

IN THE CIRCUIT COURT OF PULASKI COUNTY  
AT LITTLE ROCK

Representative/Senator-elect DAN SULLIVAN, in his official capacity, Senator BOB BALLINGER, in his official capacity, Senator ALAN CLARK, in his official capacity, Senator TERRY RICE, in his official capacity, Senator GARY STUBBLEFIELD, in his official capacity, Senator KIM HAMMER, in his official capacity, Representative MARY BENTLEY, in her official capacity, Representative STEVEN MEEKS, in his official capacity, Representative JOSH MILLER, in his official capacity, Representative JOHN PAYTON, in his official capacity, Representative MARCUS RICHMOND, in his official capacity, Representative LAURIE RUSHING, in her official capacity, Representative BRANDT SMITH, in his official capacity, Representative RICHARD WOMACK, in his official capacity, Representative HARLAN BREAUX, in his official capacity, Representative BRUCE COZART, in his official capacity, Representative JUSTIN GONZALEZ, in his official capacity, and Representative NELDA SPEAKS, in her official capacity, and each in their individual capacity as voters, citizens and residents of the State of Arkansas,

and

IRIS STEVENS, Jonesboro, Arkansas,  
JAMES DAVID HAIGLER, Jonesboro, Arkansas  
SCOTT and ANGELA GRAY, Alexander, Arkansas,  
MIKE and STEPHANIE DUKE, Benton, Arkansas, and  
DAVE ELSWICK, Little Rock, Arkansas,  
as voters, citizens and residents of the State of Arkansas,

PETITIONERS

V. CASE NO. \_\_\_\_\_

JOSE ROMERO, MD  
Secretary of the Arkansas Department of Health,  
in his official capacity.

RESPONDENT

PETITION FOR DECLARATORY JUDGMENT

COME NOW, the Petitioners, Arkansas State Legislators, in their official and individual capacities, and private citizens of the State of Arkansas in their individual capacities, and in support of their Petition for Declaratory Judgment filed pursuant to A.C.A. § 16-111-101 *et seq.* and Rule 57 of the Arkansas Rules of Civil Procedure, state and allege as follows:

PARTIES

1. Petitioners who are duly elected public officials and members of the Arkansas General Assembly, acting in their official capacities, whose rights and status as legislators have been infringed by administrative actions of the Director of the Arkansas Department of Health who by issuing directives outside the scope of authority delegated to him under the Arkansas Administrative Procedures Act, in violation of the constitutional doctrine of separation of powers, that significantly interferes with the legislative process and ignores the procedural safeguards of the Arkansas General Assembly in providing legislative oversight over the acts of executive agencies, and whom as legislators individually and collectively have been subjected to institutional injury and who have suffered injury thereby, are seeking declaratory relief that the actions of the Director substantially and unconstitutionally interfere with the legislative process, have a claim or interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not party to these proceedings.

2. Petitioners, who are legislators acting in their individual capacities, business owners and other private citizens, all residents of the State of Arkansas, are persons whose rights, status or other legal relations have been injured as citizens and residents of the State of Arkansas, and are adversely affected by the actions of the Secretary of the Arkansas Department of Health as delegated to him under Emergency Orders of the Governor of the State of Arkansas by issuing directives that have not been subjected to legislative oversight but which have general

applicability to all citizens and residents of the State of Arkansas, including Petitioners, by restricting their freedom of movement and travel, to enjoy and defend life and liberty, freedom to peaceably assembly and to consult for the common good, to protect property, of the free exercise of religion and of other constitutionally recognized rights inherent to them, the rights to be free from illegal acts of the executive branch of their state government being self-evident and whose rights have been violated without due process of law by the issuance of numerous directives applicable to them and all other citizens and residents of the State of Arkansas promulgated by the Arkansas Department of Health to the exclusion from the emergency rulemaking and legislative oversight responsibilities set forth in the Arkansas Administrative Procedures Act of their duly and popularly elected members of the legislature, and whose acts are unconstitutional as applied to them and who have suffered injury thereby, are seeking declaratory relief that, and have a claim or interest which, would be affected by the declaration, and no declaration shall prejudice the rights of persons not party to these proceedings.

3. Respondent is the Director of the Arkansas Department of Health with his office in Little Rock, Arkansas, and this action is brought against him for acts performed in the course of the execution of the official acts of his office.

#### JURISDICTION AND VENUE

4. As a civil action against the Director of the Arkansas State Board of Health brought because of his official acts, venue and jurisdiction are properly brought in this Court pursuant to A.C.A. § 16-60-104.

#### INTRODUCTION

5. On the 11th day of March, 2020, shortly after the outbreak of coronavirus disease 2019 (“COVID-19”) was detected in the State of Arkansas, Governor Asa Hutchinson issued the

first of four (4) successive executive orders declaring that an ongoing state of emergency exists and ordered the Director of the Arkansas State Department of Health to take action to prevent the spread of the disease.

6. Using as the basis for his authority to take that action in the form of agency “directives” placing restrictions and affecting the day-to-day activities of citizens of the State of Arkansas, the Director of the Department of Health has referenced provisions of the Arkansas State Board of Health Rules and Regulations Pertaining to Reportable Disease adopted by the Board on April 26, 2018, effective as of January 1, 2019.

7. On December 21, 2018, in the ordinary course of their legislative oversight function to which they are constitutionally entitled and by statute obligated, the Legislative Council of the Arkansas General Assembly reviewed those same 2019 Rules and Regulations of the Department of Health Pertaining to Reportable Disease.

8. Said Rules, as required by the Arkansas Administrative Procedures Act of the promulgated rules of an executive agency, were based on the best reasonably available scientific evidence at the time they were adopted in April, 2018.

9. The Administrative Procedures Act under Arkansas law provides the procedural safeguard of legislative review of agency rulemaking in order to assure that the extraordinary authority delegated to agencies of the executive branch to promulgate and enforce rules that have force of law conforms to the legislative intent pursuant to which said authority was delegated to them by the Arkansas General Assembly, a co-equal branch of government.

10. The Administrative Procedures Act not only contains procedures for legislative review of rules of general applicability, it also facilitates the promulgation and review of rules

necessary to address an imminent peril to the public health such as the emergence of COVID-19 through the expedited process of emergency rulemaking.

11. Though the 2019 Rules of the Department of Health became effective January 1, 2019, the Governor's March 11, 2020 Executive Order EO 20-03 identified COVID-19 as "a new disease, with more to be learned about how it spreads, the severity of the illness it causes, and to what extent it may spread."

12. Between March 13, 2020 and August 21, 2020, the Director of the Department of Health has issued forty-three (43) such directives without submitting a single one of those directives to the Legislative Council of the General Assembly for legislative review in accordance to the procedural safeguards incorporated in the emergency rulemaking provisions of the Administrative Procedures Act.

13. Since COVID-19 is a new disease, in reviewing the 2019 Rules and Regulations of the Department of Health Pertaining to Reportable Disease in December, 2018, the Legislative Council did not have before it the best reasonably scientific evidence regarding COVID-19 and that subsequently lead the Director of the Department of Health to issue his forty-three (43) directives to respond to COVID-19.

14. The emergence of COVID-19, therefore, required of the Director of the Department of Health to present to the Legislative Council of Arkansas General Assembly amended rules containing the best reasonably obtainable scientific evidence for their review so that said body could consider the need for, consequences of, and possible alternatives to those rules as they would apply to COVID-19 specifically.

15. Having not been presented to and reviewed by the Legislative Council of the General Assembly, the forty-three (43) directives of the Director of the Department of Health issued

between March 13, 2020 and August 21, 2020 and any “directives” of the Director of Health issued since August 21, 2020 or during the pendency of this litigation have not been appropriately promulgated under the emergency rulemaking provisions of the Administrative Procedures Act and are invalid.

### SEPARATION OF POWERS

16. The powers of government of the State of Arkansas are divided into three (3) distinct departments pursuant to Article 4, § 1 of the Arkansas Constitution: the legislative, the executive and the judicial, and none are to exercise any power belonging to another except where expressly directed or permitted.

17. The legislative power of Arkansas state government, i.e. lawmaking, is vested in the General Assembly by Article 5, Section 1 of the Arkansas Constitution.

18. While it is a doctrine of universal application that the functions of the legislature must be exercised by it alone and cannot be delegated, it is equally well settled that the Legislature may delegate to executive officers the power to determine certain facts, or the happening of a certain contingency, on which the operation of a statute is, by its terms, made to depend. *Terrell v. Loomis*, 218 Ark. 296, 235 S.W.2d 961 (1951).

19. Discretionary power may be delegated by the legislature to an executive agency as long as reasonable guidelines are provided. This guidance must include appropriate standards by which the administrative body is to exercise this power. A statute that, in effect, reposes an absolute, unregulated, and undefined discretion in an administrative agency bestows arbitrary power and is an unlawful delegation of legislative authority. *See, Hobbs v. Jones*, 2012 Ark. 293, 412 S.W.2d 844, 852 (2012).

20. Statutes passed by the General Assembly are presumed to be constitutional so, if possible, a statute will not be read as an unconstitutional delegation of legislative authority and not to bestow absolute, unregulated and undefined discretion or arbitrary power.

21. A basic rule of statutory construction is to give effect to the intent of the legislature. Where the language of a statute is plain and unambiguous, [the courts] determine legislative intent from the ordinary meaning of the language used. In considering the meaning of a statute, [courts] construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. [The courts] construe the statute so that no word is left void, superfluous or insignificant, and [courts] give meaning and effect to every word in the statute, if possible. *See, Osborn v. Bryant*, 2009 Ark. 358, 324 S.W.3d 687 (2009).

22. For a statute to avoid being unconstitutionally void for vagueness, it must give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden and it must not be so vague and standardless that it leaves judges free to decide, without any legally fixed standards, what is prohibited and what is not on a case by case basis. *See, Thompson v. Arkansas Social Services*, 282 Ark. 369 669 S.W.2d 878, 881 (1984).

23. It is axiomatic that interpretation of a statute will not be done in a manner that defeats its legislative purpose, nor should a statute be interpreted to lead to an absurd result. *See, City of Rockport v. City of Malvern*, 2010 Ark. 449, 374 S.W.3d 660 (2010).

#### THE ADMINISTRATIVE PROCEDURES ACT

24. The process by which legislative authority is delegated to the executive branch is found in the Administrative Procedures Act (the “A.P.A.”), A.C.A. § 25-15-201 *et seq.*

25. Under ordinary circumstances, and applicable to “all necessary and reasonable rules of a general nature,” the provisions of the Arkansas Administrative Procedures Act (the

“A.P.A.”) apply the first of two different processes for rulemaking and under A.C.A. § 25-15-204(a), the Department is required to give thirty (30) days’ notice of its intended action, publish a public notice of its intended action, afford all interested parties the opportunity to comment, and submit the proposed rule to the Legislative Council of the General Assembly pursuant to A.C.A. § 10-3-309.

26. The express purpose of A.C.A. § 10-3-309 is that while the extraordinary measure is taken to endow an administrative agency with power that is otherwise exclusively a legislative function in deference to its subject matter expertise, the legislature reserves for itself an oversight function since “[i]t is the purpose of this section to establish a method for continuing legislative review and approval of such rules to correct abuses of rulemaking authority or clarify legislative intent with respect to the rulemaking authority granted the administrative boards, commissions, departments, or agencies. A.C.A. § 10-3-309(a)(2)

27. In the case of a health emergency in which the Department of Health may find that “imminent peril to the public health, safety, or welfare” requires adoption of a rule with less than thirty (30) days’ notice, the A.P.A. provides a second, expedited process for emergency rulemaking under A.C.A. § 25-15-204(c)(1) requiring that the agency justify its finding in writing and submit its findings and proposed emergency rule to the Executive Subcommittee of the Legislative Council under A.C.A. § 10-3-309(d)(1), but which rules may be effective for no longer than one hundred twenty (120) days. A.C.A. § 25-15-204(c)(3).

