

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

Mark Martin

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Little Rock, Arkansas 72201-1094

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Department of Human Services

Department Division of Provider Services and Quality Assurance

Contact Frank Gobell E-mail frank.gobell@dhs.arkansas.gov Phone 501-320-6017

Statutory Authority for Promulgating Rules Arkansas Code 20-10-108, 109 and 20-10-203

Rule Title: Criminal Records Check (DMS-736); OLTC Rules and Regs for Conducting Criminal Record Checks for Employees

Intended Effective Date
(Check One)

☐ Emergency (ACA 25-15-204)

☐ 10 Days After Filing (ACA 25-15-204)

☒ Other May 1, 2018
(Must be more than 10 days after filing date.)

Legal Notice Published

Final Date for Public Comment

Reviewed by Legislative Council

Adopted by State Agency

Date

01/11/18

02/09/18

05/01/18

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Becky Murphy becky.murphy@dhs.arkansas.gov

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)


Signature

(501) 371-2165

Phone Number

craig.cloud@dhs.arkansas.gov

E-mail Address

Director

Title

Date

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

DEPARTMENT/AGENCY Department of Human Services
DIVISION Provider Services and Quality Assurance
DIVISION DIRECTOR Craig Cloud
CONTACT PERSON Frank GoBell
ADDRESS PO Box 8059, Slot S409
PHONE NO. (501) 320-6017 FAX NO. _____ E-MAIL Frank.GoBell@dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Frank GoBell
PRESENTER E-MAIL Frank.Gobell@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 (DMS-736) Update; OLTC Rules and Regulations for Conducting Criminal Record Checks for Employees of Long Term Care Facilities §§303, 304, 305, and 306
2. What is the subject of the proposed rule? Office of Long Term Care (OLTC) national criminal background checks for long-term care employees and applicants for employment Update
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 Code: 20-10-108, 109 and 20-10-203

7. What is the purpose of this proposed rule? Why is it necessary? The Office of Long Term Care underwent an audit performed by the Arkansas State Police (ASP) on behalf of the FBI to determine compliance with FBI requirements for performing national criminal background checks for long-term care employees and applicants for employment. The amendments are to correct deficiencies identified in the audit and that, if uncorrected, would bar federal background checks. Those changes include:

1. Having applications for background checks routed through the Office of Long Term Care rather than being submitted directly to the ASP.

2. Requiring the Office of Long Term Care to verify the identity of the applicant or employee prior to releasing the determination resulting from the background check.

3. No longer listing the actual convictions of the employee or the applicant.

4. Having all state background checks performed on-line with the ASP to allow current Office of Long Term Care staff to meet new federal requirements without the necessity of additional staff.

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: _____

Time: _____

Place: _____

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

February 9, 2018

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

May 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 Provider Services and Quality Assurance
PERSON COMPLETING THIS STATEMENT Frank Gobell
TELEPHONE 501-320-6017 **FAX** _____ **EMAIL:** frank.gobell@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 (DMS-736) Update; OLTC Rules and Regulations for Conducting Criminal Record Checks for Employees of Long Term Care Facilities §§303, 304, 305, and 306

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
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 ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

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.

RULES AND REGULATIONS FOR CONDUCTING CRIMINAL RECORD CHECKS FOR EMPLOYEES OF LONG TERM CARE FACILITIES

303 If, after checking the online ECR system maintained by the Office of Long Term Care, there was no previous disqualification determination listed on the applicant, the facility shall perform an on-line state criminal record check on the applicant before the facility offers the applicant employment, using the procedures required by the Arkansas State Police/Identification Bureau.

304 If the facility cannot verify that the applicant has lived continuously in the state for the past five (5) years, the facility shall also perform a national criminal history records check on the applicant. The facility shall provide the applicant with form DMS-736, a pre-printed Fingerprint Card provided by the Office of Long Term Care, a form FBI-1 DHS Verification, and pre-printed envelope provided by the Office of Long Term Care. The facility may assist the applicant with the completion of the documents. The applicant shall take the documents to law enforcement and request that law enforcement complete the finger print process, the Fingerprint Card, and the Verification Form. Law enforcement shall then place those items, along with the DMS-736, into the pre-printed envelope and seal the envelope. The applicant shall return the sealed envelope to the facility. The facility shall place the sealed envelope from the applicant into a second pre-printed envelope provided by the Office of Long Term Care along with any checks/payments/fees. The facility shall seal the second envelope and shall return it to the Office of Long Term Care.

