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Proposed Rulemaking

~~Title~~Rules for Conducting Criminal History Record Checks for Home Health, Hospice, and 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 42. Rules for Conducting Criminal History Record Checks for Home Health, Hospice, and Private Care Agencies in Arkansas

Subpart 1. Generally

20 CAR § 42-101. Purpose.

The purpose of this part 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.

20 CAR § 42-102. Definitions.

As used in this part:

(1) "Bureau" means the Identification Bureau of the Division of 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 Department of Health;

(4) "Determination" means the determination made by the licensing or certifying agency or a 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 based on the criminal history of the:

(A) Service provider;

(B) Operator;

(C) Applicant; or

(D) Employee;

(5)(A) "Employee" means any person who has unsupervised access to clients of a service provider except as provided in subdivision (5)(B) of this section, below, and:

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

(ii) Is employed by a service provider to provide care to clients of the service provider;

(iii) Is engaged as an independent contractor to provide care to clients of the service provider;

(~~iii~~iv) Is a temporary employee placed by an employment agency with a service provider to provide care to clients of the service provider; or

(~~iv~~v) Resides in an alternative living home in which services are provided to individuals with developmental disabilities.

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

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

(ii) Is a volunteer; or

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

(6) "HFS" means the Division of Health Facility Services of the Department of Health;

(7) "Home health agency" means a service as defined by Arkansas Code § 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 Arkansas Code § 20-7-117 whether or not the agency has applied for or possesses a license;

(9) "Index" means the database, maintained by the Identification Bureau of the Division of Arkansas State Police, 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) A service provider for licensure;

(B) An exemption from licensure;

(C) A certification; or

(D) Any other operating authority;

(13) "Private care agency" means a service as defined in Arkansas Code § 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 Identification Bureau of the Division of Arkansas State Police;

(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 childcare facility as defined by Arkansas Code § 20-78-202;

(C) A church-exempt childcare facility as recognized under Arkansas Code § 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, Adult, and Behavioral Health Services of the Department of Human Services;

(F) A home healthcare 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 § 20-48-101; ~~and~~

(17) "State criminal history records check" means a review of state criminal records conducted by the Identification Bureau of the Division of Arkansas State Police; and~~.~~

(18) "Third-party employee evaluation service" means an independent, third party, not associated with the licensing or certifying agency or the service provider, authorized or otherwise eligible under state and federal law to perform national criminal history record checks and state criminal history records checks in order to provide the determination of eligibility for employment under Arkansas Code §20-38-101, et seq.

20 CAR § 42-103. 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.**

(1) Private care agencies must be ~~certified as Elder Choices providers by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services in order to obtain Arkansas licensure~~licensed by the Department of Health.

(2) Private care agencies must therefore maintain evidence that criminal history records checks have been completed on all:

(A) Operators;

(B) Applicants for employment; and

(C) Employees.

~~(3) Elder Choices providers are also subject to Department of Human Services 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 Division 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, or private care agency must have safeguards to ensure the confidentiality of criminal history check records maintained.

20 CAR § 42-104. Failure to comply.

(a) **Home health, ~~and~~ hospice, and private care agency.** Failure to comply with this part shall be grounds to deny or revoke a home health, ~~or~~ hospice, or private care agency's license.

(b) **Private care.** Loss of Elder Choices certification shall be grounds to deny or revoke a private care agency's license.

20 CAR § 42-105. Operators.

(a) Each home health, ~~and~~ hospice, and private care agency shall obtain a state criminal history records check and a national criminal history records check on each operator no fewer than one (1) time every five (5) years.

(b) For a home health or hospice agency initially applying for licensure, the process will include the following:

(1) Evidence of a completed application for a criminal history records check on the operator; and

(2) Upon receiving the results of the state criminal history records check and the national criminal history records check, the Division of Health Facilities Services will issue a determination of whether the home health or hospice agency is disqualified from licensure.

