

1 State of Arkansas
2 95th General Assembly
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4

A Bill

HOUSE BILL 1653

5 By: Representative Cavanaugh
6
7

For An Act To Be Entitled

8
9 AN ACT TO MOVE LICENSING AND REGULATION OF
10 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES FROM THE
11 CHILD WELFARE AGENCY REVIEW BOARD TO THE DEPARTMENT
12 OF HUMAN SERVICES; TO SET STANDARDS FOR THE LICENSING
13 AND REGULATION OF PSYCHIATRIC RESIDENTIAL TREATMENT
14 FACILITIES; AND FOR OTHER PURPOSES.
15
16

Subtitle

17
18 TO SET STANDARDS FOR THE LICENSING AND
19 REGULATION OF PSYCHIATRIC RESIDENTIAL
20 TREATMENT FACILITIES.
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code § 20-8-107, concerning the expansion of
25 facilities or services permitted by the Health Services Permit Agency, is
26 amended to add an additional subsection to read as follows:

27 (e)(1) The Health Services Permit Agency shall recognize an exception
28 to the moratorium regarding bed capacity and beds in a psychiatric
29 residential treatment facility.

30 (2) The Health Services Permit Agency shall add to the permitted
31 bed capacity for psychiatric residential treatment facilities:

32 (A) Beds that are not currently permitted by the Health
33 Services Permit Agency but are licensed by the Child Welfare Agency Review
34 Board for the purpose of operating as a psychiatric residential treatment
35 facility before the effective date of this subsection; and

36 (B) Beds that are fully constructed and could be used for



1 the purpose of operating a psychiatric residential treatment facility as of
2 January 1, 2025.

3 (3) The total amount of additional beds authorized under this
4 subsection shall not exceed one thousand (1,000) beds for the purpose of
5 operating as a psychiatric residential treatment facility.

6 (4) The Health Services Permit Agency shall require prior
7 approval for construction and renovation under § 20-8-109 for any psychiatric
8 residential treatment facility project that exceeds one million dollars
9 (\$1,000,000).

10
11 SECTION 2. Arkansas Code § 20-10-101(1), concerning the definition of
12 "administrative remedy" relating to long-term care facilities and services,
13 is amended to read as follows:

14 (1) "Administrative remedy" means temporary management, denial
15 of payment for all new admissions, transfer of residents, termination or
16 suspension of license, termination of provider agreement, directed plan of
17 correction, directed in-service training, and remedies established by
18 Arkansas law, ~~including remedies provided in § 20-10-1408 [repealed];~~
19

20 SECTION 3. Arkansas Code § 20-10-101(9)(A), concerning the definition
21 of "long-term care facility" relating to long-term care facilities and
22 services, is amended to read as follows:

23 (9)(A) "Long-term care facility" means a nursing home,
24 residential care facility, assisted living facility, psychiatric residential
25 treatment facility, post-acute head injury retraining and residential care
26 facility, or any other facility which provides long-term medical or personal
27 care.
28

29 SECTION 4. Arkansas Code § 20-10-101, concerning definitions relating
30 to long-term care facilities and services, is amended to add an additional
31 subdivision to read as follows:

32 (16)(A) "Psychiatric residential treatment facility" means a
33 standalone, nonhospital facility with a provider agreement with the Arkansas
34 Medicaid Program to provide inpatient services benefits to individuals who
35 are under twenty-one (21) years of age and that:

36 (i) Is accredited by The Joint Commission or any

1 other accrediting organization with comparable standards recognized by this
 2 state;

3 (ii) Attests to meeting the conditions of
 4 participation found at 42 C.F.R. Part 483, Subpart G, as existing on January
 5 1, 2025; and

6 (iii) Attests that all of the residents in the
 7 facility meet the certification of need for services requirements as
 8 identified under 42 C.F.R. Part 441, Subpart D, as existing on January 1,
 9 2025.

10 (B) A survey and certification review of a psychiatric
 11 residential treatment facility by the department shall apply to all residents
 12 being served by the certified entity regardless of residency or payment
 13 source.