NOTE: A national criminal history records check shall not be performed on any individual whom the facility can verify has lived continuously in the state for the past five (5) years or who provides care to residents of a service provider subject to a professional license. See Section 502 for the complete list of excluded professions. **If a facility desires to perform a national criminal history records check on an individual who has lived continuously in the state for the past five (5) years or who provides care to residents of a service provider subject to a professional license, the facility shall use form ASP-122.**

305 After employment clearance is obtained from the online ECR system maintained by the Office of Long Term Care and the person has not listed prior criminal convictions on the DMS-736 form, a facility may make an offer of temporary employment to an applicant or continued employment to an incumbent employee while waiting for the official criminal record check results. Facilities may choose to deny the applicant/employee unsupervised access to a person to whom the facility provides care until the criminal record check and determination of employment status have been completed.

306 Upon completion of the criminal record check on an applicant or employee, the Bureau shall issue a report to the Office of Long Term Care or the requesting facility, depending upon the results. The Office of Long Term Care shall determine whether the applicant or employee is disqualified from employment and issue its Letter of Determination to the applicant or employee, and to the facility or requesting entity. The Letter of Determination to the facility or requesting entity shall only state whether the applicant or employee is qualified or disqualified from employment. If the criminal record report issued by the Bureau lists any conviction, of any type or nature, the facility shall be required to remove from unsupervised direct care duties any person who was offered temporary or continued employment until the Office of Long Term Care's Letter of Determination has been received. If the applicant or employee is disqualified from employment the facility shall terminate the employment of the employee or deny employment to the applicant.

OFFICE OF LONG TERM CARE

REQUEST FOR CRIMINAL RECORD CHECK
AR920160Z

- Items Needed:
1. This form correctly completed
 2. \$12 check/money order made payable to "Arkansas State Police"
 3. One completed fingerprint card
 4. Completed Verification Form

Please see the back of this form for instructions on routing and completion of the fingerprint card.

Facility ID Code (701) _____ Facility Type: ☐ NF ☐ ADC/ADHC ☐ ALF1/ALF2 ☐ HDC ☐ ICF/MR ☐ PAHI ☐ RCF ☐ OTHER

Name of Facility Submitting Form _____

Facility Contact Person _____

Facility Address _____ City _____ State _____ Zip Code _____ Telephone Number (include area code) _____

(NOTE: Use form ASP-122 for licensed nurses, other Non-mandated positions, or persons who have lived continuously in the state for the last 5 years.)

Applicant/Employee to be checked: _____

Last Name _____ First Name _____ Middle Name _____

Maiden Name _____ Aliases _____ Date of Birth (mo/day/yr) _____ Race _____ Sex (M/F) _____

Applicant/Employee's address _____ City _____ State _____ Zip Code _____

Social Security Number _____ Driver's License Number _____ State of Issuance _____

Current or last employer and address _____ City _____ State _____

Note: The name, address and date of birth listed above must appear on a valid identification document issued by a government entity. Please list the document used if not the person's driver's license: _____

Job Title or Position Name Applying For: _____

Has Applicant Lived Continuously in Arkansas for the Past Five (5) Years? ☐ Yes ☐ No

The person listed above must list all past felony or misdemeanor charge(s) for which he/she was found guilty of or plead guilty or nolo contendere to: _____

(Use Additional Pages if Necessary)

Date of Charge _____ Location (City and State) _____ Description of charge _____ Sentence/Disposition _____

Notice: Your current or potential employer may receive a determination of employment eligibility. Prior to completion of a criminal record check, the employer may choose to deny an employee unsupervised access to a person to whom the employer provides care. Any challenge to the accuracy of the report should be directed to the State Identification Bureau (501) 618-8500, #1 State Police Plaza Drive, Little Rock, AR 72209.

