

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4

As Engrossed: H3/19/97

# A Bill

ACT 1041 OF 1997  
HOUSE BILL 2099

5 By: Representatives Wooldridge, Pollan, Baker, Broadway, Curran, DeLay, Faris, French, Jeffress, Lancaster, Malone, Wallis and  
6 Young  
7  
8

## For An Act To Be Entitled

9  
10 "AN ACT TO LICENSE RESIDENTIAL CHILD CARE FACILITIES AND  
11 CHILD PLACEMENT AGENCIES WITHIN THE STATE; AND FOR OTHER  
12 PURPOSES."  
13

### Subtitle

14  
15 "TO LICENSE RESIDENTIAL CHILD CARE  
16 FACILITIES AND CHILD PLACEMENT AGENCIES  
17 WITHIN THE STATE."  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Short Title.

22 This Act shall be known as "The Child Welfare Agency Licensing Act."  
23

24 SECTION 2. Definitions.

25 (1) "Adoptive home" means a household of one (1) or more persons which  
26 has been approved by a licensed child placement agency to accept a child for  
27 adoption.

28 (2) "Adverse action" means any petition by the Division before the Child  
29 Welfare Agency Review Board to take any of the following actions against a  
30 licensee or applicant for a license:

31 (A) revocation of license;

32 (B) suspension of license;

33 (C) conversion of license from regular status to provisional  
34 status;

35 (D) imposition of a civil penalty;

36 (E) denial of application;

1                   (F) reduction of licensed capacity.

2                   (3) "Alternative compliance" means a request for approval from the Child  
3 Welfare Agency Review Board to allow a licensee to deviate from the letter of  
4 a regulation provided that the licensee has demonstrated how an alternate plan  
5 of compliance will meet or exceed the intent of the regulation.

6                   (4) "Board" means the Child Welfare Agency Review Board.

7                   (5) "Boarding school" means an institution that is operated solely for  
8 educational purposes and that meets each of the following criteria:

9                   (A) the institution is in operation for a period of time not to  
10 exceed the minimum number of weeks of classroom instruction required of  
11 schools accredited by the Arkansas Department of Education;

12                   (B) the children in residence must customarily return to their  
13 family homes or legal guardians during school breaks and must not be in  
14 residence year around, except that this provision does not apply to students  
15 from foreign countries; and

16                   (C) the parents of children placed in the institution retain  
17 custody and planning and financial responsibility for the children.

18                   (6) "Child welfare agency" means any person, corporation, partnership,  
19 voluntary association or other entity or identifiable group of entities having  
20 a coordinated ownership of controlling interest, whether established for  
21 profit or otherwise, who engages in any of the following activities:

22                   (A) receives a total number of six (6) or more unrelated minors  
23 for care on a twenty-four (24) hour basis for the purpose of ensuring the  
24 minors receive care, training, education, custody or supervision, whether or  
25 not there are six (6) or more children cared for at any single physical  
26 location;

27                   (B) places any unrelated minor for care on a twenty-four (24) hour  
28 basis with persons other than themselves;

29                   (C) plans for or assists in the placements described in  
30 subdivision (b).

31                   (7) "Child placement agency" means a child welfare agency, not including  
32 any person licensed to practice medicine or law in the State of Arkansas, who  
33 engages in any of the following activities:

34                   (A) places a child in a foster home, adoptive home or any type of  
35 facility licensed or exempted by this act;

36                   (B) plans for the placement of a child in a foster home, adoptive

1 home or any type of facility licensed or exempted by this act;

2 (C) assists the placement of a child in a foster home, adoptive  
3 home or any type of facility licensed or exempted by this act.

4 (8) "Class A violation" means violations of essential standards,  
5 including those governing fire, health, safety, nutrition, staff/child ratio,  
6 and space. Operation of an unlicensed child welfare agency shall also be a  
7 Class A violation, unless specifically exempted as provided in this act.

8 (9) "Class B violation" means any other violations of standards that are  
9 not Class A violations.

10 (10) "Division" means the Division within the Department of Human  
11 Services that shall be designated by the DHS Director to administer this act.

12 (11) "Emergency child care" means any residential child care facility  
13 that provides care to children on a time-limited basis, not to exceed ninety  
14 (90) days.

15 (12) "Exempt child welfare agency" means any person, corporation,  
16 partnership, voluntary association or other entity, whether established for  
17 profit or otherwise, who otherwise fits the definition of a child welfare  
18 agency, but who is specifically exempt from the requirement of obtaining a  
19 license under this act. Those agencies specifically exempt from the license  
20 requirement are:

21 (A) A facility or program owned or operated by an agency of the  
22 United States government;

23 (B) Any agency of the State of Arkansas that is statutorily  
24 authorized to administer or supervise child welfare activities *In order to*  
25 *maintain exempt status, the state child welfare agency shall state every two*  
26 *(2) years in written form signed by the persons in charge, that their agency*  
27 *is in substantial compliance with published state agency child welfare*  
28 *standards. Visits to review and advise exempt state agencies shall be made as*  
29 *deemed necessary by the Board to verify and maintain substantial compliance*  
30 *with the standards;*

31 (C) A facility or program owned or operated by or under contract  
32 with the Arkansas Department of Correction;

33 (D) A hospital providing acute care licensed pursuant to Ark. Code  
34 Ann. § 20-9-201 et seq.;

35 (E) Any facility governed by the Arkansas State Hospital Board or  
36 its successor;

1                   (F) Human Development Centers regulated by the Board of  
2 Developmental Disabilities Services pursuant to Ark. Code Ann. § 20-48-201 et  
3 seq.;

4                   (G) Any facility licensed as a family home pursuant to Ark. Code  
5 Ann. § 20-48-601 et seq;

6                   (H) Any boarding school as defined in this section;

7                   (I) Any temporary camp as defined in this section;

8                   (J) Any state operated facility to house juvenile delinquents or  
9 any serious offender program facility operated by a state designee to house  
10 juvenile delinquents. Those facilities shall be subject to program  
11 requirements modeled on nationally recognized correctional facility standards  
12 which shall be developed, administered, and monitored by the Division of Youth  
13 Services of the Department of Human Services;

14                   (K) Any child welfare agency operated solely by a religious  
15 organization that elects to be exempt from licensing and which complies within  
16 the conditions of the exemption for church-operated agencies as set forth in  
17 this act.

18                   (13) "Foster home" means a private residence of one (1) or more family  
19 members that receives from a child placement agency any minor child who is  
20 unattended by a parent or guardian in order to provide care, training,  
21 education, custody or supervision on a twenty-four (24) hour basis, not to  
22 include adoptive homes.

23                   (14) "Independent living home" means any child welfare agency that  
24 provides specialized services in adult living preparation in an experiential  
25 setting for persons sixteen (16) years of age or older.

26                   (15) "Minimum standards" means those rules and regulations as  
27 established by the Child Welfare Agency Review Board that set forth the  
28 minimum acceptable level of practice for the care of children by a child  
29 welfare agency.

30                   (16) "Psychiatric residential treatment facility" means a residential  
31 child care facility in a non-hospital setting that provides a structured,  
32 systematic, therapeutic program of treatment under the supervision of a  
33 psychiatrist, for children who are emotionally disturbed and in need of daily  
34 nursing services, psychiatrist's supervision and residential care, but who are  
35 not in an acute phase of illness requiring the services of an in-patient  
36 psychiatric hospital.

1       (17) "Religious organization" means a church, synagogue or mosque or  
2 association of same whose purpose is to support and serve the propagation of  
3 truly held religious beliefs.

4       (18) "Residential child care facility" means any child welfare agency  
5 that provides care, training, education, custody or supervision on a  
6 twenty-four (24) hour basis for six (6) or more unrelated minors.

7       (19) "Substantial compliance" means compliance with all essential  
8 standards necessary to protect the health, safety, and welfare of the children  
9 in the care of the child welfare agency. Essential standards include, but are  
10 not limited to, those relating to issues involving fire, health, safety,  
11 nutrition, discipline, staff/child ratio and space.

