

ARKANSAS DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES
DDS DIRECTOR'S OFFICE POLICY MANUAL

Policy Type	Subject of Policy	Policy No.
Administrative	Criminal Records Checks	1087

1. **Purpose**

The purpose of this policy is to delineate the requirements, allowances, exclusions, and general implementation of criminal record checks, in accordance with Ark. Code Ann. § 20-38-101 *et seq.* and Ark. Code Ann. § 20-48-812 (collectively, the “Law”).

2. **Scope**

This policy is applicable to all providers licensed and certified by DHS to provide services for persons with developmental disabilities, any owner of a Provider, all employees of Providers, and all applicants for employment with Providers. This policy does not cover any required adult or child maltreatment registry checks.

3. **Definitions**

“Alternative Living Home” means a residential dwelling owned or operated by an Employee used to provide Direct Care to an Individual with Disabilities.

“Bureau” means the Identification Bureau of the Department of the Arkansas State Police.

“DDS” means the Arkansas Department of Human Services, Division of Developmental Disabilities Services.

“DHS” means the Department of Human Services.

“Determination” means a written conclusion made by the appropriate division of DHS that a person is or is not qualified for employment, licensure, or certification based on the results of an Arkansas State Criminal Record Check or a National Criminal Record Check.

“Direct Care” means providing treatment, services, assistance, education, training, instruction, or supervision to an Individual with Disabilities, or having access to the finances or personal property of an Individual with Disabilities.

“Employee” means a person who:

1. Is employed by a Provider to deliver Direct Care to an Individual with Disabilities; or
2. Provides Direct Care to an Individual with Disabilities on behalf or under the supervision of, or by arrangement with, a Provider (i.e., volunteers, interns, independent contractors, etc.).

An employee does not include a person who is a family member of an Individual with Disabilities, unless the family member is paid by the Provider to provide Direct Care to the Individual.

“Group Home” means a residential dwelling that has been continuously owned or operated by a Provider since prior to July 1, 1995, and has space to provide private sleeping areas for more than four (4), but no more than fourteen (14), unrelated Individuals with Disabilities.

“Individual with Disabilities” means an individual receiving DDS services through a Provider.

“National Criminal Record Check” means a review of national criminal records based on fingerprinting or other identification methods.

“Provider” includes all of the following:

1. A certified Community and Employment Supports (CES) Waiver program service provider;
2. A certified First Connections (Part C of IDEA) program service provider;
3. Any certified adult day program service provider;
4. Any program certified as one of the following: Children’s Health Management Services (CHMS), Developmental Day Treatment Clinic Services (DDTCS), or any successor program to CHMS or DDTCS; and
5. Any other person or entity licensed or certified by DDS or DHS to provide DDS services, including, but not limited to, applied behavior analysts, First Connections service coordinators, and First Connections developmental therapists, occupational therapists, physical therapists, and speech language pathologists.

“State Criminal Record Check” means a review of state criminal records conducted by the Bureau.

“Supported Living Arrangement” means a residential dwelling owned or operated by a Provider which has space to provide private sleeping areas for no more than four (4) Individuals with Disabilities.

4. **Criminal Records Check Requirements**

- A. **State Criminal Record Check**: Except as provided elsewhere in this Section, a Provider (and any applicant to become a Provider) is required to request a State Criminal Record Check on the following persons by submitting a fully executed DDS Form 5088-STATE, or any successor document, completed as per the instructions found therein:
1. Each person applying to be a Provider, or who is an owner of an organization applying to become a Provider;
 2. Each applicant to become an Employee of a Provider; and
 3. Any person over twelve (12) years of age residing in an Alternative Living Home, Group Home, Supported Living Arrangement, or other residential setting in which services are provided to Individuals with Disabilities.
- B. **National Criminal Record Check**: Except as provided elsewhere in this Section, in addition to the State Criminal Record Check, a Provider (and any applicant to become a Provider) is also required to request a National Criminal Record Check, which must include a fingerprint check, on the following persons by submitting a fully executed DDS Form 5088-FBI, or any successor document, completed as per the instructions found therein:
1. Each person that would be an owner of an organization applying to become a Provider; and
 2. Any Employee or applicant for employment that has not been a resident of the State of Arkansas for the entire five (5) preceding years.
- C. **Record Check Retention**: Providers are required to maintain evidence that all required criminal record checks were conducted.
- D. **Excluded Professionals**: The criminal record checks required by this Policy are not required for any person who renders services subject to a professional license that requires the same or similar checks, such as a licensed professional counselor, social worker, nurse, occupational therapist, pharmacist, physical therapist, physician, surgeon, podiatrist, psychologist, psychological examiner, speech-language pathologist, audiologist, nursing home administrator, or behavior analyst.
- E. **Required Renewal**: The criminal record checks required by this Policy must be requested/renewed by a Provider at least once every five (5) years for each person to whom the Policy is applicable.

- F. Subsequent Discovery of a Criminal Record: In the event evidence of a potentially disqualifying conviction is discovered in the five (5) year period between required criminal record checks, the Provider must request a new State Criminal Record Check, and, if applicable, National Criminal Record Check, within five (5) days of discovery. Providers must temporarily disqualify/suspend an Employee's employment upon discovery of a potentially disqualifying conviction, pending a Determination by the appropriate division of DHS.
- G. Qualifying Determinations by other DHS Divisions: A Provider is not required to request a State Criminal Record Check or National Criminal Record Check on an Employee or an applicant to become an Employee if the Division of Child Care and Early Childhood Education, or any other DHS Division, has issued a qualifying Determination for the individual within the past sixty (60) days. The Provider is responsible for retaining and submitting all proper documentation.

5. Determinations

The appropriate division of DHS will make a Determination on each person for whom a State Criminal Record Check and/or National Criminal Record Check is conducted. No Employee or applicant for Employment with a Provider is permitted to perform Direct Care services for a Provider prior to receiving a Determination permitting the person to be employed. Each Determination will be in one of the following categories:

- A. Provisionally Qualified: A determination that a person may be employed as a result of a State Criminal Record Check.
- B. Qualified: A determination that a person may be employed as result of both a State Criminal Record Check and a National Criminal Record Check.
- C. Disqualified: A determination that a person may not be employed as a result of a State Criminal Record Check and/or a National Criminal Record Check.
- D. Tentatively Qualified: A determination that a "Qualified" or "Provisionally Qualified" Determination cannot be issued due to the existence of one or more potentially disqualifying charges that are less than a year old and have not reached disposition in court on a State Criminal Record Check or National Criminal Record Check. In such cases, the Provider may offer employment to the person but must re-submit the required criminal record check(s) every three (3) months until final determination is issued by the appropriate division of DHS.

Notwithstanding the foregoing, any individual that has an Arkansas State Criminal History Report that states "No Criminal History Found for this Subject" automatically receives a "Provisionally Qualified" Determination and will not actually have a Determination Letter issued.

6. Disqualifying Offenses.

A. Permanently Disqualifying Offenses: A person shall be permanently prohibited from being an owner or Employee of a Provider if that person has pled guilty or nolo contendere or been found guilty of any of the following offenses by any court in the State of Arkansas, or any similar offense by a court in another state or a federal court:

1. Abuse of an endangered or impaired person, if felony (§ 5-28-103)
2. Aggravated assault upon a law enforcement officer or an employee of a correctional facility, if a Class Y felony (§ 5-13-211)
3. Arson (§ 5-38-301)
4. Capital Murder (§ 5-10-101)
5. Endangering the Welfare of an Incompetent person—1st Degree (§ 5-27-201)
6. Kidnapping (§ 5-11-102)
7. Murder in the First Degree (§ 5-10-102)
8. Murder in the Second Degree (§ 5-10-103)
9. Rape (§ 5-14-103)
10. Sexual Assault in the First Degree (§ 5-14-124)
11. Sexual Assault in the Second Degree (§ 5-14-125)
12. Sexual extortion (§ 5-14-113)

A plea of guilty or nolo contendere or a conviction for any of the above offenses permanently prohibits an individual from being an owner or Employee of a Provider regardless of whether or not the record of the offense is expunged, pardoned, or otherwise sealed.

B. Potentially Disqualifying Offenses: A person who has pled guilty, nolo contendere, or been found guilty of any offense listed in this Section by any court in the State of Arkansas, or of any similar offense by a court in another state or a federal court, is prohibited from being an owner or Employee of a Provider, unless one of the following situations apply:

1. The offense is a misdemeanor, and the date of the conviction or plea of guilty or nolo contendere, is more than five (5) years prior to the date of the State Criminal Record Check or National Criminal Record Check request, and there have been no criminal convictions or pleas of guilty or nolo contendere of any type or nature during that five (5) year period.

OR

2. The offense is a felony, and the date of the conviction or plea of guilty or nolo contendere is more than ten (10) years prior to the date of the State Criminal Record Check or National Criminal Record Check request, and there have been

no other criminal convictions or pleas of guilty or nolo contendere of any type or nature during that ten (10) year period.

