AMENDMENT MARK-UP

CHAPTER 5
ARTICLE IX
PRESCRIBING CONTROLLED SUBSTANCES

Section 1- Arkansas optometrist licensed as optometric physician who applies for and possess a DEA number shall:

A. Prescribe schedules III, IV, and V controlled substances only.

B. Administer and prescribe controlled substances for the diagnosis and treatment of diseases and conditions of the eye, lids, and adnexa.

C. Not sell any prescription medication including controlled substances.

D. Be responsible for knowing and abiding by all state and federal regulations pertaining to controlled substances with emphasis on the "Mid-Level Practitioner's Manual", published by the DEA, and all State Board rules and regulations pertaining to controlled substances. Record the names and directions of prescribed controlled substances in the patient's record.

E. A prescriber who has been found by the Arkansas State Board of Optometry to be in violation of a rule or law involving prescription drugs shall be required by the board to register with the Prescription Drug Monitoring Program and access patient information before writing a prescription for an opioid. The board, in its discretion, may remove this requirement after a period of time if the board deems removal of the requirement appropriate.

F. Within the first two (2) years of being granted a license in the state, a prescriber shall obtain a minimum of three (3) hours of prescribing education approved by the Arkansas State Board of Optometry. The education approved by the board under this section shall include:
1. Options for online and in-person programs; and
2. Information on prescribing rules, regulations, and laws that apply to individuals who are licensed in the state.
3. Information and instructions on prescribing controlled substances, record keeping and maintaining safe and professional boundaries.

~~This section shall apply to all prescribers licensed after December 31, 2015.~~

G. A prescriber shall check the information in the Prescription Drug Monitoring Program when prescribing:
1. An opioid from Schedule II through Schedule III for every time prescribing the medication to a patient; and
2. A benzodiazepine medication for the first time prescribing the medication to a patient.

H. A practitioner who fails to access the Prescription Drug Monitoring Program as required is subject to disciplinary action by the Board.

Section 2-

A. Only optometrists certified as optometric physicians, and/or approved by the Board, shall apply for or possess a DEA number to prescribe controlled substances.

B. Optometrists not specifically approved by the Board to prescribe controlled substances:
1. Cannot apply for, obtain or possess a DEA number
2. Cannot prescribe controlled substances without being in violation of State and Federal laws.

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

DEPARTMENT/AGENCY Arkansas State Board of Optometry

DIVISION

DIVISION DIRECTOR Howard Flippin, OD, Executive Director

CONTACT PERSON Kevin M. O'Dwyer, Attorney

ADDRESS 211 S. Spring Street, Little rock AR 72201

PHONE NO. 501-372-4144 **FAX NO.** 501-372-7480 **E-MAIL** kodwyer@htolaw.com

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:

Donna K. Davis
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 5, Article IX, Governing Prescription Drug Monitoring Program

2. What is the subject of the proposed rule? To mandate the use of the Prescription Drug Monitoring Program

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

5. Is this a new rule? Yes ☐ No X
If yes, please provide a brief summary explaining the regulation. _____

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 X 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. §17-90-204 and Act 820 of 2017

7. What is the purpose of this proposed rule? Why is it necessary? To mandate the use of the Prescription Drug Monitoring 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.aroptometry.org

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

Date: November 30, 2017
Time: 1:30 p.m.
Place: 1401 W. Capitol, Suite 445, Little Rock AR 72201

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
November 30, 2017

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
January 1, 2018

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. Proof of publication will be provided after it is received.

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). See attached email.

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 Optometric Association

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas State Board of Optometry

DIVISION

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 Amendment to Chapter 5 Article IX Governing Prescription Drug Monitoring Program

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

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

Current Fiscal Year		**Next Fiscal Year**	
General Revenue	N/A	General Revenue	N/A
Federal Funds		Federal Funds	
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)		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**
$ N/A	$ 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	**Next Fiscal Year**
$ N/A	$ 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 ☐ NoX

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.

SUMMARY

AMENDMENT TO CHAPTER V, ARTICLE IX, Governing Prescribing Controlled Substances.

Act 820 of the 2017 Arkansas State Legislature required the State Optometry Board to amend the Article to include education requirements for prescribing physicians and potential involvement in the Prescription Drug Monitoring Program.