12       (20) "Temporary camp" means any facility or program providing  
13 twenty-four (24) hour care or supervision to children which meets the  
14 following criteria:

15               (A) the facility or program is operated for recreational,  
16 educational, or religious purposes only;

17               (B) no child attends the program more than forty (40) days in a  
18 calendar year; and

19               (C) the parents of children placed in the program retain custody  
20 and planning and financial responsibility for the children during placement.

21       (21) "Unrelated minor" means a child who is not related by blood,  
22 marriage, or adoption to the owner or operator of the child welfare agency and  
23 who is not a ward of the owner or operator of the child welfare agency  
24 pursuant to a guardianship order issued by a court of competent jurisdiction.

25

26       SECTION 3. Authority to Implement the Act.

27       (1) There is created the Child Welfare Agency Review Board to serve as  
28 the administrative body to carry out the provisions of this act. The Child  
29 Welfare Agency Review Board shall have the authority to promulgate rules and  
30 regulations to enforce the provisions of this act.

31       (2) The Board may also identify and implement alternative methods of  
32 regulation and enforcement which may include, but not be limited to:

33               (A) expanding the types and categories of licenses issued for  
34 programs falling within the definition of "child welfare agency," as may be  
35 required by changes in the types of child welfare programs that may occur, and  
36 to promulgate separate regulations for each category of license as it may deem

1 proper;

2 (B) using the standards of other licensing authorities or  
3 compliance-reviewing professionals as being equivalent to partial compliance  
4 with Board-promulgated rules, when those standards have been shown to predict  
5 compliance with the Board-promulgated rules;

6 (C) using an abbreviated inspection that employs key standards  
7 that have been shown to predict full compliance with the rules.

8 (3) The Division is designated as the governmental agency charged with  
9 the enforcement of the provisions of this act. Only the Division, licensees,  
10 agencies specifically exempted by this act and applicants for a license shall  
11 have standing to initiate formal proceedings before the Board, except where  
12 otherwise provided by law.

13 (4) When any person, corporation, partnership, voluntary association or  
14 other entity shall be found to operate or assist in the operation of a child  
15 welfare agency which has been licensed by the Board or has had the license  
16 denied, revoked, or suspended by the Board, and therefore, has been ordered to  
17 cease and desist operation, in accordance with the provisions of this act, the  
18 Board shall have the right to go into the chancery court in the jurisdiction  
19 in which the child welfare agency is being operated and, upon affidavit,  
20 secure a writ of injunction, without bond, restraining and prohibiting the  
21 person, corporation, partnership, voluntary association or other entity from  
22 operating the child welfare agency.

23 (5) The Arkansas Administrative Procedures Act, Ark. Code Ann.  
24 § 25-15-201 et seq. shall apply to all proceedings brought pursuant to this  
25 act. The Arkansas Rules of Civil Procedure and the Arkansas Rules of Evidence  
26 shall also apply to adverse action hearings.

27

28 SECTION 4. Child Welfare Agency Review Board Composition.

29 (a) The Child Welfare Agency Review Board shall consist of Arkansas  
30 residents who shall be qualified as follows:

31 (1) The Director of the Division or designee;

32 (2) One (1) representative from a privately-owned, licensed child  
33 placement agency with expertise in foster care;

34 (3) One (1) representative from a privately-owned, licensed child  
35 placement agency with expertise in adoptions;

36 (4) Two (2) representatives from licensed residential child care

1 facilities;

2 (5) One (1) representative from a licensed psychiatric residential  
3 treatment facility;

4 (6) One (1) representative from a licensed emergency shelter;

5 (7) One (1) representative from the public at large;

6 (8) The Director of the Department of Health or his designee.

7 (b) Members shall be appointed by the Governor for four (4) year terms  
8 expiring on March 1 of the appropriate year, except that in making initial  
9 appointments, one (1) of the members representing licensed child placement  
10 agencies and the member representing the public at large shall serve for two  
11 (2) years and two (2) of the members representing residential facilities shall  
12 serve for three (3) years.

13 (c) Members of the Board shall serve without compensation, but each  
14 member of the Board shall be entitled to reimbursements for expenses for  
15 necessary meals, lodging, and mileage in attending board meetings, to be  
16 payable from funds appropriated for the maintenance and operation of the  
17 Division.

18 (d) The Division representative on the Board shall serve as Chair and  
19 shall only vote in the event of a tie.

20

21 SECTION 5. Child Welfare Agency Review Board Duties.

22 (a) The Board shall promulgate and publish rules and regulations  
23 setting minimum standards governing the granting, revocation, refusal, and  
24 suspension of licenses for a child welfare agency and the operation of a child  
25 welfare agency. The Board may consult with such other agencies,  
26 organizations, or individuals as it shall deem proper.

27 (b) The Board may amend the rules and regulations promulgated pursuant  
28 to this section from time to time, in accordance with the rule promulgation  
29 procedures in the Arkansas Administrative Procedures Act.

30 (c) The Board shall promulgate rules and regulations that:

31 (1) promote the health, safety and welfare of children in the care  
32 of a child welfare agency;

33 (2) promote safe and healthy physical facilities;

34 (3) ensure adequate supervision of the children by capable,  
35 qualified, and healthy individuals;

36 (4) ensure appropriate educational programs and activities for

1 children in the care of a child welfare agency;

2 (5) ensure adequate and healthy food service;

3 (6) include procedures for the receipt, recordation and

4 disposition of complaints regarding allegations of violations of this act, of

5 the rules promulgated thereunder, or of child maltreatment laws;

6 (7) include procedures for the assessment of child and family

7 needs and for the delivery of services designed to enable each child to grow

8 and develop in a permanent family setting;

9 (8) ensure that criminal record checks and central registry checks  
10 are completed on owners, operators and employees of a child welfare agency as  
11 set forth in this act.

12 (9) require compiling of reports and making them available to the  
13 Division when the Board determines it is necessary for compliance  
14 determination or data compilation.

15 (d)(1) Provided that the health, safety and welfare of children in the  
16 care of a child welfare agency is not endangered, nothing in this act shall be  
17 construed to permit the Board to promulgate or enforce any rule that has the  
18 effect of:

19 (A) interfering with the religious teaching or instruction  
20 offered by a child welfare agency;

21 (B) infringing upon the religious beliefs of the holder(s)  
22 of a child welfare agency license;

23 (C) infringing upon the right of an agency operated by a  
24 religious organization to consider creed in any decision or action relating to  
25 admitting or declining to admit a child or family for services;

26 (D) infringing upon the parents' right to consent to a  
27 child's participating in prayer or other religious practices while in the care  
28 of the child welfare agency;

29 (E) prohibiting the use of corporal discipline.

30 (2) A child welfare agency that articulates a sincerely held  
31 religious belief that is violated by a specific rule promulgated by the Board  
32 shall notify the Division in writing of the belief and the specific rule that  
33 violates the belief. Such rule shall be presumptively invalid as applied to  
34 that child welfare agency. The Division may then file a petition before the  
35 Board seeking to enforce the rule. The Division shall bear the burden of  
36 showing that the health, safety, or welfare of children would be endangered by



1 the exemption, and if the Board so finds by a preponderance of the evidence,  
2 the Board shall render a finding of fact so concluding.

3 (e) The Board shall issue all licenses to child welfare agencies upon  
4 majority vote of Board members present during each properly called Board  
5 meeting at which a quorum is present when the meeting is called to order.

6 (f)(1) The Board shall have the power to deny an application to operate  
7 a child welfare agency or revoke or suspend a previously issued license to  
8 operate a child welfare agency. The Board may deny, suspend, or revoke a  
9 child welfare agency license if the Board finds by a preponderance of the  
10 evidence that the applicant or licensee:

11 (A) failed to comply with the provisions of this act or any  
12 published rule or regulation of the Board relating to child welfare agencies;

13 (B) furnishes or makes any statement or report to the  
14 Division that is false or misleading;

15 (C) refuses or fails to submit required reports or to make  
16 available to the Division any records required by it in making an  
17 investigation of the agency for licensing purposes;

18 (D) refuses or fails to submit to an investigation or to  
19 reasonable inspection by the Division;

20 (E) retaliates against an employee who in good faith reports  
21 a suspected violation of the provisions of this act or the rules promulgated  
22 thereunder.

