

DEPARTMENT OF HUMAN SERVICES, DIVISION OF PROVIDER SERVICES AND QUALITY ASSURANCE

SUBJECT: OLTC Rules and Regulations for Conducting Criminal Record Checks for Employees of Long Term Care Facilities

DESCRIPTION: Section 304 of the Rules and Regulations for Conducting Criminal Record Checks for Employees of Long Term Care Facilities is being revised to strike language stating that DHS will provide long term care facilities with envelopes for mailing purposes relating to the completion of criminal records checks for applicants and clarifies that the long term care facility must provide those envelopes to applicants. In addition, Section 304 is being revised to remove the statement concerning the use of form ASP-122. Department of Medical Services Form 736 is being updated to add privacy language, delete a residency question, and revise the instructions for completing a criminal background check.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on October 11, 2019. The Department received no public comments.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following question:

Within the title of the rules, it appears that the term “regulations” has remained. I just wanted to make mention of Act 315 of 2019, § 3204(b)(3), which concerns the uniform use of the term “rule” and requires governmental entities to ensure the use of the term “rule” upon promulgation of any rule after the effective date of the Act, which was July 24, 2019. Is there a reason that DHS OLTC has retained the term “regulation” for the time being? **RESPONSE:** DHS will revise the promulgation to repeal the references to “regulation.” In addition, if this rule becomes effective December 1 as intended, DHS will utilize the procedure provided in Acts 2019, No. 893, to remove the term “regulation” from the entire manual by January 1, 2020.

The proposed effective date is December 1, 2019.

FINANCIAL IMPACT: The agency states that the amended rule has a financial impact. It estimates that the total estimated cost for the current fiscal year is \$28,016.32 and \$28,016.32 for the next fiscal year and that assisted living facilities, residential care facilities, skilled nursing, immediate care facilities for individuals with intellectual disabilities, human development centers, the Arkansas Health Center, adult day cares, and adult day health cares will be affected, as these providers will pay the costs of the envelopes used for mailing the fingerprint cards for the criminal record checks. The agency further estimates that implementation of the rule will result in a savings to state government of \$28,016.32 for the current fiscal year and \$28,016.32 for the next fiscal year, as DHS will no longer pay for the cost of the envelopes used for fingerprinting.

LEGAL AUTHORIZATION: The Department of Human Services (“Department”) shall administer assigned forms of public assistance, supervise agencies and institutions caring for dependent or aged adults or adults with mental or physical disabilities, and administer other welfare activities or services that may be vested in it. *See* Ark. Code Ann. § 20-76-201(1). The Department shall also make rules and take actions as are necessary or desirable to carry out the provisions of Title 20, Chapter 76 of the Arkansas Code, concerning Public Assistance Generally, and that are not inconsistent therewith. *See* Ark. Code Ann. § 20-76-201(12). Further authority for the rulemaking can be found in Ark. Code Ann. § 20-10-203, which provides that 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 that the Office may promulgate such rules not inconsistent with Title 20, Chapter 10 of the Arkansas Code, concerning Long-Term Care Facilities and Services, as it shall deem necessary or desirable to properly and efficiently carry out the purposes and intent of the chapter. *See* Ark. Code Ann. § 20-10-203(a), (b).

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Department of Human Services
DIVISION Office of Long-Term Care, Division of Provider Services and Quality Assurance
DIVISION DIRECTOR Jerald Sharum
CONTACT PERSON Isaac Linam
ADDRESS 700 S. Main S295
PHONE NO. 501-320-6570 **FAX NO.** 501-404-4619 **E-MAIL** Isaac.linam@dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Jerald Sharum and Victoria Evans
PRESENTER E-MAIL Victoria.Evans@dhs.arkansas.gov; Jerald.Sharum@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:

Jessica C. Sutton
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? OLTC Rules and Regulations for Conducting Criminal Record Checks for Employees of Long Term Care Facilities
2. What is the subject of the proposed rule? OLTC national criminal background checks for employees of long-term care facilities and applicants for employment
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes _____ No x
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 x
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 rule.

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."**

See attached.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

Arkansas Code §§ 20-10-203, 20-38-103, 20-38-112, 20-76-201, 20-77-107, and 25-1-129

7. What is the purpose of this proposed rule? Why is it necessary?
See attached.

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://humanservices.arkansas.gov/resources/legal-notices>

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

Date: N/A

Time: _____

Place: _____

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

October 11, 2019

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

December 1, 2019

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. See attached.

