

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

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Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

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ARKANSAS STATE BOARD OF HEALTH

Rules Pertaining to the
Arkansas Volunteer Immunity Act For Health Care Professionals and the Arkansas Volunteer
Health Care Act



Adopted 1999

Amended 2022

100. GENERAL PROVISIONS.....	3
101. PURPOSE.....	3
102. DEFINITIONS.....	3
200. REGISTRATION UNDER THE ARKANSAS VOLUNTEER IMMUNITY ACT	5
201. REGISTRATION FOR THE FREE OR LOW-COST HEALTH CARE CLINIC	5
202. IMMUNITY UNDER ARKANSAS VOLUNTEER IMMUNITY ACT FOR HEALTHCARE PROFESSIONALS.....	5
203. REQUIRED NOTICE TO PERSONS RECEIVING HEALTH CARE SERVICES AT FREE OR LOW-COST HEALTH CARE CLINICS.....	5
300. REGISTRATION UNDER THE VOLUNTEER HEALTH CARE ACT.....	6
301. REGISTRATION PROCESS FOR HEALTHCARE PROVIDERS.....	6
302. REGISTRATION PROCESS FOR MEDICAL PROFESSIONALS	6
400. APPLICABILITY OF THE VOLUNTEER HEALTH CARE ACT.....	7
401. CONTRACTS TO PROVIDE VOLUNTEER HEALTH SERVICES.....	7
402. REPORTING ADVERSE INCIDENTS	8
403. PATIENT SELECTION, REFERRALS, AND EMERGENCY CARE	8
404. REPORTING TO THE ARKANSAS DEPARTMENT OF HEALTH	8
405. CONTINUING EDUCATION CREDIT	9
406. NOTICE OF AGENCY RELATIONSHIP	9
407. MALPRACTICE LITIGATION COSTS.....	9
500. REGISTRATION FOR VOLUNTEER SERVICES BY RETIRED PHYSICIANS AND SURGEONS.....	10
501. REGISTRATION OF RETIRED PHYSICIANS AND SURGEONS.....	10
502. IMMUNITY FROM LIABILITY FOR RETIRED PHYSICIANS AND SURGEONS.....	10

100. GENERAL PROVISIONS

101. PURPOSE

- (a) The purpose of these rules is:
 - (1) To ensure compliance with Ark. Code Ann. §16-6-201, Ark. Code Ann. §20-8-801, et seq., and Ark. Code Ann. §17-95-106;
 - (2) To provide for the registration of Free or Low-Cost Health Care Clinics, as defined in Ark. Code Ann. §16-6-201 and herein, under the Arkansas Volunteer Immunity Act, to provide immunity from civil damages to physicians and licensed health care professionals who are rendering free and voluntary professional health care services;
 - (3) To provide for the registration of healthcare providers and medical professionals, as defined in Ark. Code Ann. §20-8-803, under the Volunteer Health Care Act, who are providing Volunteer Healthcare Services to low-income patients to provide immunity from civil damages to medical professionals who contract with the Department of Health; and,
 - (4) To provide for the registration of retired physicians and surgeons who are licensed to practice medicine by the Arkansas State Medical Board under the laws of the State of Arkansas and who are providing Volunteer Healthcare Services to provide immunity from civil damages, under Ark. Code Ann. §17-95-106.
- (b) The Arkansas State Board of Health is responsible for the registration of healthcare professionals, healthcare providers; clinics pursuant to Act 276 of 1997, Act 958 of 2017, and Act 968 of 2021.

102. DEFINITIONS

- (a) “Contract” means an agreement executed in compliance with these rules between a healthcare professional or a medical professional and the Department of Health or a governmental contractor.
- (b) “Free or Low-Cost Health Care Clinic” means a clinic or part of a clinic that
 - (1) provides free or low-cost medical care; and,
 - (2) accepts no insurance payments for providing medical services.
- (c) “Governmental contractor” means the county health units, special purpose districts with healthcare responsibilities, a hospital owned and operated by a governmental entity, or any other healthcare entity designated by the department.
- (d) “Health Care Professional” as defined in Ark. Code Ann. §16-6-201 under the Arkansas Volunteer Immunity Act, means a person who:
 - (1) Is licensed or certified in under subtitle 3 of Title 17 of the Arkansas Code Annotated; or
 - (2) Is a student or resident of a health care profession program leading to a professional degree, a license, or certification under Subtitle 3 of Title 17 of the Arkansas Code Annotated, who is:

- (A) Providing services within the scope of the training of that student or resident; and
- (B) Under the supervision of a person who is licensed in the health care profession for which the student is seeking a degree, a license, or a certification.

(e) “Healthcare provider” means:

- (1) A free or charitable healthcare clinic qualified as exempt from federal income taxation;
- (2) A state or federally funded community health center;
- (3) A volunteer corporation or volunteer healthcare provider that delivers healthcare services to low-income patients; and
- (4) Other medical facilities with the primary purpose to deliver medical services or treatment to humans and that include an office maintained by a medical professional.

(f) “Low-income patient” means a person who:

- (1) Is eligible for any category of the Arkansas Medicaid Program; or
- (2) Does not have health insurance and whose annual household income does not exceed three hundred percent (300%) of the federal poverty level.

(g) “Medical professional” means:

- (1) A physician, osteopathic physician, or optometric physician;
- (2) An osteopathic physician's assistant, physician's assistant, or optometric physician's assistant;
- (3) A chiropractic physician;
- (4) A podiatric physician;
- (5) A nurse licensed under § 17-87-101 et seq.;
- (6) A dentist, dental hygienist, or dental assistant;
- (7) A pharmacist;
- (8) An optometrist;
- (9) A therapist;
- (10) An addiction specialist;
- (11) A counselor;
- (12) A “Healthcare Professional” as defined in herein;
- (13) A dietitian or an individual who offers dietary services; and
- (14) A student enrolled in an accredited program that prepares the student for licensure in one (1) or more of the healthcare professions listed in subdivisions 102(e)(1)-102(e)(12) of this section.