The following offenses disqualify an individual who does not meet one of the criteria above from being an Employee or an owner of a Provider, unless the record of the offense has been expunged, pardoned or otherwise sealed:

1. Assault in the First, Second, or Third Degree (§§ 5-13-205—207)
2. Aggravated Assault (§ 5-13-204)
3. Aggravated Assault on a Family or Household Member (§ 5-26-306)
4. Aggravated Assault upon a Law Enforcement Officer or an Employee of a Correctional Facility, if a Class Y felony (§ 5-13-211)
5. Battery in the First, Second, or Third Degree (§§ 5-13-201—203)
6. Breaking or Entering (§ 5-39-202)
7. Burglary (§ 5-39-201)
8. Coercion (§ 5-13-208)
9. Computer Crimes Against Minors (§§ 5-27-601 *et seq.*)
10. Contributing to the Delinquency of a Juvenile (§ 5-27-220)
11. Contributing to the Delinquency of a Minor (§ 5-27-209)
12. Criminal Impersonation (§ 5-3-208)
13. Criminal Use of a Prohibited Weapon (§ 5-73-104)
14. Cruelty to Animals (§ 5-62-103)
15. Aggravated Cruelty to Dog, Cat or Horse (§ 5-62-104)
16. Death Threats Concerning a School Employee or Student (§ 5-17-101)
17. Domestic Battery in the First, Second or Third Degree (§ 5-26-303—305)
18. Employing or Consenting to the Use of a Child in a Sexual Performance (§ 5-27-402)
19. Endangering the Welfare of a Minor in the First or Second Degree (§§ 5-27-205—206)
20. Endangering the Welfare of an Incompetent Person in the Second Degree (§§ 5-27-201—202)
21. Engaging Children in Sexually Explicit Conduct for Use in Visual or Print Media (§ 5-27-303)
22. False Imprisonment in the First or Second Degree (§§ 5-11-103—104)
23. Financial Identity Fraud (§ 5-37-227)
24. Forgery (§ 5-37-201)
25. Incest (§ 5-26-202)
26. Interference with Court Ordered Custody (§ 5-26-502)
27. Felony Interference with a Law Enforcement Officer (§ 5-54-104)
28. Interference with Visitation (§ 5-26-501)
29. Introduction of a Controlled Substance into Body of Another Person (§ 5-13-210)
30. Manslaughter (§ 5-10-104)
31. Negligent Homicide (§ 5-10-105)
32. Obscene Performance at a Live Public Show (§ 5-68-305)
33. Pandering or Possessing Visual or Print Medium Depicting Sexually Explicit Conduct Involving a Child (§ 5-27-304)

34. Patronizing a Prostitute (§ 5-70-103)
35. Permanent Detention or Restraint (§ 5-11-106)
36. Permitting Abuse of a Minor (§ 5-27-221)
37. Producing, Directing, or Promoting a Sexual Performance by a Child (§ 5-27-403)
38. Promoting Obscene Materials (§ 5-68-303)
39. Promoting Obscene Performance (§ 5-68-304)
40. Promoting Prostitution in the First, Second, or Third Degree (§§ 5-70-104—106)
41. Prostitution (§ 5-70-102)
42. Public Display of Obscenity (§ 5-68-205)
43. Resisting Arrest (§ 5-54-103)
44. Robbery (§ 5-12-102)
45. Aggravated Robbery (§ 5-12-103)
46. Any Sexual Offense, including sexual exhortation (§§ 5-14-101 *et seq.*)
47. Simultaneous Possession of Drugs and Firearms (§ 5-74-106)
48. Soliciting Money or Property from Incompetents (§ 5-27-229)
49. Stalking (§ 5-71-229)
50. Terroristic Act (§ 5-13-310)
51. Terroristic Threatening (§ 5-13-301)
52. Theft by Receiving (§ 5-36-106)
53. Theft of Property (§ 5-36-103)
54. Theft of Services (§ 5-36-104)
55. Transportation of Minors for Prohibited Sexual Conduct (§ 5-27-305)
56. Unlawful Discharge of a Firearm from a Vehicle (§ 5-74-107)
57. Felony Violation of the Uniform Controlled Substances Act (§§ 5-64-101 *et seq.*)
58. Voyeurism (§ 5-16-102)
59. Criminal attempt (§ 5-3-201), criminal complicity (§ 5-3-202), criminal solicitation (§ 5-3-301), or criminal conspiracy (§ 5-3-401) to commit any of the offenses listed in (A) or (B) above.

7. Criminal Record Check Document Retention

DHS shall maintain all criminal record check documentation required to be retained under restricted access available only to those authorized and trained for its use. All criminal record check documentation shall remain on file for at least five (5) years, and followed by secure destruction.

8. Appeals

Applicants or Employees receiving a Disqualified Determination shall be notified by DHS in writing. A “Disqualified” Determination is the only Determination that may be appealed.

If the Applicant or Employee wishes to appeal, he or she must submit the request for appeal within ten (10) business days of receipt of the written notification. Failure to submit an appeal within this timeframe will result in the appeal being denied. All appeals must be in writing and contain, at a minimum:

- A. The name, address, and telephone number of the person filing the appeal;
- B. The relationship the person filing the appeal has with DDS;
- C. The decision that is being appealed;
- D. The reason(s) the decision is being appealed;
- E. The desired outcome of the appeal;
- F. The law and/or facts being relied upon in filing the appeal;
- G. The person who will present the appeal; and
- H. Whether the person will be represented and if so, the name, address and telephone number of the authorized representative.

Appeals that do not contain ALL of this information will be denied.

The Appeal must be filed with the DHS division that issued the Determination. Within ten (10) business days of receipt of the appeal, the DHS division will schedule and conduct a hearing with all parties. All parties shall be notified of the hearing date, time and location in writing. An extension may be allowed when either party has a valid reason for postponement or both parties agree to the delay.

At the hearing, only issues relevant to the appeal shall be discussed and considered. The DHS Division shall issue a written decision within ten (10) business days of the meeting. The written decision will be submitted to all parties who participated in the hearing. This decision constitutes the final agency action for purposes of the Arkansas Administrative Procedures Act (A.C.A. § 25-15-201 *et seq.*)

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1. **Purpose:**

The purpose of this policy is to delineate the requirements, allowances, exclusions, and general implementation of criminal record checks, in accordance with ~~Act 1548 of 2001, hereafter referred to as "the Act".~~ Ark. Code Ann. § 20-38-101 *et seq.* and Ark. Code Ann. § 20-48-812 (collectively, the "Law").

2. **Scope:**

This policy is applicable to all providers licensed and certified by ~~DDS-DHS~~ to provide services for persons with developmental disabilities, any owner of a Provider, all employees of ~~these P~~providers, and all applicants for employment ~~by those with~~ PProviders. This policy does not cover any required adult or child maltreatment registry checks.

3. **Definitions**

"Alternative Living Home" means a residential dwelling owned or operated by an Employee used to provide Direct Care to an Individual with Disabilities.

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

"DDS" means the Arkansas Department of Human Services, Division of Developmental Disabilities Services.

"DHS" means the Department of Human Services.

"Determination" means a written conclusion made ~~by~~ the appropriate division of DHS that a person is or is not qualified for employment, licensure, or certification based on the results of an Arkansas State Criminal Record Check or a National Criminal Record Check.

"Direct Care" means providing treatment, services, assistance, education, training, instruction, or supervision to an Individual with Disabilities, or having access to the finances or personal property of an Individual with Disabilities.

“Employee” means a person who:

1. Is employed by a Provider to deliver Direct Care to an Individual with Disabilities; or
2. Provides Direct Care to an Individual with Disabilities on behalf or under the supervision of, or by arrangement with, a Provider (i.e., volunteers, interns, independent contractors, etc.).

An employee does not include a person who is a family member of an Individual with Disabilities, unless the family member is paid by the Provider to provide Direct Care to the Individual.

“Group Home” means a residential dwelling that has been continuously owned or operated by a Provider since prior to July 1, 1995, and has space to provide private sleeping areas for more than four (4), but no more than fourteen (14), unrelated Individuals with Disabilities.

“Individual with Disabilities” means an individual receiving DDS services through a Provider.

“National Criminal Record Check” means a review of national criminal records based on fingerprinting or other identification methods.

“Provider” includes all of the following:

1. A certified Community and Employment Supports (CES) Waiver program service provider;
2. A certified First Connections (Part C of IDEA) program service provider;
3. Any certified adult day program service provider;
4. Any program certified as one of the following: Children’s Health Management Services (CHMS), Developmental Day Treatment Clinic Services (DDTCS), or any successor program to CHMS or DDTCS; and
5. Any other person or entity licensed or certified by DDS or DHS to provide DDS services, including, but not limited to, applied behavior analysts, First Connections service coordinators, and First Connections developmental therapists, occupational therapists, physical therapists, and speech language pathologists.

