

DEPARTMENT OF HEALTH

EXHIBIT E-1

SUBJECT: Criminal Record Checks for Employees & Operators of Home Health, Hospice & Private Care Agencies

DESCRIPTION: In 2009, the legislature combined various criminal background check statutes into one comprehensive statute, A. C. A. § 20-38-101 et seq. The revision reflects the legislative changes, adds electronic checks, and adds a category for private care agencies.

PUBLIC COMMENT: A public hearing was held December 10, 2009, and the public comment period expired at that time. The following public comments were submitted to the Department:

(1) Arkansas State Hospice and Palliative Care Association: Submitted written and oral comments as follows:

Section III(5)(A) Typographical error -- "Employee" reference to subsection (3) is erroneous and should be changed to (C).

Response: This typo was corrected by the Department.

Section IV. Evidence of Criminal History Records Checks The Association stated that the rule requires that "All home health and hospice agencies must maintain evidence that criminal history records checks have been completed on all operators, applicants for employment, and employees of the service provider." The Association commented that "Conducting background checks on applicants who will be extended an offer of employment would be a waste of money for Arkansas hospice agencies. The language should be revised to reflect the language in the actual Act 762. (See page 5, line 16 of Act 762.) The language in the Act specifies that only applicants to which the agency intends to make an offer of employment must have a background check completed. This clarification could be accomplished by adding the following definition of 'Applicant' in Section III: 'Applicant means an individual to whom a service provider intends to make an offer of employment for a position which meets the definition of an Employee as defined in this section.'"

Response: The language was taken from the Act, page 13, line 15. The agency considered the comment and determined that no change is indicated.

Section VII.B. Federal Criminal History Check The Association objects to the provider determining residency, and suggested that residency should be determined by the State.

Response: The Department stated that this requirement is in the Act at § 20-38-103(a). As such, no change can be made through rulemaking.

Section XI. List of Disqualifying Offenses "The language in this section addresses section 20-38-105 subsection (b) of Act 762, but does not address subsections (a), (c),

and (d) of that section. These subsections differentiate between offenses that require permanent disqualification and those that allow consideration after 5 or 10 years. Should language be added to the regulations covering these issues?"

Response: The Department stated that as long as the requirements exist in the statute, the providers must follow them. The Department also surmised that the Association is really just asking for clarification via a flow chart or other explanation. This can be accomplished by sending out information to explain the rule without including it in the rule itself.

(2) Superior Senior Care/Mullenix & Associates: Requested that the word "contractor" be added in various places throughout the proposed rule.

Response: The Department considered the comment and determined that no change was indicated. The Department believes that the definition of "employee" for purposes of the Act includes contractors.

The proposed effective date is May 1, 2010.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Arkansas Code § 20-38-109 (Act 762 of 2009) authorized the Department of Health as the "licensing or certifying agency" of certain providers to "promulgate consistent rules as necessary" to implement Title 20, Chapter 38 regarding criminal background checks.

EXHIBIT E-1

Draft 11-3-08

Agency # 007.05

Rules and Regulations for Conducting Criminal History Records Checks for Home Health, Hospice and Private Care Agencies in Arkansas



ARKANSAS DEPARTMENT OF HEALTH

2010

SECTION I. AUTHORITY

These rules and regulations requiring criminal history record checks for employees of home health, ~~and hospice, and private care agencies -facilities~~ in the State of Arkansas are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the authority expressly conferred by laws of the State of Arkansas in Act ~~990 of 1997~~ 762 of 2009, Ark. Code Ann. § 20-38-101 et seq..

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

SECTION II. PURPOSE

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

SECTION III. DEFINITIONS

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

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

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

4. **Determination** means the determination made by the licensing or certifying agency that a service provider, operator, applicant for employment with, or employee of a service provider is or is not disqualified from licensure, exemption from licensure, certification, any other operating authority, or employment based on the criminal history of the service provider, operator, applicant, or employee; ~~a Department's determination that an applicant or employee is or is not disqualified from employment or that a home health or hospice is disqualified from licensure based on the criminal history of the operator.~~

Division means the ~~Division of Health Facility Services, Arkansas Department of Health.~~

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

5. Employee means any person who:

(A) has unsupervised access to clients of a service provider except as provided in subsection (3) below; and

(B)(1) provides care to clients of a service provider on behalf of, under the supervision of, or by arrangement with the service provider;

(2) Is employed by a service provider to provide care to clients of the service provider;

(3) Is a temporary employee placed by an employment agency with a service provider to provide care to clients of the service provider; or

(4) Resides in an alternative living home in which services are provided to individuals with developmental disabilities.