(h) "Volunteer Healthcare Services" means healthcare services rendered voluntarily and without compensation to any person located in the State of Arkansas by a healthcare professional who:

- (1) Is registered by the Arkansas Department of Health;
- (2) Does not accept insurance payments; and,
- (3) Provides healthcare services free of charge or for a nominal fee to persons who are unable to pay.

200. REGISTRATION UNDER THE ARKANSAS VOLUNTEER IMMUNITY ACT

201. REGISTRATION FOR THE FREE OR LOW-COST HEALTH CARE CLINIC

(a) It shall be the duty of each Free or Low-Cost Health Care Clinic to register with the Arkansas Department of Health on forms approved by the Department, upon demonstration that the Free or Low-Cost Health Care Clinic:

- (1) is located in the State of Arkansas;
- (2) does not accept any insurance payments; and,
- (3) either:
 - (A) provides health care services free of charge to persons unable to pay; or,
 - (B) provides health care services for a nominal fee.

(b) Free or Low-Cost Health Care Clinics that can demonstrate through the registration process that they are rendering free or low-cost health care services will be eligible under this program.

202. IMMUNITY UNDER ARKANSAS VOLUNTEER IMMUNITY ACT FOR HEALTHCARE PROFESSIONALS

(a) A Health Care Professional who renders Volunteer Health Care Services to any person at any Free or Low-Cost Health Care Clinic registered by the State Board of Health, under Section 201, shall not be liable for any civil damages for any act or omission resulting from the rendering of the healthcare services unless the act or omission was the result of the healthcare professional's gross negligence or willful misconduct.

(b) The board and its members and the department and its agents and employees are exempt and immune from liability for any claims or damages when performing their duties under this section.

203. REQUIRED NOTICE TO PERSONS RECEIVING HEALTH CARE SERVICES AT FREE OR LOW-COST HEALTH CARE CLINICS

(a) Any persons who receive health care services from a Free or Low-Cost Health Care Clinic must:

- (1) Have been fully informed before any treatment by the healthcare professional providing the health care services or by the staff of the healthcare clinic of the immunity from civil suit provisions of this section; and
 - (2) Have acknowledged that fact in writing on a form approved or designated by the Department of Health.
- (b) The board and its members and the department and its agents and employees are exempt and immune from liability for any claims or damages when performing their duties under this section.

300. REGISTRATION UNDER THE VOLUNTEER HEALTH CARE ACT

301. REGISTRATION PROCESS FOR HEALTHCARE PROVIDERS

- (a) Any clinic wishing to register as a healthcare provider under the Volunteer Health Care Act will be responsible for completing an application with the Arkansas Department of Health. An application for registration as a healthcare provider shall include but not be limited to the following:
- (1) Specific location of the clinic to include street address and city;
 - (2) A statement indicating that the mission of the clinic is to provide free or low-cost services;
 - (3) A list of all medical professionals and their specialties currently providing volunteer services in the clinic;
 - (4) A statement indicating medical professionals delivering services in the clinic are not receiving any financial or other compensation from the clinic and are acting on a voluntary basis;
 - (5) A statement on file that all medical professionals providing services in the clinic have a current professional license or are students under supervision of a person who is licensed in the health care profession for which the student is seeking a degree, a license, or a certification; and
 - (6) A copy of the clinic's policy for notifying patients that the medical professional is rendering voluntary healthcare services and that he/she is immune from civil suit. This policy must be in language understood by the patient.
- (b) The application must be returned to the Arkansas Department of Health. An application meeting the requirements of these Rules will be approved for a period not to exceed three years.

302. REGISTRATION PROCESS FOR MEDICAL PROFESSIONALS

- (a) Any medical professional wishing to provide services as a volunteer shall register with the Arkansas Department of Health by providing:
- (1) A completed application;

- (2) A statement indicating that the medical professional's intent is to provide free or low-cost services;
 - (3) Verification that the medical professional is not receiving insurance payments for services rendered, if the medical professional is registering as a healthcare professional for the purposes of Ark. Code Ann. §16-6-201;
 - (4) A copy of the medical professional's current professional license, or if a student, a copy of certification the student is currently enrolled in a school/training for which the student is seeking a degree, a license, or a certification;
 - (5) A statement on file that, if the medical professional is a student, the student is under supervision of a person who is licensed in the medical profession for which the student is seeking a degree, a license, or a certification; and
 - (6) A copy of the medical professional's policy for notifying patients that the health care professional is rendering voluntary health care services and that he/she is immune from civil suit. This policy must be in language understood by the patient.
- (b) The application must be returned to the Arkansas Department of Health. An application meeting the intent of Act 276 of 1997 will be approved for a period not to exceed three years.

