

With respect to bonds, the Board shall require each licensee to secure a surety bond in an amount not less than ten thousand dollars ($10,000.00) nor more than fifty thousand dollars ($50,000.00) for each location, with the security on the bond to be approved by the Board. *See* Ark. Code Ann. § 17-24-306(a). Additionally, the Board may promulgate rules to: (1) disburse bond funds to claimants, (2) if the bond proceeds are insufficient to satisfy all legitimate claims, distribute the funds pro rata among the claimants; or (3) in the discretion of the Board, require the sureties to deal directly with the claimants. *See* Ark. Code Ann. § 17-24-306(d).

Finally, the Board may charge an annual license fee not to exceed one hundred twenty-five dollars ($125.00) for licensing each collection agency and an annual fee of twenty dollars ($20.00) effective September 1, 2013, for registering each employee of the licensed collection agency who as an employee solicits, collects, or attempts to collect any delinquent account or accounts by telephone, mail, personal contact, or otherwise. *See* Ark. Code Ann. § 17-24-305(a).

12. <u>DEPARTMENT OF THE MILITARY</u> (Mr. James Holifield, Mr. Scott Stanger)

a. <u>SUBJECT</u>: Arkansas National Guard Tuition Waiver Program

<u>DESCRIPTION</u>: The Department of the Military, in collaboration with the Arkansas Division of Higher Education ("ADHE"), proposes amendments to its Arkansas National Guard Tuition Waiver Program rules. The Program rules implement Act 471 of the 91st General Assembly, Act 535 of the 92d General Assembly, and Acts 76 and 133 of the 93rd General Assembly. The proposed amendment incorporates eligibility of online-only degree programs associated with a state-

sponsored public institution of higher learning. It establishes rules for the eligibility of Guard members; defines the purpose of the Program; defines necessary responsibilities of the Program; and sets forth entitlement criteria. The amendment also includes changes to the responsibilities of the ADHE, the specific institutes of higher education, Guard members involved, and the Arkansas National Guard. It includes changes to the eligibility determination and processing, application process, authorized uses, restoration of eligibility, and policy exceptions.

PUBLIC COMMENT: A public hearing was held on September 13, 2021. The public comment period expired on October 4, 2021. The Department received no comments.

The proposed effective date is January 1, 2022.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact. With respect to the total estimated cost by fiscal year to state, county, and municipal government to implement the rule, the Department explains:

> No additional cost to implement this rule amendment. It is subject to available funds as stated in the rule. This will expand utilization of the currently appropriated funds.

LEGAL AUTHORIZATION: The proposed amendments incorporate changes made in light of Act 76 of 2021, sponsored by Senator Jane English, which amended the law concerning tuition benefits for soldiers and airmen of the Arkansas National Guard and allowed a temporary waiver of the completion of the initial active duty training requirement; and Act 133 of 2021, also sponsored by Senator English, which concerned tuition benefits for soldiers and airmen of the Arkansas National Guard and allowed the tuition-free benefit for soldiers and airmen of the Arkansas National Guard to apply to programs of study in which the courses are taken exclusively online. Pursuant to Arkansas Code Annotated § 6-60-214(h)(1), the Adjutant General, in coordination with the Division of Higher Education, shall promulgate rules for the implementation of Ark. Code Ann. § 6-60-214, concerning tuition benefits for soldiers and airmen of the Arkansas National Guard, including without limitation rules for the eligibility of soldiers and airmen. Further authority for the rulemaking is found in Ark. Code Ann. § 6-60-211(b)(1), which provides that the Adjutant General of Arkansas shall establish and publish rules for the eligibility and implementation of tuition assistance programs sponsored by the armed services. *See also* Ark. Code Ann. § 12-61-106(o) (providing that, for the purpose of effectively carrying out the terms of the code, the Adjutant General shall have the power to prescribe such rules as he or she may from time to time deem necessary).