(C) "Employee" does not include a person who:

(1) Is a family member of a client receiving care from a service provider;

(2) Is a volunteer; or

(3) Works in an administrative capacity and does not have unsupervised access to clients of a service provider. any person who provides care to individuals on behalf of, under the supervision of, or by arrangement with a home health or hospice agency or any person employed by a home health or hospice agency, unless the person is a family member, a volunteer or works in an administrative capacity.

6. HFS means Health Facility Services section of the Arkansas Department of Health.

7. Home Health Agency means a service as defined by Ark. Code Ann. § 20-10-801 et seq. whether or not the agency has applied for or possesses any license necessary for operation.

8. Hospice Agency means a service as defined by Ark. Code Ann. § 20-7-117 whether or not the agency has applied for or possesses a license.

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

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

10. Licensing or certifying agency means the state agency charged with licensing, exempting from licensure, certifying, or granting other operating authority to a service provider.

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

Provisional License means a ~~forty-five day license issued to a home health or hospice agency whose operator has been found to have an applicable offense listed in Section X on the individual's criminal history report.~~

12. Operator means a ~~the person responsible for the day-to-day operation of the home health or hospice agency signing the application of a service provider for licensure, exemption from licensure, certification, or any other operating authority.~~

13. Private Care Agency means a service as defined in Ark. Code Ann. § 20-10-2201 et seq whether or not the agency has applied for or possesses a license.

14. Registry records check means the review of one (1) or more database systems maintained by a state agency that contain information relative to a person's suitability for licensure, certification, exemption from licensure, or any other operating authority to be a service provider or for employment with a service provider to provide care.

15. Report means a statement of the criminal history of a service provider, operator, ~~an applicant for employment with, or employee of a service provider, or operator~~ issued by the Bureau.

16. Service provider means any of the following:

- (A) An Alternative Community Services Waiver Program provider certified by the Division of Developmental Disabilities Services of the Department of Human Services;
- (B) A child care facility as defined by § 20-78-202;
- (C) A church-exempt child care facility as recognized under § 20-78-209;
- (D) An early intervention program provider certified by the Division of Developmental Disabilities Services of the Department of Human Services;
- (E) An ElderChoices provider certified by the Division of Aging of the Department of Human Services;
- (F) A home health care service under § 20-10-801;
- (G) A hospice program under § 20-7-117;
- (H) A long-term care facility as defined by § 20-10-702; or
- (I) A nonprofit community program as defined by § 20-48-24 101; and

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

**IV. EVIDENCE OF CRIMINAL HISTORY RECORDS CHECKS:
HOME HEALTH OR HOSPICE AGENCIES**

A. Home Health and Hospice Agencies. All home health and hospice agencies must maintain evidence that criminal history records checks have been completed on all operators, applicants for employment, and employees of the service provider.

B. Private Care Agencies. Private care agencies must be certified as ElderChoices providers by DHS Division of Aging in order to obtain Arkansas licensure. Private care agencies must therefore maintain evidence that criminal history records checks have been completed on all operators, applicants for employment, and employees. ElderChoices providers are also subject to DHS certification requirements for registry records checks.

C. A service provider shall maintain on file, subject to inspection by the Arkansas Crime Information Center, the Identification Bureau of the Department of Arkansas State Police, or the licensing or certifying agency evidence that criminal history records checks have been completed on all operators, applicants for employment, and employees of the service provider.

D. Each home health or hospice agency must have safeguards to ensure the confidentiality of criminal history check records maintained.

V. FAILURE TO COMPLY

A. Home Health and Hospice. Failure to comply with these regulations as they apply to that type of agency. If an operator or agency fails or refuses to cooperate in obtaining criminal record checks, such circumstances shall be grounds to deny or revoke a the home health or hospice agency's license.

B. Private Care. Loss of ElderChoices certification shall be grounds to deny or revoke a private care agency's license.

B. ~~Any unlicensed agency providing home health or hospice services violating these rules and regulations shall be guilty of a Class A misdemeanor for each violation according to Act 990 of 1997.~~

VI. OPERATORS

A. Each home health and hospice agency shall obtain a state criminal history records check and a national criminal history records check on each operator no less than one (1) time every five (5) years. ~~if the operator has not been continuously employed within the State of Arkansas within the past twelve (12) months and undergone a criminal history check within the past twelve~~

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~~(12) months. Examples of evidence to verify continuous employment, may include, but not be limited to, payroll check stubs employment records, tax records, etc. A criminal history check does not have to be repeated on an operator if the individual has served continuously in a position as an operator with not more than a sixty day interruption in service.~~