“State Criminal Record Check” means a review of state criminal records conducted by the Bureau.

“Supported Living Arrangement” means a residential dwelling owned or operated by a Provider which has space to provide private sleeping areas for no more than four (4) Individuals with Disabilities.

4. **Criminal Records Check Requirements** ~~under the Criminal Record Checks policy:~~

A. State Criminal Record Check: Except as provided elsewhere in this Section, a Provider (and any applicant to become a Provider) is required to request a State Criminal Record Check on the following persons by submitting a fully executed DDS Form 5088-STATE, or any successor document, completed as per the instructions found therein:

1. Each person applying to be a Provider, or who is an owner of an organization applying to become a Provider;
2. Each applicant to become an Employee of a Provider; and
3. Any person over twelve (12) years of age residing in an Alternative Living Home, Group Home, Supported Living Arrangement, or other residential setting in which services are provided to Individuals with Disabilities.

B. National Criminal Record Check: Except as provided elsewhere in this Section, in addition to the State Criminal Record Check, a Provider (and any applicant to become a Provider) is also required to request a National Criminal Record Check, which must include a fingerprint check, on the following persons by submitting a fully executed DDS Form 5088-FBI, or any successor document, completed as per the instructions found therein:

1. Each person that would be an owner of an organization applying to become a Provider; and
2. Any Employee or applicant for employment that has not been a resident of the State of Arkansas for the entire five (5) preceding years.

C. Record Check Retention: Providers are required to maintain evidence that all required criminal record checks were conducted.

D. Excluded Professionals: The criminal record checks required by this Policy are not required for any person who renders services subject to a professional license that requires the same or similar checks, such as a licensed professional counselor, social worker, nurse, occupational therapist, pharmacist, physical therapist, physician, surgeon, podiatrist, psychologist, psychological examiner, speech-language pathologist, audiologist, nursing home administrator, or behavior analyst.

E. Required Renewal: The criminal record checks required by this Policy must be requested/renewed by a Provider at least once every five (5) years for each person to whom the Policy is applicable.

F. Subsequent Discovery of a Criminal Record: In the event evidence of a potentially disqualifying conviction is discovered in the five (5) year period between required criminal record checks, the Provider must request a new State Criminal Record Check, and, if applicable, National Criminal Record Check, within five (5) days of discovery. Providers must temporarily disqualify/suspend an Employee's employment upon discovery of a potentially disqualifying conviction, pending a Determination by the appropriate division of DHS.

G. Qualifying Determinations by other DHS Divisions: A Provider is not required to request a State Criminal Record Check or National Criminal Record Check on an Employee or an applicant to become an Employee if the Division of Child Care and Early Childhood Education, or any other DHS Division, has issued a qualifying Determination for the individual within the past sixty (60) days. The Provider is responsible for retaining and submitting all proper documentation.

- ~~(a) Requirement for completion and notarization of a criminal record check form (which complies with the Act) and completion of a fingerprint card (when required) by any person to whom the provider intends to offer employment on or after August 13, 2001~~
- ~~(b) Requirement for conveyance of forms and fees within five (5) days to the Arkansas State Police Bureau of Identification for any person to whom a service provider intends to offer employment~~
- ~~(c) Requirement for initiation of Central Registry checks by a service provider prior to an offer of employment~~
- ~~(d) Requirement for temporary disqualification for employment by a service provider upon discovery of a criminal record, pending a determination by the Division of Developmental Disabilities Services (DDS), based on the provisions of the Act~~
- ~~(e) Requirement for both an Arkansas and a national criminal record check unless the individual meets specific residency or employment qualifications~~
- ~~(f) Requirement for evidence that criminal record checks were performed on agency, temporary, and contract staff~~
- ~~(g) Requirement for notification by service providers to applicants and current employees that employment is contingent upon results of criminal record checks~~
- ~~(h) Requirement for a determination by DDS of an individual's employment qualification or disqualification, based on the provisions of the Act, and for forwarding of this determination to the service provider~~
- ~~(i) Requirement for the denial or termination of employment by a service provider to any person determined by DDS to be disqualified for employment, based on the provisions of the Act~~
- ~~(j) Requirement for the maintenance of evidence of criminal record checks on applicants and current employees and copies of determinations by DDS~~

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- ~~(k) Requirement that DDS issue a determination, based on the provisions of the Act, that a person is disqualified from employment with a service provider if that person has pled guilty or nolo contendere to or has been found guilty of certain offenses~~
- ~~(l) Requirement that service providers not knowingly employ a person who has pled guilty or nolo contendere to or has been found guilty of certain offenses~~
- ~~(m) Requirement that provisions of the Act not be waived~~
- ~~(n) Requirement that conviction for certain offenses results in permanent disqualification from employment~~
- ~~(o) Requirement for DDS to prepare necessary forms and to promulgate procedures~~
- ~~(p) Requirement for DDS to establish remedies to be imposed for failure to comply with the Act~~
- ~~(q) Requirement for all reports to remain confidential and restricted to the use of parties specified in the Act, and exempt from Freedom of Information Act (FOIA) disclosure, except to parties identified in the Act~~
- ~~(r) Requirement for the immunity of parties for damages, other than for malicious acts or omissions~~
- ~~(s) Requirement for completion of criminal record checks on all current employees of a service provider by October 1, 2002~~

4. ~~Allowances under the Criminal Record Check policy:~~

- ~~(a) Allowances for continued temporary employment of an individual, if no finding of fault records are found in a Central Registry, while awaiting the results of a criminal record check~~
- ~~(b) Allowances for employment of an individual upon determination by DDS that the person is qualified for employment, based on the provisions of the Act~~
- ~~(c) Allowances for employment of individuals with one conviction for certain offenses if conviction was ten years prior to application for employment~~
- ~~(d) Allowances for employment of an individual convicted of a misdemeanor not related to exploitation, abuse, neglect, or sexual abuse of a person~~
- ~~(e) Allowances for denial or revocation of a service provider's license for failure to obtain criminal record checks in compliance with the Act~~
- ~~(f) Allowances for applicants and employees to challenge the completeness or accuracy of criminal history information to the Arkansas State Police, Bureau of Identification~~

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5. ~~Exclusions from the Criminal Record Check policy:~~

This policy does not apply to:

- (a) ~~A person who renders services subject to a professional license as a: Licensed professional counselor, social worker, nurse, occupational therapist, pharmacist, physical therapist, physician, surgeon, podiatrist, psychologist, psychological examiner, speech language pathologist, audiologist, or nursing home administrator.~~
- (b) ~~An individual who has maintained employment in the state for twelve months, has successfully completed a criminal record check, and submits evidence thereof.~~

5. Determinations

The appropriate division of DHS will make a Determination on each person for whom a State Criminal Record Check and/or National Criminal Record Check is conducted. No Employee or applicant for Employment with a Provider is permitted to perform Direct Care services for a Provider prior to receiving a Determination permitting the person to be employed. Each Determination will be in one of the following categories:

- A. Provisionally Qualified: A determination that a person may be employed as a result of a State Criminal Record Check.
- B. Qualified: A determination that a person may be employed as result of both a State Criminal Record Check and a National Criminal Record Check.
- C. Disqualified: A determination that a person may not be employed as a result of a State Criminal Record Check and/or a National Criminal Record Check.
- D. Tentatively Qualified: A determination that a “Qualified” or “Provisionally Qualified” Determination cannot be issued due to the existence of one or more potentially disqualifying charges that are less than a year old and have not reached disposition in court on a State Criminal Record Check or National Criminal Record Check. In such cases, the Provider may offer employment to the person but must re-submit the required criminal record check(s) every three (3) months until final determination is issued by the appropriate division of DHS.

Notwithstanding the foregoing, any individual that has an Arkansas State Criminal History Report that states “No Criminal History Found for this Subject” automatically receives a “Provisionally Qualified” Determination and will not actually have a Determination Letter issued.

6. Disqualifying Offenses.

A. Permanently Disqualifying Offenses: A person shall be permanently prohibited from being an owner or Employee of a Provider if that person has pled guilty or nolo contendere or been found guilty of any of the following offenses by any court in the State of Arkansas, or any similar offense by a court in another state or a federal court:

1. Abuse of an endangered or impaired person, if felony (§ 5-28-103)
2. Aggravated assault upon a law enforcement officer or an employee of a correctional facility, if a Class Y felony (§ 5-13-211)
32. Arson (§ 5-38-301)
43. Capital Murder (§ 5-10-101)
54. Endangering the Welfare of an Incompetent person—1st Degree (§ 5-27-201)
65. Kidnapping (§ 5-11-102)
76. Murder in the First Degree (§ 5-10-102)
87. Murder in the Second Degree (§ 5-10-103)
98. Rape (§ 5-14-103)
910. Sexual Assault in the First Degree (§ 5-14-124)
1140. Sexual Assault in the Second Degree (§ 5-14-125)
12. Sexual extortion (§ 5-14-113)

A plea of guilty or nolo contendere or a conviction for any of the above offenses permanently prohibits an individual from being an owner or Employee of a Provider regardless of whether or not the record of the offense is expunged, pardoned, or otherwise sealed.