13. ARKANSAS SECRETARY OF STATE (Mr. Michael Harry)

a. SUBJECT: Rules to Create the Process for Becoming a Secure Voter

DESCRIPTION: Act 980 of 2021 created the ability of a registered voter who is a victim of domestic violence to have their address information be shielded from public view. The proposed new rules establish this process.

PUBLIC COMMENT: A public hearing was held on October 6, 2021. The public comment period expired on October 6, 2021. The Secretary of State provided the following summary of comments received and its responses thereto:

Commenter's Name: Doug Curtis, Saline County Clerk

COMMENT: How does someone request to be a secure voter and will the Secretary of State create a form? **RESPONSE:** The rules require voters who wish to secure voters to apply in person at the office of county clerk in which they are registered to vote. They are required to present the appropriate documentation to the clerk, those documents will be scanned and kept secure with the voter's registration and the secure voter designation noted in the voter registration system. There is no form at this time. If a form is later determined to be necessary, a form will be addressed in future rulemaking.

Suba Desikan, an attorney at the Bureau of Legislative Research, asked the following question and received the following response:

1. Concerning challenges, section IV (a) states that "upon a challenge from an authorized poll watcher, the secure voter shall be permitted to present proof to the poll worker and poll watcher in a separate room or, if a separate room is not available, a private area located at the polling site or vote center."
(a) What sort of "proof" would the secure voter be permitted to present?
(b) Would it vary based on what was being challenged?

RESPONSE: The proof presented would generally be an appropriate form of voter ID. Challenges are made when a poll watcher has concerns dealing with whether a voter is voting in the proper precinct, whether the voter is eligible to vote at all, or if any voter irregularities are suspected. So, the type of challenge can vary. But the intent was to allow a secure voter the ability to present proof of residence/address if that is what is being challenged.

The proposed effective date is January 1, 2022.

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

LEGAL AUTHORIZATION: Act 980 of 2021, sponsored by Representative Nicole Clowney, protects domestic violence victims' voter registration information, and, additionally, amends Arkansas election procedure and the duties of the Secretary of State. *See* Act 980 of 2021. Specifically, the Secretary of State is authorized to promulgate rules to implement the process by which a registered voter who is the victim of a domestic violence may request secure voter status from the county clerks, including without limitation the: (1) administrative process a county clerk shall use to verify eligibility for secure voter status; (2) documentation required for domestic violence victims to be approved for secure voter status; (3) format in which the county clerk shall maintain any address of all registered voters listed on the voter registration roll when the registered voter has a secure voter status; and (4) process for complying with a post-election challenge involving a secure voter. *See* Act 980 of 2021, codified as Ark. Code Ann. § 7-5-112(d).

E. Proposed Rules Recommending Expedited Process for Occupational Licensure Pursuant to Ark. Code Ann. § 17-4-110, as Amended by Act 135 of 2021

1. DEPARTMENT OF HEALTH, ARKANSAS STATE BOARD OF PHYSICAL THERAPY (Ms. Nancy Worthen)

2. DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS AND COMMISSIONS, ARKANSAS STATE BOARD OF PUBLIC ACCOUNTANCY (Mr. Jimmy Corley)

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

1. Department of Agriculture, Arkansas Bureau of Standards (Act 501 of 2019) (REPORT BY LETTER PURSUANT TO MOTION ADOPTED AT JULY 22, 2020 MEETING)

G. Monthly Written Agency Updates Pursuant to Act 595 of 2021.

H. Agency Requests to Be Excluded from Act 595 Reporting Requirements.

1. Department of Commerce, State Insurance Department (Acts 965, 1103, and 1105)

2. Department of Commerce, Division of Workforce Services (Act 770)

3. **Department of Education (Acts 69, 539, and 959)**

4. **Board of Finance (Act 1004)**

5. **Department of Finance and Administration, Arkansas Racing Commission (Act 682)**

6. **Department of Human Services (Acts 357, 651, 745, and 937)**

7. **Department of Labor and Licensing (Acts 746 and 811)**

8. **Arkansas Teacher Retirement System (Act 711)**

9. **Department of Transformation and Shared Services (Acts 379 and 1004)**

I. **Adjournment.**