#### THE STATE BOARD OF HEALTH

28. By Act 96 of 1913, codified as A.C.A. § 20-7-101, *et seq.*, the Arkansas General Assembly created the Arkansas State Board of Health (“the Board”) as the governing body of the newly-formed Arkansas Department of Health (“ADH” or “the Department”).



29. To head said Department, the legislature provided in A.C.A. § 20-7-102(a)(17) that one (1) member of the Board shall be the Secretary of the Department of Health (“the Secretary” or “the Director”).

30. As of the date of the filing of this Petition, the Secretary of the Arkansas State Board of Health is Jose Romero, M.D, the Respondent.

31. The power conferred on the State Board of Health is limited to those “necessary and reasonable rules of a general nature” for, *inter alia*, “[t]he protection of the public health and safety.” A.C.A. § 20-7-109(a)(1).

32. A “rule” adopted by an administrative agency of the executive branch is the result of an extraordinary process representing an exception to the legislative function generally reserved to the General Assembly and delegated to administrative agencies under the A.P.A. and is defined as “an agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of an agency and includes, but is not limited to, the amendment or repeal of a prior rule.”

33. Those “reasonable rules of a general nature” are, however, as is any rulemaking authority delegated to an executive agency by the legislature, subject to legislative review and approval by committees of the General Assembly under A.C.A. § 20-7-109(a)(2) requiring that “[a]ll rules promulgated pursuant to this subsection shall be reviewed by the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof.”

34. On April 26, 2018, consistent with the power conferred by the General Assembly appearing in A.C.A. § 20-7-109, and as “general measures for the control of communicable diseases,” the State Board of Health adopted Rules and Regulations Pertaining to Reportable

Disease, to be effective January 1, 2019 (the “2019 Rules”). Listed among the Notifiable Diseases and Conditions to be found in Section V, Paragraph A of those Rules are the Novel Coronaviruses Middle East Respiratory Syndrome (otherwise known as, and hereinafter referred to as “MERS”) and Severe Acute Respiratory Syndrome (otherwise known as and hereinafter referred to as “SARS”), two of a family of RNA viruses, and states as its purpose, “to provide for the prevention and control of communicable diseases and to protect the public health, welfare and safety of the citizens of Arkansas,” said 2019 Rules are attached hereto as **Exhibit A** and incorporated herein by reference.

35. Section VII of the 2019 Rules sets forth the Responsibility of the Director, and includes that “[w]hen the Director has knowledge, or is informed of the existence of a suspected case or outbreak of a communicable disease . . . [t]he Director shall take whatever steps necessary for the investigation and control of the disease.”

36. Section X of the 2019 Rules provides that “the Director shall impose such quarantine restrictions and regulations upon commerce and travel by railway, common carriers, or any other means, and upon all individuals as in his judgment may be necessary to prevent the introduction of communicable diseases into the State, or from one place to another within the State.”

37. On December 21, 2018, the 2019 Rules and Regulations of the State Board of Health were reviewed by the Legislative Council of the General Assembly pursuant to A.C.A. § 10-3-309(c)(1) providing that “[a] state agency shall file a proposed rule with the Legislative Council at least thirty (30) days before the expiration of the period for public comment on the rule under the Arkansas Administrative Procedures Act, § 25-15-201 et seq., or other laws or policies pertaining to the rulemaking authority of that state agency.”

38. While according to the federal Department of Health and Human Services' Center for Disease Control ("CDC"), there have been no reported cases worldwide of SARS since 2004, and outbreaks of MERS since 2012 were limited largely geographically to the Arabian Peninsula.

39. There have been no reported cases of either SARS or MERS in the State of Arkansas.

40. The A.P.A. provides that "[a]n agency shall not adopt, amend, or repeal a rule unless the rule is 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." A.C.A. § 25-15-204(b)(1).

#### THE EMERGENCY SERVICES ACT

41. The Arkansas Emergency Services Act of 1973, A.C.A. § 12-75-101 *et seq.*, provides that in the event of the occurrence of "a *major emergency* or a *disaster* of unprecedented size and destructiveness" and in order to ensure that the State of Arkansas will be prepared to deal with "enemy attack, natural or human-caused catastrophes, or riots and civil disturbances," created the Arkansas Department of Emergency Management and also conferred upon the Governor and upon the executive heads of the political subdivisions of the state certain emergency powers.

42. Arkansas statutes define "disaster" in A.C.A. § 12-75-103 as "any tornado, storm, flood, high water, earthquake, drought, fire, radiological incident, air or surface-borne toxic or other hazardous material contamination, or other catastrophe, whether caused by natural forces, enemy attack, or any other means which:

In the determination of the Governor or the Director of the Arkansas Department of Emergency Management or his or her designee is or threatens to be of

sufficient severity and magnitude to warrant state action or to require assistance by the state to supplement the efforts and available resources of local governments and relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby, and with respect to which the chief executive of any political subdivision in which the disaster occurs or threatens to occur certifies the need for state assistance and gives assurance of the local government for alleviating the damage, loss, hardship, or suffering resulting from such disaster; A.C.A. § 12-75-103(2).

43. What situation is to be determined as a “Major emergency” is defined by A.C.A. § 12-75-103(14) as a condition which requires the activation of emergency response at the state or local levels, either in anticipation of a severe disaster such as an imminent enemy attack, potential civil disturbance, forecast major natural or human-caused disaster, or actual onset of conditions requiring the use of such forces which exceed the day-to-day response and activities of such forces and requires the coordinating of a complement of local, state, federal, or volunteer organizations.

#### GOVERNOR HUTCHINSON’S DECLARATION OF EMERGENCY

44. On March 11, 2020, Asa Hutchinson, Governor of the State of Arkansas, citing authority granted him under the Arkansas Emergency Services Act of 1973, A.C.A. § 12-75-101 *et seq.*, rationalized by the detection of COVID-19 within the State of Arkansas, issued Executive Order EO 20-03 to declare that a disaster emergency existed and ordered the Arkansas Department of Health to take action to prevent the spread of COVID-19, said Executive Order EO 20-03 is attached hereto as **Exhibit B** and incorporated herein by reference.

45. At the time Governor Hutchinson issued EO 20-03, the 2019 Rules of the Department of Health had been in effect for over a year and A.C.A. § 20-7-110 was effective law.

46. A triggering mechanism appears in A.C.A. § 20-7-110(b) requiring of the Governor in instances of a health emergency that:

Whenever the health of the citizens of this state is threatened by the prevalence of any epidemic or contagious disease in this or any adjoining state and, in the judgment of the Governor, the public safety demands action on the part of the board, then *the Governor shall call the attention of the board to the facts and order it to take such action as the public safety of the citizens demands to prevent the spread of the epidemic or contagious disease.* [Emphasis added]

47. Executive Order EO 20-03, served as that call to bring the Board’s attention the unique facts of the COVID-19 outbreak, and should have initiated the emergency rulemaking provisions of the Administrative Procedures Act set forth in A.C.A. § 25-15-204(c)(1).

48. In Executive Order EO 20-03, though it is a novel coronavirus of a family of RNA viruses related to SARS and MERS, the Governor noted that “COVID-19 is *a new disease* and there is more to learn about how it spreads, the severity of illness it causes, and to what extent it may spread.” [Emphasis added]

49. In issuing Executive Order EO 20-03, citing A.C.A. § 20-7-110, the Governor also ordered that “[t]he Arkansas Department of Health shall act as the lead agency to work in concert with the Arkansas Division of Emergency Management and other State agencies to utilize state resources and to do “everything reasonably possible” to respond to and recover from the COVID-19 virus.”

50. Bypassing the mandatory legislative oversight provisions of the A.P.A., Executive Order EO 20-03, sought to authorize that “[t]he Secretary of Health may issue orders of isolation and/or quarantine as necessary and appropriate to control the disease in the State of Arkansas, and the Secretary of Health, in consultation with the Governor, shall have the sole authority over all instances of quarantine, isolation, and restrictions in commerce and travel throughout the state,” a clear reference to the language contained in Section X of the 2019 Rules and Regulations of the State Board of Health.

51. The vague delegation of authority to the Director of the Department of Health appearing in EO 20-03, with its reference to authority purportedly granted to him under A.C.A. § 20-7-110(b), cannot harmonize with provisions of the Arkansas constitution providing for separation of powers, since it sought to bestow upon the executive branch blanket authority “to take such action as the public safety of the citizens demands” and “to do everything reasonably possible” without regard to the procedural safeguards incorporated into the emergency rulemaking provisions of the A.P.A. since to do so would be a grant to the Director of absolute, unregulated, and undefined authority and a delegation of arbitrary power.

52. Since, as the Governor noted in EO 20-03, the emergence of COVID-19 represents to medical community a “new disease,” it could not have been anticipated in the 2019 Rules when they were adopted, or, likewise, when they were reviewed by the Legislative Council of the General Assembly and, therefore, said Rules, as they are being used by the Secretary to justify his actions since March 11, 2020, were not based on, nor was the Legislative Council cognizant of, the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning COVID-19 and the need for, consequences of, and alternatives to said Rules.

53. The COVID-19 outbreak, with its heretofore unanticipated drastic health, social and economic consequences, required an amendment to the 2019 Rules that would have apprised the legislature of said consequences, and facilitated, with the determination by the Department of Health that imminent peril to the public health, safety or welfare required the adoption of such an amendment, by the emergency rulemaking, abbreviated notice and hearing provisions of the A.P.A. set forth in A.C.A. § 25-15-204(c)(1) providing for review by the Executive Subcommittee of the Legislative Council under A.C.A. § 10-3-309(d)(1).

54. Though the Director has not issued a single emergency rule in response to COVID-19, by contrast, for the period beginning March 13, 2020 and ending August 14, 2020, the Director has issued forty-three (43) “directives” relating to the COVID-19 outbreak in the State of Arkansas, directives being issued under the premise that they are authorized under the pre-existing, but factually deficient, 2019 Rules regarding reportable diseases.

55. There is no statutory definition of “directive,” nor does the Arkansas Department of Health’s Guide to Administrative Law and Procedure, though it includes a thorough discussion of the ordinary statutory process of rulemaking and emergency rulemaking refer to the issuance of directives by the Director.

#### “DIRECTIVES” ISSUED BY THE SECRETARY

56. The Director has avoided the emergency rulemaking procedures of the A.P.A. in his exercise of authority in response to COVID-19 delegated to him by the Governor in EO 20-03. and all subsequent executive orders, by issuing “directives” under the 2019 Rules that are essentially “rules” as defined by the A.P.A. since they clearly consist of “an agency statements of general application with future effect that implements, interprets, or prescribes law or policy” as it regards COVID-19. A.C.A. §25-15-202(9)(A).

57. Under Arkansas law, there is a distinction made between an agency “directive” and a “rule” in that rules and regulations are “considered to be part of the substantive law of this state, are registered with the Arkansas Secretary of State and open to public inspection while a directive is not adopted by the Board nor registered with the Secretary of State. *See, Orsini v. State*, 340 Ark. 665, 13 S.W.3d 167, 170 (2000).

58. By labeling each of his actions as a “directive” rather than a “rule,” the Director of Health has bypassed the procedural safeguards as are clearly intended by the A.P.A. and has

excluded the Arkansas legislature whatsoever from rulemaking as it relates to COVID-19, are *ultra vires* acts beyond the scope of his rulemaking authority as delegated to him by the General Assembly, and an unconstitutional violation of separation of powers.