B. Potentially Disqualifying Offenses: A person who has pled guilty, nolo contendere, or been found guilty of any offense listed in this Section by any court in the State of Arkansas, or of any similar offense by a court in another state or a federal court, is prohibited from being an owner or Employee of a Provider, unless one of the following situations apply:

1. The offense is a misdemeanor, and the date of the conviction or plea of guilty or nolo contendere, is more than five (5) years prior to the date of the State Criminal Record Check or National Criminal Record Check request, and there have been no criminal convictions or pleas of guilty or nolo contendere of any type or nature during that five (5) year period.

OR

2. The offense is a felony, and the date of the conviction or plea of guilty or nolo contendere is more than ten (10) years prior to the date of the State Criminal Record Check or National Criminal Record Check request, and there have been no other criminal convictions or pleas of guilty or nolo contendere of any type or nature during that ten (10) year period.

The following offenses disqualify an individual who does not meet one of the criteria above from being an Employee or an owner of a Provider, ~~regardless of whether or not~~ unless the record of the offense has been expunged, pardoned or otherwise sealed:

1. Assault in the First, Second, or Third Degree (§§ 5-13-205—207)
2. Aggravated Assault (§ 5-13-204)
3. Aggravated Assault on a Family or Household Member (§ 5-26-306)
4. Aggravated Assault upon a Law Enforcement Officer or an Employee of a Correctional Facility, if a Class Y felony (§ 5-13-211)
5. Battery in the First, Second, or Third Degree (§§ 5-13-201—203)
6. Breaking or Entering (§ 5-39-202)
7. Burglary (§ 5-39-201)
8. Coercion (§ 5-13-208)
9. Computer Crimes Against Minors (§§ 5-27-601 *et seq.*)
10. Contributing to the Delinquency of a Juvenile (§ 5-27-220)
11. Contributing to the Delinquency of a Minor (§ 5-27-209)
12. Criminal Impersonation (§ 5-3-208)
13. Criminal Use of a Prohibited Weapon (§ 5-73-104)
14. Cruelty to Animals (§ 5-62-103)
15. Aggravated Cruelty to Dog, Cat or Horse (§ 5-62-104)
16. Death Threats Concerning a School Employee or Student (§ 5-17-101)
17. Domestic Battery in the First, Second or Third Degree (§ 5-26-303—305)
18. Employing or Consenting to the Use of a Child in a Sexual Performance (§ 5-27-402)
19. Endangering the Welfare of a Minor in the First or Second Degree (§§ 5-27-205—206)
20. Endangering the Welfare of an Incompetent Person in the Second Degree (§§ 5-27-201—202)
21. Engaging Children in Sexually Explicit Conduct for Use in Visual or Print Media (§ 5-27-303)
22. False Imprisonment in the First or Second Degree (§§ 5-11-103—104)
23. Financial Identity Fraud (§ 5-37-227)
24. Forgery (§ 5-37-201)
25. Incest (§ 5-26-202)
26. Interference with Court Ordered Custody (§ 5-26-502)
27. Felony Interference with a Law Enforcement Officer (§ 5-54-104)
28. Interference with Visitation (§ 5-26-501)
29. Introduction of a Controlled Substance into Body of Another Person (§ 5-13-210)
30. Manslaughter (§ 5-10-104)
31. Negligent Homicide (§ 5-10-105)

32. Obscene Performance at a Live Public Show (§ 5-68-305)
33. Pandering or Possessing Visual or Print Medium Depicting Sexually Explicit Conduct Involving a Child (§ 5-27-304)
34. Patronizing a Prostitute (§ 5-70-103)
35. Permanent Detention or Restraint (§ 5-11-106)
36. Permitting Abuse of a Minor (§ 5-27-221)
37. Producing, Directing, or Promoting a Sexual Performance by a Child (§ 5-27-403)
38. Promoting Obscene Materials (§ 5-68-303)
39. Promoting Obscene Performance (§ 5-68-304)
40. Promoting Prostitution in the First, Second, or Third Degree (§§ 5-70-104—106)
41. Prostitution (§ 5-70-102)
42. Public Display of Obscenity (§ 5-68-205)
43. Resisting Arrest (§ 5-54-103)
44. Robbery (§ 5-12-102)
45. Aggravated Robbery (§ 5-12-103)
46. Any Sexual Offense, including sexual exhortation (§§ 5-14-101 *et seq.*)
47. Simultaneous Possession of Drugs and Firearms (§ 5-74-106)
48. Soliciting Money or Property from Incompetents (§ 5-27-229)
49. Stalking (§ 5-71-229)
50. Terroristic Act (§ 5-13-310)
51. Terroristic Threatening (§ 5-13-301)
52. Theft by Receiving (§ 5-36-106)
53. Theft of Property (§ 5-36-103)
54. Theft of Services (§ 5-36-104)
55. Transportation of Minors for Prohibited Sexual Conduct (§ 5-27-305)
56. Unlawful Discharge of a Firearm from a Vehicle (§ 5-74-107)
57. Felony Violation of the Uniform Controlled Substances Act (§§ 5-64-101 *et seq.*)
58. Voyeurism (§ 5-16-102)
59. Criminal attempt (§ 5-3-201), criminal complicity (§ 5-3-202), criminal solicitation (§ 5-3-301), or criminal conspiracy (§ 5-3-401) to commit any of the offenses listed in (A) or (B) above.

~~(a) These offenses may disqualify an individual from employment by a service provider, as referenced in items 4. (c) and (d) of this policy:~~

- ~~1. Manslaughter, as prohibited in § 5-10-104;~~
- ~~2. Negligent homicide, as prohibited in § 5-10-105;~~
- ~~3. False imprisonment in the first degree, as prohibited in § 5-11-103;~~
- ~~4. Permanent detention or restraint, as prohibited in § 5-11-106;~~
- ~~5. Robbery, as prohibited in § 5-12-102;~~
- ~~6. Aggravated robbery, as prohibited in § 5-12-103;~~
- ~~7. Battery, as prohibited in §§ 5-13-201, 5-13-202, and 5-13-203;~~
- ~~8. Aggravated assault, as prohibited in § 5-13-204;~~
- ~~9. Introduction of controlled substance into body of another person, as prohibited in § 5-13-210;~~

~~Effective date: August 13, 2001 (emergency promulgation);
March 5, 2002 (final promulgation)~~

- ~~10. Terroristic threatening in the first degree, as prohibited in § 5-13-301;~~
- ~~11. Sexual solicitation of a child, as prohibited in § 5-14-110;~~
- ~~12. Violation of a minor in the first degree and second degree, as prohibited in §§ 5-14-120 and 5-14-121;~~
- ~~13. Incest, as prohibited in § 5-26-202;~~
- ~~14. Offenses against the family, as prohibited in §§ 5-26-303 – 5-26-306;~~
- ~~15. Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-203;~~
- ~~16. Permitting child abuse, as prohibited in § 5-27-221(a)(1) and (a)(3);~~

ARKANSAS DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES
DDS DIRECTOR'S OFFICE POLICY MANUAL

<u>Policy Type</u>	<u>Subject of Policy</u>	<u>Policy No.</u>
<u>Administrative</u>	<u>Criminal Records Checks</u>	<u>1087</u>

- ~~17. Engaging children in sexually explicit conduct for use in visual or print media; transportation of minors for prohibited sexual conduct, 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 §§ 5-27-303, 5-27-304, 5-27-305, 5-27-402, and 5-27-403;~~
- ~~18. Theft of property, as prohibited in § 5-36-103;~~
- ~~19. Theft by receiving, as prohibited in § 5-36-106;~~
- ~~20. Felony violation of the Uniform Controlled Substances Act, as prohibited in § 5-64-401;~~
- ~~21. Burglary, as prohibited in § 5-39-201;~~
- ~~22. Promotion of prostitution in the first degree, as prohibited in § 5-70-104;~~
- ~~23. Stalking, as prohibited in § 5-71-229;~~
- ~~24. Forgery, as prohibited in Sec. 5-37-201~~
- ~~25. Breaking or entering, as prohibited in Sec 5-39-202;~~
- ~~26. Obtaining a controlled substance by fraud, as prohibited in Sec. 5-64-403; and~~
- ~~27. Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed above.~~

~~(b) These offenses will permanently disqualify a person from employment by a service provider:~~

- ~~1. Capital murder, as prohibited in § 5-10-101;~~
- ~~2. Murder in the first degree and second degree, as prohibited in §§ 5-10-102 and 5-10-103;~~
- ~~3. Kidnapping, as prohibited in § 5-11-102;~~
- ~~4. Rape and carnal abuse in the first degree, second degree, and third degree, as prohibited in §§ 5-14-103—5-14-106;~~
- ~~5. Sexual abuse in the first degree and second degree, as prohibited in §§ 5-14-108 and 5-14-109;~~
- ~~6. Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;~~
- ~~7. Felony adult abuse, as prohibited by § 5-28-103; and~~
- ~~8. Arson, as prohibited in § 5-38-301.~~

ARKANSAS DEPARTMENT OF HUMAN SERVICES
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~~7. Program Management and Compliance Monitoring. The DDS Licensure Section has the responsibility for managing the Criminal Record Check program and for monitoring compliance with this policy and all related procedures.~~

7. Criminal Record Check Document Retention

DHS shall maintain all criminal record check documentation required to be retained under restricted access available only to those authorized and trained for its use. All criminal record check documentation shall remain on file for at least five (5) years, and followed by secure destruction.