14
 15 SECTION 5. Arkansas Code § 20-10-110(a)(2), concerning the definition
 16 of "long-term care facility" relating to the protection of residents'
 17 personal funds, is amended to read as follows:

18 (2) "Long-term care facility" means a nursing home, residential
 19 care facility, post-acute head injury retraining and residential care
 20 facility, assisted living facility, psychiatric residential treatment
 21 facility, or any other facility that provides long-term medical or personal
 22 care;

23
 24 SECTION 6. Arkansas Code Title 20, Chapter 46, Subchapter 4 is amended
 25 to read as follows:

26 Subchapter 4 – Psychiatric Residential Treatment Facilities

27
 28 ~~20-46-401—20-46-404. [Repealed.]~~

29
 30 20-46-401. Definitions.

31 As used in this subchapter:

32 (1) "Adverse action" means the Department of Human Services
 33 taking any of the following actions against a licensee or applicant for a
 34 psychiatric residential treatment facility license:

35 (A) Revocation of a license;

36 (B) Suspension of a license;

1 (C) Conversion of a license from regular or provisional
2 status to probationary status;

3 (D) Imposition of a civil penalty;

4 (E) Denial of an application; or

5 (F) Reduction of a licensed capacity;

6 (2) "Alternative compliance" means approval from the Office of
7 Long-Term Care to allow a licensee to deviate from the letter of a rule,
8 provided that the licensee has demonstrated how an alternate plan of
9 compliance will meet or exceed the intent of the rule;

10 (3) "Child" means a person who is:

11 (A) Under eighteen (18) years of age; or

12 (B) Adjudicated dependent-neglected, dependent, or a
13 member of a family in need of services before eighteen (18) years of age and
14 for whom the juvenile division of a circuit court retains jurisdiction under
15 the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

16 (4)(A) "Class A violation" means a violation of an essential
17 standard, including any of those governing fire, health, safety, nutrition,
18 staff-to-child ratio, and space.

19 (B) Operation of a psychiatric residential treatment
20 facility shall also be a Class A violation unless specifically exempted as
21 provided in this subchapter;

22 (5) "Class B violation" means any other violation of a standard
23 that is not a Class A violation;

24 (6) "Essential standards" means standards related to issues
25 involving fire, health, safety, nutrition, discipline, staff-to-child ratio,
26 and space;

27 (7) "Healthcare provider" means a healthcare professional
28 licensed in this state, including without limitation a doctor, nurse,
29 emergency medical technician, counselor, mental health professional, or
30 dentist;

31 (8) "Minimum standards" means rules as established by the Office
32 of Long-Term Care that set forth the minimum acceptable level of practice for
33 a psychiatric residential treatment facility;

34 (9) "Psychiatric residential treatment facility" means the same
35 as defined at § 20-10-101; and

36 (10) "Substantial compliance" means compliance with all

1 essential standards necessary to protect the health, safety, and welfare of
2 the children in the care of a psychiatric residential treatment facility.

3
4 20-46-402. Licensure – Unlawful acts.

5 (a)(1) It is unlawful for any person, partnership, group, corporation,
6 association, or other entity or identifiable group of entities having a
7 coordinated ownership with controlling interest to operate or assist in the
8 operation of a psychiatric residential treatment facility that has not been
9 licensed by the Office of Long-Term Care under this subchapter.

10 (2) Before obtaining a license under this subchapter, a
11 psychiatric residential treatment facility shall obtain a permit from the
12 Health Services Permit Agency or Health Services Permit Commission to operate
13 in Arkansas.

14 (3) The bed capacity allowed by the permit issued by the Health
15 Services Permit Agency or Health Services Permit Commission includes both in-
16 state and out-of-state clients.

17 (4) Expansion of bed capacity by an existing licensee shall
18 require a license from the office and a permit from the Health Services
19 Permit Agency.

20 (5)(A) A license issued by the office under this subchapter is
21 effective unless revoked, suspended, or terminated by the office.

22 (B) In addition to any other basis provided by law or
23 rule, the Department of Human Services shall terminate the license of a
24 psychiatric residential treatment facility licensee that has not been in
25 operation for a consecutive twelve-month period.

26 (C) The department may revoke, suspend, or terminate a
27 license upon any basis provided by law or rule, including without limitation
28 the failure to be in operation or in substantial compliance for a consecutive
29 six-month period.