59. The Director has issued forty-three (43) such directives of general application and future affect that have affected the legislative process and constitutional rights of Arkansas legislators, Arkansas business owners, and private citizens of the State of Arkansas, all of whom have been subjected to criminal penalties for violation of any one of those said directives, of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisonment not exceeding one (1) month or both, enforceable by any law enforcement officer within the state under A.C.A. § 20-7-101, in the exercise of his “sole authority over all instances of quarantine, isolation and restrictions on commerce and travel throughout Arkansas,” “[b]ased on available scientific evidence” and claimed under A.C.A. § 20-7-109 and 110 and the 2019 Rules. Among those are:

- March 20, 2020 for the closure of K-12 schools, state government offices, dine-in operations at bars and restaurants and of gyms and indoor entertainment venues;
- March 23, 2020 to close for in-person operations, all barbers, body art establishments, massage therapy clinics/spas and medical spas;
- March 26, 2020, subjects “[a]ll public gatherings of any number of people occurring outside a single household to agency directives, and limiting private gatherings occurring outside a single household to no more than ten (10) people in a confined space including community, civic, public leisure, commercial or sporting events, etc.



- April 3, 2020 for the indefinite postponement of elective surgical procedures;
- May 8, 2020 for the limitation of the number of people who can enter a business at any time and for the provision of hygienic and surface disinfectant measures.
- July 18, 2020 by which the Secretary of Health “requires every person in Arkansas” to wear a face covering over the mouth and nose in all indoor environments unless there exists ample space to maintain social distancing of six (6) feet.

60. The Director of the Department of Health, a sole, unelected bureaucrat within the Arkansas Department of Health, has been authorized to impose criminal penalties on citizens of the State of Arkansas, and law enforcement offices within the State of Arkansas have been charged with enforcement of the Director’s directives under A.C.A. § 20-7-101 without due process, though A.C.A. § 20-7-101(a)(1) provides that said criminal penalties apply only to violations or “orders” or “rules” and A.C.A. § 20-7-101(b)(4) states that all “rules” shall have been reviewed by House and Senate committees on Public Health, Welfare, and Labor or other appropriate subcommittee thereof, provisions the Director seeks to avoid by relabeling rules as directives.

61. Having avoided legislative oversight in contravention of the A.P.A., the Director has violated Arkansas law, and, as a result, faces the consequence that each of his “directives” issued since March 13, 2020 are invalid since they were not “adopted and filed in substantial compliance with this section” as set forth in A.C.A. § 25-15-204(h), and that each will have to be resubmitted to the appropriate legislative committees with his findings of imminent peril to the public health, safety, or welfare in writing to the Legislative Council as required by the emergency rulemaking provisions of the A.P.A.

## DURATION OF THE HEALTH EMERGENCY

62. Executive Order EO 20-03 endowed the Director with the power to “do everything reasonably possible to respond to and recover from the COVID-19 virus” but without the oversight provided in the above-mentioned emergency rulemaking provisions of the A.P.A. and does nothing to prevent arbitrary and unrestrained use of the Director’s discretion as it relates to his ability to issue health directives in contravention of the doctrine of separation of powers and limited delegation of legislative authority.

63. There are express time limitations to the delegation of emergency authority of the Governor to be found the Emergency Services Act in that “[n]o state of disaster emergency may continue for longer for sixty (60) days unless renewed by the Governor.” A.C.A. § 12-75-107(b)(2).

64. The Governor’s Executive Order EO 20-03 issued due to the threat of the outbreak of COVID-19 on March 11, 2020 and under the authority granted to him in A.C.A. § 12-75-107(b)(2) would expire in 60 days, unless renewed.

65. Within sixty (60) days of issuing Executive Order EO 20-03, with a finding that “COVID-19 continues to spread throughout the United States and Arkansas,” and “having determined that the public health and disaster emergency resulting from COVID-19 should be renewed beyond the sixty (60) days provided in Ark. Code Ann. § 12-75-107(b)(2),” Governor Hutchinson extended his initial state of emergency declaration for an additional forty-five (45) days by issuing Executive Order EO 20-25, said Executive Order EO 20-25 attached hereto as **Exhibit C** and incorporated herein by reference.

66. On June 18, 2020, although the Arkansas Emergency Services Act provides only for the declaration of a disaster emergency for a period of no longer than 60 days and one extension

that could arguably been for an additional sixty (60) days but the Governor opted for an additional forty-five (45) days and that would have expired on June 19, 2020, Governor Hutchinson, unauthorized by the language of A.C.A. § 12-75-107 and in an *ultra vires* act clearly inconsistent with the intent of the Arkansas General Assembly, issued Executive Order EO 20-37 announcing that “the emergency declared pursuant to Executive Order 20-03, and its amendments shall be terminated, and the public health and disaster emergency and declaration of the State of Arkansas as a disaster area resulting from the state-wide impact of COVID-19 shall be declared anew. This emergency shall become effective upon signing of this order, and shall expire in sixty (60) days, unless it is renewed in whole or in part by a subsequent executive order,” said Executive Order EO 20-37 attached hereto as **Exhibit D** and incorporated herein by reference.

67. On August 14, 2020, by issuing Executive Order EO 20-45, Governor Hutchinson renewed Executive Order 20-37 for an additional sixty (60) days, which if allowed to expire will result in an emergency declaration period of two hundred twenty-five (225) days duration to the exclusion of the Arkansas General Assembly, at which time “the emergency shall expire after sixty (60) days unless it is renewed in whole or in part by a subsequent executive order,” said Executive Order EO 20-45 attached hereto as **Exhibit E** and incorporated herein by reference.

68. There is clearly no provision in Emergency Services Act for a second declaration of emergency, neither can such be inferred from legislative intent, nor can there be any plausible legal justification under the auspices of the need for immediate action to the exclusion of the legislative processes and procedural safeguards mandated by the A.P.A., consisting of review by the Legislative Council of the Arkansas General Assembly, for the actions taken by the Director of the Department of Health in response to COVID-19.

69. The stated interpretation to justify the unconstitutional exercise of executive authority as it appears in the language of Executive Order EO 20-45 provides for the ability of the Governor to endow the Director with the ability to issue directives into perpetuity, to the exclusion of the mandated legislative process, representing a clear abuse of rulemaking authority anticipated by A.C.A. § 10-3-309.

70. The Governor's Act of declaring a second emergency, and by declaring an emergency anew, is *ultra vires*, or beyond the scope of the authority granted him in under A.C.A. § 12-75-107 and any action of the Director of the Department of Health taken pursuant to the power delegated to him by the Governor after June 18, 2020 is invalid.

71. Clearly, the intent of the legislature was that "[n]o state of disaster emergency may continue for longer than sixty (60) days unless renewed by the Governor which, if extended for 60 days provides for a total emergency declaration of one hundred twenty (120) days duration.

72. There is no statutory provision allowing for a second emergency declaration addressing the same disaster occurrence following an initial declaration and one extension.

73. Executive Order EO 20-45 also adopts and incorporated a list of previously issued directives of the Department of Health.

74. Section 25-15-204(c)(3) of the A.P.A. provides that an emergency rule "may be effective for no longer than one hundred twenty (120) days, a time period that coincides with the statutory time limitation for emergency declarations under A.C.A. § 12-75-107.

75. The A.P.A., in A.C.A. § 25-15-204(c)(4), further requires that "[i]f, after the expiration of the effective period of an emergency rule, an agency wishes to adopt a successive emergency rule that is identical or substantially similar to the expired emergency rule, the agency

shall not adopt the successive emergency rule earlier than thirty (30) days after the expiration of the emergency rule.”

76. The executive orders have been declared, renewed, declared anew, and renewed again, and the Director has issued his directives related to COVID-19 without regard to the statutory provision that terminates said rules or “directives” after one hundred twenty (120) days or the provision regarding successive emergency rules found in A.C.A. § 25-15-204(c)(4).

77. Every directive issued by the Director is invalid *ab initio* as in violation of the emergency rulemaking provisions of the A.P.A., but, regardless, would be deemed invalid one hundred twenty (120) days after their issuance under any circumstances.

78. The General Assembly is the repository of all powers of sovereignty not reserved by the people or reposed in one of the branches. *Rockefeller v. Hogue*, 244 Ark. 1029, 429 S.W.2d 85, 92 (1968). Likewise, “as is well known, under our system of government the legislature represents the people and as such is the reservoir of all power not relinquished to the Federal Government or prohibited by the State Constitution.” *Hackler v. King*, 233 Ark. 690, 346 S.W.2d 677, 680-81 (1961).

79. There is no repository or reservoir of power reposed in the executive branch such that the Governor could declare a second emergency for the same occurrence without said authority being delegated to him by the Arkansas General Assembly.

80. In executing Executive Order EO 20-37, the Governor again empowered the Director of the Department of Health to impose “such quarantine restrictions and regulations upon commerce and travel . . . and upon all individuals as in his judgment may be necessary to prevent the introduction of communicable diseases into the State, or from one place to another within the State.”

81. The Director has issued five (5) “directives” since June 18, 2020.

82. The authority exercised by the Director of the Department of Health in the form of the forty-three (43) directives issued since March 13, 2020 has been done in violation of the emergency rulemaking provisions of the A.P.A.

83. The five (5) directives issued by the Director since June 18, 2020, issued after the expiration of the Governor’s emergency authority as set forth in the Section 12-75-107 of the Emergency Services Act are invalid, in addition to being issued in the violation of the A.P.A., but as acts that are *ultra vires*.

#### REQUEST FOR DECLARATORY JUDGMENT

84. Plaintiffs hereby restate and incorporate by reference the allegations contained in Paragraph 1 through 83 as if set forth in full herein.

85. The Governor has the statutory authority to declare a disaster emergency pursuant to the Arkansas Emergency Services Act of 1973, A.C.A. § 12-75-101, *et seq.*

86. There did not exist any Rules or Regulations adopted by the Arkansas State Board of Health anticipating the outbreak of COVID-19 or its unforeseen and historically unique medical, social and economic consequences in early 2020 when the Governor issued the first of his Executive Orders to address said outbreak.

87. The 2019 Rules of the Arkansas State Board of Health Pertaining to Reportable Diseases, as that document did not contemplate the 2020 outbreak of COVID-19, are not applicable as they were not 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 as it applies to COVID-19 when it was presented to the Legislative Council on December 21, 2018 and cannot, therefore, and it should be declared, could not have

legitimately been used as the basis by which the Director was authorized to issue his forty-three (43) directive since March 13, 2020 and that are essentially rules of general applicability to all businesses located in, and residents and citizens of, the State of Arkansas issued without the procedural safeguards of oversight by the General Assembly, fully informed and apprised of those needs, consequences and alternatives.

88. The outbreak of COVID-19 in early 2020 necessarily required, and it should be declared, that an amendment to the 2019 Rules of the Department of Health to include the best obtainable scientific evidence if it were be used in reference to COVID-19, and presentation of that evidence made to the Executive Committee of the Legislative Council was so required so that it could perform its legislative oversight function and guard against arbitrary and capricious action of the agency in accordance with the emergency rulemaking provisions of the A.P.A. found in A.C.A. § 25-15-204(c)(1) and A.C.A. § 10-3-309(d)(1).

89. The “directives” issued by the Director of the Department of Health, as “agency statements of general applicability and future effect that implements, interprets, or prescribes law or policy,” are for all legal intents and purposes, and they should be declared, “rules” as defined by the Administrative Procedures Act in A.C.A. § 25-15-202(9)(A).

90. By issuing “directives” without legislative oversight, it should be declared, that the Director has unlawfully bypassed the procedural safeguards of the legislative oversight provisions of the Administrative Procedures Act in violation of the doctrines of separation of powers and of the limited delegated authority to the executive branch, interferes with the legislative process, and represents an abuse of that authority adversely affecting the rights of the Plaintiffs who are duly elected members of the legislative branch of Arkansas government, is

unconstitutional as it applies to them, as legislators attempting to exercise their constitutional authority and who have suffered injury thereby.

91. As being issued not in substantial compliance with the emergency rulemaking provisions of the Administrative Procedures Act, and it should be declared, that the directives issued by the Director of the Arkansas Department of Health since the issuance of the Governor's original Executive Order EO 20-03 on March 11, 2020 are invalid *ab initio* pursuant to A.C.A. § 25-15-204(h) as this Court should declare.