23 (2) Any denial of application or revocation or suspension of a  
24 license shall be effective when made.

25 (g) The Child Welfare Agency Review Board shall review the  
26 qualifications of persons required to have background checks under this act.

27 (h) The Child Welfare Agency Review Board may grant an agency's request  
28 for alternative compliance upon a finding that the child welfare agency does  
29 not meet the letter of a regulation promulgated under this act, but that the  
30 child welfare agency meets or exceeds the intent of that rule through  
31 alternative means. If the Board grants a request for alternative compliance,  
32 the child welfare agency's practice as described in the request for  
33 alternative compliance shall be the compliance terms under which the child  
34 welfare agency will be held responsible, and violations of those terms shall  
35 constitute a rule violation.

36 (i) The Child Welfare Agency Review Board shall have the authority to

1 impose a civil penalty upon any person violating any provisions of this act  
2 and any person assisting any partnership, group, corporation, organization, or  
3 association in violating any provisions of this act, except that the  
4 imposition of civil penalties shall not apply to agencies who have been  
5 granted a church-operated exemption pursuant to this act:

6           (1) the Board shall have the discretion to impose a civil penalty  
7 pursuant to this section when the Board determines by clear and convincing  
8 evidence that the person sought to be charged has violated this act or the  
9 rules promulgated thereunder willfully, wantonly or with conscious disregard  
10 for law or regulation.

11           (2) the Board may impose civil penalties as follows:

12                   (A) Class A violations as defined in this act shall be  
13 subject to a civil penalty of one hundred dollars (\$100) for each violation,  
14 with each day of noncompliance constituting a separate violation. In no event  
15 shall the Board impose more than five hundred dollars (\$500) for Class A  
16 violations occurring in any one (1) calendar month.

17                   (B) Class B violations as defined in this act shall be  
18 subject to a civil penalty of fifty dollars (\$50) for each violation, with  
19 each day of noncompliance constituting a separate violation. In no event  
20 shall the Board impose more than two hundred and fifty dollars (\$250) for  
21 Class B violations occurring in any one (1) calendar month.

22           (3) if any person upon whom the Board has levied a civil penalty  
23 fails to pay the civil penalty within sixty (60) days of the Board's decision  
24 to impose the penalty, the amount of the fine shall be considered to be a debt  
25 owed the State of Arkansas and may be collected by civil action by the  
26 Attorney General.

27           (j) The Board shall notify the applicant or licensee of the Division's  
28 petition for adverse action in writing and set forth the facts forming the  
29 basis for such request for the adverse action. This notice shall offer the  
30 licensee the opportunity for a pre-deprivation adverse action hearing to  
31 determine if the adverse action should be taken against the licensee or  
32 applicant. Nothing in this section shall be construed to prevent the Division  
33 or the Board from closing a child welfare agency on an emergency basis if  
34 emergency closure is immediately required to protect the health, safety, or  
35 welfare of children, in which case the licensee shall be entitled to a  
36 post-deprivation adverse action hearing.

1           (k) Adverse action hearings shall comply with the Arkansas  
2 Administrative Procedures Act, § 25-15-201 et seq. Within ten (10) business  
3 days after rendering a decision, the Board shall forward to the applicant or  
4 licensee a written findings of fact and conclusions of law articulating the  
5 Board's decision. The Board shall also issue an order that the applicant or  
6 licensee cease and desist from the unlawful operation of a child welfare  
7 agency if the adverse action taken was revocation or suspension of the license  
8 or denial of an application.

9           (l) If, upon the filing of a petition for a judicial review, the  
10 reviewing court determines that there is a substantial possibility that the  
11 Board's decision against the licensee or applicant may be reversed, the  
12 circuit court may enter a stay prohibiting enforcement of a decision of the  
13 Child Welfare Agency Review Board, provided that the circuit court articulates  
14 the facts from the adverse action hearing record which constitute a  
15 substantial possibility of reversal. Thereafter, the court shall complete its  
16 review of the record and announce its decision within one hundred twenty (120)  
17 days of the entry of the stay. If the court does not issue its findings  
18 within one hundred twenty (120) days of the issuance of the stay, the stay  
19 shall be considered vacated.

20           (m) All rules and regulations promulgated pursuant to this section, and  
21 all public comment received in writing by the Division in response to same,  
22 shall be made available for review by the Senate Committee on Children and  
23 Youth and the Subcommittee on Children and Youth of the House Committee on  
24 Aging, Children and Youth, Legislative and Military Affairs, and by the  
25 Governor or designee from among the Governor's staff.

26           (n) The validity or application of any rule or regulation promulgated  
27 by the Board under authority of this act shall be subject to remedies provided  
28 by law for obtaining declaratory judgments, at the suit of any interested  
29 person instituted in the circuit court of any county in which the plaintiff  
30 resides or does business or in the Circuit Court of Pulaski County. However,  
31 the Board must be named a party defendant and the Board must be summoned as in  
32 an action by ordinary proceedings.

33           (1) If a juvenile is found to be maltreated due to the acts or  
34 omissions of a person other than the parent or guardian of the juvenile, the  
35 court may enter an order restraining or enjoining the person or facility  
36 employing that person from providing care, training, education, custody, or

1 supervision of juveniles of whom the person or facility is not the parent or  
2 guardian.

3           (2) If the person or facility other than the parent or guardian of  
4 the juvenile found to be maltreated was not subject to this act, the court may  
5 order the person or facility to obtain a license from the Child Welfare Agency  
6 Review Board as a condition precedent to the person or facility providing  
7 care, training, education, custody, or supervision of any juveniles of which  
8 the person or facility is not the parent or guardian. If the court so orders,  
9 this act shall thereafter apply to the persons or facility subject to the  
10 court order.

11

12           SECTION 6. Division Enforcement Duties.

13           (a) The Division shall advise the Board regarding proposed rules and  
14 regulations. The Division shall obtain comments from the Board prior to  
15 initiating the rule promulgation process.

16           (b) The Child Welfare Agency Review Board is authorized to make an  
17 inspection and investigation of any proposed or operating child welfare  
18 agency, and of any personnel connected with that agency, to the extent that an  
19 inspection and investigation is necessary to determine whether the child  
20 welfare agency will be or is being operated in accordance with this act and  
21 the rules and regulations promulgated by the Board. The Board may delegate  
22 this authority to any agencies of the State of Arkansas whom the Board deems  
23 proper.

24           (c) The Division or any other public agency having authority or  
25 responsibility with respect to child maltreatment shall have the authority to  
26 investigate any alleged or suspected child maltreatment in any child welfare  
27 agency, whether licensed or exempt. Nothing contained in this section shall  
28 be construed to limit or restrict that authority.

29           (d) The Division shall assist licensees and applicants in complying  
30 with published rules and regulations by issuing advisory opinions regarding  
31 matters of rule compliance when so requested. The procedure for issuing  
32 advisory opinions shall be as follows:

33           (1) Any licensee or applicant for a license may submit a written  
34 request for an advisory opinion on whether or not a practice in any planned or  
35 existing child welfare agency complies with the rules promulgated pursuant to  
36 this act. The Division must respond to the request in writing within twenty

1 (20) business days of receiving the request. If the Division's response is  
2 that the subject of the request would not comply with published standards, the  
3 Division shall suggest an alternative practice which, in its opinion, would  
4 comply with published standards when it is possible to do so.

5 (2) A written opinion required above is binding on the Division  
6 as a declaratory order if the applicant or licensee has acted in reliance on  
7 the opinion. Notwithstanding the foregoing, in no event shall the advisory  
8 opinion be binding on the Child Welfare Agency Review Board if the compliance  
9 issue that is the subject of the advisory opinion is presented to the Board  
10 for review.

