

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

**QUALIFICATIONS FOR AN ARKANSAS LICENSED OPTOMETRIST TO BE
CREDENTIALLED TO UTILIZE AND PERFORM AUTHORIZED
PROCEDURES LISTED IN A.C.A. §17-90-101(a)(3)(D)**

SECTION I - AUTHORITY

The following regulations have been hereby promulgated pursuant to Act 579 of 2019 codified in Arkansas Code Annotated §17-90-101

SECTION II – DEFINITIONS AS USED IN THIS SECTION:

1. The "practice of optometry" as stated in A.C.A. §17-90-101(a) is amended to include the following procedures:
 - a. Injections, excluding intravenous or intraocular injections;
 - b. Incision and curettage of a chalazion;
 - c. Removal and biopsy of skin lesions with low risk of malignancy, excluding lesions involving the lid margin or nasal to the puncta;
 - d. Laser capsulotomy; and
 - e. Laser trabeculoplasty.

**SECTION III – REQUIREMENTS FOR APPLICANTS FOR ARKANSAS OPTOMETRIC
PHYSICIAN LICENSURE WITH CREDENTIALING FOR PROCEDURES LISTED IN
A.C.A. §17-90-101(a)(3)(D)**

1. Applicants for Arkansas Optometric Physician Licensure shall be credentialed to perform authorized procedures listed in A.C.A. §17-90-101(a)(3)(D) if:
 - a. The applicant meets all requirements to receive an Arkansas license pursuant to Chapter 1, Articles II and III or pursuant to Chapter I, Article IV to practice as an Optometric Physician, and;
 - b. Optometric Physicians graduated in 2019 or after who provided proof that he/she graduated from an optometry school whose program includes the educational requirements for certification pursuant to this rule; and

2. Once applicant satisfactorily completes the education requirements listed in this rule under Section IV, 1. b.:
 - a. The applicant must satisfactorily complete a written test administered or approved by the Arkansas State Board of Optometry on aspects of the Arkansas Optometry Practice Act pertaining to this rule.
 - b. The applicant must satisfactorily complete a clinical examination administered or approved by the Arkansas State Board of Optometry pertaining to this rule.
 - c. The applicant must satisfactorily complete a written jurisprudence examination administered by the Arkansas State Board of Optometry pertaining to this rule.

SECTION IV – REQUIREMENTS FOR EXISTING ARKANSAS LICENSED OPTOMETRIC PHYSICIANS FOR CREDENTIALING FOR PROCEDURES LISTED IN A.C.A. §17-90-101(a)(3)(D)

1. Pursuant to Act 579 of 2019 codified in A.C.A. §17-90-101(a)(3)(D), Arkansas licensed Optometric Physicians shall be credentialed to perform authorized procedures listed in A.C.A. §17-90-101(a)(3)(D) if:
 - a. The applicant provides proof of holding an Arkansas license to practice as an Optometric Physician and is in good standing;
 - b. The applicant provides proof of satisfactory completion of a course of instruction completed not more than 5 years prior to application of credentialing; provided that the course:
 - (1) is provided by an accredited college of optometry, osteopathy or medicine;
 - (2) includes a minimum of 32 clock hours in length;
 - (3) is sponsored by an organization approved by the board; and
 - (4) includes the following didactic classroom instructions:
 - (a) laser physics, hazards, and safety;
 - (b) biophysics of lasers;
 - (c) laser application on clinical optometry;
 - (d) laser tissue interactions;

- (e) laser indications, contraindications, and potential complications;
 - (f) gonioscopy;
 - (g) laser therapy for open angle glaucoma;
 - (h) laser therapy for angle closure glaucoma;
 - (i) posterior capsulotomy;
 - (j) common complications: lids, lashes, lacrimal system;
 - (k) medicolegal aspects of anterior segment procedures;
 - (l) peripheral iridotomy;
 - (m) laser trabeculoplasty;
 - (n) minor surgical procedures;
 - (o) overview of surgical instruments, asepsis, and O.S.H.A.;
 - (p) surgical anatomy of the eyelids;
 - (q) emergency surgical procedures;
 - (r) chalazion management;
 - (s) local anesthesia: techniques and complications;
 - (t) anaphylaxis and other office emergencies;
 - (u) radiofrequency surgery;
 - (v) post-operative wound care; and
- (5) includes the following Clinical or Laboratory experience:
- (a) Video Demonstration; and
 - (b) In Vitro Observation or participation

