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**JUL 2 2026**  
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To: Members, Arkansas State Board of Health

From: Paula Day, Section Chief  
Health Systems Licensing and Regulation  
Division for Health Protection

Date: October 11, 2025

Subject: To request approval by the State Board of Health of the following proposed amendments to the Rules for Private Care Agencies in Arkansas.

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Authority: Ark. Code § 20-10-2301, et seq.

Relevant Acts: Acts 643, 674, and 853 of 2025

20 CAR § 49-103. Definitions

- Act 674 – revised definition of “contractor” to state “does not receive a Form W-2 (page 2)
- Act 853 – removed certification by DHS DPSQA (page 3)
- Act 853 – added requirement for reimbursement through Arkansas Medicaid Program (page 3)
- Act 674 – removed “independent” as a descriptor for contractor (page 3)

20 CAR § 49-104. Agency location

- Act 853 - removed regional offices language (page 4)

20 CAR § 49-107. Denial, suspension, revocation of license.

- Act 674 – add “contracted individuals” to the same requirement as employee. This is in several areas for this Rule set. (pages 6, 7, & 8)

20 CAR § 49-108. Training

- Act 643 – allows home caregivers that have previously received defined training to not repeat the defined training. (page 7)

Arkansas Department of Health  
4815 West Markham St. • Little Rock, AR 72205

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20 CAR § 49-109. General requirements

- Added requirement for agency to conduct “registry checks” for employees and contracted individuals pursuant to ACA § 20-38-103 (page 9)

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# Proposed Rulemaking

## Rules for Private Care Agencies in Arkansas

Promulgated by:  
Department of Health

### **Title 20. Public Health and Welfare**

#### **Chapter I. Generally, Department of Health**

#### **Subchapter B. Health Facilities**

#### **Part 49. Rules for Private Care Agencies in Arkansas**

#### **Subpart 1. Generally**

#### **20 CAR § 49-101. Preface.**

(a)(1) This part has been prepared for the purpose of establishing a criterion for minimum standards for the licensure of private care agencies providing Medicaid personal care in Arkansas.

(2) By necessity they are of a regulatory nature but are considered to be practical minimal design and operational standards for these agencies.

(b) These standards are:

- (1) Not static; and
- (2) Subject to periodic revisions in the future as new knowledge and changes in home care become apparent.

(c) However, it is expected that agencies will:

- (1) Exceed these minimum requirements; and
- (2) Not be dependent upon future revisions in these standards as a necessary prerequisite for improved services.

(d) Each private care agency has a strong moral responsibility for providing optimum home care and services for the clients it serves.

**DRAFT**

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## **20 CAR § 49-102. Purpose.**

This part is established to ensure high quality care and services for clients in their homes.

## **20 CAR § 49-103. Definitions.**

The following words and terms, when used in this part, shall have the stated meanings unless the context clearly indicates otherwise:

(1) "Administrator" means a person who is an agency employee and is a physician, registered nurse, or an individual with at least one (1) year of supervisory or administrative experience in:

- (A) Home health care; or
- (B) Related health provider programs;

(2) "Aide Service Plan" means written assignments developed and supervised by a qualified supervisor for the tasks to be completed by the aide;

(3) "Client" means eligible recipient of Medicaid services;

(4) "Client note" means a dated, written, or electronic and signed notation by agency personnel of a contact with a client, including:

- (A) A description of services provided; and
- (B) Any changes in circumstances that impact the client's services or welfare;

(5) "Client record" means an accurate account of services:

- (A) Provided for each client; and
- (B) Maintained by the agency;

(6) "Contractor" means an entity or individual providing services for the agency who does not ~~meet the definition of employee~~receive a Form W-2 from the agency;

~~—(7) "Department" means the Division of Health Facility Services of the Department of Health;~~

(8) "Employee" means any individual for whom the agency is required to issue a Form W-2;

(9) "Health" means the condition of being sound in body, mind, and spirit, especially freedom from:

(A) Physical disease; or

(B) Pain;

(10) "Health assessment" means a determination of a patient's physical and mental status performed by medical professionals;

(11) "Personal care services" means assistance in activities of:

(A) Daily living;

(B) Hygiene; or

(C) Grooming;

(12) "Personal care aide" means a person who provides personal care/personal services for a client in their place of residence;

(13) "Place of business" means any office of a private care agency that:

(A) Maintains client records; or

(B) Directs services;

(14) "Private care agency" means a provider that:

(A) Is ~~certified by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services as a provider of home-based and community-based health services~~licensed by the Division of Health Facility Services of the Department of Health as a private care agency;

(B) Furnishes in-home staffing services for personal and attendant care services for which the provider seeks reimbursement through the Arkansas Medicaid Program; and

(C) Retains liability insurance of not less than one million dollars (\$1,000,000) to cover its employees and ~~independent~~ contractors while its employees and ~~independent~~ contractors are engaged in providing personal and attendant care services;

(15) "Quality of services" means competent care that is supported and directed in a planned pattern to achieve:

- (A) Well-being;
- (B) Dignity;
- (C) Comfort; and
- (D) Self-management;

(16) "Residence" means a place where a person resides, including a home, nursing home, residential care facility, or convalescent home for the disabled or aged;

(17) "Supervision" means authoritative procedural guidance by a qualified person, acting within his or her applicable scope of practice, to a function or activity;

(18)(A) "Supervisor" means:

- (i) A licensed nurse; or
- (ii) One who has completed two (2) years of full-time study at an accredited institution of higher education.