92. The issuance of directives by the Director of the Department of Health outside the scope of the authority specifically delegated to him by the Arkansas General Assembly should be declared to violate Article 4, §§ 1 and 2 of the Arkansas Constitution, and represents the exercise of legislative power by the Department of Health belonging solely to the Arkansas General Assembly not expressly directed or permitted.

93. Executive Order EO 20-37, issued by the Governor as his proclamation that the emergency declared pursuant to Executive Order 20-03 is terminated and the public health and disaster emergency and declaration of the State of Arkansas as a disaster area is declared anew, should be declared invalid as the source of authority by which the Director of the Department of Health issued directive that are without legal effect as being in violation of the intent of the legislature as set forth in Section 12-75-107(b)(2) that no disaster emergency may continue for a period in excess of sixty (60) days unless renewed, in which instance, no longer than one hundred twenty (120) days, which period expired on or about the 11th day of July, 2020.

94. The Governor's Executive Order 20-37, dated the 18th day of June, 2020, represents an *ultra vires* act of the executive, and any actions taken by the Director of the Arkansas Department of Health delegated to him thereby should be declared invalid as in violation of the



emergency rulemaking provisions of the Administrative Procedures Act, a legislative enactment designed to protect the rights of every individual citizen of the State of Arkansas from the arbitrary and capricious actions of unelected government officials and abuses of their rulemaking authority, actions that directly affect the lives and livelihoods of Plaintiffs who are business owners, residents and citizens of the State of Arkansas alike that are unconstitutional as it applies to them as restricting their freedom of movement and travel, to enjoy and defend life and liberty, freedom to peaceably assembly and to consult for the common good, to protect property, of the free exercise of religion and of other constitutionally recognized rights inherent to them, the rights to be free from illegal acts of their government being self-evident, and who have suffered injury thereby, said actions, and any further such actions taken after the filing of this Petition, are likewise illegal and should be declared to be invalid *ab initio* under the provisions of the Arkansas Emergency Services Act and the Administrative Procedures Act.

#### SPEEDY HEARING

95. Pursuant to Rule 57 of the Arkansas Rules of Civil Procedure, the Court may Order a speedy hearing of an action for declaratory judgment and may advance it on the calendar. Plaintiff so requests.

WHEREFORE, Plaintiffs pray for an Order of the Court declaring that the acts of the Director of the Arkansas Department of Health, in issuing “directives” pursuant to the arbitrary powers delegated to him beginning with the Governor’s Emergency Declaration EO 20-03 issued on March 11, 2020, and all executive orders issued thereafter, but that are actually rules as defined by the Administrative Procedures Act but that have not been promulgated by the emergency rulemaking provisions contained therein, are invalid as issued in contravention of procedural safeguards requiring legislative oversight to assure against the possibility of arbitrary

and abusive actions, that Emergency Order EO 20-03, as renewed by EO 20-20, expired on June 19, 2020, and that EO 20-37, issued in violation of the provisions of the Arkansas Emergency Services Act, A.C.A. § 12-75-107(b)(2) as a second emergency declaration is therefore invalid as an *ultra vires* act outside the authority vested in the executive branch by the Emergency Services Act and is therefore without legal effect to authorize the Director to act thereby, the Plaintiffs all of whom in their official and individual capacities having then been injured, pray for a speedy hearing on Plaintiffs Petition for Declaratory Judgment pursuant to Rule 57 of the Arkansas Rules of Civil Procedure, and for such other and further relief the Court deems just and proper.

Respectfully submitted,

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# ARKANSAS REGISTER

## Transmittal Sheet Use only for FINAL and EMERGENCY RULES



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For Office Use Only:  
Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Arkansas Department of Health

Department Outbreak Response Section

Contact Catherine Waters, RN, Outbreak Res. Sect. Chief E-mail catherine.waters@arkansas.gov Phone 501-661-2318

Statutory Authority for Promulgating Rules Act 96 of 2013, As Amended; A.C.A. 20-7-101 et seq.

Rule Title: Rules and Regulations Pertaining to Reportable Disease

Intended Effective Date (Check One)		Date
<input type="checkbox"/> Emergency (ACA 25-15-204)	Legal Notice Published .....	<u>09/29--10/01/18</u>
<input type="checkbox"/> 10 Days After Filing (ACA 25-15-204)	Final Date for Public Comment .....	<u>11/01/18</u>
<input checked="" type="checkbox"/> Other <u>01/01/19</u> <small>(Must be more than 10 days after filing date.)</small>	Reviewed by Legislative Council .....	<u>12/21/18</u>
	Adopted by State Agency .....	<u>04/26/18</u>

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)  
Anna Hurst anna.hurst@arkansas.gov 01/18/19  
Contact Person E-mail Address Date

### CERTIFICATION OF AUTHORIZED OFFICER

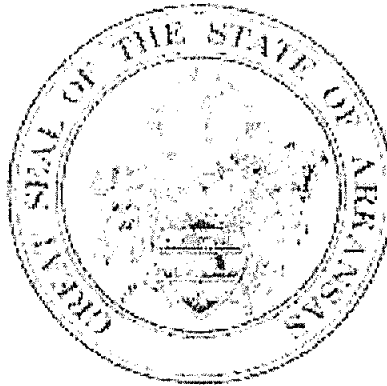
I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Laura K. Shue  
Signature  
501-661-2297 laura.shue@arkansas.gov  
Phone Number E-mail Address  
General Counsel  
Title  
01/18/19  
Date

**FILED**  
**JAN 18 2019**  
**Arkansas**  
**Secretary of State**

Revised 7/2015 to reflect new legislation passed in the 2015 Regular Session (Act 1258). This act changed the effective date from 30 days to 10 days after filing the rule.

**ARKANSAS STATE BOARD OF HEALTH  
RULES AND REGULATIONS  
PERTAINING TO REPORTABLE DISEASE**



**Promulgated Under the Authority of  
Act 96 of 1913, As Amended  
Ark. Code Ann. §§ 20-7-101 et seq.**

**Effective January 1, 2019**

**By the Arkansas State Board of Health**

**Arkansas Department of Health  
Little Rock, Arkansas  
Nathaniel Smith, MD, MPH  
Director and State Health Officer**

**RULES AND REGULATIONS PERTAINING TO REPORTABLE DISEASE**  
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## AUTHORITY

These Rules and Regulations Pertaining to Reportable Disease Control are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the authority expressly conferred by the Laws of the State of Arkansas including, without limitation, Act 96 of 1913 (Ark. Code Ann. § 207-101 et seq.).

## PURPOSE

The purpose of the Rules and Regulations Pertaining to the Control of Reportable Diseases is to provide for the prevention and control of communicable diseases and to protect the public health, welfare and safety of the citizens of Arkansas.

## SECTION I. DEFINITIONS:

- A. **Board** means the Arkansas State Board of Health.
- B. **Complete quarantine** means the limitation of freedom of movement of such well persons or domestic animals as have been exposed to a communicable disease, for a period of time not longer than the longest usual incubation period of the disease, in such manner as to prevent effective contact with those not so exposed.
- C. **Director** means the Director of the Arkansas Department of Health.
- D. **Department** means the Arkansas Department of Health.
- E. **Emergency response employee** means firefighters, law enforcement officers, emergency medical technicians, first responders, and other individuals including employees of volunteer organizations without regard to whether such employees receive compensation who, in the performance of professional duties, respond to emergencies in the State of Arkansas.
- F. **Medical provider** means any hospital, physician, nurse, hospital employee, nursing home, nursing home employee, or other health care provider.
- G. **Modified quarantine** means a selective, partial limitation of freedom of movement of persons or domestic animals, commonly on the basis of known or presumed differences in susceptibility, but sometimes because of danger of disease transmission. It may be designed to meet particular situations. Examples are exclusion of children from school; exemption of immune persons from provisions required of susceptible persons (e.g., contacts acting as food handlers); restriction of military populations to the post or quarters.
- H. **Personal surveillance** means the practice of close medical or other supervision of contacts in order to promote prompt recognition of infection or illness, but without restricting their movements.
- I. **Segregation** means the separation for special consideration, control or observation of some part of a group of persons or domestic animals from the others to facilitate control of a communicable

disease (e.g., removal of susceptible children to homes of immune persons, or establishments of a sanitary boundary to protect uninfected from infected portions of a population.)

## SECTION II. GENERAL MEASURES FOR THE CONTROL OF COMMUNICABLE DISEASES.

The current edition of "Control of Communicable Disease in Man," published by the American Public Health Association, will generally be accepted for applying control measures for communicable diseases.

## SECTION III. RESPONSIBILITY FOR REPORTING.

A. It shall be the duty of every physician, practitioner, nurse; every superintendent or manager of a dispensary, hospital, clinic, nursing or extended care home; any clinical or private laboratory; any person in attendance on a case of any of the diseases or conditions declared notifiable; or the local health department to report the disease or condition to the Department utilizing the Toll Free Disease Reporting System (1-800-482-8888) within twenty-four (24) hours.

B. Any person who determines by laboratory examination that a specimen derived from the human body yields evidence suggestive of a reportable disease shall report, within twenty-four (24) hours, to the Department on the Toll Free Disease Reporting System microscopical, cultural or other evidence of the presence of any of the diseases declared notifiable.

C. It shall be the duty of every superintendent of a public school district or such person(s) he designates, to report immediately to the Department on the Toll Free Disease Reporting System any outbreak of three (3) or more cases of any of the conditions declared notifiable.

## SECTION IV. NOTIFIABLE DISEASES AND CONDITIONS

A. Notifiable diseases and conditions are to be reported to the Department utilizing the Toll Free Disease Reporting System (1-800-482-8888) within 24 hours of diagnosis. Reports should include:

1. The reporter's name, location and phone number.
2. The name of the disease reported and the onset date.
3. The patient's name, address, phone number, age, sex and race. (PLEASE spell the patient's name.)
4. The attending physician's name, location and phone number.
5. Any treatment information, if known.
6. Any pertinent laboratory or other information used in the diagnosis.

B. Additional disease-specific information may be requested. Any person desiring to further discuss reportable diseases may phone the Division of Epidemiology at (501) 537-8969 during normal business hours or 1-800-554-5738 after hours, holidays and weekends.



SECTION V. DISEASES AND CONDITIONS  
A. NOTIFIABLE DISEASES AND CONDITIONS

*Anaplasma phagocytophila*

Anthrax\*\*

Arboviral neuroinvasive and non-neuroinvasive diseases

Babesiosis

*Bacillus cereus* or *Bacillus* species that cannot be ruled out as *B. anthracis* or *B. cereus* *bv anthracis*

Blastomycosis

Botulism\*\* (foodborne, infant, wound, other)

Brucellosis

CD4+ T-Lymphocyte Count

Campylobacteriosis (includes all isolates, not just those outbreak-related or on request)

*Candida Auris* (*Candida haemulonii*)

Carbapenem-resistant Enterobacteriaceae (CRE)

Chagas Disease

Chancroid

Chikungunya

Chlamydial infections

Cholera

*Coccidioides immitis*

Creutzfeld-Jakob Disease

Cryptosporidiosis

Cyclosporiasis

Dengue (Dengue Fever, Dengue Hemorrhagic Fever, Dengue Shock Syndrome)

Diphtheria

Ehrlichiosis

Emerging threat agents

Encephalitis caused by: California serogroup virus, Eastern equine encephalitis virus, Powassan virus, St. Louis encephalitis virus, West Nile virus, Western equine encephalitis virus

