

ARKANSAS
DEPARTMENT OF HEALTH



GUIDE TO ADMINISTRATIVE
LAW AND PROCEDURE

Revised 10/13

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INTRODUCTION

NOTE: Before beginning the administrative process, it is important to know the federal and state laws that grant your branch the authority to regulate in a certain area. **Your branch is responsible for a complete and thorough search for all applicable statutes that apply to each rule.**

The Arkansas State Board of Health (the “Board”) and the Arkansas Department of Health (the “Department”) are authorized by law to create and enforce rules and regulations to protect the health of Arkansans. Other State and Federal laws give the Board and the Department authority to create and enforce rules and regulations. The Arkansas Administrative Procedures Act (“APA”) governs the work of administrative agencies and boards in Arkansas. Under the APA, the creation of rules is governed by the rulemaking process. Hearing procedures concerning the enforcement of those rules are governed by the adjudication process.

This handbook serves as a guide on the requirements of the APA for Board members and centers and branches within the Department. This handbook also describes the role of the Board within the framework of the administrative procedures act. It contains examples and formats that are used for both rulemaking and the adjudication processes. This handbook is also available on the Arkansas Department of Health Intranet site and the Arkansas Department of Health Website.

Please review and become familiar with all materials in the guide before initiating a rulemaking or adjudication. The Department’s Office of General Counsel is available to answer questions regarding this handbook. [See Contact Information](#)

To View the [ADH website](#), scan this QR code with your Smartphone’s QR reader.



available to answer [pg. 63](#).

RULEMAKING

The “quasi-legislative” function of agencies is known as rulemaking. In rulemaking, the agency acts most like a legislature because it creates rules that citizens of the state must follow. A rule is “any agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of any agency and includes, but is not limited to, the amendment or repeal of a prior rule.” Ark. Code Ann. § 25-15-202, as amended by Act 759 of 2013. A rule is legally binding on the citizens of the state; it has the effect of law.

NOTE: Please use the Rulemaking Tracking Form located in the Forms section of this manual for the development or revision of any Rules. This Form will track the branch’s progress through each step of developing new or revised Rules. *See the Rulemaking Tracking Form, Forms, pg. 33.* **Please remember to allow enough time to complete each step of the process.**

Before any board or agency can make a new rule, it must have the authority to do so. Authority to create and enforce rules is given to a particular board or agency by a state or federal statute, known as the “enabling statute.” The first step in any rulemaking process, whether creating, amending, or repealing a rule, is to identify your enabling statute. After you have determined your enabling statute, a proposed rule or rule

change must be drafted and approved; notice of the proposed rule or rule change must go out to the public and to certain interested parties; public hearings must be held; legislative committees must review the proposed rule or rule change; and the rule or rule change must be adopted and filed. This section of the handbook will guide you through the process of creating a rule (known as “promulgating” a rule).

As of August 16, 2013, a board or agency authorized to create rules **cannot adopt, amend (change), or repeal (remove) a rule unless that action is based on the best reasonably attainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule.** Act 759 of 2013, amending Ark. Code Ann. § 25-15-204.

After every regular session of the General Assembly (once every two years), the Department must review newly enacted laws to determine whether to adopt, amend, or repeal any rules.

PREPARING THE RULE PACKET AND GETTING APPROVAL FOR RULEMAKING

The first step of the rulemaking process is to prepare the rule packet and get approval to move forward with the rulemaking. The rule packet contains the draft rule and all the other documents you will need to complete the rulemaking process.

After you have drafted the rule, but before you initiate the public comment period, you must get approval from the Department's Executive Staff and the Board of Health to proceed with rulemaking. (It should be noted that the Board meets quarterly).

Before you begin the rulemaking process, print or access a copy of the Rulemaking Tracking Form, which you should attach to your rule packet. [See the Rulemaking Tracking Form, Forms, pg. 33](#). The Rulemaking Tracking Form is a required document in the rule packet and will assist you in documenting when and how each step of the process was completed.

When drafting your rule and preparing your rule packet, please consider the following factors:

- Are you required by statute to adopt the proposed rule or rule change? Is there a specific date for adoption of the proposed rule or rule change? Do you have discretion to promulgate rules?
- Are there any other statutes relevant to the proposed rule or rule change or alternatives to the proposed rule or rule change?
- The nature and significance of the problem being addressed by the proposed rule or rule change, including: the nature and degree of risks, the priority of addressing those risks as opposed to other matters or activities of the agency, whether the problem warrants new agency action, and the countervailing risks posed by alternative rules or rule changes.
- Have existing rules created or contributed to the problem? Could those rules be amended or repealed to address the problem in whole or in part?
- Reasonable alternatives to the proposed rule or rule change, including: adopting no rule, amending or repealing existing rules, and other potential responses that could be taken instead of agency action.
- The financial impact of the proposed rule or rule change.
- Any other factor that is relevant to the need for and alternatives to the proposed rule or rule change.

STEP 1: Drafting the proposed rule or rule change.

The first step is to write the proposed rule or rule change. This may mean drafting a new rule from a blank slate, or it may mean revising an already existing rule. [See Form Rules and Regulations, Forms, pg. 35](#).

If you are revising an already existing rule, use a copy of the original rule with deleted language struck-through and new language inserted and underlined. [See the Example of a Draft \(Mark-up\) Rule Revision, Appendix, pg. 56](#).

If you are drafting a new rule, simply prepare a draft of the proposed rule or rule change. [See Form Rules and Regulations, Forms, pg. 35.](#)

If you are repealing an existing rule, you will need to draft a memorandum explaining why you are repealing the rule and specifying exactly which rule is to be repealed.

STEP 2: Drafting the other rule packet documents.

Drafting the proposed rule or rule change is just the beginning of the process. Once the proposed rule or rule change is drafted, you must prepare the other documents in the rule packet. These documents include:

- Rulemaking Tracking Form
- Draft of proposed rule or rule change
- Cover Page
- The Rules Questionnaire
- The Financial Impact Statement (described in the Drafting a Financial Impact Statement Section, [pg. 6](#))
- Cover Summary of Proposed Administrative Rules
- If needed, a Fiscal Impact Statement (described in the Considering the Impact on Schools Section, [pg. 7](#))

NOTE: Photocopy your Rule on “DRAFT” paper or use your own watermarked “DRAFT” paper or any other type of paper marked “DRAFT.” You can put a “DRAFT” watermark on every page in Microsoft Word by going into the page layout menu and clicking on watermarks, then choosing a draft watermark from the menu. [See the Example of a Draft Watermark, Appendix, pg. 57.](#)

The Rulemaking Tracking Form and the draft of the proposed rule or rule change were described in Step 1: Drafting the proposed rule or rule change, [pg. 3](#). This section will describe the remaining documents that must be included in the rule packet (except for the Financial Impact Statement and the Fiscal Impact Statement, which are discussed in greater detail in the following sections).

The Cover Page

The Cover Page lists the branch and center creating the rule; the authority (law) that allows the branch to adopt, repeal, or amend the rule; and the effective date of the rule. [See Form Rules and Regulations Cover Page, Forms, pg. 36.](#)

The Questionnaire

The Rules Questionnaire (the “Questionnaire”) is prepared to submit to the Legislative Council on Administrative Rules (the “Legislative Council”) and to the House and Senate INTERIM Committees on Public Health, Welfare, and Labor (the “Joint Committee”). Although the Questionnaire does not need to be submitted to these entities until later in the process, it is best practice to complete the Questionnaire when you draft the proposed rule or rule change and prepare the rule packet. The questionnaire is a template provided by the Bureau of Legislative Research (the “Bureau”). [See Rules and Regulations Questionnaire Form, Forms, pg. 39.](#)

The Cover Summary

The Cover Summary of Proposed Administrative Rules (the “Cover Summary”) is presented to the Board when asking for permission to begin the rulemaking process. Like the Questionnaire, the Cover Summary should be drafted when you draft the proposed rule or rule change and prepare the rule packet. [See Form Cover Summary of Proposed Administrative Rules and Regulations, Forms, pg. 38.](#)

The Cover Summary must describe the rule being adopted or repealed, or the amendments to the existing rule; the reason behind the rule adoption, repeal, or amendments; and the evidence that the proposed rule or rule change is based on scientific, technical, economic, or any other evidence.

STEP 3: Getting the Rule Approved.

Once the proposed rule or rule change is drafted and the rule packet is put together, you must submit the proposed rule or rule change for approval by the following individuals:

- Your Center Director
- An Agency Attorney, [see Contact information, Appendix, pg. 63.](#)
- An advisory board or committee, in some instances.

Next, you must get approval from the Department’s Executive Staff to proceed to the Board. To do this, you need to place your proposed rule or rule change on the agenda for the next meeting of the Executive Staff by contacting the Director’s Office. [See Contact Information, Appendix, pg. 63.](#) Provide a copy of the proposed rule or rule change, a Cover Page, and Cover Summary to the members of the Executive Staff. The Executive Staff meets monthly.

NOTE: Presentation at a full Board meeting is preferable. However, if implementation is needed at an earlier date and you cannot wait until the next full Board meeting, approval by the Executive Committee of the Board is acceptable. Please contact the Board Liaison for information on when and where the Executive Committee meets. [See Contact Information, Appendix, pg. 63.](#)

Last, you must get approval from the Board to proceed with rulemaking. To do this, you must get your proposed rule or rule change on the Board of Health agenda by sending a copy of the proposed rule or rule change, Cover Page, and Cover Summary to the Board Liaison. [See Contact Information, Appendix, pg. 63.](#) You should also prepare a brief memorandum asking the Board for permission to proceed with rulemaking. [See Form Cover Memorandum for Submitting Proposed Rules and Regulations to Board of Health, Forms, pg. 40.](#)

The full Board of Health meets quarterly. Generally these meetings are held on the fourth Thursday of the following months: January, April, July, and October. **To guarantee placement on the agenda of the next regular Board of Health meeting, your proposed rule or rule change, Cover Page, and Cover Summary must be to the**

Board Liaison by the first Thursday of the month of that meeting. For example, if you would like your proposed rule or rule change on the agenda for the April meeting, you must have the appropriate documents to the Board Liaison by the first Thursday in April.

DRAFTING A FINANCIAL IMPACT STATEMENT

Each proposed rule or rule change must be accompanied by a Financial Impact Statement (FIS) which realistically states the new or increased cost or obligation of the proposed rule or rule change on private individuals and businesses, as well as all levels of government. The FIS must state the cost to the state or state agency of implementing the rule, as well as the cost to any private or public entity of complying with the rule (this would include cost to corporations, small businesses, other government entities, and private individuals). Act 759 of 2013, amending Ark. Code Ann. § 25-15-201 et seq.

The FIS is filed, along with the proposed rule or rule change, with the Bureau and the Joint Committee **at least thirty (30) days before the end of the public comment period.** Ark. Code Ann. § 10-3-309, as amended by Act 759. [*See Financial Impact Statement Form, Forms, pg. 39.*](#)

There are two situations when the FIS will be different from above: (1) when the proposed rule is created or changed for the purpose of implementing a federal rule or regulation, or (2) when the branch discovers that the financial impact will be \$100,000 or greater.

Situation 1: The proposed rule or rule change implements a federal rule or regulation.

If the reason for your proposed rule or rule change is to implement a federal rule or regulation, the FIS must include the following information, in addition to the information described above:

- The cost of implementing the federal rule or regulation, and
- The additional cost of the state rule.

Act 759 of 2013, amending Ark. Code Ann. § 25-15-204.

Situation 2: The proposed rule or rule change's financial impact is \$100,000 or greater.

You may discover, when preparing the FIS, that your proposed rule or rule change's financial impact will be substantial. If you realize that the financial obligation will be (or will increase to) at least \$100,000 for a private individual, private entity, private business, state government, county government, municipal government, or any two or more of

All Acts passed by the Arkansas Legislature can be found at the [Arkansas State Legislature's Website](#). Scan the QR code with your Smartphone's QR app or click on this hyperlink to go to their webpage.



those groups combined, then you **must also file written findings with your FIS**. The written findings have to contain the following information:

- A statement of the proposed rule or rule change's purpose;
- The problem the agency is seeking to address by the proposed rule or rule change (this includes whether the rule is required by a state or federal statute);
- A description of the factual evidence that justifies the need for the proposed rule or rule change and describes how the benefits of the proposed rule or rule change address statutory objectives and justify the cost;
- A list of less costly alternatives to the proposed rule or rule change and the reason why those alternatives do not adequately address the problem;
- A list of alternatives suggested by public comment and the reasons why those alternatives do not adequately address the problem;
- A statement of whether existing rules have created or contributed to the problem; and, if existing rules have created or contributed to the problem, an explanation of why amendment to or repeal of the existing rule is not sufficient (this will not apply if you are amending an existing rule); and
- An agency plan to review the rule at least every ten years to determine whether there remains a need for the rule. This plan must consider whether the rule is achieving the statutory objectives, whether the benefits of the rule continue to justify its cost, and whether the rule can be amended or repealed to reduce cost while continuing to achieve the statutory objectives.

Act 759 of 2013, amending Ark. Code Ann. § 25-15-204. [See Form Written Findings, Forms, pg. 39.](#)

CONSIDERING THE IMPACT ON SCHOOLS

If your proposed rule or rule change imposes a new or increased cost for education on the state; a local school district; or a school board, commission, agency, department, officer, or other authority; a fiscal impact statement must be prepared. The fiscal impact statement is a realistic statement of the purpose of the rule and the estimated cost to the state or local school district of implementing and complying with the rule. Ark. Code Ann. §§ 19-1-701 et seq.

