

EXHIBIT M

DEPARTMENT OF HUMAN SERVICES, DEVELOPMENTAL DISABILITIES SERVICES

(1943)

SUBJECT: Standards for Conducting Criminal Record Checks for Employees of Developmental Disabilities Service Providers

DESCRIPTION: These new rules, in compliance with Act 516 of 2011, explains the requirements for criminal record checks for individuals certified or licensed by DDS as well as employees of three types of developmental disabilities providers, as follows: Center-based Services (Developmental Day Treatment Clinic Services), Home and Community Based Services (Medicaid Waiver), and Early Intervention Services.

These requirements apply: 1) When a provider checks the background of an applicant for employment with the provider; 2) when a provider conducts a periodic check for current employees of the provider; and 3) when a person submits an application to become licensed or certified as a provider.

Under these requirements, three divisions of the department (Childcare and Early Childhood Education, Medical Services/Office of Long Term Care, and Developmental Disabilities Services) will coordinate their respective criminal record check processes to reduce the burden on providers that are licensed or certified by all three divisions. All three divisions will now disqualify for the same convictions and use the same timeframes and will review and consider convictions that are expunged, pardoned, or other sealed.

The current rule is rescinded and is being replaced by this new rule as summarized above.

PUBLIC COMMENT: A hearing was held on December 13, 2011. The public comment period expired on December 20, 2011. In addition to a representative from the Bureau of Legislative Research, two persons attended the hearing: (1) Steve Hitt, Executive Director of the ARC Arkansas and (2) Sara Israel, Executive Director of the Developmental Disabilities Provider Association. Both attendees were in support of the rule. There were no other comments. The proposed effective date is February 28, 2012.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact. The continuing level budget applies.

LEGAL AUTHORIZATION: Arkansas Code Annotated § 20-38-109 authorizes the agency to promulgate consistent rules as necessary to implement § 20-38-101 *et seq.*, regarding criminal background checks. These rules implement Act 516 of 2011, which provided for transferability of criminal records checks and determination letters among various operational sections of a single service provider.

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Arkansas Department of Human Services
DIVISION Division of Developmental Disabilities Services
DIVISION DIRECTOR James C. Green
CONTACT PERSON Shelley Lee
ADDRESS PO Box 1437, Slot N501, Little Rock AR 72203
PHONE NUMBER 682-8677 **FAX NUMBER** 682-8380 **E-MAIL** shelley.lee@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
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

- 1. What is the short title of this rule?
Standards for Conducting Criminal Record Checks for Employees of Developmental Disabilities Service Providers

- 2. What is the subject of the proposed rule?
These Standards explain the requirements related to criminal record checks for the state agency and for providers of developmental disabilities services (1) when a person applies for employment with a provider, (2) when the provider conducts periodic checks for a current employee, and (3) when a person submits an application to become licensed or certified as a provider. The rule also applies to those certified or licensed by DDS. The rule coordinates and provides better consistency among the criminal record check processes for three DHS Divisions.

- 3. Is this rule required to comply with federal statute or regulations? Yes No
If yes, please provide the federal 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 the 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 markup 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 Arkansas Code citation.

ACA 20-38-109

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

These Standards explain the responsibilities of developmental disability service providers, the Division of Developmental Disabilities Services, and the Arkansas State Police in the area of criminal record checks for provider employees. It also coordinates processes among three DHS Divisions, DCCECE, DMS/OLTC, and DDS, to lessen the burden on providers who are licensed or certified by all three.

8. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: December 13, 2011

Time: 10:00 am

Place: Main Street Mall basement meeting room, 6th and Main Street, Little Rock, Arkansas

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

12/20/11

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

02/28/12

11. Do you expect this rule to be controversial? Yes No

If yes, please explain.

12. 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.

Names

Category

For

Against

Developmental Disabilities Provider Assn

Arkansas Waiver Assn

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT: Arkansas Department of Health and Human Services
DIVISION: Division of Developmental Disabilities Services
PERSON COMPLETING THIS STATEMENT: Shelley Lee
PHONE NUMBER: 682-8677

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE: Standards for Conducting Criminal Record Checks for Employees of Developmental Disabilities Service Providers

1. Does this proposed, amended, or repealed rule or regulation have a financial impact?
Yes No
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibitive, please explain.
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
General Revenue _____	General Revenue _____
Federal Funds _____	Federal Funds _____
Cash Funds _____	Cash Funds _____
Special Revenue _____	Special Revenue _____
Other _____	Other _____
Total _____	Total _____

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation, and explain how they are affected.

