

# ARKANSAS REGISTER

## Proposed Rule Cover Sheet



Secretary of State  
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Name of Department Arkansas Department of Health

Agency or Division Name Arkansas State Board of Nursing

Other Subdivision or Department, If Applicable \_\_\_\_\_

Previous Agency Name, If Applicable \_\_\_\_\_

Contact Person Sue Tedford

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Name of Rule ASBN Rules: Chapter Ten- Alternative to Discipline

Newspaper Name Arkansas Democrat-Gazette

Date of Publishing February 20, 2020

Final Date for Public Comment March 25, 2020

Location and Time of Public Meeting ASBN Boardroom located at 1123 S. University Ave., Suite 312, in Little Rock, Arkansas

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## CHAPTER TEN ALTERNATIVE TO DISCIPLINE

### SECTION I QUALIFICATIONS FOR ADMISSION

In order to be eligible for admission to the ATD program the licensee or applicant for licensure shall:

- A. Hold an Arkansas nursing license or be eligible for licensure;
- B. Otherwise be eligible for continued licensure under the Arkansas *Nurse Practice Act*;
- C. ~~Admit in writing to a Substance Use Disorder (SUD) including alcohol;~~ Acknowledge a drug or alcohol abuse problem or addiction; and
- D. Voluntarily request participation in the ATD program.
- E. A participant may transfer from another state's alternative program if it is substantively similar and approved by the ATD program director.

HISTORY: Adopted: January 1, 2018  
Amended: January 1, 2020

### SECTION II DENIAL TO PROGRAM

Licensees or applicants for licensure will be denied participation in the ATD program if they:

- A. Do not meet the qualifications listed in Section I;
- B. Diverted controlled substances for reasons other than self-administration;
- C. Engaged in behaviors resulting in patient harm;
- D. Have prior discipline by any board of nursing for substance abuse or diversion; or
- E. Demonstrated unsuccessful participation resulting in termination from the Arkansas ATD program or similar program offered in another jurisdiction.

HISTORY: Adopted: January 1, 2018

### SECTION III REQUIREMENTS FOR PARTICIPATION

The participant shall:

- A. Agree to immediately place licensure on inactive status;
- B. Complete an in-depth psychological and addictive evaluation by a Board approved evaluator;
- C. Agree to complete all treatment recommendations, if any, of the evaluator;
- D. Admit, in writing, to violation of the Arkansas *Nurse Practice Act*;
- E. Enter into an ATD program contract;
- F. Execute any release necessary to give the ATD program director access to records, including but not limited to medical, employment and criminal records; and
- G. Agree to not practice nursing without written authorization from the ATD program director.

HISTORY: Adopted: January 1, 2018

### SECTION IV STANDARDS FOR APPROVED EVALUATORS AND TREATMENT PROVIDERS

- A. Board approved evaluators shall meet the following standards:

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1. Be a physician, psychiatrist, psychologist, or mental health certified Advanced Practice Registered Nurse who is engaged in the treatment of substance use disorder, including alcohol;
  2. Demonstrate the ability to perform an examination to include a detailed history with the appropriate testing i.e. drug screens and other psychological testing as indicated;
  3. Cooperate and communicate with the ATD program director; and
  4. Submit evaluation reports according to Board approved criteria.
- B. Board approved treatment providers shall meet the following standards:
1. Provide outpatient and/or inpatient treatment;
  2. Cooperate and communicate with the ATD program director;
  3. Submit individualized written plan of care to include, but not limited to, assessment, diagnosis, treatment goals, discharge criteria, and recommendations for continuing recovery; and
  4. Meet all regulatory requirements in their respective state.

HISTORY: Adopted: January 1, 2018

## SECTION V DISCHARGE FROM PROGRAM

- A. A participant shall be discharged from the ATD program upon:
1. Successful completion of all terms and conditions of the ATD program contract; or
  2. Demonstration of noncompliance with the terms and conditions of the contract.
- B. If discharged from the ATD program for noncompliance, the licensee shall immediately surrender their licensure, accept a consent agreement, or be scheduled for a Board hearing.
- C. Participation in the ATD program does not preclude the Board from commencing any disciplinary action against a participant who is discharged from the ATD program or receives additional complaint(s).
- D. A participant may transfer to another state's alternative program if it is substantively similar and approved by the Arkansas ATD program director.
- E. If the participant voluntarily withdraws from the program, he/she shall immediately surrender his/her nursing licensure.