Step 1: Getting your proposed rule or rule change approved by the school representative.

You first have to get your proposed rule or rule change approved by the appropriate school representative. Who the representative is depends on what type of school or school system your rule affects.

- If your proposed rule or rule change affects a **local or district school**, send a cover letter and a copy of the proposed rule or rule change to the **Commissioner of the Arkansas Department of Education** for approval. [See Contact Information, Appendix, pg. 63.](#)

- If your proposed rule or rule change affects **universities, two-year institutions, community or technical colleges, or independent institutions**, send a cover letter and a copy of the proposed rule or rule change to the **Director of the Arkansas Department of Higher Education** for approval. [See Contact Information, Appendix, pg. 63.](#)

[See Form Cover Letter for Schools, Forms, pg. 43.](#)

Step 2: Preparing the fiscal impact statement.

When preparing the fiscal impact statement, you must consult the Office of Tax Research of the Bureau for guidance, as well as the Department of Education, for approval. ADH works closely with these offices to obtain public comment and to prepare the fiscal impact statement. [See Contact Information, Appendix, pg. 63.](#)

The fiscal impact statement is “a realistic statement of the purpose of a proposed law, or a regulation promulgated under a law, and the estimated financial cost to the state or any local school district of implementing or complying with the law or regulation.” Ark. Code Ann. § 19-1-701(a).

A draft of the fiscal impact statement must be sent to the Secretary of State’s office and the Joint Interim Committee on Education of the General Assembly at least **thirty-five (35) days** before adoption, if schools are affected. Ark. Code Ann. § 19-1-702.

To prepare the fiscal impact statement, take the portion of the financial impact statement that addresses the costs to the school or school district and place it in a separate document.

ENSURING NOTICE AND PUBLIC HEARING

NOTE: The ADH Legal Division can help you file your rule with the following offices and entities. Please notify the Legal Division once you have a hearing date if you need assistance. [See Contact Information, Appendix, pg. 63.](#)

Step 1: Notice and public comment period.

Most proposed rules or rule changes should have a public hearing so that the Department can hear the public’s comments and concerns about the proposed rule or rule change. Once you have obtained Board approval for rulemaking, the notice and public comment period can begin.

You must first decide a date for the public hearing. Once you know the date of the hearing, you will need to send a notice of hearing to the following:

1. To a newspaper of general daily circulation (i.e., the Democrat Gazette) for publishing. The **notice must appear for three (3) consecutive days, and the first day of publication must be at least thirty (30) days before the hearing is to be held.** Ark Code Ann. § 25-15-204, as amended by Act 759 of 2013. [See Form Letter to Place Legal Ad, Forms, pg. 42.](#)

2. To any appropriate trade, industry, or professional publication. If you know of an interested trade group or organization, send the notice to their publication so that it may be published. The notice must be published **at least thirty (30) days before the hearing is scheduled.** Ark. Code Ann. § 25-15-204, as amended by Act 759 of 2013.

The Arkansas Secretary of State's Website has a register of all proposed and final rules that have been filed. It also has instructions for filing your proposed and final rules. To go to the [Arkansas Secretary of State's Website](#), use your Smartphone to scan this QR code or click on this hyperlink.



3. To the Secretary of State's office (SOS) to be published on the SOS website. The notice sent to the SOS must include a copy of the proposed rule or rule change (the draft version) and a copy of the financial impact statement. It must be available on their website **at least thirty (30) days before the public hearing.** Ark. Code Ann. § 25-15-204, as

amended by Act 759 of 2013; Ark. Code Ann. § 25-18-218.

4. **If your rule will have a financial impact on a municipality or a county in the state**, you must prepare a fiscal impact statement to be filed with the adopted rule at the Secretary of State's office. This fiscal impact statement must be filed at least **thirty (30) days prior to the adoption of the rule.** The fiscal impact statement is limited to a "realistic statement of the estimated cost of implementing or complying with the rule" on the municipality or county. If the municipality or county affected requests a copy of the fiscal impact statement, they are entitled to immediately receive it. Ark. Code Ann. §§ 19-1-301 et seq. To complete the fiscal impact statement, take the portion of the financial impact statement that addresses the county or municipality and place it in a separate document to be filed with the secretary of state.

5. To the Office of Health Communications and Marketing for publication on the ADH website. Attach a copy of the proposed rule or rule change to the notice. Send this **at least thirty (30) days before the public hearing.** [See Contact Information, Appendix, pg. 63.](#)

NOTE: The Notice of hearing must also be posted on www.arkansas.gov **at least three (3) days prior to the day the hearing is to be held.** Please ask the Office

NOTE: Certain individuals, organizations, or groups may request notification of rulemaking, these groups should be added to the list of interested persons kept by your work unit and should be notified of the rulemaking. Ark. Code Ann. § 25-15-204, as amended by Act 759 of 2013.

of Health Communications and Marketing to forward your notice of public hearing to the contact for placement on www.arkansas.gov. Ark. Code Ann. § 25-15-219.

6. To any interested persons. Often the branch will keep a list of persons affected by rulemaking to determine who should receive a copy of any proposed rules and rule changes. This list is a great place to keep track of interested persons and persons requesting notice of rulemaking. [See Form List of Persons Affected by Rule, Forms, pg. 37](#). The notice should include a copy of the proposed rule or rule change and a Memorandum to Interested Persons. [See Form Memorandum to Interested Persons, Forms, pg. 44](#). This notice should be sent **at least thirty (30) days before the public hearing**.

The notice of public hearing must contain the following information:

1. a statement of the terms or substance of the intended action or a description of the subjects and issues involved;
2. the date, time, and location of the hearing; and
3. the manner in which interested persons may present their positions on the intended action or issues related to the intended action.

Ark. Code Ann. § 25-15-204, as amended by Act 759 of 2013. [See Form Notice of Public Hearing, Forms, pg. 41](#). Comments are received throughout the thirty (30) days leading up to the public hearing and at the public hearing. This is known as the public comment period. The public comment period may be extended up to twenty (20) days after the public hearing date.

Step 2: Submission of the proposed rule or rule change.

When you are sending your notice to the appropriate parties, you must simultaneously submit the proposed rule or rule change to the Bureau of Legislative Research (the “Bureau”), the House and Senate Interim Committees on Public Health, Welfare, and Labor (the “Joint Committee”), and the Arkansas State Library.

NOTE: The deadlines for Steps 1 & 2 are the same.

The Bureau of Legislative Research

A copy of the proposed rule or rule change, the Cover Page, the Cover Summary, the Questionnaire, and the Financial Impact Statement, along with the Letter to the Bureau of Legislative Research must be submitted to the Bureau at least **thirty (30) days prior to the expiration of the public comment period**. The best practice is to file with the Bureau at the same time that you send out your notice of public hearing. [See Form Letter to Bureau of Legislative Research, Forms, pg. 46](#); [Contact Information, Appendix, pg. 63](#).

The Bureau reviews the proposed rule or rule change. If the Bureau believes the proposed rule or rule change to be outside of the legislative intent or the statutory authority given to the agency, it will file a written statement with the Legislative Council. The proposed rule or rule change and accompanying documents will be submitted to the

Legislative Council, along with any statement prepared by the BLR. Ark. Code Ann. § 10-3-309(e), as amended by Act 759 of 2013. The Bureau often has additional questions to clarify or justify the proposed rule. These questions must be answered promptly by the branch proposing the rule.

The Joint Committee on Public Health, Welfare, and Labor

The Joint Committee also gets a copy of the proposed rule or rule change, the Cover Page, the Cover Summary, the Questionnaire, and the Financial Impact Statement, along with a Letter to the Joint Committee. This must be sent to the Joint Committee **at least thirty (30) days prior to the end of public comment period**, or at least thirty days prior to the public hearing. Ark. Code Ann. § 10-3-309(f), as amended by Act 759 of 2013. [*See Letter to the House and Senate Interim Committees on Public Health Welfare, & Labor, Forms, pg. 47; Contact Information, Appendix, pg. 63.*](#)

The Arkansas State Library

The proposed rule or rule change and the financial impact statement will also have to be filed with the Arkansas State Library. Act 759 of 2013, amending Ark. Code Ann. § 25-15-204. This should be filed at the same time that the rule is filed with the SOS, the Bureau, and the Joint Committee. [*See Contact Information, Appendix, pg. 63.*](#)

Step 3: Hold the Public Hearing.

Hold the public hearing on the date and time indicated in your published notice. Be sure to take minutes of the meeting. [*See Form Hearing Minutes, Forms, pg. 45.*](#) The best practice for taking minutes is to record the meeting and have a designated staff member prepare the minutes from the recording and their own notes. Also, be sure to provide a sign-in sheet at the public hearing and attach the list of public hearing attendees to your minutes. Each branch is responsible for designating a staff member to conduct the hearing and for providing equipment needed to hold the hearing, including the recording equipment.

Some things to keep in mind at your public hearing:

1. Comments received prior to the hearing must be verbally summarized at the hearing and/or made available for review by those who attend. **All public comments**, those received prior to the hearing and those received at the hearing, must be considered by the agency before finalizing and filing the rule. Ark. Code Ann. § 259-15-204, as amended by Act 759 of 2013.
2. If substantive changes occur in the proposed rule or rule change as a result of public comments, keep the public and the Governor notified throughout the process. Notification is made to the Governor by submitting a copy of the revised rule or rule change with a cover letter summarizing changes. If the rule was controversial during the public comment period or at the public hearing, please indicate such and state whether the

revisions addressed the controversy in your summary. [See Contact Information, Appendix, pg. 63.](#)

3. If the substantive changes have public impact, contact the agency attorney to discuss any steps of the rulemaking process that may need to be repeated. [See Contact Information, Appendix, pg. 63.](#)
4. Notify the Legislative Council and the Joint Committee if there have been substantive changes. This notification is achieved by submitting two copies of the revised rule or rule change along with the summary of the revisions to the Bureau and the Joint Committee. [See Contact Information, Appendix, pg. 63.](#)
5. Requests from any interested person or group for further hearing opportunities must be reported to and discussed with the agency attorney.

NOTE: The Emergency Medical Services Section must still have the Governor sign any rules they promulgate, in addition to completing the following steps.

REVIEWING, ADOPTING, AND FILING THE FINAL RULE

After the public hearing has been held and any revisions to the rule have been approved, you must complete the rulemaking process by having the final rule reviewed, adopted, and filed. The Legislative Council and the Joint Committee must review the final rule in a formal meeting. The Board must vote to approve the final rule. Finally, you must file the appropriate rule with the Secretary of State's office and the Arkansas State Library.

Step 1: Review by the Legislative Council and the Joint Committee.

All rules promulgated by the Department of Health must be reviewed by two legislative committees: The Rules and Regulations Subcommittee of the Arkansas Legislative Council (the "Legislative Council") and the Senate and House Interim Committees on Health, Welfare, and Labor, which meet jointly (the "Joint Committee"). Contact the agency attorney to determine when the next meeting is for each legislative committee and ask the attorney to place your rule on the agenda for their upcoming meetings. [See Contact Information, Appendix, pg. 63.](#)

When you appear before the Legislative Council and the Joint Committee, you must be prepared to answer all questions about your rule, including the financial impact of the rule. Please be familiar with the reasons the rule was adopted, the financial impact of the rule, any controversies created by the rule, and what you did to address those controversies.

Step 2: Approval by the Board of Health.

After you have appeared before the Legislative Council and the Joint Committee, the Board must adopt the final rule. In order to have the final rule adopted, the **full**

Board must vote on the final rule. You cannot appear before the Executive Committee at this stage in the process.

To get your rule on the agenda of the next full Board meeting, contact the Board Liaison and provide her with a copy of the final rule, Financial Impact Statement, Cover Sheet, Summary of comments and responses, and Memorandum to the Board for rule adoption. [See Contact Information, Appendix, pg. 63](#); [Example of Summary of Comments and Responses, Appendix, pg. 58](#); [Form Cover Memorandum to Board for Rule Adoption, Forms , pg. 48](#).

Remember, the full Board meets on the fourth Thursday of the following months: January, April, July, and October. **To guarantee placement on the next regular Board meeting, send a copy of the final rule, Financial Impact Statement, cover sheet, Summary of Comments and Responses, and Memorandum to the Board for Rule Adoption to the Board Liaison by the first Thursday of the month of that meeting.** For example, if you would like your final rule or rule change on the agenda for the April meeting, you must have the appropriate documents to the Board Liaison by the first Thursday in April.

When you appear before the full Board for the adoption of your final rule, be prepared to answer any questions the Board may have about your rule.

Step 3: Certification of the adopted rule (the adopted rule packet).

You now must prepare the adopted rule packet for certification by the Agency Director. This packet will include the following items:

- A letter requesting the signature of the Agency Director (who serves as the Secretary of the Board). [See Form Letter to Agency Director for Approval/Certification, Forms, pg. 49](#)
- A copy of the final rule or rule change (incorporating any changes made by the Board) with the Cover Page. **The final rule is printed on plain paper not DRAFT paper.**
- Summary of Comments and Responses.
- The Financial Impact Statement.