400. APPLICABILITY OF THE VOLUNTEER HEALTH CARE ACT

401. CONTRACTS TO PROVIDE VOLUNTEER HEALTH SERVICES

- (a) A healthcare provider or medical professional may enter into a contract with the Department of Health or governmental contractor to deliver volunteer health services to eligible low-income patients.
- (b) A healthcare provider or medical professional that enters into a contract as described in subdivision (a)(1) of this section shall be an agent of the state with sovereign immunity while the healthcare provider or medical professional is acting within the scope of duties under the contract as described in this section.
- (c) A governmental contractor that is also a healthcare provider is not required to enter into a contract under this subchapter with respect to the healthcare services delivered by employees of the governmental contractor.
- (d) The contract shall:
 - (1) Apply only to volunteer healthcare services delivered by the healthcare provider or medical professional to low-income patients who are eligible to receive healthcare services;
 - (2) Include all employees of the healthcare provider; and,
 - (3) State that:
 - (A) The healthcare provider or medical professional has sovereign immunity and may not be named as a defendant in an action arising due to medical care or treatment provided within the scope of the contract;

- (B) If a patient treated by the healthcare provider or medical professional is ineligible for services, the healthcare provider or medical professional shall still have sovereign immunity and may not be named as a defendant in an action arising due to medical care or treatment provided;
- (C) The department or the governmental contractor has the right to:
 - (i) Dismiss or terminate any healthcare provider or medical professional employed under the contract; and
 - (ii) Terminate the contact with a healthcare provider or medical professional with appropriate cause. At least five (5) business days before the termination date of a contract, the department or governmental contractor shall provide the healthcare provider or medical professional with written notice of intent to terminate the contract and reasons for the decision; and
 - (iii) Access the records of any patient served by the healthcare provider or medical professional under the contract.

402. REPORTING ADVERSE INCIDENTS

- (a) The healthcare provider or medical professional shall report any adverse incidents and information on treatment outcomes to the department or governmental contractor if pertaining to a patient treated under the contract.
- (b) The healthcare provider or medical professional shall also report the adverse incident to the appropriate licensing body to determine whether the adverse incident involves conduct subject to disciplinary action.
- (c) Patient medical records and identifying information contained in the adverse incident report shall be confidential and not subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

403. PATIENT SELECTION, REFERRALS, AND EMERGENCY CARE

- (a) The Department, governmental contractor, healthcare provider, or medical provider may make patient selection and initial referrals.
- (b) If emergency care is required, the patient shall be referred within forty-eight (48) hours after the latter of the time when treatment commences or the patient has the mental capacity to consent to treatments.

404. REPORTING TO THE ARKANSAS DEPARTMENT OF HEALTH

- (a) Annually, the healthcare provider or medical professional shall report the following information to the Department:
 - (1) A summary of the efficacy of access and treatment outcomes;
 - (2) Statistics for claims pending and claims paid;

- (3) The amount of defense and handling costs associated with all claims brought against healthcare providers or medical professionals by the healthcare provider or medical professional working under the Volunteer Healthcare Program;
- (4) The operation hours of the healthcare provider or medical professional;
- (5) The number of patient visits by the healthcare provider or medical professional working under the Volunteer Healthcare Program; and
- (6) The value of healthcare-related goods and services provided by the healthcare provider or medical professional working under the Volunteer Healthcare Program.

405. CONTINUING EDUCATION CREDIT

- (a) A medical professional may fulfill one (1) hour of continuing education credit with the performance of eight (8) hours of volunteer services under the Volunteer Healthcare Program.
- (b) A medical professional shall not obtain more than thirty-two (32) hours of credits as described in subsection (a) of this section in a licensing period.

406. NOTICE OF AGENCY RELATIONSHIP

- (a) The healthcare provider or medical professional shall provide written notice to each patient, parent of the patient, or legal guardian of the patient served under a contract described in Section 401.
- (b) The written notice shall:
 - (1) Be acknowledged in writing by the patient, the parent of the patient, or the legal guardian of the patient; and
 - (2) Contain information that:
 - (A) The healthcare provider or medical professional is an agent of the state; and
 - (B) The exclusive remedy for damage or injury suffered as a result of any act or omission by the healthcare provider or medical professional acting within the scope of duties under a contract described in this subchapter is to file a claim in the Arkansas State Claims Commission.
- (c) The healthcare provider or medical professional may comply with the requirements of subdivisions (b)(2)(A) and (b)(2)(B) of this section by posting the notice in a conspicuous place within the place of business of the healthcare provider or medical professional.

407. MALPRACTICE LITIGATION COSTS

- (a) A governmental contractor is responsible for costs and attorney's fees for malpractice litigation arising out of healthcare services delivered under a contract brought to the Arkansas State Claims Commission.

500. REGISTRATION FOR VOLUNTEER SERVICES BY RETIRED PHYSICIANS AND SURGEONS

501. REGISTRATION OF RETIRED PHYSICIANS AND SURGEONS

- (a) Any retired physicians and surgeons wishing to provide Volunteer Healthcare Services shall register with the Arkansas Department of Health by providing:
 - (1) A completed application;
 - (2) A statement indicating the Free or Low-Cost Health Care Clinic where the retired physician will be providing Volunteer Healthcare Services;
 - (3) A statement indicating that the retired physicians and surgeons' intent is to provide free or low-cost services;
 - (4) Verification that the Free or Low-Cost Health Care Clinic is not receiving insurance payments for services rendered;
 - (5) A copy of the medical professional's current professional license; and
 - (6) A copy of the medical professional's policy for notifying patients that the health care professional is rendering voluntary health care services and that he/she is immune from civil suit. This policy must be in language understood by the patient.
- (b) The application must be returned to the Arkansas Department of Health. An application meeting the intent of Ark. Code Ann. §17-95-106 will be approved for a period not to exceed three years.

502. IMMUNITY FROM LIABILITY FOR RETIRED PHYSICIANS AND SURGEONS

- (a) Retired physicians and surgeons who are licensed to practice medicine by the Arkansas State Medical Board under the laws of the State of Arkansas who render Volunteer Healthcare Services and registered under these Rules shall not be liable for any civil damages for any act or omission resulting from the rendering of such medical services, unless the action or omission was the result of the retired physicians or surgeons' gross negligence or willful misconduct.
- (b) The Volunteer Healthcare Services provided by the retired physician or surgeon must be at a Free or Low-Cost Health Care Clinic registered with the Department of Health as provided in these rules.

