ADMINISTRATIVE RULES & REGULATIONS SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Room A, MAC
Little Rock, Arkansas

Tuesday, December 13, 2016
9:00 a.m.

Sen. David J. Sanders, Co- Chair
Sen. Bruce Maloch, Vice-Chair
Sen. David Johnson
Sen. Jonathan Dismang
Sen. Ronald Caldwell
Sen. Jane English
Sen. Bobby J. Pierce
Sen. Jim Hendren
Sen. Bill Sample, ex-officio
Sen. Terry Rice, ex-officio
Sen. Eddie Joe Williams, Alternate
Sen. Eddie Cheatham, Alternate

Rep. Andy Davis, Co-Chair
Rep. Lane Jean, Vice-Chair
Rep. Ken Henderson
Rep. Jeff Wardlaw
Rep. Nate Bell
Rep. Chris Richey
Rep. Joe Jett
Rep. Lanny Fite
Rep. David L. Branscum, ex-officio
Rep. Mark Lowery, ex-officio
Rep. John T. Vines, Alternate

Rep. Mary P. "Prissy" Hickerson, Alternate
Rep. Charles Armstrong, Alternate
Rep. John Baine, Alternate
Rep. David Hillman, Alternate
Rep. Deborah Ferguson, Alternate
Rep. Rebecca Petty, Alternate
Rep. Clarke Tucker, Alternate
Rep. Tim Lemons, Alternate
Rep. Bob Johnson, Alternate
Rep. Dave Wallace, Alternate

A. Call to Order.

B. Report of the Department of Community Correction on Administrative Directives for the quarter ending September 30, 2016 pursuant to Act 1258 of 2015 (Dina Tyler)

C. Report of the Executive Committee Concerning Emergency Rules.

D. Rules Deferred from the August 16, 2016 Meeting.

1. <u>STATE MEDICAL BOARD</u> (Kevin Odwyer)

a. <u>SUBJECT</u>: Regulation 38; Governing Telemedicine

<u>DESCRIPTION</u>: This establishes a requirement for physicians to provide telemedicine services.

<u>PUBLIC COMMENT</u>: The public hearing was originally held on June 9, 2016, and the public comment period expired on that date.

Letters of support were received from the Arkansas Medical Society and a letter in support with the following signatures: Arkansas State Chamber of Commerce Associated Industries of Arkansas, Inc., Arkansas Trucking Association, Arkansas Freedom Fund for Veterans, America's Car Mart, Inc., American Fidelity General Agency, Inc., Carelink, the Central Arkansas Area Agency on Aging, Franklin Electric Co., Inc., Freshbenies, Martin Resource Management Corporation, National Multiple Sclerosis Society, New Benefits, Legacy Capital Group Arkansas, Parkinson's Action Network, Teladoc, TelaMedPlus, and United Spinal Arkansas.

At the public hearing, revisions were made to the rule. At the July 12, 2016 meeting of the Administrative Rules and Regulations Subcommittee, members of the public, including commenters who supported the regulation as it was originally proposed, voiced objections with how the public hearing was conducted and expressed concerns that they did not have adequate notice of the revisions that were adopted at the June 9 public hearing. Regulation 38 was referred to the Public Health committees, where no action was taken. The rule was brought before the Administrative Rules and Regulations Subcommittee again on August 16, 2016. At the Subcommittee's August meeting, Mr. Kevin Odwyer, Counsel for the Medical Board, advised the Subcommittee that the Board would hold another public hearing on Regulation 38.

A subsequent public comment period expired on October 6, 2016, and a public hearing was held on that date. At that public hearing, Robert Baratta of Teledoc spoke in favor of the regulation.

The proposed effective date is pending legislative review and approval.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: These rules implement Act 887 of 2015, the "Telemedicine Act." This act required state licensing and certification boards for healthcare professionals to amend their rules where necessary to comply with the act. *See* § 17-80-118(f).

E. Rules Deferred from the October 17, 2016 Subcommittee Meeting.

1. MANUFACTURED HOME COMMISSION (Aaron Howard)

a. SUBJECT: Certification and Licensing, Sections 300-302

DESCRIPTION: The proposed rule change would amend the process for which applicants obtain their certification for a retailer, establishing the

need to provide documented assurance the applicant is experienced and financially responsible to fully comply with the code. The rule change is intended to help ensure Arkansans are protected from entities who may be unreliable or untrustworthy.

Items concerning trustworthiness:
In accordance with the proposed rule change, it will be necessary for applicants for a new retailer certification to provide a list of all directors, officers, limited and general partners, controlling shareholders if the application is made on behalf of a corporation or partnership, or a list of all principal owners [320(A)(2)(f)]. A general employment history is to be provided for each person identified on the application, including a sworn statement these persons have not been found guilty, pleaded guilty or entered a plea of nolo contendere or suffered a judgment in a civil action in this state or any other jurisdiction for forgery, embezzlement, obtaining funds under false pretenses, extortion, conspiracy to defraud, bribery, fraud, misrepresentation of moral turpitude; or had a license, permit or certification suspended or revoked by any government agency in this state or any other jurisdiction for violation of Federal or state laws or regulations [302(A)(2)(g)].

Items concerning fiscal responsibility:
In accordance with the proposed rule change, it will be necessary for applicants for a new retailer certification to provide evidence of a net worth of at least $100,000; and include a financial statement compiled or reviewed by an independent, third-party accounting firm, prepared within six months of the application date for each owner or partner, if the applicant is a sole proprietor or partnership, or the business, if the applicant is a corporation, LLC, or LLP [320(A)(2)(h) and (i)].

Items concerning reliability:
In accordance with the proposed rule change, it will be necessary for applicants for a new retailer certification to provide evidence of having at least two years of experience as a licensed retailer or salesperson, working for a licensed retailer, in this state or any other jurisdiction. An exemption is allowed for applicants purchasing a retail location currently licensed by the Commission [302(A)(2)(j)].

PUBLIC COMMENT: A public hearing was held on September 16, 2016. The public comment period expired on August 31, 2016. J.D. Harper, Executive Director of the Arkansas Manufactured Housing Association, submitted comments in support of the proposed rule change. The proposed effective date is pending legislative review and approval.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas Manufactured Home Commission is directed to promulgate rules setting the requirements for (A) licensing and certification of manufacturers of manufactured homes or modular homes in this state and manufacturers of manufactured homes or modular homes in other states selling them in this state; (B) licensing and certification of any retailer, salesperson, and others engaged in the sale of manufactured homes or modular homes for sale in this state; and (C) licensing, training, and certification of any installer engaged in the installation of manufactured homes or modular homes in this state. Ark. Code Ann. § 20-25-106(a)(2).

F. Report of the Senate and House Interim Committees on Public Health, Welfare and Labor concerning the following rule that was referred to the Committees on October 17, 2016 (Senator Cecile Bledsoe, Chair and Representative Deborah Ferguson, Chair).

1. ARKANSAS TOBACCO CONTROL BOARD (Steve Goode and Roland Darrow)

a. SUBJECT: Safe Manufacture of Vapor Products, Alternative Nicotine Products, and E-Liquids and Consumer Safety

DESCRIPTION: This proposed rule sets out basic safe handling requirements when mixing or re-sizing e-liquids, vapor products, and alternative nicotine products. It also establishes Arkansas Tobacco Control's ability to obtain samples of product, test same, and if necessary, cause their removal from public sale.

PUBLIC COMMENT: A public hearing was held on February 22, 2106. The public comment period expired on March 18, 2016. The agency received no comments.

The proposed effective date is pending legislative review and approval.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: This rule implements parts of Act 1235 of 2015. Section 24 of Act 1235 amended Arkansas Code Annotated § 26-57-257 and gave the Director of Arkansas Tobacco Control the specific authority to "adopt safety and hygiene rules for persons that prepare or mix e-liquid products or alternate nicotine products…"

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

1. CAPITOL ZONING DISTRICT COMMISSION (Boyd Maher)

a. SUBJECT: Updates to the Capitol Zoning District Rule & Master Plan

DESCRIPTION: The following updates were made to the Capitol Zoning District Rule and Master Plan:

Throughout – Combine all rules into one document, standardize formatting, & eliminate redundant material
4. Clarify relationship between CZDC Rules & LR ordinances
8. Allow for staff approval of traditional style outbuildings, even when visible from right-of-way
9. Clarify the purpose of Conditional Use Permits
9. Allow for Variances for proposals that will return a structure to its historic appearance
12-13. Establish maximums (time, frequency, & signage) for Temporary Use Permits
13. Clarify staff role in issuing and modifying Commission-approved permits
13. Clarify time periods for permit expiration
15. Allow for staff denial of certain permit applications.
15. Staff (not applicant) will notify neighbors of meeting by regular mail
16. Clarify that Commission review of a first-impression application is not an adjudication
16. Clarify actions the Commission may take on an application
16. Create 100 day deadline after application by which Commission must take action on an application
17. Clarify that a show-cause hearing is an adjudication
17. Provide penalties for violations: suspension of previous permits and/or referral to District Ct
18. Clarify that undertaking previously denied work constitutes a violation
18. Allow for informal disposition of violations
19. Remove requirement that demo-by-neglect complaints may only be initiated by immediate neighbors or partner organizations.
21. Establish who may appeal to the Commission for reconsideration of a staff decision & when.
22. Clarify that an appeal of a staff decision is an adjudication
22. Appeals of Commission decisions shall be made to the Director of the Department of Arkansas Heritage.
28 – 33. Reformat zoning charts as lists.
29. Combine Zones A1 and A2 into a single Zone A
32. Allow for small-scale commercial-style new construction on corner lots in Zone N
33 – 34. Clarify allowed accessory uses.

35. Prohibit general industrial uses.
37. Define dwelling unit, family, & group living
37-38. Provide for group living facilities in the Mansion Area
38-39. Define different food & beverage uses
39. Define structure.
39 – 40. Allow for installation of cellular equipment on roofs of existing buildings *(previously adopted by CZDC as emergency rule, April 2015)*
42 – 46. Simplify & clarify use groups.
48. Rezone 700 blocks of Schiller, Park, & Dennison from D to B
48. Rezone block between 3rd & 4th and Victory & MLK from C to A
52. Eliminates parking requirements for 6 or fewer spaces
52. Allow staff to reduce parking requirements by half in commercial zones. Allows Commission to reduce parking requirements by half in residential zones, and waive them entirely in commercial zones
53. Allow for on-street parking to count toward requirements
54. Allows for gravel parking lots for less than 20 spaces
54. Allow for semi-pervious paving by right; requires CZDC review for new concrete or asphalt parking lots
59-62. Clarify various sign definitions.
64-65. Remove content-specific language from types of allowable signs
65. Additional signage may be approved by Commission (without a Variance)
67-68. Create standards for outdoor lighting
68. Create standard for tree protection
69. Applies standard for archeology to all properties (not just parcels w/ existing historic structures)
69. Establish standard for evaluating appropriateness of alternative energy equipment
84-85. Clarify rules for new fences at historic properties, incl. allowing for some masonry fences
96. Allow for metal awnings
121-122. Describe additional 20th Century architectural styles
151-152. Clarify agency's role in coordinating development on the State Capitol complex
242. Replica historic styles will be considered (not discouraged) for new construction in Gov Mansion Area
250. Zone O parking lot standards applicable to small parking areas throughout Mansion Area. (Larger parking lots will use Capitol Area standards.)

PUBLIC COMMENT: A public hearing was held on September 29, 2016. The public comment period expired on October 11, 2016. The department received the following comments:

Comment:

Dan Cook, resident and property owner in the Mansion Area and former Commissioner, spoke in opposition to the rulemaking process, indicating the current Commissioners and staff must retain the services of outside consultants and/or legal counsel with experience in zoning matters before proceeding with the rulemaking process. He also stated that adoption of the 1998 Master Plan precluded any subsequent changes to certain rules.

Ed Sergeant, resident and property owner in the Mansion Area and member of the Design Review Committee, also wrote to suggest using outside consultants to assist with changing the agency's rules:
"Most importantly, the process for revisions should be more formal. This is a major "surgery" for which a consultant in the field of preservation and planning should be used. The input for the last major rule changes in 1998 included (but was not limited to) 13 consultants including 8 members of Winter and Company, the 3 CZ Advisory Boards, and the Ordinance Committee. Most recent proposed revisions have been provided by staff. While those involved to date provided great insight, we recommend that they may instead provide the organization required for the process and help set goals. The cultural value of the historic district and real value of the properties effected far outweigh the expedience of the moment. Have funding sources for consultants been investigated? The 1998 publication was financed in part with funds from the Arkansas Historic Preservation Program. Has the amount for the consultation fee been investigated, either with Winter and Company or other? Should the AHPP or other sources be identified, the amount of additional funds may not be that great."

Kathy Wells, resident and property owner in the Mansion Area, also spoke in supporting of retaining outside legal counsel to review proposed revisions to the agency's rules.

Agency response: The agency is authorized and uniquely qualified to develop, adopt, and change its own rules. Indeed, the ability and willingness to respond to change represents a best practice in both the planning profession and in state government. While the agency's enabling statute allows for it to employ outside consultants to develop its Master Plan, such consultation is not required.

A significant portion of the proposed changes are related to the formatting of the Rules. Staff hears regularly from constituents who struggle to navigate between the seven documents in which the rules are currently found. Much of the volume of the marked-up document is related to removing redundant language and condensing the seven current documents one. Staff believes combining the rules into one will simplify them and make them easier for the public to understand. Also, past rule

changes have failed to update multiple instances of the same rule, leading to internal inconsistencies. It is hoped that eliminating redundancies will eliminate future inconsistencies.

The proposed procedural changes are intended to bring the written procedures in line with the way in which the Commission has traditionally conducted business and to ease the burden of compliance for the public. For the changes related to the design and rehabilitation guidelines, zoning, parking, signage, etc., all of the proposed updates have been prompted either by members of the public raising concerns about particular provisions, the Commission consistently granting certain waivers, or staff observing deficiencies in the rule documents.

The agency believes that the proposed procedural and regulatory revisions represent only incremental change to the Master Plan, and that the proposed amendments do not rise to a level warranting outside expertise. The changes to substantive rules are based on feedback from constituents, a need to bring procedural provisions into closer alignment with the Commission's long-standing practice, and the recognition that best practices in zoning and preservation have evolved since 1998.

Comment:
Marvin Dalla Rosa, resident and property owner in the Mansion Area, wrote and spoke in opposition to some of the proposed changes:
"Section 2-105, Par. C.2: Please explain this paragraph. Is it your intent that the issuance of Conditional Use Permit be altered to include uses not codified in the Rules?"

Agency response: The text added in this section is meant to clarify the purpose of Conditional Use Permits, and to make the language consistent with current practice and interpretation.

"Section 2-105, Par. C.2.a: Why did you change "may" to "shall"?"

Agency response: The agency means to clarify that Conditional Uses are understood to be approved uses that -- although the Commission may choose to attach conditions -- shall be allowed. (If a particular use is never appropriate for a zone, then it should be removed from the list of Conditional Uses for that zone.)

"Section 2-105, Par. E: We STRONGLY OPPOSE the inclusion of this paragraph. Temporary and/or Conditional Use Permits should NOT be allowed to run with the parcel of land for which they are granted, but should lie only with the original applicant. If a new owner wishes to continue with the Temp. Use they should be required to re-apply. Please explain the staff's basis for this inclusion."

Ed Sergeant, resident and property owner in the Mansion Area and member of the Design Review Committee, also wrote in opposition to permits running with the property instead of the applicant:
"It should be clarified that all conditional use permits run with the applicant, not with the property. If it runs with the property, not only has the increase in use for that property been increased forever, but a legal precedence would then be set for all other properties with the same zoning classification."

Agency response: The agency disagrees with Mr. Dalla Rosa & Mr. Sergeant. The Commission believes it must not be a respecter of persons. That is, the Commission should not consider the characteristics of the person applying for a Conditional Use Permit. The advisory committees and Commission can attach conditions to a permit to insure compatibility of the use instead of relying on assumptions about how a particular individual will operate a business. If a given use is appropriate for a given property, it should not matter who the owner or tenant is.

The agency notes that this proposed language represents what is already current practice, and further notes that Conditional Use Permits would still expire after a period of disuse and revert to the underlying zoning.

Comment:
Marvin Dalla Rosa, resident and property owner in the Mansion Area, wrote and spoke with the following questions:
"Section 2-105, Par. C.3: What are the "several" provisions that the Commission may waive on a case-by-case basis? What is the basis for deciding what may or may not be "waived"?"

