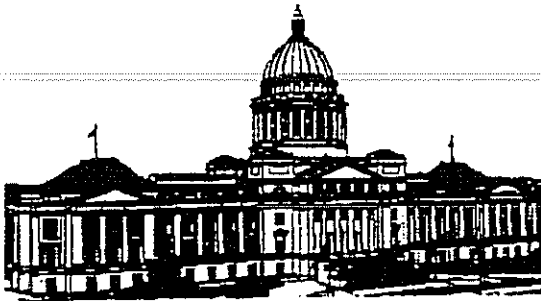


ARKANSAS REGISTER

Transmittal Sheet



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

For Office
Use Only:

Effective Date 2/19/98 Code Number 007.05.98--001

Name of Agency Arkansas Department of Health

Department Division of Health Facility Services

Contact Person Valetta M. Buck

Statutory Authority for Promulgating Rules Act 990 of 1997

	Date
<input type="checkbox"/> Intended Effective Date	
<input type="checkbox"/> Emergency	Legal Notice Published <u>Oct. 27, 1997</u>
<input checked="" type="checkbox"/> 10 Days After Filing	Final Date for Public Comment <u>Dec. 2, 1997</u>
<input type="checkbox"/> Other	Reviewed by Legislative Council <u>Dec. 4, 1997</u>
	Adopted by State Agency <u>Jan. 22, 1997</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

(501) 661-2201
Phone Number

Director, Division of Health Facility Services
Title

February 9, 1998
Date

FILED
AIR. REGISTER DIV.
98 FEB -9 PM 3:09
BY [Signature]
SECRETARY OF STATE
STATE OF ARKANSAS

DEPARTMENT Arkansas Department of Health
DIVISION Health Facility Services
PERSON COMPLETING THIS STATEMENT Valerita M. Buck
TELEPHONE NO. (501) 661-2201 FAX NO. (501) 661-2165

FINANCIAL IMPACT STATEMENT

To comply with Act 884 of 1995, please complete the following Financial Impact Statement and file with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rules and Regulations for Conducting Criminal Record

- Checks for Employees and Operators of Home Health and Hospice Agencies
1. Does this proposed, amended, or repealed rule or regulation have a financial impact? Yes y No _____
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation.

1997-98

~~1997-98~~ Fiscal Year

1998-99

~~1998-99~~ Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other _____
Total _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other _____
Total _____

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation?

1997-98

~~1997-98~~ Fiscal Year

\$15/person for state check
\$24/person for federal check

1998-99

~~1998-99~~ Fiscal Year

same

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

1997-98

~~1997-98~~ Fiscal Year

\$37,385

1998-99

~~1998-99~~ Fiscal Year

\$29,328

July 28, 1995

DR
OFFICE OF THE
COMPTROLLER
STATE OF ARKANSAS

90 FEB - 9 PM 3:09

ARK. REGISTER DIV.

FILED

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

DEPARTMENT/AGENCY Arkansas Department of Health
DIVISION Health Facility Services
DIVISION DIRECTOR Valetta M. Buck
CONTACT PERSON Renee Mallory
ADDRESS 5800 West 10th Street, Suite 400, Little Rock, AR 72204
PHONE NO. (501) 661-2201 FAX NO. (501) 661-2165

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire attached to the front of two (2) copies of your proposed rule and mail or deliver to:

Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

1. What is the short title of this rule? Rules and Regulations for Conducting Criminal Record Checks for Employees and Operators of Home Health and Hospice Agencies in Arkansas
2. What is the subject of the proposed rule?
Criminal History Checks for Employees and Operators of Home Health and Hospice Agencies
3. Is this rule required to comply with federal statute or regulations? Yes _____ No X

If yes, please provide the federal regulation and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes X No _____

If yes, what is the effective date of the emergency rule?
September 30, 1997

When does the emergency rule expire?
January 28, 1997

Will this emergency rule be promulgated under the regular provisions of the Administrative Procedure Act? Yes X
No _____

RECEIVED
AUG 29 1995

5. Is this a new rule? Yes x No

Does this repeal an existing rule? Yes No x
If yes, please provide a copy of the repealed rule.