503. REQUIRED NOTICE TO PERSONS RECEIVING VOLUNTEER HEALTH CARE SERVICES FROM A RETIRED PHYSICIAN OR SURGEON

- (a) Any persons who receive Volunteer Healthcare Services at a Free or Low-Cost Health Care Clinic from a retired physician or surgeon must:
 - (1) Have been fully informed before any treatment by the retired physician or surgeon providing the health care services or by the staff of the healthcare clinic of the immunity from civil suit provisions of this section; and

- (2) Have acknowledged that fact in writing on a form approved or designated by the Department of Health.
- (b) The board and its members and the department and its agents and employees are exempt and immune from liability for any claims or damages when performing their duties under this section.

600. MISCELLANEOUS PROVISIONS

601. SEVERABILITY

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

602. REPEAL

- (a) All rules and parts of rules in conflict herewith are hereby repealed.

CERTIFICATION

This will certify that the foregoing Rules for Volunteer Licensed Health Care Professionals Immunity Act in Arkansas were adopted by the Arkansas Board of Health at a regular session of same held in Little Rock, Arkansas on the _____ day of _____, _____.

Dated at Little Rock, Arkansas this _____ day of _____, _____.

Secretary of Health

QUESTIONNAIRE
FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY _____
DIVISION _____
DIVISION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ FAX NO. _____ E-MAIL _____
NAME OF PRESENTER AT COMMITTEE MEETING _____
PRESENTER E-MAIL _____

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. Rule" below.
- E. Submit two (2) copies of the 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, 5th Floor
Little Rock, AR 72201

- 1. What is the short title of this rule?

- 2. What is the subject of the proposed rule?

- 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? _____

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

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.

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

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).

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

Date: _____

Time: _____

Place: _____

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

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

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. _____

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

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.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT _____
DIVISION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ FAX NO. _____ EMAIL: _____

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

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 _____

Total _____

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 _____

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

Next Fiscal Year

\$ _____

\$ _____

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

\$ _____

\$ _____

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.



Arkansas Department of Health

4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000

Governor Asa Hutchinson

Renee Mallory, RN, BSN, Interim Secretary of Health

Jennifer Dillaha, MD, Director

Rules Pertaining to the Arkansas Volunteer Immunity Act for Health Care Professionals and the Arkansas Volunteer Health Care Act

August 26, 2022.

BACKGROUND

These Rules provide for the registration of Free or Low-Cost Health Care Clinics, as defined in Ark. Code Ann. §16-6-201 and herein, under the Arkansas Volunteer Immunity Act, to provide immunity from civil damages to physicians and licensed health care professionals who are rendering free and voluntary professional health care services; provide for the registration of healthcare providers and medical professionals, as defined in Ark. Code Ann. §20-8-803, under the Volunteer Health Care Act, who are providing Volunteer Healthcare Services to low-income patients to provide immunity from civil damages to medical professionals who contract with the Department of Health; and, provide for the registration of retired physicians and surgeons who are licensed to practice medicine by the Arkansas State Medical Board under the laws of the State of Arkansas and who are providing Volunteer Healthcare Services to provide immunity from civil damages, under Ark. Code Ann. §17-95-106.

KEY POINTS

The proposed rule:

- Removes outdated terms and organizes the rules for registration in an administratively more efficient manner;
- Incorporates registrations in compliance with Act 958 of 2017, as amended by Act 968 of 2021, and with Ark. Code Ann. §17-95-106

DISCUSSION

The Rules Pertaining to the Arkansas Volunteer Immunity Act for Health Care Professionals and the Arkansas Volunteer Health Care Act 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, Ark. Code Ann. §§ 16-6-201, et seq., 20-8-803, et seq, and 17-95-106.

The following changes are proposed:

General Update

Legislative

Grammatical Errors

Section 101 Purpose

Revised language to properly refer to intent for Arkansas Volunteer Immunity Act, and add language to explain intent of Arkansas Volunteer Health Care Act, and the statutory provisions for volunteer retired physicians and surgeons.

Section 102 Definitions

Corrected grammatical errors (capitalization, punctuation, and typographical errors)

Expanded definitions to incorporate Arkansas Volunteer Health Care Act and Ark. Code Ann. §17-95-106.

Section 201 Registration for the Free or Low-Cost Health Care Clinic

Corrected grammatical errors (capitalization, punctuation, and typographical errors)

Revised provisions for Arkansas Volunteer Immunity Act to clarify intent and application of the Act.

Section 202 Immunity Under Arkansas Volunteer Immunity Act For Healthcare Professionals

Corrected grammatical errors (capitalization, punctuation, typographical errors, and cross-reference errors)

Moved provisions for application of qualified immunity under Arkansas Volunteer Immunity Act to clarify intent and application of the Act.

Section 203 Required Notice To Persons Receiving Health Care Services At Free Or Low-Cost Health Care Clinics

Corrected grammatical errors (capitalization, punctuation, typographical errors, and cross-reference errors)

Moved provisions for required notices under Arkansas Volunteer Immunity Act to clarify intent and application of the Act.

Section 301 Registration Process For Healthcare Providers

Corrected grammatical errors (capitalization, punctuation, and typographical errors)

Revised provisions for Arkansas Volunteer Health Care Act to clarify intent and application of the Act, provide for registration of providers.

Section 302 Licensing Individuals from a State that Does Not License Interpreters

Corrected grammatical errors (capitalization, punctuation, typographical errors, and cross-reference errors)

Added provisions for Arkansas Volunteer Health Care Act to provide for registration of health care professionals.