Encephalitis, all types

*E. coli* (Shiga toxin producing)  
Food Poisoning, all types  
Giardiasis  
Gonorrhea  
Haemophilus influenzae Invasive Disease  
Hansens Disease (Leprosy)  
Hantavirus Pulmonary Syndrome  
Hemolytic-Uremic Syndrome  
Hepatitis (Type A, B, C, or E)  
Histoplasmosis  
HIV (Human Immunodeficiency Virus)\* (Qualitative, Quantitative, and Genotyping tests included even if no virus is detected)  
Influenza (Indicate viral type if known) all fatal cases regardless of age and hospitalizations  
Legionellosis  
Listeriosis  
Lyme Disease  
Malaria  
Measles (Rubeola)  
Melioidosis  
Meningitis, all types  
Meningococcal Infections\*\*  
Mumps  
Novel Coronavirus (Middle Eastern Respiratory Syndrome or Severe Acute Respiratory Syndrome virus)\*\*  
Novel Influenza A Virus Infections\*\*  
Pertussis (Whooping Cough)  
Plague\*\*  
Poliomyelitis\*\*  
Psittacosis  
Q Fever\*\*  
Rabies, Human and animal

Spotted Fever Rickettsiosis  
Rubella, including congenital infection  
SARS\*\*  
Salmonellosis (Including Typhoid)  
Shigellosis (includes all isolates, not just those outbreak-related or on request)  
Streptococcal Disease, Invasive Group A  
*Streptococcus pneumoniae*, Invasive disease, include antibiotic resistance profile if performed  
Syphilis\*, including congenital infection  
Tetanus  
Toxic Shock Syndrome  
Toxoplasmosis  
Trichinellosis (Trichinosis)  
Tuberculosis  
Tularemia\*\*  
Typhus\*\*  
Vancomycin-intermediate *Staphylococcus aureus* and Vancomycin-resistant *Staphylococcus aureus*  
Varicella (Chickenpox)\_disease or death  
Variola\*\* (Smallpox)  
*Vibriosis* - non cholera sp.  
Viral Hemorrhagic Fevers\*\* (Crimean-Congo, Ebola, Lassa, Lujo, Marburg, New World Arenavirus,  
Guanarito, Junin, Machupo, Sabia)  
West Nile Virus  
Yellow Fever  
*Yersinia enterocolitica*  
Zika

\* Any woman infected with AIDS, HIV or Syphilis, who is pregnant, must be so reported indicating the trimester of pregnancy. This applies each time the woman becomes pregnant.

\*\* These diseases (suspected or confirmed) must be reported immediately to the Arkansas Department of Health. These diseases are of special importance or may indicate a bioterrorism event. If it is a local call or you are in Pulaski County, report to (501) 537-8969 between the hours of 8:00 AM – 4:30 PM. All other suspected or confirmed cases must be reported to (800) 554-5738. This line

is available twenty-four hours a day. Further, any isolates from these organisms must be submitted to the Arkansas Department of Health Laboratory.

Note: "Certain Healthcare Associated Infections (HAIs) are required to be reported to the ADH via the National Healthcare Safety Network. Their omission above should not be interpreted as a release from this reporting requirement."

#### B. REPORTABLE OCCUPATIONAL DISEASES AND OTHER ENVIRONMENTAL EXPOSURES

Asbestosis

Blood Heavy Metal Levels\*

Blood Lead Levels\*\*

Byssinosis

Chemical Exposures, All Types \*\*\*

Clinical Radiation Adverse Event

Pesticide Exposures

Pneumoconiosis (Coal Workers)

Mesothelioma

Silicosis

Suspected Unintentional Radiation Exposure

\* Any elevated blood level of mercury, arsenic, cadmium or other heavy metal

\*\* Blood lead levels over 5 µg/dl for patients 72 months old or younger, and levels over 10 µg/dl for patients ≥ 73 months of age

\*\*\* Includes chemical agents of terrorism

C. REPORT ANY UNUSUAL DISEASES OR OUTBREAKS THAT MAY REQUIRE PUBLIC HEALTH ASSISTANCE. Any unusual disease or outbreak must be reported immediately to the Department. If it is a local call or you are in Pulaski County, report to (501) 537-8969 between the hours of 8:00 AM – 4:30 PM. All other suspected or confirmed cases must be reported to (800) 5545738. This line is available twenty-four hours a day.

D. Clinical samples or isolates containing the disease agents listed in this section must be submitted to the Department laboratory for further identification testing. This may include viral or bacterial isolates or human tissue or blood samples containing the agent. In the case of stool testing, if no isolate containing the live pathogen is available, then the raw stool should be submitted.

*Bacillus cereus* *bv anthracis* or *Bacillus* species that cannot be ruled out as *B. anthracis* or *B. cereus* *bv anthracis*)

Brucellosis

*Campylobacter* sp.

*Candida Auris* (*Candida haemulonii*)

Chemical agents of terrorism

Emerging threat agents

Glanders (*Burkholderia mallei*)

*Haemophilus influenzae*, invasive isolates

*Listeria* sp.

Melioidosis (*Burkholderia pseudomallei*)

*Neisseria meningitidis*

*Salmonella* sp.

Shiga toxin producing *E. coli*;

*Shigella* sp.

Vancomycin resistant *Staphylococcus aureus*

*Vibrio cholerae*

*V. parahaemolyticus*

*V. vulnificus*

#### SECTION VI. OTHER DISEASES.

All outbreaks of diseases on the list (or other emerging diseases not specifically mentioned on the list) should be reported immediately (within 4 hours) via phone to the ADH.

All unusually drug resistant infections should be reported within 24 hours to the ADH.

Other diseases not named in these lists may at any time be declared notifiable as the necessity and public health demand, and these regulations shall apply when so ordered by the Director.

#### SECTION VII. RESPONSIBILITY OF THE DIRECTOR.

When the Director has knowledge, or is informed of the existence of a suspected case or outbreak of a communicable disease:

- A. The Director shall take whatever steps necessary for the investigation and control of the disease.
- B. If the Director finds that the nature of the disease and the circumstances of the case or outbreak warrant such action, the Director shall make, or cause to be made, an examination of the patient in

order to verify the diagnosis, make an investigation to determine the source of the infection, and take appropriate steps to prevent or control spread of the disease.

#### SECTION VIII. CEASE AND DESIST ORDERS.

If the Director has reasonable cause to suspect that any person who is HIV positive is intentionally engaging in conduct that is likely to cause the transmission of the virus, the Director may issue an order to said person to cease and desist such conduct. Failure to comply immediately shall constitute a violation of these rules and regulations. Such violation shall be promptly reported to the prosecuting attorney in the county where the person resides for appropriate action.

#### SECTION IX. ISOLATION.

It shall be the duty of the attending physician, immediately upon discovering a disease requiring isolation, to cause the patient to be isolated pending official action by the Director. Such physician also shall advise other members of the household regarding precautions to be taken to prevent further spread of the disease, and shall inform them as to appropriate, specific, preventive measures. He shall, in addition, furnish the patient's attendant with such detailed instructions regarding the disinfection and disposal of infective secretions and excretions as may be prescribed by the Director of the Arkansas Department of Health.

#### SECTION X. STATE AND LOCAL QUARANTINE

A. The Director shall impose such quarantine restrictions and regulations upon commerce and travel by railway, common carriers, or any other means, and upon all individuals as in his judgment may be necessary to prevent the introduction of communicable disease into the State, or from one place to another within the State.

B. No quarantine regulations of commerce or travel shall be instituted or operated by any place, city, town or county against another place or county in this or in any other State except by authority of the Director.

C. No person shall interfere with any health authority having jurisdiction, or carry or remove from one building to another, or from one locality to another within or without the State, any patient affected with a communicable disease dangerous to the public health except as provided under the rules governing the transportation of same.

#### SECTION XI. TERMINAL DISINFECTION.

Each person released from quarantine or isolation shall take such measures as are required by the Department for that particular disease. The area of isolation shall be disinfected according to the instructions of the Department.

## SECTION XII. IDENTIFICATION OF THE BODY OF A DECEASED PERSON WHO HAS BEEN INFECTED BY A COMMUNICABLE DISEASE

Any physician or any other person who has reason to believe that a deceased person may have been infected by Creutzfeldt-Jakob Disease (CJD) shall immediately after death attach to the large digit of the right foot, a red indicator measuring no less than 3 inches by 5 inches, which clearly states that the patient may have been infected with Creutzfeldt-Jakob Disease (CJD). If the body is wrapped in plastic sheets or other covering material and the toe tag is not visible, a duplicate clearly visible tag shall be applied to the outside covering material.

## SECTION XIII. PROTECTION OF EMERGENCY RESPONSE EMPLOYEES

A. Any emergency response employee who fears that he or she has been exposed to a communicable disease may notify the Department. Upon notification, the Department shall determine if the exposure requires additional investigation. In the event that it is determined that the exposure is one which should not create the risk of transmission of a communicable disease, the emergency response employee shall be so notified. If requested, he or she will be instructed as to additional steps that may be taken to confirm that no exposure to actual disease has occurred. If the Department determines that the exposure was one that could have caused the transmission of a communicable disease, the Department shall immediately contact the treating physician to determine if the patient was infected with a communicable disease. If it is determined that the individual was infected with a communicable disease, the emergency response employee shall be contacted immediately by the Department and counseled concerning the recommended course of action.

B. Any medical provider who has knowledge that an emergency response employee has been exposed to a communicable disease shall notify the Department immediately. The Department shall contact the emergency response employee immediately and provide appropriate counseling concerning the appropriate course of action.

C. Any medical provider who has knowledge that a patient with a communicable disease is being transferred, transported or treated by an emergency response employee shall, prior to said transfer, transportation or treatment notify the emergency response employee of the patient's communicable condition.

## SECTION XIV. EXCLUSION AND READMISSION TO SCHOOL OR CHILD CARE FACILITIES.

It shall be the duty of the principal or other person in charge of any public or private schools, or child care facilities, at the direction of the Department, to exclude therefrom any child, teacher or employee affected with a communicable disease until the individual is certified free of disease, by written notice from a physician, school nurse, public health nurse or the Department.

## SECTION XV. TUBERCULOSIS.

Refer to the Amendment to the Rules and Regulations Pertaining to the Control of Communicable Diseases, Arkansas State Board of Health, filed with the Secretary of State March 10, 1994.

## SECTION XVI. PUBLIC FOOD HANDLERS

No person known to be infected with a communicable disease, or suspected of being infected with a communicable disease, or who has been found to be a carrier of disease-producing organisms, shall engage in the commercial handling of food, or be employed on a dairy or on premises handling milk or milk products, until he is determined by the Department to be free of such disease, or incapable of transmitting the infection.

## SECTION XVII. COMMUNICABLE DISEASES IN DAIRIES

A. When the Department has good cause to believe that a milk supply is suspected to be the source of infection for any one of the communicable diseases known to be transmitted through milk, the Department shall prohibit the use, sale, or disposal of such milk except by a method approved by the Director until such time as he deems it to be safe for human consumption.

B. When a case of Typhoid Fever, Salmonella infection, Brucellosis, Shigellosis, Respiratory Streptococcal infection, Diphtheria, or any other disease capable of being transmitted through milk is confined on the premises where a dairy is maintained, the Department shall prohibit the use, sale or disposal of such milk except by a method approved by the Director until he is satisfied that such is safe for human consumption.

## SECTION XVIII. LABORATORY TESTS FOR THE RELEASE OF CASES OR CARRIERS OF COMMUNICABLE DISEASES

When laboratory tests are required for the release of cases, or carriers, the tests shall be performed by the Public Health Laboratory or by another laboratory approved by the State Epidemiologist. A specimen may be sent to a laboratory not so approved, provided that it is divided and a portion of the specimen is sent to an approved laboratory. Release shall be considered on the basis of the report of the approved laboratory only.

## SECTION XIX. DIPHTHERIA LABORATORY SPECIMENS FOR DIAGNOSIS AND RELEASE

A. Cultures should be obtained separately from the nose and throat by means of sterile swab and test tube as provided by the Department for aid in diagnosis.

B. A case or carrier of Diphtheria shall not be released until two cultures from the throat and two from the nose, taken not less than twenty-four (24) hours apart, fail to show the presence of Diphtheria bacilli. The first of such cultures shall be taken not less than one week from the day of the onset of the disease. A virulence test should be made in any case where positive cultures are reported



three weeks or longer after the onset of the disease or discovery of a carrier. If the organisms are non-virulent, the patient may be released.

