

1 State of Arkansas As Engrossed: H2/27/13 S3/27/13 S4/4/13

2 89th General Assembly

A Bill

3 Regular Session, 2013

HOUSE BILL 1384

4

5 By: Representative Miller

6 By: Senator Irvin

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For An Act To Be Entitled

9 AN ACT TO REQUIRE THAT IN-HOME CAREGIVERS WHO ARE
10 PAID THROUGH THE MEDICAID PROGRAM BE TESTED FOR
11 ILLEGAL DRUG USE; TO REQUIRE CRIMINAL BACKGROUND
12 CHECKS; AND FOR OTHER PURPOSES.

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Subtitle

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TO REQUIRE THAT IN-HOME CAREGIVERS WHO
17 ARE PAID THROUGH MEDICAID BE TESTED FOR
18 ILLEGAL DRUG USE AND UNDERGO CRIMINAL
19 BACKGROUND CHECKS.

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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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24 SECTION 1. Arkansas Code Title 20, Chapter 77, Subchapter 1, is
25 amended to add an additional section to read as follows:

26 20-77-125. In-home caregiver drug tests and criminal background
27 checks.

28 (a) As used in this section, "caregiver" means an individual who has
29 responsibility for the protection, in-home care, or custody of a Medicaid
30 enrollee as a result of assuming the responsibility by contract or

31 (b)(1) A caregiver shall submit to a drug screen that tests for the
32 use of illegal drugs through a program established by the Department of Human
33 Services.

34 (2) A drug screen under this section shall be administered to:

35 (A) A caregiver on or after September 1, 2013; and

36 (B)(i) A random sampling of caregivers on or after



1 September 1, 2013.

2 (ii) The random sampling shall be designed to ensure
3 that each caregiver is tested for illegal drug use under this section at
4 least one (1) time every five (5) years.

5 (iii) A caregiver who has been tested through a home
6 health agency within the previous five (5) years for the use of illegal drugs
7 may satisfy the testing requirement under this subsection (b) by providing
8 verification of the home health agency test.

9 (3)(A) A caregiver who refuses to submit to a drug screen
10 required under this section or who tests positive for the use of illegal
11 drugs in a drug screen required under this section shall be ineligible for
12 employment paid with Medicaid funds for six (6) months after the date of the
13 refusal or the date of the positive test result.

14 (B)(i) After the six-month period under subdivision
15 (b)(3)(A) of this section, the caregiver may volunteer to undergo a new test
16 for the use of illegal drugs under this section.

17 (ii) If the caregiver tests positive for the use of
18 illegal drugs in a voluntary drug screen under this section, the caregiver
19 shall be ineligible for future employment paid with Medicaid funds.

20 (c)(1) The Department of Human Services shall:

21 (A) Require a state criminal background check of a
22 caregiver and of an applicant to become a caregiver by the Identification
23 Bureau of the Department of Arkansas State Police that conforms to the
24 applicable standards; and

25 (B) For a person who has not resided continuously in
26 Arkansas during the previous five (5) years, require a federal criminal
27 background check of a caregiver and of an applicant to become a caregiver by
28 the Federal Bureau of Investigation that conforms to the applicable standards
29 and includes the taking of fingerprints.

30 (2) A caregiver or an applicant to become a caregiver shall pay
31 for the payment of any fee associated with the criminal records check under
32 this subsection.

33 (3) Before a criminal background check is performed, a caregiver
34 or an applicant to become a caregiver shall sign a release authorizing the
35 background check.

36 (4) Upon completion of the criminal background check, the

1 Identification Bureau of the Department of Arkansas State Police shall
2 forward to the Department of Human Services information obtained concerning
3 the caregiver or applicant to become a caregiver that indicates that the
4 caregiver or applicant to become a caregiver has pleaded guilty or nolo
5 contendere to or has been found guilty of a felony or crime involving moral
6 turpitude or dishonesty.

7 (5) The results of the background check shall be used by the
8 Department of Human Services to determine the suitability of:

9 (A) An applicant to become a caregiver paid with Medicaid
10 funds; or

11 (B) A caregiver for continued employment paid with
12 Medicaid funds.

13 (6) A caregiver or applicant to become a caregiver who has
14 pleaded guilty or nolo contendere to or has been found guilty of a felony or
15 crime involving moral turpitude or dishonesty shall not be employed to
16 provide services paid with Medicaid funds.

17 (7) The criminal background information of a caregiver or
18 applicant to become a caregiver is confidential.

19 (d)(1) The Department of Human Services shall adopt rules to implement
20 this section.

21 (2) If necessary, the Department of Human Services shall seek a
22 waiver from the Centers for Medicare and Medicaid Services for approval of
23 the rules adopted under this section.

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26 /s/Miller

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29 **APPROVED: 04/18/2013**