(c) For a home health, ~~or~~ hospice, or private care agency that is currently licensed but is completing the application for the annual renewal of the agency, the process will include the following:

(1) Evidence of current completed criminal history records checks or of new applications for criminal history records checks on the operator must be submitted to the division with the annual renewal application; and

(2) For new criminal history records checks applications, upon receiving results of the state criminal history check and national history check the division will issue a determination of whether the agency may continue licensure based on results of the operator's criminal history records check.

20 CAR § 42-106. Applicants, employees, and temporary employees.

(a) Each home health, ~~or~~ hospice, or private care applicant or employee must complete a state criminal history check unless the applicant or employee is licensed as a professional as described in 20 CAR § 42-111.

(b)(1) 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 (5) years.

(2) The home health, ~~or~~ hospice, or private care agency will be responsible for verification of this information.

(3) 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 Arkansas Code § 20-38-101 et seq., before the placement of the temporary employee with the service provider; and

(B) The entity shall:

(i) Maintain all documentation regarding criminal history records checks for each temporary employee placed with a service provider; and

(ii) 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:

(1) Inform employees that continued employment is contingent on the satisfactory results of criminal history records checks; and

(2) Conduct periodic criminal history records checks on all employees no fewer 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:

(1) Deny employment to the applicant; or

(2) Terminate the employment of the employee.

(f) If the licensing agency, ~~or~~ certifying agency, or third-party employee evaluation service 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.

20 CAR § 42-107. Challenges to criminal history information.

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

20 CAR § 42-108. Assignment of facility identification numbers.

(a) Each home health~~, and~~ hospice, and private care agency ~~facility~~ shall have a facility identification number assigned.

(b) Contact the Division of Health Facilities Services criminal history records program at (501) 661-2201 to obtain an ID number.

20 CAR § 42-109. Applications.

(a) Completed applications for either national criminal history records checks, state criminal history records checks, or both, ~~are~~ shall be submitted by the agency ~~to the Division of Arkansas State Police~~via the electronic Division of State Police's Online Criminal Background Check System at https://cbc.ark.org.

(b) National criminal history records checks shall only be required for individuals that have resided in Arkansas for less than five (5) years.

(c) For applications for national criminal history records checks, the agency shall submit, with the completed electronic application:

(1) The consent form provided by the Department of Health; and

(2) The applicant's fingerprints obtained through an approved harvester.

~~(b) Applications may be completed and mailed or completed online and submitted electronically.~~

~~(1) **Applications by mail.**~~

~~(A)(i) Application forms for state criminal history records checks are available from the Division of Health Facilities Services.~~

~~(ii) No other applications will be accepted.~~

~~(B) Fingerprint cards for national criminal history records checks are available from the Division of Health Facilities Services.~~

~~(C)(i) The application must be completely filled out.~~

~~(ii) The application shall be signed by the subject of the criminal history records check and notarized by a notary public.~~

~~(D)(i) The original application with the appropriate fee must be sent directly to the Identification Bureau of the Division of Arkansas State Police at the address provided on the application.~~

~~(ii) A copy of the application for a criminal history must be sent to the Division of Health Facilities Services.~~

~~(E) If a national history check is required, the completed fingerprint card must accompany the application.~~

~~(2) **Electronic applications.** Electronic applications are completed online through the Division of Arkansas State Police website: www.asp.state.ar.us.~~

20 CAR § 42-110. List of disqualifying offenses.

The following is a list of disqualifying offenses:

(1) Criminal attempt, Arkansas Code § 5-3-201, criminal complicity, Arkansas Code § 5-3-202, criminal solicitation, Arkansas Code § 5-3-301, or criminal conspiracy, Arkansas Code § 5-3-401;

(2) Capital murder, Arkansas Code § 5-10-101;

(3) Murder, Arkansas Code §§ 5-10-102 and 5-10-103;

(4) Manslaughter, Arkansas Code § 5-10-104;

