

DEPARTMENT OF HUMAN SERVICES, DIVISION OF AGING, ADULT, AND BEHAVIORAL HEALTH SERVICES

SUBJECT: Procedures for Name Removal from Arkansas Adult Maltreatment Registry

DESCRIPTION:

Statement of Necessity

DHS currently has a rule in place to process name removal from the Child Maltreatment Registry. DHS does not have a corresponding rule in place to process name removal from the Adult Maltreatment Registry. This rule equalizes the process between the two registries.

Rule Summary

Arkansas Adult Protective Services is establishing a process for adult maltreatment offenders to request consideration to have their name removed from the Arkansas Adult Maltreatment Registry under certain circumstances.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on November 11, 2022. The agency provided the following summary of the public comments it received and its responses to those comments:

Commenter's Name: Catherine Burks RN, Compliance Officer, Absolute Care Management Corporation

COMMENT: My question is whether there will possibly be a proposal related to names on the Child Maltreatment Registry as well. We have had numerous employees come up on the child maltreatment report. By and large, I would say almost 100% of these have been able to get their name removed once they were able to get a hearing scheduled. However, the turnaround time for someone to get their appeal request in the system and get a hearing scheduled is far too long, often two or three months out. This is hindering these individuals from being able to work and provide much needed services for Arkansans. I want to add the fact that a lot of these findings are 10+ years old and once they get a hearing there are not even any records on file of the original complaint that was called in. **RESPONSE:** Thank you for your response. The child maltreatment registry is managed by the Division of Children and Family Services. Your comment has been relayed to the DCFS division director.

Commenter's Name: Holly Johnson, Senior Assistant Attorney General, Medicaid Fraud Control Unit, Office of Arkansas Attorney General Leslie Rutledge

1. *Consideration for Removal by Review Team.* What are the qualifications (education, experience, e.g.) for those who will be considered for the Adult Maltreatment Registry Review Team? **RESPONSE:** The review team will be comprised of APS supervisory

staff or APS team members with at least five (5) years of experience. Additionally, a DHS attorney from the Office of Chief Counsel will be included to provide counsel.

2. *Name Request Removal*. We propose adding the underlined language and part C below. An offender may request his or her name be removed from the Adult Maltreatment Registry when:
- A. The individual has not had a subsequent true report for one (1) year; and,
 - B. More than (1) year has passed since the offender's name was placed on the Adult Maltreatment Registry; and
 - C. More than (1) year has passed from the completion of any court-imposed sentence.

RESPONSE: Thank you for your response. We agree to your recommendation regarding part (c) and have updated the rule accordingly.

3. We propose adding the underlined language below. However, the offender may not request removal from the Adult Maltreatment Registry if any of the following apply:
- A. The offender was placed into the Adult Maltreatment Registry for any type of maltreatment that resulted in a fatality as a direct result of the offender's act or omission;
 - B. The offender is still involved in an open criminal court case based on the same underlying facts for which he or she was placed onto the Adult Maltreatment Registry; or has not completed the terms and conditions of any sentence arising from a conviction based on the same underlying facts for which he or she was placed onto the Adult Maltreatment Registry.

RESPONSE: Thank you for your response. We agree to your recommendation to add the additional language and have updated the rule accordingly.

4. We propose adding the underlined language below.
- C. The offender was placed onto the Adult Maltreatment Registry for any of the maltreatment types or type involving any of the injury characteristics or details listed below:

We propose adding the following maltreatment types to the list:

- a. Sexual Violence
- b. Restraint of the liberty of another involving threats or violence
- c. Human trafficking

RESPONSE: Thank you for your response. We agree to your recommendation to add the offenses listed and have updated the rule accordingly.

5. *Application Format for an Offender*. As to A.2., we propose adding the underlined language: Arkansas Adult Maltreatment Registry results free from a true finding of the same maltreatment type for the preceding year, or for one year following the completion

of any court-ordered sentence, if applicable. **RESPONSE:** Thank you for your response. We agree to your recommendation to add the additional language and have updated the rule accordingly.