Agency response: The Commission may reduce, expand, or waive its Standards for parking, signage, height, setbacks, etc. The basis for considering such waivers is described in each of those sections. This text is intended to clarify that proposed changes that cannot be reviewed under the lower standard (waiver) will be considered under the higher standard (variance).

Comment:
Marvin Dalla Rosa, resident and property owner in the Mansion Area, wrote and spoke with the following questions:
"Section 2-105, Par.C.6.a.iii: Why is the temporary use permit duration changed to 14 days from 7? What is the basis for this change? And does this only apply to "Staff-granted" TU permits? (See Par. 6.b.i of this same section where you state that the Commission can grant a TU permit for up to a year)."

Agency response: Staff is occasionally asked to issue two consecutive TU permits at the same property (such as an outdoor sale). This provision would allow owners to obtain only one permit for a single 2-week event. The agency is also proposing a one-year maximum for Commission-issued TUPs, since the current Rules are silent on the maximum length of such permits.

"Section 2-105, Par.C.6.a.v: Has the square footage of signage for a Temp Use been changed? If so, from what and on what basis?"

Agency response: The current Rules are silent on the maximum size of signs associated with Temporary Uses. The proposed language was taken from the City of Little Rock's zoning code.

"Please provide the basis for the 8-week maximum time allowed for a particular property to have temporary use permits. This appears to be an attempt to broaden the temporary use permit to the extent that it begins to act as a conditional use permit."

Agency response: The current requirements for Temporary Use Permits were silent regarding how often they may be issued. The proposed 8-week maximum was taken from the City of Little Rock's zoning ordinance.

Mr. Dalla Rosa also noted in the public hearing that this provision (maximum of 8 weeks per year for a staff-issued TUP) could be used back-to-back – one 8-week period at the end of a calendar year immediately followed by another 8 week period beginning in January – to effectively create a 4 month TUP.

Agency response: The Commission agrees with Mr. Dalla Rosa. The proposed 8-week (or other) maximum prescribed should be for a rolling 12-month period, not per calendar year. <u>This language has been incorporated in the final rule.</u>

"Section 2-105, Par. C.6.b: Why was the last sentence removed? Why are you eliminating the standard of demonstrating that a Temporary Use will be consistent with the Master Plan? Won't removing this requirement weaken the established Plan?"

Agency response: The language proposed for removal is redundant with language in subsection F.

"Also, with regard to Subsection ii of that same paragraph, what is the basis for temporary use permits being allowed up to a year in duration?"

Agency response: The current rules do not prescribe a maximum duration for Commission-approved Temporary Use Permits. The Commission believes one year is a reasonable maximum for a temporary permit.

Comment:
Marvin Dalla Rosa, resident and property owner in the Mansion Area, wrote and spoke with the following questions: "Section 2-105, Par F.2.c.i: Why was the certified mail requirement removed?"

Agency response: The agency's long-standing practice of requiring applicants to notify neighbors by certified mail is often criticized as costly and burdensome.

"What assurances would the Director have that the surrounding property owners were notified per the Rules?"

Agency response: The agency does not presently know whether notices are received, only whether they were sent. This proposal shifts the responsibility from the applicant to the agency.

"Same paragraph, section ii, why was this deleted? What is the proposed timeframe by which the affidavit and supporting exhibits for an application must be submitted prior to a review by the Commission? In what format will these be made available to the public?"

Agency response: The affidavit mentioned in the deleted paragraph relates to the notification procedures. In addition to the certified mail receipts, applicants were required to submit a signed and dated affidavit stating that they indeed had sent the notifications. With staff taking on that function, there is no need for the affidavit. Regarding exhibits, the agency typically requires all supporting materials to be submitted with the application itself several weeks before the Commission meeting. Meeting agendas & staff reports will continue to be published on the agency's website.

Comment:
Dan Cook and Kathy Wells, property owners and residents in the Mansion Area spoke in opposition to the proposal to remove the word "hearing" from the Commission's application review procedures.

Marvin Dalla Rosa, Mansion Area resident and property owner, also asked about the proposed changes:
"Why was the language changed from a hearing to a review? What is the basis for that?"

Agency response: The term "hearing" carries a particular meaning for a state agency. A "hearing" under the Arkansas Administrative Procedures Act indicates an adjudication – a quasi-judicial proceeding that implies swearing of witnesses, a hearing officer, a court reporter, etc. The Commission previously included the word "hearing" in its rules which unintentionally carried with it the requirement of this much more formal proceeding.

The proposed rule seeks to clarify that the Commission's long-standing practice of seeking public input on permit applications should not be construed as an adjudication. Adjudications are, by their very nature, adversarial proceedings, whereas the Commission's review process with public input is intended to serve as a consensus-building device.

The agency notes its enabling legislation specifically grants the Commission authority to "prescribe such rules and regulations concerning procedure before it and concerning the exercise of its functions and duties as it shall deem proper." (A.C.A. 22-3-307(a))

"Section 2-105.F.4: Does this paragraph eliminate the Mansion Area Advisory Committee input opportunity from the public? Please explain."

Agency response: No. This paragraph seeks to clarify the purpose of soliciting public input on applications. It does not change the role of advisory committees.

Section 2-105.F.5.a: Why was "may issue" changed to "shall approve"?

Agency response: To clarify that the Commission must approve an application if it finds the proposal is substantially consistent with the review criteria.

"Section 4-301: Case-by-case: This language is added to the document. Please explain who will demonstrate to the Commission whether proposed work will not detract from the historic integrity of the property or surrounding properties. Is this the staff? The applicant? Who determines what "may nevertheless be suitable for some properties."?"

Agency response: This language is intended to clarify existing practices. Every historic property is different and the Commission has long reserved its authority to consider special cases. In all such cases, it is incumbent on an applicant to demonstrate to the Commission's satisfaction that the proposed work will not detract from the overall historic character of the neighborhood.

Comment:
Marvin Dalla Rosa, resident and property owner in the Mansion Area, wrote and spoke with the following questions: "Section 2-1 05.F.5.e: If the Commission does not act on an application within 100 days is the application automatically approved? Regardless of its impact, detrimental or otherwise, on the District? Isn't this an avenue by which the Commission and/or Staff would abdicate their responsibility? What is the basis for this 100-day timeline? Is lack of action on applications a recurring issue?"

Agency response: The agency has been criticized by previous applicants for the Commission's ability to defer action on controversial applications, sometimes for months at a time. This provision is offered in response to this criticism and would require the Commission to take action, or else grant a default approval. The agency notes that if an approval, even by default, violates the Commission's rules, then that approval can be appealed.

Comment:
Adelia Kittrell, resident and property owner in the Mansion Area, wrote with a mixture of questions and comments: "What are the implications to violations running with the property, owner to owner? Would that mean I am responsible for past violations and could face court as insinuated in the proposed changes? Would it suppress real estate in the area, especially for young families who don't have the resources to fix all the violations? I am particularly worried about Paragraph B, section D. It seems antithetical to community growth or at least tips the balance in favor of people with more money to address them and away from the low-income members of the community or even new/young families buying into the neighborhood.

"Would violations have to be divulged before a sale? I would be seriously upset if I bought a new house and learned I couldn't do ANY repairs on my house until I addressed the $20,000 in violations the previous owner committed. It could *easily* reach that amount on an old home. Depending on the number and type of violations, it could result in a house falling into disrepair instead of being kept up through the years. It is exceedingly possible this might price out younger and low-income community members. I think it's unethical to hold someone into account for something they didn't do. Rather, we should incentivize sellers to make the correct repairs. I certainly feel like the implied effects of the rule change outweigh the current problem and possibly exacerbate it.

"I'm not sure I would have bought my house if I thought that I would be held responsible for past owner violations because I 1) wouldn't know what I was getting into and 2) wouldn't know if I had the money or skills

to fix it. Is there any way to include a provision that would allow subsequent owners to make applications and secure permits for other projects, but if they file for permits that effect the violation in question, that they would have to address it at that time?

"For example, if I buy a house and it has a violation from a previous owner in regard to vinyl siding (which isn't allowed). and I want to build a fence in my front yard, my $1,000 fence project just turned into a $20,000+ project that has nothing to do with a fence. However, if I submit a permit for a new exterior, then I would then have to make sure the new exterior remedies the violation.

"In my personal experience (which I know isn't all-encompassing), I find that people typically want to make their houses worth more and fit the historic nature of the community. In most cases, the friction comes from a lack of money to meet those demands rather than a desire to skirt the rules. Part of the historic nature and value of our community is the varied demographics both in race and incomes. One of my biggest fears is forcing out low-income and minorities that have made up a part of this neighborhood since Central High was desegregated. I hope we can someday come up with a way to help support rather than penalize after the fact when it is too late anyway. From what I can tell, any sort of incentives are geared towards major renovations that mainly help higher-income individuals rather than the single family residence that needs some historically accurate repairs."

Agency response: Staff has received extensive feedback that the agency's current (unwritten) policy to hold harmless any new property owners for violations committed by previous owners has served to "grandfather in" numerous insensitive changes throughout the District. Moreover, this interpretation creates a perverse incentive for sellers to undertake unpermitted work immediately prior to conveying a property.

The agency does, however, recognize Ms. Kittrell's concern about current owners being suddenly held responsible for violations committed by previous owners. The Commission also discussed the difficulty of notifying prospective buyers of any outstanding violation(s) at a given property. The Commission decided to remove this provision from the final rule.

Though not directly germane to these proposed revisions, staff shares Ms. Kittrell's "big picture" concerns about the role of agency rules in displacing long-time residents from the Governor's Mansion Area. The agency does not, however, believe this phenomenon, sometimes called "gentrification" is occurring at this time. Indeed, US Census data indicate the Mansion Area remains among the most diverse neighborhoods in Little

Rock, racially, economically, and by age. Staff will continue to periodically monitor demographic trends and evaluate whether the agency's requirements are serving to decrease this robust diversity.

Comment:
Kathy Wells, resident and property owner in the Mansion Area, spoke in support of the proposed changes allowing any citizen of Arkansas to initiate a demolition-by-neglect complaint.

Marvin Dalla Rosa, resident and property owner in the Mansion Area, wrote and spoke with the following questions:
"Section 2-107.C: Why was this deleted? If the Staff no longer performs this function to whom does this responsibility fall? Is this not part of the Staff's job?"

Agency response: Under current Rules, only one of the groups listed may initiate a Demolition by Neglect investigation by submitting a written complaint. By removing this section, staff or any citizen of Arkansas may report a potential case of demo-by-neglect. However, leaving the final sentence about initiating enforcement actions may serve to clarify the proper proceedings in Demolition by Neglect cases. The Commission decided not to strike this sentence from the final rule.

Comment:
David & Teresa Carlisle, property owners in the Mansion Area wrote & spoke in support of the changes.

Ed Sergeant, resident and property owner in the Mansion Area and member of the Design Review Committee, wrote in opposition to the changes.
"Allowing small-scale commercial-style new construction on corner lots in Zone N would include a reduction in setbacks. In short, we would not want to live next door to one of these properties which blocks our view up the street and provides a 2 story blank wall for us to look at. This would be very detrimental to locations such as Broadway Street where the stability of the historic residential structures is already a problem. The street already suffers from excessive speeding and traffic accidents. The most important use in the inner city is residential and we should do more to protect the historic residential structures, not create more problems for them."

Agency response: The agency disagrees with Mr. Sergeant. The agency believes that allowing for small-scale commercial style new structures on corner lots in Zone N (in the tradition of historic corner stores) will allow for a broader range of development without negatively impacting the neighborhood's overall residential character. The agency emphasizes that

no new uses are being proposed for these properties; only a different style of allowable new structures. The agency also notes that small-scale corner store structures were part of the historic development pattern of the neighborhood.

Comment:
Ed Sergeant, property owner in the Mansion Area and member of the Design Review Committee, wrote in opposition to some zoning changes: "Hotel, Motel, Amusement, Consumer Goods and Services would be allowed as a Conditional Use in Zone N when the preservation of a historic commercial, multifamily or civic type building is involved. Generally, this is Broadway, Main from 19th to Roosevelt, Roosevelt and the area to the northeast of SoMa. Why is this increase in zoning important? Hotel, motel and amusement are regional not community uses. Uses should support the community/pedestrian qualities of the neighborhood within which they are sited. Instead, hotel, motel and amusement are driving based for which development requires maximum parking and signage. The increase of allowable uses for Broadway would be detrimental to the structures and houses behind them."

Agency response: The agency believes Mr. Sergeant is reading the document incorrectly. The proposed changes do not call for any additional use groups in Zone N.

Comment:
Dan Cook, resident and property owner in the Mansion Area and former Commissioner, spoke in opposition to allowing uses listed under Community Facilities 1 in the Mansion Area.

Agency response: The agency believes Dr. Cook is reading the document incorrectly. Community Facilities 1 is already, currently listed among the Conditional Uses that can be considered in the Mansion Area. No change is being proposed at this time.

Comment:
Kathy Wells, resident and property owner in the Mansion Area, spoke in support of the new language allowing the Commission to make reasonable accommodation for communal living facilities.

Marvin Dalla Rosa, resident and property owner in the Mansion Area, wrote and spoke with the following questions: "Section 3-202.Z.13.3.a: It appears that group homes will be approved by the Commission even if they do not meet the requirements of the District. Is that the case?"

Agency response: Yes. Federal and state Fair Housing laws require that the Commission make reasonable accommodation for groups of disabled individuals whose condition requires group living facilities.

"Section 3-203.U.6: Are homeless shelters also to be allowed in Zone M – Residential?"

Agency response: No.

Comment:
Susan Chambers, Terri Parker West, and Lloyd Litsey, residents and property owners in the Mansion Area, wrote in opposition to relaxing the parking requirements near the intersection of 23rd and Arch:
"I object to the relaxing of required parking spaces for the 23rd and Arch intersection. As you know, the 2200 and 2300 blocks of Arch are a mix of old commercial buildings and residential houses. The Homeowners need access to their front yards and doors to carry in groceries, children and to ensure the safety of their vehicles by parking in front of their homes. Any business going in on a block with residences needs to have a parking lot."

Marvin Dalla Rosa, resident and property owners in the Mansion Area, also wrote and spoke in opposition to this proposed change:
"Section 3-301-Parking: As per my previous query at the Mansion Area Committee meeting, please provide the objective basis utilized by the staff to reduce the parking requirements throughout the District. Do these changes apply to Zone O, N and M equally? What data, reports, studies, etc. were utilized by the Staff in making this determination? Please provide attribution of this information for public review. Lacking such, the 50 percent reduction appears to be arbitrary and CANNOT BE SUPPORTED."

Kathy Wells, resident and property owner in the Mansion Area, spoke in opposition to the proposed reductions, cautioning that such changes should be based on empirical data.

Agency response: Staff has repeatedly observed that the Commission's rules for off-street parking often serve as a barrier to small businesses (minority-owned businesses in particular) seeking to locate in the District and serve to undermine the very characteristics that make the neighborhood a desirable place to be. Staff has traced much of Commission's current parking rules back to City of Little Rock parking regulations dating from the 1950s. Those appear to have been derived from model codes first developed in the 1930s when automobiles were becoming ubiquitous in our cities. In other words, the underlying parking rules were not adopted during the 1998 master planning process.

There is a rich body of literature and research asserting that any attempt to 'solve' parking problems on the front end by requiring a certain amount of off-street parking as a condition of every new business license or construction permit produces large, negative unintended consequences. These include increased costs in construction and business operation, valuable land being devoted to large expanses of pavement that sit empty most of the time, gaps in the street frontage, underutilized on-street parking, increased traffic with all of its negative attributes, making car ownership a requirement rather than a choice, etc. A growing viewpoint in the planning and zoning world today is that the 1930s way of thinking has not worked for our cities. Parking lots abound, but vibrancy seems to have disappeared in the same places. The rigidly prescriptive top-down way of dealing with car storage is being replaced with more of a market-based solution.