30 (b) It is unlawful for any person to falsify an application for
31 licensure, to knowingly circumvent the authority of this subchapter, to
32 knowingly violate the orders issued by the department, or to advertise for
33 inpatient psychiatric residential treatment when not licensed under this
34 subchapter to provide those services.

35 (c) Any violation of this section shall constitute a Class D felony.
36

1 20-46-403. Licensure – Process.

2 (a) Any person, partnership, group, corporation, organization,
3 association, or other entity or identifiable group of entities having a
4 coordinated ownership with controlling interest, desiring to operate a
5 psychiatric residential treatment facility shall submit:

6 (1) An application and a reasonable application fee, as
7 determined by the Department of Human Services, to the department; and

8 (2) A separate application for license for each separate
9 physical location.

10 (b)(1) The department shall review, inspect, and investigate each
11 applicant seeking to operate a psychiatric residential treatment facility and
12 shall determine whether to issue a license and what the terms and conditions
13 of the license should be.

14 (2) The department shall complete its determination under
15 subdivision (b)(1) of this section within ninety (90) days after receiving a
16 complete application from the applicant.

17 (3) A complete application shall consist of:

18 (A) A completed application form;

19 (B) A copy of the articles of incorporation, bylaws, and
20 current board roster, if applicable, including names and addresses of the
21 officers;

22 (C) A complete personnel list with verifications of
23 qualifications and experience;

24 (D) Substantiation of the financial soundness of the
25 psychiatric residential treatment facility's operation; and

26 (E) A written description of the psychiatric residential
27 treatment facility's program of care, including intake policies, types of
28 services offered, and a written plan for providing healthcare services to
29 children in care.

30 (c)(1) The department shall issue a regular license that shall be
31 effective if the department finds that:

32 (A) The applicant for a psychiatric residential treatment
33 facility license meets all licensing requirements; or

34 (B) The applicant meets all essential standards, has a
35 favorable compliance history, and has the ability and willingness to comply
36 with all essential standards within a reasonable time.

1 (2)(A) The department may issue a provisional license that shall
2 be effective for up to one (1) year if the department finds that the
3 applicant meets all essential standards but the applicant requires more
4 frequent monitoring because the applicant's ability or willingness to meet
5 all essential standards within a reasonable time has not been favorably
6 determined.

7 (B) The department shall not issue a regular or
8 provisional license to any facility that does not meet all essential
9 standards.

10 (d)(1) A license to operate a psychiatric residential treatment
11 facility shall apply only to the owner stated on the application.

12 (2) The license shall be transferable, along with all capacity
13 and rights of licensure, from:

14 (A) One (1) location to another if the initial location is
15 no longer operated as a psychiatric residential treatment facility; and

16 (B) One (1) owner to another, if permitted under
17 subdivision (d)(3) of this section.

18 (3) Whenever ownership of a controlling interest in the
19 operation of a psychiatric residential treatment facility is sold, the
20 following procedures shall be followed:

21 (A) The seller shall notify the department of the sale at
22 least thirty (30) days before the completed sale;

23 (B) The seller shall remain responsible for the operation
24 of the facility until the facility is closed or an amended license is issued
25 to the buyer;

26 (C) The seller shall remain liable for all penalties
27 assessed against the facility that are imposed for violations occurring
28 before the transfer of a license to the buyer;

29 (D) The buyer shall provide all documentation required of
30 a new applicant to the department;

31 (E) The buyer shall be subject to any corrective action
32 notices or outstanding administrative remedies to which the seller was
33 subject; and

34 (F) Section 20-46-402(a) shall apply in its entirety to
35 the new owner of the psychiatric residential treatment facility.

36

1 20-46-404. Licensure posting and display.

2 If the Department of Human Services issues a license to operate a
3 psychiatric residential treatment facility, the license shall be posted and
4 displayed in a conspicuous place in the facility and must state at a minimum:

5 (1) The full legal name of the person, partnership, group,
6 corporation, organization, association, or other entity or identifiable group
7 of entities having a coordinated ownership with controlling interest holding
8 the license, including the business name, if different;

9 (2) The address of the psychiatric residential treatment
10 facility;

11 (3) The effective date and expiration date of the license, if
12 applicable;

13 (4) The type of psychiatric residential treatment facility the
14 licensee is authorized to operate;

15 (5) The ages and maximum number of children that may receive
16 services from the psychiatric residential treatment facility;

17 (6) The status of the license, whether regular, provisional, or
18 probationary; and

19 (7) Any special conditions or limitations of the license.