Section 401 – 407 Applicability of the Volunteer Health Care Act

Corrected grammatical errors (capitalization, punctuation, typographical errors, and cross-reference errors)

Added provisions for Arkansas Volunteer Health Care Act to provide for the applicability of the Volunteer Health Care Act, required contract provisions, reporting requirements, patient selection, and reporting to the Arkansas Department of Health.

Section 501 – 503 Registration For Volunteer Services By Retired Physicians And Surgeons

Corrected grammatical errors (capitalization, punctuation, typographical errors, and cross-reference errors)

Added provisions for Arkansas law on immunity for volunteer retired physicians and surgeons to provide for the registration process, application of immunity, and reporting requirements.

Section 601 – 602 Miscellaneous Provisions

Corrected grammatical errors (capitalization, punctuation, and typographical errors)

Added miscellaneous provisions for severability and repeal.

ARKANSAS STATE BOARD OF HEALTH

Rules ~~and Regulations~~ Pertaining to the
Arkansas Volunteer ~~Licensed Health Care Professional~~ Immunity Act For Health Care
Professionals and the Arkansas Volunteer Health Care Act



Adopted 1999

Amended

<u>100. GENERAL PROVISIONS.....</u>	3
<u>101. PURPOSE.....</u>	3
<u>102. DEFINITIONS.....</u>	3
<u>200. REGISTRATION UNDER THE ARKANSAS VOLUNTEER IMMUNITY ACT.....</u>	5
<u>201. REGISTRATION FOR THE FREE OR LOW-COST HEALTH CARE CLINIC.....</u>	5
<u>202. IMMUNITY UNDER ARKANSAS VOLUNTEER IMMUNITY ACT FOR HEALTHCARE PROFESSIONALS.....</u>	6
<u>203. REQUIRED NOTICE TO PERSONS RECEIVING HEALTH CARE SERVICES AT FREE OR LOW-COST HEALTH CARE CLINICS.....</u>	6
<u>300. REGISTRATION UNDER THE VOLUNTEER HEALTH CARE ACT.....</u>	6
<u>301. REGISTRATION PROCESS FOR HEALTHCARE PROVIDERS.....</u>	6
<u>302. REGISTRATION PROCESS FOR MEDICAL PROFESSIONALS.....</u>	7
<u>400. APPLICABILITY OF THE VOLUNTEER HEALTH CARE ACT.....</u>	8
<u>401. CONTRACTS TO PROVIDE VOLUNTEER HEALTH SERVICES.....</u>	8
<u>402. REPORTING ADVERSE INCIDENTS.....</u>	9
<u>403. PATIENT SELECTION, REFERRALS, AND EMERGENCY CARE.....</u>	9
<u>404. REPORTING TO THE ARKANSAS DEPARTMENT OF HEALTH.....</u>	9
<u>405. CONTINUING EDUCATION CREDIT.....</u>	9
<u>406. NOTICE OF AGENCY RELATIONSHIP.....</u>	10
<u>407. MALPRACTICE LITIGATION COSTS.....</u>	10
<u>500. REGISTRATION FOR VOLUNTEER SERVICES BY RETIRED PHYSICIANS AND SURGEONS.....</u>	10
<u>501. REGISTRATION OF RETIRED PHYSICIANS AND SURGEONS.....</u>	10
<u>502. IMMUNITY FROM LIABILITY FOR RETIRED PHYSICIANS AND SURGEONS.....</u>	11

100. GENERAL PROVISIONS

101. PURPOSE

- (a) The purpose of these rules ~~or regulations~~ is: to
- (1) To ensure compliance with Ark. Code Ann. §16-6-201, ~~and~~ Ark. Code Ann. §20-8-801, et seq., and Ark. Code Ann. §17-95-106;
 - (2) To provide for the registration of Free or Low-Cost Health Care Clinics, as defined in Ark. Code Ann. §16-6-201 and herein, under the Arkansas Volunteer Immunity Act, to provide immunity from civil damages to physicians and licensed health care professionals who are rendering free and voluntary professional health care services;
 - (3) To provide for the registration of ~~Free or Low-Cost Medical Health Care Clinics~~ healthcare providers and medical professionals, as defined in Ark. Code Ann. §20-8-803, under the Volunteer Health Care Act, who are providing Volunteer Healthcare Services to low-income patients to provide immunity from civil damages to medical professionals who contract with the Department of Health; ~~and, and to provide immunity from civil damages to physicians and licensed health care professionals who are rendering free and voluntary professional health care services.~~
 - (4) To provide for the registration of retired physicians and surgeons who are licensed to practice medicine by the Arkansas State Medical Board under the laws of the State of Arkansas and who are providing Volunteer Healthcare Services to provide immunity from civil damages, under Ark. Code Ann. §17-95-106.
- ~~(a)~~(b) The Arkansas State Board of Health is responsible for the registration of ~~free or low cost medical~~ health-care professionals, healthcare providers; clinics pursuant -to Act 276 of 1997, Act 958 of 2017, and Act 968 of 2021.-

102. DEFINITIONS

- (a) “Contract” means an agreement executed in compliance with these rules between a healthcare professional or a medical professional and the Department of Health or a governmental contractor.;
- (b) “Free or Low-Cost ~~Medical-Health Care~~ Clinic ~~(FOLCMCFOLCHCC)~~” means a clinic or part of a clinic that
- (1) provides free or low-cost medical care; and,
 - (2) ~~which~~ accepts no insurance payments for providing medical services ~~and that has been registered with the Arkansas Department of Health as fulfilling these requirements.~~
- (c) “Governmental contractor” means the county health units, special purpose districts with healthcare responsibilities, a hospital owned and operated by a governmental entity, or any other healthcare entity designated by the department.;
- (d) “Health Care Professional” as ~~used in Section IV~~ defined in Ark. Code Ann. §16-6-201 under the Arkansas Volunteer Immunity Act, ~~means a person who:~~

(1) Is licensed or certified in under subtitle 3 of Title 17 of the Arkansas Code Annotated.;
or

(2) Is a student or resident of a health care profession program leading to a professional degree, a license, or certification under Subtitle 3 of Title 17 of the Arkansas Code Annotated, who is:

(A) Providing services within the scope of the training of that student or resident; and

(B) Under the supervision of a person who ~~is~~ licensed in the health care profession for which the student is seeking a degree, a license, or a certification.

