

Agency # 007.05

Rules and Regulations for Conducting Criminal
History Records Checks for Home Health,
Hospice and Private Care Agencies in Arkansas



ARKANSAS DEPARTMENT OF HEALTH

2010

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SECTION 1 AUTHORITY

These rules and regulations requiring criminal history record checks for employees of home health, hospice, and private care agencies in the State of Arkansas are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the authority expressly conferred by laws of the State of Arkansas in Act 762 of 2009, Ark. Code Ann. § 20-38-101 et seq..

SECTION 2 PURPOSE

The purpose of these sections is to provide direction to home health, hospice and private agencies in the state of Arkansas as it relates to criminal record checks for employees, operators, and applicants.

SECTION 3 DEFINITIONS

1. **Bureau** means the Identification Bureau of the Department of the Arkansas State Police.
2. **Care** means treatment, services, assistance, education, training, instruction, or supervision for which the service provider is compensated either directly or indirectly.
3. **Department** means the Arkansas Department of Health.
4. **Determination** means the determination made by the licensing or certifying agency that a service provider, operator, applicant for employment with, or employee of a service provider is or is not disqualified from licensure, exemption from licensure, certification, any other operating authority, or employment based on the criminal history of the service provider, operator, applicant, or employee;
5. **Employee** means any person who:
 - (A) Has unsupervised access to clients of a service provider except as provided in subsection (C) below; and
 - (B)(1) provides care to clients of a service provider on behalf of, under the supervision of, or by arrangement with the service provider;
 - (2) Is employed by a service provider to provide care to clients of the service provider;
 - (3) Is a temporary employee placed by an employment agency with a service provider to provide care to clients of the service provider; or
 - (4) Resides in an alternative living home in which services are provided to individuals with developmental disabilities.
 - (C) “Employee” does not include a person who:
 - (1) Is a family member of a client receiving care from a service provider;
 - (2) Is a volunteer; or
 - (3) Works in an administrative capacity and does not have unsupervised access to clients of a service provider.
6. **HFS** means Health Facility Services section of the Arkansas Department of Health.
7. **Home Health Agency** means a service as defined by Ark. Code Ann. § 20-10-801 et seq. whether or not the agency has applied for or possesses any license necessary for operation.
8. **Hospice Agency** means a service as defined by Ark. Code Ann. § 20-7-117 whether or not the agency has applied for or possesses a license.
9. **Index** means the database, maintained by the Bureau, of criminal records checks that have been conducted on applicants for employment with and employees of home health

or hospice agencies.

10. **Licensing or certifying agency** means the state agency charged with licensing, exempting from licensure, certifying, or granting other operating authority to a service provider.
11. **National criminal history records check** means a review of national criminal records maintained by the Federal Bureau of Investigation based on fingerprint identification or other positive identification methods.
12. **Operator** means the person signing the application of a service provider for licensure, exemption from licensure, certification, or any other operating authority.
13. **Private Care Agency** means a service as defined in Ark. Code Ann. § 20-10-2201 et seq whether or not the agency has applied for or possesses a license.
14. **Registry records check** means the review of one (1) or more database systems maintained by a state agency that contain information relative to a person's suitability for licensure, certification, exemption from licensure, or any other operating authority to be a service provider or for employment with a service provider to provide care.
15. **Report** means a statement of the criminal history of a service provider, operator, applicant for employment with, or employee of a service provider issued by the Bureau.
16. **Service provider** means any of the following:
 - (A) An Alternative Community Services Waiver Program provider certified by the Division of Developmental Disabilities Services of the Department of Human Services;
 - (B) A child care facility as defined by § 20-78-202;
 - (C) A church-exempt child care facility as recognized under § 20-78-209;
 - (D) An early intervention program provider certified by the Division of Developmental Disabilities Services of the Department of Human Services;
 - (E) An Elder Choices provider certified by the Division of Aging of the Department of Human Services;
 - (F) A home health care service under § 20-10-801;
 - (G) A hospice program under § 20-7-117;
 - (H) A long-term care facility as defined by § 20-10-702; or
 - (I) A nonprofit community program as defined by § 20-48-24 101; and
17. **State criminal history records check** means a review of state criminal records conducted by the Bureau.

SECTION 4 EVIDENCE OF CRIMINAL HISTORY RECORDS CHECKS:

- A. Home Health and Hospice Agencies. All home health and hospice agencies must maintain evidence that criminal history records checks have been completed on all operators, applicants for employment, and employees of the service provider.
- B. Private Care Agencies. Private care agencies must be certified as Elder Choices providers by DHS Division of Aging in order to obtain Arkansas licensure. Private care agencies must therefore maintain evidence that criminal history records checks have been completed on all operators, applicants for employment, and employees. Elder Choices providers are also subject to DHS certification requirements for registry records checks.
- C. A service provider shall maintain on file, subject to inspection by the Arkansas Crime Information Center, the Identification Bureau of the Department of Arkansas State Police, or the licensing or certifying agency evidence that criminal history records checks have been completed on all operators, applicants for employment, and employees of the service provider.
- D. Each home health or hospice agency must have safeguards to ensure the confidentiality of criminal history check records maintained.