20
21 20-46-405. Confidentiality and disclosure.

22 (a) Reports, correspondence, memoranda, case histories, or other
23 materials, including protected health information, compiled or received by a
24 licensee or a state agency, shall be confidential and shall not be released
25 or otherwise made available except to the extent permitted by federal law and
26 only:

27 (1) To the Department of Human Services as required by rule;

28 (2) To the parent, guardian, or custodian of a child who is the
29 subject of the materials;

30 (3) To a child who is the subject of the materials;

31 (4) To healthcare providers to assist in the care and treatment
32 of a child at the discretion of a licensee or state agency and if deemed to
33 be in the best interest of the child;

34 (5) To school personnel and daycare centers caring for a child
35 at the discretion of the licensee or state agency and if deemed to be in the
36 best interest of the child;

1 (6) For any audit or similar activity conducted in connection
2 with the administration of any such plan or program by any governmental
3 agency that is authorized by law to conduct the audit or activity;

4 (7) Upon presentation of an order of appointment, to a court-
5 appointed special advocate;

6 (8) To an attorney ad litem for a child;

7 (9) For law enforcement or a prosecuting attorney upon request;

8 (10) To circuit courts, as provided for in the Arkansas Juvenile
9 Code of 1989, § 9-27-301 et seq.;

10 (11) In a criminal or civil proceeding conducted in connection
11 with the administration of any such plan or program;

12 (12) For purposes directly connected with the administration of
13 any of the state plans as outlined at 42 U.S.C. § 671, as existing on January
14 1, 2025;

15 (13) For the administration of any other federal or federally
16 assisted program that provides assistance, in cash or in kind, or services,
17 directly to individuals on the basis of need;

18 (14)(A) To individual federal and state representatives and
19 senators in their official capacity and their staff members with no
20 redisclosure of information.

21 (B) Disclosure shall not be made to any committee or
22 legislative body of any information that identifies by name or address any
23 recipient of services;

24 (15) To a grand jury or court upon a finding that information in
25 the record is necessary for the determination of an issue before the court or
26 grand jury;

27 (16) To a person, provider, or government entity identified by
28 the licensee or the state agency as having services needed by a child or his
29 or her family;

30 (17) To volunteers authorized by the licensee or the state
31 agency to provide support or services to a child or his or her family at the
32 discretion of the licensee or the state agency and only to the extent
33 information is needed to provide the support or services;

34 (18)(A) To a person, agency, or organization engaged in a bona
35 fide research or evaluation project that is determined by the Division of
36 Children and Family Services to have value for the evaluation or development

1 of policies and programs within the division.

2 (B) Any confidential information provided by the
3 department for a research or evaluation project under this subdivision
4 (a)(18)(A) of this section shall not be redisclosed or published;

5 (19) To a child fatality review panel as authorized by the
6 department; or

7 (20) To the Child Welfare Ombudsman.

8 (b)(1) Any person or agency to whom disclosure is made shall not
9 disclose to any other person reports or other information obtained under this
10 section.

11 (2) Any person disclosing information in violation of this
12 subsection shall be guilty of a Class C misdemeanor.

13 (3) This subchapter does not prevent subsequent disclosure by a
14 child or his or her parent or guardian.

15 (4) Any data, records, reports, or documents released under this
16 section to a law enforcement agency, the prosecuting attorney, or a court by
17 the department are confidential and shall be sealed and not redisclosed
18 without a protective order to ensure that items of evidence for which there
19 is a reasonable expectation of privacy are not distributed to persons or
20 institutions without a legitimate interest in the evidence.

21
22 20-46-406. Criminal record and child maltreatment checks.

23 (a) The following individuals in connection with a psychiatric
24 residential treatment facility shall be checked for a state and federal
25 criminal record and against the Child Maltreatment Central Registry:

26 (1) An employee of the psychiatric residential treatment
27 facility having direct and unsupervised contact with children;

28 (2) A volunteer of the psychiatric residential treatment
29 facility having direct and unsupervised contact with children;

30 (3) An owner of the psychiatric residential treatment facility
31 having direct and unsupervised contact with children;

32 (4) A member of the psychiatric residential treatment facility's
33 board of directors having direct and unsupervised contact with children; and

34 (5) An adult working in a psychiatric residential treatment
35 facility.