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). See 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 Division of Provider Services and Quality Assurance
PERSON COMPLETING THIS STATEMENT Victoria Evans
TELEPHONE NO. 501-320-3964 **FAX NO.** N/A **EMAIL:** Victoria.Evans@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 OLTC Rules and Regulations for Conducting Criminal Record Checks for Employees of Long Term Care Facilities

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes x 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 x 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 x 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

Next Fiscal Year

General Revenue
Federal Funds
Cash Funds
Special Revenue

Other (Identify) _____

Other (Identify) _____

Total _____

Total _____

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

Current Fiscal Year

Next Fiscal Year

General Revenue _____

General Revenue _____

Federal Funds _____

Federal Funds _____

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total _____

Total _____

- 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

Next Fiscal Year

\$ 28,016.32

\$ 28,016.32

Assisted Living Facilities, Residential Care Facilities, Skilled Nursing, Intermediate Care Facilities for Individuals with Intellectual Disabilities, Human Development Centers, Arkansas Health Center, Adult Day Cares and Adult Day Health Cares will be affected. These providers will pay the costs of the envelopes used for mailing the fingerprint cards for the criminal record checks.

- 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

Next Fiscal Year

7. \$ (\$28,016.32)

\$ (\$28,016.32)

DHS will no longer pay for the cost for the envelopes used for the fingerprinting.

- 8. 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 x

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.

NOTICE OF RULE MAKING

The Office of Long-Term Care of the Division of Provider Services & Quality Assurance, of the Department of Human Services hereby issues, for a thirty-day public comment period, a notice of rulemaking for the following proposed medical assistance rule(s) under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§ 20-10-203, 20-38-103, 20-38-112, 20-76-201, 20-77-107, and 25-10-129.

Effective December 1, 2019:

Section 304 of the Rules and Regulations for Conducting Criminal Record Checks for Employees of Long Term Care Facilities is being revised to strike language stating that DHS will provide long term care facilities with envelopes for mailing purposes relating to the completion of criminal records checks for applicants and clarifies that the long term care facility must provide those envelopes to applicants. In addition, Section 304 is being revised to remove the statement concerning the use of ASP-122 form. Division of Medical Services Form 736 is being updated to add privacy language, delete a residency question, and revise instructions for completing a criminal background check.

The proposed rule is available for review at the Division of Provider Services & Quality Assurance, 4th Floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 8059, Slot S427, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rule on the Legal Notices website at <https://humanservices.arkansas.gov/resources/legal-notices> . 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 October 11, 2019. 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 501-320-6164.

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. **4501837416**

Jerald Sharum, Director
Division of Provider Services & Quality Assurance

Statement of Necessity and Rule Summary

Rules and Regulations for Conducting Criminal Record Checks for Employees of Long Term Care Facilities

Statement of Necessity.

The Rules and Regulations for Conducting Criminal Record Checks for Employees of Long Term Care Facilities currently states that the Division of Provider Services and Quality Assurance (DPSQA) will provide two (2) sets of different-sized envelopes to long term care facilities to allow them to mail fingerprint cards and other necessary forms relating to the completion of criminal records checks for applicants. However, the intent of the rule is for the long term care facilities to provide those envelopes themselves to applicants. In addition, Section 304 is being revised to remove the statement concerning the use of ASP-122 form.

Rule Summary.

Section 304 of the Rules and Regulations for Conducting Criminal Record Checks for Employees of Long Term Care Facilities is being revised to strike language stating that DHS will provide long term care facilities with envelopes for mailing purposes relating to the completion of criminal records checks for applicants and clarifies that the long term care facility must provide those envelopes to applicants. In addition, Section 304 is being revised to remove the statement concerning the use of ASP-122 form. Department of Medical Services Form 736 is being updated to add privacy language, delete a residency question, and revise instructions for completing a criminal background check.

From: [Thomas Herndon](#)
To: register@sos.arkansas.gov
Cc: [Isaac Linam](#)
Subject: DHS/DPSQA - Proposed Filing - Rules and Regulations for Conducting Criminal Record Checks for Employees of Long Term Care Facilities
Date: Tuesday, September 10, 2019 8:44:00 AM
Attachments: [SoS - Criminal Records Check for Long Term Care Facilities.pdf](#)

Department of Human Services/ Division of Provider Services and Quality Assurance

This ad will run for the following three consecutive days:

Thursday, September 12, 2019

Friday, September 13, 2019

Saturday, September 14, 2019

The 30 day public comment period will end October 11, 2019.

Let me know if you have any questions.

Thanks,

Thomas Herndon | Program Administrator
Arkansas Department of Human Services
Office of Rules Promulgation | Office of Legislative & Intergovernmental Affairs
Phone: 501.396.6013
Thomas.Herndon@dhs.arkansas.gov

NOTE - This email may contain sensitive information or confidential information.

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