6. As to A.3., we propose adding the underlined language: Adult Maltreatment Registry results from the offender's current state of residence and any state in which the offender has resided in the preceding year free from a true finding of the same maltreatment type for the preceding year, or for one year following the completion of any court-ordered sentence, if applicable. **RESPONSE:** Thank you for your response. We agree to your recommendation to add the additional language and have updated the rule accordingly.

7. As to A.4., we propose deleting the stricken language and adding the underlined language: Arkansas Crime Information Center (ACIC) background check and an adult maltreatment related check that is free from disqualifying offenses for ~~the preceding one (1) year;~~ one (1) year prior to the date of the application. **RESPONSE:** Thank you for your response. We agree to your recommendation to add the additional language and have updated the rule accordingly.

8. As to A.5., we propose deleting the stricken language and adding the underlined language State background check results from the offender's current state of residence and any state in which the offender has resided in the preceding year free from adult maltreatment-related offenses for ~~the preceding one (1) year;~~ one (1) year prior to the date of the application. **RESPONSE:** Thank you for your response. We agree to your recommendation to add the additional language and have updated the rule accordingly.

9. *Notice.* In addition to the above, we propose that notice of the petition for removal be given to the Medicaid Fraud Control Unit (the Unit) of the Arkansas Attorney General's Office if the underlying conduct resulted in a criminal prosecution and if one of its attorneys represented the State of Arkansas in the proceeding, and that the Unit's prosecutor be given the opportunity to provide a response/recommendation. **RESPONSE:** Thank you for your response. We agree to notify the Medicaid Fraud Control Unit (the Unit) of the Arkansas Attorney General's Office if the underlying conduct resulted in a criminal prosecution and if one of its attorneys represented the State of Arkansas in the proceeding. The Unit's prosecutor may also provide a response to the petition. We have updated the rule accordingly.

10. *Determination of Name Removal Request by an Offender.* We propose adding the underlined language:

The Adult Maltreatment Registry Review Team will consider requests for removal of names from the Registry. In determining whether to remove an offender from the Adult Maltreatment Registry the Review Team shall consider any relevant evidence, which may include without limitation the following:

The list should include input from any victim, or surviving family member of a victim, of the underlying facts for which the offender/petitioner was placed onto the Adult Maltreatment Registry.

RESPONSE: Thank you for your response. We agree to your recommendation to add the additional language and have updated the rule accordingly.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following question and received the following response:

Q. Where does the list of excluded injury characteristics on page 2 of the proposed rule come from? **A.** We obtained this list from the name removal policy for the child maltreatment registry that is already in place and wished to be as consistent as possible between the two registries.

The proposed effective date is January 1, 2023.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact.

Per the agency, the total estimated cost to implement this rule is \$0 for the current fiscal year and \$580 for the next fiscal year. The agency indicated that this number represents increased mailing costs.

LEGAL AUTHORIZATION: The Adult and Long-Term Care Facility Resident Maltreatment Act establishes a statewide Adult and Long-Term Care Facility Resident Maltreatment Central Registry within the Department of Human Services. Ark. Code Ann. § 12-12-1716(a)(1). The Department may promulgate rules to implement the Act. Ark. Code Ann. § 12-12-1723.



Division of Aging, Adult, & Behavioral Health Services
P.O. Box 1437, Slot W241, Little Rock, AR 72203-1437
P: 501.686.9164

MEMORANDUM

TO: Interested Persons and Providers

FROM: Jay Hill, Director, Division of Aging, Adult & Behavioral Health Services

DATE: Thursday, October 13, 2022

SUBJ: Name Removal from Arkansas Adult Maltreatment Registry

As a part of the Arkansas Administrative Procedure Act process, attached for your review and comment are proposed rule revisions.

Public comments must be submitted in writing at the above address or at the following email address: ORP@dhs.arkansas.gov Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

If you have any comments, please submit those comments in writing, no later than November 11, 2022.

All DHS proposed rules, public notices, and recently finalized rules may also be viewed at: [Proposed Rules & Public Notices](#).

