

**ARKANSAS SENATE**  
87th General Assembly - Regular Session, 2009  
**Amendment Form**

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**Subtitle of Senate Bill No. 819**

"TO IMPROVE ADMINISTRATIVE PROCESSES AT THE DEPARTMENT OF HUMAN SERVICES AND THE DEPARTMENT OF HEALTH TO BETTER PROTECT CLIENTS BY CONSOLIDATING THE VARIOUS PROCESSES FOR CONDUCTING CRIMINAL HISTORY CHECKS FOR DIVERSE SERVICE."

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**Amendment No. 1 to Senate Bill No. 819.**

Amend Senate Bill No. 819 as originally introduced:

Add Senator Steele as a co-sponsor to the bill

AND

Page 3, line 1, delete "is disqualified" and substitute "is or is not disqualified"

AND

Page 3, delete lines 5 through 26 and substitute:

"(3)(A) "Employee" means any person who:

(i) Has unsupervised access to clients of a service provider except as provided in subdivision (3)(B) of this section; and

(ii)(a) Provides care to clients of a service provider on behalf of, under the supervision of, or by arrangement with the service provider;

(b) Is employed by a service provider to provide care to clients of the service provider;

(c) Is a temporary employee placed by an employment agency with a service provider to provide care to clients of the service provider; or

(d) Resides in an alternative living home in which services are provided to individuals with developmental disabilities.

(B) "Employee" does not include a person who:

(i) Is a family member of a client receiving care from a service provider;

(ii) Is a volunteer; or

(iii) Works in an administrative capacity and does not have unsupervised access to clients of a service provider;"



AND

Page 3, delete line 36 and substitute:

“(7) “Registry records check” means the review of one (1) or more database systems maintained by a state agency that contain information relative to a person’s suitability for licensure, certification, exemption from licensure, or any other operating authority to be a service provider or for employment with a service provider to provide care;”

AND

Page 4, delete lines 1 through 5

AND

Page 4, delete line 17 and substitute “(D) An early intervention program provider certified by the”

AND

Page 4, delete lines 26 through 36 and substitute:

“(I) A nonprofit community program as defined by § 20-48-101; and

(10) “State criminal history records check” means a review of state criminal history records conducted by the bureau.”

AND

Page 5, delete lines 1 through 26 and substitute:

“20-38-102. Criminal history records checks – Operators.

(a)(1)(A) When an operator applies for a license, exemption from licensure, certificate, or other operating authority for a service provider from its licensing or certifying agency, the operator shall submit a criminal history records check form and a complete set of fingerprints to the Identification Bureau of the Department of Arkansas State Police and request a state criminal history records check and a national criminal history records check on the operator.

(B) The operator shall attach evidence of the request for a criminal history records check to the application for the service provider’s license, exemption from licensure, certificate, or other operating authority.

(2)(A) The bureau shall conduct a state criminal records history check and request a national criminal history records check on the operator.

(B) Upon completion of each criminal history records check, the bureau shall issue a report to the licensing or certifying agency.

(3) Based on the criminal history records check, the licensing or certifying agency shall determine whether the operator is or is not disqualified from licensure, exemption from licensure, certification, or other operating authority.

(4) The licensing or certifying agency shall forward its determination to the operator and the service provider seeking licensure,

exemption from licensure, certification, or other operating authority.

(b) Operators are required to undergo periodic criminal history records checks no less than one (1) time every five (5) years."

AND

Page 6, line 1, delete "six (6)" and substitute "five (5)"

AND

Page 6, line 10, delete "six (6)" and substitute "five (5)"

AND

Page 6, line 22, delete the word "temporarily" and substitute "conditionally"

AND

Page 6, line 25, delete "as caregivers" and substitute "to provide care"

AND

Page 7, delete lines 1 and 2 and substitute "service provider and shall provide copies of the documentation to the service provider, which shall be made available to the appropriate licensing or certifying agency upon request."

AND

Page 7, delete lines 12 through 16 and substitute:

"(B) When a service provider initiates a request for a national criminal history records check on an applicant for employment with or an employee of the service provider, the bureau shall issue a report to the licensing or certifying agency within ten (10) days after receipt of the results of the national criminal history records check from the Federal Bureau of Investigation."