2. Once applicant satisfactorily completes education requirements listed in this rule in Section IV, 1. b.:
- a. The applicant must satisfactorily complete a written test administered or approved by the Arkansas State Board of Optometry on aspects of the Arkansas Optometry Practice Act pertaining to this rule.

- b. The applicant must satisfactorily complete a clinical examination administered or approved by the Arkansas State Board of Optometry pertaining to this rule.
- c. The applicant must satisfactorily complete a written jurisprudence examination administered by the Arkansas State Board of Optometry pertaining to this rule.

SECTION V – CERTIFICATION

- 1. Once an applicant satisfactorily completes the education requirements listed in this rule and the testing requirements listed in this rule, completes an application for certification and submits an application fee of fifty (\$50.00) dollars the Arkansas State Board of Optometry shall issue a certification to the applicant certifying that the applicant is qualified and credentialed to utilize procedures listed in A.C.A. §17-90-101(a)(3)(D). The certificate shall be conspicuously displayed in the optometric physician's office.

SECTION VI- PROHIBITIONS

- 1. Prohibitions:
 - a. Performing procedures pursuant to this rule and A.C.A. §17-90-101(a)(3)(D) without credentialing based upon the education requirements and testing requirement outlined in this rule and having first obtained a certification as outlined in this rule shall be grounds for suspension or revocation of an optometry license pursuant to the Arkansas Optometry Practice Act.

SECTION VII - OPHTHALMIC LASER PROCEDURES OUTCOME REPORTING

- 1. Outcomes reporting:
 - a. Every optometric physician who has met the requirements for certification pursuant to this rule and A.C.A. §17-90-101(a)(3)(D) shall report to the board the outcome of authorized ophthalmic laser procedures performed in such form as required or directed by the board. The reports shall be submitted no less than annually. The board shall provide the reports to the Arkansas State Department of Health.

SECTION VIII – RENEWAL

- 1. Every optometric physician who is granted certification under this Rule shall submit a renewal application each year together with a renewal fee of ten (\$10.00) dollars to the Secretary of the Board on or before the 1st day of February.

2. In addition to the renewal application and the renewal fee, each optometric physician shall also supply proof in the form of a certificate of completion of two hours of continuing education specifically regarding the procedures listed in this rule and for which they are certified to perform. The two hours of continuing education required by this rule may be included in the ten (10) hours of general and ocular therapy and pharmacology required in Chapter V, Article V, Section 2 of the Rules of Arkansas State Board of Optometry.

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QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Department of Health
DIVISION Division of Health Related Boards and Commissions/Arkansas State Board of Optometry
DIVISION DIRECTOR Matt Gilmore, ADH Boards and Commissions
CONTACT PERSON Howard F. Flippin, O.D., Executive Director
ADDRESS Post Office Box 512, Searcy, AR 72145
PHONE NO. 501-268-4351 **FAX NO.** 501- **E-MAIL** aroptometry@sbcglobal.net
NAME OF PRESENTER AT COMMITTEE MEETING Kevin M. O'Dwyer
PRESENTER E-MAIL kodwyer@htolaw.com

INSTRUCTIONS

- A. Please make copies of this form for future use.
B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? Chapter VIII, Article I – Qualifications for an Arkansas Licensed Optometrist to be Credentialed to Utilize and Perform Authorized Procedures Listed in A.C.A. §17-90-101(a)(3)(D)
2. What is the subject of the proposed rule? To add new rule for authorized procedures
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No ☒
If yes, please provide the federal rule, regulation, and/or statute citation. _____
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ☐ No ☒
If yes, what is the effective date of the emergency rule? N/A
- When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes ☐

No ☒

5. Is this a new rule? Yes ☒ No

If yes, please provide a brief summary explaining the regulation. To add new rule for authorized procedures.