(e) “Healthcare provider” means:

(1) A free or charitable healthcare clinic qualified as exempt from federal income taxation;

(2) A state or federally funded community health center;

(3) A volunteer corporation or volunteer healthcare provider that delivers healthcare services to low-income patients; and

(4) Other medical facilities with the primary purpose to deliver medical services or treatment to humans and that include an office maintained by a medical professional.;

(f) “Low-income patient” means a person who:

(1) Is eligible for any category of the Arkansas Medicaid Program; or;

(2) Does not have health insurance and whose annual household income does not exceed three hundred percent (300%) of the federal poverty level.;~~and~~

(g) “Medical professional” means:

(1) A physician, osteopathic physician, or optometric physician;

(2) An osteopathic physician's assistant, physician's assistant, or optometric physician's assistant;

(3) A chiropractic physician;

(4) A podiatric physician;

(5) A nurse licensed under § 17-87-101 et seq.;

(6) A dentist, ~~or~~ dental hygienist, or dental assistant;

(7) A pharmacist;

(8) An optometrist;

(9) A therapist;

(10) An addiction specialist;

(11) A counselor;

(12) A “Healthcare Professional” as defined in herein;

(13) A dietitian or an individual who offers dietary services; and

(14) A student enrolled in an accredited program that prepares the student for licensure in one (1) or more of the healthcare professions listed in subdivisions 102(e)(1)-102(e)(12) of this section.

(h) “Volunteer Healthcare Services” means healthcare services rendered voluntarily and without compensation to any person located in the State of Arkansas by a healthcare professional who:

(1) Is registered by the Arkansas Department of Health;

(2) Does not accept insurance payments; and,

(+)(3) Provides healthcare services free of charge or for a nominal fee to persons who are unable to pay.

~~1. “Volunteer physicians and health care professionals (VPHCP) means any licensed medical doctor, chiropractic physician, dentist, optometric physician, podiatrist, and any licensed health care professional providing voluntary service, without financial reimbursement in a clinic, hospital or primary care setting registered with the Arkansas Department of Health as an FOLCMC.~~

200. REGISTRATION UNDER THE ARKANSAS VOLUNTEER IMMUNITY ACT

~~103.201. GENERAL REQUIREMENTS~~ REGISTRATION FOR THE FREE OR LOW-COST HEALTH CARE CLINIC UNDER ARK CODE ANN. § 16-6-201

(a) It shall be the duty of each Free or Low-Cost Health Care Clinic to register with the Arkansas Department of Health on forms approved by the Department, upon demonstration that the Free or Low-Cost Health Care Clinic:

(1) is located in the State of Arkansas;

(2) does not accept any insurance payments; and,

(3) either:

(A) provides health care services free of charge to persons unable to pay; or,

(A)(B) provides health care services for a nominal fee.;

(b) ~~Clinics~~ Free or Low-Cost Health Care Clinics that can demonstrate through the registration process that they are rendering free or low-cost health care services will be eligible under this program.

~~—Only physicians and licensed health care professionals who are licensed under the laws of the State of Arkansas and who render professional health care services voluntarily and without compensation to any person at any FOLCMC shall be eligible.~~

202. IMMUNITY UNDER ARKANSAS VOLUNTEER IMMUNITY ACT ARK CODE ANN. § 16-6-201 FOR HEALTHCARE PROFESSIONALS

- ~~(e)(a)~~ a. ~~—A Health Care Professional who renders healthcare services voluntarily and without compensation~~ Volunteer Health Care Services to any person at any Free or Low-Cost Health Care Clinic ~~free or low-cost healthcare clinic located in the State of Arkansas and registered by the State Board of Health, under Section 201, that accepts no insurance payments and provides healthcare services free of charge to persons unable to pay or provides healthcare services for a nominal fee~~ shall not be liable for any civil damages for any act or omission resulting from the rendering of the healthcare services unless the act or omission was the result of the healthcare professional's gross negligence or willful misconduct.
- (b) ~~The board and its members and the department and its agents and employees are exempt and immune from liability for any claims or damages when performing their duties under this section.~~

203. b. —REQUIRED NOTICE TO PERSONS RECEIVING HEALTH CARE SERVICES AT FREE OR LOW-COST HEALTH CARE CLINICS

- (a) ~~Any persons who receive health care services from a Free or Low-Cost Health Care Clinic FOLCHCC must:~~
- ~~(1) 1-~~ Have been fully informed before any treatment by the healthcare professional providing the health care services ~~services~~ or by the staff of the healthcare clinic of the immunity from civil suit provisions of this section; and
 - ~~(2) 2-~~ Have acknowledged that fact in writing on a form approved or designated by the Department of Health.
- (b) ~~e.~~ ~~The board and its members and the department and its agents and employees are exempt and immune from liability for any claims or damages when performing their duties under this section.~~