36 (b) A psychiatric residential treatment facility shall check the

1 individuals in connection with a psychiatric residential treatment facility
2 with:

3 (1)(A) The equivalent registry in his or her state of residence
4 and any state of residence in which the person has lived for the past five
5 (5) years and in the person's state of employment, if different, for reports
6 of child maltreatment in compliance with policy and procedures promulgated by
7 the Department of Human Services.

8 (B) All persons required to be checked with the registry
9 under subsection (b)(1)(A) of this section shall repeat the check a minimum
10 of every two (2) years.

11 (C) The department may deny a license to any applicant
12 found to have any record of founded child maltreatment in the official record
13 of the registry or to an applicant who continues to employ a person with any
14 record of founded child maltreatment in the official record of the registry.

15 (D) Any person required to be checked under this section
16 who is found to have any record of child maltreatment in the official record
17 of the registry shall be reviewed by the owner or operator of the psychiatric
18 residential treatment facility in consultation with the department to
19 determine appropriate corrective measures that would include without
20 limitation training, probationary employment, or nonselection for employment;

21 (2)(A) The Identification Bureau of the Division of Arkansas
22 State Police to determine if the person has pleaded guilty or nolo contendere
23 to or has been found guilty of any offense listed in this subchapter in
24 compliance with policy and procedures promulgated by the department.

25 (B) All persons required to be checked with the
26 Identification Bureau of the Division of Arkansas State Police under this
27 subsection shall repeat the check at a minimum of every five (5) years; and

28 (3)(A) The Federal Bureau of Investigation by a fingerprint-
29 based criminal background check performed in compliance with federal law to
30 determine if the person has pleaded guilty or nolo contendere to or been
31 found guilty of any offense listed in this subchapter.

32 (B) In the event a legible set of fingerprints as
33 determined by the Identification Bureau of the Division of Arkansas State
34 Police and the Federal Bureau of Investigation cannot be obtained after a
35 minimum of two (2) attempts by qualified law enforcement personnel, the
36 department shall determine eligibility based upon a name check by the

1 Identification Bureau of the Division of Arkansas State Police and the
2 Federal Bureau of Investigation.

3 (c) The owner or operator of a psychiatric residential treatment
4 facility shall:

5 (1)(A) Maintain on file, subject to inspection by the
6 department, evidence that all persons required to be checked under this
7 section have been approved or disqualified in accordance with the rules of
8 the appropriate licensing or certifying agency.

9 (B) Failure to maintain that evidence on file will be
10 prima facie grounds to revoke the license of the owner or operator of the
11 facility; and

12 (2) Submit the criminal records check form to the Office of
13 Long-Term Care for the employee or volunteer, who shall not begin employment
14 or volunteerism until the registry check and criminal records checks required
15 under this subchapter are completed.

16 (d)(1) Each person required to have a criminal records check under
17 this subchapter shall complete a criminal records check form developed by the
18 department and shall sign the form that contains:

19 (A) Certification that the subject of the check consents
20 to the completion of the check;

21 (B)(i) Certification that the subject of the check has not
22 pleaded guilty or nolo contendere to or been found guilty of a crime.

23 (ii) If the subject of the check has been convicted
24 of a crime, a certification containing a description of the crime and the
25 particulars of the conviction shall be included in lieu of the certification
26 under subdivision (d)(1)(B)(i) of this section;

27 (C) Notification that the subject of the check may
28 challenge the accuracy and completeness of any information in any report and
29 obtain a prompt determination as to the validity of the challenge before a
30 final determination is made by the department with respect to his or her
31 employment status or licensing status;

32 (D) Notification that the subject of the check may be
33 denied a license or exemption to operate a psychiatric residential treatment
34 facility or may be denied unsupervised access to children in the care of a
35 psychiatric residential treatment facility due to information obtained by the
36 check that indicates that the subject of the check has pleaded guilty or nolo

1 contendere to or been found guilty of or is under pending indictment for a
2 crime listed in this subchapter; and

3 (E) Notification that any background check and the results
4 thereof shall be handled in accordance with the requirements of Pub. L. No.
5 92-544.