Here is a sampling of papers and news articles about cities relaxing or eliminating off-street parking requirements:
http://www.fayettevilleflyer.com/2015/10/07/fayetteville-eliminates-minimum-parking-requirements/
http://www.uctc.net/research/papers/351.pdf
http://www.mapc.org/resources/parking-toolkit/strategies-topic/eliminate-minimum-reqs
http://www.slate.com/articles/news_and_politics/the_hive/2010/06/theres_no_such_thing_as_free_parking.html
http://shoup.bol.ucla.edu/Trouble.pdf
http://www.naiop.org/en/Magazine/2016/Summer-2016/Development-Ownership/Smaller-Cities-Lighten-Up-on-Minimum-Parking-Requirements.aspx
http://sdapa.org/download/PatrickSiegman_SDParkingSym_7-14-06.pdf
http://streets.mn/2015/06/11/minneapolis-proposes-to-eliminate-minimum-parking-requirements-near-transit/
http://www.psrc.org/growth/housing/hip/case-studies/sf
http://www.strongtowns.org/journal/2015/11/18/a-map-of-cities-that-got-rid-of-parking-minimums

The Commission has already relaxed its rules multiple times in part by implementing and refining a process for obtaining complete or partial parking waivers in certain circumstances. In recent years the Commission has declined to grant a waiver in only one instance at 23rd and Arch while granting numerous partial and total waivers elsewhere in the neighborhood. All of the churches in the neighborhood, a significant portion of the businesses currently located on Main Street, several of the offices on Broadway, the school at Roosevelt and Main, and others simply would not be allowed to operate had the Commission rigidly imposed its underlying parking rules as originally written. The proposed changes

would make it easier for uses that are allowed by right to begin operating without first having to seek a parking waiver from the Commission.

As context, many cities have completely eliminated minimum parking requirements citywide (Fayetteville, AR, for example) or in certain areas (Little Rock in its Urban Use zone downtown, immediately north of the CZDC's Mansion Area and east of the Capitol Area). Several citizens have expressed a desire to do so in the Capitol Zoning District, too. That level of change would best be preceded by an extensive dialog between the CZDC, City of Little Rock, Rock Region Metro, LRDNA, etc. about improved public transit, improved pedestrian and bike facilities, and possibly a resident parking pass for residential streets at some point in the future if parking demand grows too much.

In the meantime, however, the agency agrees that a greater need for off-street parking requirements remains in predominantly residential zones then in commercial zones. Instead of a District-wide 50% parking reduction, the Commission instead adopted of language that allows staff to reduce the required off-street parking by 50% reduction only commercial zones, while allowing the Commission to consider, on a case-by-case basis, parking waivers up to 50% in residential zones, and up to 100% in commercial areas.

Comment:
Ed Sergeant, property owner in the Mansion Area and member of the Design Review Committee, wrote in opposition to relaxing landscape requirements:
"Reducing landscaping requirements is counter to current movements to improve the green aspects of our communities and enhance pedestrian experience. Does this mean that the CZ standards will be even less than the City's?"

Agency response: The agency believes Mr. Sergeant is reading the document incorrectly. The proposed changes do not call for any reduction in landscape requirements.

Additional Signage
Ed Sergeant, property owner in the Mansion Area and member of the Design Review Committee, wrote in opposition to allowing larger signs:
"The allowable area of signs should not be increased by the Commission. This is also counter to current movements in downtown communities."

Kathy Wells, resident and property owner in the Mansion Area, spoke in opposition to the proposal to allow the Commission to approve more and larger signs than allowed by right.

Agency response: The agency disagrees with Mr. Sergeant and Ms. Wells, and believes the Commission should have the flexibility to consider extra signage in some limited circumstances. The agency notes the proposed rules call for an upper limit on what even the Commission may approve.

Comment:
Adelia Kittrell, resident and property owner in the Mansion Area, wrote with a mixture of questions and comments:
"… Tree Protection. What happens if a tree isn't approved for cutting and it subsequently falls on a house? Will the Commission be held liable? Will home owners be responsible for a registered/certified forester to come to their residence to affirm in writing that the tree is a hazard?

… I certainly think that there's a need to protect our lovely old trees. I'm a professional tree-hugger myself. If a tree professional is needed to review a case, who bears that cost? And if it isn't approved for cutting or trimming and something happens to a historic property, who is held liable for those costs? I'm also wondering about insurance companies. Mine requested that tree limbs be cut before they insured my house. Will there be conflicts between the CDZD and insurance companies? I'm all for protecting these trees, though. I'm just wondering about the implications."
Agency response: The agency believes that the sliding scale of review provided in the proposed tree protection language should serve to alleviate Ms. Kittrell's concerns. The agency also notes that certified foresters are available at the city, county, & state levels who provide professional advice to property owners free of charge.

Comment:
Kyle Pitsor, VP of Government Relations for the National Electrical Manufacturers Association, wrote:
"Our comments are intended to limit misdirected and excessive outdoor illumination. Such illumination wastes energy, intrudes on the privacy of others, creates glare which reduces the effect of lighting, deteriorates the natural nighttime environment, and reduces the ability for astronomical observation. In addition, our comments reflect recent New York state legislation that was signed into law and had the support of the International Association of Lighting Designers, the Illuminating Engineering Society, the International Dark-Sky Association, and NEMA.

Outdoor lighting is used to illuminate roadways, parking lots, yards, sidewalks, public meeting areas, signs, work sites and buildings. When well designed, it improves visibility, adds an element of safety and creates a sense of security, while at the same time minimizing energy use and operating costs. However, if it is not well designed it can be costly, inefficient, counterproductive, and harmful to the nighttime environment,

interfering with normal patterns of activity, behavior and physiology of flora and fauna.
Much of the outdoor lighting in use today wastes energy because it is poorly designed. This waste results in both higher costs for providing such lighting and increased pollution from the power plants that produce the wasted electricity. It is conservatively estimated that $3 to $4.5 billion a year is wasted in the United States in the unintended lighting of the sky rather than the streets, walkways, and outdoor public spaces which the light was intended to illuminate.
In addition to wasting energy, poorly designed lighting often causes blinding glare. Glare occurs when you see light directly from a fixture or bulb. The glare from poorly designed or positioned lighting hampers the vision of drivers and pedestrians, reducing its effectiveness and creating a hazard rather than increasing safety. It shines onto neighboring properties and into nearby residences, reducing privacy, hindering sleep, and diminishing the beauty of the natural surroundings in areas far removed from the source of such lighting.
NEMA believes that the commission's rules for outdoor lighting should follow these guidelines:

1. Fixtures should be fully shielded for those mounted to poles, buildings or other structures.
2. Building mounted fixtures should be fully shielded when its initial fixture lumens are greater than 3000 lumens and are not specifically intended for roadway lighting, parking-lot lighting, or facade lighting.
3. Facade fixture is shielded to reduce glare, sky glow, and light trespass to the greatest extent possible.
4. Ornamental roadway lighting fixtures cannot allow more than 700 lumens from the fixture above a horizontal plane through the fixture's lowest light emitting part.
5. For new illuminated permanent outdoor fixtures applications, only the illuminance levels required may be used.

The rules for outdoor lighting should be waived when:
1. Federal law preempts State law.
2. The fixture is temporarily used by emergency personnel or repair personnel for road repair.
3. Navigational lighting systems necessary for aviation and nautical safety.
4. Athletic playing lighting.
5. Safety or security needs exist that cannot be addressed by any other method.
6. Replacement of previously installed permanent outdoor fixtures that are destroyed, damaged or inoperative, have experienced electrical failure due to failed components or required standard maintenance.
7. Lighting is intended for tunnels and roadway underpasses."

Agency response: The agency agrees with NEMA's comments. The proposed rules for outdoor lighting are intended to reduce glare and light pollution and were developed in consultation with state Rep. Stephen Meeks and other Arkansas "dark sky" advocates. Some of NEMA's comments, however, go beyond what is being proposed, or are not applicable in the Capitol Zoning District (eg. 'tunnels and roadway underpasses'). The agency does not believe these suggestions should be incorporated into the final rule at this time.

Comment:
Muriel Lederman, a property owner in the Mansion Area:
"I believe your standards for solar panels are somewhat inconsistent. On p. 69, you state that for staff approval, panels cannot face the street, while on p. 106 you state that if a panel is to be located on a roof plane, facing the street, it should be designed to minimize glare and reflectivity.

In other words, anyone who own a home, such as I do, whose **only** south/west face roof surface faces a street, needs to get special permission to install a solar panel, while those homeowners whose houses are situated differently get a free pass. If the appearance of solar panels is a concern on historic houses, why is it not a concern through the district?

I would prefer that the standards allow solar panels with minimal reflectivity on any roof plane appropriate for capturing solar energy through staff approval."

Agency response: The agency disagrees with Ms. Lederman. The Commission has always held historic structures to a higher standard of review, as well as those parts of structures visible from the public right of way. The agency believes these distinctions should continue.

Comment:
Kathy Wells, resident and property owner in the Mansion Area, spoke in support of the new language allowing the Commission to consider historic architectural styles for new construction in the Mansion Area.
Agency response: The Commission has traditionally approved such designs. This language is intended to make the Rules consistent with existing practice.

Comment:
Kathy Wells, resident and property owner in the Mansion Area, spoke in supporting of combining all the Commission's rules into a single document.

Agency response: The agency believes a single document with a standard format will be easier for both property owners and commission members to use effectively.

Marvin Dalla Rosa, resident and property owner in the Mansion Area, wrote and spoke with the following questions: "Is this document identical in all ways to the one posted to the CZDC website late last month? Have any changes been made since then? If so, what are those changes and most importantly, when were they made? This is a 252-page document and having reviewed both this one and the one previously posted, I want to make certain there were no changes made in the interim. Please clarify."

Agency response: The document Mr. Dalla Rosa references on the agency's website was the proposed Rules, prior to any revisions.

"In Section 2-105, Paragraph C.1. please explain the deletion of paragraph e, which deals with applications for certificates of appropriateness and the Commission's review in light of the Standards, and replaced it with an item that deals primarily with windows. What is the basis for this change?"

Agency response: The text that was removed was redundant with language for evaluating all permits in subsection F. The text that was moved to this location dealt with Certificates of Appropriateness for damaged windows. The agency believes this text is better suited to the section on Certificates of Appropriateness than its current location.

"Section 2-105, Par. E: The deletion of the paragraph dealing with windows – same question as … above. Please clarify."

Agency response: This text was moved to the subsection dealing with Certificates of Appropriateness.

"Section 2-105.F.5: Why was the first sentence deleted?"

Agency response: It was moved to the following paragraph for clarity.

"Section 2-111: Why was this paragraph deleted?"

Agency response: It was moved to Article 1.

"Section 3-202.Z.e: Please clarify the changes in zoning with regard to home occupation. Especially with regard to subsection iii."

Agency response: Most of this language was moved to this location from another section. The new language is intended to clarify and make the text consistent with existing practice.

"Section 3-203.USE GROUPS: There are a multitude of changes, both additions and deletions, in this Section. Given the redline/greenline/deletion segments throughout this document, we are requesting a version that shows the document in total as if all changes were accepted. This will help us to determine the final language as proposed by Staff."

Agency response: A "clean" version of the proposed changes was provided to the Bureau of Legislative Research, and is also available upon request.

"Section 3-203.U.5: Why was this Section deleted and replaced with one allowing up to 5 units. Would this apply within Zone M?"

Agency response: This language is intended to clarify the meaning of Multifamily use. This group has always been a Conditional Use in Zone M.

"Section 3-203.U.16: It appears that Commission and/or Staff can determine a group for a particular use at their discretion. Is that the case?"

Agency response: The agency has always had this discretion. This language is intended to clarify.

"Section 3-203.U.16: Please clarify the Home Occupations deletion/edits."

Agency response: This language was moved to another section.

"Section 3-301.P.13.1: What is the basis for deletion of the violation language?"

Agency response: The agency agrees with Mr. Dalla Rosa. <u>The Commission decided not to strike the sentence in question, believing it provides clarity.</u>

"Section 3-301.P.13.2: What is the basis for deletion of the "Paved" language/definition?"

Agency response: This language is obviated by new language in standard P8.

"Section 3-301.P.14: It appears there are numerous deletions of requirements in this section. Are they simply eliminated entirely or do they appear elsewhere in the Rules? Please clarify."

Agency response: Similar items were condensed into a single item. Others were moved to new groups according the proposed changes to use groups in the previous section.

"Section S.3 Definitions: Why was this section deleted? Do they appear elsewhere in the Rules? Please clarify."

Agency response: Some of these were definitions without a reference to any items elsewhere. Others were incorporated into the standard for the type of sign in question.

"Section 4-102: Why was language denoting the Mansion Area deleted?"

Agency response: Because this section applies to all historic properties in both the Mansion and Capitol areas.

"GLOSSARY: Why was this deleted?"

Agency response: Many of the items in this section defined terms that were not used elsewhere. Others are generally understood terms not requiring special definitions.

"Page 167 – Capitol Area Zones: Is it Staff's intent to delete these entirely?"

Agency response: This was redundant with an identical page in the General Standards.

"Section 6-201.B - Historic Survey Rating Categories: Why was this removed?"

Agency response: These categories have not been used since the adoption of the current (1998) Master Plan.

"Page 195 – Mansion Area Zones: Is it Staff's intent to delete these entirely? Same question for Page 200."

Agency response: The Mansion Area zoning requirements are covered in the General Standards. And the map on page 200 shows neighborhood conditions as they existed in 1998.

"Section 7 -101 Design Standards – Introduction (Pg. 207): Why was this section deleted?"

Agency response: This material is redundant with language found in the Capitol Area Master Plan.

"Section 7.C – Design Objectives: Why was this section deleted?"

Agency response: This material is redundant with language found in the Capitol Area Master Plan.

"Article Eight – Mansion Area Design Standards: As with the Capitol Area Standards, wholesale sections have been deleted. Are all of these captured elsewhere in the document? If so, please clarify. If not, what is the basis for their deletion?"

Agency response: This material is redundant with language found in the Mansion Area Master Plan.

"Section 8-101: The article appears to focus on new construction and work on non-historic existing structures. Where is language concerning historic structures, which is purportedly the primary focus of the CZDC? Of particular concern also is the addition of the last sentence concerning "O" standards for parking lot design and landscaping. What is the intent of that inclusion?"

Agency response: Rules for historic structures are found in the Rehabilitation Standards. The language on parking lots in meant to clarify that the "O" standards for parking lots apply to small lots (<20 spaces) throughout the Mansion Area.

The proposed effective date is January 1, 2017.

CONTROVERSY: This rule is expected to be controversial. The agency has received extensive feedback from constituents, particularly property owners in the Governor's Mansion area, about the need for stronger enforcement of the agency's rules. Other property owners, however, have traditionally objected to additional agency oversight. The commission anticipates that both sides will comment extensively on the proposed enforcement procedures.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 22-3-302, the Capitol Zoning District Commission is charged with the

authority to promote the general welfare of the state with respect to the State Capitol as well as the area surrounding the Governor's mansion.

Arkansas Code Annotated § 22-3-307 states that the Capitol Zoning District Commission has the authority to prescribe such rules and regulations concerning the exercise of its functions and duties as it shall deem proper.

2. STATE BOARD OF DENTAL EXAMINERS (Kevin Odwyer)

a. SUBJECT: Amendment to Article VIII Governing Requirements for Licensure of Dentists and Dental Hygienists and CPR

DESCRIPTION: These changes conform with nationally recognized terminology regarding CPR, and they update the need for "hands on" CPR skills training.

PUBLIC COMMENT: A public hearing was held on September 16, 2016, and the public comment period expired on that date. No public comments were submitted to the agency. The proposed effective date is pending legislative review and approval.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Dental Examiners is authorized to promulgate rules and regulations in order to carry out the intent and purposes of the Arkansas Dental Practice Act. Ark. Code Ann. § 17-82-208(a).

3. DEPARTMENT OF EDUCATION (Jennifer Davis)

a. SUBJECT: Arkansas Educational Financial Accounting and Reporting System and Annual Training Requirements

DESCRIPTION: These rules apply to all school districts, open-enrollment public charter schools, and education service cooperatives for accounting and reporting revenues and expenditures and for providing required training. They are needed to comply with Act 345 of 2015.

The following changes are proposed:

Section 1.01 Regulatory authority updated

Section 3.02	Definition reworded for clarity
Section 3.03	Definition reworded for clarity
Section 3.04	Definition reworded to maintain style of other definitions
Section 3.07	Removed incorrect acronym
Section 3.08	Grammatical correction
Section 3.10	Definition reworded to maintain style of other definitions
Section 3.17	Definition reworded to maintain style of other definitions
Section 3.20	Updated internal section reference
Section 3.21	Updated internal section reference
Section 4.02	Reworded for clarity
Section 5.02.2	Reworded for clarity
Section 5.03.3	Updated to reflect current law in Ark. Code Ann. § 6-20-2202
Section 6.02.2	Reworded for clarity
Section 8.08	Updated to reflect current law in Ark. Code Ann. § 6-20-2202
Section 9.04.4.4	Reworded for clarity
Section 10.03	Updated as a result of Act 345 that reduces the minimum number of training hours from 4 to 2 and provides for additional training that may be required for certain persons
Section 10.4.1.1	Updated as a result of Act 345, which reduced the minimum number of training hours from 4 to 2
Section 10.04.1.6	New Section that provides for additional training that may be required for certain persons

A summary of changes made as a result of the public comment period:

Title	Updated to include "educational"
Section 5.03.3	Subsections added to reflect ADE's requirements in the law for notifying districts of pertinent information
Section 8.08	Updated to include clarification that the auditors are part of the ADE Financial Accountability Unit
Section 10.04.1.6	Typo corrected

PUBLIC COMMENT: A public hearing was held on September 1, 2016. The public comment period expired on September 19, 2016. In addition to the questions from staff set forth below, the Department received only one public comment from Debbie Atwell of the Rogers School District, pointing out a typographical error in Section 10.04.1.6, which the Department corrected.