SECTION 5 FAILURE TO COMPLY

- A. Home Health and Hospice. Failure to comply with these regulations shall be grounds to deny or revoke a home health or hospice agency's license.
- B. Private Care. Loss of Elder Choices certification shall be grounds to deny or revoke a private care agency's license.

SECTION 6 OPERATORS

- A. Each home health and hospice agency shall obtain a state criminal history records check and a national criminal history records check on each operator no less than one (1) time every five (5) years.
 - 1. For a home health or hospice agency initially applying for licensure, the process will include the following:
 - a. Evidence of a completed application for a criminal history records check on the operator.
 - b. Upon receiving the results of the state criminal history records check and the national criminal history records check, HFS will issue a determination whether the home health or hospice agency is disqualified from licensure.
 - 2. For a home health or hospice agency that is currently licensed but is completing the application for the annual renewal of the agency, the process will include the following:
 - a. Evidence of current completed criminal history records checks or of new applications for criminal history records checks on the operator must be submitted to HFS with the annual renewal application.
 - b. For new criminal history records checks applications, upon receiving results of the state criminal history check and national history check HFS will issue a determination whether the agency may continue licensure based on results of the operator's criminal history records check.

SECTION 7 APPLICANTS, EMPLOYEES, AND TEMPORARY EMPLOYEES

- A. Each home health or hospice applicant or employee must complete a **state criminal history check** unless the applicant or employee is licensed as a professional as described in Section XII below.
- B. A **federal criminal history check** must also be completed if the applicant or employee has not continuously lived in the State of Arkansas for the past five years. The home health or hospice agency will be responsible for verification of this information. Examples of evidence that can be used to verify the above may include, but is not limited to, employment records, payroll check stubs, tax records, rent/house payment records, utility bills, school records, etc.
- C. Temporary employees. If a service provider uses temporary employees to provide care, the service provider shall:
 - (1) Use a contract to detail the requirements for placing temporary employees with the service provider; and
 - (2) Ensure that the contract pertaining to the service provider's use of temporary employees requires the entity providing the temporary employees to comply with the following terms:
 - (a) The entity is responsible for conducting a criminal history records check on each temporary employee under this subchapter before the placement of the temporary employee with the service provider; and
 - (b) The entity shall maintain all documentation regarding criminal history records checks for each temporary employee placed with a service provider and shall provide copies of the documentation to the service provider, which shall be made available to the appropriate licensing or certifying agency upon request.
- D. A service provider shall inform employees that continued employment is contingent on the satisfactory results of criminal history records checks and shall conduct periodic criminal history records checks on all employees no less than one (1) time every five (5) years.
- E. If the licensing or certifying agency determines that an applicant or employee is disqualified from employment based on the criminal history of the applicant or employee, the service provider shall deny employment to the applicant or shall terminate the employment of the employee.

- F. If the licensing or certifying agency issues a determination that an applicant or employee is not disqualified from employment or if there is no criminal history on an applicant or employee, the service provider may employ the applicant or continue the employment of the employee.

SECTION 8 CHALLENGES TO CRIMINAL HISTORY INFORMATION

A person may challenge the completeness or accuracy of his or her criminal history information under § 12-12-1013.

SECTION 9 ASSIGNMENT OF FACILITY IDENTIFICATION NUMBERS

Each home health and hospice facility shall have a facility identification number assigned. Contact the HFS criminal history records program at (501) 661-2201 to obtain an ID number.

SECTION 10 APPLICATIONS

- A. Completed applications for criminal history records checks are submitted by the agency to the Arkansas State Police.
- B. Applications may be completed and mailed or completed online and submitted electronically.
 - 1. Applications by mail.
 - a. Application forms for **state** criminal history records checks are available from HFS. No other applications will be accepted.
 - b. Fingerprint cards for **national** criminal history records checks are available from HFS.
 - c. The application must be completely filled out. The application shall be signed by the subject of the criminal history records check and notarized by a notary public.
 - d. The **original** application with the appropriate fee must be **sent directly to the Arkansas State Police Identification Bureau** at the address provided on the application. A **copy** of the application for a criminal history must be **sent to HFS**.
 - e. If a national history check is required, the completed fingerprint card must accompany the application.
 - 1. Electronic applications. Electronic applications are completed online through the Arkansas State Police website: www.asp.state.ar.us.