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
\$ <u>Continuing leve</u> _____	\$ <u>Continuing leve</u> _____

Developmental Disabilities providers, employees of these providers, and individuals licensed or certified by DDS will continue to be subject to criminal record checks requirements. These requirements are being updated through the repeal of a rule and the promulgation of this new rule.

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
\$ <u>Continuing leve</u> _____	\$ <u>Continuing leve</u> _____

Summary of Rule

The Division of Developmental Disabilities Services, Department of Human Services, in compliance with Act 516 of 2011, proposes a new rule entitled "*Standards for Conducting Criminal Record Checks for Employees of Developmental Disabilities Service Providers*". These Standards explain the requirements for criminal record checks for individuals certified or licensed by DDS as well as employees of three types of developmental disabilities providers:

- Center-based Services (Developmental Day Treatment Clinic Services),
- Home and Community Based Services (Medicaid Waiver),
- Early Intervention Services

These requirements apply:

- when a provider checks the background of an applicant for employment with the provider,
- when a provider conducts a periodic check for current employees of the provider, and
- when a person submits an application to become licensed or certified as a provider.

Under these requirements, three divisions of the Department:

- Division of Childcare and Early Childhood Education,
- Division of Medical Services/Office of Long Term Care, and
- Division of Developmental Disabilities Services)

will coordinate their respective criminal record check processes to reduce the burden on providers that are licensed or certified by all three Divisions. All three divisions will now disqualify for the same convictions and use the same timeframes and will review and consider convictions that are expunged, pardoned, or otherwise sealed.

The Division of Developmental Disabilities, Department of Human Services proposes to rescind a rule entitled "DDS Administrative Policy 1087, Criminal Record Checks". This rule is being replaced by the new rule summarized above, entitled "*Standards for Conducting Criminal Record Checks for Employees of Developmental Disabilities Service Providers*".

(FINAL FILING)

BUREAU OF LEGISLATIVE RESEARCH

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Division of Developmental Disabilities Services
AMENDING ADMINISTRATIVE REGULATIONS

TITLE: Standards for Conducting Criminal Record Checks for Employees of
Developmental Disabilities Service Providers

PROPOSED EFFECTIVE DATE: 02/28/12

STATUTORY AUTHORITY: ACA 20-38-109

NECESSITY AND FUNCTION: Defines and clarifies criminal record check process for employees of
developmental disabilities service providers

PAGES FILED: 14

Signature
Name: Shelley Lee Title: Assistant Director
Section: Quality Assurance
Department of Health and Human Services

Promulgation date: 02/15/12

Contact person: Shelley Lee

STANDARDS
FOR CONDUCTING
CRIMINAL RECORD CHECKS
FOR EMPLOYEES
OF
DEVELOPMENTAL DISABILITIES
SERVICE PROVIDERS

Arkansas Department of Human Services
Division of Developmental Disabilities Services

February 28, 2012

Post Office Box 1437, Slot N501

Little Rock, Arkansas 72203-1437

(501) 682-8677

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DDS Form 5088

AUTHORITY

The following rules and regulations for the requirement of criminal record checks for applicants and employees of providers of developmental disabilities services in the State of Arkansas are duly adopted and promulgated by the Arkansas Department of Human Services, Division of Developmental Disabilities Services (DDS), pursuant to the authority expressly conferred by Arkansas Code Ann. §20-38-101 et seq. (Act 1548 of 2001, Act 762 of 2009 and Act 516 of 2011).

Effective September 1, 2009, pursuant to Act 762 of 2009, Arkansas Code Title 20 was amended to add Chapter 38 which consolidated processes for conducting criminal record checks for diverse service providers within three Divisions of the Arkansas Department of Human Services. Thereafter, the authority expressed within these regulations are conferred by Arkansas Code Ann. §20-38-101 et seq. in addition to other authority conferred on the Division of Developmental Disabilities Services by Arkansas law or federal regulation.

If any provisions of these rules and regulations, or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end the provisions hereof are declared severable.

Individuals and service providers are immune from suit or liability for damages for acts or omissions, other than malicious acts or omissions, occurring in the performance of duties imposed by ACA §20-38-101 et seq.