6 (2) Under § 25-32-107(d), the subject of the background check
7 may submit an electronic signature to complete the records check.

8 (e) This section does not prevent the department from denying a
9 license or exemption to an owner or preventing an operator or employee in a
10 psychiatric residential treatment facility from having unsupervised access to
11 children by reason of the pending appeal of a criminal conviction or child
12 maltreatment determination.

13 (f)(1) An owner or operator of a psychiatric residential treatment
14 facility is not liable during a conditional period of service for hiring any
15 person required to have a background check under this subchapter who may be
16 subject to a charge of false swearing upon completion of the registry and
17 criminal records check.

18 (2)(A) A false swearing shall occur when a person while under
19 oath provides false information or omits information that the person knew or
20 reasonably should have known was material.

21 (B) Lack of knowledge that information is material is not
22 a defense to a charge of false swearing.

23 (3) For purposes of this subchapter, false swearing is a Class A
24 misdemeanor.

25
26 20-46-407. Criminal background checks – Offenses.

27 (a) A report of a pleading of guilty or nolo contendere or a finding
28 of guilt to any charge listed in this section shall be:

29 (1) Returned to the Department of Human Services for review; and

30 (2) Considered regardless of whether or not the record is
31 expunged, pardoned, or otherwise sealed.

32 (b) A person who is required to have a criminal records check under §
33 20-46-406(b)(2) and (3) shall be permanently prohibited from having direct
34 and unsupervised contact with a child in the care of a psychiatric
35 residential treatment facility if that person has pleaded guilty or nolo
36 contendere to or been found guilty of any of the following offenses by any

1 court in the State of Arkansas, of a similar offense in a court of another
2 state, or of a similar offense by a federal court, unless the conviction is
3 vacated or reversed:

4 (1) Abuse of an endangered or impaired person, if felony, § 5-
5 28-103;

6 (2) Arson, § 5-38-301;

7 (3) Capital murder, § 5-10-101;

8 (4) Endangering the welfare of an incompetent person in the
9 first degree, § 5-27-201;

10 (5) Kidnapping, § 5-11-102;

11 (6) Murder in the first degree, § 5-10-102;

12 (7) Murder in the second degree, § 5-10-103;

13 (8) Rape, § 5-14-103;

14 (9) Sexual assault in the first degree, § 5-14-124;

15 (10) Sexual assault in the second degree, § 5-14-125;

16 (11) Aggravated assault upon a law enforcement officer or an
17 employee of a correctional facility, § 5-13-211(a)(2), if a Class Y felony;
18 and

19 (12) Trafficking of persons, § 5-18-103.

20 (c) Except as provided under § 20-46-408, a person who is required to
21 have a criminal records check under § 20-46-406(b)(2) and (3) is not eligible
22 to have direct and unsupervised contact with a child in the care of a
23 psychiatric residential treatment facility if that person has pleaded guilty
24 or nolo contendere to or been found guilty of any of the following offenses
25 by a court in the State of Arkansas, of a similar offense in a court of
26 another state, or of a similar offense by a federal court, unless the
27 conviction is vacated or reversed:

28 (1) Criminal attempt, § 5-3-201, to commit any offenses in
29 subsection (b) or (c) of this section;

30 (2) Criminal complicity, § 5-3-202, to commit any offenses in
31 subsection (b) or (c) of this section;

32 (3) Criminal solicitation, § 5-3-301, to commit any offenses in
33 subsection (b) or (c) of this section;

34 (4) Criminal conspiracy, § 5-3-401, to commit any offenses in
35 subsection (b) or (c) of this section;