11 (e) The Division shall issue corrective action notices following  
12 inspections of child welfare agencies as provided below.

13 (1) If the Division finds that a child welfare agency has failed  
14 to comply with an applicable law or rule and this failure does not imminently  
15 endanger the health, safety or welfare of the persons served by the program,  
16 the Division shall issue a corrective action notice to the child welfare  
17 agency. The corrective action notice must require the licensee to outline a  
18 corrective action plan. The Division's corrective action notice shall  
19 contain:

20 (A) A factual description of the conditions that constitute  
21 a violation of the law or rule;

22 (B) The specific law or rule violated; and

23 (C) A reasonable time frame within which the violation must  
24 be corrected.

25 (2)(A) If the child welfare agency believes that the contents of  
26 the Division's corrective action notice are in error, the welfare agency may  
27 ask licensing authorities to reconsider the parts of the corrective action  
28 notice that are alleged to be in error. The request for reconsideration must  
29 be in writing, delivered by certified mail, specify the parts of the  
30 corrective action notice that are alleged to be in error, explain why they are  
31 in error, and include documentation to support the allegation of error.

32 (B) The Division shall render a decision on the request for  
33 reconsideration within fifteen (15) working days after the date the request  
34 for reconsideration was received. The licensee's request for reconsideration  
35 and supporting documentation shall be retained by the Division and made a part  
36 of the licensee's record.

1                   (3) If upon reinspection, the Division finds that the licensee has  
2 corrected the violation(s) specified in the corrective action notice, the  
3 Division employee shall indicate this correction and the date the correction  
4 was verified in the licensee's file. If upon reinspection, the Division finds  
5 that the licensee has not corrected the violations specified in the corrective  
6 action order within the required time frame, the Division may, in its  
7 discretion, petition the Child Welfare Agency Review Board to impose  
8 appropriate adverse action against the license. In the case of an applicant  
9 for a license, if the applicant has not corrected the violations in a  
10 previously issued corrective action notice, the Division may recommend denial  
11 of the application for a child welfare agency license.

12

13                   SECTION 7. Licenses Required and Issued.

14                   (a) It shall be unlawful for any person, partnership, group,  
15 corporation, association, or other entity or identifiable group of entities  
16 having a coordinated ownership of controlling interest, to operate or assist  
17 in the operation of a child welfare agency which has not been licensed by the  
18 Board from licensing pursuant to this act. This license shall be required in  
19 addition to any other license required by law for all entities that fit the  
20 definition of a child welfare agency and not specifically exempted.

21                   (b) It shall be unlawful for any person to falsify an application for  
22 licensure, to knowingly circumvent the authority of the Child Welfare Agency  
23 Licensing Act, to knowingly violate the orders issued by the Child Welfare  
24 Agency Review Board, or to advertise the provision of child care or child  
25 placement when not licensed under the Child Welfare Agency Licensing Act to  
26 provide such services, unless determined by the Board to be exempt therefrom.  
27 Any violation of this section shall constitute a Class D felony.

28                   (c) Any person, partnership, group, corporation, organization,  
29 association, or other entity or identifiable group of entities having a  
30 coordinated ownership of controlling interest, desiring to operate a child  
31 welfare agency shall first make application for a license or a church-operated  
32 exemption for such facility to the Board on the application forms furnished  
33 for this purpose by the Board. The Division shall also furnish the applicant  
34 with a copy of the Child Welfare Agency Licensing Act and the policies and  
35 procedures of the Child Welfare Agency Review Board at the time the person  
36 requests an application form. The child welfare agency shall submit a

1 separate application for license for each separate physical location of a  
2 child welfare agency.

3 (d) The Division shall review, inspect, and investigate each applicant  
4 to operate a child welfare agency and shall present a recommendation to the  
5 Board whether the Board should issue a license and what the terms and  
6 conditions of the license should be. The Division must complete its  
7 recommendation within ninety (90) days after receiving a complete application  
8 from the applicant. A complete application shall consist of:

9 (1) a completed application form prepared and furnished by the  
10 Board;

11 (2) a copy of the Articles of Incorporation, by-laws, and current  
12 board roster, if applicable, including names and addresses of the officers;

13 (3) a complete personnel list with verifications of  
14 qualifications and experience;

15 (4) substantiation of the financial soundness of the agency's  
16 operation;

17 (5) a written description of the agency's program of care,  
18 including intake policies, types of services offered, and a written plan for  
19 providing health care services to children in care.

20 (e)(1) The Board shall issue a regular license, which shall be  
21 effective until adverse action is taken on the license, if the Board finds  
22 that:

23 (A) the applicant for a child welfare agency license meets  
24 all licensing requirements; or

25 (B) the applicant for a child welfare agency license meets  
26 all essential standards, has a favorable compliance history and has the  
27 ability and willingness to comply with all standards within a reasonable time.

28 (2) The Board may issue a provisional license, which shall be  
29 effective for up to one (1) year, if the Board finds that the applicant meets  
30 all essential standards but the applicant requires more frequent monitoring  
31 because the applicant's ability or willingness to meet all standards within a  
32 reasonable time has not been favorably determined. The Board shall at no time  
33 issue a regular or provisional license to any agency or facility who does not  
34 meet all essential standards.

35 (f) A license to operate a child welfare agency shall apply only to the  
36 address and location stated on the application and license issued, and it

1 shall not be transferable from one holder of the license to another or from  
2 one place to another. Whenever ownership of a controlling interest in the  
3 operation of a child welfare agency is sold, the following procedures must be  
4 followed:

5 (1) the seller shall notify the Division of the sale at least  
6 thirty (30) days prior to the completed sale;

7 (2) the buyer shall apply to the Division for a license to  
8 operate the child welfare agency at least thirty (30) days prior to the  
9 completed sale;

10 (3) the seller shall remain responsible for the operation of the  
11 child welfare agency until such time as the agency is closed or a license is  
12 issued to the buyer;

13 (4) the seller shall remain liable for all penalties assessed  
14 against the child welfare agency which are imposed for violations or  
15 deficiencies occurring prior to the issuance of a license to the buyer; and

16 (5) the buyer shall be subject to any corrective action notices  
17 to which the seller was subject.

18 (g) If the Board votes to issue a license to operate a child welfare  
19 agency, the license must be posted in a conspicuous place in the child welfare  
20 agency, and must state, at a minimum:

21 (1) the full legal name of the entity holding the license,  
22 including the business name, if different;

23 (2) the address of the child welfare agency;

24 (3) the effective date and expiration date of the license;

25 (4) the type of child welfare agency the licensee is authorized  
26 to operate;

27 (5) the maximum number and ages of children that may receive  
28 services from the agency, if the agency is not a child placement agency;

29 (6) the status of the license, whether regular or provisional;

30 (7) any special conditions or limitations of the license.

31 (h) Reports, correspondence, memoranda, case histories, or other  
32 materials compiled or received by a licensee or a state agency engaged in  
33 placing a child shall be confidential and shall not be released or otherwise  
34 made available, except:

35 (1) To the director as required by regulation;

36 (2) As provided by the Revised Uniform Adoption Act, A.C.A. §



1 9-9-201 et seq.; or

2 (3) To multidisciplinary teams under A.C.A. § 12-12-502(b).

3 (i) Foster parents approved by a child placement agency licensed by the  
4 Department of Human Services shall not be liable for damages caused by their  
5 foster children, nor shall they be liable to the foster children nor to the  
6 parents or guardians of the foster children for injuries to the foster  
7 children caused by acts or omissions of the foster parents unless the acts or  
8 omissions constitute malicious, willful, wanton, or grossly negligent conduct.

9  
10 SECTION 8. Church-Related Exemption.

11 (a) Any church or group of churches exempt from the state income tax  
12 levied by § 26-51-101 et seq., when operating a child welfare agency shall be  
13 exempt from obtaining a license to operate the facility by the receipt by the  
14 Board of written request therefor, together with the written verifications  
15 required in subsection (b) of this section. A written request shall be made by  
16 those churches desiring exemption to the Board, which is mandated under the  
17 authority of this act to license all child welfare agencies.