(B) An individual who has a high school diploma or GED may substitute one (1) year of full-time employment in a supervisory capacity in a healthcare facility or community-based agency for one (1) year at an institution of higher education;

(19) "Telenursing" means the use of distance technology to:

- (A) Deliver nursing care; and
- (B) Conduct nursing practice; and

(20) "Visit" means a face-to-face meeting:

- (A) In the client's residence; or
- (B) By the use of information technology.

## **20 CAR § 49-104. Agency location.**

A private care agency shall maintain a:

~~————(1) Licensed, fully operational primary office physically located within the state of Arkansas~~ to adequately service the administrative needs of the private care agency and its clients.; and

~~(2) Sufficient number of licensed regional offices to adequately service the administrative needs of the agency and the clients.~~

## **20 CAR § 49-105. Application for license.**

(a) Annual license applications shall be:

(1) On forms prescribed by the Division of Health Facility Services of the Department of Health; and

(2) Effective on a calendar-year basis with an expiration date of December 31.

(b) Each agency shall receive a license for Medicaid personal care.

(c) The agency shall notify the division of any of the following:

(1) Change of name;

(2) Change of location;

(3) Agency closing;

(4) Change in contact information, including:

(A) Correspondence address;

(B) Telephone number;

(C) Email; and

(D) Fax; and

(5) Change of ownership.

(d) **Agency closure.** If a licensed agency closes, it shall:

(1) Notify the division in writing of:

(A) The effective date; and

(B) Plans for transfer of current clients and records; and

(2) Return original license to the division.

## **20 CAR § 49-106. Inspections.**

(a) A review, ~~and/or~~ inspection, or both shall be conducted before the license is issued.

(b) Once the initial inspection is conducted and the agency becomes licensed, periodic inspections shall be conducted no less than every three (3) years.

(c)(1) If the inspection is conducted in order to determine compliance with standards, the agency shall come into compliance within sixty (60) days.

(2) If the agency fails to comply, the Director of Health Facility Services of the Department of Health may propose actions to suspend or revoke the license in accordance with the section relating to license denial, suspension, or revocation.

**20 CAR § 49-107. Denial, suspension, revocation of license.**

(a) A private care agency license may be denied, suspended, or revoked for one or more of the following reasons:

(1) Violation of the provisions of the statute or any of the standards in this part;

(2) Misstatement of a material fact on any documents required to be submitted to the Division of Health Facility Services of the Department of Health or requirements to be maintained by the agency pursuant to this part;

(3) Commission by the agency or its personnel of a false, misleading, or deceptive act or practice;

(4) Materially altering any license issued by the division; and

(5) An intentional or negligent act by the agency, ~~or~~ its employees, or contracted individuals that materially affects the health and safety of a client.

(b) If the Director of Health Facility Services of the Department of Health proposes to deny, suspend, or revoke a license, the director shall:

(1) Notify the agency of the reasons for the proposed action; and

(2)(A) Offer the agency an opportunity for a hearing.

(B) The agency may request a hearing within thirty (30) days after the date the agency receives notice.

(C) The request shall be in writing and submitted to:

Director

Division of Health Facility Services

Department of Health

5800 West Tenth, Suite 400  
Little Rock, Arkansas 72204

(D) A hearing shall be conducted pursuant to the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

(E) If the agency does not request a hearing in writing after receiving notice of the proposed action, the:

(i) Agency is deemed to have waived the opportunity for a hearing;  
and

(ii) Proposed action shall be taken.

(c)(1) The division may suspend or revoke a license to be effective immediately when the health and safety of clients are threatened.

(2)(A) The division shall notify the agency of the emergency action and shall notify the agency of the date of a hearing that shall be within seven (7) days of the effective date of the suspension or revocation.

(B) The hearing shall be conducted pursuant to the Arkansas Administrative Procedure Act.

## **20 CAR § 49-108. Training.**

(a) Training provided to agency employees and contracted individuals shall:

(1) Be approved by the Division of Health Facility Services of the Department of Health;

(2) Include all items listed in the attached Table 1;

(3) Be supervised by a registered nurse;

(4) Be a minimum of forty (40) hours to include classroom and clinical instruction related to the home setting; and

(5) Have written:

(A) Course objectives;

(B) Expected outcomes; and

(C) Method or methods of evaluation.

