

CONDUCTING CRIMINAL RECORD CHECKS FOR EMPLOYEES AND OPERATORS OF HOME HEALTH AND HOSPICE AGENCIES IN ARKANSAS

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SECTION I. AUTHORITY

These rules and regulations requiring criminal record checks for employees of home health and hospice facilities 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 990 of 1997.

These rules and regulations shall be promulgated as a supplement to the licensure manuals for home health and hospice facilities.

SECTION II. PURPOSE

The purpose of these sections is to provide direction to home health or hospice agencies in the state of Arkansas as it relates to criminal record checks on current or potential employees.

SECTION III. DEFINITIONS

Bureau means the Identification Bureau of the Department of the Arkansas State Police.

Care means treatment, services, assistance, education, training, instruction, or supervision for which the care-giving person or entity is reimbursed either directly to or by arrangement with a home health or hospice agency.

Department means the Arkansas Department of Health.

Determination means a Department's determination that an applicant or employee is or is not disqualified from employment or that a home health or hospice is disqualified from licensure based on the criminal history of the operator.

Division means the Division of Health Facility Services, Arkansas Department of Health.

Elderly means persons aged 65 or older.

Employee means any person who provides care to individuals on behalf of, under the supervision of, or by arrangement with a home health or hospice agency or any person employed by a home health or hospice agency, unless the person is a family member, a volunteer or works in an administrative capacity.

Home Health Agency means a service as defined by Ark. Code Ann. § 20-10-801 whether or not the agency has applied for or possesses any license necessary for operation.

Hospice Agency service as defined by Ark. Code Ann. § 20-7-117 whether or not the agency has applied for or possesses a license.

Individuals with disabilities means persons who require assistance to perform one or more of the following tasks of daily living: feeding, mobility, toileting, or medication.

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.

National criminal history check means a review of national criminal records maintained by the Federal Bureau of Investigation based on fingerprint identification or other positive identification methods.

Provisional License means a forty-five day license issued to a home health or hospice agency whose operator has been found to have an applicable offense listed in Section X on the individual's criminal history report.

Operator means a person responsible for the day to day operation of the home health or hospice agency.

Report means a statement of the criminal history of an applicant, employee, or operator issued by the Bureau.

State criminal history check means a review of state criminal records conducted by the Bureau.

IV. HOME HEALTH OR HOSPICE AGENCIES.

A. All home health and hospice agencies must comply with these regulations as they apply to that type of agency. If an operator or agency fails or refuses to cooperate in obtaining criminal record checks, such circumstances shall be grounds to deny or revoke the home health or hospice agency's license.

B. Any unlicensed agency providing home health or hospice services violating these rules and regulations shall be guilty of a Class A misdemeanor for each violation according to Act 990 of 1997.

V. OPERATORS

A. Each home health and hospice agency obtain a state criminal history check and a national criminal history check on each operator if the operator has not been continuously employed within the State of Arkansas within the past twelve (12) months and undergone a criminal history check within the past twelve (12) months. Examples of evidence to verify continuous employment may include, but not be limited to, payroll check stubs, employment records, tax records, etc. A criminal history check does not have to be repeated on an operator if the

individual has served continuously in a position as an operator with not more than a sixty day interruption in service.

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 check on the operator and, if exempt under Section A, a copy of the criminal history check.
 - b. Upon receiving the results of the state criminal history check and the national criminal history check the Division will issue determination whether the home health or hospice agency is disqualified from licensure.
 - c. If a home health or hospice agency initially applying for licensure is disqualified from licensure based on the criminal history report of the operator the application may be resubmitted with a different operator. Sections A.1.a. and A.1.b will be followed once the application has been resubmitted. If the application is not resubmitted within fifteen (15) days of notification of the denial the application will be considered null and void.
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 a completed application for a criminal history check on the operator must be submitted to the Division with the annual renewal application. If the first letter of the county in which the agency is located begins with the letter A-L the information must be submitted with the application for renewal for the calendar year 1999; Counties M-Z must be submitted with the application for renewal of the calendar year 2000.
 - b. Upon receiving results of the state criminal history check and national history check the Division will issue a determination whether the agency may continue licensure based on results of the operator's criminal history check.
 - c. The Division will issue a forty-five day provisional license to a home health or hospice agency whose operator has been found guilty or has pled guilty or nolo contendere to any of the offenses listed in Section X. A home health or hospice agency has fifteen days from the date the provisional license was issued to resubmit an application for licensure with a new operator. If another license application is not received within fifteen days of the specified date the entity's license will be immediately revoked.

VI. APPLICANTS AND EMPLOYEES

A. Each home health or hospice applicant or employee who will be providing care for the elderly or individuals with disabilities must complete a state criminal history check if the applicant or employee does not meet one of the following:

- Licensed as a professional as described in Section XI; or

- Has maintained continuous employment in the State of Arkansas within the past 12 months and successfully completed a state criminal history check within 12 months immediately prior to the application.