18 (b)(1) In order to maintain an exempt status, the child welfare agency  
19 shall state every two (2) years, in written form signed by the persons in  
20 charge, that their agency has met the fire, safety, and health inspections and  
21 is in substantial compliance with published standards that similar nonexempt  
22 child welfare agencies are required to meet.

23 (2) Visits to review and advise exempt agencies shall be made as  
24 deemed necessary by the Board to verify and maintain substantial compliance  
25 with all published standards for nonexempt agencies.

26 (3) Standards for substantial compliance shall not include those  
27 of a religious or curriculum nature so long as the health, safety, and welfare  
28 of the child is not endangered.

29 (c)(1) Any questions of substantial compliance with the published  
30 standards shall be reviewed by the Board.

31 (2) Final administrative actions of the Board shall be pursued by  
32 either party in the court of competent jurisdiction in the resident county of  
33 the facility under review.

34 (3) Challenge to the constitutionality or reasonableness of any  
35 regulation or statute may be made prior to any appeal under the Arkansas  
36 Administrative Procedure Act, § 25-15-201 et seq.

1           (d) As used in this section, the term "substantial compliance" and the  
2 term "is being operated in accordance with this act" shall each mean that a  
3 church-operated exempt or a nonexempt child welfare agency is being operated  
4 within the minimum requirements for substantial compliance as promulgated by  
5 the Board. It is the intent and purpose of this section that the term  
6 "substantial compliance" be applicable to all child welfare agencies.

7

8           SECTION 9. Criminal Record and Child Maltreatment Checks.

9           (a)(1) The following persons in a child welfare agency shall be checked  
10 with the Arkansas Child Maltreatment Central Registry for reports of child  
11 maltreatment in compliance with policy and procedures promulgated by the Child  
12 Welfare Agency Review Board:

13                           (A) employees having direct and unsupervised contact with  
14 children;

15                           (B) volunteers having direct and unsupervised contact with  
16 children;

17                           (C) foster parents;

18                           (D) adoptive parents residing in Arkansas;

19                           (E) owners having direct and unsupervised contact with  
20 children;

21                           (F) members of the agency's board of directors having direct  
22 and unsupervised contact with children.

23           (2) The Child Welfare Agency Review Board shall have the authority  
24 to deny a license or church-operated exemption to any applicant found to have  
25 any record of founded child maltreatment in the official record of the  
26 Arkansas Child Maltreatment Central Registry.

27           (3) Any person required to be checked under this section who is  
28 found to have any record of child maltreatment in the official record of the  
29 Arkansas Child Maltreatment Central Registry shall be reviewed by the owner or  
30 operator of the facility in consultation with the Board to determine  
31 appropriate corrective action measures, which would indicate, but are not  
32 limited to training, probationary employment, or nonselection for employment.

33 The Child Welfare Agency Review Board shall also have the authority to deny a  
34 license or church-operated exemption to an applicant who continues to employ a  
35 person with any record of founded child maltreatment.

36           (4) All persons required to be checked with the Arkansas Child

1 Maltreatment Central Registry under this section shall repeat the check every  
2 two (2) years, except that adoptive parents who reside in Arkansas shall  
3 repeat the check every year pending court issuance of a final decree of  
4 adoption, at which point repeat checks shall no longer be required.

5 (b)(1) The following persons in a child welfare agency shall be checked  
6 with the Identification Bureau of the Arkansas State Police for convictions of  
7 the offenses listed in this act, in compliance with policy and procedures  
8 promulgated by the Child Welfare Agency Review Board:

9 (A) employees having direct and unsupervised contact with  
10 children;

11 (B) volunteers having direct and unsupervised contact with  
12 children;

13 (C) foster parents;

14 (D) owners having direct and unsupervised contact with  
15 children;

16 (E) members of the agency's board of directors having direct  
17 and unsupervised contact with children.

18 (2) The owner or operator of a child welfare agency shall maintain  
19 on file, subject to inspection by the board, evidence that Arkansas State  
20 Police criminal records checks have been initiated on all persons required to  
21 be checked, and the results of the checks. Failure to maintain that evidence  
22 on file will be prima facie grounds to revoke the license or church-operated  
23 exemption of the owner or operator of the child welfare agency.

24 (3) All persons required to be checked with the Arkansas State  
25 Police under this section shall repeat the check every five (5) years, except  
26 that adoptive parents shall not repeat the check after court issuance of a  
27 final decree of adoption in the adoption case for which the check was  
28 obtained.

29 (4) Adoptive parents shall complete background checks as required  
30 by law.

31 (c)(1) The following persons in a child welfare agency who have not  
32 lived in Arkansas continuously for the past six (6) years shall be checked  
33 with the Federal Bureau of Investigations for convictions of the offenses  
34 listed in this act, in compliance with federal law and regulations and with  
35 policy and procedures promulgated by the Child Welfare Agency Review Board:

36 (A) employees having direct and unsupervised contact with

1 children;

2 (B) volunteers having direct and unsupervised contact with

3 children;

4 (C) foster parents;

5 (D) owners having direct and unsupervised contact with

6 children;

7 (E) members of the agency's board of directors having direct

8 and unsupervised contact with children.

9 (2) The owner or operator of a child welfare agency shall maintain  
10 on file, subject to inspection by the board, evidence that the Federal Bureau  
11 of Investigations criminal records checks have been initiated on all persons  
12 required to be checked, and the results of the checks. Failure to maintain  
13 that evidence on file will be prima facie grounds to revoke the license or  
14 church-operated exemption of the owner or operator of the child welfare  
15 agency.

16 (d)(1) Each person required to have a criminal record check under this  
17 act shall complete a criminal records check form developed by the Department  
18 of Human Services and shall sign such form under oath before a notary public  
19 which contains the following:

20 (A) certification that the subject of the check consents to  
21 the completion of the check;

22 (B) certification that the subject of the check has not been  
23 convicted of a crime and, if the subject of the check has been convicted of a  
24 crime, contains a description of the crime and the particulars of the  
25 conviction;

26 (C) notification that the subject of the check may challenge  
27 the accuracy and completeness of any information in any such report and obtain  
28 a prompt determination as to the validity of such challenge before a final  
29 determination is made by the Child Welfare Agency Review Board with respect to  
30 their employment status or licensing status;

31 (D) notification that the subject of the check may be denied  
32 a license or exemption to operate a child welfare agency or may be denied  
33 unsupervised access to children in the care of a child welfare agency due to  
34 information obtained by the check which indicates that the subject of the  
35 check has been convicted of, or is under pending indictment for, a crime  
36 listed in this act;

1                   (E) notification that any background check and the results  
2 thereof shall be handled in accordance with the requirements of P.L. 92-544.

3                   (2) The owner or operator of the child welfare agency shall submit  
4 the criminal records check form to the Identification Bureau of the Department  
5 of Arkansas State Police for processing within ten (10) days of hiring the  
6 employee, who shall remain under conditional employment until the Arkansas  
7 Child Abuse Central Registry check and criminal records checks required under  
8 this act are completed.

9                   (3) Nothing in this section shall be construed to prevent the  
10 Board from denying a license or exemption to an owner or preventing an  
11 operator or employee in a child welfare agency from having unsupervised access  
12 to children by reason of the pending appeal of a criminal conviction or child  
13 maltreatment determination.

14                   (4) In the event a legible set of fingerprints, as determined by  
15 the Department of the Arkansas State Police and the Federal Bureau of  
16 Investigation, cannot be obtained after a minimum of three (3) attempts by  
17 qualified law enforcement personnel, the Board shall determine eligibility  
18 based upon a name check by the Department of Arkansas State Police and the  
19 Federal Bureau of Investigation.

20                   (5)(A) Owner/operator liability: An owner or operator of a child  
21 welfare agency shall not be liable during a conditional period of service for  
22 hiring any person required to have a background check pursuant to this act who  
23 may be subject to a charge of false swearing upon completion of central  
24 registry and criminal records checks.