Send the adopted rule packet to the Director's Office to obtain the Agency Director's signature in the certification section of the Adopted Rule.

Unless the Board makes revisions to the final rule, you may submit the final rule to the Director for his signature at the Board meeting. If you do this, you do not have to prepare the letter requesting the Director's signature. You will still need to prepare the other documents in the adopted rule packet.

Step 4: Filing the adopted rule.

For the adopted rule to become effective, it must be filed with the Secretary of State's (SOS) office for publication in the Arkansas Register. In order to do this you must prepare the Arkansas Register Transmittal Sheet, which can be found on the [Arkansas Secretary of State's Website](#). An "authorized officer" is required to sign the

NOTE: The adopted rule will become effective thirty (30) days after it is filed with the SOS office, unless a later date is specified in the language of the adopted rule or by statute. Ark. Code Ann. § 25-15-204; as amended by Act 759 of 2013.

Transmittal Sheet. “Authorized Officers” include the Agency Director, Chief Legal Counsel, Deputy Director or Center Director.

The SOS requires a paper copy to be filed with its office and an electronic copy to be emailed to register@sos.arkansas.gov. Both copies should be filed with the financial impact statement attached.

You must **hand deliver three (3) copies of the certified, adopted rule and financial impact statement** to the SOS office to be filed, along with two (2) copies of the Arkansas Register Transmittal Sheet. One (1) copy of the adopted rule remains

with the SOS office, along with one Transmittal Sheet. The other two (2) copies of the adopted rule are brought back to the Department, along with the remaining Transmittal Sheet. Your branch keeps one copy of the file-marked, certified, adopted rule. The other copy is given to the agency attorney, along with the remaining Transmittal Sheet. You should make your branch a copy of the Transmittal Sheet and keep it in your records along with your copy of the adopted rule.

Step 5: Distribution of the Adopted Rule.

The rule is effective thirty (30) days after filing with the SOS office; however, there are other offices and individuals that must receive copies of the rule under Arkansas law. Those offices are outlined below:

[Arkansas State Library](#)

The Arkansas State Library receives twelve (12) copies of the adopted rule and twelve (12) copies of the Financial Impact Statement (and fiscal impact statement, if there is one). A copy of the Financial Impact Statement should be attached to the back of each copy of the adopted rule. You will also need the Agency Certification Form, which can be found on the Arkansas State Library’s website. An “authorized officer” must sign the Agency Certification Form. An authorized officer is any one of the following: the Agency Director, the Deputy Director, Chief Legal Counsel, or your Center Director.



Use this QR code or hyperlink to visit the [Arkansas State Library’s Website](#) for more information on how to file rules with their office.

Hand deliver or mail two (2) copies of the Agency Certification Form, along with twelve (12) copies of the adopted rule and Financial Impact Statement (if mailed, also including a self-addressed envelope). [See Contact Information, Appendix, pg. 63.](#)

The best practice is to hand-deliver twelve copies of your Rule and Financial Impact Statement to the Arkansas State Library on the same day that you hand deliver your rules to the SOS office. If you do this, take the Department’s filed-marked copies

from the SOS office to the State Library and have them file-marked along with the twelve (12) copies for the State Library.

Bureau of Legislative Research

If there were changes from the rule as originally proposed, the Bureau must receive one (1) copy of the rule as it has been changed. If needed, send a copy of the final rule, the financial impact statement, and summary of comments and responses to the Bureau.

Interested Persons

Those individuals identified by your branch as interested persons also receive one (1) copy of the adopted rule, along with a cover letter. This group of interested persons should include anyone affected by the rule. Ark. Code Ann. § 25-15-204, as amended by Act 759 of 2013. The List of Persons Affected by Rule can help you determine which persons should receive a copy of the adopted rule. [See Form List of Persons Affected by Rule, Forms, pg. 37](#); [See Form Cover Letter Transmitting Final Adopted Rule/Regulation to Interested Persons, Forms, pg. 50](#).

Step 6: Publish the adopted rule on the agency website.

The adopted rule should be published on the Department’s website, along with the following:

- All written comments submitted regarding the adopted rule;
- A summary of all written and oral comments submitted and the agency’s response to those comments. [See Example of Summary of Comments and Responses, Appendix, pg. 58](#);
- A summary of the financial impact of the adopted rule; and
- The proposed effective date of the adopted rule.

This information should be posted on the Department’s website immediately following the filing of the rule and before its effective date. Ark. Code Ann. § 25-15-204, as amended by Act 759 if 2013. To have your adopted rule posted on the Department’s website, contact the Office of Health Communications and Marketing. [See Contact Information, Appendix, pg. 63](#).

NOTE: The Director of the Department may promulgate an emergency rule to add or delete a substance from the controlled substances schedule without going before the Board. That emergency rule may be effective for up to one hundred eighty (180) days.

ADOPTING EMERGENCY RULES

If there is imminent peril to the public’s health, safety, or welfare; or compliance with a federal law or regulations requires adoption of a rule in less than thirty (30) days, an agency may proceed with rulemaking without notice and public comment. Ark. Code Ann. § 25-15-204, as amended by Act 759 of 2013. A rule adopted in this manner is known as an “emergency rule.” **An emergency rule is only**

valid for one hundred twenty (120) days.

Step 1: Draft the emergency rule and prepare the rule packet.

You must draft the emergency rule and prepare a rule packet, as described above ([pg. 3](#)). Keep in mind that if you want to make your rule permanent (effective for longer than 120 days), you still have to initiate the full rulemaking process. If this is your intention, you need to initiate the full rulemaking process at the same time that you implement the emergency rule. Therefore, it is best to complete the entire rule packet when you draft the emergency rule. Also, you must file a Financial Impact Statement with the emergency rule.

You need to attach a statement to your rule that explains the agency's findings that the rule was necessary to (1) prevent imminent peril to the public's health, safety, or welfare; or (2) implement a federal law or regulation that required a rule in less than thirty (30) days. This statement must also explain the reasons why your branch made these findings (i.e., why not passing an emergency rule would lead to imminent peril to the public health, safety, or welfare).

Step 2: Get approval from the Board of Health.

You need approval from the Board before you can implement your emergency rule. To do this, you need permission from the Executive Staff to appear before the Board. [See, supra, pg. 5](#). After the Executive Staff has granted you permission to go before the Board, ask to be placed on the agenda of the next full meeting of the Board of Health. [See, supra, pg. 5](#). Since you are seeking approval of a rule that will become effective, **you must appear before the full Board**. When you appear before the board, you will need a draft of the emergency rule or rule change, a cover sheet, and a cover summary. [See supra, pg.3](#).

Step 3: File the emergency rule.

The emergency rule or rule change must be filed with the SOS office, the Arkansas State Library, and the Bureau. When filing the emergency rule or rule change, be sure to attach the agency's statement of findings and the financial impact statement. [See Form Statement of Findings for Emergency Rulemaking, Forms, pg. 51; Form Financial Impact Statement, Forms, pg. 39](#).

Step 4: Distribute the emergency rule.

The agency must take steps to ensure that the emergency rule or rule change is known to any persons who may be affected by it. This can be accomplished by sending a copy of the emergency rule or rule change to interested persons, trade groups, and other organizations that you know will be affected. [See Form List of Persons Affected by](#)

NOTE: If you would like to initiate the full rulemaking process, you must ask the Board for permission to begin the rulemaking process at the same time that you ask for approval of the emergency rule. You will need a copy of the rule you intend to implement through the rulemaking process (this may be identical to your emergency rule), as well as the Cover Sheet and Cover Summary for the rule. You will also need a Financial Impact Statement. [See supra, pg. 3](#).

[Rules, Forms, pg. 37.](#) You must publish the emergency rule or rule change on the Department's website by sending it to the Office of Health Communications and Marketing. [See Contact Information, Appendix, pg. 63.](#)

Your branch is not limited to the above steps when providing notice to those affected. Please take any steps that your branch feels will be most effective in ensuring that proper notice of the emergency rule or rule change is received by those who will be affected by it. Ark. Code Ann. § 5-64-201(a)(1)(A).

ADJUDICATIONS

Adjudication is the word used by the Administrative Procedures Act (APA) to describe the quasi-judicial function of a state agency. Adjudications are defined as the “agency process for the formulation of an order.” Ark. Code Ann. § 25-15-202(1)(A), as amended by Act 759 of 2013. An order is “the final disposition of an agency in any matter other than a rulemaking. . .” Ark. Code Ann. § 25-15-202(5), as amended by Act 759 of 2013. Adjudications require proper notice to the parties and a hearing before a fact finder and on the record. This section will outline how to properly conduct an adjudication, more commonly known as an administrative hearing.

NOTE: Many hearings conducted by ADH involve license or permit revocations, suspensions, or sanctions to a license or permit holder. The APA places additional requirements on the agency in hearings involving licensure or permitting.

GIVING PROPER NOTICE OF THE HEARING

The APA states that “all parties shall be afforded an opportunity for a hearing after reasonable notice.” Ark. Code Ann. § 25-15-208(a)(1). The law then goes on to carefully describe what must be in the notice. The notice must state the following:

- The date, time, place, and nature of the hearing;
- The legal authority and jurisdiction under which the hearing is being held; and
- A short and plain statement of the matters of fact and law.

Ark. Code Ann. § 25-15-208(a)(2).

However, the APA does not specify what amount of time constitutes “reasonable notice.” In some cases, the statute or rules governing your branch may specify how much notice is required. Please check the laws governing your branch to be sure. Otherwise, your branch may have an internal written policy governing the amount of notice that is required. If you cannot locate any statute, rule, or policy that determines how much notice to give an individual who is required to appear for an administrative hearing, **a good rule of thumb is thirty (30) days**. However, it is likely that fourteen (14) days’ notice will be found reasonable.

When the adjudication involves licensure or permitting, the agency (or its attorney) must provide the following information to the licensee or permit holder, **if the information is requested by the license or permit holder**:

- Names and addresses of those people you intend to call as witnesses;

- A copy of any written or recorded statements and the substance of any oral statements made by the license or permit holder;
- A copy of any reports or statement of experts made in connection with the case (including results of physical or mental examinations, scientific tests, experiments, or comparisons); and
- A copy of any books, papers, documents, photos, or other objects you intend to use at the hearing or that were obtained from the license or permit holder.

Ark. Code Ann. § 25-15-208(a)(3). To the extent that research, records, correspondence, reports or memoranda contain the opinions, theories, or conclusions of the attorney for the agency, his staff, or other state agents, those documents are not required to be disclosed. Ark. Code Ann. § 25-15-208(a)(3)(E).

The opposing party (or respondent) may agree to settle the case by a consent order. This is acceptable under the APA. If an agreement for a consent order is reached, the administrative hearing will not take place. Ark. Code Ann. § 25-15-208(b). The consent order can be agreed to at any time, including the day of the hearing. The consent order must be presented to the appropriate Board or Agency for adoption.

ISSUING SUBPOENAS TO WITNESSES

A subpoena is a document that commands an individual to appear and give testimony or produce evidence. In the case of an administrative hearing, a subpoena can be used to command an individual to attend to the hearing and testify or produce documents to be introduced as evidence at the hearing. Ark. Code Ann. § 25-15-208(A)(7)(A). If the law authorizing your branch to conduct hearings allows you to subpoena witnesses, you may do so. If you are allowed to subpoena witnesses, the other party may do the same. The subpoena must be issued by the presiding officer (the administrative law judge, Board members, or hearing officer conducting the hearing). Ark. Code Ann. § 25-15-213(3)(A)(i).

A subpoena must contain the date, time, and location of the hearing. It should be addressed to the person being subpoenaed (if the person is underage, it should be addressed to his or her parent or guardian); and, if you are asking that person to produce documents or other items, it should specifically state what you are asking them to produce. Ark. Rule Civ. P. 45. You will also need to arrange for the witness to receive the applicable witness fee, which is currently set at \$30.00 per day and \$0.25 per mile travelled to and from the hearing. *Id.* This is done by attaching a witness fee form and a Form W-9. [See Form Subpoena, Forms, pg. 52; Form for Witness Reimbursement, Forms, pg. 54; W-9 Form for Witnesses at Hearings, Appendix, pg. 60.](#)

In order to be effective, a subpoena must be properly “served.” Serving a subpoena means ensuring the person being subpoenaed receives the subpoena through a proper method of delivery. A subpoena can be served by mail provided it is sent **certified mail, restricted delivery and return receipt requested**. A subpoena may also be served on the individual by a process server, a sheriff, or anyone else able to serve under the Arkansas Rule governing subpoenas. Ark. Code Ann. § 25-15-208(a)(7)(B).

If the subpoena was properly issued and served, as described above, and the person it was directed to refuses to respond to the subpoena or give testimony, the agency or the presiding officer of the hearing may apply to the circuit court of the county where the proceedings were held or where the petition for judicial review was filed for an order directing the person to obey the subpoena. If a circuit court does issue an order and the person still fails to obey the subpoena, he or she can be found in contempt of the court's order, which can result in civil or criminal punishment. Ark. Code Ann. § 25-15-213(3)(B).