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

If you need this material in a different format, such as large print, contact our Americans with Disabilities Act Coordinator at (501) 682-8677 (voice) or 682-1332 (TDD).

100 DEFINITIONS

The following definitions shall apply unless clearly stated otherwise:

Bureau - The Identification Bureau of the Department of the Arkansas State Police

Care - The treatment, services, assistance, education, training, instruction or supervision of individuals with disabilities for which the service provider is compensated either directly or indirectly.

Conviction – A conviction or plea of guilty or nolo contendere, whether or not the record of the offense is expunged, pardoned, or otherwise sealed,

Determination - The determination made by the licensing or certifying agency that a person making application to be licensed or certified as a service provider, an employee of a service provider, or an applicant for employment with a service provider is or is not disqualified from employment, licensure, or certification based on the criminal history of the employee or applicant.

Employee -

1. A person who:

- (i) (a) Is employed by a service provider to provide care to individuals with disabilities served by the service provider; or
- (b) Provides care to individuals with disabilities served by a service provider on behalf of, under supervision of, or by arrangement with the service provider; or
- (c) Submits an application to a service provider for the purposes of employment; or
- (d) Is a temporary employee placed by an employment agency with a service provider to provide care to individuals with disabilities served by the service provider
- (e) Submits an application to the Licensing or Certification Agency for the purpose of being licensed or certified as a service provider; or
- (f) Resides in an alternative living home in which services are provided to individuals with developmental disabilities; and

(ii) Has or may have unsupervised access to individuals with disabilities served by a service provider, except as provided in subsection 2 below.

2. Employee does not include a person who:

- (i) Is a family member of an individual with a disability served by a service provider, unless the family member is paid by the service provider to provide care to the individual;
- (ii) Is a volunteer for the service provider without unsupervised access to individuals with disabilities; or
- (iii) Works in an administrative capacity for the service provider and does not and will not have unsupervised access to individuals with disabilities served by a service provider or access to the property or funds of those individuals.

Individual with Disabilities – A person with an intellectual, mental, developmental, or physical impairment who has deficits in these areas of need: self-care, understanding and use of language, learning, mobility, self-direction, and capacity for independent living.

Licensing or Certification Agency - The state agency (Department of Human Services, Division of Developmental Disabilities Services) charged with licensing or certifying a service provider.

National Criminal History Check - A review of national criminal records based on fingerprint identification or other positive identification methods.

Report - A statement of the criminal history of a service provider, applicant, applicant for employment with, or employee of a service provider issued by the Bureau.

Registry Records Check – The review of one or more database systems maintained by a state agency that contains information relative to a person's suitability for licensure or certification as a service provider or for employment with a service provider to provide care to individuals with disabilities.

Service Provider - (A) An Alternative Community Services (ACS) Waiver Program provider certified by the Division of Developmental Disabilities Services of the Department of Human Services;

(B) An Early Intervention (EI) Program provider certified by the Division of Developmental Disabilities Services of the Department of Human Services;

(C) A nonprofit community program licensed by the Division of Developmental Disabilities Services of the Department of Human Services to provide Developmental Day Treatment Clinic Services (DDTCS); and

(D) Any other person or entity licensed or certified by the Division of Developmental Disabilities Services of the Department of Human Services to provide services, including but not limited to applied behavior analysts; EI service coordinators; EI developmental therapists, and occupational, physical, or speech/language therapists certified to provide EI services;

State Criminal History Check - A review of state criminal records conducted by the Identification Bureau of the Arkansas State Police.

200 IMPLEMENTATION REQUIREMENTS

201 Before making an offer of employment, the service provider shall inform an applicant that employment is contingent upon the satisfactory results of criminal history record checks. Service providers shall not knowingly hire or continue to employ a person who has been found guilty or has pled guilty or nolo contendere to any of the offenses listed below by any court in the State of Arkansas or any similar offense by a court in another state or of any similar offense by a federal court.