1. For a home health or hospice agency initially applying for licensure the process will include the following:
 - a. Evidence of a completed application for a criminal history records check on the operator, ~~and, if exempt under Section A, a copy of the criminal history check.~~
 - b. Upon receiving the results of the state criminal history records check and the national criminal history records check, ~~HFS~~ the Division will issue a determination whether the home health or hospice agency is disqualified from licensure.
 - c. ~~If a home health or hospice agency initially applying for licensure is disqualified from licensure based on the criminal history report of the operator the application may be resubmitted with a different operator. Sections A.1.a and A.1.b. will be followed once the application has been resubmitted. If the application is not resubmitted within fifteen (15) days of notification of the denial the application will be considered null and void.~~

2. For a home health or hospice agency that is currently licensed but is completing the application for the annual renewal of the agency the process will include the following:
 - a. Evidence of a current completed application for a criminal history records checks or of new applications for criminal history records checks on the operator must be submitted to the Division ~~HFS~~ with the annual renewal application. ~~If the first letter of the county in which the agency is located begins with the letter A-L the information must be submitted with the application for renewal for the calendar year 1999; Counties M-Z must be submitted with the application for renewal for the calendar year 2000.~~
 - b. For new criminal history records checks applications, Upon receiving results of the state criminal history check and national history check the ~~Division HFS~~ will issue a determination whether the agency may continue licensure based on results of the operator's criminal history records check.

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

VII. APPLICANTS, AND EMPLOYEES, AND TEMPORARY EMPLOYEES

- A. Each home health or hospice applicant or employee ~~who will be providing care for the~~ ~~elderly or individuals with disabilities,~~ must complete a **state criminal history check** ~~unless if the applicant or employee does not meet one of the following is:~~

- ~~licensed as a professional as described in Section XII below;~~ ~~or~~
 ~~has maintained continuous employment in the State of Arkansas within the past 12 months and successfully completed a state criminal history check within 12 months immediately prior to the application.~~

- ~~B. A federal criminal history check~~ must also be completed if the applicant or employee ~~does not meet one of the following: has not~~ ~~continuously lived in the State of Arkansas for the past five years;~~ ~~or~~

~~Provided care to the elderly and/or individuals with disabilities for a continuous 60 day period immediately prior to the application.~~ The home health or hospice agency will be responsible for verification of this information. Examples of evidence that can be used to verify the above may include, but is not limited to, employment records, payroll check stubs, tax records, rent/house payment records, utility bills, school records, etc.

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

- C. Temporary employees. If a service provider uses temporary employees to provide care, the service provider shall:

(1) Use a contract to detail the requirements for placing temporary employees with the service provider; and

(2) Ensure that the contract pertaining to the service provider's use of temporary employees requires the entity providing the temporary employees to comply with the following terms:

(a) The entity is responsible for conducting a criminal history records check on each temporary employee under this subchapter before the placement of the temporary employee with the service provider; and

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(b) The entity shall maintain all documentation regarding criminal history records checks for each temporary employee placed with a service provider and shall provide copies of the documentation to the service provider, which shall be made available to the appropriate licensing or certifying agency upon request.

(D) A service provider shall inform employees that continued employment is contingent on the satisfactory results of criminal history records checks and shall conduct periodic criminal history records checks on all employees no less than one (1) time every five (5) years.

(E) If the licensing or certifying agency determines that an applicant or employee is disqualified from employment based on the criminal history of the applicant or employee, the service provider shall deny employment to the applicant or shall terminate the employment of the employee.

(F) If the licensing or certifying agency issues a determination that an applicant or employee is not disqualified from employment or if there is no criminal history on an applicant or employee, the service provider may employ the applicant or continue the employment of the employee.

VIII. CHALLENGES TO CRIMINAL HISTORY INFORMATION

A person may challenge the completeness or accuracy of his or her criminal history information under § 12-12-1013.

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1. For persons hired after October 1, 1997 the following process must be followed:

- a. If a home health or hospice agency intends to make an offer of employment to a person, that person must submit an application for a criminal history check along with the application for employment. The application for the criminal history check shall be forwarded directly to the Bureau.
- b. The home health or hospice agency may make an offer of temporary employment to a person pending receipt of notification from the Bureau that the Bureau's index has been checked and no criminal history has been found and the Division has checked its database and no criminal history has been found. The home health or hospice agency may continue to temporarily employ the person until the licensing agency issues a determination, based on the information received from the Bureau, whether the person is disqualified from employment. If the licensing agency determines that the person is disqualified from employment based on the criminal history report, the person must be terminated if temporarily employed or denied employment if not temporarily employed. If a criminal history is found in the Bureau's index the person is disqualified from employment until the criminal history check is completed and the Division issues a determination.