AVOIDING *EX PARTE* COMMUNICATION

Ex parte, or “one party,” communication is not allowed. This means that you cannot directly or indirectly communicate regarding the issues of the case with the hearing officer, the Board members making the decision, or the administrative law judge (ALJ) unless **all parties are part of the communication**. Anything you send to the individuals making the final decision (Board members, ALJ, hearing officer, etc.), **must also be sent to the other parties to the hearing**. This includes emails, letters, memorandum, and evidence you intend to present at the hearing. If you need to call the decision maker, you must include the other parties on the phone call. This does not mean that you cannot communicate with the decision makers for other matters. For example, if you regularly communicate with Board members as part of your daily work duties, that communication is still allowed. However, you cannot discuss the facts or issues of an administrative hearing while engaging in those tasks. Ark. Code Ann. § 25-15-209.

The decision maker has an obligation to ensure that no improper *ex parte* communication occurs. This includes communication between Board members about the issues or facts of a hearing before the hearing occurs.

CONDUCTING AN ADMINISTRATIVE HEARING

After proper notice has been sent to the other parties and they have been given a chance to respond, you must hold the administrative hearing. As previously stated, a hearing can be avoided if the other party wishes to enter into a consent order prior to or on the day of the hearing.

You may also agree to stipulations any time prior to the hearing. Stipulations are agreements between the parties as to certain facts or matters of law at issue. If you get stipulations on some facts or issues, you do not need to present evidence on those facts or issues. They will be assumed true. However, you may still need to present evidence on other matters that have not been stipulated to.

You may also get a default finding against a party who fails to show up at to the hearing. Ark. Code Ann. § 25-15-208(b). Ultimately, the decision maker must decide whether or not to enter a default order. You, or the agency attorney, may request a default order be entered.

It is the job of the presiding officer (typically the hearing officer or ALJ) to maintain order at the hearing. This includes ensuring that both parties are given the opportunity to present evidence and be heard on the issues, directing the taking of evidence, ruling on objections, and generally guiding the course of the proceeding. Ark. Code Ann. § 25-15-213(3)(A).

Generally, the proponent of the rule or order has the burden of proof. Typically, this means that the agency or work unit asking to follow the rule or regulation in question must present evidence sufficient to prove their case. The burden of proof should be detailed in the statute giving the agency or board authority to proceed. The most commonly used burden of proof in administrative hearings is “preponderance of the evidence.” Preponderance of the evidence means that more likely than not, the thing occurred the way the agency said it did. To find that the preponderance of the evidence burden has been met, you must find that the evidence is in favor of the agency. For example, if you are seeking to revoke a license because someone failed to properly renew it, you must prove that more likely than not, the person did not renew their license as you described.

Taking evidence. Both parties must have the opportunity to be heard and present evidence at the hearing. It is the job of the presiding officer to take in evidence at the administrative hearing. This includes conducting the hearing to ensure that evidence is taken in a fair and impartial manner. Taking evidence includes hearing witnesses who are called by the parties and admitting documents that are presented by the parties.

Evidence should be taken pursuant to the procedural rules that govern the Board or Agency conducting the hearing. Ark. Code Ann. § 25-15-213(3)(A). The presiding officer must administer the oath to all witnesses prior to taking their testimony. Ark. Code Ann. § 25-15-213(3)(A)(ii). Administering the oath is also known as “swearing in the witnesses,” and is often done at the beginning of the proceeding, before any witnesses are called, to expedite the hearing. Generally, the party with the burden of proof will go first and present their witnesses and evidence. After the party that called the witness has questioned him or her, the hearing officer must give the other party the opportunity to cross-examine the witness. Ark. Code Ann. § 25-15-213(5).

Provided that doing so does not prejudice any party, evidence may be taken in written form to expedite the hearing. Ark. Code Ann. § 25-15-213(4).

Ruling on objections. The presiding officer must rule on all evidentiary objections. Ark. Code Ann. § 25-15-213(3)(A)(iv). These rulings should be guided by the agency’s own procedural rules. If those rules do not offer guidance, the following principles should be followed:

- Any evidence that is irrelevant, immaterial, or unduly repetitious should be excluded.
- Any evidence that is not privileged should be received so long as it is of the type “commonly relied upon by reasonably prudent people in their affairs.”

Ark. Code Ann. § 25-15-213(4).

Making a record. A record must be made of all administrative hearings. The record should be made by the board or agency conducting the hearing. This can be done in many ways. Some agencies or boards hire a court reporter to attend the hearing and create a transcript. Others record the hearing by means of an electronic recording device and do not transcribe it unless a party appeals the agency decision to a circuit court. Regardless of the method used to create the record, the record must include the following:

- all pleadings, motions, and intermediate rulings;
- evidence received or considered (including a transcript of oral proceedings, if requested);
- a statement of matters officially noticed;
- offers of proof, objections, and rulings thereon;
- proposed findings and exceptions thereto; and
- all staff memoranda or data submitted to the hearing officer or members of the agency in connections with their consideration of the case.

Ark. Code Ann. § 25-15-208(5).

Licensing hearings. Hearings regarding the grant, denial, or renewal of a license require the following:

- If the licensee has made timely and sufficient application for the renewal of his or her license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and if denied, until the last day for seeking judicial review of the agency order or a later date fixed by the reviewing court.
- A revocation, suspension, annulment, or withdrawal of a license is not lawful unless:
 - the agency gives notice, by mail, to the licensee of the facts or conduct warranting the action; and
 - the licensee is given the opportunity to show compliance with all lawful requirements for the retention of his or her license.
- If the agency finds that the public's health, safety, or welfare requires emergency action and incorporates that finding into its order, the license may be summarily suspended pending proceedings for revocation or other action.

Ark. Code Ann. § 25-15-211.

ISSUING THE FINAL ORDER

After the hearing is concluded, the decision makers (usually the Board members or ALJ) must issue a final order detailing their decision regarding the issues of fact and law presented to them at the hearing. The final decision must be reduced to writing, and, in many cases, sent on to the Board for adoption. Most hearings conducted by the Department are conducted before a subcommittee or advisory committee of the Board. The orders resulting from these hearings are proposed orders and typically must go to the Board for adoption. If the decision must be adopted by the Board, ask the agency attorney to place the item on the agenda for the next Board meeting.

The APA is very specific about what must be in the final order. Each final order must contain findings of fact and conclusions of law, and these must be separately stated. Ark. Code Ann. § 25-15-210(b)(2). If the statute that governs the hearing requires specific findings of fact be made, then the underlying facts supporting that finding must be explicitly stated in the final order. *Id.* Every finding of fact must be based only on the evidence presented at the hearing and those matters officially noticed by the hearing officer. Ark. Code Ann. § 25-15-208(a)(6). [*See Example of Final Administrative Order, Appendix, pg. 61.*](#) Often a party, usually the agency, will submit proposed findings of fact. When this occurs, the final order must include a ruling on each proposed finding. Ark. Code Ann. § 25-15-210(b)(2).

After a final decision has been made and reduced to writing, every party must be sent a copy of the final order. This can be accomplished by personal service (using a process server or sheriff) or by certified mail, restricted delivery. Ark. Code Ann. § 25-15-210(c).

JUDICIAL REVIEW OF THE FINAL ORDER

Any person, other than an inmate with the Department of Correction, who believes himself or herself to be harmed by a final agency decision in an adjudication may ask for judicial review of the final agency decision, or order. Ark. Code Ann. § 25-15-212(a). Judicial review, often called appeal, is the process by which a court of law reviews the agency's order.

The agency's decision is not automatically stayed upon appeal. In other words, the appealing party may have to comply with the agency decision, even though they are asking a circuit court to overturn, or reverse, it. The agency may decide to stay the order until the appeal is resolved or the court may order that the final agency decision be stayed. In the case of a disciplinary order from a professional licensing board governing a healing arts profession, the court may, after notice and hearing of the same, issue necessary and appropriate processes to postpone the effective date of the final decision. Ark. Code Ann. § 25-15-212(c).

“Healing arts” is defined as the practice of any type of profession that requires special education and skill that promotes healing of the human body or that relates to the prevention of illness or disease. Ark. Code Ann. § 17-80-109(1).

The party seeking judicial review must file a petition for judicial review within thirty (30) days of service of the final agency order. The petition must be filed in the circuit court of the county where the Petitioner resides and does business or in Pulaski County Circuit Court. Once filed, the Petitioner must serve copies of the petition on the agency and all other parties. The petition must be served according to the Arkansas Rules of Civil Procedure. Ark. Code Ann. §25-15-212(b).

NOTE: If you, or anyone in your work unit, are served with a petition for judicial review, please notify the agency attorney immediately. [See Contact Information, Appendix, pg. 63.](#)

Once the agency has been served with the petition for judicial review, it has thirty **(30) days to prepare the record**. Either the original or a certified copy of the record must be sent to the circuit court hearing the appeal within that timeframe. If more time is needed, the agency can petition the court for additional time to prepare the record, however, this time cannot exceed ninety (90) days from the date of service. The agency must pay for the record to be prepared. However, if the agency wins on appeal, that cost can be recovered. Ark. Code Ann. § 25-15-212(d).

The parties can stipulate, or agree, to shorten the record. Ark. Code Ann. § 25-15-212(d)(3). The APA encourages such stipulations by mandating that if a party unreasonably refuses to stipulate to limit the record, that party may be taxed the additional costs by the court. Id.

The reviewing court is limited to reviewing the record of the hearing that is sent up from the agency. Ark. Code Ann. § 258-15-212(g). In other words, no additional testimony can be heard and no other documents can be produced during the appeal. That is why it is so important to ensure that an accurate and complete record is kept of the administrative hearing. There are exceptions to this rule. If it is alleged that there was a procedural error or irregularity that does not appear in the record, then the court may take oral testimony regarding such and receive written briefs (or arguments) from the parties. Id.

Also, a party may ask for leave to present additional evidence to the agency. Such application must be made before the date set for the appeal hearing. To allow additional evidence to be presented to the agency, the court must find that it is material and that there were good reasons why it was not presented at the agency hearing. If the court allows the additional evidence, the agency may modify its findings and decision based upon the additional evidence. The new or modified findings and decisions, along with the evidence, must be filed with the reviewing court. Ark Code Ann. § 25-15-212(f).

There are several possible outcomes of a judicial review. The court may affirm the agency's decision, or leave the agency order in place. The court may also remand the agency's decision, or send it back to the agency to hear again. The court may modify or reverse the agency's decision if it finds the agency's decision was:

- in violation of constitutional or statutory provisions;
- in excess of the agency's statutory authority;

- made upon unlawful procedure;
- affected by other error or law;
- not supported by substantial evidence of record; or
- arbitrary, capricious, or characterized by abuse of discretion.

Ark. Code Ann. § 25-15-212(h). If the agency's decision is affirmed in whole or in part by the Court, the part affirmed shall be a final judgment. Ark. Code Ann. § 25-15-212(i). When an agency's order is affirmed, the parties must follow it.

THE ROLE OF THE BOARD OF HEALTH

The Arkansas State Board of Health (the “Board”) serves as the policy advisory body to the Arkansas Department of Health (The “Department”). All rules promulgated by the Department must be approved by the Board. Similarly, the Board acts as the decision-maker, or fact-finder, in most agency adjudications.

STATUTORY AUTHORITY

Arkansas Code Annotated § 20-7-101 et seq. creates the Board and gives it statutory authority to regulate public health in Arkansas. The Board has been designated as the state board for carrying into effect the provisions of federal acts to provide for cooperation with the states in the protection of mothers and infants and promotion of a public health program. Ark. Code Ann. § 20-7-111. To assist in carrying out these duties and enforcing its rules, the Board may impose civil penalties for violations of the rules and regulations promulgated by it. Ark. Code Ann. § 20-7-101. The statute sets the maximum civil penalty at \$1,000.00 per violation and each day of a violation constitutes a separate violation for purposes of assessing the penalty. Id.

