

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department Arkansas Department of Health

Agency or Division Name ADH Division of Health Related Board and Commission

Other Subdivision or Department, If Applicable Arkansas State Board of Chiropractic Examiners

Previous Agency Name, If Applicable _____

Contact Person Laurie Mayhan

Contact E-mail asbce@arkansas.gov

Contact Phone 501-682-9015

Name of Rule Advertising by Chiropractic Physicians

Newspaper Name Arkansas Democrat-Gazette

Date of Publishing January 30, 2022, January 31, 2022 & February 1, 2022

Final Date for Public Comment March 1, 2022

Location and Time of Public Meeting 101 E. Capiol Ave. and/or Zoom, April 14, 2022

MARKUP

Act 589 – To Regulate the Use of a Procurer by a Licensed Chiropractic Physician

Ark. Admin. Code 007.33.8-2 (Formerly cited as AR ADC 029.00.2)

PART 2. RULES

D. ADVERTISING BY CHIROPRACTIC PHYSICIANS. Advertising by chiropractic physicians should be dignified, ethical and professional, not necessarily limited to, but preferably of an educational or informative nature or as a statement of basic fees. Chiropractic physicians have the sole responsibility over the employees or agents hired, including those hired for advertising/marketing purposes.

9. Telephone communication including advertising/marketing. Any agent, procurer, contractor, or employee communicating with a prospective patient on behalf of a chiropractic physician shall disclose how the agent, procurer, contractor, or employee obtained the prospective patient's information. The agent, procurer, contractor, or employee must communicate his or her legal name and the name of the particular chiropractic physician on whose behalf the communication is being made, that he or she is an agent, procurer, contractor, or employee of the particular chiropractic physician. Unless such communication of the agent, procurer, contractor, or employee is true and evidence of the same is on file with the Board, the agent, procurer, contractor, or employee shall not state that he or she practices or is employed as attorney, insurance adjuster, chiropractor, and is not employed in the fields of law, health care, law enforcement, private investigation, or insurance.

(a) When direct in-person solicitation is made by an agent, procurer, contractor, or employee of the chiropractor, in addition to the requirements set forth in paragraph 9, the agent, procurer, contractor, or employee shall show the person being solicited a photo ID with their legal name and the name of the chiropractic physician on whose behalf the solicitation is being made, and shall dispense a professional card bearing his or her legal name, and the name, address, and telephone number of the licensed chiropractic physician on whose behalf the solicitation is being made. Such professional card shall be provided to the person being solicited at the beginning of the encounter, and shall be left with the person regardless of whether the person being solicited accepts the solicitation request.

(b) The licensee employing an agent, procurer, contractor, or employee for purposes of soliciting new patients shall file, in a format approved by the board, a registration form that includes the procurer's full legal name, permanent home address, and business and/or personal telephone number solely used for client communication purposes, and a copy of the procurer's driver's license or state issued photo ID, and a copy of their written contract before the procurer acts on the chiropractor's behalf. Each procurer registration shall terminate on December 31. The chiropractic physician shall register each procurer annually. The chiropractor is required to provide the board with updated procurer registration information, should any of it change during the year. All registered phone numbers and pictures of the procurers will be made public on the board's website to be as transparent as possible. The chiropractic physician is responsible to the Board for the content of the contact, including prohibited statements made or required statements not made, as well as for any action that is foreseeable in a telephone or in-person encounter.

(1) Telephone solicitation/marketing of victims of accidental injury and which are conducted on behalf of chiropractic physicians shall be made in substantial conformance to a written script which is considered by the Board to have been specifically approved by the chiropractic physician. The chiropractic physician shall be required to maintain such scripts for a period of two (2) years following their utilization. Scripts are to be made available for review upon request by this Board or its designee.

