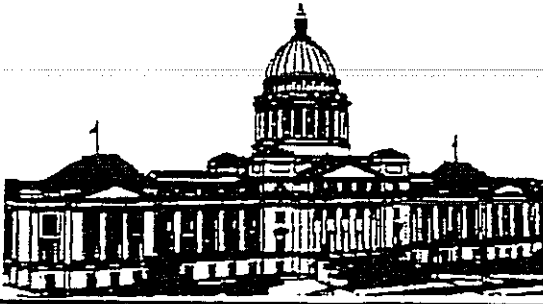


# ARKANSAS REGISTER

## Transmittal Sheet



Sharon Priest  
Secretary of State  
State Capitol Rm. 026  
Little Rock, Arkansas 72201-1094

For Office Use Only: Effective Date 9/30/97 Code Number 007.05.97--003

Name of Agency Arkansas Dept of Health  
Department Division of Health Facility Services  
Contact Person Valetta M. Buck  
Statutory Authority for Promulgating Rules Act 990 of 1997

	Date
<input checked="" type="checkbox"/> Intended Effective Date	
<input checked="" type="checkbox"/> Emergency	Legal Notice Published . . . . .
<input type="checkbox"/> 10 Days After Filing	Final Date for Public Comment . . . . .
<input type="checkbox"/> Other	Reviewed by Legislative Council . . . . .
	Adopted by State Agency . . . . . <u>9/25/97</u>

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with Act 434 of 1967 As Amended.

Valetta M. Buck  
Signature

661-2201  
Phone Number

Director, Division of Health Facility Services  
Title

9/30/97  
Date

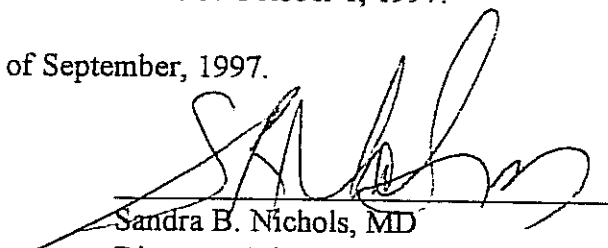
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97 SEP 30 AM 8:55  
SHARON PRIEST  
SECRETARY OF STATE  
STATE OF ARKANSAS

## EMERGENCY DECLARATION

I, Sandra B. Nichols, MD, Director of the Arkansas Department of Health, pursuant to A.C.A. 25-15-204 (Repl. 1996) hereby declare that the "Rules and Regulations to Implement Act 990 of 1997: Criminal Background Checks for Home Health and Hospice Operators" are implemented on an emergency basis and shall become effective immediately upon their filing with the Secretary of State.

The Arkansas Department of Health finds this effective date to be necessary because of immanent peril to the public health, safety and welfare. That threat arises for the reasons stated in Section 16 of Act 990 of 1997, which compelled the Arkansas Legislature to require compliance with said Act as of October 1, 1997.

It is so Ordered this 25<sup>th</sup> day of September, 1997.



Sandra B. Nichols, MD

Director, Arkansas Department of Health

FILED  
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BY \_\_\_\_\_  
SHARON PRIEST  
SECRETARY OF STATE  
STATE OF ARKANSAS

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97 SEP 30 AM 8:56  
SHARON P. TIEST  
SECRETARY OF STATE  
STATE OF ARKANSAS  
BY \_\_\_\_\_

**RULES AND REGULATIONS**  
**FOR CONDUCTING**  
**CRIMINAL RECORD CHECKS**  
**FOR EMPLOYEES AND OPERATORS OF**  
**HOME HEALTH AND HOSPICE AGENCIES**  
**IN ARKANSAS**

## SECTION I. AUTHORITY

These rules and regulations requiring criminal record checks for employees of home health and hospice facilities in the State of Arkansas are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the authority expressly conferred by laws of the State of Arkansas in Act 990 of 1997.

These rules and regulations shall be promulgated as a supplement to the licensure manuals for home health and hospice facilities.

## SECTION II. PURPOSE

The purpose of these sections is to provide direction to home health or hospice agencies in the state of Arkansas as it relates to criminal record checks on current or potential employees.

## SECTION III. DEFINITIONS

**Bureau** means the Identification Bureau of the Department of the Arkansas State Police.

**Care** means treatment, services, assistance, education, training, instruction, or supervision for which the care-giving person or entity is reimbursed either directly to or by arrangement with a home health or hospice agency.