(5) Negligent homicide, Arkansas Code § 5-10-105;

(6) Kidnapping, Arkansas Code § 5-11-102;

(7) False imprisonment in the first degree, Arkansas Code § 5-11-103;

(8) Permanent detention or restraint, Arkansas Code § 5-11-106;

(9) Robbery, Arkansas Code §§ 5-12-102 and 5-12-103;

(10) Battery, Arkansas Code §§ 5-13-201 and 5-13-202;

(11) Assault, Arkansas Code §§ 5-13-204 and 5-13-206;

(12) Coercion, Arkansas Code § 5-13-208;

(13) Introduction of controlled substance into body of another person, Arkansas Code § 5-13-210;

(14) Terroristic threatening, Arkansas Code § 5-13-301;

(15) Terroristic act, Arkansas Code § 5-13-310;

(16) Any sexual offense, Arkansas Code § 5-14-101 et seq.;

(17) Voyeurism, Arkansas Code § 5-16-102;

(18) Death threats concerning a school employee or student, Arkansas Code § 5-17-101;

(19) Incest, Arkansas Code § 5-26-202;

(20) Domestic battery, Arkansas Code §§ 5-26-303 — 5-26-306;

(21) Interference with visitation, Arkansas Code § 5-26-501;

(22) Interference with court-ordered custody, Arkansas Code § 5-26-502;

(23) Endangering the welfare of an incompetent person, Arkansas Code §§ 5-27-201 and 5-27-202;

(24) Endangering the welfare of a minor, Arkansas Code §§ 5-27-205 and 5-27-206;

(25) Contributing to the delinquency of a minor, Arkansas Code § 5-27-209;

(26) Contributing to the delinquency of a juvenile, Arkansas Code § 5-27-220;

(27) Permitting abuse of a minor, Arkansas Code § 5-27-221;

(28) Soliciting money or property from incompetent persons, Arkansas Code § 5-27-229;

(29) Engaging children in sexually explicit conduct for use in visual or print media, Arkansas Code § 5-27-303;

(30) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, Arkansas Code § 5-27-304;

(31) Transportation of minors for prohibited sexual conduct, Arkansas Code § 5-27-305;

(32) Employing or consenting to the use of a child in a sexual performance, Arkansas Code § 5-27-402;

(33) Producing, directing, or promoting a sexual performance by a child, Arkansas Code § 5-27-403;

(34) Computer crimes against minors, Arkansas Code § 5-27-601 et seq.;

(35) Adult felony abuse of an endangered or impaired person, Arkansas Code § 5-28-103;

(36) Theft of property, Arkansas Code § 5-36-103;

(37) Theft of services, Arkansas Code § 5-36-104;

(38) Theft by receiving, Arkansas Code § 5-36-106;

(39) Forgery, Arkansas Code § 5-37-201;

(40) Criminal impersonation, Arkansas Code § 5-37-208;

(41) Financial identity fraud, Arkansas Code § 5-37-227;

(42) Arson, Arkansas Code § 5-38-301;

(43) Burglary, Arkansas Code § 5-39-201;

(44) Breaking or entering, Arkansas Code § 5-39-202;

(45) Resisting arrest, Arkansas Code § 5-54-103;

(46) Felony interference with a law enforcement officer, Arkansas Code § 5-54-104;

(47) Cruelty to animals, Arkansas Code § 5-62-101;

(48) Felony violation of the Uniform Controlled Substances Act, Arkansas Code §§ 5-64-101 – 5-64-501 et seq.;

(49) Public display of obscenity, Arkansas Code § 5-68-205;

(50) Promoting obscene materials, Arkansas Code § 5-68-303;

(51) Promoting obscene performance, Arkansas Code § 5-68-304;

(52) Obscene performance at a live public show, Arkansas Code § 5-68-305;

(53) Prostitution, Arkansas Code § 5-70-102;

(54) Patronizing a prostitute, Arkansas Code § 5-70-103;

(55) Promotion of prostitution, Arkansas Code §§ 5-70-104, 5-70-105, and 5-70-106;

(56) Stalking, Arkansas Code § 5-71-229;

(57) Criminal use of a prohibited weapon, Arkansas Code § 5-73-104;

(58) Simultaneous possession of drugs and firearms, Arkansas Code § 5-74-106; and

(59) Unlawful discharge of a firearm from a vehicle, Arkansas Code § 5-74-107.