(2) Agents, procurers, contractors, or employees of chiropractic physicians who solicit

Act 589 – To Regulate the Use of a Procurer by a Licensed Chiropractic Physician

Ark. Admin. Code 007.33.8-2 (Formerly cited as AR ADC 029.00.2)

PART 2. RULES

victims of accidental injury shall keep a log of all solicitation calls made, including at minimum the name and phone number of the person being solicited, the date and time of the phone call. These logs shall be kept for a period of + 5 years.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Health
DIVISION Health Related Boards and Commissions / Arkansas State Board of Chiropractic Examiners
PERSON COMPLETING THIS STATEMENT Laurie Mayhan, Director of Arkansas State Board of Chiropractic Examiners
TELEPHONE NO. (501) 682-9015 **FAX NO.** (501) 682-9016 **EMAIL:** asbce@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Advertising by Chiropractic Physicians

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;

- b) The reason for adoption of the more costly rule;

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

- d) Whether the reason is within the scope of the agency’s statutory authority, and if so, please explain.

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 _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$ 0.00 _____

Total \$ 0.00 _____

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

Current Fiscal Year

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$ 0.00 _____

Total \$ 0.00 _____

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

Next Fiscal Year

\$ 0.00 _____

\$ 0.00 _____

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

Next Fiscal Year

\$ 0.00 _____

\$ 0.00 _____

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.

Notice of Rulemaking

The Arkansas State Board of Chiropractic Examiners hereby issue the following proposed amendments to its Rules pursuant to its authority under Ark. Code Ann. §§ 17-81-101 et. seq.

Pursuant to Acts 135, 390, 589, 725, 746, and 748 of the 93rd General Assembly Regular Session (2021), the Rules of the Arkansas State Board of Chiropractic Examiners are being updated to amend rules concerning animal chiropractic, licensure for military veterans, advertising by chiropractic physicians, application for state board examination and licensure, and pre-licensure criminal background check waiver request.

These proposed amendments are available for review at the Arkansas State Board of Chiropractic Examiners office, 101 East Capitol Ave., Suite 209, Little Rock, AR 72201. You may also access them on the Arkansas State Board of Chiropractic Examiners website at <https://www.arkansas.gov/asbce>. All public comments should be addressed, in writing, to Director, Arkansas State Board of Chiropractic Examiners, 101 East Capitol Ave., Suite 209, Little Rock, AR 72201, or by email to asbce@arkansas.gov and should be received no later than March 1, 2022.



Arkansas Department of Health

Arkansas State Board of Chiropractic Examiners
101 E. Capitol, Suite 209 • Little Rock, Arkansas 72201 • (501) 682-9015 • Fax: (501) 682-9016
Governor Asa Hutchinson
José Romero, MD, Secretary of Health
Laurie Mayhan, Director

Proposed Rule Regarding Advertising by Chiropractic Physicians: Procurers

PURPOSE

The Arkansas State Board of Chiropractic is seeking amend to the Advertising by Chiropractic Physicians rule regarding Procurers. Amendment is according to Act 589 of 2021.

BACKGROUND

Pursuant to ACA §17-81-101, the Board has authority to promulgate rules necessary to carry out the functions of the Board. Several pieces of legislation were enacted in the 2021 General Session that affected the Board's administrative functions and/or licensure requirements that would require amendments to current rules. The ASBCE Board, Board Director, and legal counsel prepared the attached rule amendments as a result of this legislation. The Board approved these proposed amendments at their November 4, 2021 and December 9, 2021 board meetings.

KEY POINTS

The proposed amendments contain the following changes:

- Adding in specific registration requirements required by the Procurer
- Adding record retention requirement for call logs

DISCUSSION

The Board reviewed the changes in Act 589 of 2021 and felt it was necessary to add in amendments to their advertising rules, regarding the procurer section, to better define registration requirements.

RECOMMENDATION

We recommend that the proposed amendments to the Board's Rule be approved as proposed by the Board.

Thank you for your time and attention.

Sincerely,

A handwritten signature in blue ink that reads "Laurie Mayhan".

Laurie Mayhan
Director
Arkansas Department of Health
Board of Chiropractic Examiners
101 East Capitol Avenue, Suite 209
Little Rock, AR 72201
Office: (501) 682-9015
asbce@arkansas.gov