25                   (B)(i) Pursuant to this act, false swearing shall occur when  
26 a person, while under oath, provides false information or omits information  
27 that the person knew or reasonably should have known was material.

28                   (ii) Lack of knowledge that information is material is  
29 not a defense to a charge of false swearing.

30                   (C) For purposes of this act, false swearing is a Class A  
31 misdemeanor.

32                   (e)(1) Except as provided in subsection (d)(2) of this section, no  
33 person shall be eligible to have direct and unsupervised contact with a child  
34 in the care of a child welfare agency if that person has pleaded guilty or  
35 nolo contendere or has been found guilty of any of the following offenses by  
36 any court in the State of Arkansas or of any similar offense by a court in

- 1 another state or of any similar offense by a federal court:
- 2                   (A) Capital murder as prohibited in § 5-10-101;
- 3                   (B) Murder in the first and second degrees as prohibited in
- 4 §§ 5-10-102 and 5-10-103;
- 5                   (C) Manslaughter as prohibited in § 5-10-104;
- 6                   (D) Negligent homicide as prohibited in § 5-10-105;
- 7                   (E) Kidnapping as prohibited in § 5-11-102;
- 8                   (F) False imprisonment in the first and second degrees as
- 9 prohibited in §§ 5-11-103 and 5-11-104;
- 10                   (G) Permanent detention or restraint as prohibited in
- 11 § 5-11-106;
- 12                   (H) Battery in the first, second, and third degrees as
- 13 prohibited in §§ 5-13-201, 5-13-202 and 5-13-203;
- 14                   (I) Aggravated assault as prohibited in § 5-13-204;
- 15                   (J) Assault in the first and second degrees as prohibited in
- 16 §§ 5-13-205 and 5-13-206;
- 17                   (K) Terroristic threatening in the first and second degrees
- 18 as prohibited in § 5-13-301(a) and (b);
- 19                   (L) Any sexual offense as prohibited in § 5-14-101 et seq.;
- 20                   (M) Permitting abuse of a child as prohibited in § 5-27-221;
- 21                   (N) Endangering the welfare of a minor in the first and
- 22 second degrees as prohibited in §§ 5-27-203 and 5-27-204;
- 23                   (O) Contributing to the delinquency of a minor as prohibited
- 24 in § 5-27-205;
- 25                   (P) Engaging children in sexually explicit conduct for use
- 26 in visual or print medium, transportation of minors for prohibited sexual
- 27 conduct, use of a child or consent to use of a child in sexual performance,
- 28 and producing, directing, or promoting sexual performance by a child, as
- 29 prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;
- 30                   (Q) Incest as prohibited in § 5-26-202;
- 31                   (R) Interference with visitation as prohibited in
- 32 § 5-26-501;
- 33                   (S) Interference with custody as prohibited in § 5-26-502;
- 34                   (T) Engaging in conduct with respect to controlled
- 35 substances as prohibited in § 5-64-401;
- 36                   (U) Distribution to minors as prohibited in § 5-64-406;

1 (V) Public display of obscenity as prohibited in § 5-68-205;

2 (W) Prostitution as prohibited in § 5-70-102;

3 (X) Promotion of prostitution in the first, second, and

4 third degrees as prohibited in §§ 5-70-104, 5-70-105, and 5-70-106;

5 (Y) Criminal attempt, criminal solicitation, or criminal

6 conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301 and 5-3-401 to commit

7 any of the offenses listed in this section;

8 (Z) Any felony or any misdemeanor involving violence,

9 threatened violence, or moral turpitude;

10 (AA) Any former or future law of this or any other state or

11 of the federal government which is substantially equivalent to one of the

12 aforementioned offenses;

13 (2)(A) Any person pleading guilty or nolo contendere or found

14 guilty of any of the offenses listed in subsection (e) of this section shall

15 be absolutely disqualified to be an owner, operator, or employee in a child

16 welfare agency during the period of their confinement, probation or parole

17 supervision.

18 (B) Any person pleading guilty or nolo contendere or found

19 guilty of any of the offenses listed in subsection (e)(1) of this section

20 shall be presumed to be disqualified to be an owner, operator, or employee in

21 a child welfare agency after the completion of their term of confinement,

22 probation or parole supervision. This presumption can be rebutted in the

23 following manner:

24 (i) the applicant to own, operate or be an employee

25 must petition the Child Welfare Agency Review Board to make a determination

26 that the applicant does not pose a risk of harm to any person served by the

27 facility and is therefore qualified to serve in a child welfare agency. The

28 applicant shall bear the burden of making such a showing.

29 (ii) the Board, in its discretion, permit an applicant

30 to own, operate or be an employee in a child welfare agency is qualified to

31 serve in a child welfare agency notwithstanding having been convicted of an

32 offense listed in this section, upon making a determination that the applicant

33 does not pose a risk of harm to any person served by the facility. In making

34 this determination, the Board shall consider the following factors:

35 (a) the nature and severity of the crime;

36 (b) the consequences of the crime;

- 1 (c) the number and frequency of crimes;
- 2 (d) the relation between the crime and the
- 3 health, safety, and welfare of persons served by a child welfare agency, such
- 4 as:
  - 5 (1) the age and vulnerability of victims
  - 6 of the crime;
  - 7 (2) the harm suffered by the victim;
  - 8 (3) the similarity between the victim and
  - 9 persons served by a child welfare agency;
  - 10 (e) the time elapsed without a repeat of the
  - 11 same or similar event;
  - 12 (f) documentation of successful completion of
  - 13 training or rehabilitation pertinent to the incident; and
  - 14 (g) any other information that bears on the
  - 15 applicant's ability to care for children or any other relevant information.

16 (C) The Board's decision to disqualify a person from being  
 17 an owner, operator, or employee in a child welfare agency pursuant to this  
 18 section shall constitute the final administrative agency action and shall not  
 19 be subject to review.

20  
 21 SECTION 10. All provisions of this act of a general and permanent  
 22 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
 23 Code Revision Commission shall incorporate the same in the Code.

24  
 25 SECTION 11. If any provision of this act or the application thereof to  
 26 any person or circumstance is held invalid, such invalidity shall not affect  
 27 other provisions or applications of the act which can be given effect without  
 28 the invalid provision or application, and to this end the provisions of this  
 29 act are declared to be severable.

30  
 31 SECTION 12. (a) Arkansas Code Annotated §§ 9-28-401 through 9-28-412  
 32 are repealed.

33 ~~9-28-401. Title.~~  
 34 ~~This subchapter shall be known and cited as the "Child Placement Agency~~  
 35 ~~Licensing Act".~~

36



1 ~~9-28-402. Definitions.~~

2 ~~As used in this subchapter, unless the context otherwise requires:~~

3 ~~(1) "Child placement agency" means any group, association, partnership,~~  
4 ~~corporation, or person, other than the natural parents or guardian of a child,~~  
5 ~~who plans for the placement of, or places, a child in an institution, foster~~  
6 ~~home, or adoptive home;~~

7 ~~(2) "Child" means any person under the age of eighteen (18) years;~~

8 ~~(3) "Director" means the Director of the Department of Human Services;~~

9 ~~(4) "Committee" means the Advisory Committee on Child Placement; and~~

10 ~~(5) "Physicians" means persons licensed under the Medical Practices~~  
11 ~~Act, <sup>A</sup> 17-95-201 et seq.~~

12

13 ~~9-28-403. State agencies and certain professionals exempted.~~

14 ~~(a) The provisions of this subchapter shall not be applicable to any~~  
15 ~~state agency authorized to place a child in an institution, foster home, or~~  
16 ~~adoptive home if the state agency meets the standards and reporting~~  
17 ~~requirements prescribed for child placement agencies.~~

18 ~~(b) Furthermore, the provisions of this subchapter shall not be~~  
19 ~~applicable to lawyers or physicians, provided that such persons are actively~~  
20 ~~engaged in their professions within the State of Arkansas.~~