COMPOSITION OF THE BOARD OF HEALTH

Arkansas Code Annotated §20-7-102 describes the composition of the Board. Each Board member is appointed by the Governor and serves at his pleasure. However, the Governor must adhere to strict qualifications when choosing the twenty-four (24) Board members. Each Board member must take the oath for state officers prescribed in the Arkansas Constitution and shall be commissioned by the Governor in the same manner as other state officials. The members are as follows:

- Seven (7) shall be licensed medical doctors of good professional standing, appointed as follows:
 - One (1) shall be appointed from each of the four (4) congressional districts of the state; and
 - Three (3) members shall be appointed from the state at large from a list of at least three (3) names for each position presented by the Arkansas Medical Society; and
 - One (1) of the seven (7) licensed medical doctors must be an osteopathic physician appointed from a list of at least three (3) names presented by the Arkansas Osteopathic Medical Association from the state at large.
- One (1) shall be a regularly licensed, registered, and practicing dentist with at least seven (7) years’ experience in the practice of

dentistry in the state; and this member shall be chosen from a list of at least three (3) names presented by the Arkansas State Dental Association;

- One (1) shall be a professional engineer with at least seven (7) years' experience in the practice of engineering in the state; and this member shall be chosen from a list of at least three (3) names presented by the Arkansas Society of Professional Engineers;
- One (1) shall be a licensed professional nurse with at least a bachelor's degree who has been a resident of Arkansas for at least seven (7) years and who has five (5) years of nursing experience in the state; and this member shall be chosen from a list of no more than three (3) names presented by the Arkansas Nurses Association;
- One (1) shall be a licensed pharmacist with at least seven (7) years of active practice in the profession of pharmacy; and this member shall be chosen from a list of at least three (3) names presented by the Arkansas Pharmacists Association;
- One (1) shall be a regularly licensed veterinarian with at least seven (7) years' experience in the active practice of veterinary medicine; and this member shall be chosen from a list of at least three (3) names provided by the Arkansas Veterinary Medicine Association;
- One (1) shall be a registered sanitarian with at least seven (7) years' experience in the practice of his or her profession; and this member shall be chosen from a list of at least three (3) names presented by the Arkansas State Board of Sanitarians;
- One (1) shall be a hospital administrator who has at least seven (7) years' experience in the practice of his or her profession; and this member shall be chosen from a list of three (3) names presented by the Arkansas Hospital Association;
- One (1) shall be a regularly licensed, registered and practicing optometrist who has seven (7) years' experience in the practice of optometry in the state; and this member shall be chosen from a list of at least three (3) names presented by the Arkansas Optometric Association;
- One (1) shall be a regularly licensed and practicing chiropractor; and this member shall be chosen from a list of at least three (3) names presented by the Arkansas Chiropractic Association or the Arkansas Chiropractic Society;
- One (1) shall be a restaurant operator who has owned or operated a restaurant for a minimum of five (5) years; and this member shall

be chosen from a list of three (3) names presented by the Arkansas Hospitality Association;

- One (1) shall be a consumer representative who has an interest in public health; and this member shall be appointed from the state at large;
- One (1) shall represent the elderly and shall be at least sixty (60) years old and shall not be actively engaged in or retired from any occupation, profession, or industry regulated by the board; and this member shall be appointed from the state at large and confirmed by the Senate;
- One (1) shall be a licensed doctor of podiatric medicine of good professional standing with at least seven (7) years' experience in the practice of podiatry in the state; and this member shall be appointed from a list of at least three (3) names presented by the Arkansas Podiatric Medical Association;
- One (1) shall be a member of the Arkansas Public Health Association; and this member shall be appointed from a list of three (3) names provided by the Arkansas Public Health Association;
- One (1) shall be a licensed medical doctor of good professional standing from a rural county that contains a medically underserved population in the state; and
- One (1) shall be the Director of the Arkansas Department of Health, who shall serve as the secretary of the Board. The director also serves as the State Health Officer and his or her qualifications are outlined in Act 435 of 2013, amending Ark. Code Ann. § 20-7-103.

The Governor may also appoint a Surgeon General for the state. This person cannot be a sitting member of the Board and must be a graduate of a legally constituted and reputable medical school and be in good standing in the medical profession. The Surgeon General will serve as a cabinet level advisor to the Governor and will have all the powers of a member of the Board. Part of the Surgeon General's duties include advising the Board and the Governor on health policy options, raising awareness of health care and public health areas of priority, reviewing legislative analysis and proposed legislation, and providing medical review oversight and guidance. Ark. Code Ann. § 20-7-103.

The President of the Board is elected by the members. Ark. Code Ann. § 20-7-103(a), as amended by Act 435 of 2013. He or she serves a one (1) year term.

If the Governor does not immediately appoint a replacement for a Board member whose term has expired, then that Board member continues to serve on the Board until such time as a replacement is appointed. This is known as holding over.

MEETINGS

The Board must meet one (1) time every three (3) months. The regular, full meetings of the Board are typically held on the last Thursday of the months of January, April, July, and October. Upon call of the president of the Board or a majority of the members, the Board may meet at others times as may be necessary in the interest of public health. These meetings are known as special meetings.

A majority of the members of the Board constitutes a quorum. A quorum must be present for the Board to legally transact business. If a quorum is lost during a meeting of the Board, the Board cannot conduct business during the time that the quorum is lost.

The Board follows Robert's Rules of Order to conduct business during its meetings. The Board also adopts and follows by-laws or rules governing Board membership and business. *See Board of Health By-Laws, Appendix, pg. 64.*

It is important that members attend Board meetings. State law provides that if a board member appointed by the Governor has unexcused absences from three (3) successive regular meetings without attending a special meetings called in the interim, the Governor can remove the board member, subject to confirmation by the Senate, if necessary. Ark. Code Ann. § 25-16-804 (§ 804 states that the Governor may remove any board member for “good cause,” subject to confirmation by the Senate, and outlines what constitutes “good cause”).

LEGISLATIVE FUNCTION OF THE BOARD OF HEALTH

The Board also serves as the legislative branch of the Department by creating and enacting rules. Every administrative board or agency serves a quasi-legislative function, this is known as rulemaking. The rulemaking process is the administrative function that most closely resembles a legislature's lawmaking function. Each board or agency is authorized by the legislature to promulgate rules.

Legislators are “generalists” in that they must know a little bit about a lot of things. For this reason, legislative bodies delegate the task of drafting and enacting detailed, specialized, and complex rules governing specific areas where the legislative body has no expertise. The Board and the Department are the bodies with knowledge and expertise in the area of public health. Therefore, the legislature delegates rulemaking authority regarding public health issues to the Board and the Department.

The statute that gives a board or agency its authority is known as the enabling statute. The Board's general rulemaking authority was granted to it by Arkansas Code Annotated § 20-7-101 et seq. This enabling statute gives the Board the authority to promulgate any rules necessary for the following:

- The protection of the public health and safety;
- The general amelioration of the sanitary and hygienic conditions within the state;

- The suppression and prevention of infectious, contagious, and communicable disease;
- The proper enforcement of quarantine, isolation, and control of such disease; and
- The proper control of chemical exposure that may result in adverse health effects to the public.

Ark. Code Ann. § 20-7-109(a)(1). However, the Board may not regulate the practice of medicine or healing nor interfere with the right of any citizen to employ the practitioner of his or her choice. *Id.* at § 109(c). Arkansas Code Annotated § 20-7-109 gives the Board general authority to regulate public health in the state. Other statutes may give the Board specific authority to regulate in a certain area. For example, the Board was given the authority to adopt, amend, or repeal rules for the purposes of carrying out the Vital Statistics Act in Arkansas Code Annotated § 20-18-202.

The Board is also the governing body that approves rules promulgated by branches of the Department. When the Department is given the authority to promulgate rules and regulations, those rules are reviewed and adopted by the Board. For example, Act 1420 of 2013, creating Ark. Code Ann. § 20-27-2701 et seq., gives the Department the authority to promulgate rules and regulations to carry out the provisions of the unlawful sale of bedding act. Once the environmental section of the Department drafts rules regarding the unlawful sale of bedding, the rules will be presented to the Board for the Board’s comment and ultimate adoption.

The rulemaking process is described in detail in the “Rulemaking” section above. [See Rulemaking, supra, pg. 2.](#)

JUDICIAL FUNCTION OF THE BOARD OF HEALTH

The judicial branch of government interprets the laws passed by legislatures. Trial courts issue orders based upon the law and their interpretation of it. Often these orders require or encourage individuals to act in a way that complies with the law. An agency or board serves a quasi-judicial function similar to courts when it holds hearings and issues orders interpreting its own rules and regulations. This process is known as adjudication. An order is defined as “the final disposition of an agency in any matter other than a rulemaking, including licensing and rate making, in which the agency is required by law to make its determination after notice and hearing.” Ark. Code Ann. § 25-15-202, as amended by Act 759 of 2013.

A smaller ad-hoc subcommittee of Board members generally holds hearings and issues orders for the Board to adopt. However, sometimes a more specialized committee will hold hearings and issue orders. For example, when a cosmetologist faces suspension or revocation of his or her license by the Department, the hearing will be conducted by the Cosmetology Technical Advisory Committee (CTAC). The CTAC will issue an order. The licensee may appeal to the Board if he or she is not in agreement with the CTAC’s order.

The adjudication process is detailed in the above section entitled “Adjudications.” [See Adjudications, supra, pg. 18.](#)

EXECUTIVE FUNCTION OF THE BOARD OF HEALTH

The Executive Branch of government is tasked with enforcement of the laws. Administrative agencies and boards also serve a quasi-executive function when they enforce their own rules and regulations. The executive, or enforcement, tasks of an agency or board are carried out through agency's or board's powers to investigate and prosecute violations of their rules and regulations.

As a general rule, the Board will not be carrying out the enforcement activities. Rather, these activities are carried out by the individual branches of the Department. For example, an investigator in the environmental branch may investigate a complaint that a restaurant violated the Clean Air Act and decide whether or not the violation occurred. The investigator and his division would then decide on a proposed penalty and ask Administrative Hearings Subcommittee to hold a hearing and issue an order. The Board would then review those findings and conclusions and decide whether or not to adopt them.

FORMS

This section contains the forms referred to in the detailed descriptions of rulemaking and adjudications laid out above. Please use these forms as a guide. It is very important that you carefully review the entire form and ensure that the correct information is inserted.

RULEMAKING TRACKING FORM

*Please track completion of each rulemaking activity on this form to ensure that the process is completed in a timely fashion. **Remember, this in an internal document and does not go to any party outside of the Department.***

Work Unit:		Primary Contact:	
		Phone #:	
Name of Rule:		Authorizing Statute:	
Step	Action	Date	Notes
1	Prepare the rule packet, to include: <ul style="list-style-type: none"> the draft rule or rule change the cover page the questionnaire the financial impact statement the cover summary the fiscal impact statement (if needed) 		
2	Will the financial impact of this rule be greater than \$100,000 on a particular group or groups? <input type="checkbox"/> Yes <input type="checkbox"/> No <ul style="list-style-type: none"> If yes, prepare the Written Findings 		
4	Have Center Director and the Agency Attorney review your rule		
5	Place Item on agenda of the next Executive Staff Meeting		
	Get Executive Staff approval to present Rule/Reg to the Board		
6	Place Item on agenda of the next Board Meeting		
	Appear before the Board to obtain approval to proceed with the public hearing		
7	Does this rule/reg impact schools? <input type="checkbox"/> yes <input type="checkbox"/> no <ul style="list-style-type: none"> If yes, obtain approval from appropriate school rep If yes, prepare the fiscal impact statement 		
	Are any other groups impacted? If so have they been contacted <input type="checkbox"/> yes <input type="checkbox"/> no <ul style="list-style-type: none"> Any problems or issues that need to be resolved? 		
8	Place Notice for Public Hearing Name of Publication: _____ Date Sent: _____ Date Appeared: _____		
	Notice sent to any other publications: Name of Publication: _____ Date Sent: _____ Date Appeared: _____		
9	E-Mail public hearing notice & draft rule to Secretary of State		

10	Place notice & draft rule on the Department's Website		
11	Send draft rule and public hearing notice to Interested Parties Interested Parties are: <ul style="list-style-type: none"> • _____ • _____ • _____ 		
12	Submit draft rule, questionnaire, and financial impact statement to the Bureau and the Joint Committee		
13	File draft rule and financial impact statement with the Arkansas State Library		
14	Place Notice of hearing on www.arkansas.gov at least 3 days before hearing		
15	Hold Public Hearing <ul style="list-style-type: none"> • Did Major changes result from public hearing? ___Yes ___No • If yes send notice to Governor's office, Bureau, and Joint Committee 		
16	Obtain agency attorney review/approval of changes resulting from public hearing. <ul style="list-style-type: none"> • Do any steps need to be repeated? ___Yes ___No 		
17	Appear before the Leg. Council and Joint Interim Committees		
18	Place item on agenda for next full Board Meeting Appear Before the full Board for rule adoption		
19	Prepare final rule packet for certification, to include: <ul style="list-style-type: none"> • The final rule and Cover Sheet • Letter Requesting Director's Signature • Summary of Comments and Responses • Financial Impact Statement 		
	Obtain Agency Director's signature for certification of final rule		
	Prepare copies of the final certified rule		
20	Obtain "Authorized Officer" signature on final rule		
21	File final certified rule copies with the Secretary of State & State Library		
	Return agency copies to your office and the agency attorney		
22	Send copies of the adopted rule to: <ul style="list-style-type: none"> • Bureau, if there are rule changes • Gov. Office, if there are rule changes • Interested Parties • Those affected by the rule 		
23	Post final rule and summaries of comments and responses on the Department's website		

FORM RULES AND REGULATIONS

This form describes all sections that must be included in new and revised rules and Regulations.

**RULES AND REGULATIONS PERTAINING TO
(name of rule or regulation)**

SECTION I. AUTHORITY

The following Rules and Regulations pertaining to (name of rule or regulation) are duly adopted and promulgated by the Arkansas Board of Health pursuant to the authority expressly conferred by the laws of the State of Arkansas including, without limitation, (Act) of (statute) (amended), the same being Ark. Code Ann. § (name).

SECTION II. PURPOSE

To protect the health of the citizens of Arkansas by _____.

SECTION III. DEFINITIONS

For the purposes of these Regulations, the following words and phrases when used herein shall be construed as follows: *(List definitions in alphabetical order. Definitions are often taken directly from the language of the enabling statute.)*

SECTION IV. SPECIFIC REQUIREMENTS *(Your rule language goes here. This can be more than one section.)*

SECTION __. SEVERABILITY

If any provision of these Rules and Regulations or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of these Rules and Regulations which can give effect without the invalid provisions or applications, and to this end the provisions hereto are declared severable.

SECTION __. REPEAL

All regulations and parts of regulations in conflict herewith are hereby repealed. *(Specify if repealing a specific existing rule or part thereof.)*

CERTIFICATION

This will certify that the foregoing Rules and Regulations for _____ were adopted by the Arkansas Board of Health at a regular session of the Board held in (city, state) on the ____ day of _____, 20__.