NOTICE OF RULE MAKING

The Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services announces for a public comment period of thirty (30) calendar days a notice of rulemaking for the following proposed rule under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§20-76-201 and 25-10-129.

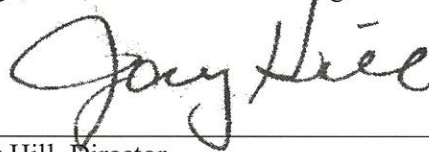
Effective January 1, 2023:

The Director of the Division of Aging, Adult, and Behavioral Health Services (DAABHS) is establishing a process for adult maltreatment offenders to request consideration to have their name removed from the Arkansas Adult Maltreatment Registry in certain circumstances.

The proposed rule is available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rule at <https://humanservices.arkansas.gov/do-business-with-dhs/proposed-rules/>. Public comments must be submitted in writing at the above address or at the following email address: ORP@dhs.arkansas.gov. All public comments must be received by DHS no later than **November 11, 2022**. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at 501-534-4138.

The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and is operated, managed and delivers services without regard to religion, disability, political affiliation, veteran status, age, race, color or national origin.



Jay Hill, Director
Division of Aging and Adult Behavior Services

Policy and Procedures for Name Removal from the Arkansas Adult Maltreatment Registry

The Arkansas Adult Maltreatment Registry maintained by the Adult Protective Services (APS) division within the Department of Human Services (DHS) will retain all “Founded” reports of maltreatment indefinitely to assist APS in the safety and protection of endangered and impaired Arkansas adults.

Records of all cases in which allegations are determined to be “Unfounded” will not be included in the Adult Maltreatment Registry; however, the information from “Unfounded” reports included in the APS data system will be retained indefinitely to assist APS in assessing future risk and safety of endangered and impaired adults.

APS staff will ensure that all assessments with a “Founded” disposition will be securely stored and will verify and respond to all valid requests for information from a Prosecuting Attorney who is prosecuting a case related to any APS report or case.

No offender who is placed on the Adult Maltreatment Registry will be “automatically” removed from the registry.

Any adult maltreatment offender who qualifies for consideration for removal may apply for consideration of removal through DAABHS. Requests that qualify per time and offense requirements will be reviewed by the Adult Maltreatment Registry Review Team in the order in which they are received.

Consideration for Removal by Review Team

The Adult Maltreatment Registry Review Team shall operate as follows:

A. The Director of the Division of Aging, Adult, and Behavioral Health Services (DAABHS) will appoint the members of the Adult Maltreatment Registry Review Team.

1) The Review Team will be made up of APS central office and field staff.

2) There will be five (5) members with five (5) alternates in case of scheduling conflicts.

3) A representative of OCC may provide legal advice and assistance to the team but will not be a member of the Adult Maltreatment Registry Review Team.

B. The Review Team will select an alternating chairperson for each quarter.

C. The Review Team will determine a regular meeting schedule for the review any requests that meet all criteria but shall meet no less than on an annual, quarterly basis.

D. Review requests must be received sixty (60) days in advance of the review meeting, and all Review Team members will be provided with the case information fifteen (15) days prior to the review team meeting. All decisions will be determined by a majority vote of the team members.

E. All team decisions will be sent in writing by the DAABHS Director or designee.

1) Denials will be sent to the applicants by certified mail within fifteen (15) days from the review team’s decision.

2) Approvals will be sent to the applicants by regular mail within fifteen (15) days of the review team's decision.

Name Request Removal

An offender may request his or her name be removed from the Adult Maltreatment Registry when:

- A. The individual has not had a subsequent true report for one (1) year;
- B. More than one (1) year has passed since the offender's name was placed on the Adult Maltreatment Registry; and
- C. More than one (1) year has passed from the completion of any court-imposed sentence.