2. For persons hired prior to October 1, 1997 the following process must be followed beginning January 1, 1998:

- a. For persons hired during an even year an application for a criminal history check must be submitted to the Bureau in the month hired in the year 1998. For persons hired in an odd year an application for a criminal history check must be submitted to the Bureau in the month hired in the year 1999.
- b. Once application for a criminal history check has been submitted, a home health agency may continue to employ a person pending receipt of notification from the Bureau that the Bureau's index has been checked and no criminal history found and the Division has checked its database and no criminal history has been found. If a criminal history is found in the Bureau's index the person is disqualified from employment until the criminal history check is completed and the Division issues a determination based on the criminal history report obtained from the Bureau.

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~~B. If an applicant has had a state criminal history check within the past twelve months an application for a criminal history check must be completed and sent to the Division along with a copy of the results of the criminal history check. The Division will then issue a determination.~~

~~C. A home health or hospice must inform applicants and employees that continued employment is contingent on the results of criminal history checks and the individual has a right to obtain a copy of their criminal history report from the Bureau.~~

VHIX. ASSIGNMENT OF FACILITY IDENTIFICATION NUMBERS

Each home health and hospice facility shall have a facility identification number assigned. Contact the HFS criminal history records program at (501) 661-2201 to obtain an ID number.

X. APPLICATIONS

A. A. Completed applications for criminal history records checks are submitted by the agency to the Arkansas State Police.

B. Applications may be completed and mailed or completed online and submitted electronically.

1. Applications by mail.

a. Application forms for state criminal history records checks are available for a criminal history check will be provided to the agency by from HFS, the Division. No other applications will be accepted.

b. Fingerprint cards for national criminal history records checks are available from HFS.

c. The completed application for a state criminal history check must be completely filled out. The application shall be signed by the subject of the criminal history records check and notarized by a notary public.

~~include the following on each:~~

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

C. The application must be signed by the applicant and notarized by a notary public.

d. The ~~original~~ application for a criminal history check along with the appropriate fee must be **sent directly to the Arkansas State Police Identificaion Bureau** at the address provided on the application. A copy of the application for a criminal history must be **sent to the DivisionHFS**.

e. If a national history check is required, the completed fingerprint card must accompany the _____ application, for the state criminal history check. The fingerprint card will be provided by _____ the Division.

2. Electronic applications. Electronic applications are completed online through the Arkansas State Police website: www.asp.state.ar.us.

VIII. REAPPLICATION REVIEW

A. ~~Reapplication reviews will be granted to operators, employees, and potential employees who are able to provide proof that the felony convictions shown in the criminal records check are incorrect. These appeals may take the form of:~~

1. ~~A written request to the Identification Bureau of the Department of the Arkansas State Police providing another application and fee for the state criminal history check along with additional information that would aid in the identification of records pertaining to the applicant.~~

2. ~~A letter written to the Arkansas Department of Health Chief Counsel requesting review of a second state criminal record check to affect the determination made by the Department. If this review provides no information regarding any of the applicable offenses listed in Section X, then the first determination of employment disqualification will be overturned.~~

B. ~~Applicants who have an applicable offense listed in Section X as indicated on their national criminal record check shall not be afforded the reapplication review process.~~

IX. MAINTAINING RECORDS AND CONFIDENTIALITY

A. ~~Each qualified entity shall maintain evidence that criminal history checks have been initiated on all operators and employees and a copy of each determination received from the Division. This evidence must be made available for inspection by the Arkansas Crime Information Center, the Bureau and the Division upon request. This evidence~~

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_____ must be available for all current operators and employees and for any employees that
_____ were employed within the past twenty-four (24) months.

B. _____ Each home health or hospice agency must have safeguards to ensure the confidentiality of
_____ criminal history check records maintained.

C. _____ For records that are no longer required and the agency wishes to destroy the agency must
_____ have a policy on how these records will be destroyed.

XI. LIST OF DISQUALIFYING OFFENSES

- (1) Criminal attempt, § 5-3-201, criminal complicity, § 5-3-202, criminal solicitation, § 5-3-301, or criminal conspiracy, § 5-3-401;
- (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 in the first degree, § 5-11-103;
- (8) Permanent detention or restraint, § 5-11-106;
- (9) Robbery, §§ 5-12-102 and 5-12-103;
- (10) Battery, §§ 5-13-201 and 5-13-202;
- (11) Assault, §§ 5-13-204 and 5-13-206;
- (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, § 5-30 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 an incompetent person, §§ 5-27-36 201 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;

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- (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 et seq.;
- (35) Adult 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;
- (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, § 5-62-101;
- (48) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 - 5-64-501 et seq.;
- (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, 5-70-105, and 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.