(b) ~~Unless the agency has been properly authorized by the Division of Higher Education to operate a school, training shall be limited to agency employees. A home caregiver who previously completed the training as described in this section and provides documentation of the completed training shall not be required to repeat the training.~~

## **20 CAR § 49-109. General requirements.**

(a) **Policies and procedures.** The agency shall have written policies including:

(1) **Organizational.**

(A) A description of the structure showing ownership and line of authority down to the client service level;

(B) The services offered;

(C) Hours of operation; and

(D) Criteria for client acceptance and termination;

(2) Orientation of all personnel to the policies and objectives of the agency;

(3) Procedures for all tasks;

(4) **Infection control program.**

(A) That has as its goal the prevention and control of infections and communicable diseases.

(B) Work restrictions for employees and contracted individuals shall be according to Centers for Disease Control and Prevention recommendations.

(C)(i) Measures for prevention of communicable disease outbreaks, especially Mycobacterium tuberculosis (TB).

(ii) All plans for the prevention of transmission of TB shall conform to the most current Centers for Disease Control and Prevention guidelines for preventing the transmission of Mycobacterium tuberculosis in healthcare facilities;

(5)(A) Personnel records shall be maintained for each employee and ~~for~~ contracted individual.

(B) A current personnel record shall include the:

(i) Job description, signed by employee or contracted individual;

- (ii) Qualifications, education, and/or training;
- (iii) Application for employment;
- (iv) Verification of:
  - (a) Licenses;
  - (b) Certifications; and
  - (c) Work history;
- (v) Evidence of orientation and competency for the topics listed in

Table 1; **and**

(vi) Criminal history determination of eligibility for employment; **and**  
(vii) Registry check results for the population type served by the agency, pursuant to Arkansas Code §20-38-103.

(6)(A) An agency-wide quality assurance and improvement program that includes all services for the purpose of monitoring the safety and effectiveness of:

- (i) Services; and
- (ii) Quality of care.

(B) The program will include:

- (i) Client satisfaction surveys;
- (ii) Supervision of services;
- (iii) Results of inspections, surveys, and audits from outside entities;

and

- (iv) Performance improvement projects as applicable; and

**(7) Complaints and incidents.**

(A) Each agency shall keep a record of complaints received.

(B) Documentation shall include the:

- (i) Names of involved individuals;
- (ii) Relationship to the client;
- (iii) Nature of the complaint;
- (iv) Date of incident; and

(v) Action taken to resolve the complaint, including referrals to other

entities.

(b) **Governing board.** A private care agency shall have an organized governing board, consisting of at least one (1) member, which may be the owner, who shall:

- (1) Be legally responsible for maintaining quality client services and establishing policies for the agency;
- (2) Be legally responsible for the conduct of the agency; and
- (3) Establish a mechanism to:
  - (A) Adopt and periodically review:
    - (i) Written bylaws; or
    - (ii) An acceptable equivalent;
  - (B) Approve written policies and procedures related to:
    - (i) Safe, adequate services; and
    - (ii) Operation of the agency;
  - (C) Appoint an administrator and approve a plan for an alternate in the absence of the administrator; and
  - (D) Oversee the management and fiscal affairs of the agency, including approving the agency's annual budget.

(c) **Administrator responsibilities.** The administrator shall:

- (1) Manage the agency's daily ongoing functions;
- (2) Ensure all persons providing services on behalf of the agency:
  - (A) Are qualified; and
  - (B) Receive ongoing education;
- (3) Ensure the accuracy of public information materials and activities;
- (4) Implement and monitor budgeting and accounting systems;
- (5) Implement quality assurance and infection control programs; and
- (6) Conduct an annual review of the changes to the policies and procedures.

(d) **Client rights.**

- (1) The agency shall provide each client or representative with a copy of the bill of rights affirming the client's right to:
  - (A) Be informed of the services:
    - (i) Offered by the agency; and

- (ii) Being provided to the client;
  - (B) Participate in the development of the plan of care and to be informed of the dates and approximate time of service;
  - (C) Receive an explanation of any responsibilities the client may have in the care process;
  - (D) Be informed of:
    - (i) The name of agency; and
    - (ii) How to contact that agency during all hours of operation;
  - (E) Be:
    - (i) Informed of the process for submitting and addressing complaints to the agency; and
    - (ii) Notified of the state home health hotline number;
  - (F) Be informed orally and in writing of any charges:
    - (i) That insurance might not cover; and
    - (ii) For which the client would be responsible;
  - (G) Courteous and respectful treatment, privacy, and freedom from:
    - (i) Abuse; and
    - (ii) Discrimination;
  - (H) Confidential management of client records and information;
  - (I) Access information in the client record upon request;
  - (J) Receive prior notice and an explanation for the reasons of termination, referral, transfer, discontinuance, or change of service; and
  - (K) Control access to the client's home.
- (2) The agency shall provide each client and family with a written list of responsibilities affirming the client's responsibility to:
- (A) Assist in developing and maintaining a safe environment;
  - (B) Treat all agency staff with courtesy and respect;
  - (C) Participate in the development and update of services; and
  - (D) Adhere to the plan of care or services as developed by the agency and to assist in the care as necessary.