However, the offender may not request removal from the Adult Maltreatment Registry if any of the following apply:

- A. The offender was placed into the Adult Maltreatment Registry for any type of maltreatment that resulted in a fatality as a direct result of the offender's act or omission;
- B. The offender is still involved in an open criminal court case based on the same underlying facts for which he or she was placed onto the Adult Maltreatment Registry; or has not completed the terms and the conditions of any sentence arising from the conviction based on the same underlying facts for which he or she was placed onto the Adult Maltreatment Registry.
- C. The offender was placed onto the Adult Maltreatment Registry for any of the maltreatment types or type involving any of the injury characteristics or details listed below:

- Abuse with deadly weapon;
- Bone fractures;
- Brain Damage/Skull Fracture;
- Burns/scalding;
- Human Trafficking
- Immersion;
- Interfering with a person's breathing;
- Internal injuries;
- Malnutrition;
- Oral sex;
- Poison/noxious substances;
- Restraint of the liberty of another involving threats or violence;
- Sexual exploitation;

- Sexual penetration;
- Sexual Violence;
- Subdural hematoma; or
- Suffocation; or

D. The offender is convicted of a criminal offense for an act or omission listed above in C that constitutes adult maltreatment and for which the offender is named in the Adult Maltreatment Registry regardless of any subsequent expungement of the offense from the offender's criminal record, so long as the offender's conviction has not been reversed or vacated.

Application Format for an Offender

An application for name removal from the Adult Maltreatment Registry shall conform to the following:

- A. The offender will submit his or her request/ petition to:

DAABHS/Adult Maltreatment Registry Name Removal
P.O. Box 1437 – Slot W241
Little Rock, AR 72203-1437

and shall also submit:

- 1) A personal letter describing:
 - a) The offender's reason for the removal request;
 - b) The events and circumstances surrounding the adult maltreatment finding;
 - c) The offender's rehabilitation; and,
 - d) Why the offender does not pose a risk of maltreatment to vulnerable populations, including without limitation, children, the elderly, persons with a disability, and persons with a mental health illness;
- 2) Arkansas Adult Maltreatment Registry results free from a true finding of the same maltreatment type for the preceding year, or for one (1) year following the completion of any court-ordered sentence, if applicable;
- 3) Adult Maltreatment Registry results from the offender's current state of residence and any state in which the offender has resided in the preceding year free from a true finding of the same maltreatment type for the preceding year, or for one (1) year following the completion of any court-ordered sentence, if applicable;
- 4) Arkansas Crime Information Center (ACIC) background check and an adult maltreatment-related check that is free from disqualifying offenses for the preceding one (1) year, one (1) year prior to the date of application;

- 5) State background check results from the offender's current state of residence and any state in which the offender has resided in the preceding year free from adult maltreatment-related offenses for the preceding one (1) year, one (1) year prior to the date of the application;
- 6) Description and documentation (e.g., court records, letter from the offender's attorney, probation officer, or prosecuting attorney) of any current pending criminal charges, if applicable;
- 7) Evidence of the offender's rehabilitation, including, but not limited to:
 - a) Documentation proving completion of treatment, remediation, or rehabilitation programs as related to the specific offense if applicable.
 - b) For removal requests related to sexual abuse, proof of rehabilitation must include documentation from a licensed mental health professional that:
 - i) States that the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense;
 - ii) States total length of time the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense and the frequency of therapy sessions during that period of time;
 - iii) Indicates whether a sex offender specific assessment was conducted during the therapy period (e.g., the Vermont Assessment of Sex Offender Risk (VASOR), Clarke Sex History Questionnaire for Males Revised, Hare Psychotherapy Scale) (note: the use of such an assessment is not necessarily a requirement for removal but the presence or absence of such an assessment will be considered);
 - iv) Provides the licensed mental health professional's assessment of the requestor's participation during the therapy period.
 - v) One (1) to three (3) letters of reference from professionals, (not to include APS employees), employers, spiritual counselors, friends, or family describing the offender's rehabilitation and whether the offender poses a risk of maltreatment to vulnerable populations, including without limitation, children, the elderly, persons with a disability, and persons with a mental health illness.
 - vi) No more than one (1) letter of reference can be submitted from a family member.

The Adult Maltreatment Registry Review Team may select additional, non-adult maltreatment-related offenses which prevent name removal from the Adult Maltreatment Registry.