I, the undersigned, hereby give my consent for the Arkansas State Police to conduct the required criminal record checks on myself and release any results to the Department of Human Services. I understand that my fingerprints will be used to conduct a FBI criminal records search. I further authorize a FBI records check. I further authorize the Department of Human Services to issue determinations of employment eligibility to my current or potential employer, including a private placement agency or contracted staffing company. I understand that I may challenge the accuracy and completeness of any information in any report and obtain a prompt determination as to the validity of the challenge before a final determination is made. I understand that any background check and the results thereof shall be handled in accordance with the requirements of Pub. L. No. 92-544.

Providing false information on this form is a violation of Arkansas law and is punishable as set forth in Arkansas Code § 5-53-103.

Statement on Oath: I state on oath that the representations made herein are true and correct.

Signature of Applicant/Employee _____ Date _____

State of Arkansas, County of _____

Subscribed and sworn to before a Notary Public in and for the county and state aforesaid, this the _____ day of _____, (yr) _____.

Notary Public _____

(Notary Seal)

My commission expires on _____, (yr) _____.

FOR ARKANSAS STATE POLICE USE ONLY
80000 National Background Check @ \$12.00

INSTRUCTIONS FOR COMPLETING A CRIMINAL BACKGROUND CHECK

1. Applicant must:
 - a. Receive from the facility the form DMS-736, Fingerprint Card, Verification Form, and pre-printed envelope provided by the Office of Long Term Care.
 - b. Complete form DMS-736.
 - c. Take form DMS-736, Fingerprint Card, Verification Form, and pre-printed envelope to law enforcement.
 - d. Have law enforcement complete Fingerprint Card (see instructions below) and Verification Form, and place those documents and the form DMS-736 into the pre-printed envelope. Seal the envelope and return it to the applicant.
 - e. Return sealed envelope to facility.
2. Facility must:
 - a. Provide applicant the form DMS-736, Fingerprint Card, Verification Form, and pre-printed envelope.
 - b. Place the sealed envelope returned by the applicant into a second pre-printed envelope provided by the Office of Long Term Care along with any checks/payment and additional documentation.
 - c. Seal the second envelope and send it to the Office of Long Term Care, P.O. BOX 8059, MAIL SLOT S405, LITTLE ROCK, AR 72203-8059.

INSTRUCTIONS FOR COMPLETING THE FINGERPRINT CARD

The National Background Check requires a classifiable set of fingerprint impressions. The card will be rejected otherwise.

PLEASE TYPE OR PRINT THE INFORMATION CLEARLY AND LEGIBLY.

The fingerprint card MUST be a blue applicant card with the proper licensing entity ORI number preprinted. The proper Office of Long Term Care ORI # is AR920160Z, listed at the top of this page.

FINGERPRINT CARD: Do not leave any space blank except the *FBI NO. FBI*, *ARMED FORCES NO. MNU*, and *MISCELLANEOUS NO. MNU* fields, or any of the sections that state Leave Blank.

EMPLOYER AND ADDRESS: This is the space to provide the Service Provider name and address.

REASON FINGERPRINTED: "A.C.A. 20-38-101" is preprinted to specify the Long Term Care regulations.

YOUR NO. OCA: Enter your Facility Code (also referred to as your CRC Code).

FOR SEX: Use "M" or "F".

FOR RACE: Use one of the following: A = ASIAN, B = BLACK, H = HISPANIC, I = INDIAN (AMERICAN), W = WHITE, or U = UNKNOWN.

FOR "HGT": Use feet and inches, such as 5'10".

FOR EYES AND HAIR: Use the following three character codes:

<u>EYES:</u>	BLU = BLUE	GRY = GRAY	MAR = MAROON	BRO = BROWN	GRN = GREEN
	PNK = PINK	BLK = BLACK	HAZ = HAZEL	XXX = UNKNOWN	

<u>HAIR:</u>	BAL = BALD	BLK = BLACK	BLN = BLOND	BRO = BROWN	GRY = GRAY
	RED = RED	SDY = SANDY	WHI = WHITE	XXX = UNKNOWN	

CITIZENSHIP: If USA citizen, use "US", or if a citizen of MEXICO, use "MEXICO", etc.

DATE OF BIRTH: Use numeric characters, such as 09-17-51 (MM/DD/YY).

PLACE OF BIRTH: Use State or country, such as "ARKANSAS" or "MEXICO", etc.