21

22 ~~9-28-404. Penalties.~~

23 ~~(a) Any person who plans for the placement of, or places or assists any~~  
24 ~~group, association, partnership, corporation, or other person in placing a~~  
25 ~~child in an institution, foster home, or adoptive home, without first~~  
26 ~~obtaining a license from the Director of the Department of Human Services,~~  
27 ~~shall be deemed guilty of a Class D felony. The license shall be in addition~~  
28 ~~to any other license required by law.~~

29 ~~(b) Any person who places or causes to be placed any public~~  
30 ~~notification in order to promote or accomplish any act violating this section~~  
31 ~~shall be deemed guilty of a Class D felony.~~

32

33 ~~9-28-405. Injunctions.~~

34 ~~The director may apply to the proper chancery court for, and the court~~  
35 ~~shall have jurisdiction upon hearing and for cause shown to grant, a temporary~~  
36 ~~or permanent injunction restraining any person from violating any provision of~~

1 ~~this subchapter.~~

2

3 ~~———— 9-28-406. Advisory Committee on Child Placement — Cooperation of~~  
4 ~~Department of Human Services.~~

5 ~~———— (a)(1) There is created the Advisory Committee on Child Placement to be~~  
6 ~~composed of seven (7) members to be appointed by the Governor.~~

7 ~~———— (2) As a group, the members shall have sufficient knowledge,~~  
8 ~~experience, and expertise to fairly represent the interests of the general~~  
9 ~~public, the specific problems and interests of those who use or benefit from~~  
10 ~~child placement services, and the concerns of professional planners and~~  
11 ~~providers of these services.~~

12 ~~———— (3) All appointments shall be for a term of four (4) years.~~

13 ~~———— (b) Members of the committee shall serve without compensation but will~~  
14 ~~be reimbursed by the Department of Human Services for their reasonable~~  
15 ~~necessary travel and other expenses incurred in the performance of their~~  
16 ~~official duties.~~

17 ~~———— (c)(1) The committee shall meet at least every six (6) months at times~~  
18 ~~and places fixed by the committee.~~

19 ~~———— (2) At its first meeting each year, the committee shall organize~~  
20 ~~and elect from its membership a chairman.~~

21 ~~———— (3) A majority of the membership of the committee shall~~  
22 ~~constitute a quorum.~~

23 ~~———— (4) No action shall be taken by the committee except by an~~  
24 ~~affirmative vote of the majority of those present and voting.~~

25 ~~———— (d)(1) The committee shall advise the director on the formulation of~~  
26 ~~policy for administering and implementing this subchapter.~~

27 ~~———— (2) The committee shall also report annually to the Governor, the~~  
28 ~~Legislative Council, and the Director of the Department of Human Services on~~  
29 ~~their findings and recommendations.~~

30 ~~———— (e)(1) No regulation made pursuant to this subchapter shall become~~  
31 ~~effective and no amendment or revision thereof shall take effect until the~~  
32 ~~regulation has been presented to the committee with an opportunity for the~~  
33 ~~committee to give its advice.~~

34 ~~———— (2) The recommendation of the Advisory Committee on Child~~  
35 ~~Placement shall accompany regulations submitted to the Legislative Council and~~  
36 ~~the Joint Interim Committee on Public Health, Welfare, and Labor pursuant to~~ <sup>§</sup>

1 ~~10-3-309.~~

2 ~~(f) In order for the committee to properly and efficiently discharge~~  
3 ~~its duties and responsibilities, the Department of Human Services shall~~  
4 ~~provide assistance to them which shall include:~~

5 ~~(1) Arranging space for regular and other necessary meetings;~~

6 ~~(2) Furnishing staff assistance, materials, and supplies~~  
7 ~~necessary to conduct regular meetings and other necessary meetings;~~

8 ~~(3) Furnishing child placement case information which shall not~~  
9 ~~include specific names and addresses of the parties to the case;~~

10 ~~(4) Furnishing technical advice and direction.~~

11

12 ~~9-28-407. Regulations.~~

13 ~~(a) The director shall have the power to issue regulations containing~~  
14 ~~specific requirements consistent with and in furtherance of the purposes of~~  
15 ~~this subchapter for the facilities, programs, and operation of child placement~~  
16 ~~agencies and otherwise for the implementation of this subchapter.~~

17 ~~(b) The regulations shall apply uniformly throughout the state.~~

18 ~~(c) Regulations established pursuant to this section shall include, but~~  
19 ~~not be limited to, requirements that each child placement agency:~~

20 ~~(1) Structure its programs to maximize coordination of its own~~  
21 ~~services with those of foster care agencies and other providers of services to~~  
22 ~~children;~~

23 ~~(2) Study the alternatives to adoption before a permanent plan is~~  
24 ~~made for any child to whom the licensee provides foster care services;~~

25 ~~(3) Have an established program of recruitment of potential~~  
26 ~~foster or adoptive parents or a program to purchase such recruitment services;~~

27 ~~(4) Provide intake procedures and a family assessment for any~~  
28 ~~adult interested in adopting a waiting child under the care of the licensee;~~

29 ~~(5) Maintain a fair hearing and appeal procedure for persons~~  
30 ~~aggrieved by the actions of the licensee;~~

31 ~~(6) Provide or cause to be provided preplacement, placement,~~  
32 ~~post-placement, and postadoption services;~~

33 ~~(7) Periodically conduct reviews of its services;~~

34 ~~(8) Provide opportunity to its staff members to receive training~~  
35 ~~suited to staff and child placement agency functions and participate in the~~  
36 ~~planning and execution of the licensee's staff training program;~~

- 1 ~~\_\_\_\_\_ (9) Hire qualified personnel to provide its services;~~
- 2 ~~\_\_\_\_\_ (10) Assure the provision of health care to the children under~~
- 3 ~~its care;~~
- 4 ~~\_\_\_\_\_ (11) Maintain and preserve case records which meet minimum~~
- 5 ~~standards established by the director;~~
- 6 ~~\_\_\_\_\_ (12) Maintain a case review and reporting system;~~
- 7 ~~\_\_\_\_\_ (13) Compile and report statistics to the director; and~~
- 8 ~~\_\_\_\_\_ (14) Perform or cause to be performed a family assessment of~~
- 9 ~~potential adoptive parents or foster parents before such persons take physical~~
- 10 ~~custody of the child.~~

11

12 ~~\_\_\_\_\_ 9-28-408. [Repealed.]~~

13

14 ~~\_\_\_\_\_ 9-28-409. Licenses - Application, issuance, etc.~~

15 ~~\_\_\_\_\_ (a) An applicant may apply for a license to plan for the placement of~~

16 ~~children, place children in institutions, place children in foster homes, and~~

17 ~~place children in adoptive homes, or the applicant may limit the application~~

18 ~~to one (1) or more of these services.~~

19 ~~\_\_\_\_\_ (b) Application for a child placement agency license or renewal shall~~

20 ~~be made on forms approved by the director.~~

21 ~~\_\_\_\_\_ (c) The director shall issue a license to any applicant which:~~

22 ~~\_\_\_\_\_ (1) Gives satisfactory evidence of financial responsibility;~~

23 ~~\_\_\_\_\_ (2) Has sufficient personnel, properly qualified, to provide~~

24 ~~child placement services and to provide for the needs of children who may~~

25 ~~reasonably be expected to be in the applicant's charge as an incident to~~

26 ~~placement of the children;~~

27 ~~\_\_\_\_\_ (3) Has suitable and adequate facilities and administrative~~

28 ~~capabilities for the conduct of its programs; and~~

29 ~~\_\_\_\_\_ (4) Complies with the standards contained in regulations made~~

30 ~~pursuant to this subchapter.~~

31 ~~\_\_\_\_\_ (d)(1) Upon receipt of a completed application, and pending the renewal~~

32 ~~of the license, the current license shall remain in effect unless it is~~

33 ~~suspended, revoked, or the licensed agency closes or no longer requires a~~

34 ~~license under this subchapter.~~

35 ~~\_\_\_\_\_ (2)(A) If a completed application containing all the information~~

36 ~~required by regulations for renewal is not received by the expiration date of~~