**Department** means the Arkansas Department of Health.

**Determination** means a Department's determination that an applicant or employee is or is not disqualified from employment or that a home health or hospice is disqualified from licensure based on the criminal history of the operator.

**Division** means the Division of Health facility Services, Arkansas Department of Health

**Elderly** means persons aged 65 or older.

**Employee** means any person who provides care to individuals on behalf of, under the supervision of, or by arrangement with a home health or hospice agency or any person employed by a home health or hospice agency, unless the person is a family member, a volunteer or works in an administrative capacity.

**Felony conviction in the criminal history report** means a conviction on any of the major crimes listed in ACT 990 of 1997, Section 5, subsection b (Attachment I).

**Home Health Agency** means a service as defined by A.C.A. §20-10-801 whether or not the

agency has applied for or possesses any license necessary for operation.

Hospice Agency service as defined by A.C.A. §20-7-117 whether or not the agency has applied for or possesses a license.

Individuals with disabilities means persons who require assistance to perform one or more of the following tasks of daily living: feeding, mobility, toileting, or medication.

Index means the database, maintained by the Bureau, of criminal records checks that have been conducted on applicants for employment with and employees of home health or hospice agencies.

National criminal history check means a review of national criminal records maintained by the Federal Bureau of Investigation based on fingerprint identification or other positive identification methods.

Provisional License means a forty-five day license issued to a home health or hospice agency whose operator has been found to have a felony conviction in the criminal history report.

Operator means a person responsible for the day to day operation of the home health or hospice agency.

Report means a statement of the criminal history of an applicant, employee, or operator issued by the Bureau.

State criminal history check means a review of state criminal records conducted by the Bureau.

#### IV. HOME HEALTH OR HOSPICE AGENCIES

- A. All home health and hospice agencies must comply with these regulations as they apply to that type of agency. If an operator or agency fails or refuses to cooperate in obtaining criminal record checks, such circumstances shall be grounds to deny or revoke the home health or hospice agency's license.
- B. Any unlicensed agency providing home health or hospice services violating these rules and regulations shall be guilty of a Class A misdemeanor for each violation according to Act 990 of 1997.

#### V. OPERATORS

- A. Each home health and hospice agency obtain a state criminal history check and a national criminal history check on each operator if the operator has not been continuously

employed within the State of Arkansas within the past twelve (12) months and undergone a criminal history check within the past twelve (12) months. Examples of evidence to verify continuous employment, may include, but not be limited to, payroll check stubs, employment records, tax records, etc. Verification of a previous criminal history check may be obtained from the Division if the check was conducted after October 1, 1997. A criminal history check does not have to be repeated on an operator if the individual has served continuously in a position as an operator with not more than a sixty day interruption in service.

1. For a home health or hospice agency initially applying for licensure the process will include the following:
  - a. Evidence of a completed application for a criminal history check on the operator or, if exempt under Section A, a copy of the criminal history check and a statement from the agency that the information for exemption has been verified, must be submitted to the Division with any initial applications for licensure of a home health or hospice agency;
  - b. Upon receiving the results of the state criminal history check and the national criminal history check the Division will issue determination whether the home health or hospice agency is disqualified from licensure;
  - c. If a home health or hospice agency initially applying for licensure is disqualified from licensure based on a felony conviction in the criminal history report of the operator the application may be resubmitted with a different operator. Sections A.1.a and A.1.b. will be followed once the application has been resubmitted. If the application is not resubmitted within fifteen (15) days of notification of the denial the application will be considered null and void.
2. For a home health or hospice agency that is currently licensed but is completing the application for the annual renewal of the agency the process will include the following:
  - a. Evidence of a completed application for a criminal history check on the operator must be submitted to the Division with the annual renewal application. If the first letter of the county in which the agency is located begins with the letter A-L the information must be submitted with the application for renewal for the calendar year 1999; Counties M-Z must be submitted with the application for renewal for the calendar year 2000.
  - b. Upon receiving results of the state criminal history check and national history check the Division will issue a determination whether the agency may continue licensure based on results of the operator's criminal history

check.

- c. The Division will issue a forty-five day provisional license to a home health or hospice agency whose operator has been found guilty or has plead nolo contendere to any of the offenses listed in Section X. A home health or hospice agency has fifteen days from the date the provisional license was issued to resubmit an application for licensure with a new operator. If a another license application is not received within fifteen days of the specified date the entity's license will be immediately revoked.