Secretary
Arkansas Board of Health

FORM RULES & REGULATIONS COVER PAGE

The authority listed in this cover page example is the GENERAL authority for Public Health. The statute listed may not be the enabling legislation you are acting under. List more specific statutes if they cite more specific authority.

ARKANSAS STATE BOARD OF HEALTH

(BUREAU/DIVISION NAME)

**RULES AND REGULATIONS
FOR
(NAME OF RULE/REGULATION)**

**Promulgated Under the Authority of
Arkansas Code Annotated § 20-7-109
(or your enabling statute)**

**Effective (Month/Year)
This (Revision) Effective (Month/Year)**

**By the Arkansas State Board of Health
Arkansas Department of Health
Little Rock, Arkansas
(Agency Director)**

FORM LIST OF PERSONS AFFECTED BY RULE

This form is used to record those individuals and entities that will be impacted by the rule or rule change or that have requested notice of rulemaking. The form may also be used to record those who send written comments regarding the rule.

**List of Persons Affected
By Proposed Administrative Rule/Regulation**

1. Give the names, addresses and phone numbers of all persons, groups, organizations, etc., interested in or affected by this Proposed Rule/Regulation and the position taken by each.
2. Categorize them according to the following:
 - (A) Those you contacted
 - (B) Those who contacted you.
 - (C) Those who participated in public hearing or public comment period.
3. Place a check mark in the FOR or AGAINST column if known.

Name of Business/Organization	Address & Phone #	Category (A, B, or C)	For	Against

FORM COVER SUMMARY OF PROPOSED ADMINISTRATIVE RULES AND REGULATIONS

**ARKANSAS DEPARTMENT OF HEALTH
COVER SUMMARY OF PROPOSED ADMINISTRATIVE RULES**

CENTER _____
ADDRESS _____
CONTACT PERSON _____
PHONE NUMBER _____

=====

SHORT TITLE OF THIS RULE _____

1. The subject of the proposed rule is_____.
2. Is this a new rule or a repeal or amendment of an existing rule? If this is an amendment, state specifically what is amended?
3. What state or federal law or regulation grants the authority for this proposed rule?
4. What is the purpose of this proposed rule? Why is it necessary?
5. What is the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternative to the rule?
6. Will this proposed rule be controversial? If yes, explain nature of controversy.
7. What is the financial impact of this proposed rule? Who will bear any financial costs?
8. Will a public hearing held on this proposed rule? If yes, state the date, time and location of such hearing. If no, state the date the public comment period ends.
9. What is the proposed effective date of this proposed rule_____.

RULES & REGULATIONS QUESTIONNAIRE FORM

This questionnaire is submitted, along with the draft rule, the cover page, and the financial impact statement, to the Legislative Council (through the Bureau of Legislative Research) and the Joint Committee. [See Contact Information, Appendix, pg. 63.](#)

The Rules and Regulations Questionnaire Form is a template provided by the Bureau for Legislative Research. You can get the template from the legal division or on the ADH intranet site.

FINANCIAL IMPACT STATEMENT FORM

Ark. Code Ann. § 25-15-204 and § 10-3-309 (e)(1), as amended by Act 759 of 2013, describe the financial impact statement that must accompany all administrative rules. Please review the [Drafting a Financial Impact Statement Section, pg.6](#), carefully to ensure your financial impact statement complies with all applicable law.

The financial impact statement form is at template provided by the Bureau of Legislative Research. You can get the template from the legal division or on the ADH intranet site.

FORM WRITTEN FINDINGS

If the financial impact of your rule exceeds \$100,000 to any one group or two or more groups combined, then you must also prepare written findings, as laid out in Act 759 of 2013, amending Ark. Code Ann. § 25-15-204.

The written findings are part of the financial impact statement template provided by the Bureau Legislative Research. You can get the template from the legal division or on the ADH intranet site.

FORM COVER MEMORANDUM FOR SUBMITTING PROPOSED RULES AND REGULATIONS TO THE BOARD OF HEALTH

*This Cover Memorandum should be prepared and submitted, along with your rule, Cover Sheet, and Cover Summary, to the Board Liaison so that it can be placed on the in the Board of Health packet prior to the full Board of Health meeting at which you are presenting your rule. **Please remember to have your rule and other documents to the Board Liaison at by the first Thursday of the month in which the meeting will be held.** This memorandum should be typed on agency letterhead, which can be found on the ADH Intranet.*

MEMORANDUM

TO: MEMBERS, ARKANSAS STATE BOARD OF HEALTH

FROM: _____
(NAME), DIRECTOR, (CENTER)

SUBJECT: _____
PROPOSED RULE AND REGULATION (DESCRIBE)

DATE:

It is proposed to (amend, promulgate, revise) the Rules and Regulations pertaining to (name of Rule/Regulation) pursuant to the procedures of the Administrative Procedures Act process, as amended, by authority of (authorizing statute or law).

Attached for your review is a draft copy of the proposed Rules and Regulations.

(Initials of typist)

Attachment: Proposed Rule regarding
Financial Impact Statement
Cover Summary

FORM NOTICE OF PUBLIC HEARING

This notice of public hearing must be published and distributed as described above in the [Ensuring Notice and Public Hearing Section, supra, pg. 8](#), at least thirty (30) days before the scheduled public hearing.

NOTICE OF PUBLIC HEARING

The Arkansas Department of Health will hold a public hearing on (date and time) in (location), at Little Rock, Arkansas, to allow interested persons to comment on the proposed adoption of (Name of Rules and Regulations) pursuant to (name of statute).

Copies of the proposed Rules and Regulations will be available for public inspection and copying at (location) of the Arkansas Department of Health. The proposed Rule and Regulation may also be found on the Arkansas Department of Health's website at www.healthy.arkansas.gov.

The public may submit written comments to: Director of (Division or Bureau),
Arkansas Division of Health, 4815 West Markham Street, Slot #____, Little Rock,
Arkansas 72205-3867 no later than 8:00 a.m. on (day of hearing).

FORM LETTER TO PLACE LEGAL AD

*This letter should be drafted on agency letterhead, which can be found on the ADH Intranet site. Please submit this letter, along with the Notice of Hearing, to the Arkansas Democrat Gazette **at least thirty (30) days before your public hearing is scheduled.***

(Date)

Arkansas Democrat Gazette
Attention: Legal Ads
P. O. Box 2221
Little Rock, AR 72203

To Whom it May Concern:

Please publish the attached notice of Public Hearing of Proposed Regulations to be run for three (3) consecutive days, beginning on (DATE).

Please send the bill to the attention of:

(Division name), Director
Arkansas Department of Health
4815 West Markham Street, Slot ____
Little Rock, AR 72205-3867
(Phone Number)

Thank you for your prompt attention to this matter.

Sincerely,

(Name)
(Title)

(Initials of signor: initials of typist) *(if this is the same person, only use one set of initials)*

Encl.: Notice of Public Hearing

FORM COVER LETTER FOR SCHOOLS

*Please use this Cover Letter for Schools when your rule has a financial impact on a state or local school or school district. This letter should be typed on agency letterhead, which can be found on the ADH Intranet. **Include a completed copy of a fiscal impact statement** if there are any anticipated costs, which will result from the adoption of these rules/regulations.*

(Date)

Attn: (School Official)
(Title of Organization)
(City, State Zip)

Dear (Name):

Attached is a copy of the (revision, amendment) of proposed Rules and Regulations pursuant to (name Act or Statute). Please examine this document and submit written comments to (name of contact) at the Department of Health by (deadline date).

If there are any questions, please call or write.

Sincerely,

(Name)
(Title)
(Division and/or Bureau)
(Phone Number)

(Initials of signor: initials of typist) *(if this is the same person, only use one set of initials)*

Encl.: (Name of Rule)
Fiscal Impact Statement

FORM MEMORANDUM TO INTERESTED PERSON

When sending the proposed rule and notice of public hearing to interested persons, please attach this Memorandum to the other documents. This memorandum should be typed on agency letterhead, which can be found on the ADH Intranet site.

MEMORANDUM

TO: (NAME OF INTERESTED PERSON)

FROM: (NAME), DIRECTOR, (BUREAU OR DIVISION)

SUBJECT: PROPOSED RULE AND REGULATION REGARDING _____.

DATE:

The Arkansas Department of Health will hold a public hearing on *(date and time)* at *(location)* in conformance with the Administrative Procedures Act, Ark. Code Ann. § 25-15-201 et seq.

It is proposed to *(promulgate, revise, amend, etc.)* the *(name of Rule and Regulation)* pursuant to the Administrative Procedures Act as amended, and by authority of Ark. Code Ann. §§ _____ through _____ *(your enabling statute)*.

A draft copy of the proposed *(revision, amendment, rule and regulation, etc.)* is attached for your review. Please submit any written comments to the following no later than 8:00 on *(date of hearing)*:

Director of (Division or Bureau)
Arkansas Department of Health
4815 West Markham Street
Slot # _____
Little Rock, Arkansas 72205-3867

(Initials of typist)

Attachment: Proposed Rule Regarding _____

FORM HEARING MINUTES

Please use this form when transcribing the hearing minutes from your recording. Public comments must be transcribed from the recording of the hearing and summarized in the hearing minutes.

MINUTES

SUBJECT: *(Name of revision, amendment, promulgation of Rule & Regulation)*

The following individuals were present at the hearing:

A Public Hearing was conducted on *(date)* at *(time)* in *(room location)* by the Arkansas Department of Health, *(address)*, Arkansas.

At the appointed time the meeting was called to order by *(name, title)*.

Written comments were received by the deadline prior to the hearing and are attached. *(or no written comments were received by the deadline prior to the hearing.) Attach comments to these minutes.*

Oral comments received during the hearing were as follows:

Having received no further comments and no requests for further oral hearings, the public hearing process was closed.

The hearing was adjourned at *(time)*.

FORM LETTER TO BUREAU OF LEGISLATIVE RESEARCH

This letter is sent to the Bureau of Legislative Research to be passed onto the Legislative Council. This letter should be typed on agency letterhead, which can be found on the ADH Intranet site.

(Date)

Attn.: Donna Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

Dear Ms. Davis:

Attached are two copies of the questionnaire on Proposed Rules and Regulations pursuant to (name Act or statute), Financial Impact Statement, and the (*amended, revised, promulgated*) Rule regarding (*short title of rule*).

If there are any questions, please call or write.

Sincerely,

(Name)
(Title)
Arkansas Department of Health
(Division and/or Bureau)
(Phone Number)

(Initials of signor: Initials of typist)

Encl.: Proposed Rule regarding _____
Financial Impact Statement
Questionnaire

**FORM LETTER TO THE HOUSE AND SENATE INTERIM
COMMITTEES ON PUBLIC HEALTH, WELFARE, AND LABOR**

This letter is sent to Joint Committee on Public Health, Welfare and Labor. This letter should be typed on agency letterhead, which can be found on the ADH Intranet site.

(Date)

Attn: Phil Price
House and Senate Interim Committees
on Public Health, Welfare, and Labor
Arkansas Legislative Council
Room 315, State Capitol
Little Rock, AR 72201

Dear Mr. Price:

Attached are two copies of the Questionnaire on Proposed Rules and Regulations pursuant, Financial Impact Statement, and the *(amended, revised, promulgated)* Rule regarding *(short title of rule)*.

The Rule(s) *has/have* been approved by the Rules Committee. We request that this matter be placed on the Agenda at your next meeting. Please contact us if you want us to attend and testify concerning the proposed rule change.

If there are any questions, please call or write.

Sincerely,

(Name)
(Title)
Arkansas Department of Health
(Division and/or Bureau)
(Phone Number)

(Initials of signor: Initials of typist)

Encl.: Rule regarding
Financial Impact Statement
Questionnaire

**FORM COVER MEMORANDUM TO THE BOARD OF HEALTH
FOR RULE ADOPTION**

*Submit this memorandum to the Board of Health along with the final rule, the cover summary that includes any changes made to the rule, and the financial impact statement. This memorandum and the accompanying documents **should be given to the Board of Health Liaison by the first Thursday of the month that the full board of health meeting is held.***

MEMORANDUM

TO: MEMBERS, ARKANSAS STATE BOARD OF HEALTH

FROM: _____
(NAME), DIRECTOR, (Center)

SUBJECT: _____
ADOPTION OF RULE AND REGULATION (DESCRIBE)

DATE:

All steps in the administrative rule making process have been completed for adoption of the Rules and Regulations pertaining to (name of Rule/Reg) pursuant to the procedures of the Administrative Procedures Act process, as amended, by authority of Act 434 of 1967 as amended.

Attached for your review is a copy of the Proposed Rule.

(Initials)

Attachment

**FORM LETTER TO AGENCY DIRECTOR
FOR APPROVAL/CERTIFICATION**

If you have the rule signed by the Agency Director at the Board meeting where the final rule is approved, you DO NOT need this form.

(Date)

(Name)

Director of the Arkansas Department of Health
Secretary of the Board of Health
4815 West Markham Street, Slot
Little Rock, Arkansas 72205

Dear (Name)

Attached is a copy of (promulgated, revised, amended, etc.) (name of Rule and Regulation) pursuant to the Administrative Procedures Act as amended, Ark. Code Ann. § 25-15-201 et seq., by authority of Ark. Code Ann. §§ ____ through ____ for adoption, as well as the financial impact statement that will be filed with this Rule and Regulation.

