

ARKANSAS REGISTER

Transmittal Sheet

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For Office

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Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Health

Department Center for Health Protection

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Statutory Authority for Promulgating Rules §16-6-201, §20-8-801, et seq., and §17-95-106.

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

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(Must be more than 10 days after filing date.)

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Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

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11/18/22

Contact Person

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Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Laura K. Shue
Signature

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11/18/22

Date

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

Effective: November 28, 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
503.	REQUIRED NOTICE TO PERSONS RECEIVING VOLUNTEER HEALTH CARE SERVICES FROM A RETIRED PHYSICIAN OR SURGEON	10
600.	MISCELLANEOUS PROVISIONS	11
601.	SEVERABILITY	11
602.	REPEAL	11

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 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 assistant, physician assistant, or optometric physician 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(g)(1)-102(g)(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 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 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.

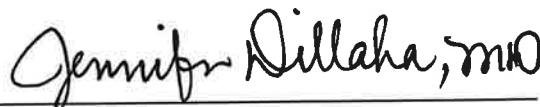
602. REPEAL

- (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 28th day of July, 2022.

Dated at Little Rock, Arkansas this 18th day of November, 2022.



Jennifer Dillaha, MD
Secretary of the Arkansas State Board of Health
Director of the Arkansas Department of Health