AND

Page 7, delete lines 32 through 36 and substitute:

"(f)(1) If the subject of a criminal history records check has been offered employment with a child care facility or a church-exempt child care facility, the subject of a criminal history records check shall not be assessed a fee for the statewide criminal records check records check required under this section.

(2) The subject of a criminal history records check shall be responsible for the payment of any fee associated with the nationwide criminal records check.

(g) A person may challenge the completeness or accuracy of his or her criminal history information under § 12-12-1013."

AND

Page 8, delete lines 1 through 15 and substitute “20-38-104. Request for records check – Requirement.”

AND

Page 8, delete lines 31 through 36 and substitute:

“(5) Informs the person how to object to the content of reports;  
and  
(6) Contains the notarized signature of the person who is the subject of the check.”

AND

Page 9, delete line 1

AND

Page 9, delete lines 9 through 30 and substitute:

“20-38-105. Disqualification from employment – Denial or revocation – Penalties.

(a)(1) Except as provided in subsection (d) of this section, the licensing or certifying agency shall issue a determination that a person is disqualified as a service provider, operator, or from employment with a service provider if the person has pleaded guilty or nolo contendere to or has been found guilty of:

(A) Any of the offenses listed in subsection (b) of this section by any court in the State of Arkansas;

(B) Any similar offense by a court in another state; or

(C) Any similar offense by a federal court.

(2) Except as provided in subsection (d) of this section, a service provider shall not knowingly employ a person and the licensing or certifying agency shall not knowingly contract with, license, exempt from licensure, certify, or otherwise authorize a person to be a service provider if the person has pleaded guilty or nolo contendere to or has been found guilty of:

(A) Any of the offenses listed in subsection (b) of this section by any court in the State of Arkansas;

(B) Any similar offense by a court in another state; or

(C) Any similar offense by a federal court.”

AND

Page 11, delete lines 35 and 36 and substitute:

(c)(1) The provisions of this subsection (c) shall not be waived by the licensing or certifying agency.

(2) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, a conviction or plea of guilty or nolo contendere for any of the offenses listed in this subsection (c) whether or not the record of the offense is expunged, pardoned, or otherwise sealed, shall result in permanent disqualification from employment with a service provider or licensure, exemption from

licensure, certification, or other operating authority as a service provider and is not subject to subsection (d) of this section:

(A) Any of the following offenses by any court in the State of Arkansas;

(i) Capital murder, § 5-10-101;

(ii) Murder in the first degree, § 5-10-102;

(iii) Murder in the second degree, § 5-10-103;

(iv) Kidnapping, § 5-11-102;

(v) Rape, § 5-14-103;

(vi) Sexual assault in the first degree, § 5-14-124;

(vii) Sexual assault in the second degree, § 5-14-

125;

(viii) Endangering the welfare of an incompetent person in the first degree, § 5-27-201;

(ix) Abuse of an endangered or impaired person, § 5-28-103, if it is a felony; and

(x) Arson, § 5-38-301;

(B) Any similar offense by a court in another state; or

(C) Any similar offense by a federal court.

(3) For purposes of licensure as a child care facility, exemption from licensure as a church-exempt child care facility, or employment with a child care facility or church-exempt child care facility, a conviction or plea of guilty or nolo contendere for any offense that involves violence or a sexual act whether or not the record of the offense is expunged, pardoned, or otherwise sealed may result in permanent disqualification from licensure as a child care facility, exemption from licensure as a church-exempt child care facility, or employment with a child care facility or church-exempt child care facility and may not subject to subsection (d) of this section.

(d)(1) This section shall not disqualify a person from employment with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider if:

(A) The conviction or plea of guilty or nolo contendere was for a misdemeanor offense;

(B) The date of the conviction or plea of guilty or nolo contendere is at least five (5) years from the date of the request for the criminal history records check;

(C) The person has no criminal convictions or pleas of guilty or nolo contendere of any type or nature during the five (5) year period preceding the background check request; and

(D) The person has completed the person's term of confinement, probation, or parole related to the conviction or plea of guilty or nolo contendere.