1. Criminal attempt, § 5-3-201, criminal complicity, § 5-3-202, criminal solicitation, § 5-3-301, and criminal conspiracy, § 5-3-401, to commit any of the offenses listed in this subsection.
2. Capital murder, § 5-10-101;
3. Murder, §§ 5-10-102 and 5-10-103;
4. Manslaughter, § 5-10-104;
5. Negligent homicide, § 5-10-105;
6. Kidnapping, § 5-11-102;
7. False imprisonment, §§ 5-11-103 and 5-11-104;
8. Permanent detention or restraint, § 5-11-106;
9. Robbery, §§ 5-12-102 and 5-12-103;
10. Battery in the first, second and third degree, §§ 5-13-201 - 5-13-203;
11. Assault, §§ 5-13-204 - 5-13-207;
12. Coercion, § 5-13-208;
13. Introduction of controlled substance into body of another person, § 5-13-210;
14. Terroristic threatening, § 5-13-301;
15. Terroristic act, § 5-13-310;
16. Any sexual offense, § 5-14-101 et seq.;
17. Voyeurism, § 5-16-102;
18. Death threats concerning a school employee or student, § 5-17-101;
19. Incest, § 5-26-202;
20. Domestic Battery, §§ 5-26-303 - 5-26-306;
21. Interference with visitation, § 5-26-501;
22. Interference with court-ordered custody, § 5-26-502;
23. Endangering the welfare of incompetent person, §§ 5-27-201 and 5-27-202;
24. Endangering the welfare of a minor, §§ 5-27-205 and 5-27-206;
25. Contributing to the delinquency of a minor, § 5-27-209;
26. Contributing to the delinquency of a juvenile, § 5-27-220;
27. Permitting abuse of a minor, 5-27-221;
28. Soliciting money or property from incompetents, § 5-27-229;
29. Engaging children in sexually explicit conduct for use in visual or print media, § 5-27-303;
30. Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;
31. Transportation of minors for prohibited sexual conduct, § 5-27-305;
32. Employing or consenting to the use of a child in a sexual performance, § 5-27-402;
33. Producing, directing, or promoting a sexual performance by a child, § 5-27-403;
34. Computer crimes against minors, 5-27-601;
35. Felony abuse of an endangered or impaired person, § 5-28-103;
36. Theft of property, § 5-36-103;
37. Theft of services, § 5-36-104;
38. Theft by receiving, § 5-36-106;
39. Forgery, § 5-37-201;
40. Criminal impersonation, § 5-37-208;
41. Financial identity fraud, 5-37-227;
42. Arson, 5-38-301;

43. Burglary, § 5-39-201;
44. Breaking or entering, § 5-39-202;
45. Resisting arrest, §5-54-103;
46. Felony interference with a law enforcement officer, §5-54-104;
47. Cruelty to animals, §§ 5-62-103 and 5-62-104;
48. Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 – 5-64-508;
49. Public display of obscenity, §5-68-205;
50. Promoting obscene materials, §5-68-303;
51. Promoting obscene performance, §5-68-304;
52. Obscene performance at a live public show, §5-68-305;
53. Prostitution, §5-70-102;
54. Patronizing a prostitute, §5-70-103;
55. Promotion of prostitution, §§ 5-70-104 – 5-70-106;
56. Stalking, § 5-71-229;
57. Criminal use of a prohibited weapon, §5-73-104;
58. Simultaneous possession of drugs and firearms, §5-74-106; and
59. Unlawful discharge of a firearm from a vehicle, §5-74-107.

201.1 Except as provided in Section 201.2 below, a conviction or plea of guilty or nolo contendere for an offense listed in Section 201 shall not disqualify an employee or applicant for employment if:

1. The conviction or plea of guilty or nolo contendere was a misdemeanor offense and the date of conviction of the offense is at least five years from the date of the application for the criminal record check, and 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 record check;
2. The conviction or plea of guilty or nolo contendere was a felony offense and the date of the conviction of the offense is at least ten years from the date of the application for the criminal record check, and the person has no criminal convictions or pleas of guilty or nolo contendere of any type or nature during the ten year period preceding the record check;

The provisions in 202.1(1) and 201.1(2) shall be applied at the initial criminal record check performed by a service provider. A person who has previously been disqualified by DDS, and for whom the time for disqualification has passed (five years for misdemeanors or ten years for felonies) may have a new criminal record check conducted and may have the disqualification by DDS removed, except as provided in Section 201.2 below.