**(e) Records and documentation.**

(1) The private care agency shall maintain records of all services provided to clients that are:

- (A) Orderly, intact, legibly written;
- (B) Available and retrievable either:
  - (i) In the agency; or
  - (ii) By electronic means; and
- (C) Suitable for:
  - (i) Photocopying; or
  - (ii) Printing.

(2) Records shall be stored in a manner that:

- (A) Prevents loss or manipulation of information;
- (B) Protects the record from damage; and
- (C) Prevents access by unauthorized persons.

(3) Records shall be retained for a minimum of:

- (A) Five (5) years after discharge of the client; or
- (B) Two (2) years after the age of majority.

(4) Each record shall include:

- (A) Initial assessment performed by a qualified supervisor;
- (B) Plan of care that shall detail the services;
- (C) Aide Service Plan;
- (D) Physician or licensed practitioner orders, if any;
- (E) Records of supervisory visits;
- (F) Date and time service providers are in the home; and
- (G) Tasks completed.

(5) Client notes are to be:

- (A) Written the day the service is rendered; and
- (B) Incorporated into the record no less than every fourteen (14) days.

(6) Provisions shall be made for the records in the event an agency ceases operation.

(f) A written notice of the felony status under Arkansas Code § 5-13-202 of attacking a healthcare worker shall be posted in all public entrances and patient waiting area of the healthcare facility utilizing the digital poster available on the Department of Health website.

(g) A healthcare provider shall not mislead any patient regarding the healthcare provider's licensure status.

## **20 CAR § 49-110. Services.**

(a) **All services.** The agency shall:

(1) Perform an initial evaluation visit and determine the:

(A) Needs and condition of the client;

(B) Services to be provided; and

(C) Personnel to provide the services; and

(2) Develop the Aide Service Plan that shall:

(A) Outline the services;

(B) Determine scope and frequency of visits;

(C) Assign appropriate delegation of services consistent with the Arkansas State Board of Nursing; and

(D)(i) Determine supervision scope and frequency.

(ii) Frequency shall be at least annually.

(b) Personal care services shall be rendered by a person who has completed an approved forty-hour aide training course that meets the requirements set forth in 20 CAR § 49-108, and:

(1) Delegate through the use of an Aide Service Plan;

(2) Each aide shall receive a copy of the Aide Service Plan;

(3) A copy of the Aide Service Plan will be accessible in the home;

(4) The Aide Service Plan shall be individualized and specific;

(5)(A) Aides shall receive a minimum of twelve (12) hours of in-service training per twelve (12) months.

(B) The in-services provided shall address areas that directly relate to the client care aspect of the aide's job; and

(6)(A) The agency is responsible for evaluating the competency of any personal care aide.

(B) At a minimum, the aide shall be observed by a registered nurse performing the skills required to care for a client according to Table 1.

(C) There shall be documentation by the agency to show evidence of this evaluation.

(c) **Services provided by contractors.** A contracted entity or contracted individual conforms to all applicable agency policies, including those described in 20 CAR § 49-109(a).

#### **Appendix A. Table 1 - Rules for Private Care Agencies in Arkansas**

**Link:**

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/329/20CARpt.49Table1.pdf>

State of Arkansas  
95th General Assembly  
Regular Session, 2025

## A Bill

HOUSE BILL 1854

By: Representative Bentley  
By: Senator Flippo

### For An Act To Be Entitled

AN ACT TO EXEMPT A HOME CAREGIVER FROM HOME CAREGIVER  
TRAINING IF HE OR SHE PREVIOUSLY COMPLETED TRAINING;  
AND FOR OTHER PURPOSES.

### Subtitle

TO EXEMPT A HOME CAREGIVER FROM HOME  
CAREGIVER TRAINING IF HE OR SHE  
PREVIOUSLY COMPLETED TRAINING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 20-77-2304 is amended to read as follows:  
20-77-2304. Exemptions.

An individual may provide caregiver services without the training  
required under this subchapter if the person is a:

- (1) Certified Nursing Assistant;
- (2) Licensed practical nurse;
- (3) Parent, grandparent, child, grandchild, or sibling of the  
recipient of the services;
- (4) Physician;
- (5) Registered nurse;
- (6) Service provider who does not receive compensation for his  
or her services;
- (7) Licensed social worker;
- (8) Court-appointed legal guardian of the recipient of the  
caregiver services; ~~or~~
- (9) A direct-care worker providing caregiver services to a



1 participant in any program licensed, certified, or administered by the  
2 Department of Human Services; or

3 (10) A home caregiver who previously completed training under  
4 this subchapter if he or she provides documentation of the completed  
5 training.