In conformance with the Administrative Procedures Act, all steps prior to final approval/certification have been completed.

Please indicate your approval by signing in the certification section of Rule/Regulation and returning the document to me.

If there are any questions, please call or write.

Sincerely,

(Name)

(Title)

(Division or Bureau)

(Phone Number)

(Initials of signor: Initials of typist)

Encl.: Rule and Regulations Pertaining to _____
Financial Impact Statement

**FORM COVER LETTER TRANSMITTING FINAL ADOPTED
RULE/REGULATIONS TO INTERESTED PERSON**

(Date)

(Name)
(Title, if needed)
(Address)
(City, State, Zip)

Dear (Name):

Attached you will find the adopted copy of (promulgated, revised, amended, etc.) (name of Rule and Regulation) pursuant to the Administrative Procedures Act as amended, Ark. Code Ann. § 25-15-201 et seq., by authority of Ark. Code Ann. §§ _____ through _____.

In conformance with the Administrative Procedures Act, all steps for final approval/certification have been completed.

Thank you for participating in this process.

If there are any questions, please call or write.

Sincerely,

(Name)
(Title)
Arkansas Department of Health
(Division or Bureau)
(Phone Number)

(Initials)
Attachment

FORM STATEMENT OF FINDINGS FOR EMERGENCY RULEMAKING

Use this form to explain why you decided to use the emergency rulemaking process instead of going through the formal rulemaking procedure.

EMERGENCY RULEMAKING FINDINGS

AGENCY: _____

DIVISION: _____

CONTACT PERSON: _____

PHONE #: _____ FAX #: _____ EMAIL: _____

SHORT TITLE OF RULE: _____

1. Please check the reason you are seeking an emergency rule:
 To prevent imminent peril to the public's health, safety, or welfare.
 To implement a federal law or regulation that required a rule in less than thirty (30) days.
2. Please explain why you found that the emergency rule was necessary.

FORM SUBPOENA TO ADMINISTRATIVE HEARING

**ISSUED BY THE
ARKANSAS STATE BOARD OF _____**

VS.

**SUBPOENA IN AN
ADMINISTRATIVE
ADJUDICATION**

Case No. _____

TO: _____ (Name)
_____ (Address)

____ You are commanded to appear before the Arkansas Board of _____ at the place, date, and time specified below to testify in the above-styled administrative hearing.

Place of Testimony	Date
	Time

____ You are commanded, at the time of the hearing described above, to produce and permit inspection and copying of the following documents or objects:

Documents and Objects for inspection at hearing:

Administrative Law Judge/Hearing Officer
Address

DATE: _____

PROOF OF SERVICE

**SERVED ON _____ ON THIS, THE ____ DAY OF _____,
20____, AT THE FOLLOWING ADDRESS:**

BY: _____ Personal Service

**_____ Certified Mail, Restricted
Delivery, Return Receipt Requested**

Served by: _____
Name Title

DECLARATION OF SERVER

I declare, under penalty of perjury under the laws of the State of Arkansas, that the foregoing information contained in the Proof of Service is true and correct.

Name Executed on: _____

Address

NOTICE TO PERSONS SUBJECT TO SUBPOENAS

This subpoena is being issued pursuant to the Administrative Procedures Act, Arkansas Code Annotated § 20-15-201 et seq., in accordance with Arkansas Rule of Civil Procedure 45.

Regardless of his or her county of residence, a witness subpoenaed for examination at a trial or hearing must be properly served with a subpoena at least two days prior to the trial or hearing, or within a shorter time if the court so orders. The subpoena must be accompanied by a witness fee calculated at the rate of \$30.00 per day for attendance and \$0.25 per mile for travel from the witness' residence to the place of the trial or hearing. Rule 45(d), Ark. R. Civ. P.

A witness subpoenaed in connection with a deposition must be properly served with the subpoena at least five business days prior to a deposition, or within a shorter time if the court so orders. The witness is required to attend a deposition at any place within 100 miles of where he or she resides, is employed, or transacts business in person, or at such other convenient place set by court order. The subpoena must be accompanied by a witness fee calculated at the rate of \$30.00 per day for attendance and \$0.25 per mile for travel from the witness' residence to the place of the deposition. Rule 45(e), Ark. R. Civ. P.

A subpoena may command the person to whom it is directed to produce for inspection any books, papers, documents or tangible things designated in the subpoena. The person subpoenaed may ask the court to quash or modify the subpoena if it is unreasonable or oppressive or to require that the person on whose behalf the subpoena is issued to pay the reasonable cost of such production. Rule 45(b), Ark. R. Civ. P. The person subpoenaed may also object in writing to the inspection or copying of any or all of the designated materials or seek a protective order from the court. If a written objection is made within ten days of service of the subpoena or on or before the time specified for compliance if such time is less than ten days, the party causing the subpoena to be issued is not entitled to inspect the materials unless the court so orders. Rule 45(e), Ark. R. Civ. P.

When a witness fails to attend in obedience to a subpoena or intentionally evades the service of a subpoena by concealment or otherwise, the court may issue a warrant for arresting and bringing the witness before the court to give testimony and answer for contempt. Rule 45(g), Ark. R. Civ. P.

FORM FOR WITNESS REIMBURSEMENT

Please attach this form to a subpoena issued by your division for a witness's attendance at an administrative hearing. If the witness will attend without a subpoena (voluntarily), then no subpoena or witness fee will need to be sent.

WITNESS FEE AND TRAVEL REIMBURSEMENT

(Please attach a copy of the subpoena issued by an agency attorney or ALJ for your attendance at the hearing, deposition, or trial, as well as the completed W-9. Failure to correctly complete this form or attach the appropriate documents may result in processing delays for your payment.)

Name: _____

Address: _____

Phone #: _____

Date and Time of Hearing _____

Location of Hearing _____

Witness Fee: 30.00/day for ___ days= \$ _____

Mileage*: .25/mile for ___ miles= \$ _____

TOTAL: \$ _____

*Please use www.randmcnalley.com to calculate the distance traveled from your house to the hearing location, and attach a printout showing the mileage to this form.

Signature of Witness: _____

Date: _____

APPENDIX

This Appendix contains information you can use to assist with the administrative processes. For example, there is a list of contact information for sources inside and outside of the agency. There are also examples of several rulemaking documents. If you need additional assistance, please call the legal division, whose contact information can be found in this Appendix!

EXAMPLE OF DRAFT (MARK-UP) RULE REVISION

**RULES AND REGULATIONS PERTAINING TO
COMMUNICABLE DISEASE CONTROL**

SECTION I. AUTHORITY

These Rules and Regulations Pertaining to Communicable be Disease Control are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the authority expressly conferred by the Laws of the State of Arkansas including, without limitation, Act 96 of 1913 (Arkansas Statutes, 1947 Section 82-220) ~~and Act 161 of 1955, as amended (Ark. Code Ann. § 20-7-101, et seq.).~~

SECTION I. ~~I.~~ II. General Measures For The CONTROL OF COMMUNICABLE DISEASES.

A. General Measures. General measures for the control of the communicable diseases adopted by resolution of the Arkansas State Board of Health at their regular meeting January 25, 1951, are published separately and can be supplied on request. The current edition of “Control of Communicable Disease in Man,” published by the American Public Health Association, and/or “Report of the Committee on Infectious disease,” published by American Committee of Pediatrics, will be accepted for applying general control measures for communicable diseases.

SECTION II.B. Specific Measures for Control in Arkansas

The specific Rules ~~and~~ & Regulations regarding the control of communicable disease in Arkansas are published ~~herewith~~ here.

SECTION III. DEFINITIONS.

A. Communicable Disease. Means a communicable disease as defined by the Arkansas Department of Health which may be transmitted during the performance of routine professional duties of emergency response employees.

B. Emergency Response Employee. Means fire fighter, law enforcement officers, emergency medical technicians, first responders, and other individuals including employees of volunteer organizations without regard to whether such employees receive compensation who, in the performance of professional duties, respond to emergencies in the State of Arkansas.

C. Medical Provider. Means any hospital, physician, nurse, hospital employee, nursing home, nursing home employee, or other health care provider.

D. Personal Surveillance. The practice of close medical or other supervision of contacts in order to promote prompt recognition of infection or illness, but without restricting their movements.

EXAMPLE OF DRAFT WATERMARK

The use of watermark paper is not a requirement. It is an example of one type of “DRAFT” paper. Any “DRAFT” mark is acceptable as long as it appears on every page of the Proposed Rule/Regulation.

DRAFT

EXAMPLE OF SUMMARY OF COMMENTS AND RESPONSES

You must prepare a summary of all public comments received in writing or orally and the agency's responses to those comments. This summary is a good tool for answering questions in front of the Legislative Council, the Joint Committee, and the Board of Health. It is also a good way to summarize the comments and responses for publication on the agency's website.

**Arkansas Department of Health
Proposed Rules Pertaining to Arkansas Prescription Drug Monitoring Program
Public Comments Received**

A public hearing was conducted January 8, 2013 at 10:00 a.m. in Room #2508 of the Arkansas Department of Health, 4815 West Markham, Little Rock, Arkansas. No oral comments were received during the hearing.

Written comments were received by the deadline prior to the hearing and follow.

Response to written comments from Clyde Frazier received January 2, 2013:

Comment	Response
1. Section II Purpose---This will just be housekeeping for the wording. The sentence beginning with "These regulations..." includes the word "by" twice. The second "by" does not carry the true meaning of the sentence and should be changed to the word "to" followed by the colon. Then change the initial word in each of the following four (4) phrases to (1) "enhance"; (2) "help"; (3) "assist"; and (4) "enable". <u>A simpler way to correct the confusing wording would be to just use the wording of the statute as you have done in so many other sections with only the change of "this subchapter" to "these regulations" and then include "is", as was deleted in the Act.</u>	This change will be made.
2. Section III Definitions---In (3) sample controlled substances	The Department plans to begin the program by promulgating regulations

Comment	Response
<p>should be included here as an exception. You might consider (3) (A) wording as “Dispenser means a practitioner who dispenses “other than sample controlled substances directly to patients.” Or (3) (B) (iv) “Dispenser does not include a practitioner who dispenses controlled substance samples directly to patients.”</p>	<p>based on the enabling legislation. Additions and changes to the regulations will be made later as they are determined to be necessary. The provision of samples by physicians is not considered dispensing by the Arkansas Medical Board.</p>
<p>3. Section III Definitions---I assume (B) (iii) will include hospice care facilities, long-term care facilities, and assisted living facilities.</p>	<p>That is correct.</p>
<p>4. Section IV Requirements for the PDMP--- (b) (1) There should be some consideration (wording) here to include a waiver clause to allow for non-reporting when there has been a natural disaster or other emergency beyond the control of the dispenser.</p>	<p>Emergencies are addressed through Governor’s Declarations and other state and federal laws. These types of circumstances will be included in the dispensers’ reporting policies and procedures.</p>

W-9 FORM FOR WITNESSES AT HEARINGS

The form W-9 is an IRS Request for Taxpayer Identification Number and Certification Form. It is required when the state pays someone money for a variety of reasons. The Form W-9 can be found on the IRS website. This form must be submitted with the Witness Reimbursement Form when a subpoenaed witness wants to receive the witness fee and mileage reimbursement.

Use this QR code or hyperlink to visit the [IRS website](#) and get the form W-9.



EXAMPLE OF FINAL ADMINISTRATIVE ORDER

BEFORE THE COSMETOLOGY TECHNICAL ADVISORY COMMITTEE
(Committee)

ARKANSAS DEPARTMENT OF HEALTH
PETITIONER

vs.

██████████
RESPONDENT

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER

Respondent, ██████████, is a cosmetology student in the State of Arkansas. On this 16th day of September 2013 a hearing was held to determine if the Allegations of Fact and Law in the Order and Notice of Hearing previously issued to the Respondent were true. The Arkansas Department of Health was represented by its counsel, Elizabeth Pitman, and the respondent, ██████████ did not appear in person. Based on the testimony and other matters presented to the Cosmetology Technical Advisory Committee, the Committee determined that the allegations contained in the Order and Notice of Hearing to be true. Therefore, the Committee makes the following Findings of Fact, Conclusions of Law and Order:

Findings Of Fact

1. Respondent was in receipt of proper Notice of the Hearing and the Allegations of Fact and proposed laws violated, and did not appear in person at the hearing on September 16, 2013.

2. The Committee hereby finds that the Respondent, [REDACTED] attempted to obtain employment as a practitioner in a licensed cosmetology establishment with a fraudulent license.

Conclusions of Law, Order

After due deliberation, the Committee recommended that the allegations of fact and violations of law against the Respondent, listed in the Order and Notice of Hearing were proven as charged. It was further recommended that the Respondents actions are in violation of **Ark. Code Ann. § 17-26-105 (14)**. It is therefore Proposed that the respondent [REDACTED] be assessed a civil penalty in the amount of One Thousand Dollars (\$1000.00) Dollars and must be paid before a license is issued. This **Proposed Order** shall become final unless appealed to Arkansas State Board of Health in accordance with Ark. Code Ann. §17-26-208 within thirty (30) days of the receipt of the **Proposed Order**.

IT IS SO ORDERED this 16th day of September, 2013.