## VI. APPLICANTS AND EMPLOYEES

- A. Each home health or hospice applicant or employee who will be providing care for the elderly or individuals with disabilities, must complete a **state criminal history check** if the applicant or employee:

- Does not hold a professional license as described in Section XI; or
- Has not maintained continuous employment in the State of Arkansas **and** successfully completed a state criminal history check.

A **federal criminal history check** must also be completed if the applicant or employee:

- Has not lived continuously in the State of Arkansas for the past five years; or
- Has not provided care to the elderly and/or individuals with disabilities for a continuous 60 day immediately prior to the application.

The home health or hospice agency will be responsible for verification of this information. Examples of evidence that can be used to verify the above may include, but is not limited to, employment records, payroll check stubs, tax records, rent/house payment records, utility bills, school records, etc. Verification of a previous criminal history check may be obtained from the Division if the check was conducted prior to October 1, 1997.

*Note: Section XI provides a list of immune licensed individuals. The term professional does not include certification. Certified persons include, but are not limited to certified nursing assistants and certified home health aides.*

1. For persons hired after October 1, 1997 the following process must be followed:
  - a. If a home health or hospice agency intends to make an offer of employment to a person, that person must submit an application for a criminal history check along with the application for employment. The

application for the criminal history check shall be forwarded directly to the Bureau.

- b. The home health or hospice agency may make an offer of temporary employment to a person pending receipt of notification from the Bureau that the Bureau's index has been checked and no criminal history has been found and the Division has checked its database and no criminal history has been found. The home health or hospice agency may continue to temporarily employ the person until the licensing agency issues a determination, based on the information received from the Bureau, whether the person is disqualified from employment. If the licensing agency determines that the person is disqualified from employment based on felony convictions in the criminal history report the person must be terminated if temporarily employed or denied employment if not temporarily employed. If a criminal history is found in the Bureau's index the person is disqualified from employment until the criminal history check is completed and the Division issues a determination.
- 2. For persons hired prior to October 1, 1997 the following process must be followed beginning January 1, 1998:
  - a. For persons hired during an even year an application for a criminal history check must be submitted to the Bureau in the month hired in the year 1998. For persons hired in an odd year an application for a criminal history check must be submitted to the Bureau in the month hired in the year 1999.
  - b. Once application for a criminal history check has been submitted, a home health agency may continue to employ a person pending receipt of notification from the Bureau that the Bureau's index has been checked and no criminal history found and the Division has checked its database and no criminal history has been found. If a criminal history is found in the Bureau's index the person is disqualified from employment until the criminal history check is completed and the Division issues a determination based on the criminal history report obtained from the Bureau.
- B. A home health or hospice must inform applicants and employees that continued employment is contingent on the results of criminal history checks and the individual has a right to obtain a copy of their criminal history report from the Bureau.

## VII. APPLICATIONS

- A. Applications for a criminal history check will be provided to the agency by the Division.



No other applications will be accepted. The completed application for a state criminal history check must include the following on each :

1. Facility Identification Number
2. Facility Name
3. Facility Address
4. Facility Telephone Number
5. Full Name of Applicant
6. Social Security Number
7. Mailing Address of Applicant
8. Date of Birth
9. Gender
10. Race
11. Driver's License Number and State of Issue
12. A list of all felony and misdemeanor charges for which the applicant was found guilty or plead nolo contendere.

The application must be signed by the applicant and notarized by a notary public. The **original** application along with the appropriate fee must be **sent directly to the Bureau** at the address provided on the application. A **copy** of the application must be sent to the **Division**.

- B. If a national history check is required the fingerprint card must accompany the application for the state criminal history check. The fingerprint card will be provided by the Division.

## VIII. REAPPLICATION REVIEW

- A. Reapplication reviews will be granted to operators, employees, and potential employees who are able to provide proof that the felony convictions shown in the criminal records check are incorrect. These appeals may take the form of:
1. A written request to the Identification Bureau of the Department of the Arkansas State Police providing another application and fee for the state criminal history check along with additional information that would aid in the identification of records pertaining to the applicant.
  2. A letter written to the Arkansas Department of Health Chief Counsel requesting review of a second state criminal record check to affect the determination made by the Department. If this review provides no information of felony conviction for any of the offenses listed in ACT 990 of 1997, Section 5, subsection b (Attachment I), then the first determination of employment disqualification will be overturned.