HISTORY: Adopted: January 1, 2018

## SECTION VI REPORTING TO THE BOARD

The ATD program director shall make the following information available to the board:

- A. Names and results of any contact or investigation regarding an impaired nurse who is believed to be a danger to the public;
- B. Names of participants who:
  1. Fail to comply with the terms and conditions of the contract;
  2. Refuse to cooperate with the ATD program director; or
  3. Voluntarily withdraw or involuntarily discharge from the program;
- C. An annual evaluation of the program; and
- D. Other information and data as requested by the Board.

HISTORY: Adopted: January 1, 2018

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE**  
**ARKANSAS LEGISLATIVE COUNCIL**

**DEPARTMENT/AGENCY:** Department of Health  
**DIVISION:** Division of Health Related Board and Commissions/State Board of Nursing  
**DIVISION DIRECTOR:** Matt Gilmore  
**CONTACT PERSON:** Sue Tedford  
**ADDRESS:** 1123 S. University Ave., Suite 800; Little Rock, AR 72204  
**PHONE NO.:** (501) 686-2703    **FAX NO.:** (501) 686-2714    **E-MAIL:** sue.tedford@arkansas.gov  
**NAME OF PRESENTER AT COMMITTEE MEETING:** Sue Tedford  
**PRESENTER E-MAIL:** sue.tedford@arkansas.gov

**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 C. Sutton**  
**Administrative Rules Review Section**  
**Arkansas Legislative Council**  
**Bureau of Legislative Research**  
**One Capitol Mall, 5<sup>th</sup> Floor**  
**Little Rock, AR 72201**

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1. What is the short title of this rule?

Chapter One- General Provisions  
Chapter Two- Licensure: RN, LPN, and LPTN  
Chapter Four- Advanced Practice Registered Nurse  
Chapter Six- Standards for Nursing Education Programs  
Chapter Eight- Medication Assistant- Certified  
Chapter Ten- Alternative to Discipline

2. What is the subject of the proposed rule?

General Provisions, Licensure: RN, LPN, and LPTN, Advanced Practice Registered Nurse, Standards for Nursing Education Programs, Medication Assistant- Certified, Alternative to Discipline

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes   X   No       

If yes, please provide the federal rule, regulation, and/or statute citation.

Act 250 of 2019, Act 837 of 2019, Act 315 of 2019, Act 308 of 2019, and Act 593 of 2019

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes \_\_\_\_\_ No  X

If yes, what is the effective date of the emergency rule? \_\_\_\_\_

When does the emergency rule expire? \_\_\_\_\_

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  X  If yes, please provide a brief summary explaining the rule.

Does this repeal an existing rule? Yes \_\_\_\_\_ No  X  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  X  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.

Administrative Procedures Act; A.C.A. § 25-15-201, et. seq.

7. What is the purpose of this proposed rule? Why is it necessary?

	<b>CHANGE</b>	<b>REASON FOR CHANGE</b>
Ch. 1, pg. 1-5, Section IV, Definitions	Definition of “Professional Boundaries” added	Clarification
Ch. 1, pg. 1-8, Section VI,E, Default or Delinquent Student Loans and Scholarships	Stops licensure suspension or revocation for nonpayment of student loans	Act 250 of 2019
Ch. 2, pg. 2-2, Section II, I, Deferred Action for Childhood Arrivals (DACA)	Authorizes ASBN to license recipients of DACA	Act 837 of 2019
Ch. 2, pg. 2-14 to 2-15, Section XIII, Minor Aesthetic Procedures	Language added to define and clarify a nurse’s role and required training for minor aesthetic procedures	In collaboration with the Arkansas Medical Board, ASBN is being proactive with this public protection issue
Ch. 4, pg. 4-3, Section III, F, Renewals	Eliminates unnecessary references to the word “regulation” in statute and rule	Act 315 of 2019