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

(1) Title – Pursuant to Ark. Code Ann. §§ 6-20-2203(a)(1) and 6-20-2207(a)(1)(A), should the title include the term "Educational," i.e., "Arkansas *Educational* Financial Accounting and Reporting System"? **RESPONSE:** Comment considered. Update made.

(2) Section 5.03.3 – Arkansas Code Annotated § 6-20-2202(e)(1) does permit the withholding of state aid, but appears to condition that withholding on the basis that the Department has met all of its deadlines for providing pertinent information to the LEA. That condition, however, does not appear to be included in Section 5.03.3. Was there a reason for its omission? **RESPONSE:** Comment considered. Clarification made. For Section 5.03.3, language was added that withholding of aid is contingent on ADE giving districts all pertinent information by the July 1 deadline.

(3) Section 8.08 – Arkansas Code Annotated § 6-20-2202(c)(2) seems to require that upon approval by the auditors, a copy of the approved budget be filed also with the Department. Is there a reason that language was omitted? **RESPONSE:** Comment considered. Clarification made. Because the auditor is part of ADE, it seemed redundant to provide it to the ADE auditor, then provide to the Department. However, language was

added to clarify and make clear that the auditor of the Financial Accountability Unit is part of the Department.

(4) Section 10.04.1.6 – I believe there might be a typographical error in the third line of the section – "about selecting cod*e*s." **RESPONSE:** Comment considered. Correction made.

The proposed effective date is pending legislative review and approval.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The State Board of Education ("Board") shall adopt by rule a uniform budget and accounting system that shall be known as the "Arkansas Educational Financial Accounting and Reporting System." *See* Ark. Code Ann. § 6-20-2203(a)(1). *See also* Ark. Code Ann. § 6-20-2207(a)(1)(A) (directing the Board to promulgate rules governing a uniform budget and accounting system that shall be known as the "Arkansas Educational Financial Accounting and Reporting System"). The system shall establish and implement the process and procedures for financial reporting as required by the Arkansas Educational Financial Accounting and Reporting Act of 2004, codified at Ark. Code Ann. §§ 6-20-2201 through 6-20-2208, for school districts, education service cooperatives, and open-enrollment public charter schools. *See* Ark. Code Ann. § 6-20-2203(a)(2). The Board is further required, pursuant to Ark. Code Ann. § 6-20-1805(a), to establish by rules or regulations appropriate training and continuing education requirements for individuals whose job responsibilities include preparing a budget or classifying, recording, or reporting receipts or expenditures of a school or school district. *See* Ark. Code Ann. § 6-20-1805(a). The Board shall likewise establish rules or regulations to assure the proficiency of school employees or other individuals to properly classify, record, and report the fiscal transactions of schools or school districts. *See* Ark. Code Ann. § 6-20-1805(b). Finally, the instant changes also implement Act 345 of 2015, which amended the training requirements under the aforementioned Arkansas Educational Financial Accounting and Reporting Act of 2004 and set forth in Ark. Code Ann. § 6-20-2204.

4. DEPARTMENT OF ENVIRONMENTAL QUALITY, WATER DIVISION (Caleb Osborne, ADEQ; and Marcy Taylor for the Third-Parties)

a. SUBJECT: Regulation No. 2; Third-Party Rulemaking, City of Harrison and City of Yellville Wastewater Treatment Plants

DESCRIPTION: This rule amends Regulation No. 2 to:

1. Modify the water quality criterion for chloride, sulfate and total dissolved solids (TDS) for Crooked Creek from the outfall of Harrison's Wastewater Treatment Plant to ADEQ monitoring station WHI0193 as follows: chloride from 20 mg/L to 22.6 mg/L; sulfate from 20 mg/L to 24.4 mg/L; and TDS from 200 mg/L to 269 mg/L; and

2. Modify the TDS water quality standards for Crooked Creek from ADEQ monitoring station WHI0193 to the mouth of Crooked Creek as follows: TDS from 200 mg/L to 238 mg/L.

PUBLIC COMMENT: A public hearing was held in Harrison, Arkansas, on October 19, 2015. The public comment period expired on November 2, 2015.

The cities of Harrison and Yellville ("the Cities") state that ten (10) public comments were submitted. The commenters were:

- Carol Bitting
- Friends of the North Fork & White Rivers
- Arkansas Public Policy Panel
- Beaver Water District
- Arkansas Department of Environmental Quality (ADEQ)
- El Dorado Chemical Company
- Huntsville Water Utilities
- Martin Resource Management Corporation
- Butterball, LLC
- The City of Siloam Springs

In addition to the rulemaking request by the Cities for a change to the water quality standards for a portion of Crooked Creek, the Commission put two questions out for public comment: (a) whether proposed new criteria should be rounded up to the nearest whole number for chloride and sulfate and up to the nearest multiple of ten for total dissolved solids; and (b) whether proposed new criteria should be revised to correspond to the 99th percentile of relevant instream data.

All ten (10) of the public comments addressed the two questions raised by the Commission. However, of those ten (10), only four (4) commenters also addressed the rulemaking request by the Cities. Three of those commenters (Friends of the North Fork & White Rivers, Arkansas Public Policy Panel, Beaver Water District) did not oppose the Cities' rulemaking request. The fourth commenter, Carol Bitting, opposed the Cities' request citing opposition to the degradation of water quality in Crooked Creek. The commenter suggested that the Cities install equipment designed to

increase water quality and that the public be educated to stop using products that are high in chlorides and sulfate.

The Cities responded only to the one comment opposing the rulemaking request; i.e., the Cities did not respond to the three (3) commenters who stated that they did not oppose the Cities' request, and did not respond to the commenters who only addressed the Commission's two questions.

The Cities' response to the one comment opposing the rulemaking stated that requested changes will not result in degradation of the water quality of Crooked Creek. Rather, the Cities are seeking changes that reflect the historic concentrations of sulfate, chloride, and total dissolved solids in the affected reaches of Crooked Creek and to revise the water quality standards to be consistent with the already existing and historic concentrations in those reaches of Crooked Creek. Further, the Cities fully explored alternatives, including the installation of treatment technologies. The only available treatment technology is reverse osmosis, which generates a concentrated brine that is environmentally difficult and costly to dispose of and is economically infeasible. The approximate estimated capital cost of RO for Harrison's ratepayers is $5,600,000 with annual operating costs of $4,900,000. The approximate estimated capital cost of RO for Yellville's ratepayers is $2,250,000 with annual operating costs of $660,000.

The public comments on the two (2) questions raised by the Commission are summarized below:

Carol Bitting: round down, not up;

Friends of the North Fork & White Rivers: We urge that the questions be considered in a separate process due to the probable statewide application;

Arkansas Public Policy Panel: do not round up and do not revise criteria to correspond to the 99th percentile of relevant instream data;

Beaver Water District: Water quality standards should not be rounded up or based on the 99th percentile of relevant instream data; a separate public hearing should be held on these questions;

Arkansas Department of Environmental Quality (ADEQ): do not round up and do not revise criteria to correspond to the 99th percentile of relevant instream data;

El Dorado Chemical Company: We support rounding up and use of the 99th percentile, which is protective of aquatic life and reduces the

possibility of a stream returning to the 303(d) list (list of impaired streams);

Huntsville Water Utilities: We support rounding up and use of the 99th percentile;

Martin Resource Management Corporation: We support rounding up and use of the 99th percentile, which is protective of aquatic life and reduces the possibility of a stream returning to the 303(d) list;

Butterball, LLC: We support rounding up and use of the 99th percentile, which is protective of aquatic life and reduces the possibility of a stream returning to the 303(d) list; and

The City of Siloam Springs: We support rounding up and use of the 99th percentile, which is protective of aquatic life and reduces the possibility of a stream returning to the 303(d) list.

The Cities' statement as to the questions raised by the Commission was: "The Cities recognize the reasoning behind the questions posed by APCEC and acknowledge and appreciate the statements by the Commissioners that the questions are not intended to affect the Cities' requested criteria. The criteria requested by the Cities are based on the Use Attainability Analysis (UAA) documentation and on statistical analysis previously approved by APCEC and EPA over several years of criteria establishment. The Cities did not request the rounding up of the proposed new criteria and the rounding down of the requested criteria would result in permit limits which could not be achieved by the Cities. The Cities take no position on the second question raised by APCEC."

The Department acknowledged the comments received.

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

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: This amendment to Regulation No. 2, Water Quality Standards, stems from a third party rulemaking request made to the Arkansas Pollution Control and Ecology Commission ("Commission") by the City of Harrison and the City of Yellville, both of which own and operate wastewater treatment plants ("WWTP"). The City of Harrison seeks modification of the chloride, sulfate, and total dissolved solids ("TDS") water quality criteria for Crooked Creek from the outfall of the Harrison WWTP to the monitoring station WHI0193 of the Arkansas

Department of Environmental Quality ("ADEQ"). The City of Yellville seeks modification of the TDS water quality criterion for Crooked Creek from ADEQ monitoring station WHI0193 to the mouth of Crooked Creek. Arkansas Code Annotated § 8-4-202(c)(1) bestows upon any person the right to petition the Commission for the issuance, amendment, or repeal of any rule or regulation. *See also* Ark. Code Ann. § 8-4-102(5) (defining "person" as "any state agency, municipality, governmental subdivision of the state or the United States, public or private corporation, individual, partnership, association, or other entity"). Pursuant to Ark. Code Ann. § 8-4-202(a), the Commission is given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules and regulations implementing or effectuating the powers and duties of the Commission and the ADEQ. It is further given and charged with the power and duty to promulgate rules and regulations including water quality standards. *See* Ark. Code Ann. § 8-4-201(b)(1)(A). *See also* Ark. Code Ann. § 8-4-202(b)(3).

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

a. SUBJECT: EGS Rule 13.23 License Criteria for EGS Laboratories

DESCRIPTION: This proposed rule establishes the requirements for granting a license to independent testing laboratories that certify that Electronic Gates of Skill meet the requirements of Arkansas law. Laboratories must be independent, certified, and have five years experience testing gaming devices. Licenses shall be for a period of three years.

PUBLIC COMMENT: A public hearing was held on November 11, 2016. The public comment period expired on November 9, 2016. The department received the following comments:

Comment:
GLI Testing Lab, spoke against the adoption of an Electronic Games of Skill (EGS) licensing rule. They argued that the Arkansas Racing Commission (ARC) was better off with only one testing lab that is selected through the bidding process conducted by the state. GLI has an existing contract with ARC for consulting services.

Dustin McDaniel, attorney for BMM, a competing testing lab, spoke in favor of the new rule.

Response:
The ARC previously considered these arguments, and determined that it was in the best interest of the State to have competition among testing labs, and that competition could result in lower costs.

Comment:
Michael Harry, attorney for the Bureau of Legislative Research, asked the following question:

I noticed that there will be a license and renewal fee assessed of not more than $1,000. What statute is the Commission relying upon for assessing this fee?

Response:
The Commission is relying on the authority under Arkansas Code Annotated § 23-113-303(b)(1).

The proposed effective date is January 1, 2017.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no cost to the state. Testing labs would be required to pay a license fee of not more than $1,000 per year.

LEGAL AUTHORIZATION: Arkansas Code Annotated §23-113-302 gives the Commission the authority to promulgate, revise, amend, and repeal rules, regulations, and orders in order to regulate the specific games, devices, machines, and equipment played and utilized in connection with wagering on electronic games of skill and the rules of play and methods of operation, as well as the appropriate security and surveillance systems, in order to safeguard fairness and integrity in the conduct and operation of electronic games of skill and wagering on the electronic games of skill.

Pursuant to Ark. Code Ann. §25-15-105, an agency is required to have specific statutory authority to assess a fee or penalty. This rule assesses a licensure and renewal fee of not more than $1,000. The commission is authorized to assess a licensing fee of $1,000 pursuant to A.C.A. §23-113-303 (b)(1)(A)-(B)(2) which states that "[n]o person may… provide repair or other services to electronic games of skill unless the person has… (B) Obtained a license from the commission. (2) Each supplier shall pay to the commission an annual license fee in the amount of one thousand dollars ($1,000) for each year or part thereof that the license is in effect."

b. SUBJECT: Amendment to Rule 2212

DESCRIPTION: This provides that where two horses are trained by the same trainer or owned by the same owner and are running uncoupled in a race, and one of such entrants is disqualified, the other entrant shall also be disqualified if, in the judgment of the stewards, the violation by the disqualified horse prevented any other horse from finishing ahead of the other part of the uncoupled entry. Disqualification of one uncoupled entrant would not require disqualification of other horses owned or trained by the same person and running uncoupled in the same race if the violation by the disqualified entrant did not so affect the finish of the race.

PUBLIC COMMENT: A public hearing was held on November 10, 2016. The public comments period expired on November 9, 2016. The commission received no comments in opposition to the rule. However, Skip Ebel, attorney for Oaklawn Park, spoke in favor of the rule.

The proposed effective date is January 1, 2017.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Arkansas Code Annotated §23-110-204 grants the Arkansas Racing Commission sole jurisdiction over the business and the sport of horse racing in Arkansas. The statute goes further, giving the commission the full, complete, and sole power and authority to promulgate rules.

c. SUBJECT: Amendment to Rule 2441

DESCRIPTION: The existing rule required claimed horses to be taken to the paddock after the finish of the race. This caused a problem with too many horses in the paddock area. The amendment requires claimed horses to be taken to an area designated by the Oaklawn Board of Stewards for the exchange of custody of the claimed horse to avoid congestion in the paddock area.

PUBLIC COMMENT: A public hearing was held on November 10, 2016. The public comments period expired on November 9, 2016. The commission received no comments in opposition to the rule. However, Skip Ebel, attorney for Oaklawn Park, spoke in favor of the rule.

The proposed effective date is January 1, 2017.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Arkansas Code Annotated §23-110-204 grants the Arkansas Racing Commission sole jurisdiction over the business and the sport of horse racing in Arkansas. The statute goes further, giving the commission the full, complete, and sole power and authority to promulgate rules.

d. SUBJECT: Rule 2467 Pick-5 Wagering

DESCRIPTION: This rule allows Oaklawn to offer a pick-5 wager that requires the bettor to select the winning horses in each of five designated races. If there are no betters who correctly pick the winners of the five designated races, the net amount of the betting pool shall be distributed to the bettors correctly selecting the highest number of winners in the five designated races.

PUBLIC COMMENT: A public hearing was held on November 10, 2016. The public comments period expired on November 9, 2016. The commission received no comments in opposition to the rule. However, Skip Ebel, attorney for Oaklawn Park, spoke in favor of the rule stating that it is a popular wager at other parks.

The proposed effective date is January 1, 2017.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Arkansas Code Annotated §23-110-204 grants the Arkansas Racing Commission sole jurisdiction over the business and the sport of horse racing in Arkansas. The statute goes further, giving the commission the full, complete, and sole power and authority to promulgate rules.

6. DEPARTMENT OF HEALTH, CENTER FOR PUBLIC HEALTH PRACTICE (Robert Brech)

a. SUBJECT: Medical Waste Regulations Amendment

DESCRIPTION: The Medical Waste Program is making changes to the Rules and Regulations Pertaining to the Management of Medical Waste from Generators and Health Care Related Facilities; Section VII – Requirements for Transporters of Commercial Medical Waste (K.)

The proposed changes allow for variance in the manifest/tracking documentation that must be provided to the generators by the commercial medical waste transporters at the time of waste transfer.

PUBLIC COMMENT: A public hearing was held on September 20, 2016. The public comment period expired on September 20, 2016.

The Department received the following comment from Selin Hoboy and Al Burson from Stericycle, Inc:

COMMENT:
"Stericycle appreciates the opportunity to provide comments on these proposed regulations and respectfully request that the Arkansas Department of Health consider the use of volume (per DOT as stated) as an option instead of weight (only)" or the number of containers", such that we can ensure compliance with the Department and DOT. Additionally, we request that VII. K. 4.b. be stricken from the proposed rules and not be adopted or amended to provide greater flexibility in time to return to generator (i.e. 45 days)."