36 (5) Assault in the first, second, or third degree, §§ 5-13-205 –

- 1 5-13-207;
2 (6) Aggravated assault, § 5-13-204;
3 (7) Aggravated assault on a family or household member, § 5-26-
4 306;
5 (8) Battery in the first, second, or third degree, §§ 5-13-201 –
6 5-13-203;
7 (9) Breaking or entering, § 5-39-202;
8 (10) Burglary, § 5-39-201;
9 (11) Coercion, § 5-13-208;
10 (12) Computer crimes against minors, § 5-27-601 et seq.;
11 (13) Contributing to the delinquency of a juvenile, § 5-27-220;
12 (14) Contributing to the delinquency of a minor, § 5-27-209;
13 (15) Criminal impersonation, § 5-37-208;
14 (16) Criminal use of prohibited weapons, § 5-73-104;
15 (17) Communicating a death threat concerning a school employee
16 or student, § 5-17-101;
17 (18) Domestic battering in the first, second, or third degree,
18 §§ 5-26-303 – 5-26-305;
19 (19) Employing or consenting to the use of a child in a sexual
20 performance, § 5-27-402;
21 (20) Endangering the welfare of a minor in the first or second
22 degree, §§ 5-27-205 and 5-27-206;
23 (21) Endangering the welfare of an incompetent person in the
24 second degree, § 5-27-202;
25 (22) Engaging children in sexually explicit conduct for use in
26 visual or print medium, § 5-27-303;
27 (23) False imprisonment in the first or second degree, §§ 5-11-
28 103 and 5-11-104;
29 (24) Felony abuse of an endangered or impaired person, § 5-28-
30 103;
31 (25) Felony interference with a law enforcement officer, § 5-54-
32 104;
33 (26) Felony violation of the Uniform Controlled Substances Act,
34 § 5-64-101 et seq., § 5-64-201 et seq., § 5-64-301 et seq., § 5-64-401 et
35 seq., and § 5-64-501 et seq.;
36 (27) Financial identity fraud, § 5-37-227;

- 1 (28) Forgery, § 5-37-201;
2 (29) Incest, § 5-26-202;
3 (30) Interference with court-ordered custody, § 5-26-502;
4 (31) Interference with visitation, § 5-26-501;
5 (32) Introduction of controlled substance into body of another
6 person, § 5-13-210;
7 (33) Manslaughter, § 5-10-104;
8 (34) Negligent homicide, § 5-10-105;
9 (35) Obscene performance at a live public show, § 5-68-305;
10 (36) Offense of cruelty to animals, § 5-62-103;
11 (37) Offense of aggravated cruelty to a dog, cat, or equine, §
12 5-62-104;
13 (38) Pandering or possessing visual or print medium depicting
14 sexually explicit conduct involving a child, § 5-27-304;
15 (39) Permanent detention or restraint, § 5-11-106;
16 (40) Permitting abuse of a minor, § 5-27-221;
17 (41) Producing, directing, or promoting a sexual performance by
18 a child, § 5-27-403;
19 (42) Promoting obscene materials, § 5-68-303;
20 (43) Promoting obscene performance, § 5-68-304;
21 (44) Promoting prostitution in the first, second, or third
22 degree, §§ 5-70-104 – 5-70-106;
23 (45) Prostitution, § 5-70-102;
24 (46) Public display of obscenity, § 5-68-205;
25 (47) Resisting arrest, § 5-54-103;
26 (48) Robbery, § 5-12-102;
27 (49) Aggravated robbery, § 5-12-103;
28 (50) Sexual extortion, § 5-14-113;
29 (51) Sexual solicitation, § 5-70-103;
30 (52) Sexual offenses, § 5-14-101 et seq., except for a
31 misdemeanor violation of sexual indecency with a child, § 5-14-110;
32 (53) Simultaneous possession of drugs and firearms, § 5-74-106;
33 (54) Soliciting money or property from incompetent persons, § 5-
34 27-229;
35 (55) Stalking, § 5-71-229;
36 (56) Terroristic act, § 5-13-310;

1 (57) Terroristic threatening, § 5-13-301;

2 (58) Theft by receiving, § 5-36-106;

3 (59) Theft of property, § 5-36-103;

4 (60) Theft of public benefits, § 5-36-202;

5 (61) Theft of services, § 5-36-104;

6 (62) Transportation of minors for prohibited sexual conduct, §
7 5-27-305;

8 (63) Unlawful discharge of a firearm from a vehicle, § 5-74-107;

9 and

10 (64) Voyeurism, § 5-16-102.

11 (d) A former or future law of this state or any other state or of the
12 federal government that is substantially equivalent to an offense listed in
13 subsection (c) of this section shall be considered as prohibiting employment
14 or volunteering under subsections (b) and (c) of this section.