8. Appeals

Applicants or Employees receiving a Disqualified Determination shall be notified by DHS in writing. A "Disqualified" Determination is the only Determination that may be appealed.

If the Applicant or Employee wishes to appeal, he or she must submit the request for appeal within ten (10) business days of receipt of the written notification. Failure to submit an appeal within this timeframe will result in the appeal being denied. All appeals must be in writing and contain, at a minimum:

- A. The name, address, and telephone number of the person filing the appeal;
- B. The relationship the person filing the appeal has with DDS;
- C. The decision that is being appealed;
- D. The reason(s) the decision is being appealed;
- E. The desired outcome of the appeal;
- F. The law and/or facts being relied upon in filing the appeal;
- G. The person who will present the appeal; and

H. Whether the person will be represented and if so, the name, address and telephone number of the authorized representative.

Appeals that do not contain ALL of this information will be denied.

The Appeal must filed with the DHS division that issued the Determination. Within ten (10) business days of receipt of the appeal, the DHS division will schedule and conduct a hearing with all parties. All parties shall be notified of the hearing date, time and location in writing. An extension may be allowed when either party has a valid reason for postponement or both parties agree to the delay.

At the hearing, only issues relevant to the appeal shall be discussed and considered. The DHS Division shall issue a written decision within ten (10) business days of the meeting. The written decision will be submitted to all parties who participated in the hearing. This decision constitutes the final agency action for purposes of the Arkansas Administrative Procedures Act (A.C.A. § 25-15-201 *et seq.*)

~~References: Arkansas Code Annotated (ACA) § 20-48-801 *et. seq.*, § 20-33-201 through 203~~

~~Department of Human Services Policy 1052 and Procedures~~

~~Administrative Rules and Regulations Subcommittee of the Arkansas Legislative Council: reviewed December 6, 2001 and March 7, 2002.~~

~~Effective date: August 13, 2001 (emergency promulgation);
March 5, 2002 (final promulgation)~~

~~STANDARDS~~
~~FOR CONDUCTING~~
~~CRIMINAL RECORD CHECKS~~
~~FOR EMPLOYEES~~
~~OF~~
~~DEVELOPMENTAL DISABILITIES~~
~~SERVICE PROVIDERS~~

~~Arkansas Department of Human Services~~
~~Division of Developmental Disabilities Services~~

~~Date June 30, 2014~~
~~Post Office Box 1437, Slot N501~~
~~Little Rock, Arkansas 72203-1437~~
~~(501) 682-8677~~

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AUTHORITY

~~The following rules and regulations for the requirement of criminal record checks for applicants and employees of service providers of developmental disabilities services in the State of Arkansas are duly adopted and promulgated by the Arkansas Department of Human Services, Division of Developmental Disabilities Services (DDS), pursuant to the authority expressly conferred by Arkansas Code Ann. §20-38-101 et seq. (Act 1548 of 2001, Act 762 of 2009, and Act 516 of 2011, and Act 990 of 2013).~~

~~Effective September 1, 2009, pursuant to Act 762 of 2009, Arkansas Code Title 20 was amended to add Chapter 38 which consolidated processes for conducting criminal record checks for diverse service providers within three Divisions of the Arkansas Department of Human Services. Thereafter, the authority expressed within these regulations are conferred by Arkansas Code Ann. §20-38-101 et seq. in addition to other authority conferred on the Division of Developmental Disabilities Services by Arkansas law or federal regulation.~~

~~If any provisions of these rules and regulations, or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end the provisions hereof are declared severable.~~

~~Individuals and service providers are immune from suit or liability for damages for acts or omissions, other than malicious acts or omissions, occurring in the performance of duties imposed by ACA §20-38-101 et seq.~~

~~"The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and operates, manages and delivers services without regard to age, religion, disability, political affiliation, veteran status, sex, race, color or natural origin."~~

~~If you need this material in a different format, such as large print, contact our Americans with Disabilities Act Coordinator at (501) 682-8677 (voice) or 682-1332 (TDD).~~

100 DEFINITIONS

The following definitions shall apply unless clearly stated otherwise:

~~Acknowledgement—Written notice from the Division of Developmental Disabilities Services acknowledging that a Service Provider:~~

- ~~1. Has determined at its discretion that a person disqualified from employment by DDS due to a criminal record meets the criteria for a waiver, and~~
- ~~2. Intends to offer the person employment or to continue the person's employment with the Service Provider.~~

~~Bureau—The Identification Bureau of the Department of the Arkansas State Police~~

~~Care—The treatment, services, assistance, education, training, instruction or supervision of individuals with disabilities for which the service provider is compensated either directly or indirectly.~~

~~Conviction—A conviction or plea of guilty or nolo contendere, whether or not the record of the offense is expunged, pardoned, or otherwise sealed,~~

~~Determination—The determination made by the licensing or certifying agency that a person making application to be licensed or certified as a service provider, an employee of a service provider, or an applicant for employment with a service provider is or is not disqualified from employment, licensure, or certification based on the criminal history of the employee or applicant.~~

~~Employee—~~

~~1. A person who:~~

- ~~(i) (a) Is employed by a service provider to provide care to individuals with disabilities served by the service provider; or~~
- ~~(b) Provides care to individuals with disabilities served by a service provider on behalf of, under supervision of, or by arrangement with the service provider; or~~
- ~~(c) Submits an application to a service provider for the purposes of employment; or~~
- ~~(d) Is a temporary employee placed by an employment agency with a service provider to provide care to individuals with disabilities served by the service provider~~
- ~~(e) Submits an application to the Licensing or Certification Agency for the purpose of being licensed or certified as a service provider; or~~
- ~~(f) Resides in an alternative living home in which services are provided to individuals with developmental disabilities; and~~

~~(ii) Has or may have unsupervised access to individuals with disabilities served by a service provider, except as provided in subsection 2 below.~~

~~2. Employee does not include a person who:~~

- ~~(i) Is a family member of an individual with a disability served by a service provider, unless the family member is paid by the service provider to provide care to the individual;~~
- ~~(ii) Is a volunteer for the service provider without unsupervised access to individuals with disabilities; or~~

~~(iii) Works in an administrative capacity for the service provider and does not and will not have unsupervised access to individuals with disabilities served by a service provider or access to the property or funds of these individuals.~~

~~Group home—A residential dwelling that is owned and operated by a provider licensed or certified by the Division of Developmental Disabilities which was recognized by DDS prior to July 1, 1995 and which has space to provide private sleeping areas for more than four but no more than fourteen unrelated individuals who have a developmental disability.~~

~~Individual with Disabilities—A person with an intellectual, developmental, or physical impairment who has deficits in these areas of need: self-care, understanding and use of language, learning, mobility, self-direction, and capacity for independent living.~~

~~Licensing or Certification Agency—The state agency (Department of Human Services, Division of Developmental Disabilities Services) charged with licensing or certifying a service provider.~~

~~National Criminal History Check—A review of national criminal records based on fingerprint identification or other positive identification methods.~~

~~Report—A statement of the criminal history of a service provider, applicant, applicant for employment with, or employee of a service provider issued by the Bureau.~~

~~Registry Records Check—The review of one or more database systems maintained by a state agency that contains information regarding a finding of abuse, neglect, or exploitation of a child or adult.~~

~~Service Provider—(A) An Alternative Community Services (ACS) Waiver Program service provider certified by the Department of Human Services, Division of Developmental Disabilities Services.~~

~~(B) A First Connections Part C Early Intervention Program service provider certified by the Department of Human Services, Division of Developmental Disabilities Services;~~

~~(C) A nonprofit community program licensed by the Department of Human Services, Division of Developmental Disabilities Services to provide Developmental Day Treatment Clinic Services (DDTCS); and~~

~~(D) Any other person or entity licensed or certified by the Department of Human Services, Division of Developmental Disabilities Services to provide services, including but not limited to applied behavior analysts; First Connections service coordinators; First Connections developmental therapists, and occupational, physical, or speech language pathologists certified to provide First Connections services;~~