(2) This section shall not disqualify a person from employment with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider if:

(A) The conviction or plea of guilty or nolo contendere was for a felony offense;

(B) The date of the conviction or plea of guilty or nolo contendere is at least ten (10) years from the date of the background check request;

(C) The individual has no criminal convictions or pleas of

guilty or nolo contendere of any type or nature during the ten-year period preceding the request for a criminal history records; and

(D) The person has completed the person's term of confinement, probation, or parole related to the conviction or plea of guilty or nolo contendere.

(e) A person shall not be disqualified from employment with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider if the person has been found guilty of or has pleaded guilty or nolo contendere to a misdemeanor offense not listed in subsection (b) of this section, a similar misdemeanor offense in another state, or a similar federal misdemeanor offense."

AND

Page 12, delete lines 1 through 36

AND

Page 13, delete lines 1 through 9 and substitute "20-38-106. Evidence of records checks."

AND

Page 13, delete line 16 and substitute "20-38-107. Remedies for failure to comply."

AND

Page 13, delete line 22 and substitute "20-38-108. Duties of Identification Bureau."

AND

Page 13, delete line 32 and substitute "20-38-109. Regulations."

AND

Page 14, delete line 2 and substitute "20-38-110. Confidentiality."

AND

Page 14, delete line 14 and substitute "20-38-111. Immunity."

AND

Page 14, delete lines 21 and 22 and substitute "20-38-112. Exclusions – Licensed professionals – Completion of criminal history records check."

AND

Page 27, delete lines 28 through 36 and substitute:  
20-33-213. Criminal history and registry records checks required.

(a) As used in this section:

(1) "Registry records check" means the review of one (1) or more database systems maintained by a state agency that contain information relative to a person's suitability for licensure or certification as a service provider or employment with a service provider to provide care as defined in § 20-38-101; and

(2) "Service provider" means any of the following:

(A) An Elderchoices provider certified by the Division of Aging and Adult Services of the Department of Human Services;

(B) A home health care service as defined by § 20-10-801;

(C) A hospice program as defined by § 20-7-117; or

(D) A long-term care facility as defined by § 20-10-702.

(b) Beginning September 1, 2009, a service provider is subject to the requirements of this section and § 20-33-201 et seq., concerning criminal history records checks.

(c)(1) A person offered employment with a service provider on or after September 1, 2009, is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal history records checks.

(2)(A) A person who was offered employment by a service provider prior to September 1, 2009, was subject to a criminal history records check under § 20-33-201 et seq., and has continued to be employed by the service provider who initiated the criminal history records check may continue employment with the service provider based on the results of the criminal history records check process conducted under § 20-33-201 et seq.

(B) When the person next undergoes a periodic criminal history records check, the person's continued employment with the service provider is contingent on the results of a criminal history records check under § 20-38-101 et seq.

(d)(1) The person who signs an application for licensure or certification as a service provider on or after September 1, 2009, is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal history records checks.

(2)(A) The person who signed an application for licensure or certification of a service provider prior to September 1, 2009, was subject to a criminal history records check under § 20-33-201 et seq., and has continued to maintain the licensure or certification of the service provider may continue to maintain the licensure or certification of the service provider based on the results of the criminal history records check process conducted under § 20-33-201 et seq.

(B) When the service provider next undergoes a periodic criminal history records check, the service provider's continued licensure or certification is contingent on the results of a criminal history records check under § 20-38-101 et seq.

(e) The division shall establish by rule requirements for registry records checks for:

(1) An applicant for licensure or certification of a service provider;

(2) An applicant for employment with service provider; and

(3) An employee of a service provider."

AND

Page 28, delete lines 1 through 6 and substitute the following:

“SECTION 7. Arkansas Code §§ 20-48-801 through 22-48-811 are repealed.”

AND

Page 39, delete lines 22 through 33 and substitute the following:

“20-48-812. Criminal history records checks required.

(a) As used in this section:

(1) “Registry records check” means the review of one (1) or more database systems maintained by a state agency that contain information relative to a person’s suitability for licensure or certification as a service provider or employment with a service provider to provide care as defined in § 20-38-101; and

(2) “Service provider” means any of the following:

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

(B) An early intervention program provider certified by the division; or

(C) A nonprofit community program as defined by § 20-48-101.