A federal criminal history check must also be completed if the applicant or employee does not meet one of the following:

- Continuously lived in the State of Arkansas for the past five years; or
- Provided care to the elderly and/or individuals with disabilities for a continuous 60 day period immediately prior to the application.

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 are not limited to, employment records, payroll check stubs, tax records, rent/house payment records, utility bills, school records, etc.

Note: Section XI provides a list of immune licensed individuals. The term professional does not include certification. Certified persons include but are not limited to certified nursing assistants and certified home health aides.

1. For persons hired after October 1, 1997 the following process must be followed:
 - a. If a home health or hospice agency intends to make an offer of employment to a person, that person must submit an application for a criminal history check along with the application for employment. The application for the criminal history check shall be forwarded directly to the Bureau.
 - b. The home health or hospice agency may make an offer of temporary employment to a person pending receipt of notification from the Bureau that the Bureau's index has been checked and no criminal history has been found and the Division has checked its database and no criminal history has been found. The home health or hospice agency may continue to temporarily employ the person until the licensing agency issues a determination, based on the information received from the Bureau, whether the person is disqualified from employment. If the licensing agency determines that the person is disqualified from employment based on the criminal history report, the person must be terminated if temporarily employed or denied employment if not temporarily employed. If a criminal history is found in the Bureau's index the person is disqualified from employment until the criminal history check is completed and the Division issues a determination.
2. For persons hired prior to October 1, 1997 the following process must be followed beginning January 1, 1998:
 - a. For persons hired during an even year an application for a criminal history check must be submitted to the Bureau in the month hired in the year 1998. For persons hired in an odd year an application for a criminal history check must be submitted to the Bureau in the month hired in the year 1999.
 - b. Once application for a criminal history check has been submitted, a home health agency may continue to employ a person pending receipt of notification

from the Bureau that the Bureau's index has been checked and no criminal history found and the Division has checked its database and no criminal history has been found. If a criminal history is found in the Bureau's index the person is disqualified from employment until the criminal history check is completed and the Division issues a determination based on the criminal history report obtained from the Bureau.

B. If an applicant has had a state criminal history check within the past twelve months an application for a criminal history check must be completed and sent to the Division along with a copy of the results of the criminal history check. The Division will then issue a determination.

C. A home health or hospice must inform applicants and employees that continued employment is contingent on the results of criminal history checks and the individual has a right to obtain a copy of their criminal history report from the Bureau.

VII. APPLICATIONS

A. Applications for a criminal history check will be provided to the Agency by the Division. No other applications will be accepted. The completed application for a state criminal history check must include the following on each:

1. Facility Identification Number
2. Facility Name
3. Facility Address
4. Facility Telephone Number
5. Full Name of Applicant
6. Social Security Number
7. Mailing Address of Applicant
8. Date of Birth
9. Gender
10. Race
11. Driver's License Number and State of Issue
12. A list of all felony and misdemeanor charges for which the applicant was found guilty or pled guilty or nolo contendere.

The application must be signed by the applicant and notarized by a notary public. The original application for a criminal history check along with the appropriate fee must be sent directly to the Bureau at the address provided on the application. A copy of the application for a criminal history must be sent to the Division.

B. If a national history check is required the fingerprint card must accompany the application for the state criminal history check. The fingerprint card will be provided by the Division.

VIII. REAPPLICATION REVIEW

A. Reapplication reviews will be granted to operators, employees, and potential employees who are able to provide proof that the felony convictions shown in the criminal records check are incorrect. These appeals may take the form of:

1. A written request to the Identification Bureau of the Department of the Arkansas State Police providing another application and fee for the state criminal history check along with additional information that would aid in the identification of records pertaining to the applicant.

2. A letter written to the Arkansas Department of Health Chief Counsel requesting review of a second state criminal record check to affect the determination made by the Department. If this review provides no information regarding any of the applicable offenses listed in Section X, then the first determination of employment disqualification will be overturned.

B. Applicants who have an applicable offense listed in Section X as indicated on their national criminal record check shall not be afforded the reapplication review process.

IX. MAINTAINING RECORDS AND CONFIDENTIALITY

A. Each qualified entity shall maintain evidence that criminal history checks have been initiated on all operators and employees and a copy of each determination received from the Division. This evidence must be made available for inspection by the Arkansas Crime Information Center, the Bureau and the Division upon request. This evidence must be available for all current operators and employees and for any employees that were employed within the past twenty-four (24) months.

B. Each home health or hospice agency must have safeguards to ensure the confidentiality of criminal history check records maintained.

C. For records that are no longer required and the agency wishes to destroy the agency must have a policy on how these records will be destroyed.