20 CAR § 42-111. Professional licenses excluded from requirement.

The following is a list of professional licenses excluded from requirement:

(1) Licensed professional counselors, as outlined in Arkansas Code § 17-27-101 et seq.;

(2) Dentists, as outlined in Arkansas Code § 17-82-101 et seq.;

(3) Nurses, as outlined in Arkansas Code § 17-87-101 et seq.;

(4) Occupational therapists, as outlined in Arkansas Code § 17-88-101 et seq.;

(5) Pharmacists, as outlined in Arkansas Code § 17-92-101 et seq.;

(6) Physical therapists, as outlined in Arkansas Code § 17-93-301 et seq.;

(7) Physicians and surgeons, as outlined in Arkansas Code § 17-95-201 et seq.;

(8) Podiatrists, as outlined in Arkansas Code § 17-96-101 et seq.;

(9) Psychologists and psychological examiners, as outlined in Arkansas Code § 17-97-101 et seq.;

(10) Speech-language pathologists and audiologists, as outlined in Arkansas Code § 17-100-101 et seq.; and

(11) Social workers, as outlined in Arkansas Code § 17-46-101 et seq. [repealed].

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 <u>either</u> the licensing or certifying agency <u>or the third-party employee evaluation service</u> 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;

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

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

(ii) Meets any of the following criteria:

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

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

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

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

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

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

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

(ii) Is a volunteer; or

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

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

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

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

(7) "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;

(8) "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 Identification Bureau of the Division of Arkansas State Police;

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

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

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

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

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

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

(F) A home healthcare 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) A service provider shall inform employees that continued employment or contractual engagement 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)(1)(A) When a service provider initiates a request for a state criminal history records check on an applicant for employment or contract with or an employee of the service provider, the Identification Bureau of the Division of Arkansas State Police shall issue within twenty-four (24) hours an electronic report to the licensing or certifying agency.

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

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

(3)(A)(i) If the licensing or certifying agency or the third-party employee evaluation service determines that an applicant or employee is disqualified from employment or engagement in a contract 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.

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

(b) After receipt of written acknowledgment

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

(B) If the licensing or certifying agency or the third-party employee evaluation service 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 6. Arkansas Code § 20-38-105(a), concerning disqualification from employment with a service provider based on a criminal history records check, is amended to read as follows:

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

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

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

(C) Any similar offense by a federal court.

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

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

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

(C) Any similar offense by a federal court.

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

with the same service provider;

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

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

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

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

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

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

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

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

(e) A person shall not be disqualified 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 the person has been found guilty of or has pleaded guilty or nolo contendere to a misdemeanor offense not listed in subsection (b) of this section, a similar misdemeanor offense in another state, or a similar federal misdemeanor offense.

(f) Even if the person would otherwise be disqualified under this section, a person shall not be disqualified 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 the person:

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

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

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

(B) A similar offense in another state; or

(C) A similar federal offense.

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

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

(a) A service provider shall maintain on file, subject to inspection by the Arkansas Crime Information Center, the Identification Bureau of the Division 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 and evidence that all operators, applicants for employment or engagement in a contract, and employees of the service provider have been approved or disqualified in accordance with the rules of the appropriate licensing or certifying agency.

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

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

20-38-110. Confidentiality.

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

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

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

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

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

/s/Bentley

APPROVED: 4/16/25

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 <u>licensed</u> 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.

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

20-10-2302. Definitions.

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

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

(2) 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.

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

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

APPROVED: 4/17/25