300. REGISTRATION UNDER THE VOLUNTEER HEALTH CARE ACT

104.301. REGISTRATION PROCESS FOR HEALTHCARE PROVIDERS

- (a) Any clinic wishing to register as a healthcare provider under the Volunteer Health Care Act ~~FOLCMC under this act Ark. Code Ann. § 16-6-201,~~ will be responsible for completing an application with the Arkansas Department of Health. An application for ~~registration~~ ~~as an healthcare provider FOLCMC~~ shall include but not be limited to the following:
- (1) Specific location of the clinic to include street address and city;
 - (2) A statement indicating that the mission of the clinic is to provide free or low-cost services;
 - ~~(3) Verification that the clinic is not receiving insurance payments for services rendered;~~

- (4)(3) _____ A list of all ~~physicians and their medical specialties and health care~~medical professionals and their specialties currently providing volunteer services in the clinic;
 - (5)(4) _____ A statement indicating ~~that physicians and health care professionals~~medical professionals delivering services in the clinic are not receiving any financial or other compensation from the ~~clinic and~~clinic and are acting on a voluntary basis;
 - (6)(5) _____ A statement on file that all ~~professional health care providers~~medical professionals providing services in the clinic have a current professional license or are students under supervision of a person who is licensed in the health care profession for which the student is seeking a degree, a license, or a certification; and
 - (7)(6) _____ A copy of the clinic's policy for notifying patients that the ~~physician/health care~~medical professional is rendering voluntary ~~medical~~health-care services and that he/she is immune from civil ~~suit~~. This policy must be in language understood by the patient.
- (b) The application must be returned to the Arkansas ~~Department of Health~~. An application meeting the ~~intent of the Act~~requirements of these Rules will be approved for a period not to exceed three years.

302. REGISTRATION PROCESS FOR MEDICAL PROFESSIONALS

- (a) Any medical professional wishing to provide services as a volunteer shall register with the Arkansas Department of Health by providing:
 - (1) A completed application;
 - (2) A statement indicating that the medical professional's intent is to provide free or low-cost services;
 - (3) Verification that the medical professional is not receiving insurance payments for services rendered, if the medical professional is registering as a healthcare professional for the purposes of Ark. Code Ann. §16-6-201;
 - (4) A copy of the medical professional's current professional license, or if a student, a copy of certification the student is currently enrolled in a school/training for which the student is seeking a degree, a license, or a certification;
 - (5) A statement on file that, if the medical professional is a student, the students is under supervision of a person who is licensed in the medical profession for which the student is seeking a degree, a license, or a certification; and
 - (6) A copy of the medical professional's policy for notifying patients that the health care professional is rendering voluntary health care services and that he/she is immune from civil suit. This policy must be in language understood by the patient.
- (b) The application must be returned to the Arkansas Department of Health. An application meeting the intent of Act 276 of 1997 will be approved for a period not to exceed three years.

400. APPLICABILITY OF THE VOLUNTEER HEALTH CARE PROGRAM ACT

401. CONTRACTS TO PROVIDE VOLUNTEER HEALTH SERVICES

- (a) A healthcare provider or medical professional may enter into a contract with the Department of Health or governmental contractor to deliver volunteer health services to eligible low-income patients.
- (b) A healthcare provider or medical professional that enters into a contract as described in subdivision (a)(1) of this section shall be an agent of the state with sovereign immunity while the healthcare provider or medical professional is acting within the scope of duties under the contract as described in this section.
- (c) A governmental contractor that is also a healthcare provider is not required to enter into a contract under this subchapter with respect to the healthcare services delivered by employees of the governmental contractor.
- (d) The contract shall:

 - (1) Apply only to volunteer healthcare services delivered by the healthcare provider or medical professional to low-income patients who are eligible to receive healthcare services;
 - (2) Include all employees of the healthcare provider; and,
 - (3) State that:

 - (A) The healthcare provider or medical professional has sovereign immunity and may not be named as a defendant in an action arising due to medical care or treatment provided within the scope of the contract;
 - (B) If a patient treated by the healthcare provider or medical professional is ineligible for services, the healthcare provider or medical professional shall still have sovereign immunity and may not be named as a defendant in an action arising due to medical care or treatment provided;
 - (C) The department or the governmental contractor has the right to:

 - (i) Dismiss or terminate any healthcare provider or medical professional employed under the contract; and
 - (ii) Terminate the contract with a healthcare provider or medical professional with appropriate cause. At least five (5) business days before the termination date of a contract, the department or governmental contractor shall provide the healthcare provider or medical professional with written notice of intent to terminate the contract and reasons for the decision; and
 - (iii) Access the records of any patient served by the healthcare provider or medical professional under the contract.;

402. REPORTING ADVERSE INCIDENTS

- (a) The healthcare provider or medical professional shall report any adverse incidents and information on treatment outcomes to the department or governmental contractor if pertaining to a patient treated under the contract.
- (b) The healthcare provider or medical professional shall also report the adverse incident to the appropriate licensing body to determine whether the adverse incident involves conduct subject to disciplinary action.
- (c) Patient medical records and identifying information contained in the adverse incident report shall be confidential and not subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.;

403. PATIENT SELECTION, REFERRALS, AND EMERGENCY CARE

- (a) The Department, governmental contractor, healthcare provider, or medical provider may make patient selection and initial referrals.
- (b) If emergency care is required, the patient shall be referred within forty-eight (48) hours after the latter of the time when treatment commences or the patient has the mental capacity to consent to treatments.