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8 **APPROVED: 4/16/25**  
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State of Arkansas

As Engrossed: S4/3/25

95th General Assembly

## A Bill

Regular Session, 2025

HOUSE BILL 1454

By: Representative Bentley

By: Senator Irvin

### For An Act To Be Entitled

AN ACT TO AMEND THE LAWS CONCERNING CRIMINAL HISTORY  
RECORDS CHECKS FOR EMPLOYEES OF SERVICE PROVIDERS; TO  
ALLOW THIRD-PARTY EMPLOYEE EVALUATION SERVICES TO  
PERFORM CRIMINAL HISTORY RECORDS CHECKS; TO INCLUDE  
INDEPENDENT CONTRACTORS; AND FOR OTHER PURPOSES.

### Subtitle

TO AMEND THE LAWS CONCERNING CRIMINAL  
HISTORY RECORDS CHECKS FOR EMPLOYEES OF  
SERVICE PROVIDERS; TO ALLOW THIRD-PARTY  
EMPLOYEE EVALUATION SERVICES TO PERFORM  
CRIMINAL HISTORY RECORDS CHECKS; AND TO  
INCLUDE INDEPENDENT CONTRACTORS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 20-38-101 is amended to read as follows:

20-38-101. Definitions.

As used in this chapter:

(1) "Care" means treatment, services, assistance, education,  
training, instruction, or supervision for which the service provider is  
compensated either directly or indirectly;

(2) "Determination" means the determination made by either the  
licensing or certifying agency or the third-party employee evaluation service  
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



1 based on the criminal history of the service provider, operator, applicant,  
2 or employee;

3 (3)(A) "Employee" means any person who:

4 (i) Has unsupervised access to clients of a service  
5 provider, except as provided in subdivision (3)(B) of this section; and

6 (ii) Meets any of the following criteria:

7 (a) Provides care to clients of a service  
8 provider on behalf of, under the supervision of, or by arrangement with the  
9 service provider;

10 (b) Is employed by a service provider to  
11 provide care to clients of the service provider;

12 (c) Is engaged as an independent contractor to  
13 provide care to clients of a service provider;

14 ~~(e)~~(d) Is a temporary employee placed by an  
15 employment agency with a service provider to provide care to clients of the  
16 service provider; or

17 ~~(d)~~(e) Resides in an alternative living home  
18 in which services are provided to individuals with developmental  
19 disabilities.

20 (B) "Employee" does not include a person who:

21 (i) Is a family member of a client receiving care  
22 from a service provider;

23 (ii) Is a volunteer; or

24 (iii) Works in an administrative capacity and does  
25 not have unsupervised access to clients of a service provider;

26 (4) "Licensing or certifying agency" means the state agency  
27 charged with licensing, exempting from licensure, certifying, or granting  
28 other operating authority to a service provider;

29 (5) "National criminal history records check" means a review of  
30 criminal history records maintained by the Federal Bureau of Investigation  
31 based on fingerprint identification or other positive identification methods;

32 (6) "Operator" means the person signing the application of a  
33 service provider for licensure, exemption from licensure, certification, or  
34 any other operating authority;

35 (7) "Registry records check" means the review of one (1) or more  
36 database systems maintained by a state agency that contain information

1 relative to a person's suitability for licensure, certification, exemption  
2 from licensure, or any other operating authority to be a service provider or  
3 for employment with a service provider to provide care;

4 (8) "Report" means a statement of the criminal history of a  
5 service provider, operator, applicant for employment with, or employee of a  
6 service provider issued by the Identification Bureau of the Division of  
7 Arkansas State Police;

8 (9) "Service provider" means any of the following:

9 (A) An Alternative Community Services Waiver Program  
10 provider certified by the Division of Developmental Disabilities Services;

11 (B) A childcare facility as defined by § 20-78-202;

12 (C) A church-exempt childcare facility as recognized under  
13 § 20-78-209;

14 (D) An early intervention program provider certified by  
15 the Division of Developmental Disabilities Services;

16 (E) A home- and community-based health services provider  
17 certified by the Division of Provider Services and Quality Assurance;

18 (F) A home healthcare service under § 20-10-801;

19 (G) A hospice program under § 20-7-117;

20 (H) A long-term care facility as defined by § 20-10-702;

21 (I) A nonprofit community program as defined by § 20-48-  
22 101;

23 (J) An entity that provides personal care services to  
24 individuals;

25 (K) A long-term care facility under § 20-10-1202; or

26 (L) An entity that provides services to or houses teens  
27 and youths; ~~and~~

28 (10) "State criminal history records check" means a review of  
29 state criminal history records conducted by the Identification Bureau of the  
30 Division of Arkansas State Police; and

31 (11) "Third-party employee evaluation service" means an  
32 independent, third-party service, not associated with either the licensing or  
33 certifying agency or the service provider, authorized or otherwise eligible  
34 under state and federal law to perform national criminal history records  
35 checks and state criminal history records checks in order to provide the  
36 determination of eligibility for employment under this subchapter.