RESPONSE: The current proposed revision is as follows:
4. The weight (pounds) or the number of containers of commercial medical waste transported. (This will stay as is. The reporting of volume only is not descriptive enough for agency needs. ADH needs to ensure that each container of waste is accounted for by the transporter, while in transit. Volume may still be reported; however, either weight in pounds or the number of containers would be required by ADH. Further, changes to K. 4.b. as requested allows for the flexibility in reporting time (i.e. 45 days) to permit transporters with real-time tracking capability time to report the weight in pounds to the generators.)

a. The commercial medical waste transporter may provide at the time of pick-up the number of containers if the transporter can track real-time individual waste containers from the point of collection through the point of treatment.

If the weight (pounds) of each container is not provided at the time of transfer, the commercial medical waste transporter must report the weight (pounds) of each container to the generator within fourteen (14) days. (Our regulation states that this info is required to be included as part of the log/manifest to the generator. ADH will amend this to 45 days instead of 14).

The proposed effective date is tentatively set for February 15, 2017.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Arkansas Code Annotated § 20-7-109 (a)(1)(B) gives the Department of Health the authority to make all necessary rules and reasonable rules and regulations of a general nature regarding the sanitary and hygienic conditions within the state.

Specifically, Ark. Code Ann. § 20-32-106 (a) authorizes the Department of Health to regulate the segregation, packaging, storage, transportation, treatment and disposal of commercial medical waste.

7. DEPARTMENT OF HEALTH, CENTER FOR HEALTH PROTECTION/PHARMACY SERVICES (Robert Brech)

a. SUBJECT: List of Controlled Substances in Arkansas

DESCRIPTION: The proposed amendments update the List of Controlled Substances to include these drugs:

1. Eluxadoline. The FDA approved this drug for treatment of irritable bowel syndrome with diarrhea. To follow DEA scheduling, this drug would be included as Schedule IV. Page 15, (f,4).

2. Brivaracetam. The FDA approved this drug for treatment of epilepsy. To follow DEA scheduling, this drug would be included as Schedule V. Page 16, (e,3).

3. Acetyl fentanyl. N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide. The DEA has placed this opioid analgesic into Schedule 1 because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule 1. Page 2, (56).

4. Butyryl fentanyl. N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide. The DEA has placed this opioid analgesic into Schedule 1 because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule 1. Page 2, (57).

5. Beta-hydroxythiofentanyl. N-{1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl}-N-phenylpropionamide. The DEA has placed this opioid analgesic into Schedule 1 because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule 1. Page 2, (58).

6. AH-7921. 3,4-dichloro-*N*-[(1dimethylamino) cyclohexylmethyl]benzamide. The DEA has placed this opioid analgesic into Schedule 1 because it has no recognized medical use in the United States. To follow the DEA scheduling, this drug would be included as Schedule 1. Page 2, (67).

7. W-18. 1-(4-nitrophenylethyl) piperidylidene-2-(4-chlorophenyl) sulfonamide. Page 2, (68). Felisia Lackey, Chief Forensic Chemist-Drug Section, Arkansas State Crime Laboratory, requested that this dangerous synthetic opioid be included into Schedule 1. This drug is considered to be 100 times more potent than fentanyl and 10,000 times more potent than morphine.
More information regarding W-18 was obtained from Dr. Jeffery Moran with the ADH Public Health Lab, and for the following reasons, ADH Pharmacy Services recommends that W-18 be included into Schedule 1:
- current scientific knowledge regarding emerging illicit drugs of concern
- high potential for abuse and dependence
- risk to the public health

The following drugs, similar to those listed above, will be included as Schedule 1:

8. Acetyl fentanyl 4-methylphenethyl analog. N-{1-[2-(4-methylphenyl)ethyl]-4-piperidinyl}-N-phenyl-acetamide monohydrochloride. Page 2, (59).

9. Valeryl fentanyl. N-phenyl-N[1-(2-phenylethyl)-4-piperidinyl]-pentanamide monohydrochloride. Page 2, (60).

10. Furanyl fentanyl. N-(1-(2-phenylethyl)-4-piperidinyl)-N-phenylfuran-2-carboxamide. Page 2, (61).

11. Isobutyryl fentanyl. 2-methyl-N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-propanamide monohydrochloride.Page 2, (62).

12. Octfentanil. N-(2-fluorophenyl)-2-methoxy-N-[1-(2-phenylethyl)piperidin-4-yl]acetamide. Page 2, (63).

13. 4-methoxy butyryl fentanyl. N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-yl)butyramide monohydrochloride. Page 2, (64).

14. Para-flourobutyryl fentanyl. N-(4-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-butanamide monohydrochloride. Page 2, (65).

15. Acetyl norfentanyl. N-phenyl-N-4-piperidinyl-acetamide monohydrochloride. Page 2, (66).

16. W-15. 1-phenylethylpiperidylidene-2-(4-chlorophenyl) sulfonamide. Page 2, (69).

17. MT-45. 1-cyclohexyl-4-(1,2-diphenylethyl) piperazine. Page 3, (70).

18. U-47700. trans-3,4-dichloro-N-(2-(dimethylamino)cyclohexyl)-N-methylbenzamide. Page 3, (71).

PUBLIC COMMENT: A public hearing was held on September 26, 2016. The public comment period expired on September 26, 2016. The department received no comments.

The proposed effective date is March 1, 2017.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Arkansas Code Annotated § 20-7-109 (a)(1)(A) gives the Department of Health the authority to make all necessary and reasonable rules and regulations of a general nature for the protection of the public health and safety.

Specifically, Ark. Code Ann. § 5-64-201 (a)(1)(A)(i) states the Director of the Department of Health shall administer this chapter (Controlled Substances) and may add a substance to or delete or reschedule any substance enumerated in a schedule.

8. DEPARTMENT OF HUMAN SERVICES, AGING AND ADULT SERVICES (Craig Cloud)

a. SUBJECT: Section 310 – Arkansas Family Caregiver Support Program

DESCRIPTION: This is a new policy to comply with the Older Americans Act Title III, Part E. This policy establishes administration and service delivery standards for the Arkansas Family Caregiver Support Program which will allow Area Agencies on Aging to provide support to caregivers. This is mandatory by the Older Americans Act.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on September 5, 2016. The Department received no comments.

The proposed effective date is pending legislative review and approval.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: This rule has been promulgated in order to comply with the Federal Older Americans Act Title III, Part E.

The Department of Human Services is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201 (12). In addition, A.C.A. § 25-10-129(b) states that the Department of Human Services has the authority to promulgate rules, as necessary to conform to federal statutes, rules and regulations that affect current and future programs administered or funded by or through the department, as necessary to receive any current or future federal funds available to the department.

9. DEPARTMENT OF HUMAN SERVICES, CHILDREN AND FAMILY SERVICES (Christin Harper)

a. SUBJECT: Policy Regarding Children Missing from Out-of-Home Placements

DESCRIPTION: These updates make the following changes:

1. Updates the policy and procedure per federal P. L. 113-183, specifically to add requirements for division staff to notify the National Center for Missing and Exploited Children (NCMEC) when a child is missing from foster care and provides information regarding the child so that NCMEC may aid the division and law enforcement in locating the child as well as to report to local law enforcement any youth identified as a sex trafficking victim.

2. Broadens the definition of a child missing from foster care to include possible abductions as well as when a child leaves a foster care placement independently (I.E., runs away).

3. Provides additional detail to staff regarding notification requirements when a child is missing from foster care.

4. Clarifies that a new Child and Adolescent Needs and Strengths (CANS) assessment will be conducted when a child who has been missing from foster care is located.

5. Updates the policy/procedures for general organizational and formatting purposes.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on October 28, 2016. The department received no comments.

The proposed effective date is January 1, 2017.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Portions of this rule were promulgated to update the department's policy and procedure to be in line with Federal Public Law 113-183 §104.

Arkansas Code Annotated § 9-28-103 (b) authorizes the Division of Children and Family Services of the Department of Human Services to promulgate rules necessary to administer the subchapter regarding children and family services.

10. DEPARTMENT OF HUMAN SERVICES, COUNTY OPERATIONS (Donna DuMond and Yolanda Geary, item a; Dave Mills, item b)

a. SUBJECT: SNAP Work Requirements

DESCRIPTION: This is the revised policy for work requirements for non-exempt able bodied adults without dependents in the Supplemental Nutrition Assistance Program. The state agency is given the authority to require certain work registrants to meet certain work or work activity prerequisites to be eligible to participate in the Supplemental Nutrition Assistance Program. The revisions allow the state to provide training services to a larger set of work registrants, thus increasing the number of employable SNAP recipients. This will enable the agency to achieve the goal of reducing the unemployment and under-employed population.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on November 13, 2016. The department received no comments.

The proposed effective date is February 1, 2017.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: The cost per impacted person for January 1, 2014 through June 30, 2014 is $150. The cost per impacted person for July 2014 through June 2015 is $150. The expected number of impacts are minimal based on current participation statistics. This policy change results in a household with an undocumented alien being treated in the same manner as households without an undocumented. These rules do not result in any increased cost to the state.

LEGAL AUTHORIZATION: The Department of Human Services is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201 (12). Arkansas Code § 20-77-107 specifically authorizes the department to "establish and maintain an indigent medical care program."

The purpose of this rule is to comply with Federal Regulation 7 CFR 273.11 (c)(3)(i)(A) through (G) as authorized by the Food and Nutrition Act of 2008 (PL 110-246).

b. SUBJECT: Medical Services Policy Manual Sections G-140 and G-141

DESCRIPTION: This rule amends the DHS Medical Services Policy Manual to be consistent with federal law requiring a reasonable opportunity enrollment period for verification of immigration status for an otherwise eligible individual.

G-140 – Changed 10-day notice to 90-day notice for an alien to verify immigration status.

G-141 – Added a new section of policy to describe the 90-day reasonable opportunity period for an alien to verify immigration status if that status cannot be verified through FDSH, SAVES, or if the individual does not have immigration documentation. The individual will receive Medicaid coverage during this reasonable opportunity period. If immigration status is not verified during the reasonable opportunity period, Medicaid coverage will end on the 90th day.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on September 1, 2016. The department received no comments.

The proposed effective date is February 1, 2017.

CONTROVERSY: DHS expects this rule to be controversial because it relates to both Medicaid and verification of immigration status.

FINANCIAL IMPACT: The cost to implement the rule is $4,010,610 for the current fiscal year ($1,212,407 in general revenue and $2,798,203 in federal funds) and $9,759,150 for the next fiscal year ($2,958,974 in general revenue and $6,800,176 in federal funds).

Since the increased cost or obligation is at least $100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of the entities combined, the agency provided the following additional detail:

(1) a statement of the rule's basis and purpose; **The purpose of this rule change is to amend the DHS Medical Services Policy Manual to be consistent with federal law requiring a reasonable opportunity enrollment period for verification of immigration status for an otherwise eligible individual.**

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute; **To become compliant with federal regulations and or statute 42 U.S.C. 1320b-7(d)(4)(A).**

(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; **Federal mandate/regulation**

(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; **No alternatives mandated by federal regulation.**

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

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; 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. **Agency will continue to monitor federal regulations and if changes occur then will comply as mandated.**

LEGAL AUTHORIZATION: The Department of Human Services is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201 (12). In addition, Ark Code Ann. § 25-10-129 (b) states that the Department of Human Services has the authority to promulgate rules, as necessary to conform to federal statutes, rules and regulations that affect current and future programs administered or funded by or through the department, as necessary to receive any current or future federal funds available to the department.

11. DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES (Tami Harlan, item a; Charlie Green and Paula Stone, item b; Tami Harlan, item c; Melissa Stone, item d; Tami Harlan, items e and f)

a. SUBJECT: Rehabilitative Services for Persons with Mental Illness (RSPMI) Rate Reduction

DESCRIPTION: This reduces the payment amount per unit for procedure code 90853 from $13.80 to $10.00.

PUBLIC COMMENT: A public hearing was held on October 6, 2016. The public comment period expired on November 13, 2016.

Michael Harry, an attorney with the Bureau of Legislative Research, asked what was covered under procedure code 90853 as it was not clear from the description and rule itself.

Tami Harlan with the Department of Human Services responded that the procedure code in question covers group psychotherapy.

The proposed effective date is February 1, 2017.

CONTROVERSY: This is expected to be controversial. It is likely that individual providers will identify the rates as possible barriers to treatment.

FINANCIAL IMPACT: The estimated savings is $7,918,310 for the current fiscal year ($2,393,705 in general revenue and $5,524,605 in

federal funds) and $13,575,022 for the next fiscal year ($3,993,771 in general revenue and $9,581,251 in federal funds).

LEGAL AUTHORIZATION: The Department of Human Services is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201 (12). Ark. Code Ann. § 20-77-107 specifically authorizes the department to "establish and maintain an indigent medical care program."

b. SUBJECT: Outpatient Behavioral Health Services Update New-16, ARKids 3-16, Inpatient Psychiatric Services for Persons Under Age 21 Update 1-16, School Based Mental Health Update 1-16, Substance Abuse Treatment Services 2-16, Rehabilitative Services for Persons with Mental Illness 4-16, Licensed Mental Health Practitioners 2-16 and State Plan Amendment #2016-008

DESCRIPTION: Effective July 1, 2017, Arkansas Medicaid proposes to implement the Medicaid Outpatient Behavioral Health Services Program while also amending the Inpatient Psychiatric Services for Persons Age 21 program and School Based Mental Health program. The proposed rule ensures that behavioral health care reimbursed by Medicaid is: (1) Family/consumer-driven and person-centered, to support and promote evidence-based, recovery-oriented practices that guide service delivery and payment efficiency; (2) Provides customized, culturally and linguistically competent, community-based services; (3) Offers the least restrictive care; (4) Utilizes a team-based approach to treatment decisions to address service needs; and (5) Ensures services are high quality based on data from outcomes and evaluation tools.

PUBLIC COMMENT: A public hearing was held on October 4, 2016. The public comment period expired on November 13, 2016. The department received the following comments:

Comment: Regarding the Independent Assessment, specifically, 1) Which instrument will be chosen? 2.) Qualifications of the assessors?
Response: The independent assessment entity, as well as the instrument, will be identified via procurement by the State. The version of instrument has not been decided upon at this time. The independent assessment instrument will be conducted by an appropriately trained individual to perform the assessment as required to maintain the validity and reliability of the tool.

Comment: Concerns about the delay in allowable provision of services to individuals waiting on independent assessment.

Response: Counseling Level Services and Crisis Services can be provided to any beneficiary as long as the services are medically necessary. There is no delay in providing Counseling Level or Crisis Services. Certain populations will be presumptively eligible for Rehabilitative/Intensive Level Services until they receive an independent assessment. These include 1.) Youth involved in the juvenile justice system (DYS custody); 2.) Individuals involved in the foster care system (DCFS custody); 3.) Individuals discharged from acute psychiatric hospital stays; 4.) Individuals discharged from crisis residential stays; 5.) Adults with involvement in the forensic system; 6.) Clients identified and referred by DBHS.

Comment: Care Coordination Entity?
Response: The proposed Care Coordination model will assist adults and children with behavioral health needs develop a person and family centered plan and will facilitate access to needed services across multiple systems. The responsibility for providing Care Coordination to individuals with the highest levels of behavioral health service need will be held by the Arkansas Coordinating Care Entity (ACE).

Comment: Concerned that the Behavioral Health Transformation plan may not realize significant decrease in Medicaid expenditures. This will likely occur because of the expanded array of services, the expanded population of persons eligible to receive services (for example, person with only a substance use diagnosis), and because of the ending of the moratorium, the vast expansion of providers who will be participating in the Medicaid system.
Response: The goal of the Behavioral Health Transformation is to ensure that individuals are receiving the right services, at the right time, in the right location. Access to expanded services is determined by utilizing an independent assessment which determines eligibility for the more intensive services targeted to specific populations.
To make a meaningful impact on Behavioral Health treatment in Arkansas, it is essential to address the following:
Substance abuse treatment services are not coordinated/integrated with mental health services.
Enhanced continuum of crisis services
Enhance and expand Care coordination
Overutilization of residential treatment for children
Lack of emphasis on Family Support Services and other evidence based practices
Allowing more providers in the State does not mean that there will be an increase in the amount of individuals needing medically necessary behavioral health services. The efficiencies created by allowing co-location of therapy services to ensure people are able to access those services easily, the ability to treat mental health and substance use

disorders by the same therapist and creating a system that provides incentive to focus on recovery will create a coordinated and efficient behavioral health system that improves outcomes of clients with behavioral health needs.

