

DEPARTMENT OF HUMAN SERVICES, PROVIDER SERVICES AND QUALITY ASSURANCE

SUBJECT: Criminal Records Check (DMS-736) Update; OLTC Rules and Regulations for Conducting Criminal Record Checks for Employees of Long Term Care Facilities §§303, 304, 305 and 306

DESCRIPTION: The Office of Long Term Care underwent an audit performed by the Arkansas State Police (ASP) on behalf of the FBI to determine compliance with FBI requirements for performing national criminal background checks for long-term care employees and applicants for employment. The amendments are to correct deficiencies identified in the audit and that, if uncorrected, would bar federal background checks. Those changes include:

1. Having applications for background checks routed through the Office of Long Term Care rather than being submitted directly to the ASP.
2. Requiring the Office of Long Term Care to verify the identity of the applicant or employee prior to releasing the determination resulting from the background check.
3. No longer listing the actual convictions of the employee or the applicant.
4. Having all state background checks performed on-line with the ASP to allow current Office of Long Term Care staff to meet new federal requirements without the necessity of additional staff.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on February 9, 2018. The Department received no public comments. The proposed effective date is May 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Department of Human Services is authorized to “make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith.” Arkansas Code Annotated § 20-76-201 (12). The authority for the revision to update the criminal records check policy is found in Chapter 38 of Title 20 of the Arkansas Code, which provides the procedures for the Department’s Criminal Background Checks applicable to service providers, operators, employees or potential employees of a service provider. *See Ark. Code Ann. §20-38-101, et seq. (Supp. 2017).*

The Office of Long-Term Care is designated as the unit of state government primarily responsible for the inspection, regulation, and licensure of long-term care facilities and the regulation and licensure of long-term care facility administrators, and may promulgate rules and regulations as it shall deem necessary or desirable to properly and efficiently carry out its duties. *See Ark. Code Ann. §20-10-203 (Repl. 2014).* The Office is required to promulgate appropriate rules and regulations prescribing minimum staffing requirements for all long-term care facilities in the state. *See Ark. Code Ann. §20-10-211 (Repl. 2014).*

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Department of Human Services
DIVISION Provider Services and Quality Assurance
DIVISION DIRECTOR Craig Cloud
CONTACT PERSON Frank GoBell
ADDRESS PO Box 8059, Slot S409
PHONE NO. (501) 320-6017 FAX NO. _____ E-MAIL Frank.GoBell@dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Frank GoBell
PRESENTER E-MAIL Frank.Gobell@dhs.arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

**Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201**

1. What is the short title of this rule? Criminal Records Check (DMS-736) Update; OLTC Rules and Regulations for Conducting Criminal Record Checks for Employees of Long Term Care Facilities §§303, 304, 305, and 306

2. What is the subject of the proposed rule? Office of Long Term Care (OLTC) national criminal background checks for long-term care employees and applicants for employment Update

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation. _____

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No

If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes No

5. Is this a new rule? Yes No
If yes, please provide a brief summary explaining the regulation. _____

Does this repeal an existing rule? Yes No

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule?

Yes No

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Arkansas Code: 20-10-108, 109 and 20-10-203

7. What is the purpose of this proposed rule? Why is it necessary? The Office of Long Term Care underwent an audit performed by the Arkansas State Police (ASP) on behalf of the FBI to determine compliance with FBI requirements for performing national criminal background checks for long-term care employees and applicants for employment. The amendments are to correct deficiencies identified in the audit and that, if uncorrected, would bar federal background checks. Those changes include:

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8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). <https://www.medicaid.state.ar.us/general/comment/comment.aspx>

9. Will a public hearing be held on this proposed rule? Yes No
If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

February 9, 2018

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

April 1, 2018

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. Attached.

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). Attached.

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. Unknown.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Provider Services and Quality Assurance

PERSON COMPLETING THIS STATEMENT Frank Gobell

TELEPHONE 501-320-6017 **FAX** _____ **EMAIL:** frank.gobell@dhs.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Criminal Records Check (DMS-736) Update; OLTC Rules and Regulations for Conducting Criminal Record Checks for Employees of Long Term Care Facilities §§303, 304, 305, and 306

- 1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No
- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total 0 _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total 0 _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total 0 _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total 0 _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ 0 _____

Next Fiscal Year

\$ 0 _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 0 _____

Next Fiscal Year

\$ 0 _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously

with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

SUMMARY

The Office of Long Term Care underwent an audit performed by the Arkansas State Police (ASP) on behalf of the FBI to determine compliance with FBI requirements for performing national criminal background checks for long-term care employees and applicants for employment. The amendments are to correct deficiencies identified in the audit and that, if uncorrected, would bar federal background checks. Those changes include:

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