Determination of Name Removal Request by an Offender

The Adult Maltreatment Registry Review Team will consider requests for removal of names from the Registry. In determining whether to remove an offender from the Adult Maltreatment Registry the Review Team shall consider any relevant evidence, which may include without limitation the following:

- A. The circumstances surrounding the maltreatment;
- B. The seriousness of the harm caused by the maltreatment;
- C. The probability of the offender engaging in future maltreatment;
- D. Evidence of the offender's completion of training, rehabilitation, and efforts to learn effective strategies to care for adults;
- E. Information submitted by the petitioner;
- F. And any other information that is relevant to the specific offense.
- G. Input from any victim, or surviving family member of a victim, of the underlying facts for which the offender/petitioner was placed onto the Adult Maltreatment Registry.

If the Review Team denies the request-for-removal of the name from the Adult Maltreatment Registry, the Review Team shall send a denial letter to the offender explaining the reason for denial as it relates to:

- A. The circumstances surrounding the maltreatment;
- B. The seriousness of the harm caused by the maltreatment;
- C. The probability of the offender engaging in future maltreatment;
- D. Evidence of the offender's completion of training, rehabilitation, and efforts to learn effective strategies to care for adults;
- E. Any pending criminal charges surrounding the maltreatment;
- F. And any other information that is relevant to the specific offense.

The offender shall wait one (1) year from the date of the request for removal before filing a new petition with the Division requesting the offender's name be removed from the Adult Maltreatment Registry. However, if the Review Team needs additional information from the offender in order to make the determination as to whether to remove his or her name from the Adult Maltreatment Registry, the Review Team may request that the offender provide the additional information without requiring the offender to wait an additional year to file a new petition. The Review Team shall inform the offender in writing of the specific additional information requested. The offender shall have ten (10) calendar days from the date of the request to submit the requested additional information. If the request is sent via mail, the offender shall be given an additional three (3) calendar days to submit the information. If the requested information is not submitted within the specified timeframe, then the offender shall wait one (1) year from the date of the request to file a new petition requesting his or her name be removed from the Adult Maltreatment Registry.

If the Review Team denies the request-for-removal of the name from the Adult Maltreatment Registry, the offender may request Judicial Review pursuant to the Arkansas Administrative Procedures Act.

Notice

In addition to the above, we propose that notice of the petition for removal be given to the Medicaid Fraud Control Unit (the Unit) of the Arkansas Attorney General's Office if the underlying conduct resulted in a criminal prosecution and if one of its attorneys represented the State of Arkansas in the proceeding, and that the Unit's prosecutor be given the opportunity to provide a response/recommendation.

Proposed

DHS Responses to Public Comments Regarding Name Removal from Arkansas Removal Adult Maltreatment Registry

Catherine Burks RN, Compliance Officer

Absolute Care Management Corporation

Comment: My question is whether there will possibly be a proposal related to names on the Child Maltreatment Registry as well. We have had numerous employees come up on the child maltreatment report. By and large, I would say almost 100% of these have been able to get their name removed once they were able to get a hearing scheduled. However, the turnaround time for someone to get their appeal request in the system and get a hearing scheduled is far too long, often two or three months out. This is hindering these individuals from being able to work and provide much needed services for Arkansan's. I want to add the fact that a lot of these findings are 10+ years old and once they get a hearing there are not even any records on file of the original complaint that was called in.

Response: Thank you for your response. The child maltreatment registry is managed by the Division of Children and Family Services. Your comment has been relayed to the DCFS division director.

Holly Johnson, Senior Assistant Attorney General, Medicaid Fraud Control Unit

Office of Arkansas Attorney General Leslie Rutledge

Comment: Consideration for Removal by Review Team

What are the qualifications (education, experience, e.g.) for those who will be considered for the Adult Maltreatment Registry Review Team?

Response: The review team will be comprised of APS supervisory staff or APS team members with at least five (5) years of experience. Additionally, a DHS attorney from the Office of Chief Counsel will be included to provide counsel.