SECTION 11 LIST OF DISQUALIFYING OFFENSES

- (1) Criminal attempt, § 5-3-201, criminal complicity, § 5-3-202, criminal solicitation, § 5-3-301, or criminal conspiracy, § 5-3-401;
- (2) Capital murder, § 5-10-101;
- (3) Murder, §§ 5-10-102 and 5-10-103;
- (4) Manslaughter, § 5-10-104;
- (5) Negligent homicide, § 5-10-105;
- (6) Kidnapping, § 5-11-102;
- (7) False imprisonment in the first degree, § 5-11-103;
- (8) Permanent detention or restraint, § 5-11-106;
- (9) Robbery, §§ 5-12-102 and 5-12-103;
- (10) Battery, §§ 5-13-201 and 5-13-202;
- (11) Assault, §§ 5-13-204 and 5-13-206;
- (12) Coercion, § 5-13-208;
- (13) Introduction of controlled substance into body of another person, § 5-13-210;
- (14) Terroristic threatening, § 5-13-301;
- (15) Terroristic act, § 5-13-310;
- (16) Any sexual offense, § 5-14-101 et seq.;
- (17) Voyeurism, § 5-16-102;
- (18) Death threats concerning a school employee or student, § 5-30 17-101;
- (19) Incest, § 5-26-202;
- (20) Domestic battery, § 5-26-303 — § 5-26-306;
- (21) Interference with visitation, § 5-26-501;
- (22) Interference with court-ordered custody, § 5-26-502;
- (23) Endangering the welfare of an incompetent person, §§ 5-27-36 201 and 5-27-202;
- (24) Endangering the welfare of a minor, §§ 5-27-205 and 5-27-206;
- (25) Contributing to the delinquency of a minor, § 5-27-209;
- (26) Contributing to the delinquency of a juvenile, § 5-27-220;
- (27) Permitting abuse of a minor, § 5-27-221;
- (28) Soliciting money or property from incompetents, § 5-27-229;
- (29) Engaging children in sexually explicit conduct for use in visual or print media, § 5-27-303;
- (30) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;
- (31) Transportation of minors for prohibited sexual conduct, §12 5-27-305;
- (32) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;
- (33) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;
- (34) Computer crimes against minors, § 5-27-601 et seq.;
- (35) Adult Felony abuse of an endangered or impaired person, § 5-28-103;
- (36) Theft of property, § 5-36-103;
- (37) Theft of services, § 5-36-104;
- (38) Theft by receiving, § 5-36-106;
- (39) Forgery, § 5-37-201;

- (40) Criminal impersonation, § 5-37-208;
- (41) Financial identity fraud, § 5-37-227;
- (42) Arson, § 5-38-301;
- (43) Burglary, § 5-39-201;
- (44) Breaking or entering, § 5-39-202;
- (45) Resisting arrest, § 5-54-103;
- (46) Felony interference with a law enforcement officer, § 5-54-104;
- (47) Cruelty to animals, § 5-62-101;
- (48) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 - 5-64-501 et seq.;
- (49) Public display of obscenity, § 5-68-205;
- (50) Promoting obscene materials, § 5-68-303;
- (51) Promoting obscene performance, § 5-68-304;
- (52) Obscene performance at a live public show, § 5-68-305;
- (53) Prostitution, § 5-70-102;
- (54) Patronizing a prostitute, § 5-70-103;
- (55) Promotion of prostitution, §§ 5-70-104, 5-70-105, and 5-70-106;
- (56) Stalking, § 5-71-229;
- (57) Criminal use of a prohibited weapon, § 5-73-104;
- (58) Simultaneous possession of drugs and firearms, § 5-74-106; and
- (59) Unlawful discharge of a firearm from a vehicle, § 5-74-107.

SECTION 12 PROFESSIONAL LICENSES EXCLUDED FROM REQUIREMENT

1. **Licensed professional counselors**, as outlined in A.C.A. §17-27-101;
2. **Dentists**, as outlined in A.C.A. §17-82-101;
3. **Nurses**, as outlined in A.C.A. §17-87-101;
4. **Occupational therapists**, as outlined in A.C.A. §17-88-101;
5. **Pharmacists**, as outlined in A.C.A. §17-92-101;
6. **Physical therapists**, as outlined in A.C.A. §17-93-301;
7. **Physicians and surgeons**, as outlined in A.C.A. §17-95-201;
8. **Podiatrists**, as outlined in A.C.A. §17-96-101;
9. **Psychologists and psychological examiners**, as outlined in A.C.A. §17-97-101;
10. **Speech-language pathologists and audiologists**, as outlined in A.C.A. §17-100-101;
12. **Social workers**, as outlined in A.C.A. §17-46-101;

CERTIFICATION

This will certify that the Rules and Regulations for Conducting Criminal Record Checks for Employees and Operators of Home Health, Hospice, and Private Care Agencies in Arkansas were adopted by the State Board of Health of Arkansas at a regular session of said Board held in Little Rock, Arkansas, on the 28th day of January 2010.

Paul Halverson, DrPH, FACHE
Secretary of Arkansas State Board of Health
Director, Arkansas Department of Health

The foregoing Rules and Regulations, copy having been filed in my office, are hereby approved on the _____ day of _____, 2010.

Mike Beebe
Governor