Capital murder, as prohibited in A.C.A. 5-10-101;

- 2. ~~Murder in the first degree and second degree~~, as prohibited in A.C.A. 5-10-102 and 5-10-103;
- 3. ~~Manslaughter~~, as prohibited in A.C.A. 5-10-104;
- 4. ~~Negligent homicide~~, as prohibited in A.C.A. 5-10-105;
- 5. ~~Kidnapping~~, as prohibited in A.C.A. 5-11-102;
- 6. ~~False imprisonment in the first degree~~, as prohibited in A.C.A. 5-11-103;

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7. ~~Permanent detention or restraint~~, as prohibited in A.C.A. 5-11-106;
8. ~~Robbery~~, as prohibited in A.C.A. 5-12-102;
9. ~~Aggravated robbery~~, as prohibited in A.C.A. 5-12-103;
10. ~~Battery in the first degree~~, as prohibited in A.C.A. 5-13-201;
11. ~~Aggravated assault~~, as prohibited in A.C.A. 5-13-204;
12. ~~Introduction of controlled substance into body of another person~~, as prohibited in
A.C.A. 5-13-210;
13. ~~Terroristic threatening in the first degree~~, as prohibited in A.C.A. 5-13-301;
14. ~~Rape and carnal abuse in the first degree, second degree, and third degree~~, as
prohibited in A.C.A. 5-14-103, 5-14-106;
15. ~~Sexual abuse in the first and second degree~~, as prohibited in A.C.A. 5-14-108 and 5-
14-109;
16. ~~Sexual solicitation of a child~~, as prohibited in 5-14-110;
17. ~~Violation of a minor in the first degree and second degree~~, as prohibited in A.C.A. 5-
14-120 and 5-14-121;
18. ~~Incest~~, as prohibited in A.C.A. 5-26-202;
19. ~~Offenses against the family~~, as prohibited in A.C.A. 5-26-303 through 5-26-306;
20. ~~Endangering the welfare of incompetent person in the first degree~~, as prohibited in
A.C.A. 5-27-201;
21. ~~Endangering the welfare of a minor in the first degree~~, as prohibited in A.C.A. 5-27-
221;
22. ~~Permitting child abuse~~, as prohibited in subdivisions (a)(1) and (a)(3) of A.C.A. 5-27-
221;

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- ~~23. Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, or pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in A.C.A. 5-27-303, 5-27-304, 5-27-305, 5-27-402, and 5-27-403;~~
24. **Felony adult abuse**, as prohibited in A.C.A. 5-28-103;
25. **Theft of property**, as prohibited in A.C.A. 5-36-103;
26. **Theft by receiving**, as prohibited in A.C.A. 5-36-106;
27. **Arson**, as prohibited in A.C.A. 5-38-301;
28. **Burglary**, as prohibited in A.C.A. 5-39-201;
29. **Felony violation of the Uniform Controlled Substances Act**, as prohibited in A.C.A. 5-64-401;
30. **Promotion of prostitution in the first degree**, as prohibited in A.C.A. 5-70-104;
31. **Stalking**, as prohibited in A.C.A. 5-71-229;
32. **Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy**, as prohibited in A.C.A. 5-3-201, 5-3-202, 5-3-301, and 5-3-401.

XII. IMMUNE PROFESSIONAL LICENSES EXCLUDED FROM REQUIREMENT

1. **Licensed professional counselors**, as outlined in A.C.A. 17-27-101;
- ~~23.~~ **Dentists**, as outlined in A.C.A. 17-82-101;
- ~~34.~~ **Nurses**, as outlined in A.C.A. 17-87-101;
- ~~45.~~ **Occupational therapists**, as outlined in A.C.A. 17-88-101;
- ~~56.~~ **Pharmacists**, as outlined in A.C.A. 17-92-101;
- ~~67.~~ **Physical therapists**, as outlined in A.C.A. 17-93-301;
- ~~78.~~ **Physicians and surgeons**, as outlined in A.C.A. 17-95-201;

CERTIFICATION

This will certify that the Rules and Regulations for Conducting Criminal Record Checks for Employees and Operators of Home Health, Hospice, and Private Care Agencies in Arkansas were adopted by the State Board of Health of Arkansas at a regular session of said Board held in Little Rock, Arkansas, on the day _____ of _____, 2010.

Paul Halverson, DrPH, FACHE
Secretary of Arkansas State Board of Health
Director, Arkansas Department of Health

The foregoing Rules and Regulations, copy having been filed in my office, are hereby approved on the _____ day of _____, 2010.

Mike Beebe
Governor