Ch. 4, pg. 4-6, Section VI, D., 4, Additional Standards for CRNAs	Allows a podiatrist to be a collaborating physician and requires an APRN to be employed by the podiatrist	Act 308 of 2019
Ch. 4, pg. 4-7, Section VII, C, Professional Certification Programs	Eliminates the necessity of notifying a certified body of disciplinary action unless an APRN's ability to practice is restricted	Determined it was not necessary for public protection, no action is taken by the certifying body
Ch. 4, pg. 4-7 to 4-8, Section VIII, A, 5, Prescriptive Authority	Allows a podiatrist to be a collaborating physician and requires an APRN to be employed by the podiatrist	Act 308 of 2019
Ch. 4, pg. 4-8, Section VIII, A, 7, Prescriptive Authority	Eliminates unnecessary references to the word "regulation" in statute and rule	Act 315 of 2019
Ch. 4, pg. 4-8 to 4-9, Section VIII, D, Prescribing Privileges	APRNs may prescribe schedule II medications with the following restrictions: *opioid- 5 days or less; and *stimulants if the initial prescription was issued by a physician, used to treat same condition, and the physician evaluates the patients at least every 6 months	Act 593 of 2019
Ch. 4, pg. 4-9, Section VIII, A, 4, a, Prescriptive Authority	Allows a podiatrist to be a collaborating physician and requires an APRN to be employed by the podiatrist	Act 308 of 2019
Ch. 4, pg. 4-9, Section VIII, D, 4, c, Prescribing Privileges	APRNs may prescribe schedule II medications with the following restrictions: *opioid- 5 days or less; and *stimulants if the initial prescription was issued by a physician, used to treat same condition, and the physician evaluates the patients at least every 6 months	Act 593 of 2019
Ch. 4, pg. 4-11, Section VIII, J, 2, Renewals	Eliminates unnecessary references to the word "regulation" in statute and rule	Act 315 of 2019
Ch. 4, pg. 4-15, Section XIII, D, Minimum Standards for Establishing a Patient Relationship	Lists exclusions to the minimum standards for establishing a patient relationship	Mirroring the Arkansas Medical Board
Ch. 4, pg. 4-17, Section XVI, Minor Aesthetic Procedures	Language added to define and clarify a nurse's role and required training for minor aesthetic procedures	In collaboration with the Arkansas Medical Board, ASBN is being proactive with this public protection issue
Ch. 6, pg. 6-4, Section II, D, Facilities	Eliminates unnecessary references to the word "regulation" in statute and rule	Act 315 of 2019

Ch. 8, pg. 8-7, Section XIV, C, d, Program Requirements	Eliminates unnecessary references to the word "regulation" in statute and rule	Act 315 of 2019
Ch. 10, pg. 10-1, Section I, C, Qualifications for Admission	Articulates the responsibility of an ATD participate to acknowledge a drug or alcohol abuse problem or addiction, to mirror statute	To align with statute regarding the alternative to discipline program

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.arsbn.org](http://www.arsbn.org)

9. Will a public hearing be held on this proposed rule? Yes  X  No \_\_\_\_\_  
If yes, please complete the following:

Date:  March 13, 2020

Time:  9:00 a.m.

Place:  Arkansas State Board of Nursing Boardroom, Suite 312; 1123 S. University Ave., Little Rock, AR 72204

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

March 25, 2020

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

Date pending legislative review and approval. (Original proposed date was January 1, 2020)

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.

Attached

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e).

Attached

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 Association of Nurse Anesthetists, Arkansas Nurses Association, Arkansas Nurse Practitioner Association, Arkansas Medical Society, Arkansas Medical Board, Arkansas Nursing Educational Programs

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT/AGENCY:** Department of Health

**DIVISION:** Division of Health Related Board and Commissions/State Board of Nursing

**PERSON COMPLETING THIS STATEMENT:** Sue Tedford

**PHONE NO.:** (501) 686-2703    **FAX NO.:** (501) 686-2714    **E-MAIL:** sue.teford@arkansas.gov

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** \_\_\_\_\_

1. Does this proposed, amended, or repealed rule have a financial impact?  
Yes \_\_\_\_\_ No X
  
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 X 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 X 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 \_\_\_\_\_ 0 \_\_\_\_\_  
Federal Funds \_\_\_\_\_ 0 \_\_\_\_\_  
Cash Funds \_\_\_\_\_ 0 \_\_\_\_\_  
Special Revenue \_\_\_\_\_ 0 \_\_\_\_\_  
Other (Identify) \_\_\_\_\_ 0 \_\_\_\_\_  
  
Total \_\_\_\_\_ 0 \_\_\_\_\_

General Revenue \_\_\_\_\_ 0 \_\_\_\_\_  
Federal Funds \_\_\_\_\_ 0 \_\_\_\_\_  
Cash Funds \_\_\_\_\_ 0 \_\_\_\_\_  
Special Revenue \_\_\_\_\_ 0 \_\_\_\_\_  
Other (Identify) \_\_\_\_\_ 0 \_\_\_\_\_  
  
Total \_\_\_\_\_ 0 \_\_\_\_\_



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

**Current Fiscal Year**

General Revenue 0  
Federal Funds 0  
Cash Funds 0  
Special Revenue 0  
Other (Identify) 0  
  
Total 0

**Next Fiscal Year**

General Revenue 0  
Federal Funds 0  
Cash Funds 0  
Special Revenue 0  
Other (Identify) 0  
  
Total 0

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**

\$ 0

**Next Fiscal Year**

\$ 0

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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**

\$ 0

**Next Fiscal Year**

\$ 0

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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 X

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.