Does this repeal an existing rule? Yes ☐ No ☒

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule?

Yes

No ☒

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. ACA §17-90-101(a)(3)(D)

7. What is the purpose of this proposed rule? Why is it necessary? To add new rule regarding authorized procedures.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.aroptometry.org

9. Will a public hearing be held on this proposed rule? Yes ☒ No ☐

If yes, please complete the following:

Date: October 29, 2020

Time: 8:30 a.m.

Victory Building

1401 West Capitol Avenue, Suite 247

Place: Little Rock, AR 72201

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

Unknown

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

Unknown

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. Proof of publication will be provided as soon as it is received. the

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). Will provide after approval by Governor.

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. Arkansas State Board of Optometry; Arkansas Optometric Association.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Health
DIVISION Division of Health Related Boards and Commissions/Arkansas State Board of Optometry

PERSON COMPLETING THIS STATEMENT Kevin M. O'Dwyer, Attorney

TELEPHONE 501-372-4144 **FAX** 501-372-7480 **EMAIL:** kodwyer@htolaw.com

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Chapter VIII, Article I – Qualifications for an Arkansas Licensed Optometrist to be Credentialed to Utilize and Perform Authorized Procedures Listed in A.C.A. §17-90-101(a)(3)(D)

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;
N/A

(b) The reason for adoption of the more costly rule;
N/A

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;
N/A

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.
N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue	N/A
Federal Funds	
Cash Funds	
Special Revenue	
Other (Identify)	
Total	

General Revenue	N/A
Federal Funds	
Cash Funds	
Special Revenue	
Other (Identify)	
Total	

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue	N/A
Federal Funds	
Cash Funds	
Special Revenue	
Other (Identify)	
Total	

Next Fiscal Year

General Revenue	N/A
Federal Funds	
Cash Funds	
Special Revenue	
Other (Identify)	
Total	

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ N/A

Next Fiscal Year

\$ N/A

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ N/A

Next Fiscal Year

\$ N/A

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

CHAPTER VIII, Article I

Summary

This rule is being promulgated contingent upon the Supreme Court dismissing Case No. CV-19-641.

Proposed Chapter VIII, Article I expands the definition of the practice of optometry to include the following procedures:

- (i) Injections, excluding intravenous or intraocular injections;
- (ii) Incision and curettage of a chalazion;
- (iii) Removal and biopsy of skin lesions with low risk of malignancy, excluding lesions involving the lid margin or nasal to the puncta;
- (iv) Laser capsulotomy; and
- (v) Laser Trabeculoplasty.

The intent of this rule is to establish credentialing requirements for an optometrist to perform the procedures outlined in Act 579.

After the act was passed, the Optometry Board began the process of drafting a rule that would be as thorough as possible regarding the credentials and requirements necessary for the safety of patients to allow optometrists to be permitted to perform the various procedures listed in the Act. Dr. Bryant Ashley, Chairman of the Board of Optometry traveled to North Carolina to visit the National Board Examination Center to discover the exact testing requirements for the national test as well as the various subjects covered. He then traveled to Oklahoma to visit an Optometry school that teaches these procedures. After getting an understanding of their curriculum, he then researched the rules that already exist in states that allow optometrists to perform these procedures. These states included Kentucky, Louisiana, and Oklahoma. After review of the various state rules, it was clear that there were similarities in the requirements; however, Kentucky's rule appeared to provide the most thorough and comprehensive list of requirements. The Arkansas rule as drafted is based, in part, on Kentucky and to a lesser extent the other states in order to capture all the requirements of the various states. The Board looked at other states because these rules have been in effect for some time and seem to work well. The Board believes that the rule, as drafted, provides an extremely comprehensive list of requirements that provide the maximum amount of protections to patients because it requires a high level of proven competency by the optometrist who applies for the certificate.