1 ~~the current license, the current license shall expire and the agency shall~~  
2 ~~cease operation. The appropriate division of the Department of Human Services~~  
3 ~~shall verify that the agency has ceased operations.~~

4 ~~\_\_\_\_\_ (B) If an agency license has lapsed, the agency cannot~~  
5 ~~operate until a license is issued.~~

6 ~~\_\_\_\_\_ (e) The granting or denial of an application for a license pursuant to~~  
7 ~~this subchapter shall constitute final action of the Director of the~~  
8 ~~Department of Human Services subject to review in accordance with the Arkansas~~  
9 ~~Administrative Procedure Act, § 25-15-201 et seq.~~

10 ~~\_\_\_\_\_ (f) Upon issuance of a license or a renewal there shall be paid to the~~  
11 ~~director a license fee which shall be determined by regulation.~~

12 ~~\_\_\_\_\_ (g) A child placement agency license shall be issued for a term of~~  
13 ~~three (3) years and shall be renewable for like terms by the holder, provided~~  
14 ~~that the holder continues to meet all requirements for licensure.~~

15 ~~\_\_\_\_\_ (h)(1) A child placement agency which is applying for an initial~~  
16 ~~license shall receive a provisional license which shall entitle the holder to~~  
17 ~~all rights and privileges conferred by a child placement agency license, but~~  
18 ~~which shall have a term of one (1) year.~~

19 ~~\_\_\_\_\_ (2) An applicant for a provisional license shall be required to~~  
20 ~~satisfy the director that it is prepared to meet all requirements for~~  
21 ~~licensure upon the issuance of a license.~~

22

23 ~~\_\_\_\_\_ 9-28-410. Monitoring, inspection of agencies - Suspension, revocation of~~  
24 ~~license - Conditional license.~~

25 ~~\_\_\_\_\_ (a)(1) The director shall monitor, on a continuing basis, the~~  
26 ~~performance of child placement agencies.~~

27 ~~\_\_\_\_\_ (2) The director or his designee shall have the right, at all~~  
28 ~~reasonable times, to inspect all of the facilities, books, and records of~~  
29 ~~every child placement agency and to interview any agent or employee thereof or~~  
30 ~~any person under its custody, control, direction, or supervision.~~

31 ~~\_\_\_\_\_ (b)(1) Whenever the director finds that any agency is not providing the~~  
32 ~~services required by this subchapter or is otherwise in violation of this~~  
33 ~~subchapter or other applicable laws, he shall notify the licensee of the lack~~  
34 ~~of compliance and provide the licensee with a reasonable opportunity to~~  
35 ~~achieve compliance.~~

36 ~~\_\_\_\_\_ (2) If the licensee fails to correct the deficiency, the director~~

1 ~~may suspend the license, revoke the license, or suspend the license and grant~~  
2 ~~a conditional license.~~

3 ~~\_\_\_\_\_ (3) Suspension, revocation, or suspension of a license with the~~  
4 ~~issuance of a conditional license shall be after a hearing pursuant to the~~  
5 ~~rules of the Department of Human Services and shall be subject to review in~~  
6 ~~accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

7 ~~\_\_\_\_\_ (c)(1) An order of suspension shall specify the period of the~~  
8 ~~suspension, but shall not exceed one (1) year.~~

9 ~~\_\_\_\_\_ (2) If the license is revoked, no application for licensure shall~~  
10 ~~be accepted from the agency or the agency's administrator for a period of one~~  
11 ~~(1) year.~~

12 ~~\_\_\_\_\_ (3) A conditional license shall specify the conditions under~~  
13 ~~which the licensee may continue to operate.~~

14 ~~\_\_\_\_\_ (4) A conditional license shall not exceed a period of ninety~~  
15 ~~(90) days, except that a conditional license may be extended one (1) time for~~  
16 ~~forty-five (45) days for good cause shown.~~

17 ~~\_\_\_\_\_ (5) Upon the expiration of a conditional license, the original~~  
18 ~~license shall be either reinstated or revoked.~~

19 ~~\_\_\_\_\_ (d)(1) A license may be suspended after notification of lack of~~  
20 ~~compliance and prior to the hearing only if an emergency exists requiring~~  
21 ~~immediate action to protect the health, safety, and welfare of children.~~

22 ~~\_\_\_\_\_ (2) The period of emergency suspension shall not exceed sixty~~  
23 ~~(60) days.~~

24 ~~\_\_\_\_\_ (3) A hearing shall be scheduled as soon as possible but only~~  
25 ~~after notice to all parties.~~

26 ~~\_\_\_\_\_ (e) The decision of the director shall constitute final administrative~~  
27 ~~action.~~

28

29 ~~\_\_\_\_\_ 9-28-411. Records confidential - Exceptions.~~

30 ~~\_\_\_\_\_ Reports, correspondence, memoranda, case histories, or other materials~~  
31 ~~compiled or received by a licensee in placing a child shall be confidential~~  
32 ~~and shall not be released or otherwise made available, except:~~

33 ~~\_\_\_\_\_ (1) To the director as required by regulation; or~~

34 ~~\_\_\_\_\_ (2) As provided by the Revised Uniform Adoption Act, § 9-9-201 et seq.~~

35

36 ~~\_\_\_\_\_ 9-28-412. Liability of foster parents.~~

1 ~~———— Foster parents approved by a child placement agency licensed by the~~  
2 ~~Department of Human Services shall not be liable for damages caused by their~~  
3 ~~foster children, nor shall they be liable to the foster children nor to the~~  
4 ~~parents or guardians of the foster children for injuries to the foster~~  
5 ~~children caused by acts or omissions of the foster parents unless the acts or~~  
6 ~~omissions constitute malicious, willful, wanton, or grossly negligent conduct.~~

7 (b) Arkansas Code Annotated §§ 20-46-401 through 20-46-404 are  
8 repealed.

9 ~~———— 20-46-401. Definition.~~

10 ~~———— As used in this subchapter, unless the context otherwise requires, a~~  
11 ~~"psychiatric residential treatment facility" means any non-hospital~~  
12 ~~establishment with permanent facilities which provides a twenty-four (24) hour~~  
13 ~~program of care by qualified therapists to include, but not be limited to,~~  
14 ~~licensed mental health professionals, psychiatrists, psychologists,~~  
15 ~~psychotherapists, and licensed certified social workers, for emotionally~~  
16 ~~disturbed children and adolescents who are not in an acute phase of illness~~  
17 ~~requiring the services of a psychiatric hospital, and are in need of~~  
18 ~~restorative treatment services. An establishment furnishing primarily~~  
19 ~~domiciliary care is not within this definition.~~

20

21 ~~———— 20-46-402. License required for receipt of federal funds.~~

22 ~~———— No psychiatric residential treatment facility, as defined in §~~  
23 ~~20-46-401, shall be eligible to receive Title XIX benefits under the federal~~  
24 ~~Social Security Act until such time as the psychiatric residential treatment~~  
25 ~~facility has been licensed to be a psychiatric residential treatment facility~~  
26 ~~by the Department of Human Services.~~

27

28 ~~———— 20-46-403. Rules and regulations.~~

29 ~~———— (a) The Department of Human Services shall adopt, promulgate, and~~  
30 ~~enforce such rules, regulations, and standards that may be necessary for the~~  
31 ~~accomplishment of this subchapter.~~

32 ~~———— (b) The rules, regulations, and standards shall be modified, amended,~~  
33 ~~or rescinded from time to time by the Department of Human Services as may be~~  
34 ~~in the public interest.~~

35

36 ~~———— 20-46-404. Administrative procedures.~~

1 ~~\_\_\_\_\_ The Department of Human Services shall follow the procedures prescribed~~  
2 ~~for adjudication in the Administrative Procedure Act, § 25-15-201 et seq., in~~  
3 ~~exercising any power authorized by this subchapter.~~

4 (c) All laws and parts of laws in conflict with this act are hereby  
5 repealed.

6 /s/Rep. Wooldridge, et al

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8 APPROVED: 4-02-97

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