1  
2 SECTION 2. Arkansas Code § 20-38-103(a)(1) and (2), concerning a  
3 service provider informing applicants and employees of service providers that  
4 employment is contingent on a criminal history records check, are amended to  
5 read as follows:

6 (a)(1) Before making an offer of employment or engaging as an  
7 independent contractor, a service provider shall inform an applicant that  
8 employment is contingent on the satisfactory results of criminal history  
9 records checks.

10 (2) If a service provider intends to make an offer of employment  
11 to or contract with an applicant, the service provider shall conduct criminal  
12 history records checks on the applicant under this section.

13  
14 SECTION 3. Arkansas Code § 20-38-103(b), concerning conditionally  
15 employment for applicants and employees of service providers pending a  
16 criminal history records check, is amended to read as follows:

17 (b) After a service provider satisfies the regulatory requirements of  
18 the appropriate licensing or certifying agency governing registry checks of  
19 applicants for employment or engagement in a contract, the service provider  
20 may conditionally employ or contract with an applicant pending receipt of a  
21 determination from the appropriate licensing or certifying agency or from a  
22 third-party employee evaluation service.

23  
24 SECTION 4. Arkansas Code § 20-38-103(c)(2)(B)(iii), concerning  
25 criminal history records checks for temporary employees of service providers,  
26 is amended to read as follows:

27 (iii) Provide copies of the documentation to the  
28 service provider, which shall be made available to the appropriate licensing  
29 or certifying agency or the third-party employee evaluation service upon  
30 request.

31  
32 SECTION 5. Arkansas Code § 20-38-103(d) and (e), concerning criminal  
33 history records checks for applicants and employees of service providers, are  
34 amended to read as follows:

35 (d) A service provider shall inform employees that continued  
36 employment or contractual engagement is contingent on the satisfactory

1 results of criminal history records checks and shall conduct periodic  
2 criminal history records checks on all employees no less than one (1) time  
3 every five (5) years.

4 (e)(1)(A) When a service provider initiates a request for a state  
5 criminal history records check on an applicant for employment or contract  
6 with or an employee of the service provider, the Identification Bureau of the  
7 Division of Arkansas State Police shall issue within twenty-four (24) hours  
8 an electronic report to the licensing or certifying agency.

9 (B) When a licensing or certifying agency submits a  
10 request for a national criminal history records check on an applicant for  
11 employment or contract with or an employee of the service provider, the  
12 Identification Bureau of the Division of Arkansas State Police shall issue a  
13 report to the licensing or certifying agency within ten (10) days after  
14 receipt of the results of the national criminal history records check from  
15 the Federal Bureau of Investigation.

16 (2) After receipt of a report from the Identification Bureau of  
17 the Division of Arkansas State Police, the licensing or certifying agency  
18 shall determine whether the applicant or employee is disqualified from  
19 employment or contract with the service provider based on the criminal  
20 history of the applicant or employee and shall forward its determination to  
21 the service provider.

22 (3)(A)(i) If the licensing or certifying agency or the third-  
23 party employee evaluation service determines that an applicant or employee is  
24 disqualified from employment or engagement in a contract based on the  
25 criminal history of the applicant or employee, the service provider shall  
26 deny employment to the applicant or shall terminate the employment of the  
27 employee.

28 (ii)(a) If the applicant or employee is  
29 disqualified from employment based on the criminal history and the service  
30 provider wants to employ the applicant or continue to employ the employee,  
31 the service provider shall provide written notice to the licensing or  
32 certifying agency or the third-party employee evaluation service of the  
33 person's identity and that the service provider has determined that the  
34 person is not disqualified from employment because the person satisfies the  
35 criteria for a waiver under § 20-38-105(d)(3).

36 (b) After receipt of written acknowledgment

1 from the licensing or certifying agency or the third-party employee  
2 evaluation service that the service provider has determined that the  
3 applicant or employee is not disqualified from employment because the person  
4 satisfies the criteria for a waiver under § 20-38-105(d)(3), the service  
5 provider may employ the applicant or continue the employment of the employee.

6 (B) If the licensing or certifying agency or the  
7 third-party employee evaluation service issues a determination that an  
8 applicant or employee is not disqualified from employment or if there is no  
9 criminal history on an applicant or employee, the service provider may employ  
10 the applicant or continue the employment of the employee.