Is this an amendment to an existing rule? If yes, please
attach a markup showing the changes in the existing rule
and a summary of the substantive changes.

No

6. What state law grants the authority for this proposed rule?
If codified, please give Arkansas Code citation.

Act 990 of 1997

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

To ensure employees and operators of home health and hospice agencies
have not been convicted of certain crimes.

8. Will a public hearing be held on this proposed rule?
Yes x No If yes, please give the date, time,
and place of the public hearing?

December 2, 1997

9. When does the public comment period expire?

December 2, 1997

10. What is the proposed effective date of this proposed rule?

January 28, 1997

11. Do you expect this rule to be controversial? Yes
No y If yes, please explain.

12. Please give the names of persons, groups, or organizations
which you expect to comment on these rules? Please provide
their position (for or against) if known.

Arkansas Hospital Association - For
HomeCare Association of Arkansas

PLEASE ANSWER ALL QUESTIONS COMPLETELY

July 23, 1995

DEPARTMENT Arkansas Department of Health
DIVISION Health Facility Services
PERSON COMPLETING THIS STATEMENT Valetta M. Buck
TELEPHONE NO. (501) 661-2201 FAX NO. (501) 661-2165

FINANCIAL IMPACT STATEMENT

To comply with Act 884 of 1995, please complete the following Financial Impact Statement and file with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rules and Regulations for Conducting Criminal Record

Checks for Employees and Operators of Home Health and Hospice Agencies

1. Does this proposed, amended, or repealed rule or regulation have a financial impact? Yes x No

2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation.

1997-98

1998-99

~~1995-96~~ Fiscal Year

~~1996-97~~ Fiscal Year

General Revenue _____
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Cash Funds _____
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Other _____
Total _____

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1998-99

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same

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1998-99

~~1995-96~~ Fiscal Year

~~1996-97~~ Fiscal Year

\$37,385

\$29,328

July 28, 1995

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

DEPARTMENT/AGENCY Arkansas Department of Health
DIVISION Health Facility Services
DIVISION DIRECTOR Valetta M. Buck
CONTACT PERSON Renee Mallory
ADDRESS 5800 West 10th Street, Suite 400, Little Rock, AR 72204
PHONE NO. (501) 661-2201 FAX NO. (501) 661-2165

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Room 315, State Capitol
Little Rock, AR 72201

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September 30, 1997

When does the emergency rule expire?

January 28, 1997

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No _____

RECEIVED
AUG 29 1995

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Yes x No If yes, please give the date, time,
and place of the public hearing?

December 2, 1997

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December 2, 1997

10. What is the proposed effective date of this proposed rule?

January 28, 1997

11. Do you expect this rule to be controversial? Yes
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which you expect to comment on these rules? Please provide
their position (for or against) if known.

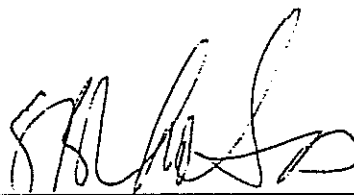
Arkansas Hospital Association - For
HomeCare Association of Arkansas

PLEASE ANSWER ALL QUESTIONS COMPLETELY

July 28, 1995

CERTIFICATION

This will certify that the Rules and Regulations for Conducting Criminal Record Checks for Employees and Operators of Home Health and Hospice Agencies in Arkansas were adopted by the State Board of Health of Arkansas at a regular session of said Board held in Little Rock, Arkansas, on the 22nd day of January, 1998.



Sandra B. Nichols, M.D.
Secretary of Arkansas State Board of Health
Director, Arkansas Department of Health

Dated at Little Rock, Arkansas, this 28 day of January, 1998.

The foregoing Rules and Regulations, copy having been filed in my office, are hereby approved on the 3 day of February, 1998.



Mike Huckabee
Governor

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.