3. A person who would otherwise be disqualified under Section 201 shall not be disqualified if the person:
 - a. Was not disqualified on August 31, 2009; and
 - b. Has been continuously employed by the service provider who initiated the criminal record check or continues to be the operator of a service provider; and,

- c. Has not been found guilty of or pleaded guilty or nolo contendere to any offense listed in Section 201, a similar offense in another state, or a similar federal offense since August 31, 2009; and
- d. Submits proof of prior non-disqualification through the service provider

When the person next undergoes a periodic criminal record check, the person's continued employment or operator status with the service provider is contingent on the results of the new criminal record check.

201.2 Because of the serious nature of the offense and close relationship to the type of work that is to be performed, the following offenses by any court in the State of Arkansas or any similar offense by a court of another state or federal court, whether or not the record of the offense is expunged, pardoned, or otherwise sealed, shall result in permanent disqualification of employment:

1. Capital murder, § 5-10-101;
2. Murder in the first degree, § 5-10-102;
3. Murder in the second degree, § 5-10-103;
4. Kidnapping, § 5-11-102;
5. Rape, § 5-14-103;
6. Sexual assault in the first degree, § 5-14-124;
7. Sexual assault in the second degree, § 5-14-125;
8. Endangering the welfare of an incompetent person in the first degree, § 5-27-201;
9. Felony abuse of an endangered or impaired person, § 5-28-103; and
10. Arson, § 5-38-301.

202 Criminal record checks shall be conducted periodically as follows:

1. Periodic criminal record checks shall be performed on all employees as defined above on an ongoing basis. Each provider shall implement a schedule to conduct criminal record checks on employees so that no employee exceeds five years without a new criminal record check.
2. A person who is submitting an application to become licensed or certified as a service provider shall complete a criminal record check and submit results in the first application for a license or certification that is signed by the person and shall be required by the service provider to undergo periodic criminal record checks no less than one time every five years.

203 If a provider determines the need to utilize temporary employees as provided by a private placement agency, contract staffing agency, or through a contract for care provided by an outside vendor, the private placement agency, contract staffing agency or outside vendor shall initiate the criminal record check as provided by these standards prior to the placement of the person with the DDS service provider. The process to implement this provision is as follows:

1. When a service provider determines the need to utilize a private placement agency, contract staffing agency or contract for care provided by an outside vendor, the provider shall notify such agency/vendor to contact DDS for inclusion in the process to conduct criminal record checks as specified in these standards.
2. Upon contact by a private placement agency or contract agency/vendor as defined above, DDS shall direct the requestor to the standards and forms needed to conduct criminal record checks in accordance with these standards.
3. The private placement agency or contract agency/vendor shall initiate criminal record checks on applicable employees as prescribed in Section 300 of these standards. Upon receipt of the criminal record report, DDS shall issue a determination in writing to the agency/vendor.
4. Prior to placement of a person to work for a service provider, the service provider must obtain from the private placement agency or contract agency/vendor a copy of the person's determination letter from DDS to verify compliance with this provision.
5. Criminal record checks on persons assigned from private placement agencies or contract agencies/vendors must comply with the twelve month time limit provision specified in Section 501 of these standards. These persons are not eligible for the periodic record check provisions in Section 202 (1) and shall be subject to yearly criminal record checks. Each provider must establish a procedure for reviewing at least annually documentation of a current determination from DDS.

204 Criminal record checks as required in these standards shall include both a state and national record check. A "state only" criminal record check is allowed if the provider can verify the applicant has lived continuously in the State of Arkansas for the past five years.

Note: 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. Service providers shall maintain copies of such verification evidence in cases where a state-only criminal record check was conducted, for review by DDS.

205 If requested, each employee who has had a criminal record check conducted pursuant to these standards has a right to obtain, from the service provider, a copy of the report issued by the Identification Bureau and a copy of the determination letter issued by DDS. When a criminal record check results in the disqualification of an individual, the service provider must provide a copy of the DDS determination letter to the individual.

206 A review of Child and Adult Maltreatment Registries must be conducted for each applicant for employment at a service provider, each employee, and each person who submits an application to the Licensing or Certification Agency for the purpose of being licensed or certified as a service provider. Forms for registry record checks may be obtained from the agencies that maintain the registries. Providers shall develop policies and procedures to address actions taken by the provider when a finding of abuse, neglect or maltreatment on an applicant or employee appears on a registry.

Registry checks must be repeated every two years for the Child Abuse Registry and every five years for the Adult Abuse Registry. Results of all registry record checks and provider actions related to the results of such checks shall be maintained in the employee's personnel file for review by DDS.