Comment: Name Request Removal

1. We propose adding the underlined language and part C below.

An offender may request his or her name be removed from the Adult Maltreatment Registry when:

- A. The individual has not had a subsequent true report for one (1) year; and,
- B. More than (1) year has passed since the offender's name was placed on the Adult Maltreatment Registry; and
- C. More than (1) year has passed from the completion of any court-imposed sentence.

Response: Thank you for your response. We agree to your recommendation regarding part (c) and have updated the rule accordingly.

Comment: We propose adding the underlined language below.

However, the offender may not request removal from the Adult Maltreatment Registry if any of the following apply:

A. The offender was placed into the Adult Maltreatment Registry for any type of maltreatment that resulted in a fatality as a direct result of the offender's act or omission;

B. The offender is still involved in an open criminal court case based on the same underlying facts for which he or she was placed onto the Adult Maltreatment Registry; Or has not completed the terms and conditions of any sentence arising from a conviction based on the same underlying facts for which he or she was placed onto the Adult Maltreatment Registry.

Response: Thank you for your response. We agree to your recommendation to add the additional language and have updated the rule accordingly.

Comment: We propose adding the underlined language below.

C. The offender was placed onto the Adult Maltreatment Registry for any of the maltreatment types or type involving any of the injury characteristics or details listed below:

We propose adding the following maltreatment types to the list:

- a. Sexual Violence
- b. Restraint of the liberty of another involving threats or violence
- c. Human trafficking

Response: Thank you for your response. We agree to your recommendation to add the offenses listed and have updated the rule accordingly.

Comment: Application Format for an Offender

As to A.2., we propose adding the underlined language: Arkansas Adult Maltreatment Registry results free from a true finding of the same maltreatment type for the preceding year, or for one year following the completion of any court-ordered sentence, if applicable.

Response: Thank you for your response. We agree to your recommendation to add the additional language and have updated the rule accordingly.

Comment: As to A.3., we propose adding the underlined language: Adult Maltreatment Registry results from the offender's current state of residence and any state in which the offender has resided in the preceding year free from a true finding of the same maltreatment type for the preceding year, or for one year following the completion of any court-ordered sentence, if applicable.

Response: Thank you for your response. We agree to your recommendation to add the additional language and have updated the rule accordingly.

Comment: As to A.4., we propose deleting the stricken language and adding the underlined language: Arkansas Crime Information Center (ACIC) background check and an adult maltreatment related check that is free from disqualifying offenses for the preceding one (1) year; one (1) year prior to the date of the application.

Response: Thank you for your response. We agree to your recommendation to add the additional language and have updated the rule accordingly.

Comment: As to A.5., we propose deleting the stricken language and adding the underlined language State background check results from the offender's current state of residence and any state in which the offender has resided in the preceding year free from adult maltreatment-related offenses for the preceding one (1) year; one (1) year prior to the date of the application.

Response: Thank you for your response. We agree to your recommendation to add the additional language and have updated the rule accordingly.

Comment: Notice

In addition to the above, we propose that notice of the petition for removal be given to the Medicaid Fraud Control Unit (the Unit) of the Arkansas Attorney General's Office if the underlying conduct resulted in a criminal prosecution and if one of its attorneys represented the State of Arkansas in the proceeding, and that the Unit's prosecutor be given the opportunity to provide a response/recommendation.

Response: Thank you for your response. We agree to notify the Medicaid Fraud Control Unit (the Unit) of the Arkansas Attorney General's Office if the underlying conduct resulted in a criminal prosecution and if one of its attorneys represented the State of Arkansas in the proceeding. The Unit's prosecutor may also provide a response to the petition. We have updated the rule accordingly.

Comment: Determination of Name Removal Request by an Offender

We propose adding the underlined language: The Adult Maltreatment Registry Review Team will consider requests for removal of names from the Registry. In determining whether to remove an offender from the Adult Maltreatment Registry the Review Team shall consider any relevant evidence, which may include without limitation the following:

The list should include input from any victim, or surviving family member of a victim, of the underlying facts for which the offender/petitioner was placed onto the Adult Maltreatment Registry.

Response: Thank you for your response. We agree to your recommendation to add the additional language and have updated the rule accordingly.