Kelli Kersey
Cosmetology Section Chief
Date: September 16, 2013

CONTACT INFORMATION

Department of Health Contacts:

NAME & TITLE	OFFICE	CONTACT INFORMATION
Rick Hogan, General Counsel Reginald Rogers, Deputy General Counsel Elizabeth Pitman, Deputy General Counsel Leslie Lovett, Administrative Specialist/Board of Health Liaison	Legal Division Department of Health	4815 W. Markham, Slot 31 Little Rock, Arkansas 72205 Rick Hogan: (501) 661-2252 Reginald Rogers: (501) 661-2609 Elizabeth Pitman: (501) 280-4034 Leslie Lovett: (501) 661-2878 Leslie.Lovett@arkansas.gov
Director's Executive Assistant	Director's Office Department of Health	4815 W. Markham, Slot 39 Little Rock, Arkansas 72205 Phone: (501) 280-4648 Email: Connie.Johnson@arkansas.gov

Outside Contacts:

NAME & TITLE	OFFICE	CONTACT INFORMATION
Donna Davis Administrative Rules Analyst	Legal Services Division Bureau of Legislative Research	1 Capitol Mall 5 th Floor Little Rock, AR 72201 Phone: 682-1937
Phillip Adams Special Assistant for Agency & Legislative Affairs, Health and Human Services	Governor's Office	State Capitol Building, Suite 250 Little Rock, Arkansas 72201 Main Phone: 682-2345 Fax: 682-1382
Jon Davidson Administrative Rules Coordinator	Secretary of State's Office	State Capitol Building, Suite 256 Little Rock, Arkansas 72201 Phone: (501) 682-3527 Email: register@sos.arkansas.gov Main Phone: (501) 682-1010
Shane Broadway Interim Director	Department of Higher Education	423 Main Street, Suite 400 Little Rock, Arkansas 72201 Phone: 371-2000 Fax: 371-2001
Dr. Tom Kimbrell Commissioner of Education	Department of Education	4 Capitol Mall Little Rock, Arkansas 72201-1071 Phone: 682-4475 Fax: 682-1079
Carolyn Ashcraft State Librarian	Document Services Arkansas State Library	900 West Capitol Avenue Suite 100 Little Rock, Arkansas Phone: (501) 682-2840 Fax: (501) 682-1532
Phil Price	Bureau of Legislative Research Joint Committee on Public Health, Welfare, & Labor	1 st Capitol Mall, 5 th Floor Little Rock, Arkansas 72201 Email: philp@blr.arkansas.gov

BOARD OF HEALTH BY-LAWS

*These Bylaws were adopted by the Board of Health at the October 24, 2013 Meeting.
The Bylaws outline how the Board will conduct business and elect members.*

**By-Laws
of the
Arkansas State Board of Health [Board]**

ARTICLE I
Meetings of Board Members

Section 1. Purposes and Powers.

(a) The Board shall have general supervision and control of all matters pertaining to the health of the citizens of the State of Arkansas. It shall make a study of the causes and prevention of infectious, contagious and communicable diseases, and except as otherwise provided by the law of the State of Arkansas, shall have direction and control of all matters of quarantine regulations and enforcement, and shall have full power and authority to prevent the entrance of such diseases from points without the State of Arkansas, and shall have direction and control over all sanitary and quarantine measures for dealing with all such diseases within the State, and to suppress the same and prevent their spread.

(b) Power is hereby conferred on the Board to make all necessary and reasonable rules and regulations of a general nature for the protection of the public health, and for the general amelioration of the sanitary and hygienic conditions within the State, for the suppression and prevention of infectious, contagious and communicable diseases, for the proper enforcement of quarantine, isolation and control of such disease, and for the proper control of chemical exposures that may result in adverse health effects to the

public. All rules and regulations promulgated by the Board shall be reviewed by the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor. However, the Board shall not regulate the practice of medicine or healing, or the practice of any other discipline of the healing arts designated as a learned profession by the laws of the State of Arkansas, nor interfere with the right of any citizen to employ the practitioner of his choice.

(c) The Board shall also be granted such other powers as conferred upon it by the laws of the State of Arkansas.

(d) The mission of the Board is to protect and promote the health of the people of Arkansas. The Board acts as an advocate for all Arkansas citizens, particularly those whose health is at greatest risk – the young, the elderly, the poor, the medically underserved, and those exposed to environmental hazards. Through their expertise and knowledge of health problems throughout the State, Board members act to inform the public on major health needs, and to serve as spokespersons for the programs of the Department of Health.

(e) The business and affairs of the Board shall be managed by the members of the Board. The members shall be appointed by the Governor of the State of Arkansas, as provided by Arkansas law.

Section 2. Office and Place of Meetings.

(a) The office of the Board shall be at Little Rock, and the Board shall be furnished with all necessary equipment and supplies, as other offices of the State are furnished, including suitable rooms for its offices, necessary for carrying on the work of

the Board, and to be provided in a suitable building designated by the Director of the Department of Health.

(b) Meetings of the Board may be held at such place or places, within or without the State of Arkansas, as shall be fixed by the Board and stated in the notice thereof. The books and records of the Board may be kept at such place or places within the State of Arkansas as the Board may from time to time determine.

Section 3. Regular Meetings. The Board shall conduct its regular meetings on the fourth Thursday of the months of January, April, July and October of each year,. The Board may change the date of the meeting by majority vote. The January meeting shall be the annual meeting. Notice of regular meetings shall be given by the Director of the Department of Health to each member of the Board during the first week in January of each year and at least seven (7) days before the date on which each meeting is to be held.

Section 4. Special Meetings. Special meetings of the Board for any purpose or purposes may be called by the President, a majority of the Board, or by the President upon written request of the Director of the Department of Health. Such written request of the majority of the Board members or the Director of the Department of Health shall state the purpose or purposes for which such meeting is to be called.

Section 5. Notice of Special Meetings. Except as otherwise expressly required by law, notice of special meetings of members shall be given at least seven (7) days before the date on which the meeting is to be held to each member of the Board by telephone or electronic means, or by delivering a notice personally, or by mailing such notice in a postage prepaid envelope directed to the address as it appears on the books of

the Board. Notice of any adjourned meeting of the Board shall not be required to be given except where expressly required by law.

Section 6. Agenda. The Secretary of the Board Director of the Department of Health shall cause, at least seven (7) days prior to any regular or special meeting of the Board, an Agenda of the matters to be discussed at such regular or special meeting to be placed in the United States mail or via electronic means addressed to each member of the Board of Health.

Section 7 Quorum and Manner of Acting. Unless otherwise provided by law, the presence of a majority of the Board shall be necessary to constitute a quorum for the transaction of business. In the absence of a quorum, a majority of the Board present may adjourn the meeting from time to time until a quorum shall be present. At all meetings of the Board in which a quorum is present, all matters shall be decided by the affirmative vote of a majority of the members present and voting, except as otherwise required by the laws of the State of Arkansas.

Section 8. Resignation. Any member of the Board may resign at any time by giving written notice to the Governor of the State of Arkansas. The resignation of any member shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 9. Vacancies. Any vacancy that shall occur in the Board by reason of death, resignation, disqualification or removal or any other cause whatsoever shall be filled by the Governor as provided by law.

Section 10. Compensation of Members. Members of the State Board of Health may receive expense reimbursement, specifically per diem expenses and mileage costs, as well as a stipend in accordance with applicable law. No other compensation shall be received by Members for service on the Board. However, nothing herein contained shall be construed to preclude any member from serving the Department of Health in any other capacity and receiving compensation therefor. A state employee may not receive a stipend for serving as a member of the State Board of Health.

ARTICLE II

Committees of the Board

Section 1. Committees. The Board may establish and create from time to time such committees as it deems necessary to carry out the affairs and further the purposes of the Board. The standing committees of the Board shall be:

Executive

Nominating

Legislative

Local Grant Trust Fund

Rural Health

Section 2. Executive Committee. The Board shall by resolution establish an Executive Committee consisting of such members of the Board as it may determine, provided, however, that the Executive Committee membership shall always include at least one physician member of the Board. During the intervals between meetings of the Board, the Executive Committee shall meet as frequently as it deems necessary, and

shall receive reports, conduct routine business, and take official action on behalf of the Board only on issues which constitute a bona fide emergency requiring a decision prior to the next regular or special meeting of the Board. All actions of the Executive Committee shall be reported at the next regular or special meeting of the Board.

Section 3. Nominating Committee. The Nominating Committee shall consist of four (4) members appointed by the President for a term of one (1) year. It shall prepare and have forwarded to each Board member a list of nominees for each Board office at least thirty (30) days prior to the annual meeting of the Board.

Section 4. Legislative Committee. The Legislative Committee shall consist of four (4) members appointed by the President for a term of one (1) year. It shall monitor all legislation, both federal and state, which impacts the Board and its functions, and shall make recommendations to the board regarding appropriate action. In addition, the Committee shall, at the instruction of the Board, assist the Department of Health in securing enactment of state legislation which will benefit the health of the citizens of Arkansas.

Section 6. Local Grant Trust Fund Committee. The Local Grant Trust Fund Committee shall consist of four (4) members appointed by the President for a term of one (1) year. It shall be responsible for conducting reviews and granting approval the distribution of grants for the construction, renovation, or other expansion of local health unit facilities pursuant to the Arkansas Health Department Building and Local Grant Act, Ark. Code Ann. § 20-7-205 et seq. The Committee shall report to the Board regarding the distribution of funds at the quarterly Board meetings.

Section 7. Rural Health Committee. The Rural Health Committee shall consist of four (4) members appointed by the President for a term of one (1) year.

ARTICLE III

Officers

Section 1. Number. The principal officers of the Board shall be the President, the President-elect, and the Secretary.

Section 2. The Secretary. The Board shall nominate a Secretary who, with the approval of the Governor, shall serve as the Director of the Department of Health and shall:

- A. be a licensed medical doctor who is a graduate of a school of medicine recognized by the Arkansas State Medical Board; hold a graduate degree in public health or a graduate degree in a recognized public health discipline or have equivalent knowledge and experience in public health as determined by the Board; and have experience in the practice of public health and in leadership and management, the sufficiency of which shall be determined by the Board; or, in the alternative,
- B. hold a doctoral degree in public health or a doctoral degree in a recognized public health discipline from an accredited college or university with at least five (5) years of experience in the practice of public health and at least ten (10) years of experience in the leadership and management of a large complex organization the sufficiency of which shall be determined by the Board.

- a. The Secretary shall have all the powers of a member of the board
The Secretary shall send the Notice and agenda for board meetings to all members and shall have authority to sign the rules and regulations on behalf of the Board. The Secretary shall also have authority to issue all Quarantine and Isolation and any other Emergency orders on behalf of the Board in order to protect public health. The Secretary shall also perform such duties as may be required by law or the Board.

Section 3. President and President-elect. The President and President-elect of the Board shall be chosen annually by the Board at the January meeting. The President-elect from the preceding term shall automatically succeed to the office of President. The new President-elect shall be chosen through an election by a majority of the present Board members.

Section 4. Term of Office. Each such officer shall hold office until his or her successor has been chosen and qualified, or until his or her death, resignation, or removal in the manner hereinafter provided.

Section 5. Subordinate Officers. In addition to the principal officers enumerated in Section 1 of Article III, the Board may have such other officers as the Board may deem necessary, each of who shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 6. Removal. Any officer may be removed, with cause, at any time, by a vote of a two-thirds (2/3) majority of the members of the Board present and voting at any regular or special meeting of the Board at which proper notification of such proposed

action was made in advance to each member. However, the Secretary shall serve at the pleasure of the Governor.

Section 7. Vacancies. A vacancy in any office may be filled for the unexpired portion of the term in the manner prescribed in these By-laws for election or appointment to such office for such unexpired time.

Section 8. President. The President shall have general supervision and management of the affairs of the Board subject to the control of the Board. In general he shall perform all duties incident to the office of President as herein defined and all such other duties as from time to time may be assigned to him by the Board.

Section 9. President-elect. The President-elect shall, in the absence or disability of the President, perform the duties and exercise the powers of President of the Board. The President-elect shall perform such other duties and have such other powers as the President or the Board may from time to time prescribe.

ARTICLE IV Administrative Hearings

Each administrative hearing regarding licensure or other matter under the Board's jurisdiction shall be heard by a panel made up of three (3) members of the Board, chosen by the President based upon their expertise. Each public hearing shall provide due process to any entitled to a hearing as a result of actions taken by the Department of Health for which the Board of Health has jurisdiction. The three (3) person panel shall render decisions in the form of Findings of Fact, Conclusions of Law, and Orders consistent with the requirements of the Arkansas Administrative Procedures Act, Ark. Code Ann. § 25-15-201 et seq. The Panel's Orders shall be referred to the full Board of Health at the next quarterly meeting of the Board after the Order is entered for adoption.

ARTICLE V

Amendments

The By-Laws of the Board may be altered, amended or repealed by the affirmative vote of a two-thirds (2/3) majority of the members of the Board, provided notice of the proposed action and the substance of the suggested amendment shall be given to each member of the Board as provided herein.

ARTICLE VI

Administrative Year

The administrative year of the Board shall be the calendar year.

ARTICLE VII

Procedural Rules

All meetings and procedural matters of the Board shall be conducted in accordance with "Robert's Rules of Order" except when in conflict with these By-Laws or the laws of the State of Arkansas.