~~State Criminal History Check—A review of state criminal records conducted by the Identification Bureau of the Arkansas State Police.~~

~~Supported living arrangement—A residential dwelling that is owned and operated by a provider licensed or certified by the Division of Developmental Disabilities which has space to provide private sleeping areas for no more than four individuals who have a developmental disability.~~

~~Waiver—The process by which a Service Provider employs or continues the employment of a person who has been determined by DDS to be disqualified for employment due to a criminal record after the service provider determines at its discretion that the person satisfies the criteria for a waiver and receives acknowledgement from DDS~~

200 IMPLEMENTATION REQUIREMENTS

~~201 Before making an offer of employment, the service provider shall inform an applicant that employment is contingent upon the satisfactory results of criminal history record checks. The employer must inform the applicant that the Service provider shall not knowingly hire or continue to employ a person who has been found guilty or has pled guilty or nolo contendere to any of the offenses listed below by any court in the State of Arkansas or any similar offense by a court in another state or of any similar offense by a federal court, whether or not the record of the offense is expunged, pardoned, or otherwise sealed.~~

- ~~1. Criminal attempt, § 5-3-201, criminal complicity, § 5-3-202, criminal solicitation, § 5-3-301, and criminal conspiracy, § 5-3-401, to commit any of the offenses listed in this subsection.~~
- ~~2. Capital murder, § 5-10-101;~~
- ~~3. Murder, §§ 5-10-102 and 5-10-103;~~
- ~~4. Manslaughter, § 5-10-104;~~
- ~~5. Negligent homicide, § 5-10-105;~~
- ~~6. Kidnapping, § 5-11-102;~~
- ~~7. False imprisonment, §§ 5-11-103 and 5-11-104;~~
- ~~8. Permanent detention or restraint, § 5-11-106;~~
- ~~9. Robbery, §§ 5-12-102 and 5-12-103;~~
- ~~10. Battery in the first, second and third degree, §§ 5-13-201 – 5-13-203;~~
- ~~11. Assault, §§ 5-13-204 – 5-13-207;~~
- ~~12. Coercion, § 5-13-208;~~
- ~~13. Introduction of controlled substance into body of another person, § 5-13-210;~~
- ~~14. Terroristic threatening, § 5-13-301;~~
- ~~15. Terroristic act, § 5-13-310;~~
- ~~16. Any sexual offense, § 5-14-101 et seq.;~~
- ~~17. Voyeurism, § 5-16-102;~~
- ~~18. Death threats concerning a school employee or student, § 5-17-101;~~
- ~~19. Incest, § 5-26-202;~~
- ~~20. Domestic Battery, §§ 5-26-303 – 5-26-306;~~
- ~~21. Interference with visitation, § 5-26-501;~~
- ~~22. Interference with court-ordered custody, § 5-26-502;~~
- ~~23. Endangering the welfare of incompetent person, §§ 5-27-201 and 5-27-202;~~
- ~~24. Endangering the welfare of a minor, §§ 5-27-205 and 5-27-206;~~
- ~~25. Contributing to the delinquency of a minor, § 5-27-209;~~
- ~~26. Contributing to the delinquency of a juvenile, § 5-27-220;~~
- ~~27. Permitting abuse of a minor, 5-27-221;~~
- ~~28. Soliciting money or property from incompetents, § 5-27-229;~~
- ~~29. Engaging children in sexually explicit conduct for use in visual or print media, § 5-27-303;~~
- ~~30. Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;~~
- ~~31. Transportation of minors for prohibited sexual conduct, § 5-27-305;~~
- ~~32. Employing or consenting to the use of a child in a sexual performance, § 5-27-402;~~
- ~~33. Producing, directing, or promoting a sexual performance by a child, § 5-27-403;~~
- ~~34. Computer crimes against minors, 5-27-601;~~
- ~~35. Felony abuse of an endangered or impaired person, § 5-28-103;~~
- ~~36. Theft of property, § 5-36-103;~~
- ~~37. Theft of services, § 5-36-104;~~

- ~~38. Theft by receiving, § 5-36-106;~~
- ~~39. Forgery, § 5-37-201;~~
- ~~40. Criminal impersonation, § 5-37-208;~~
- ~~41. Financial identity fraud, 5-37-227;~~
- ~~42. Arson, 5-38-301;~~
- ~~43. Burglary, § 5-39-201 and 204;~~
- ~~44. Breaking or entering, § 5-39-202;~~
- ~~45. Resisting arrest, §5-54-103;~~
- ~~46. Felony interference with a law enforcement officer, §5-54-104;~~
- ~~47. Cruelty to animals, §§ 5-62-103 and 5-62-104;~~
- ~~48. Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-508;~~
- ~~49. Public display of obscenity, §5-68-205;~~
- ~~50. Promoting obscene materials, §5-68-303;~~
- ~~51. Promoting obscene performance, §5-68-304;~~
- ~~52. Obscene performance at a live public show, §5-68-305;~~
- ~~53. Prostitution, §5-70-102;~~
- ~~54. Patronizing a prostitute, §5-70-103;~~
- ~~55. Promotion of prostitution, §§ 5-70-104 — 5-70-106;~~
- ~~56. Stalking, § 5-71-229;~~
- ~~57. Criminal use of a prohibited weapon, §5-73-104;~~
- ~~58. Simultaneous possession of drugs and firearms, §5-74-106; and~~
- ~~59. Unlawful discharge of a firearm from a vehicle, §5-74-107.~~

202 ~~1. Except as provided in Section 201.2 below, DDS will not disqualify an individual if their conviction or plea of guilty or nolo contendere was:~~

~~a. A misdemeanor offense and the date of conviction of the offense is at least five years from the date of the application for the criminal record check, and the person has no criminal convictions or pleas of guilty or nolo contendere of any type or nature during the five-year period preceding the record check;~~

~~b. A felony offense and the date of the conviction of the offense is at least ten years from the date of the application for the criminal record check, and the person has no criminal convictions or pleas of guilty or nolo contendere of any type or nature during the ten-year period preceding the record check;~~

~~2. The provisions in 202.1(a) and 201.1(b) shall be applied by the service provider at the time that the initial criminal record check is requested by a service provider. DDS will not disqualify a person for whom the time for disqualification has passed (five years for misdemeanors or ten years for felonies). The service provider may request a new criminal record check for such persons.~~

~~3. DDS will not disqualify a person who would otherwise be disqualified under Section 201 if the person:~~

~~a. Was not disqualified on August 31, 2009; and~~

~~b. Has been continuously employed by the service provider who initiated the criminal record check or continues to be the operator of a service provider; and,~~

~~c. Has not been found guilty of or pleaded guilty or nolo contendere to any offense listed in Section 201, a similar offense in another state, or a similar federal offense since August 31, 2009; and~~

~~d. Submits proof of prior non-disqualification through the service provider~~

~~When the person next undergoes a periodic criminal record check, the person's continued employment or operator status with the service provider is contingent on the results of the new criminal record check.~~

~~**202** Because of the serious nature of the offense and close relationship to the type of work that is to be performed, the following offenses by any court in the State of Arkansas or any similar offense by a court of another state or federal court, whether or not the record of the offense is expunged, pardoned, or otherwise sealed, shall result in permanent disqualification of employment:~~

- ~~1. Capital murder, § 5-10-101;~~
- ~~2. Murder in the first degree, § 5-10-102;~~
- ~~3. Murder in the second degree, § 5-10-103;~~
- ~~4. Kidnapping, § 5-11-102;~~
- ~~5. Rape, § 5-14-103;~~
- ~~6. Sexual assault in the first degree, § 5-14-124;~~
- ~~7. Sexual assault in the second degree, § 5-14-125;~~
- ~~8. Endangering the welfare of an incompetent person in the first degree, § 5-27-201;~~
- ~~9. Felony abuse of an endangered or impaired person, § 5-28-103; and~~
- ~~10. Arson, § 5-38-301.~~

~~**203** Service providers shall request criminal record checks on current employee at least every five years~~

~~**204** If a service provider determines the need to utilize temporary employees as provided by a private placement agency, contract staffing agency, or through a contract for care provided by an outside vendor, the private placement agency, contract staffing agency or outside vendor shall initiate the criminal record check as provided by these standards prior to the placement of the person with the DDS service provider. The process to implement this provision is as follows:~~

- ~~1. When a service provider determines the need to utilize a private placement agency, contract staffing agency or contract for care provided by an outside vendor, the service provider shall notify such agency/vendor to contact DDS for inclusion in the process to conduct criminal record checks as specified in these standards.~~
- ~~2. Upon contact by a private placement agency or contract agency/vendor as defined above, DDS shall direct the requestor to the standards and forms needed to conduct criminal record checks in accordance with these standards.~~
- ~~3. The private placement agency or contract agency/vendor shall initiate criminal record checks on applicable employees as prescribed in Section 300 of these standards. Upon receipt of the criminal record report, DDS shall issue a determination in writing to the agency/vendor.~~
- ~~4. Prior to placement of a person to work for a service provider, the service provider must obtain from the private placement agency or contract agency/vendor a copy of the person's determination letter from DDS to verify compliance with this provision.~~
- ~~5. Criminal record checks on persons assigned from private placement agencies or contract agencies/vendors must comply with the twelve month time limit provision specified in Section 501 of these standards. These persons are not eligible for the periodic record check provisions in Section 202 (1) and shall be subject to yearly criminal record checks. Each~~

service provider must establish a procedure for reviewing at least annually documentation of a current determination from DDS.