Comment: Will DHS consider expanding allowable places of services for specific Counseling Level services to Beneficiary's Home and Homeless Shelters?
Response: Homeless Shelters (Place of Service 04) and Beneficiary's Home (Place of Service 12) will be added as an allowable place of services for specific services within the Outpatient Behavioral Health Services manual. The services where Place of Service 04 (Homeless Shelter) will be an allowable place of service will be: 1) Individual Behavioral Health Counseling; 2) Marital/Family Behavioral Health Counseling with Beneficiary Present; 3) Marital/Family Behavioral Health Counseling without Beneficiary Present; 4) Psychoeducation; 5) Mental Health Diagnosis; 6) Interpretation of Diagnosis; 7) Substance Abuse Assessment; 8) Pharmacologic Management, and; 9) Psychiatric Assessment.

Comment: Can the daily allowable limit of 1 unit (60 minutes) for Psychological Testing be amended? 60 minutes does not allow adequate time for the clinical interview and administration of a psychological test
Response: The Department of Human Services agrees with this comment and will amend the daily allowable amount of units of this service (CPT Code 96101) to be billed from 1 unit to 4 units daily. The 8 unit yearly allowable amount, with extension of benefits available, will remain in place.

Comment: What are the proposed rates and how were they determined?
Response: The proposed changes in reimbursement rates are based upon the 2014 Public Consulting Group (PCG) Rate study. The Department of Human Services will post the proposed reimbursement fee schedule on the Division of Medical Services website for the associated changes.

Comment: Will the independent assessment take away authority for mental health professionals to determine appropriate care?
Response: No. A treatment plan will only be reimbursable for individuals determined to be eligible for Rehabilitative Level Services and adults in Intensive Level Services. While the independent assessment helps determine the tier of the individual, the provider agency will develop the treatment plan to guide clinical care provided by professionals and paraprofessional members of the team. The definition for the service is, "Treatment Plan is a plan developed in cooperation with the beneficiary (or parent or guardian if under 18) to deliver specific mental health services to restore, improve, or stabilize the beneficiary's mental health

condition. The Plan must be based on individualized service needs as identified in the completed Mental Health Diagnosis, independent assessment, and independent care plan. The Plan must include goals for the medically necessary treatment of identified problems, symptoms and mental health conditions. The Plan must identify individuals or treatment teams responsible for treatment, specific treatment modalities prescribed for the beneficiary, and time limitations for services. The plan must be congruent with the age and abilities of the beneficiary, client-centered and strength-based; with emphasis on needs as identified by the beneficiary and demonstrate cultural competence."

Comment: Why is no treatment plan required for individuals receiving Counseling Level Services?
Response: Beneficiaries receiving only Counseling Level Services do NOT require a Treatment Plan. The services offered in this level are a limited array of counseling services provided by a master's level clinician. Establishment of goals and a plan to reach those goals is part of good clinical practice and can be developed with the client during the Mental Health Diagnostic Assessment and Interpretation of Diagnosis. Also part of good clinical practice is assessing client's response to treatment at each session which should include a review of progress towards the mutually agreed upon goals. The treatment plan requirement for individuals receiving Rehabilitative Level Services and Therapeutic Communities in Intensive Level Services is because individuals with more complex needs would entail plans for services provided by multiple people including both professionals and paraprofessionals.

Comment: How will providers be trained and informed about the upcoming changes?
Response: The Department is willing to meet with providers and hopes to continue meeting with providers during the transition to this new system. A transition plan will be developed that will assist providers in preparing for the upcoming proposed changes. The purpose of the Behavioral Health Transformation is to create a more effective and efficient system.

Comment: The proposal states that revisions in the Master Treatment Plan must occur every 90 days. We strongly recommend that the frequency of periodic treatment plan reviews change to every 180 days. This was one of the recommendations shared by 3 provider groups/associations submitted in a proposed cost savings plan early this year.
Response: The language regarding frequency of treatment plan reviews will be amended to state that a Treatment Plan will only be required to be reviewed every 180 days, with a maximum yearly benefit of 4 units per SFY.

Comment: 213.200 The Treatment plan is based on the independent assessment. Does this mean our therapists have no say in what or how to treat?
Response: Beneficiaries receiving only Counseling Level Services do NOT require a Treatment Plan. The services offered in this level are a limited array of counseling services provided by a master's level clinician. A treatment plan will only be required for individuals determined to be eligible for Rehabilitative Level Services and adults in Intensive Level Services. While the independent assessment helps determine the tier of the individual, the provider agency will develop the treatment plan to guide clinical care provided by professionals and paraprofessional members of the team. The definition for the service is, "Treatment Plan is a plan developed in cooperation with the beneficiary (or parent or guardian if under 18) to deliver specific mental health services to restore, improve, or stabilize the beneficiary's mental health condition. The Plan must be based on individualized service needs as identified in the completed Mental Health Diagnosis, independent assessment, and independent care plan. The Plan must include goals for the medically necessary treatment of identified problems, symptoms and mental health conditions. The Plan must identify individuals or treatment teams responsible for treatment, specific treatment modalities prescribed for the beneficiary, and time limitations for services. The plan must be congruent with the age and abilities of the beneficiary, client-centered and strength-based; with emphasis on needs as identified by the beneficiary and demonstrate cultural competence."

Comment: We are pleased with the addition of new and services that are best practices.
Response: Thank you.

The proposed effective date is pending legislative review and approval.

CONTROVERSY: This is expected to be controversial. This amendment will transform the Medicaid Behavioral Healthcare system within the state, including the service array and fee schedule.

FINANCIAL IMPACT: The estimated savings is $83,296,247 for the current fiscal year ($24,505,756 in general revenue and $58,790,491 in federal funds) and the same savings is projected for the next fiscal year.

LEGAL AUTHORIZATION: The Department of Human Services is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201 (12). Ark. Code Ann. § 20-77-107 specifically

authorizes the department to "establish and maintain an indigent medical care program."

c. SUBJECT: State Plan Amendment #2016 – Nursing Facility Payment Methodology

DESCRIPTION: The Department of Human Services Medical Assistance Program Manual of Cost Reimbursement is amended to change policy regarding the payment of a provisional rate. The policy changes the methodology used to determine the per diem rate a nursing facility will receive after a change of ownership. The policy also puts a cap on the allowable professional liability insurance at $2,500 per licensed bed.

PUBLIC COMMENT: A public hearing was held on October 3, 2016. The public comment period expired on November 13, 2016.

The proposed effective date is January 1, 2017.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: The department estimates that the total savings for the current fiscal year is $3,200,000 ($2,232,640 in federal funds and $967,360 in general revenue) and $6,400,000 for the next fiscal year ($4,465,280 in federal funds and $1,934,720 in general revenue).

LEGAL AUTHORIZATION: The Department of Human Services is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201 (12). Ark. Code Ann. § 20-77-107 specifically authorizes the department to "establish and maintain an indigent medical care program."

d. SUBJECT: ARKids 2-16, CHMS 1-16, DDTCS 1-16, and Therapy 1-16

DESCRIPTION: Effective for dates of service on and after July 1, 2017, Arkansas Medicaid will establish a limit on the weekly amount of Medicaid funded speech therapy, occupational therapy, and physical therapy that may be provided to an eligible beneficiary without prior authorization. The adoption of the rule is expected to result in cost savings.

DESCRIPTION: This establishes a limit on the weekly amount of Medicaid funded speech therapy, occupational therapy, and physical

therapy that may be provided to an eligible individual without prior authorization.

PUBLIC COMMENT: A public hearing was held on October 5, 2016. The public comment period expired on November 13, 2016. The department received the following comments:

Over 9,000 comments were submitted between September 14th – October 27th in response to Therapy 1-16. The majority of those comments were from parties stating their concerns if the proposed therapy thresholds are initiated and a Prior Authorization is implemented. Many of the comments were in support of the proposed changes.

Comment: Several parties, submitted comments stating the proposed 90 minute threshold is inadequate for the majority of children who qualify under Medicaid guidelines and 120 minutes would be more appropriate as most "outliers" are over the 120 minute range. Many stated a 120 minute threshold would be a good compromise; there would be fewer Prior Authorizations resulting in less administrative costs. "I believe that to arbitrarily limit services to 90 minutes (without prior authorization) harms the children that desperately need those services. It also takes patient care decisions away from the doctor and therapist (where they should be) and places them in the hands of "decision makers" that neither know the patient, nor the severity of their condition. If a limit must be written into the new rules, I would ask that you seriously consider making that limit 120 minutes per week. I feel that this would most appropriately reflect the needed amounts of therapy for the most patients".

Comment: Several parties commented about having a third party vendor perform the evaluations. They stated that the therapist that has been working with the individual would be better suited to perform the evaluations because they are familiar with the individual. A third party is inadequate because they do not have regular contact, thus leading to inconsistent evaluations.

Comment: Several parties submitted comments voicing concern that a reduction in minutes to 90 minutes per week per therapy will cause the individuals to require therapeutic services for a longer period of time, thus being a greater expense in the long term.

Comment: Several parties submitted comments concerning individuals not receiving services during the Prior Authorization process.

Comment: Several parties submitted comments voicing concern about a timely review process for the Prior Authorization.

Comment: Several parties submitted comments exclaiming the progress that their loved one has made with therapy and the 90 minute threshold will hinder the individual's progress and cause the individual to regress causing further delay.

Comment: Several parties commented on specific procedures being spelled out in legislation. "After a period of time, this legislation will be reversed (Texas is a recent example) creating a "black hole" of sorts in which roles, responsibilities, policies, and procedures are not clearly defined". "We should have what records and documentation will be required to make any kind of determination outlined within the legislation, itself. So, if this moves forward, I ask that you please include these guidelines".

Comment: Several parties echoed the following comment; "Research has shown time and time again that early intervention is not only the most effective approach for a child to make progress with rectifying a speech/language disorder, but it is also very cost effective. Early intervention will help to prevent more expenses that would come about later in the child's life if *sufficient* therapy was not conducted at the earliest age possible".

Comment: Several parties submitted comments stating that the proposed change is concerned with short-term savings and has not considered the long-term implications. Where is the value in reducing these services when you are looking at the long-term value associated with it?

Comment: Several parties submitted comments regarding the Prior Authorization process, and the belief that there is one in place. Arkansas essentially has a prior authorization (PA) process in place. Therapists conduct an evaluation and create a plan of treatment with a recommendation for the weekly minutes needed for therapy. The report, plan of treatment, and recommendation for minutes are submitted to the primary care physician (PCP) for review. The severity of the disorder guides the therapist in recommending the number of minutes needed to address the areas of deficit based on medical necessity. (Please refer back to the chart listed above to verify the range of minutes prescribed per discipline.) The PCP then confirms medical necessity and approves the recommended number of minutes. The PCP has the ability to decrease the number of minutes recommended or decline services completely. Therapy cannot be initiated until the PCP has returned a DMS-640 form which includes the specific number of minutes prescribed for the client. Therefore, the PCP acts as a PA for services.

Comment: Several parties comments reflected the following sentiment; "the changes proposed have been discussed and created with little to no input from treating therapists, families, or physicians in Arkansas. Although the total financial savings was reported to the Arkansas Democratic Gazette, details regarding the specific changes were not shared. Medicaid has not disseminated this information to current providers. Our national organizations are not aware of these significant changes. The discussions have occurred in such a vacuum that groups throughout the state such as the "Down Syndrome Network" and "Autism Involves Me" have not been given the opportunity to formulate a response and are currently working to gather details regarding these proposed changes".

Comment: Several parties comments reflected the following sentiment; I am pro limiting therapy minutes to a general guideline of 90 minutes a week per discipline, per child (what most of my kids get anyways). I believe this will cut down on the cost of billing for unnecessary treatment time for children who are currently receiving too much therapy. We all know how expensive therapy services are, and I believe establishing a limit will save money and shift focus from unnecessary billing to treating more clients who actually NEED services. HOWEVER, there needs to be a plan in place that makes it EASY for therapists to "prove" and qualify those clients who need MORE than 90 minutes per week.

Comment: Several parties submitted comments voicing concern over the cost/expense of employees having to keep up with all of the Prior Authorizations for extended therapy. The changes in the above stated bill will negatively impact several of our patients' progress and future success. Currently, 50% of our patients receive skilled therapy services for 120 minutes/week. If we were required to request Prior Authorization for each of these children (in addition to the physician approving visits) it would add costs all around…administrative costs for the providers, increased expense for Medicaid to handle Prior Authorization requests and a delay the child's therapy services during this process.

Comment: Several parties submitted comments that the proposed 90 minute thresholds will compromise individual's ability of achieving critical milestones and benchmarks.

Comment: Several parties submitted comments stating that a third party PA is redundant when the Primary Care Physician already writes the prescription.

Comment: Several parties agree with the proposed changes; "Therapists are over identifying kids and over serving them. Request 180 min regardless of the severity of the diagnosis".

Comment: Several parties submitted comments stating if an effective PA system is established with a third party, the recipients will receive the same number of minutes at an increased cost to the State.

Comment: Several parties stated that a third party PA will erode the position of the Primary Care Physician and substitute administrative judgement in place of medical judgement.

Comment: Several parties agree the proposed changes will cut cost of billing for unnecessary treatment time for children receiving too much therapy, if there is a simple component in place to get additional therapy minutes for those that need it.

Comment: Several parties submitted comments stating that the State needs to re-examine DDTCS make it more difficult to qualify for DDTCS, as they are costly to Medicaid program.

Comment: Several parties submitted comments agreeing with the proposed changes to avoid managed care.

Comment: Several parties submitted comments stating that when the State had Prior Authorizations in the past they did not work, caused delays and back-log.

Comment: Several parties submitted comments stating; the tests used for qualification for therapy services have to be examined as well.
Comment: Several therapists submitted comments stating that proposed changes limit the therapist's abilities to exercise clinical skills which they spent years working towards. It is difficult to understand how the trustworthiness and integrity of highly educated therapists could be called into question and be told they have completed all those years of education yet they are not trusted to conduct unbiased and ethical evaluations on patients. This is how this is being perceived by the Speech, Occupational, and Physical Therapy communities. DO NOT punish the honest therapists by taking away their educational rights to prescribe the amount of minutes their clinical judgement justifies.

Comment: DDPA supports the original proposal for a threshold of 90 minutes of therapy per week per discipline for children and adults with a prior authorization process in place prior to implementing the thresholds that have approved guidelines, credentials of reviewers, and timelines for any recommendations for therapy that are above the threshold. An appeal process must be in place prior to implementing the threshold also. The projected savings would be $13,000,000 net.

Comment: (UAMS KIDS FIRST) In general, we support the proposal as a method to ensure appropriate and efficient use of resources across the state. Our questions apply to the proposed PA process. We are primarily concerned with access to services for the types of children described, but also with minimizing the administrative time and effort burden.

Comment: Implementing arbitrary minutes on therapy limits our professional clinical integrity and what we and the dr feel is best for the patient. I know there are therapists that abuse the system. But instead of placing limitations on the children who need these services beyond 90 minutes, you should implement more in depth audits and consequences for those that lack professional judgment.

Comment: Several parties submitted comments recommending flagging therapy companies that use the maximum amount of minutes on a higher percentage of clients, to identify possible abuse of the system. Once they have been identified as prescribing unusually high amounts of therapy, they could be reviewed under audit, instead of making cuts across the board.

Comment: It has come to my attention that a Workgroup consisting of representatives from ARPTA, AROTA, ArkSHA, CHMS, DDTCS, DDPA, and Early Intervention Providers, refused the proposal of reducing therapy reimbursement rates by 3-6%. By doing this it seems that they would rather reduce the amount of time children with special needs receive therapy by placing a threshold of 90 minutes per week instead of taking a pay cut. If I have interpreted this incorrectly I apologize.

Comment: DRA believes it is essential to establish a system that allows for careful monitoring and tracking of extended therapy benefits requests to ensure that the prior authorization process does not result in delays in accessing needed therapies and/or effectively results in hard cap limits on the amount of therapies available.

DRA is concerned about the lack of clarity in the proposed policy concerning whether the allowable amounts of therapies includes both individual and group therapies or individual therapy alone. Some individuals need both individual and group therapy.

DRA believes that further information and clarification regarding the impact of the unit limits on different types of therapy is necessary.
Recommendations:
1. DHS should amend the proposed policy to include a clear and timely authorization process for extended therapy requests, and

2. DHS should amend the proposed policy to clarify that individuals can receive up to six units (90min) weekly of individual therapy and six units of weekly group therapy.