207 A person may challenge the completeness or accuracy of criminal history information issued by the Bureau in accordance with ACA §12-12-1013. DDS shall make employment determinations based on the information obtained from the Bureau and shall not be responsible for allegations regarding the disposition, expungement or accuracy of the information. Any challenges to the accuracy of the report should be directed to the Arkansas State Police/Identification Bureau (501) 618-8500, #1 State Police Plaza Drive, Little Rock, Arkansas 72209.

208 All reports obtained by DDS under these standards are confidential and are restricted to the exclusive use of the Arkansas Crime Information Center, the Bureau, the licensing or certifying agency (DDS) and the person who is the subject of the report. The information contained in reports shall not be released or otherwise disclosed to any other person or agency except by court order and are specifically exempt from disclosure under the Arkansas Freedom of Information Act (A.C.A. 25-19-101, et seq.), except that the Department of Human Services/DDS is authorized and directed to furnish "determinations" to service providers. Providers utilizing the Arkansas State Police on-line process for criminal record checks will have access to the state reports that result from that process.

Note: Ark. Code Ann. § 12-12-1013 states that criminal history information may be provided to the subject, the subject's attorney, or other designee authorized in writing by the subject.

209 Each service provider shall maintain on file, subject to inspection by the Arkansas Crime Information Center, the Bureau, or the licensing or certifying agency (DDS), evidence that criminal record checks have been initiated on employment applicants, employees, and applicants for licensure or certification and shall maintain a copy of the determinations received from DDS. The provider shall monitor all pending criminal record check applications to ensure results are received within 30 calendar days for a state record check and 120 calendar days for a national (FBI) record check. The provider shall make all efforts to resolve pending applications that exceed these timeframes and shall document those efforts. For persons assigned from a private placement agency or contracted agency/vendor, the provider shall maintain on file copies of the determination letter issued by DDS.

300 PROCESS FOR EMPLOYMENT APPLICANTS AND EMPLOYEES

301 A criminal record check must be conducted when a person applies for a position as an employee, as defined by these standards, and the provider intends to make an offer of employment to the applicant. The same process as described in this section shall also be used when an incumbent employee's name is submitted for periodic criminal record checks as required by Section 202 (1) of these standards.

302 The provider, upon making an offer of employment to an applicant, shall have the applicant complete a criminal record check form (DDS-5088). Within five working days of completion of the form, the provider shall forward the form (or, if the check is to be conducted online, maintain the completed form at the requesting provider) and appropriate fee(s) to the Arkansas State Police/Identification Bureau requesting a state record check and, if applicable, a national FBI records check. The provider must maintain a copy of the DDS-5088 for verification of compliance (see Section 208). If a national record check is required, the applicant must also submit the appropriate fingerprint card. Fingerprint cards shall be available from DDS and must contain both the enabling statute number under "reason fingerprinted" and the identifier number (ORI) code that has been assigned.

303 If an applicant has not listed any of the convictions found in Section 201 on the DDS-5088 form or other employment application forms, a provider may make an offer of conditional employment to an applicant or may continue the employment of an incumbent employee while waiting for the official criminal record check results. Providers may choose to deny the applicant/employee unsupervised access to a person to whom the provider provides care until the criminal record check and determination of employment status have been completed.

304 Upon completion of a criminal record check on an applicant or employee, the Bureau shall issue a report to DDS and to the requesting provider. DDS shall determine whether the applicant or employee is disqualified from employment and issue its Letter of Determination to the provider or requesting entity. If the criminal record report issued by the Bureau lists any conviction, of any type or nature, the provider shall be required to remove from unsupervised direct care duties any person who was offered conditional or continued employment until DDS' Letter of Determination has been received. If the applicant or employee is disqualified from employment, the provider shall terminate the employment of the employee or deny further employment to the applicant.

305 The provider, upon making an offer of employment to an applicant, shall also submit forms to request a review of both the Child and Adult Maltreatment Registries. Results of the registry checks shall be maintained by the service provider. Providers shall develop policies and procedures to address actions taken by the provider when a finding of abuse, neglect or maltreatment on an applicant appears on a registry.