205 ~~Criminal record checks as required in these standards shall include both a state and national record check. A service provider may request a "state only" criminal record check if the service provider can verify the applicant has lived continuously in the State of Arkansas for the past five years and the applicant does not report any disqualifying convictions on their employment application.~~

~~Note: Examples of evidence that can be used to verify the above may include, but are not limited to, employment records, payroll check stubs, tax records, rent/house payment records, utility bills, school records, etc. Service providers shall maintain copies of such verification evidence in cases where a state only criminal record check was conducted, for review by DDS.~~

206 ~~The service provider shall furnish to the employee or applicant a copy of the report issued by the Identification Bureau and a copy of the determination letter issued by DDS.~~

207 ~~The service provider must conduct a review of both the Child and Adult Maltreatment Registries for each applicant for employment and each employee. Service providers may obtain forms for registry checks from the agencies that maintain the registries. Service providers shall not employ a person who has a finding of abuse, neglect or maltreatment on a registry.~~

~~Service providers must repeat registry checks every two years for the Child Abuse Registry and every five years for the Adult Abuse Registry. The service provider must maintain results of all registry record checks and service provider actions related to the results of such checks in the employee's personnel file for review by DDS.~~

208 ~~A person may challenge the completeness or accuracy of criminal history information issued by the Bureau in accordance with ACA §12-12-1013. DDS shall make determinations of disqualification based on the information obtained from the Bureau and shall not be responsible for allegations regarding the disposition, expungement or accuracy of the information. Any challenges to the accuracy of the report should be directed to the Arkansas State Police/Identification Bureau (501) 618-8500, #1 State Police Plaza Drive, Little Rock, Arkansas 72209.~~

209 ~~All reports obtained by DDS under these standards are confidential and are restricted to the exclusive use of the Arkansas Crime Information Center, the Bureau, the licensing or certifying agency (DDS) and the person who is the subject of the report. The information contained in reports shall not be released or otherwise disclosed to any other person or agency except by court order and are specifically exempt from disclosure under the Arkansas Freedom of Information Act (A.C.A. 25-19-101, et seq.), except that the Department of Human Services/DDS is authorized and directed to furnish "determinations" to service providers. Service providers utilizing the Arkansas State Police on-line process for criminal record checks will have access to the state reports that result from that process.~~

~~Note: Ark. Code Ann. § 12-12-1013 states that criminal history information may be provided to the subject, the subject's attorney, or other designee authorized in writing by the subject.~~

210 ~~Each service provider shall maintain on file, subject to inspection by the Arkansas Crime Information Center, the Bureau, or the licensing or certifying agency (DDS), evidence that~~

criminal record checks have been initiated on employment applicants, employees, and applicants for licensure or certification and shall maintain a copy of the determinations received from DDS. When a service provider grants a waiver under Section 504, the Service Provider must maintain documentation to verify that the person met the criteria for the waiver, including acknowledgement from DDS.

~~211~~ The provider shall monitor all pending criminal record check applications to ensure results are received within 30 calendar days for a state record check and 120 calendar days for a national (FBI) record check. The service provider shall make all efforts to resolve pending applications that exceed these timeframes and shall document those efforts. For persons assigned from a private placement agency or contracted agency/vendor, the service provider shall maintain on file copies of the determination letter issued by DDS.

300 PROCESS FOR EMPLOYMENT APPLICANTS AND EMPLOYEES

~~301~~ A criminal record check must be conducted when a person applies for a position as an employee, as defined by these standards, and the service provider intends to make an offer of employment to the applicant. The same process as described in this section shall also be used when an incumbent employee's name is submitted for periodic criminal record checks as required by Section 202 (1) of these standards.

~~302~~ The service provider, upon making an offer of employment to an applicant, shall have the applicant complete a criminal record check form (DDS-5088). Within five working days of completion of the form, the service provider shall forward the form (or, if the check is to be conducted online, maintain the completed form at the requesting service provider) and appropriate fee(s) to the Arkansas State Police/Identification Bureau requesting a state record check and, if applicable, a national FBI records check. The service provider must maintain a copy of the DDS-5088 for verification of compliance (see Section 210). If a national record check is required, the applicant must also submit the appropriate fingerprint card. Fingerprint cards shall be available from DDS and must contain both the enabling statute number under "reason fingerprinted" and the identifier number (ORI) code that has been assigned.

~~303~~ If an applicant has not listed any of the convictions found in Section 201 on the DDS-5088 form or other employment application forms, a service provider may make an offer of conditional employment to an applicant or may continue the employment of an incumbent employee while waiting for the official criminal record check results. Service providers may choose to deny the applicant or employee unsupervised access to an individual to whom the service provider delivers services until the criminal record check and determination of employment status have been completed.

~~304~~ Upon completion of a criminal record check on an applicant or employee, the Bureau shall issue a report to DDS and to the requesting service provider. DDS shall determine whether the applicant or employee is disqualified from employment and issue its Letter of Determination to the service provider or requesting entity. If the criminal record report issued by the Bureau lists any conviction, of any type or nature, the service provider shall be required to remove from unsupervised direct care duties any person who was offered conditional or continued employment until DDS' Letter of Determination has been received. If the applicant or employee is disqualified from employment, the service provider shall terminate the employment of the employee or deny further employment to the applicant.

~~When a service provider intends to grant a waiver under Section 504, the service provider may not allow the person who is the subject of the waiver to perform unsupervised direct care duties until the waiver is complete, including acknowledgement by DDS.~~

~~**305** The service provider, upon making an offer of employment to an applicant, shall also submit forms to request a review of both the Child and Adult Maltreatment Registries. Results of the registry checks shall be maintained by the service provider. A service provider may not employ a person with a true finding of child or adult maltreatment on a central registry.~~

~~**400** PROCESS FOR APPLICANTS FOR LICENSURE OR CERTIFICATION~~

~~**401** Immediately prior to submitting an initial application to DDS for a license or certification as a service provider, the person, herein referred to as the applicant, shall complete a criminal record check form (DDS-5088) and FBI fingerprint card obtained from DDS. The applicant shall submit the forms and appropriate fees to the Bureau. Upon receipt of the criminal record report from the Bureau, DDS shall make a determination as to whether the applicant is disqualified. DDS will send the determination letter to the applicant seeking licensure or certification for inclusion in the application packet.~~

~~**402** The applicant shall request a review of any records related to the applicant on both the Child and Adult Maltreatment Registries prior to submitting an application for licensure or certification to DDS. Forms for registry checks may be obtained from the agencies that maintain the registries. The applicant shall include original results of all registry record checks in the application packet.~~

~~**403** Upon receipt of a complete application packet, including the determination of disqualification by DDS and results of both registry checks, DDS will review the packet. DDS shall issue a temporary license or certification to an applicant whose application meets all requirements. DDS shall deny licensure or certification to an applicant if the applicant has been determined to be disqualified based on criminal records check provisions, if the application packet does not include a determination from DDS, if the application packet does not include results of registry checks, or if the results of registry checks include a finding of abuse, neglect or maltreatment on the applicant.~~

~~**404** The requirement for a criminal record check and registry checks initiated by the applicant shall apply to the initial application for licensure or certification only. Thereafter, the service provider shall ensure that every person who meets the definition of employee undergoes periodic criminal record checks no less than once every five years and registry checks as noted in Section 206.~~

~~**500** EXCEPTIONS, EXCLUSIONS, and WAIVERS~~

~~**501** Any person who submits evidence of having maintained employment in the State of Arkansas for the past twelve months and of successfully completing a criminal record check within the last twelve months under these requirements shall not be required to apply for a new criminal record check. Service providers must maintain copies of the previous criminal record check, the determination letter issued by DDS, and evidence of continual employment for verification of this provision. Persons who satisfy these requirements shall be subject to the same periodic checks as other employees as described in Section 202. A waiver under Section 504 is valid only for employment with the service provider that granted the waiver and may not be transferred for employment with another service provider.~~

~~Note: Service providers that accept a previously conducted criminal record check must verify that it is compliant with provisions set forth in these standards. All provisions, such as the requirement for a national FBI record check, if applicable, must have been completed. The criminal record check must have been processed by DDS and a determination of disqualification status made by DDS.~~