11  
12 SECTION 6. Arkansas Code § 20-38-105(a), concerning disqualification  
13 from employment with a service provider based on a criminal history records  
14 check, is amended to read as follows:

15 (a)(1) Except as provided in subsection (d) of this section, the  
16 licensing or certifying agency shall issue a determination that a person is  
17 disqualified as a service provider, operator, or from employment or  
18 engagement in a contract as an independent contractor with a service provider  
19 if the person has pleaded guilty or nolo contendere to or has been found  
20 guilty of:

21 (A) Any of the offenses listed in subsection (b) of this  
22 section by any court in the State of Arkansas;

23 (B) Any similar offense by a court in another state; or

24 (C) Any similar offense by a federal court.

25 (2) Except as provided in subsection (d) of this section, a  
26 service provider shall not knowingly employ or contract with a person and the  
27 licensing or certifying agency shall not knowingly contract with, license,  
28 exempt from licensure, certify, or otherwise authorize a person to be a  
29 service provider if the person has pleaded guilty or nolo contendere to or  
30 has been found guilty of:

31 (A) Any of the offenses listed in subsection (b) of this  
32 section by any court in the State of Arkansas;

33 (B) Any similar offense by a court in another state; or

34 (C) Any similar offense by a federal court.

35  
36 SECTION 7. Arkansas Code § 20-38-105(d)(1), concerning offenses that

do not disqualify a person from employment with a service provider based on a criminal history records check, is amended to read as follows:

(d)(1) This section shall not disqualify a person from employment or engagement in a contract with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider if:

(A) The conviction or plea of guilty or nolo contendere was for a misdemeanor offense;

(B) The date of the conviction or plea of guilty or nolo contendere is at least five (5) years from the date of the request for the criminal history records check; and

(C) The person has no criminal convictions or pleas of guilty or nolo contendere of any type or nature during the five-year period preceding the criminal history records check request.

SECTION 8. Arkansas Code § 20-38-105(d)(3), concerning non-disqualifying offenses related to employment with a service provider based on a criminal history records check, is amended to read as follows:

(3) This section does not disqualify a person from employment or engagement in a contract with a service provider if:

(A) The conviction or plea of guilty or nolo contendere was for any of the nonviolent offenses listed below:

(i) Theft by receiving, § 5-36-106;  
(ii) Forgery, § 5-37-201;  
(iii) Financial identity fraud, § 5-37-227;  
(iv) Resisting arrest, § 5-54-103;  
(v) Criminal impersonation in the second degree, § 5-37-208(b);

(vi) Interference with visitation, § 5-26-501;  
(vii) Interference with court-ordered custody, § 5-26-502;

(viii) Prostitution, § 5-70-102; and

(ix) Sexual solicitation, § 5-70-103;

(B) The service provider wants to employ or contract with the person;

(C) The person remains in employment or under contract

1 with the same service provider;

2 (D) The person has completed probation, parole, or post-  
3 release supervision, paid all court-ordered fees or fines, including  
4 restitution, and fully complied with all court orders pertaining to the  
5 conviction or plea;

6 (E) The person will be employed by or contracted with:

7 (i) A long-term care facility licensed by the Office  
8 of Long-Term Care;

9 (ii) An intermediate care or other facility,  
10 developmental day treatment clinic services provider, or group home licensed  
11 or certified by the Division of Developmental Disabilities Services; or

12 (iii) A childcare facility or a church-exempt  
13 childcare facility licensed by the Division of Child Care and Early Childhood  
14 Education;

15 (F) Subsequent to employment, the person does not plead  
16 guilty or nolo contendere to or is found guilty of any offense in subsection  
17 (b) of this section; and

18 (G) The person does not have a true or founded report of  
19 child maltreatment or adult maltreatment in a central registry.

20  
21 SECTION 9. Arkansas Code § 20-38-105(e) and (f), concerning offenses  
22 that do not disqualify a person from employment with a service provider based  
23 on a criminal history records check, are amended to read as follows:

24 (e) A person shall not be disqualified from employment or engagement  
25 in a contract with a service provider or licensure, exemption from licensure,  
26 certification, or other operating authority as a service provider if the  
27 person has been found guilty of or has pleaded guilty or nolo contendere to a  
28 misdemeanor offense not listed in subsection (b) of this section, a similar  
29 misdemeanor offense in another state, or a similar federal misdemeanor  
30 offense.

31 (f) Even if the person would otherwise be disqualified under this  
32 section, a person shall not be disqualified from employment or engagement in  
33 a contract with a service provider or licensure, exemption from licensure,  
34 certification, or other operating authority as a service provider if the  
35 person:

36 (1) Was not disqualified on August 31, 2009; and

1 (2) Since August 31, 2009, has not been found guilty of or  
2 pleaded guilty or nolo contendere to:

3 (A) An offense listed in subsection (b) of this section;

4 (B) A similar offense in another state; or

5 (C) A similar federal offense.  
6

7 SECTION 10. Arkansas Code § 20-38-106 is amended to read as follows:

8 20-38-106. Evidence of criminal history records checks.