400 PROCESS FOR APPLICANTS FOR LICENSURE OR CERTIFICATION

401 Immediately prior to submitting an initial application to DDS for a licensure or certification as a service provider, the person, herein referred to as the applicant, shall complete a criminal record check form (DDS-5088) and FBI fingerprint card obtained from DDS. The applicant shall submit the forms and appropriate fees to the Bureau. Upon receipt of the criminal record report from the Bureau, DDS shall make a determination as to whether the applicant is disqualified. DDS will send the determination letter to the applicant seeking licensure or certification for inclusion in the application packet.

402 The applicant shall request a review of any records on both the Child and Adult Maltreatment Registries prior to submitting an application for licensure or certification to DDS. Forms for registry checks may be obtained from the agencies that maintain the registries. Original results of all registry record checks shall be included in the application packet.

403 Upon receipt of a complete application packet, including the determination of disqualification by DDS and results of both registry checks, DDS will review the packet. DDS shall issue a temporary license or certification to a provider whose application meets all requirements. DDS shall deny licensure or certification to a provider if the applicant has been determined to be disqualified based on criminal records check provisions, if the application packet does not include a determination from DDS, if the application packet does not include results of registry checks, or if the results of registry checks include a finding of abuse, neglect or maltreatment on the applicant.

404 The requirement for a criminal record check and registry checks initiated by the applicant shall apply to the initial application for licensure or certification only. Thereafter, the service provider shall ensure that the person undergoes periodic criminal record checks as an employee no less than once every five years and registry checks as noted in Section 206.

500 EXCEPTIONS/EXCLUSIONS

501 Any person who submits evidence of having maintained employment in the State of Arkansas for the past twelve months and of successfully completing a criminal record check within the last twelve months under these requirements shall not be required to apply for a new criminal record check. Copies of the previous criminal record check, the determination letter issued by DDS, and evidence of continual employment must be maintained by the provider for verification of this provision. These persons shall be subject to the same periodic checks as other employees as described in Section 202.

Note: The acceptance of a previously conducted criminal record check is contingent upon compliance with provisions set forth in these standards. All provisions, such as the requirement for a national FBI record check, if applicable, must have been completed. The criminal record check must have been processed by and a determination of employment status made by DDS.

502 As described below, an employment determination performed by other divisions of the Arkansas Department of Human Services and the criminal history report used to make the determination for an applicant or employee of a service provider are valid and transferrable for purposes of meeting the requirements of these standards for application or employment by DDS service provider. In these circumstances, the DDS service provider is not required to conduct any further criminal records check other than the periodic checks as described in Section 202. A valid and transferrable employment determination must meet the following conditions:

1. The determination must be made by:

a. The Division of Child Care and Early Childhood Education (DCCECE) for an applicant or employee of a child care facility or church-exempt child care facility; or,

b. The Division of Medical Services, Office of Long Term Care, for an applicant or employee of an Intermediate Care Facility for Persons with Intellectual/Developmental Disabilities (ICF)

2. The DDS service provider employee or applicant has not have a break in continuous employment with the service provider in the child care facility or ICF; and,

3. The child care facility or ICF in which the employee or applicant works is operated and administered by the same service provider operating the DDS program; and,

4. The licensed or certified service provider maintains evidence acceptable to DDS that the child care facility or ICF is operated and administered by the same service provider; and,

5. The DDS service provider, the child care facility, and the ICF in which the employee or applicant is employed maintains an original or copy of the determination letter by the Divisions listed in 1(a) or (b), above.

503 The requirement for a criminal record check under these standards shall not apply to persons who render care subject to professional licenses obtained for the following occupations:

1. Licensed professional counselors;
2. Dentists;
3. Registered or licensed practical nurses;
4. Occupational therapists;
5. Pharmacists;
6. Physical therapists;
7. Physicians and surgeons;
8. Podiatrists;
9. Psychologists and psychological examiners;
10. Speech-language pathologists and audiologists; and
11. Social workers.

A service provider may require that a criminal record check be conducted for any employee or contracted staff, regardless of professional license exemption, in accordance with the provider's policies.

600 SANCTIONS/PENALTIES

601 A provider that violates or fails to comply with requirements to obtain and maintain on file documentation of criminal record checks as specified in these standards shall be subject to licensure or certification enforcement remedies as found in DDS policy.