(b) Beginning September 1, 2009, a service provider is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal history records checks.

(c)(1) A person offered employment with a service provider on or after September 1, 2009, is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal history records checks.

(2)(A) A person who was offered employment by a service provider prior to September 1, 2009, was subject to a criminal history records check under § 20-48-801 et seq., and has continued to be employed by the service provider who initiated the criminal history records check may continue employment with the service provider based on the results of the criminal history records check process conducted under § 20-48-801 et seq.

(B) When the person next undergoes a periodic criminal history records check, the person’s continued employment with the service provider is contingent on the results of a criminal history records check under § 20-38-101 et seq.

(d)(1) The person who signs an application for licensure or certification as a service provider on or after September 1, 2009, is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal records checks.

(2)(A) The person who signed an application for licensure or certification of a service provider prior to September 1, 2009, was subject to a criminal history records check under § 20-48-801 et seq., and has continued to maintain the licensure or certification of the service provider may continue to maintain the licensure or certification of the service provider based on the results of the criminal history records check process conducted under § 20-48-801 et seq.

(B) When the service provider next undergoes a periodic criminal history records check, the service provider’s continued licensure or certification is contingent on the results of a criminal history records



check under § 20-38-101 et seq.

(e) The division shall establish by rule requirements for registry records checks for:

(1) An applicant for licensure or certification of a service provider;

(2) An applicant for employment with service provider; and

(3) An employee of a service provider.

(f) The division shall establish by rule:

(1) Requirements for criminal history and registry records checks of persons who volunteer for a service provider; and

(2) The consequences of a determination that a person who proposes to reside in an alternative living home in which services are provided to an individual with developmental disabilities is disqualified from the residency based on the criminal history of the person.”

AND

Page 47, delete lines 8 through 19 and substitute the following:

“20-78-606. Criminal history records checks required.

(a) As used in this section:

(1) “Registry records check” means the review of one (1) or more database systems maintained by a state agency that contain information relative to a person’s suitability for licensure or certification as a service provider or employment with a service provider to provide care as that term is defined in § 20-38-101; and

(2) “Service provider” means any of the following:

(A) A child care facility as defined by § 20-78-202; and

(B) A church-exempt child care facility as recognized

under § 20-78-209.

(b) Beginning September 1, 2009, a service provider is subject to the requirements of this section and § 20-38-101 et seq. concerning criminal history records checks.

(c)(1) A person offered employment with a service provider on or after September 1, 2009, is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal history records checks.

(2)(A) A person who was offered employment by a service provider prior to September 1, 2009, was subject to a criminal history records check under § 20-78-601 et seq., and has continued to be employed by the service provider who initiated the criminal history records check may continue employment with the service provider based on the results of the criminal history records check process conducted under § 20-78-601 et seq.

(B) When the person next undergoes a periodic criminal history records check, the person’s continued employment with the service provider is contingent on the results of a criminal history records check under § 20-38-101 et seq.

(d)(1) The person who signs an application for licensure or certification as a service provider on or after September 1, 2009, is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal history records checks.

(2)(A) The person who signed an application for licensure or certification of a service provider prior to September 1, 2009, was subject to a criminal history records check under § 20-78-601 et seq., and has

continued to maintain the licensure or certification of the service provider may continue to maintain the licensure or certification of the service provider based on the results of the criminal history records check process conducted under § 20-78-601 et seq.

(B) When the service provider next undergoes a periodic criminal history records check, the service provider's continued licensure or certification is contingent on the results of a criminal history records check under § 20-38-101 et seq.

(e) The Division of Child Care and Early Childhood Education of the Department of Human Services shall establish by rule requirements for registry records checks for:

(1) An applicant for licensure or exemption from licensure as a service provider;

(2) An applicant for employment with service provider; and

(3) An employee of a service provider.

(f) The division shall establish by rule requirements for criminal history and registry records checks of persons who volunteer for a service provider."

AND

Add an additional section to read as follows:

"SECTION 12. This act shall be effective September 1, 2009."

The Amendment was read the first time, rules suspended and read the second time and \_\_\_\_\_  
By: Senator Lavery  
BPG/BCS - 03-18-2009 09:56  
BPG303 \_\_\_\_\_  
Secretary