~~**502** As described below, a disqualification determination made by other divisions of the Arkansas Department of Human Services and the criminal history report used to make the determination for an applicant or employee of a service provider are valid and transferrable for purposes of meeting the requirements of these standards for application or employment by DDS service provider. In these circumstances, the DDS service provider is not required to conduct any further criminal records check other than the periodic checks as described in Section 202. A valid and transferrable employment determination must meet the following conditions:~~

~~1. The determination must be made by:~~

- ~~a. The Division of Child Care and Early Childhood Education (DCCECE) for an applicant or employee of a child care facility or church-exempt child care facility; or,~~
- ~~b. The Division of Medical Services, Office of Long Term Care, for an applicant or employee of an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID)~~

~~2. The DDS service provider employee or applicant has not have a break in continuous employment with the service provider in the child care facility or ICF/IID; and,~~

~~3. The child care facility or ICF/IID in which the employee or applicant works is operated and administered by the same service provider operating the DDS program; and,~~

~~4. The licensed or certified DDS service provider maintains evidence acceptable to DDS that the child care facility or ICF/IID is operated and administered by the same service provider; and,~~

~~5. The DDS service provider, the child care facility, and the ICF/IID in which the employee or applicant is employed maintains a copy of the determination letter by the Divisions listed in 1(a) or (b), above.~~

~~**503** The requirement for a criminal record check under these standards shall not apply to persons who render care subject to professional licenses obtained for the following occupations:~~

- ~~1. Licensed professional counselors;~~
- ~~2. Dentists;~~
- ~~3. Registered or licensed practical nurses;~~
- ~~4. Occupational therapists;~~
- ~~5. Pharmacists;~~
- ~~6. Physical therapists;~~
- ~~7. Physicians and surgeons;~~
- ~~8. Podiatrists;~~
- ~~9. Psychologists and psychological examiners;~~

10. ~~Speech-language pathologists and audiologists; and~~
11. ~~Social workers.~~

~~A service provider may require that a criminal record check be conducted for any employee or contracted staff, regardless of professional license exemption, in accordance with the provider's policies.~~

504 ~~A service provider may grant a waiver and employ a person who has been disqualified under Section 201 if:~~

~~a. The conviction or plea of guilty or nolo contendere was for any of the non-violent offenses listed below:~~

- ~~1. Interference with court-ordered visitation, § 5-26-501;~~
- ~~2. Interference with court-ordered custody, § 5-26-502;~~
- ~~3. Theft by receiving, § 5-36-106;~~
- ~~4. Forgery, § 5-37-201;~~
- ~~5. Criminal impersonation, in the second degree § 5-37-208(b);~~
- ~~6. Financial identity fraud, 5-37-227;~~
- ~~7. Resisting arrest, §5-54-103;~~
- ~~8. Prostitution, §5-70-102;~~
- ~~9. Patronizing a prostitute, §5-70-103;~~

~~b. the service provider wants to hire the person;~~

~~c. the person remains in the employment of the service provider granting the waiver;~~

~~d. the service provider maintains documentation to verify that the person has:~~

- ~~i. completed probation or parole supervision;~~
- ~~ii. paid all court-ordered fees or fines, including restitution, and~~
- ~~iii. fully complied with all court orders pertaining to the conviction or plea of guilty or nolo contendere;~~

~~contendere;~~

~~e. The person will be employed by:~~

- ~~i. A long term care facility licensed by the Office of Long Term Care;~~
- ~~ii. An Intermediate Care Facility for Persons with Intellectual Disabilities licensed by the Office of Long Term Care;~~
- ~~iii. A Developmental Day Treatment Clinic Services provider (DDTCS) licensed by the Division of Developmental Disabilities Services (DDS);~~
- ~~iv. A group home operated by a service provider certified by DDS to provide Home and Community Based Services under the ACS Waiver Program~~

~~f. After employment by the service provider granting the waiver, the person is not convicted of or does not plead guilty or nolo contendere to any offense listed in Section 201; and~~

~~g. The person does not have a true or founded report of child or adult maltreatment on a central registry.~~

505 ~~Service providers shall not grant a waiver to a person working in an individual's home, the home of an individual's family member, the home of a staff member in which an individual lives, or a supported living arrangement.~~

600 SANCTIONS and PENALTIES

~~601 A service provider that violates or fails to comply with requirements to obtain and maintain on file documentation of criminal record checks as specified in these standards shall be subject to licensure or certification enforcement remedies as found in DDS policy.~~

~~602 In determining licensure or certification enforcement remedies, DDS shall consider:~~

- ~~1. The gravity of the violation, including the probability that death or serious harm to an individual with disabilities will result or has resulted;~~
- ~~2. The severity and scope of the actual or potential harm;~~
- ~~3. The extent to which the provisions of applicable statutes or standards were violated;~~
- ~~4. The "good faith" exercised by the service provider. Indications of good faith include, but are not limited to:~~
 - ~~a. Awareness of the requirements and reasonable diligence to comply;~~
 - ~~b. Prior history in complying with the requirements;~~
 - ~~c. Efforts to correct noncompliance; and~~
 - ~~d. Any other mitigating factors in favor of the service provider.~~

700 APPEALS

~~701 An administrative hearing is available to a person who disagrees with a determination of disqualification for employment, licensure, or certification made by DDS as described in these standards. These provisions do not apply to a person's challenge to the accuracy of the record obtained from the Bureau (see Section 208 of these standards).~~

~~702 The decision by a service provider not to grant a waiver to a person under Section 504 is subject to the discretion of the service provider and may not be appealed.~~

~~703 When a petitioner wishes to appeal, they may do so by mailing a written notice of appeal to Office of Appeals and Hearings, Office of Policy and Legal Services, Arkansas Department of Human Services, P.O. Box 1437, Slot N1001, Little Rock, Arkansas 72203. The person shall mail the notice by certified mail, return receipt requested. The appeal procedure is described in DHS Policy 1098.~~

SUMMARY OF CHANGES

DDS POLICY 1087

The Department of Human Services Division of Developmental Disability Services (DDS) is proposing changes to DDS Policy #1087, which sets forth the process and policy used to conduct Criminal Records Checks on Employees and Owners of DDS Providers.

This policy amendment updates the language of Policy 1087 to conform to federal and state law regarding conducting criminal records checks. The duplicative language found in the Standards for Conducting Criminal Record Checks for Employees of Developmental Disabilities Service Providers will also be repealed.

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of Developmental Disabilities Services
DIVISION DIRECTOR Melissa Stone
CONTACT PERSON Elizabeth Pitman
ADDRESS P.O. Box 1437, Slot N501
PHONE NO. (501) 682-4936 **FAX NO.** (501) 682-8380 **E-MAIL** elizabeth.pitman@dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Melissa Stone
PRESENTER E-MAIL melissa.stone@dhs.arkansas.gov

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 and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

**Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201**

1. What is the short title of this rule? Criminal Records Check (DDS Policy 1087)
2. What is the subject of the proposed rule? Updating the language of Policy 1087 to conform to Federal and State law; and repealing duplicative policy: Standards for Conducting Criminal Record Checks for Employees of DDS Providers.
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No ☒
If yes, please provide the federal rule, regulation, and/or statute citation. _____
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ☐ No ☒
If yes, what is the effective date of the emergency rule? _____
When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes ☐

No ☐

5. Is this a new rule? Yes ☐ No ☒

If yes, please provide a brief summary explaining the regulation. _____

Does this repeal an existing rule? Yes ☐ No ☒

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule?

Yes ☒ No ☐

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Arkansas Statute 20-38-101 et seq., and Ark Code Ann. 20-48-812.

7. What is the purpose of this proposed rule? Why is it necessary? This rule change updates the definition of developmental disability used by DDS so that it matches the language of A.C.A. 20-48-101, which sets out categorical eligibility

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

<https://www.medicaid.state.ar.us/general/comment/comment.aspx>

9. Will a public hearing be held on this proposed rule? Yes ☒ No ☐

If yes, please complete the following:

Date: December 4, 2017

Time: 2:00 PM

Department of Human Services

Conference Room A

700 Main Street

Place: Little Rock, AR

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

December 8, 2017

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

February 1, 2018

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. Attached.

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). Attached.
14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. Unknown.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Developmental Disabilities Services

PERSON COMPLETING THIS STATEMENT Elizabeth Pitman

TELEPHONE 501-682-4936 **FAX** 501-682-8380 **EMAIL:** Elizabeth.pitman@dhs.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Criminal Records Check (DDS Policy 1087)

- | | | |
|---|---|--|
| 1. Does this proposed, amended, or repealed rule have a financial impact? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue	_____
Federal Funds	_____
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
 Total	 0

Next Fiscal Year

General Revenue	_____
Federal Funds	_____
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
 Total	 0

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue	_____
Federal Funds	_____
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	0

Next Fiscal Year

General Revenue	_____
Federal Funds	_____
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	0

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ 0

Next Fiscal Year

\$ 0

-
6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 0

Next Fiscal Year

\$ 0

-
7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.