602 In determining licensure or certification enforcement remedies, DDS shall consider:

1. The gravity of the violation, including the probability that death or serious harm to an individual with disabilities will result or has resulted;
2. The severity and scope of the actual or potential harm;
3. The extent to which the provisions of applicable statutes or standards were violated;
4. The "good faith" exercised by the provider. Indications of good faith include, but are not limited to:
 - a. Awareness of the requirements and reasonable diligence to comply;
 - b. Prior history in complying with the requirements;
 - c. Efforts to correct noncompliance; and
 - d. Any other mitigating factors in favor of the provider.

700 APPEALS

701 An administrative hearing is available to a person who disagrees with a determination of disqualification for employment, licensure, or certification made by DDS as described in these standards. These provisions do not apply to a person's challenge to the accuracy of the record obtained from the Bureau (see Section 207 of these standards).

702 When a petitioner wishes to appeal, he/she may do so by mailing a written notice of appeal to Office of Appeals and Hearings, Office of Chief Counsel, Arkansas Department of Human Services, P.O. Box 1437, Slot N1001, Little Rock, Arkansas 72203. The notice shall be mailed by certified mail, return receipt requested. The appeal procedure is described in DHS Policy 1098.

MAIL form/attachments: State ID Bureau, Arkansas State Police, #1 State Police Plaza Dr., Little Rock, AR 72209

Obtain forms from: Arkansas Department of Human Services, Division of Developmental Disabilities Services (DDS)
 Licensure and Certification, PO Box 1437, Slot N203, Little Rock, AR 72203-1437, (501) 682-8675

REQUEST FOR CRIMINAL RECORD CHECK – ORI AR 920440Z

(A) State-only Check: Required items
 A.1. This form completed, signed, and notarized
 A.2. \$25 check/money order made payable to "Arkansas State Police"

(B) National (FBI) Check (must also request and pay for State Check in box A) Required items
 B.1. This form completed, signed, and notarized
 B.2. \$19.25 check/money order made payable to "Arkansas State Police"
 B.3. One completed fingerprint card

Type of Provider: Licensed DDTCS ___ Certified Early Intervention ___ Certified Waiver ___ Other _____

Provider submitting form: _____
 Name of Provider Address City/Zip

 Name of Provider Contact Person Telephone number (include Area Code)

 Name of person to be checked _____
 Last Name First Name Middle Name

Current address _____
 Street City State ZIP Code

 Maiden Name Aliases Date of Birth (month/day/year) Telephone

 Social Security Number Race Sex (M/F) Driver's License Number State of Issuance

Note: The name, address, and date of birth listed above must appear on a valid identification document issued by a government entity.
 Please list the document used if not the person's driver's license: _____

The person listed above must list all past felony or misdemeanor charges(s) for which he/she was found guilty of or to which he/she pled guilty or nolo contendere:
Date of charge Location Description of charge Sentence/Disposition

Notice: Providers will receive state criminal record reports and must forward those with a criminal record to DDS for a determination of employment eligibility. 20-38-101. DDS will receive FBI reports and make determinations of employment eligibility. Prior to receipt of these items, providers may choose to deny an employee unsupervised access to a person to whom the employer provides care. Providing false information on this form is a violation of Arkansas law and is punishable as set forth in Arkansas Code Annotated § 5-53-103. Any challenges to the accuracy of the report should be directed to the State Identification Bureau, Arkansas State Police, #1 State Police Plaza Drive, Little Rock, Arkansas 72209 (501) 618-8500.

Consent: I, the undersigned, hereby give my consent for the Arkansas State Police to conduct a criminal record check on me and to release results to the provider named below and to DDS. I further authorize, if required, a national criminal record check on me through the Federal Bureau of Investigation and the release of the results to DDS. I further authorize the Department of Human Services to issue a determination of employment eligibility to my current or potential employer, including a private placement or contracted staffing agency, based on the criminal record that is issued.

Statement of Oath: I state on oath that the representations made herein are true, complete, and correct.

 Signature of Applicant/Employee Date

Notarization: State of Arkansas County of _____ Subscribed and sworn to before me, a Notary Public, in and for the county and state

noted above this the _____ day of _____, _____

 Notary Public

My commission expires on _____, (year) _____

 (Notary Seal)

FOR ARKANSAS STATE POLICE ONLY
 _____ 82005 Civil Records Check \$25 via postal mail _____ 80005 & 80006 FBI Records Check \$19.25 _____ 82005 Civil Records Check \$22 via internet

Form DDS-5088 (02/28/12)