- B. **Applicants who have received a felony conviction as indicated on their national criminal record check shall not be afforded the reapplication review process.**

## **IX. MAINTAINING RECORDS AND CONFIDENTIALITY**

- A. Each qualified entity shall maintain evidence that criminal history checks have been initiated on all operators and employees and a copy of each determination received from the Division. This evidence must be made available for inspection by the Arkansas Crime Information Center, the Bureau and the Division upon request. This evidence must be available for all current operators and employees and for any employees that were employed within the past twenty-four (24) months.
- B. Each home health or hospice agency must have safeguards to ensure the confidentiality of criminal history check records maintained.
- C. For records that are no longer required and the agency wishes to destroy the agency must have a policy on how these records will be destroyed.

## **X. LIST OF FELONIES**

1. **Capital murder**, as prohibited in A.C.A. 5-10-101;
2. **Murder in the first degree and second degree**, as prohibited in A.C.A. 5-10-102 and 5-10-103;
3. **Manslaughter**, as prohibited in A.C.A. 5-10-104;
4. **Negligent homicide**, as prohibited in A.C.A. 5-10-105;
5. **Kidnaping**, as prohibited in A.C.A. 5-11-102;
6. **False imprisonment in the first degree**, as prohibited in A.C.A. 5-11-103;
7. **Permanent detention or restraint**, as prohibited in A.C.A. 5-11-106;
8. **Robbery**, as prohibited in A.C.A. 5-12-102;

9. **Aggravated robbery**, as prohibited in A.C.A. 5-12-103;
10. **Battery in the first degree**, as prohibited in A.C.A. 5-13-201;
11. **Aggravated assault**, as prohibited in A.C.A. 5-13-204;
12. **Introduction of controlled substance into body of another person**, as prohibited in A.C.A. 5-13-210;
13. **Terroristic threatening in the first degree**, as prohibited in A.C.A. 5-13-301;
14. **Rape and carnal abuse in the first degree, second degree, and third degree**, as prohibited in A.C.A. 5-14-103, 5-14-106;
15. **Sexual abuse in the first and second degree**, as prohibited in A.C.A. 5-14-108 and 5-14-109;
16. **Sexual solicitation of a child**, as prohibited in 5-14-110;
17. **Violation of a minor in the first degree and second degree**, as prohibited in A.C.A. 5-14-120 and 5-14-121;
18. **Incest**, as prohibited in A.C.A. 5-26-202;
19. **Offenses against the family**, as prohibited in A.C.A. 5-26-303 through 5-26-306;
20. **Endangering the welfare of incompetent person in the first degree**, as prohibited in A.C.A. 5-27-201;
21. **Endangering the welfare of a minor in the first degree**, as prohibited in A.C.A. 5-27-221;
22. **Permitting child abuse**, as prohibited in subdivisions (a) (1) and (a) (3) of A.C.A. 5-27-221;
23. **Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, or pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child**, as prohibited in A.C.A. 5-27-303, 5-27-304, 5-27-305, 5-27-402, and 5-27-403;
24. **Felony adult abuse**, as prohibited in A.C.A. 5-28-103;
25. **Theft of property**, as prohibited in A.C.A. 5-36-103;
26. **Theft by receiving**, as prohibited in A.C.A. 5-36-106;

27. **Arson**, as prohibited in A.C.A. 5-38-301;
28. **Burglary**, as prohibited in A.C.A. 5-39-201;
29. **Felony violation of the Uniform Controlled Substances Act**, as prohibited in A.C.A. 5-64-401;
30. **Promotion of prostitution in the first degree**, as prohibited in A.C.A. 5-70-104;
31. **Stalking**, as prohibited in A.C.A. 5-71-229;
32. **Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy**, as prohibited in A.C.A. 5-3-201, 5-3-202, 5-3-301, and 5-3-401.

## **XI. IMMUNE PROFESSIONAL LICENSES**

1. **Licensed professional counselors**, as outlined in A.C.A. 17-27-101;
2. **Social workers**, as outlined in A.C.A. 17-46-101;
3. **Dentists**, as outlined in A.C.A. 17-82-101;
4. **Nurses**, as outlined in A.C.A. 17-87-101;
5. **Occupational therapists**, as outlined in A.C.A. 17-88-101;
6. **Pharmacists**, as outlined in A.C.A. 17-92-101;
7. **Physical therapists**, as outlined in A.C.A. 17-93-301;
8. **Physicians and surgeons**, as outlined in A.C.A. 17-95-201;
9. **Podiatrists**, as outlined in A.C.A. 17-96-101;
10. **Psychologists and psychological examiners**, as outlined in A.C.A. 17-97-101;
11. **Speech-language pathologists and audiologists**, as outlined in A.C.A. 17-100-101; or
12. **Nursing home administrators**, as outlined in A.C.A. 20-10-401.