Comment: I applaud you for working with the ARKSHA, AOTA, and APTA Representatives. We are opposed to a Managed Care Model as suggested by TSG. We desire to retain the ability to complete our own evaluations and make the subsequent therapy recommendations. We are opposed to a third entity performing our evaluations. This would significantly delay the timeliness of the evaluations and initiation of services. We are intimately acquainted with the children we serve and their idiosyncrasies. We are the skilled and nationally board certified professionals licensed by the State of Arkansas and ASHA, to do such.

COMMENT:
Michael Harry, attorney for the Bureau of Legislative Research, asked how the department settled on placing the cap at 6 units per week.

RESPONSE:
Although the threshold changes were proposed by a Provider Workgroup made up of speech therapist, occupational therapist, physical therapist and early intervention providers, more information needs to be available to inform stakeholders on the intention of the proposed rule. I have attached a Fact Sheet we developed.

Currently, the Notice of Rule Change states (I'm paraphrasing a little here): All PT, OT, and ST billed under the Medicaid State Plan will allow 90 minutes per discipline per week with the appropriate prescription. However, if greater amounts of therapy is required, a prior authorization or extension of benefits process will be utilized. As for the prior authorization process, the same Provider Workgroup is drafting specs on how the PA process should ideally operate. That draft will go on our website for public comment as well, likely in early 2017. DDS is committed to ensuring that clinicians review the documentation submitted for increased therapy hours. It is not our intention to deny therapy services for children who need them. The prior authorization process will also include clear guidance on how a therapist/PCP can appeal a decision.

All written comments, such as yours, will be logged. DHS will formally respond to the comments in writing following the end of the public comment period. The public comment period is the first step in any rule change process. The public comment period has been extended until November 13th. We will read all comments and make adjustments to the rule if warranted.

The proposed effective date is July 1, 2017.

CONTROVERSY: This rule is expected to be controversial. While the organizations representing the therapy providers have approved of the amendment, certain individual therapists may disagree with the rule.

FINANCIAL IMPACT: The total estimated savings for the current fiscal year is $16,281,140 for the 2017 fiscal year ($4,789,911 in general revenue and $11,491,229 in federal funds) and the same amount in savings is projected for the following fiscal year.

LEGAL AUTHORIZATION: The Department of Human Services is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201 (12). Ark. Code Ann. § 20-77-107 specifically authorizes the department to "establish and maintain an indigent medical care program."

e. SUBJECT: 2016 CPT and HCPCS Code Conversion

DESCRIPTION: The purpose of the proposed rule is to comply with federal regulations 45 CFR and Part 45 Section 162.1002. These notices of rulemaking are prepared to inform Arkansas Medicaid enrolled providers of the implementation of the annual CPT and HCPCS coding conversion and make non-payable those deleted procedure codes from the 2015 code books. This rule is necessary for consistency with the utilization of procedure codes used by Medicare and other third party payers of medical claims. These data sets are standardized and are used nationally for claims processing.

PUBLIC COMMENT: This rule change was first promulgated on an emergency basis with an effective date of August 26, 2016. No public hearing was held on the permanent rule change. The public comment period expired on September 20, 2016. No public comments were received. The following changes were made by Division of Medical Services' staff subsequent to the Department's initial rule filing:

A. 2016 Current Procedural Terminology (CPT) Code Conversion

1. The following 2016 Current Procedural Terminology (CPT) codes were made payable: CPT codes 31652, 31653, 31654 and 33477 will be made payable. 33477 will be requiring prior authorization.

2. The prior authorization requirement for CPT code 77387 was removed.

B. 2016 Healthcare Common Procedure Coding System Level II (HCPCS) Code Conversion and Code Conversion on Dental Procedures and Nomenclature (CDT) Conversion

1. The FP modifier for J2798 was removed.
2. The EP modifier for T4525 was removed.
3. New descriptions and modifier usage were given on procedure codes E0465 and EO466.
4. The age restriction for J3380 was indicated as 18y-99y.
5. J7297 is a covered procedure code.

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

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: The total additional cost to implement the rule is $186,939 for the current fiscal year ($56,512 in general revenue and $130,427 in federal funds) and $224,327 for the next fiscal year ($68,016 in general revenue and $156,311 in federal funds).

LEGAL AUTHORIZATION: The Department of Human Services' ("Department") stated purpose for the instant proposed rulemaking is to comply with federal regulations, particularly 45 C.F.R. § 162.1002, which adopts standard medical data code sets that are required for use in accord with 45 C.F.R. § 162.1000. Pursuant to Arkansas Code Annotated § 25-10-129, the Department and its various divisions are specifically authorized and directed to promulgate rules as necessary to conform to federal statutes, rules, and regulations affecting programs administered or funded by or through the Department, as necessary to receive any federal funds that may be available. *See* Ark. Code Ann. § 25-10-129(b). The Department is additionally charged with administering assigned forms of public assistance and welfare activities or services vested in it. *See* Ark. Code Ann. § 20-76-201(1). *See also* Ark. Code Ann. § 20-77-107(a)(1) (authorizing the appropriate division of the Department to establish and maintain an indigent medical care program). Further, it is empowered to make rules and regulations and take actions as necessary or desirable to carry out the provisions of Title 20, Subtitle 5, Chapter 76, Public Assistance Generally. *See* Ark. Code Ann. § 20-76-201(12).

f. SUBJECT: Rehabilitative Services for Persons with Mental Illness (RSPMI) Update #2-16

DESCRIPTION: This rule eliminates speech therapy services to the RSPMI program which are duplicative to other programmatic services; eliminates costly collateral services which have been determined obsolete

to the program; and adjusts daily benefit limits for interventions to the amount reasonably expected to be beneficial. It reduces the daily maximum units for mental health professionals and mental health paraprofessionals in the RSPMI program.

PUBLIC COMMENT: A public hearing was held on July 18, 2016. The public comment period expired on July 26, 2016. The department received the following comments:

One hundred seventeen comments were submitted within the 30 day comment period in response to RSPMI 2-16. Ninety-seven of those were comments from clients stating what their concerns are if their services are eliminated. Four of those comments were from Birch Tree; two attorney offices; three from Families, Inc Counseling Services; three from school districts and a few others. The comments are addressed in the responses below.

Comment: Several parties submitted comments stating that the proposed changes to benefit limits for intervention services would cause rapid deterioration among recipients and would result in increased hospitalizations, incarcerations and homelessness.
Response: The proposed changes allow recipients to receive all medically necessary care. The provider may request an extension of benefits. Beacon Health will review all extension of benefit requests. Extensions will be granted if the additional services are deemed to be medically necessary.

Comment: Several parties commented that there is no evidence that access to care was considered during the review process.
Response: The Division of Medical Services (DMS) is considering access to care, but has not yet conducted an inquiry regarding how patient care would be affected by RSPMI 2-16.

Comment: Several parties commented that the proposed changes were arbitrarily selected and driven by budgetary considerations without giving consideration to the patient and possible repercussions.
Response: DMS has identified that overutilization and improper use of these services impacts Medicaid spending and quality of care.

Comment: Eliminating services, along with daily and annual caps in this manual release and the previous release, combine to create serious parity issues. Eliminating or limiting these medically necessary outpatient services will result in avoidable, but more costly, inpatient service needs in the future. Wholesale changes that remove services from the service array without adequate support and service infrastructure as a replacement

will not accomplish the intended savings and, more importantly, will result in worse outcomes for children with mental illness.
Response: The proposed changes allow recipients to receive all medically necessary care. The provider may request an extension of benefits for intervention services. Beacon Health will review all extension of benefit requests. Extensions will be granted if the additional services are deemed to be medically necessary. Eliminated services can be obtained through equally effective alternative programs or methods.

Comment: Several parties commented that if behavioral health services are to be subject to an independent assessment, the individual performing the assessment must be a licensed professional with the knowledge and expertise to perform the assessment. Providers currently use licensed individuals to perform assessments. A centralized state-managed or contracted assessment system should not rely on less qualified individuals. Any independent assessment process must be held to strict compliance with appropriate and safe timeframes for assessments. Many individuals in need of behavioral health services cannot afford to wait for approval or assignment by an independent assessment. A state-managed or contracted program of independent assessment for behavioral health services should not be used as a mechanism to ration or deny medically necessary care. The state should consider the cost of the assessment process in terms of manpower, paperwork, and access to care and ensure that any assessment process actually add net value to the system. Otherwise, it will just be an additional paperwork burden for providers and the assessment entity alike.
Response: This comment is not applicable to RSPMI 2-16 which does not propose the use of an independent assessment.

Comment: Several parties questioned whether DMS had considered or conducted an access study pursuant to 42.C.F.R. 447.203 et seq.? If not, what are the reasons for adopting this position?
Response: Access to care is being considered and DMS is consulting with CMS regarding this issue. A state plan amendment has been submitted to CMS.

Comment: As a matter of fundamental fairness in procedure, merely striking language from a provider manual is insufficient to remove an existing service from the state plan. Collateral interventions and speech therapy are services specifically enumerated in the state plan as approved by CMS. *See attachment 1, pp. 6a12-6a13, Arkansas State Plan*. To properly remove these services requires submission to CMS of a State Plan Amendment (SPA). States electing to make changes to Medicaid services, including optional services, must do so through a SPA which must comply with federal requirements governing Medicaid. Conversely, when a state wishes to make changes in a manner that deviates from federal requirements, it must do so by seeking a waiver.

Neither a SPA nor a waiver has been sought for these proposed changes. Given that the proposed effective date of the rule is October 1, 2016, it would appear that DMS has decided to completely forego the SPA process. However, notwithstanding that very short time frame, and even assuming DMS does plan to seek a SPA following the public comment period, the chosen manner of this promulgation still remains out of compliance with federal requirements and is improper.
Response: A State Plan Amendment has been submitted to CMS.

COMMENT:
Michael Harry, an attorney with the Bureau of Legislative Research, asked the following question:

A lot of the comments [at the public hearing] were referring to not having any replacement for doing away with the collateral services. Will there be anything to replace them or was it the determination that collateral services is obsolete in general?

RESPONSE:
The department is currently working on a replacement plan.

The proposed effective date is pending legislative review and approval.

CONTROVERSY: Although the provider associations recommended these changes, it is likely that individual providers will identify them as possible barriers to treatment.

FINANCIAL IMPACT: There will be a savings of $14,850,000 in the current fiscal year ($4,489,155 in general revenue and $10,360,845 in federal funds) and $19,800,000 in the next fiscal year ($5,985,540 in general revenue and $13,814,460 in federal funds).

LEGAL AUTHORIZATION: The Department of Human Services is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201 (12). Ark. Code Ann. § 20-77-107 specifically authorizes the department to "establish and maintain an indigent medical care program."

12. ARKANSAS INSURANCE DEPARTMENT (Booth Rand)

a. SUBJECT: Rule 113: Vision Care Plan Coverage

DESCRIPTION: Act 959 of 2015 prohibits vision care insurers and discount plans from applying discount amounts to non-covered services and merchandise provided by eye doctors and clinics. This rule provides that a vision care insurer, vision care plan, or vision care discount plan cannot circumvent or avoid this restriction by providing minimal or de minimus coverage for a service or material, or by designating a service or material as "covered" as defined in Ark. Code Ann. § 23-99-1002(1) and (2). The rule also provides clarification as to when the Vision Care Act requirements apply to vision care plans. The rule explains that the act's provision apply to vision care plans upon renewal or issuance of a plan after the effective date of the act (July 22, 2015 via sine die), or applies when the vision care provider is re-credentialed by a vision care insurer or plan. This is added to the rule to address vision care provider concerns that the vision care insurers are not renewing vision care provider contracts to avoid application of this act.

PUBLIC COMMENT: A public hearing was held on September 28, 2016. The public comment period expired on September 28, 2016. The department received the following comments:

Comment: Arkansas Optometric Association ("AOA"). We received and submitted into the administrative record a letter in support of the rule by the AOA. The AOA was instrumental in creating the legislation in Act 959 of 2015, through which this Rule is promulgated.

Comment: National Association of Vision Care Plans ("NAVCP"). This Association represents vision care insurers and plans. We received and submitted into the record and also received testimony at the hearing from one of its representatives. NAVCP complained about the language in Section 3(C) which equalized out of pocket costs to in-network amounts when insureds are referred to labs chosen by the vision care provider. NAVCP explained this raises costs.

AID Response: After consultation with AOA, to avoid controversy in the proposed Rule, we agreed to remove the out of pocket costs phrase.

Comment: Delta Dental of Arkansas. Delta Dental also complained of proposed Section 3(C) language, the last sentence addressing out of pocket costs. We have removed this phrase as explained above. Delta Dental also complained of earlier wording the Rule which it interprets as prohibiting all vision care providers on a voluntary basis of being prohibited from applying discounts to their consumer patients. Delta Dental raises the issue that some vision care providers may want to voluntarily apply discounts for their patients.

AID Response: Neither AOA or AID interpret the law or Rule to prohibit all vision care providers from applying discounts. The language in Act 959 and this Rule is addressing vision care providers being forced by the plans to accept the discounts.

The proposed effective date is pending legislative review and approval.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: This rule is promulgated to implement Act 959 of 2015.

Act 959 of 2015 created Arkansas Code Annotated § 23-99-905 which directs the State Insurance Department to develop and promulgate rules for the implementation and administration of the Vision Care Plan Act of 2015.

b. SUBJECT: Rule 115: Prior Authorization Transparency Act

DESCRIPTION: This rule supplies interpretations and clarifications to various provisions of Act 1106 of 2015, in the Prior Authorization Transparency Act, in the following areas:

1. Statistical reporting of prior authorization determinations, including historical data retention requirements;

2. Web and public publication of prior authorization procedures and criteria including permitting linking to criteria which is proprietary and copyrighted;

3. Provide additional time window of two weeks for insurers to process voluntary prior authorization medical services requests to address concerns of the insurance industry related to reviewing authorization requests for medical services the insurers do not have designated as requiring prior authorization; and

4. Provide clarifications of other miscellaneous interpretation questions presented to the department by utilization review entities and insurers subject to Act 1106 of 2015.

PUBLIC COMMENT: A public hearing was held on August 30, 2016. The public comment period expired on August 30, 2016 but was extended to allow further comment from the public until September 16, 2016. The department received the following comments:

Comment: Arkansas Blue Cross and Blue Shield ("ABCBS"). ABCBS suggested to AID to add a definition in the rule for "non medical review" and also explaining in the Rule that prior authorization only applies to medical services which are being reviewed by the insurer or URE for medical necessity or medical appropriateness.

AID response: AID agrees with AMS. We do not believe the statute permits us to make this change, in light of the statutory language in Act 1106.

ABCBS requested that AID change the references in Section 5 for "report" or "reporting," to "make available," instead of "report."

AID response: We changed the reference and used the term "disclosure."

ABCBS requested that we change the effective date to 1-1-2017 to have the requirements more timely apply to the health plan years.

AID response: We agree and have made effective date, 1-1-2017.

ABCBS requested that we change Section 5 B 4 on data reporting of specialty of provider that we condition that to "..if the utilization review entity receives that information at the time the prior authorization request is submitted."

AID response: We agree and have made this amendment to the proposed Rule.

ABCBS objected to what was earlier in Section 8 of the proposed Rule on Prior Authorization Requirements for Non Pre Certified Services on the basis that it believed that Act 1106 of 2015 was not intended to permit a provider to have the Act requirements apply just to any prospective medical service, but instead only to those medical services or procedures the health insurer or URE required prior authorization.

AID response: We have removed Section 8 and renumbered.

Comment: Arkansas Medical Society. AMS is in support of the proposed Rule. AMS indicated in much of its response its opposition to ABCBS arguments about offensive or voluntary prior authorization, and what was previously in Section 8 of the proposed Rule which we have removed. AMS was in agreement with most of the other technical language suggestions which are in conformity with Act 1106 of 2015.

Comments: Mr. Tim Hutchinson, ESQ., who represented MCG. MCG develops evidence based clinical guidelines for insurers and utilization review entities. MCG's complaint is over the data disclosure of any and all guidelines, procedures, criteria, medical protocols for prior authorization review "on the public part" of the website of the insurer or utilization review entity. Mr. Hutchinson explained this was disclosing proprietary information. Mr. Hutchinson explained the publication of such criteria potentially was pre-empted under the Federal Copyright Act. He also complained that such disclosure was an unconstitutional taking of property.

AID Response: As stated in the hearing, AID understands the concerns; however, the Act was written to require disclosure of any and all criteria, and does not permit an exception for proprietary information. We suggested he visit with the sponsor of the Act to develop better language or change the law, if possible. In response to his comments and MCG concerns, AID did however provide for the insurer to utilization review entity to provide a link off the public website for this information however the information still would have to accessible to providers and physicians.