9 (a) A service provider shall maintain on file, subject to inspection  
10 by the Arkansas Crime Information Center, the Identification Bureau of the  
11 Division of Arkansas State Police, or the licensing or certifying agency  
12 evidence that criminal history records checks have been completed on all  
13 operators, applicants for employment, and employees of the service provider  
14 and evidence that all operators, applicants for employment or engagement in a  
15 contract, and employees of the service provider have been approved or  
16 disqualified in accordance with the rules of the appropriate licensing or  
17 certifying agency.

18 (b) If a service provider employs an applicant or continues the  
19 employment of or contract with an employee who satisfied the criteria for a  
20 waiver under § 20-38-105(d)(3), the service provider shall maintain  
21 documentation that the person met the criteria for the waiver, including the  
22 written acknowledgment by the licensing or certifying authority.  
23

24 SECTION 11. Arkansas Code § 20-38-110 is amended to read as follows:

25 20-38-110. Confidentiality.

26 (a) All reports obtained under this subchapter are confidential and  
27 are restricted to the exclusive use of the Arkansas Crime Information Center,  
28 the Identification Bureau of the Department of Arkansas State Police, and the  
29 licensing or certifying agency or the third-party employee evaluation  
30 service.

31 (b) The information contained in reports shall not be released or  
32 otherwise disclosed to any other person or agency except by court order and  
33 is specifically exempt from disclosure under the Freedom of Information Act  
34 of 1967, § 25-19-101 et seq., except to the licensing or certifying agency or  
35 the third-party employee evaluation service.  
36

1           SECTION 12. Arkansas Code § 20-38-112(e)(2)(C) and (D), concerning  
2 exclusions for criminal history records checks and completion of a criminal  
3 history records checks, are amended to read as follows:

4                   (C) The service provider maintains evidence acceptable to  
5 the licensing or certifying agency that the service provider types for which  
6 employment or engagement in a contract determinations and criminal history  
7 records checks are accepted under this subsection are operated and  
8 administered by the same service provider; and

9                   (D) The service provider maintains an original or copy of  
10 the determination letter for each employee at the service provider type for  
11 which employment or engagement in a contract determinations and criminal  
12 history records checks are accepted under this subsection and at which the  
13 employee who is the subject of the determination letter is employed.

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15                                   */s/Bentley*  
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18                                   **APPROVED: 4/16/25**  
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State of Arkansas  
95th General Assembly  
Regular Session, 2025

## A Bill

HOUSE BILL 1439

By: Representative Ladyman  
By: Senator Flippo

### For An Act To Be Entitled

AN ACT TO REMOVE THE CERTIFICATION PROCESS OF THE  
DEPARTMENT OF HUMAN SERVICES FROM LICENSURE AS A  
PRIVATE CARE AGENCY; AND FOR OTHER PURPOSES.

### Subtitle

TO REMOVE THE CERTIFICATION PROCESS OF  
THE DEPARTMENT OF HUMAN SERVICES FROM  
LICENSURE AS A PRIVATE CARE AGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 20-10-2301(b), concerning the purpose and  
intent of the licensure of private care agencies, is amended to read as  
follows:

(b) It is the purpose of this subchapter to:

(1) Allow a licensed private care agency to provide in-home  
personal care services twenty-four (24) hours a day and seven (7) days a week  
to eligible recipients;

(2) Provide for the reimbursement of the personal care services  
through Medicaid; and

(3) Authorize the Department of Human Services in its  
administration of the Arkansas Medicaid Program to set forth Medicaid  
provider participation requirements for a private care agency that will  
ensure sufficient available personal care service providers in order to meet  
the needs of all eligible recipients, including available in-home personal  
care services twenty-four (24) hours a day and seven (7) days a week.



1 SECTION 2. Arkansas Code § 20-10-2302 is amended to read as follows:  
2 20-10-2302. Definitions.

3 As used in this subchapter, "private care agency" means a provider that  
4 ~~is certified by the Division of Provider Services and Quality Assurance as a~~  
5 ~~provider of home and community based health services~~ licensed by the  
6 Department of Health as a private care agency and that:

7 (1) Furnishes in-home staffing services for personal and  
8 attendant care services for which the provider seeks reimbursement through  
9 the Arkansas Medicaid Program; and

10 (2) Retains liability insurance of not less than one million  
11 dollars (\$1,000,000) to cover its employees and independent contractors while  
12 its employees and independent contractors are engaged in providing personal  
13 and attendant care services.

14  
15 SECTION 3. Arkansas Code § 20-10-2304(c)(3)(B), concerning the rules  
16 for private care agencies, is amended to read as follows:

17 (B) A private care agency maintain a primary location in  
18 Arkansas ~~and a sufficient number of regional offices~~ to adequately service  
19 the administrative needs of the private care agency and the patients of the  
20 private care agency; and

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23 **APPROVED: 4/17/25**  
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