404. REPORTING TO THE ARKANSAS DEPARTMENT OF HEALTH

- (a) Annually, the healthcare provider or medical professional shall report the following information to the Department:
 - (1) A summary of the efficacy of access and treatment outcomes;
 - (2) Statistics for claims pending and claims paid;
 - (3) The amount of defense and handling costs associated with all claims brought against healthcare providers or medical professionals by the healthcare provider or medical professional working under the Volunteer Healthcare Program;
 - (4) The operation hours of the healthcare provider or medical professional;
 - (5) The number of patient visits by the healthcare provider or medical professional working under the Volunteer Healthcare Program; and
 - (6) The value of healthcare-related goods and services provided by the healthcare provider or medical professional working under the Volunteer Healthcare Program.

405. CONTINUING EDUCATION CREDIT

- (a) A medical professional may fulfill one (1) hour of continuing education credit with the performance of eight (8) hours of volunteer services under the Volunteer Healthcare Program.
- (b) A medical professional shall not obtain more than ~~eight (8)~~ thirty-two (32) hours of credits as described in subsection (a) of this section in a licensing period.

406. NOTICE OF AGENCY RELATIONSHIP

- (a) The healthcare provider or medical professional shall provide written notice to each patient, parent of the patient, or legal guardian of the patient served under a contract described in Section 401.
- (b) The written notice shall:
 - (1) Be acknowledged in writing by the patient, the parent of the patient, or the legal guardian of the patient; and
 - (2) Contain information that:
 - (A) The healthcare provider or medical professional is an agent of the state; and
 - (B) The exclusive remedy for damage or injury suffered as a result of any act or omission by the healthcare provider or medical professional acting within the scope of duties under a contract described in this subchapter is to file a claim in the Arkansas State Claims Commission.
- (c) The healthcare provider or medical professional may comply with the requirements of subdivisions (b)(2)(A) and (b)(2)(B) of this section by posting the notice in a conspicuous place within the place of business of the healthcare provider or medical professional.

407. MALPRACTICE LITIGATION COSTS

- (a) A governmental contractor is responsible for costs and attorney's fees for malpractice litigation arising out of healthcare services delivered under a contract brought to the Arkansas State Claims Commission.

500. REGISTRATION FOR VOLUNTEER SERVICES BY RETIRED PHYSICIANS AND SURGEONS

501. REGISTRATION OF RETIRED PHYSICIANS AND SURGEONS

- (a) Any retired physicians and surgeons wishing to provide Volunteer Healthcare Services shall register with the Arkansas Department of Health by providing:
 - (1) A completed application;
 - (2) A statement indicating the Free or Low-Cost Health Care Clinic where the retired physician will be providing Volunteer Healthcare Services;
 - (3) A statement indicating that the retired physicians and surgeons' intent is to provide free or low-cost services;
 - (4) Verification that the Free or Low-Cost Health Care Clinic is not receiving insurance payments for services rendered;
 - (5) A copy of the medical professional's current professional license; and
 - (6) A copy of the medical professional's policy for notifying patients that the health care professional is rendering voluntary health care services and that he/she is immune from civil suit. This policy must be in language understood by the patient.

(b) The application must be returned to the Arkansas Department of Health. An application meeting the intent of Ark. Code Ann. §17-95-106 will be approved for a period not to exceed three years.

502. IMMUNITY FROM LIABILITY FOR RETIRED PHYSICIANS AND SURGEONS

(a) Retired physicians and surgeons who are licensed to practice medicine by the Arkansas State Medical Board under the laws of the State of Arkansas who render Volunteer Healthcare Services and registered under these Rules shall not be liable for any civil damages for any act or omission resulting from the rendering of such medical services, unless the action or omission was the result of the retired physicians or surgeons' gross negligence or willful misconduct.

(b) The Volunteer Healthcare Services provided by the retired physician or surgeon must be at a Free or Low-Cost Health Care Clinic registered with the Department of Health as provided in these rules.

503. REQUIRED NOTICE TO PERSONS RECEIVING VOLUNTEER HEALTH CARE SERVICES FROM A RETIRED PHYSICIAN OR SURGEON

(a) Any persons who receive Volunteer Healthcare Services at a Free or Low-Cost Health Care Clinic from a retired physician or surgeon must:

(1) Have been fully informed before any treatment by the retired physician or surgeon providing the health care services or by the staff of the healthcare clinic of the immunity from civil suit provisions of this section; and

(2) Have acknowledged that fact in writing on a form approved or designated by the Department of Health.

(b) The board and its members and the department and its agents and employees are exempt and immune from liability for any claims or damages when performing their duties under this section.

600. MISCELLANEOUS PROVISIONS

601. SEVERABILITY

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

602. REPEAL

(a) All rules and parts of rules in conflict herewith are hereby repealed.

CERTIFICATION

This will certify that the foregoing Rules for Volunteer Licensed Health Care Professionals Immunity Act in Arkansas were adopted by the Arkansas Board of Health at a regular session of same held in Little Rock, Arkansas on the _____ day of _____, _____.

Dated at Little Rock, Arkansas this _____ day of _____, _____.

Secretary of Health

NOTICE OF PUBLIC COMMENT PERIOD

The Arkansas Department of Health (ADH) is accepting public comments on the Rules Pertaining to the Arkansas Volunteer Immunity Act for Health Care Professionals and the Arkansas Volunteer Health Care Act from September 4, 2022, to October 4, 2022. The comment period is provided to allow interested parties and the public to provide any comments. The proposed rule revision with a summary of changes can be viewed online at <https://www.healthy.arkansas.gov/proposed-amendment-to-existing-rules> or you may request a copy from our office at 501-661-2574.

Comments on the proposed changes can also be mailed to Arkansas Department of Health, Comments/Slot # 21, 4815 West Markham, Little Rock Arkansas, 72205, or emailed to Jeremy.courtney@arkansas.gov.