Comments : Ms. Jamie Gilmore, attorney for Ambetter/Centene. Ms. Gilmore wanted more clarification on the "deemed approved" in Section 5(B)(8).

AID response: We believe the rule language is sufficiently clear. An insurer who fails to disclose the prior authorization criteria merely "deems approved" the particular prior authorizations which sought authorizations for medical procedures the insurer or URE failed to post or disclose the procedures on, in each individual case. If insurers are worried about the consequence that a failure to disclose procedures, "deems approved" a large number of potential claims, they need to simply post or disclose the procedures.

Ms. Gilmore made the same objections to what was earlier in Section 8 of the proposed rule related to "voluntary prior authorizations."

AID response: We removed the early Section 8 language.

The proposed effective date is January 1, 2017.

CONTROVERSY: Although the department has tried to and will strive to arrive at mutually agreeable language or resolution on some of the proposed interpretations, there may be some controversy to some of the interpretation issues. By and large, on issues related to statistical reporting or web publication, the providers and insurers appear to be in agreement.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: This rule is promulgated to enact the provisions of Act 1106 of 2015.

Arkansas Code Annotated § 23-61-108 authorizes the Insurance Commissioner may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Arkansas Insurance Code.

13. DEPARTMENT OF LABOR, BOILER INSPECTION DIVISION (Denise Oxley)

a. SUBJECT: Rule 010.01: Boiler Inspection

DESCRIPTION: The following is a summary of the proposed changes to the rules:

Rule 010.01-002. This rule are amended to update contact information for the board.

Rule 010.01-004 and -005. These rules, dealing with rule-making, are amended to comply with Act 1258 of 2015. The proposed amendments provide for approval of any proposed rule, including emergency rules, by the Legislative Council or other legislative committee pursuant to Ark. Code Ann. § 10-3-309.

Rule 010.01-008(J), dealing with re-licensure and reinstatement are amended to comply with Act 1066 of 2015. The Department of Labor's Code Enforcement Manager is charged with expediting the process for reinstatement.

Rule 010.01-008 is amended to add a new sub-section dealing with active duty service members, returning military veterans, and their spouses. The purpose is to comply with Act 848 of 2015. The proposed rule deals with temporary licensure and provides for: an expedited process for full licensure; a provision to accept substantially similar military experience and training; and an extension of a license for at least 180 days following a return from active deployment. Spouses have the same timeframes and expedited process. The licensee must submit proof of deployment and deployment dates. There is no continuing education requirement or reciprocity authorization for the licenses issued by the Boiler Inspection Division.

Rule 010.01-010 is amended to comply with Act 95 of 2015 and allow an extension of time for the inspection of high pressure steam boilers for good cause not to exceed six (6) months.

Rule 010.01-027 amends the rules to provide an effective date of January 1, 2017 and to appropriately list the history of the board's rules.

PUBLIC COMMENT: A public hearing was held on October 11, 2016, and the public comment period expired on that date. No public comments were submitted. The proposed effective date is January 1, 2017.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no cost to the state to implement this rule. Any active duty service member, veteran, or spouse wishing an extension of licensure will have to provide a copy of paperwork showing deployment dates or discharge date. This cost should be minimal and is estimated to be $1.

LEGAL AUTHORIZATION: The Boiler Advisory Board is authorized to assist with the formulation of rules and regulations for the construction, installation, inspection, repair, and operation of boilers and unfired pressure vessels and their appurtenances and of pressure piping, as set out in Ark. Code Ann. § 20-23-101 *et seq*. *See* Ark. Code Ann. § 20-23-201(b)(1). These rules implement Act 848 of 2015 (concerning licensure, certification, or permitting of active duty service members, returning military veterans, and spouses); Act 1066 of 2015 (concerning reduced requirements for reinstatement of licenses); Act 1258 of 2015 (concerning approval of rules by Legislative Council); and Act 95 of 2015 (permitting for good cause a 6-month extension for boiler inspections).

14. DEPARTMENT OF PARKS AND TOURISM, ARKANSAS STATE PARKS (Joe Jacobs and Grady Spann)

a. SUBJECT: Calendar Year 2017 Arkansas State Parks Fees and Rates

DESCRIPTION: This regulation provides for new services and adjustments in fees and rates at various Arkansas state park locations. The additional and/or adjustments include: camping and rental facility options; pavilions and meeting rooms; cabins and lodge rooms; marina and boat rental fees; interpretive services; swimming; and miscellaneous equipment rental.

Forty-one percent of the park system's daily maintenance and operation budget is from services and the rental of facilities. Adjustments in fees and rates are made over time to compensate for inflation, expenses, and to maintain Arkansas State Parks' mission of conservation, recreation, education, and tourism.

PUBLIC COMMENT: A public hearing was held on October 20, 2016. The public comment period expired on October 18, 2016. No public comments were submitted.

The proposed effective date is pending legislative review and approval.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: The following chart indicates the dollar increase CY 2017 fees over the CY 2016 fees:

Lodging	$ 72,221.00
Camping	$ 12,486.00
Meeting Rooms & Pavilions	$ 5,280.00
Marina Slip Rental & Boat Rental	$ 13,489.00
Interpretive Tours	$ 250.00
Golf	-
Museum	-
Miscellaneous Rental Equipment	$ 64,263.61
Swimming	$ 4,458.00
Entrance Fees	$178,132.00
Total	$350,579.61

LEGAL AUTHORIZATION: The State Parks, Recreation, and Travel Commission is authorized and directed to prescribe and collect reasonable fees, rates, tolls, and charges for the services, facilities, and commodities rendered by the properties and equipment of the state parks system. Ark. Code Ann. § 22-4-305(a).

15. DEPARTMENT OF PARKS AND TOURISM, TOURISM (Joe David Rice)

a. SUBJECT: Integration of Advertising & Marketing Plan

DESCRIPTION: This proposed rule will revise the procedures used by the Arkansas Department of Parks and Tourism to select a professional advertising/marketing firm. It identifies and describes the services required by the department and establishes an application and review process.

The rule states that the department's advertising/marketing will be handled by a single vendor (which may incorporate the expertise of subcontractors). The result should be increased efficiencies, streamlined services, and a consistency in messaging for the state's tourism industry.

PUBLIC COMMENT: A public hearing was held on October 14, 2016, and the public comment period expired on that date. Two comments were made from potential vendors, and those comments were incorporated into the revised rules and regulations. The comments were as follows:

Fahlgren Mortine ad agency

COMMENT: To revise the "Conflict of Interest" section to allow vendors servicing another state tourism account to bid on the Arkansas account, provided the other accounts were not with contiguous states.
RESPONSE: Revisions made.

Mangan Holcomb agency

COMMENT: To amend the "Second Phase of the Review Process" narrative by adding this sentence: "Speculative creative is not required as long as a specific, detailed strategy is proposed for the Department."
RESPONSE: Revisions made.

The department also made a few editorial changes to correct spellings and add clarity.

The proposed effective date is pending legislative review and approval.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Department of Parks and Tourism is specifically authorized to promulgate its own rules and procedures applying to the professional services of an advertising agency. Ark. Code Ann. § 15-11-102(b).

16. ARKANSAS STATE POLICE (Major Lindsey Williams, Sergeant Michael Moyer, and Mary Claire McLaurin, item a; Major Lindsey Williams, item b)

a. SUBJECT: PI/Security Disqualifying Offenses

DESCRIPTION: Acts 10 and 11 of the Third Extraordinary Session of 2016 made changes to provisions of A.C.A. Sec. 17-40-101, et seq. regarding the licensing and regulation of private investigators, private security agencies, alarm systems companies, polygraph examiners, and voice stress analysis examiners.

Specifically, the Acts clarified unlawful acts under A.C.A. Sec. 17-40-301; relaxed the criminal history disqualifying offenses under A.C.A. Sec. 17-40-306(d); required the Department of Arkansas State Police (ASP) to promulgate rules defining disqualifying offenses under A.C.A. Sec. 17-40-306(e); permitted new employees to work prior to receiving a license, credential, or commission under supervision under A.C.A. Sec. 17-40-325; and omitted redundant provisions of A.C.A. Sec. 17-40-337. As such, the Act requires ASP to promulgate new rules identifying disqualifying offenses and to define supervisions of new employees. Additional changes and corrections have been added to facilitate the administration of licensing and regulation.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on September 24, 2016. No public comments were submitted to the agency.

Jessica Sutton, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) My question concerns the fees. Your rules provide for a $20 transfer fee for alarm systems agents, alarm systems apprentices, alarm systems technicians, alarm systems monitors, and security guards. However, Ark. Code Ann. § 17-40-302(a)(3)(D) makes no mention of a transfer fee for security guards. Where is your statutory authority for this fee? **RESPONSE:** The statutory authority is Ark. Code Ann. § 17-40-329(d) that states a transfer fee must be paid when a credential holder changes employment from one licensee to another. A security guard is a credential holder. The $20.00 transfer fee is not new. All of the fees used to be listed in the Board Rules but when the Board was abolished in 2015, the fees were transferred to statute. It appears that the security guard credential was inadvertently not transferred from the old Board Rules to Ark. Code Ann. § 17-40-302(a)(3)(D). Since a transfer fee is required, Rule 2.5 specifies the amount.

(2) On Section 2.9, language was added in the rules to state that "[a] prior conviction listed in A.C.A. § 17-40-337(a)(2)(B)-(C) will not disqualify an applicant for a commission unless the applicant is barred by federal law from owning, receiving, or possessing a firearm." The statute does not contain the restricted language and instead appears to state that a conviction of that crime is sufficient to disqualify the applicant.

Additionally, there is a separate provision under (a)(5) that would already disqualify an applicant if he/she may not lawfully possess a firearm. Therefore, I feel like the additional language restricting it to only those crimes IF the applicant is barred by federal law from owning, receiving, or possessing a firearm is inconsistent with the statute. Can you reconcile this for me? **RESPONSE:** Your comments are well taken, and we have decided to strike subsection (c) of Rule 2.9. The intent of the recent modifications to § 17-40-337 was to remove misdemeanors as disqualifying when they are over 10 years old. We were concerned that some of these misdemeanors – the ones listed in subsections (a)(2)(B)-(C) could be federal prohibitors from possessing a firearm. So they were kept in the law as disqualifying. We have since learned that those offenses, on their own, should not cause a person to be federally prohibited from possessing a firearm. Thus, the Rule was drafted in an attempt to mitigate that error. That said, we now believe the better avenue will be to seek a legislative change when we are able.

The proposed effective date is pending legislative review and approval.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Director of the Arkansas State Police is authorized to determine the qualifications of applicants as provided in the Private Security Agency, Private Investigator, and School Security Licensing and Credentialing Act. *See* Ark. Code Ann. § 17-40-207(a)(1). Additionally, the Director is authorized to promulgate reasonable rules in the manner provided by the Arkansas Administrative Procedure Act. *See* Ark. Code Ann. § 17-40-207(a)(5).

These rules implement Acts 10 and 11 of 2016 (Third Extraordinary Session), concerning the qualifications of professionals under the Private Security Agency, Private Investigator, and School Security Licensing and Credentialing Act. The acts directed the Department of Arkansas State Police to promulgate rules that determine the offenses under Ark. Code Ann. § 17-40-306(d)(1)(B) that constitute Class A misdemeanors involving theft, sexual offenses, violence, an element of dishonesty, or a crime against a person.

b. SUBJECT: Residential Daycare Exception

DESCRIPTION: On January 1, 2017, the Arkansas Fire Prevention Code of 2012 will require all licensed daycare facilities in the state to maintain an automatic fire suppression system. That rule was originally intended to exempt residential facilities, licensed for sixteen (16) children

or less, that are operated in the care giver's primary residence. The proposed rule change is intended to clarify and firmly establish the exception prior to the deadline of January 1, 2017.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on October 12, 2016. No public comments were submitted. The proposed effective date is January 1, 2017.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The administration and enforcement of the Fire Prevention Act is vested in the Department of Arkansas State Police. Ark. Code Ann. § 12-13-104(a). The Director of the Department of Arkansas State Police is empowered to create and maintain a State Fire Marshal Enforcement Section in the Department of Arkansas State Police and to appoint such personnel with such duties, powers, and titles as he or she may deem necessary for the proper administration and enforcement of the Fire Prevention Act. Ark. Code Ann. § 12-13-104(b). The State Fire Marshal Enforcement Section is responsible for enforcing the Arkansas Fire Prevention Code and periodically revising and updating the Arkansas Fire Prevention Code. Ark. Code Ann. § 12-13-105(5).

17. PUBLIC EMPLOYEES RETIREMENT SYSTEM (Gail Stone and Jay Wills)

a. SUBJECT: Regulation 402 – Repayment of Refunded Contributions

DESCRIPTION: This amendment removes the existing requirement that APERS members who have taken a refund of their pension contributions repurchase their entire refunded service at one time in one lump sum. Now, such individuals will be allowed to repurchase their refunded service in one-year increments. This change allows individuals who are close to retirement who may not be able to repurchase all of their refunded service to repurchase enough refunded service to allow them to retire.

PUBLIC COMMENT: A public hearing was held on October 7, 2016. The public comment period expired October 7, 2016. The agency received no public comments.

The proposed effective date is pending legislative review and approval.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The administration and control of the Arkansas Public Employees' Retirement System shall be vested in a board called the "Board of Trustees of the Arkansas Public Employees' Retirement System." Ark. Code Ann. § 24-4-104(a). The Board "shall . . . [m]ake all rules and regulations as it shall deem necessary from time to time in the transaction of its business and in administering the Arkansas Public Employees' Retirement System." Ark. Code Ann. § 24-4-105(b)(1).

18. ARKANSAS REAL ESTATE COMMISSION (Gary Isom)

a. SUBJECT: Regulation 6: Renewal; Inactive Status; Expired Licenses and Regulation 11: Continuing Education

DESCRIPTION: The current annual continuing education requirement for real estate licensees is six classroom hours. This amendment will add one classroom hour on personal safety, increasing the total annual requirement to seven classroom hours. This initiative is largely in response to the 2014 murder of a real estate agent in North Little Rock. The intent is to help ensure that licensees and consumers have a safer real estate market in which to transact business.

The second change will allow the Real Estate Commission to address two issues that were brought to their attention through town hall styled meetings with brokers in various sections of the state. Brokers in south Arkansas expressed that access to quality education was limited because of the low number of real estate licensees in their area. The other issue raised was the lack of variety in subject matter of the courses offered by instructors, despite the fact that a large number of topics qualify for continuing education. Real estate schools and educators will be encouraged and provided the opportunity to address these weaknesses. However, in the event these needs are not met, this amendment will allow the Real Estate Commission to offer education in those underserved areas to hopefully improve the licensees' educational experience and make their time spent on education more worthwhile.

PUBLIC COMMENT: A public hearing was held on November 14, 2016, and the public comment period expired on that date.

Public comments were as follows:

Ron Stinchcomb, President, Arkansas Realtors Association

COMMENT: Mr. Stinchcomb furnished a letter expressing ARA support for the proposed amendments. **RESPONSE:** The support of the Arkansas Realtors Association is appreciated.

Greg Joslin, Principal Broker, Irwin Partners

COMMENT: Mr. Joslin, as a commercial broker, expressed that rather than increasing the CE requirement by one hour on safety, that each brokerage firm should develop its own internal processes to enhance safety. **RESPONSE:** Commercial brokers who served as stakeholders on AREC taskforce for the one hour on safety for Continuing Education, supported the amendment.

The proposed effective date is January 1, 2017.

CONTROVERSY: This is not expected to be controversial. While the industry, through the Arkansas Realtors Association, supports the amendments, some licensees may object to the additional hour of education.

FINANCIAL IMPACT: There is no cost to the state. The estimated cost to each person who holds an active Arkansas real estate license will be $15 annually since they will need to acquire one additional hour on safety education annually from the real estate education school providing such education or an alternative source.

LEGAL AUTHORIZATION: The Arkansas Real Estate Commission may do all things necessary and convenient for carrying into effect the provisions of the Real Estate License Law and may from time to time promulgate necessary or desirable rules and regulations. Ark. Code Ann. § 17-42-303(a).

A broker or salesperson shall complete annually: (1) not less than six (6) or more than nine (9) classroom hours of continuing education required by the commission; (2) the distance education equivalent required by the commission; or (3) a course that the commission has determined to demonstrate mastery of an acceptable real estate subject. Ark. Code Ann. § 17-42-307(b)(1).

The commission shall establish an education program for real estate licensees to ensure that education is available and accessible to an applicant or a licensee. The education program is intended to fulfill the education requirements for a real estate license and to provide real estate

courses intended to fulfill the education requirements for a real estate license. Ark. Code Ann. § 17-42-501.

Adjournment.