## SECTION XX. TYPHOID FEVER

### A. Laboratory Specimens for Diagnosis of Cases and Release

1. Samples of feces and whole blood submitted to the Public Health Laboratory for culture within the first week of the suspected case of Typhoid Fever give the greatest probability of obtaining a positive result insofar as the culture is concerned. Such cultures when positive are the only proof of diagnosis of Typhoid Fever.
2. All patients testing positive for Typhoid Fever should undergo additional testing to determine if they are a carrier. Carrier testing involves submission of successive stool samples at least one month apart until three negative samples are obtained.
3. Patients who have been determined to have Typhoid Fever shall be isolated or excluded for such period as required, and shall be released from isolation and from supervision only by the health authority. If the person is continent and does not work in foodhandling then they do not have to be excluded. If the person is incontinent or a foodhandler then they will be required to be excluded from job duties and followed by the department until they have three negative stool samples at least one month apart and are cleared through the Arkansas Department of Health.

### B. Typhoid Carriers

1. Any person who has recovered from Typhoid Fever and in whose feces or urine Typhoid bacilli are present one year or longer after such recovery shall be declared to be a chronic carrier. Any person who has recently recovered from Typhoid Fever and from whose feces or urine Typhoid organisms are cultured by the Public Health Laboratory during the first year from such recovery shall be considered a convalescent, or temporary carrier, and shall conform to all the Regulations regarding the control of Typhoid carriers. Any person found in the investigation of a case or cases of Typhoid Fever from whose feces or urine Typhoid bacilli are cultured by the Public Health Laboratory shall be declared to be a chronic carrier except that such person be one who has recently recovered from Typhoid Fever.
2. Control of Typhoid Carriers
  - a) The urine and feces of a Typhoid carrier shall be disposed of in such a manner that they will not endanger any public or private water supply, or be accessible to flies.
  - b) No Typhoid carrier shall prepare or handle any food or drink to be consumed by persons other than members of the household with whom he resides.
  - c) No Typhoid carrier shall conduct or be employed in any restaurant, hotel or boarding house, or conduct a lodging house in which, prior to taking lodgers, a separate toilet and bathroom have not been installed for the use solely of the Typhoid

carrier. Said toilet shall be located in a part of the house separate from any part that may be occupied by a lodger.

d) Any person determined to be a Typhoid carrier as defined in these Regulations shall sign an AGREEMENT, to be witnessed by at least two persons. Said AGREEMENT shall read as follows:

#### TYPHOID CARRIER AGREEMENT

*In view of the fact that I have been proven to be a Typhoid carrier, I do solemnly swear to abide by the following regulations as long as I remain a Typhoid carrier, which I understand will probably be for the remainder of my life:*

- 1. Under no circumstances will I handle milk or milk products such as cream, ice cream, butter or cheese, nor any other foodstuffs, nor will I do any cooking of food except for my own individual consumption and for those members of my immediate family who have been immunized against typhoid fever within the past three years.*
- 2. Following each visit to the toilet I will wash my hands thoroughly with soap and water.*
- 3. I will inform the Arkansas Department of Health, Outbreak Response Section, 4815 West Markham Street, Little Rock, Arkansas 72205-3867, in advance of any change in address from that listed below.*

*Signature of Carrier*

*Complete Address of Carrier*

*Signatures and addresses of two witnesses*

*Name Address*

*Name Address*

*Date of Signing*

#### 3. Release of Chronic Typhoid Carriers from Control Restrictions

a) A chronic Typhoid carrier may be released from restrictions only on approval of the Director and only after submitting proof of a minimum of six (6) consecutive negative feces cultures (for urinary carriers, urine cultures) taken at least one (1) month apart and at least ten (10) days after taking any antibiotic, and performed by the Division of Laboratories of the Department. At least two (2) of the specimens must be liquid stools obtained after administration of a cathartic such as magnesium sulfate. At least two (2) of the specimens must be validated by collection under close supervision as having come from the carrier. For fecal carriers, the identity of the specimen may be confirmed by oral administration of a suitable marker material under supervision and finding this material in a specimen. Cultures of duodenal fluid may be substituted for stool cultures, if desired.

- b) A released chronic carrier who wishes to work in a food handling or other occupation from which carriers are excluded must present evidence from a Local Health Department that he has received instruction in methods of food handling and personal hygiene. While employed in such a restricted occupation he must submit evidence of a negative stool (or urine if appropriate) culture and additional food handling instruction every year.

SECTION XXI. SEXUALLY TRANSMITTED DISEASE (SYPHILIS, GONORRHEA, CHLAMYDIA, HIV{HUMAN IMMUNODEFICIENCY VIRUS},\_\_\_\_CHANCROID, LYMPHOGRANULOMA VENEREUM, GRANULOMA INGUINALE) AND OPHTHALMIA NEONATURUM (GONORRHEAL OPHTHALMIA)

A. Testing of pregnant women.

1. Every physician attending a pregnant woman shall take, or cause to be taken, a sample of venous blood at the time of first examination and during the third trimester, ideally at 28 to 32 weeks gestation, and submit such sample to an approved laboratory for a standard serologic test for Syphilis; a standard test for Human Immunodeficiency virus; and a standard test for Hepatitis B. Any person other than a physician permitted by law to attend pregnant women but not permitted by law to take blood samples, shall cause a specimen of blood to be taken by, or under the direction of a physician duly licensed to practice medicine and surgery, and have such specimen submitted to an approved laboratory for testing.
2. Any person reporting a birth or stillbirth shall state on the certificate whether a blood test for Syphilis had been made upon a specimen of blood taken from the woman who bore the child for which a birth or stillbirth certificate is filed and the approximate date when the specimen was taken.

B. Ophthalmia Neonatorum (Gonorrhoea Ophthalmia)

1. Ophthalmia Neonatorum is to be reported to the Epidemiology Program, Arkansas Department of Health, as soon as the disease is suspected.
2. It shall be the duty of the local health authority in whose jurisdiction the case occurs to investigate the case to confirm the diagnosis by bacteriological examination and, if of Gonococcal origin, to determine if the attendant at delivery used prophylactic medication in the eyes of the infant.
3. Due to the nature of the infection and its communicability, and inasmuch as Gonorrhoeal Ophthalmia is amenable to antimicrobial therapy; it shall be the duty of every physician to administer appropriate antimicrobial therapy at once (consistent with the current American Academy of Pediatrics' Report of the Committee on Infectious Diseases (i.e.: The Red Book). It shall be the duty of every midwife attending such cases, or suspected cases, to refer all such cases to a licensed physician for treatment.

- C. It shall be the duty of every physician to report, as soon as diagnosed, every case of sexually transmitted disease on the Confidential Case Report, as provided by the Department, or by utilizing the Toll Free Communicable Disease Reporting System, to the Sexually Transmitted Disease Program, Arkansas Department of Health. Physicians shall report the patient by name, address, age, sex, race and date of birth within twenty-four (24) hours of the diagnosis in case of primary, secondary and congenital Syphilis and Syphilis in pregnant women.
- D. Whenever the Director has reasonable grounds to believe that any person is suffering from Syphilis, Gonorrhea, Chancroid, Chlamydia, HIV (Human Immunodeficiency Virus), Lymphogranuloma Venereum or Granuloma Inguinale in a communicable state, he is authorized to cause such person to be apprehended and detained for the necessary tests and examination, including an approved blood serologic test and other approved laboratory tests, to ascertain the existence of said disease or diseases: provided, that any evidence so acquired shall not be used against such person in any criminal prosecution.
- E. The Director may, when in the exercise of his discretion he believes that the public health requires it, commit any commercial prostitute, or other persons apprehended and examined and found afflicted with said diseases, or either of them who refuses or fails to take treatment adequate for the protection of the public health, to a hospital or other place in the State of Arkansas for such treatment even over the objection of the person so diseased and treated provided the commitment can be done without endangering the life of the patient.
- F. It shall be the duty of a physician on the occasion of the first visit to or by a person suffering from Syphilis, Gonorrhea, Chancroid, Chlamydia, HIV (Human Immunodeficiency Virus), Lymphogranuloma Venereum or Granuloma Inguinale to instruct said person in the precautions to be taken to prevent communication of the disease to others, and to inform him of the necessity of continued uninterrupted treatment until such adequate treatment has been administered.
- G. It shall be the duty of every physician to administer appropriate and adequate treatment to any individual regardless of age, sex, or race whom he has reasonable grounds to believe is suffering from Syphilis, Gonorrhea, Chancroid, Chlamydia, HIV (Human Immunodeficiency Virus), Lymphogranuloma Venereum or Granuloma Inguinale in a communicable state, to render the disease non-communicable to others for the protection of the public health. Likewise, it shall be the duty of every physician to treat, prophylactically or therapeutically, any individual regardless of age, sex or race whom he has reasonable grounds to believe has been exposed to a communicable case of Syphilis, Gonorrhea, Chancroid, Chlamydia, HIV (Human Immunodeficiency Virus), Lymphogranuloma Venereum or Granuloma Inguinale for the protection of the public health. Consent to the provision of medical and surgical care or services by a physician licensed to practice medicine in this State, when executed by a minor who is or believes himself to be afflicted with a sexually transmitted disease, shall be valid and binding as if the minor had achieved his majority.

SECTION XXII. RABIES CONTROL.

Refer to the Rules and Regulations Pertaining to Rabies Control, Arkansas State Board of Health, July 1975, and the Rabies Control Act, Act 11 of 1968 as amended by Act 725 of 1975.

SEVERABILITY

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

REPEAL

All Rules and Regulations and any parts of Rules and Regulations in conflict herewith are hereby repealed.

CERTIFICATION

This will certify that the foregoing Rules and Regulations Pertaining to Reportable Disease Control in Arkansas were adopted by the Arkansas State Board of Health at a regular session of the Board held in Little Rock, Arkansas, on the April 26, 2018, to be effective January 1, 2019.



Nathaniel Smith, MD, MPH  
Secretary  
Arkansas State Board of Health

**STATE OF ARKANSAS**  
**EXECUTIVE DEPARTMENT**

**PROCLAMATION**



TO ALL TO WHOM THESE PRESENTS COME – GREETINGS:

EO 20-03

**EXECUTIVE ORDER TO DECLARE AN EMERGENCY, AS AUTHORIZED BY ARK. CODE ANN. §12-75-114, AND ORDER THE ARKANSAS DEPARTMENT OF HEALTH TO TAKE ACTION TO PREVENT THE SPREAD OF COVID-19, AS AUTHORIZED BY ARK. CODE ANN. §20-7-110.**

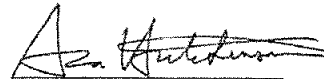
- WHEREAS: An outbreak of coronavirus disease 2019 (COVID-19) has spread throughout China and to 59 other countries and territories, including the United States;
- WHEREAS: COVID-19 has been detected within the State of Arkansas and adjoining states, threatening the public safety of the citizens of Arkansas;
- WHEREAS: COVID-19 is a new disease and there is more to learn about how it spreads, the severity of illness it causes, and to what extent it may spread;
- WHEREAS: The virus is thought to spread mainly from person to person between people who are in close contact with one another, through respiratory droplets produced when an infected person coughs or sneezes: therefore, isolation and quarantine can be necessary and effective public health measures to control the spread of the COVID-19 virus;
- WHEREAS: The Secretary of Health may issue orders of isolation and/or quarantine as necessary and appropriate to control this disease in the State of Arkansas, and the Secretary of Health, in consultation with the Governor, shall have sole authority over all instances of quarantine, isolation, and restrictions on commerce and travel throughout the state;
- WHEREAS: It is essential that our schools and educational institutions remain operational in the most practicable manner possible without jeopardizing public safety;
- WHEREAS: All necessary measures should be implemented to ensure that essential state services remain available to those who depend on them;
- WHEREAS: All necessary measures should be implemented to ensure that citizens maintain access to essential goods and commodities, including, but not limited to, groceries, pharmacy items, household consumables, and fuel; and
- WHEREAS: Spread of COVID-19 is likely to impact drivers of commercial vehicles transporting essential items of commerce during this emergency, including but not limited to, groceries, pharmacy items, medical equipment, goods, commodities, fuel, poultry, and livestock. 49 C.F.R. Section 390.23 authorizes a state governor to declare a regional emergency during the duration of the emergency conditions, not to exceed thirty (30) days from the date of the initial declaration of emergency, and to exempt any motor carrier or driver operating a commercial motor vehicle to provide direct assistance in providing emergency relief during an emergency from Parts 390 through 399 of Chapter 49, Code of Federal Regulations.
- NOW, THEREFORE, I, Asa Hutchinson, Governor of the State of Arkansas, acting under the authority vested in me by Ark. Code Ann. §§ 12-75-101, *et seq.*, and § 20-7-110, after consultation with the Secretary of Health, do hereby declare that an emergency exists and order the following:

- (1) The Arkansas Department of Health shall act as the lead agency to work in concert with the Arkansas Division of Emergency Management and other State agencies to utilize state resources and to do everything reasonably possible to respond to and recover from the COVID-19 virus;

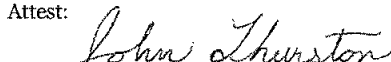
- (2) No quarantine regulations of commerce or travel shall be instituted or operated by any place, city, town or county against another place, city, town, or county in this or in any other state except by authority of the Secretary of Health;
- (3) The Arkansas Department of Education, in consultation with the Arkansas Department of Health, shall provide guidance to local school districts and institutions of higher education to address concerns related to COVID-19 and take all measures necessary to ensure the continuation of education in the State during this emergency. The Secretary of Health, in consultation with the Secretary of Education, shall have sole authority to close public school campuses throughout the state for reasons related to COVID-19;
- (4) All Department Secretaries shall work with the Arkansas Department of Health and Arkansas Division of Emergency Management to ensure that essential state services remain available to those who depend on them;
- (5) Provisions of regulating statutes prescribing procedures for conduct of the State Office of Procurement, the Arkansas Building Authority, the State Office of Personnel Management, and all other State departments and agencies are suspended to render maximum assistance to the Arkansas Department of Health and the Arkansas Department of Emergency Management relative to any potential impediment to the rapid and orderly rendering of assistance during this emergency; and
- (6) A state of emergency exists, and a regional emergency is declared pursuant to 49 C.F.R. Section 390.23, as applied to commercial vehicles transporting essential items of commerce during this emergency, including but not limited to, groceries, pharmacy items, medical equipment, goods, commodities, fuel, poultry, and livestock.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Arkansas to be affixed this 11<sup>th</sup> day of March, in the year of our Lord 2020.



  
Asa Hutchinson, Governor

Attest:

  
JOHN THURSTON, SECRETARY OF STATE

**STATE OF ARKANSAS**  
**EXECUTIVE DEPARTMENT**

**PROCLAMATION**



EO 20-25

TO ALL TO WHOM THESE PRESENTS COME – GREETINGS:

**EXECUTIVE ORDER TO AMEND EXECUTIVE ORDER 20-03 REGARDING THE PUBLIC HEALTH EMERGENCY CONCERNING COVID-19, FOR THE PURPOSE OF RENEWING THE DISASTER AND PUBLIC HEALTH EMERGENCY TO PREVENT THE SPREAD OF AND MITIGATE THE IMPACT OF COVID-19**

WHEREAS: An outbreak of coronavirus disease 2019 (COVID-19) has spread throughout the world resulting in a global pandemic; and

WHEREAS: On March 11, 2020, by Executive Order 20-03, an emergency was declared in the state as a result of COVID-19, and that emergency is on-going; and

WHEREAS: COVID-19 continues to spread throughout the United States and Arkansas; and

WHEREAS: In response to COVID-19, significant measures have been taken by Executive Order and Directives by the Secretary of Health to limit person-to-person contact, restrict gatherings, and suspend businesses that require significant person-to-person interaction; and

WHEREAS: On March 26, 2020, by Executive Order 20-10, amending Executive Order 20-03, I declared the entire State of Arkansas a disaster area in which ingress and egress to and from, the movement of persons within, and the occupancy of premises therein, may be controlled, pursuant to Ark. Code Ann. § 12-75-114(e)(7); and

WHEREAS: Pursuant to Act 96 of 1913, Ark. Code Ann. §§ 20-7-101 et seq., and the rules promulgated therefore, the Secretary of Health has the authority to impose such quarantine restrictions and regulations upon commerce and travel by railway, common carriers or any other means, and upon all individuals as in his judgment may be necessary to prevent the introduction of communicable disease into the State, or from one place to another within the State; and

WHEREAS: I, as Governor, in consultation with the Secretary of Health, have determined that the public health and disaster emergency resulting from COVID-19 should be renewed beyond the sixty (60) days provided for in Ark. Code Ann. § 12-75-107(b)(2); and

WHEREAS: COVID-19 continues to impact drivers of commercial vehicles transporting essential items of commerce during this emergency, including but not limited to, groceries, pharmacy items, medical equipment, goods, commodities, fuel, poultry, and livestock. 49 C.F.R. Section 390.23 authorizes a state governor to declare a regional emergency during the duration of the emergency conditions, not to exceed thirty (30) days from the date of the initial declaration of emergency, and to exempt any motor carrier or driver operating a commercial motor vehicle to provide direct assistance in providing emergency relief during an emergency from Parts 390 through 399 of Chapter 49, Code of Federal Regulations.



NOW, THEREFORE, I, Asa Hutchinson, Governor of the State of Arkansas, acting under the authority vested in me by Ark. Code Ann. §§ 12-75-101, *et seq.*, do hereby amend Executive Order 20-03 declaring an emergency in the State of Arkansas for the purpose of extending the public health and disaster emergency and declaration of the State of Arkansas as a disaster area resulting from the state-wide impact of COVID-19. The emergency and declaration shall be extended for an additional forty-five (45) days from the date of this order.

FURTHERMORE, in conjunction with the directives of the Secretary of Health, I order the following:

- (1) Executive Order 20-03 and all amendments thereto, not specifically superseded by this order or a prior order, shall remain in effect for the duration of the emergency.
- (2) The directives of this order shall supersede the directives of Executive Order 20-13.
- (3) All public and private gatherings of any number of people occurring outside a single household or living unit are subject to the directives of the Secretary of Health.
- (4) All businesses, manufacturers, construction companies, and places of worship shall adhere to social distancing protocols issued by the Secretary of Health.
- (5) All travelers from New York, New Jersey, Connecticut, New Orleans and all international locations shall follow the quarantine directives of the Secretary of Health. These locations are identified due to high numbers of COVID-19 cases at the present time. The Secretary of Health may amend the list of quarantine locations as he deems appropriate.
- (6) K-12 schools and extracurricular activities, including athletic events and practices, will remain closed for on-site instruction until such time as the Governor, Secretary of Education, and Secretary of Health deem appropriate.
- (7) State government employees will continue to conduct business through both remote work and on-site work. On-site government work will be limited to employees that are critical to the necessary function of government during a public health emergency and are required to report to work on site.
- (8) Restaurants may continue takeaway and delivery service, adhering to Alcoholic Beverage Control regulations, and they may resume dine-in operations as of May 11, 2020, pursuant to the directives of the Secretary of Health.
- (9) Clubs and Bars shall remain closed until cleared to open by the Secretary of Health.
- (10) Gyms (including fitness centers/clubs, fitness classes, and group fitness studios) may resume operations as of May 4, 2020, pursuant to the directives of the Secretary of Health.
- (11) Casinos and outdoor and indoor entertainment venues shall remain closed to nonessential functions until cleared to open by the Secretary of Health.
- (12) Barbers, Body Art Establishments, Body Art Schools, Cosmetology Establishments and Massage Therapy Clinics/Spas, and Medical Spas may resume operations as of May 6, 2020, pursuant to the directives of the Secretary of Health.

- (13) The directives of the Arkansas Department of Health issued on March 13, 2020, regarding long term health facilities shall remain in effect for the duration of this order or until the Secretary of Health provides an alternative directive.
- (14) Cities and counties taking reasonable measures to prevent the spread of COVID-19 by imposing curfews and closing city or county owned parks and facilities shall not be interpreted as a quarantine regulation of commerce or travel. Curfews should not prevent citizens of any age from traveling to and from work, acquiring food or essential goods and services, walking pets, or acquiring exercise outdoors while maintaining social distance of at least six (6) feet.
- (15) A state of emergency continues, and a regional emergency is declared pursuant to 49 C.F.R. Section 390.23, as applied to commercial vehicles transporting essential items of commerce during this emergency, including but not limited to, groceries, pharmacy items, medical equipment, goods, commodities, fuel, poultry, and livestock.
- (16) Executive Orders of the Governor issued pursuant Ark. Code Ann. §§ 12-75-101, *et seq.*, have the force and effect of law. Additionally, pursuant to Ark. Code Ann. § 20-7-101, violation of a directive from the Secretary of Health during this public health emergency is a misdemeanor offense, and upon conviction thereof is punishable by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment not exceeding one (1) month, or both. All law enforcement officers within this state shall enforce the directives of this order and those of the Secretary of Health to preserve the health and safety of all Arkansans during this emergency.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Arkansas to be affixed this 5<sup>th</sup> day of May, in the year of our Lord 2020.



Asa Hutchinson, Governor

**STATE OF ARKANSAS**  
**EXECUTIVE DEPARTMENT**

**PROCLAMATION**



EO 20-37

TO ALL TO WHOM THESE PRESENTS COME – GREETINGS:

**EXECUTIVE ORDER TO RENEW THE DISASTER AND PUBLIC HEALTH EMERGENCY TO MITIGATE THE SPREAD AND IMPACT OF COVID-19**

- WHEREAS: An outbreak of coronavirus disease 2019 (COVID-19) has spread throughout the world resulting in a global pandemic; and
- WHEREAS: On March 11, 2020, by Executive Order 20-03, an emergency was declared in the state as a result of COVID-19; and
- WHEREAS: On March 26, 2020, Executive Order 20-10, amending Executive Order 20-03, declared the entire State of Arkansas a disaster area in which ingress and egress to and from, the movement of persons within, and the occupancy of premises therein, may be controlled, pursuant to Ark. Code Ann. § 12-75-114(e)(7); and
- WHEREAS: On May 5, 2020, by Executive Order 20-25, the emergency was extended for forty-five (45) additional days, until June 19, 2020; and
- WHEREAS: COVID-19 continues to spread throughout the United States and Arkansas; and
- WHEREAS: In response to COVID-19, significant measures have been taken by Executive Order and Directives by the Secretary of Health to limit person-to-person contact and provide Arkansans with resources to mitigate the impact of COVID-19; and
- WHEREAS: Pursuant to Act 96 of 1913, Ark. Code Ann. §§ 20-7-101 et seq., and the rules promulgated therefore, the Secretary of Health has the authority to impose such quarantine restrictions and regulations upon commerce and travel by railway, common carriers or any other means, and upon all individuals as in his judgment may be necessary to prevent the introduction of communicable disease into the State, or from one place to another within the State; and
- WHEREAS: I, as Governor, in consultation with the Secretary of Health, have determined that the public health and disaster emergency resulting from COVID-19 should continue to enable the State of Arkansas to use all available resources under the Emergency Services Act to render maximum assistance to the citizens of the State of Arkansas during this pandemic; and
- WHEREAS: Amendments to Executive Order 20-03, and Executive Orders issued pursuant to that emergency regarding the suspension of rules and statutes by state agencies, telehealth, extension of tax deadlines, suspension of in-person witnessing and notarization of legal documents, suspension of prohibitions for banks and corporations to hold shareholder meetings solely or partially by remote communication, authorization for health care professionals to eliminate obstacles to medical care, enabling of workers' compensation due to COVID-19, and the protection for businesses from COVID-19 related liability should continue to have force and effect to provide Arkansans with the tools necessary to protect against the spread and impact of COVID-19; and

WHEREAS: COVID-19 continues to impact drivers of commercial vehicles transporting essential items of commerce during this emergency, including but not limited to, groceries, pharmacy items, medical equipment, goods, commodities, fuel, poultry, and livestock. 49 C.F.R. Section 390.23 authorizes a state governor to declare a regional emergency during the duration of the emergency conditions, not to exceed thirty (30) days from the date of the initial declaration of emergency, and to exempt any motor carrier or driver operating a commercial motor vehicle to provide direct assistance in providing emergency relief during an emergency from Parts 390 through 399 of Chapter 49, Code of Federal Regulations.