X. LIST OF OFFENSES

1. Capital murder, as prohibited in Ark. Code Ann. § 5-10-101;
2. Murder in the first degree and second degree, as prohibited in Ark. Code Ann. §§ 5-10-102 and 5-10-103;
3. Manslaughter, as prohibited in Ark. Code Ann. § 5-10-104;
4. Negligent homicide, as prohibited in Ark. Code Ann. § 5-10-105;
5. Kidnapping, as prohibited in Ark. Code Ann. § 5-11-102;
6. False imprisonment in the first degree, as prohibited in Ark. Code Ann. § 5-11-103;
7. Permanent detention or restraint, as prohibited in Ark. Code Ann. § 5-11-106;
8. Robbery, as prohibited in Ark. Code Ann. § 5-12-102;
9. Aggravated robbery, as prohibited in Ark. Code Ann. § 5-12-103;

10. Battery in the first degree, as prohibited in Ark. Code Ann. § 5-13-201;
11. Aggravated assault, as prohibited in Ark. Code Ann. § 5-13-204;
12. Introduction of controlled substance into body of another person, as prohibited in Ark. Code Ann. § 5-13-210;
13. Terroristic threatening in the first degree, as prohibited in Ark. Code Ann. § 5-13-301;
14. Rape and carnal abuse in the first degree, second degree, and third degree, as prohibited in Ark. Code Ann. §§ 5-14-103, 5-14-106;
15. Sexual abuse in the first and second degree, as prohibited in Ark. Code Ann. §§ 5-14-108 and 5-14-109;
16. Sexual solicitation of a child, as prohibited in Ark. Code Ann. § 5-14-110;
17. Violation of a minor in the first degree and second degree, as prohibited in Ark. Code Ann. §§ 5-14-120 and 5-14-121;
18. Incest, as prohibited in Ark. Code Ann. § 5-26-202;
19. Offenses against the family, as prohibited in Ark. Code Ann. §§ 5-26-303 through 5-26-306;
20. Endangering the welfare of incompetent person in the first degree, as prohibited in Ark. Code Ann. § 5-27-201;
21. Endangering the welfare of a minor in the first degree, as prohibited in Ark. Code Ann. § 5-27-221;
22. Permitting child abuse, as prohibited in subdivisions (a)(1) and (a)(3) of Ark. Code Ann. § 5-27-221;
23. Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, or pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in Ark. Code Ann. §§ 5-27-303, 5-27-304, 5-27-305, 5-27-402, and 5-27-403;
24. Felony adult abuse, as prohibited in Ark. Code Ann. § 5-28-103;
25. Theft of property, as prohibited in Ark. Code Ann. § 5-36-103;
26. Theft by receiving, as prohibited in Ark. Code Ann. § 5-36-106;
27. Arson, as prohibited in Ark. Code Ann. § 5-38-301;
28. Burglary, as prohibited in Ark. Code Ann. § 5-39-201;
29. Felony violation of the Uniform Controlled Substances Act, as prohibited in Ark. Code Ann. § 5-64-401;
30. Promotion of prostitution in the first degree, as prohibited in Ark. Code Ann. § 5-70-104;

31. Stalking, as prohibited in Ark. Code Ann. § 5-71-229;
32. Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, as prohibited in Ark. Code Ann. §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401.

XI. IMMUNE PROFESSIONAL LICENSES

1. Licensed professional counselors, as outlined in Ark. Code Ann. § 17-27-101;
2. Social workers, as outlined in Ark. Code Ann. § 17-46-101;
3. Dentists, as outlined in Ark. Code Ann. § 17-82-101;
4. Nurses, as outlined in Ark. Code Ann. § 17-87-101;
5. Occupational therapists, as outlined in Ark. Code Ann. § 17-88-101;
6. Pharmacists, as outlined in Ark. Code Ann. § 17-92-101;
7. Physical therapists, as outlined in Ark. Code Ann. § 17-93-301;
8. Physicians and surgeons, as outlined in Ark. Code Ann. § 17-95-201;
9. Podiatrists, as outlined in Ark. Code Ann. § 17-96-101;
10. Psychologists and Psychological examiners, as outlined in Ark. Code Ann. § 17-97-101;
11. Speech-language pathologists and audiologists, as outlined in Ark. Code Ann. § 17-100-101;
12. Nursing home administrators, as outlined in Ark. Code Ann. § 20-10-401.

CERTIFICATION

This will certify that the Rules and Regulations for Conducting Criminal Record Checks for Employees and Operators of Home Health and Hospice 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 22nd day of January, 1998.

(signed) Sandra B. Nichols, M.D.

Secretary of Arkansas State Board of Health

Director, Arkansas Department of Health

Dated at Little Rock, Arkansas, this 28th day of January 1998.

The foregoing Rules and Regulations, copy having been filed in my office, are hereby approved on the 3rd day of February, 1998.

(signed) Mike Huckabee

Governor