NOW, THEREFORE, I, Asa Hutchinson, Governor of the State of Arkansas, acting under the authority vested in me by Ark. Code Ann. §§ 12-75-101, *et seq.* and Ark. Code Ann. § 20-7-110, in consultation with Secretary of Health, do hereby declare that upon the signing of this Executive Order, the emergency declared pursuant to Executive Order 20-03, and its amendments shall be terminated, and the public health and disaster emergency and declaration of the State of Arkansas as a disaster area resulting from the state-wide impact of COVID-19 shall be declared anew. This emergency shall become effective upon signing of this order, and shall expire in sixty (60) days, unless it is renewed in whole or in part by a subsequent executive order.

FURTHERMORE, in conjunction with the directives of the Secretary of Health, I order the following:

- (1) The following executive orders are adopted and incorporated herein, as if set out word for word, and shall remain in effect until the expiration of this order or its renewal:
  - a. Executive Order 20-05, regarding telehealth;
  - b. Executive Order 20-06, extended by Executive Order 20-16, regarding the suspension of rules and statutes by state agencies;
  - c. Executive Order 20-09, regarding the extension of tax deadlines;
  - d. Executive Order 20-14, regarding the suspension of in-person witnessing and notarization of legal documents;
  - e. Executive Order 20-15, regarding suspension of prohibitions for banks and corporations to hold shareholder meetings solely or partially by remote communication;
  - f. Executive Order 20-18 and Executive Order 20-34, regarding access to healthcare resources;
  - g. Executive Order 20-22 and Executive Order 20-35, regarding Workers' Compensation protections; and
  - h. Executive Order 20-33, regarding the protection of businesses from liability related to COVID-19.
- (2) All public and private gatherings of any number of people occurring outside a single household or living unit shall adhere to applicable directives or guidelines issued by the Secretary of Health.
- (3) All businesses, manufacturers, construction companies, long term care facilities, medical and dental providers, community and school-sponsored team sports, and places of worship shall adhere to applicable directives or guidelines issued by the Secretary of Health.

- (4) K-12 schools and extracurricular activities shall adhere to the applicable directives or guidelines of the Secretary of Education or Secretary of Health.
- (5) The Secretary of Health may issue orders of isolation and quarantine as necessary and appropriate to control the spread of COVID-19 in Arkansas, and the Secretary of Health, in consultation with the Governor, shall have sole authority over all instances of quarantine, isolation, and restrictions on commerce and travel throughout the state. Cities and counties shall not impose any restriction of commerce or travel that is more restrictive than a directive or guideline issued by the Secretary of Health, in consultation with the Governor.
- (6) A state of emergency continues and a regional emergency is declared pursuant to 49 C.F.R. Section 390.23, as applied to commercial vehicles transporting essential items of commerce during this emergency, including but not limited to, groceries, pharmacy items, medical equipment, goods, commodities, fuel, poultry, and livestock.
- (7) Executive Orders of the Governor issued pursuant Ark. Code Ann. §§ 12-75-101, *et seq.*, have the force and effect of law. Additionally, pursuant to Ark. Code Ann. § 20-7-101, violation of a directive from the Secretary of Health during this public health emergency is a misdemeanor offense and upon conviction thereof is punishable by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment not exceeding one (1) month or both. All law enforcement officers within this state shall enforce the directives of this order and those of the Secretary of Health to preserve the health and safety of all Arkansans during this emergency.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Arkansas to be affixed this 18<sup>th</sup> day of June, in the year of our Lord 2020.



Asa Hutchinson, Governor

**STATE OF ARKANSAS**  
**EXECUTIVE DEPARTMENT**

**PROCLAMATION**



EO 20-45

TO ALL TO WHOM THESE PRESENTS COME – GREETINGS:

**EXECUTIVE ORDER TO RENEW THE DISASTER AND PUBLIC HEALTH EMERGENCY TO MITIGATE THE SPREAD AND IMPACT OF COVID-19**

- WHEREAS: An outbreak of coronavirus disease 2019 (COVID-19) has spread throughout the world resulting in a global pandemic; and
- WHEREAS: On March 11, 2020, by Executive Order 20-03, an emergency was declared in the State as a result of COVID-19; and
- WHEREAS: On March 26, 2020, Executive Order 20-10, amending Executive Order 20-03, declared the entire State of Arkansas a disaster area, in which ingress and egress, to and from, the movement of persons within and the occupancy of premises therein, may be controlled, pursuant to Ark. Code Ann. § 12-75-114(e)(7); and
- WHEREAS: On May 5, 2020, by Executive Order 20-25, the emergency was extended for forty-five (45) additional days, until June 19, 2020; and
- WHEREAS: On June 18, 2020, by Executive Order 20-37, the emergency declared, pursuant to Executive Order 20-03 and its amendments, was terminated, and the public health and disaster emergency and declaration of the State of Arkansas as a disaster area resulting from the state-wide impact of COVID-19 was declared anew; and
- WHEREAS: The current state of emergency, declared by Executive Order 20-37, expires on August 17, 2020, unless it is renewed by the Governor, pursuant to Ark. Code Ann. § 12-75-107 (b)(2); and
- WHEREAS: COVID-19 continues to spread throughout the United States and Arkansas; and
- WHEREAS: In response to COVID-19, significant measures have been taken by Executive Order and directives by the Secretary of Health to limit person-to-person contact and provide Arkansans with resources to mitigate the impact of COVID-19; and
- WHEREAS: Pursuant to Act 96 of 1913, Ark. Code Ann. §§ 20-7-101 et seq., and the rules promulgated therefore, the Secretary of Health has the authority to impose such quarantine restrictions and regulations upon commerce and travel by railway, common carriers or any other means, and upon all individuals, as in his judgment may be necessary to prevent the introduction of communicable disease into the State or from one place to another within the State; and
- WHEREAS: I, as Governor, in consultation with the Secretary of Health, have determined that the public health and disaster emergency resulting from COVID-19 should be renewed to enable the State of Arkansas to use all available resources under the Emergency Services Act to render maximum assistance to the citizens of the State of Arkansas during this pandemic; and
- WHEREAS: Executive Orders and amendments thereto issued pursuant to the state of emergency declared in Executive Order 20-03 and renewed by Executive Order 20-37 regarding the suspension of rules and statutes by state agencies, telehealth, suspension of in-person witnessing and notarization of legal

documents, suspension of prohibitions for banks and corporations to hold shareholder meetings solely or partially by remote communication, authorization for health care professionals to eliminate obstacles to medical care, enabling of workers' compensation due to COVID-19, the protection for businesses from COVID-19 related liability, the mandate to the Department of Health for a face covering directive, and state and federal elections should continue to have force and effect to provide Arkansans with the tools necessary to protect against the spread and impact of COVID-19; and

WHEREAS: COVID-19 continues to impact drivers of commercial vehicles transporting essential items of commerce during this emergency, including but not limited to, groceries, pharmacy items, medical equipment, goods, commodities, fuel, poultry, and livestock. 49 C.F.R. Section 390.23 authorizes a state governor to declare a regional emergency during the duration of the emergency conditions, not to exceed thirty (30) days from the date of the initial declaration of emergency and to exempt any motor carrier or driver operating a commercial motor vehicle to provide direct assistance in providing emergency relief during an emergency from Parts 390 through 399 of Chapter 49, Code of Federal Regulations.

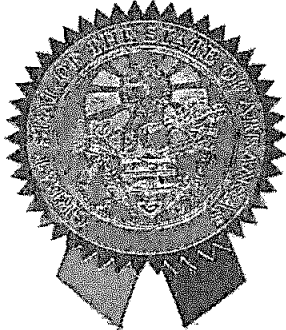
NOW, THEREFORE, I, Asa Hutchinson, Governor of the State of Arkansas, acting under the authority vested in me by Ark. Code Ann. §§ 12-75-101, *et seq.* and Ark. Code Ann. § 20-7-110, in consultation with Secretary of Health, do hereby declare upon the signing of this Executive Order that the emergency declared pursuant to Executive Order 20-37 is renewed, and the public health and disaster emergency and declaration of the State of Arkansas as a disaster area resulting from the state-wide impact of COVID-19 shall continue for an additional sixty (60) days from the signing of this order. The emergency shall expire after sixty (60) days unless it is renewed in whole or in part by a subsequent executive order.

FURTHERMORE, in conjunction with the directives of the Secretary of Health, I order the following:

- (1) The following executive orders are adopted and incorporated herein, as if set out word for word, and shall remain in effect until the expiration of this order or its renewal:
  - a. Executive Order 20-05, regarding telehealth;
  - b. Executive Order 20-06, extended by Executive Order 20-16, regarding the suspension of rules and statutes by state agencies;
  - c. Executive Order 20-14, regarding the suspension of in-person witnessing and notarization of legal documents;
  - d. Executive Order 20-15, regarding suspension of prohibitions for banks and corporations to hold shareholder meetings solely or partially by remote communication;
  - e. Executive Order 20-18 and Executive Order 20-34, regarding access to healthcare resources;
  - f. Executive Order 20-22 and Executive Order 20-35, regarding Workers' Compensation protections;
  - g. Executive Order 20-33, regarding the protection of businesses from liability related to COVID-19;
  - h. Executive Order 20-43 regarding the issuance of a face covering directive by the Arkansas Department of Health; and
  - i. Executive Order 20-44 regarding state and federal elections.

- (2) All public and private gatherings of any number of people occurring outside a single household or living unit shall adhere to applicable directives or guidelines issued by the Secretary of Health.
- (3) All businesses, manufacturers, construction companies, long term care facilities, medical and dental providers, community and school-sponsored team sports, and places of worship shall adhere to applicable directives or guidelines issued by the Secretary of Health.
- (4) K-12 schools and extracurricular activities shall adhere to the applicable directives or guidelines of the Secretary of Education or Secretary of Health.
- (5) The Secretary of Health may issue orders of isolation and quarantine as necessary and appropriate to control the spread of COVID-19 in Arkansas, and the Secretary of Health, in consultation with the Governor, shall have sole authority over all instances of quarantine, isolation, and restrictions on commerce and travel throughout the state. Cities and counties shall not impose any restriction of commerce or travel that is more restrictive than a directive or guideline issued by the Secretary of Health, in consultation with the Governor.
- (6) A state of emergency continues, and a regional emergency is declared pursuant to 49 C.F.R. Section 390.23, as applied to commercial vehicles transporting essential items of commerce during this emergency, including but not limited to, groceries, pharmacy items, medical equipment, goods, commodities, fuel, poultry, and livestock.
- (7) Executive Orders of the Governor issued pursuant Ark. Code Ann. §§ 12-75-101, *et seq.*, have the force and effect of law. Additionally, pursuant to Ark. Code Ann. § 20-7-101, violation of a directive from the Secretary of Health during this public health emergency is a misdemeanor offense, and upon conviction thereof is punishable by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment not exceeding one (1) month, or both. All law enforcement officers within this State shall enforce the directives of this order and those of the Secretary of Health to preserve the health and safety of all Arkansans during this emergency.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Arkansas to be affixed this 14<sup>th</sup> day of August, in the year of our Lord 2020.



Asa Hutchinson, Governor