15
16 20-46-408. Criminal background checks – Disqualification.

17 (a) A person who is required to have a criminal records check and
18 national fingerprint background check under § 20-46-406(b)(2) and (3) who has
19 pleaded guilty or nolo contendere to or been found guilty of any of the
20 offenses listed in § 20-46-407 shall be disqualified from being an owner,
21 operator, volunteer, member of a board of directors, or employee in a
22 psychiatric residential treatment facility during the period of the person's
23 confinement, probation, parole, or post-release supervision unless the
24 conviction is vacated or reversed.

25 (b) Except as provided under subsection (c) of this section, a person
26 who has pleaded guilty or nolo contendere to or been found guilty of any
27 offense listed in § 20-46-407 shall not work in a psychiatric residential
28 treatment facility unless:

29 (1) The date of a plea of guilty or nolo contendere or the
30 finding of guilt for a misdemeanor offense is at least five (5) years from
31 the date of the records check; and

32 (2) There has been no criminal conviction or plea of guilty or
33 nolo contendere of any type or nature during the five-year period preceding
34 the background check request.

35 (c)(1) A person who is required to have a criminal records check and
36 national fingerprint background check under § 20-46-406(b)(2) and (3) who has

1 pleaded guilty or nolo contendere to or been found guilty of any of the
2 offenses listed in § 20-46-407 shall be presumed to be disqualified to be an
3 owner, operator, volunteer, member of a psychiatric residential treatment
4 facility's board of directors, or employee in a psychiatric residential
5 treatment facility after the completion of his or her term of confinement,
6 probation, parole, or post-release supervision unless the conviction is
7 vacated or reversed.

8 (2) An owner, operator, volunteer, member of any psychiatric
9 residential treatment facility's board of directors, or an employee in a
10 psychiatric residential treatment facility may petition the Department of
11 Human Services for a waiver which can be rebutted in the following manner:

12 (A) The applicant shall petition the department to make a
13 determination that the applicant does not pose a risk of harm to any person;

14 (B) The applicant shall bear the burden of making a
15 showing as described in subdivision (c)(2)(A) of this section; and

16 (C)(i) The department may permit an applicant to be an
17 owner, operator, volunteer, member of a psychiatric residential treatment
18 facility's board of directors, or an employee in a psychiatric residential
19 treatment facility notwithstanding having pleaded guilty or nolo contendere
20 to or been found guilty of an offense listed in § 20-46-407 upon making a
21 determination that the applicant does not pose a risk of harm to any person
22 served by the psychiatric residential treatment facility.

23 (ii) In making a determination, the department shall
24 consider:

25 (a) The nature and severity of the crime;

26 (b) The consequences of the crime;

27 (c) The number and frequency of the crimes;

28 (d) The relation between the crime and the
29 health, safety, and welfare of any person, such as the:

30 (1) Age and vulnerability of the victim;

31 (2) Harm suffered by the victim; and

32 (3) Similarity between the victim and
33 the persons served by the psychiatric residential treatment facility;

34 (e) The time elapsed without a repeat of the
35 same or similar crime;

36 (f) Documentation of successful completion of

1 training or rehabilitation related to the crime; and

2 (g) Any other information that relates to the
3 applicant's ability to care for children or is deemed relevant.

4 (iii) The department's decision to disqualify a
5 person from being an owner, operator, volunteer, member of a psychiatric
6 residential treatment facility's board of directors, or an employee in a
7 psychiatric residential treatment facility under this section shall
8 constitute the final administrative agency action and is not subject to
9 review.

10 (d) Information obtained from the criminal records check and the
11 national fingerprint criminal background checks is confidential and shall not
12 be disclosed by the department except to the applicant and his or her
13 attorney during a meeting with the department only if no redisclosure by the
14 applicant or his or her attorney occurs and all copies shared with the
15 applicant and his or her attorney are returned to the department.

16
17 SECTION 7. Arkansas Code § 9-28-402(8), concerning the definition of
18 "child welfare agency" within the Child Welfare Agency Licensing Act, is
19 amended to read as follows:

20 (8) "Child welfare agency" means any person, corporation,
21 partnership, voluntary association, or other entity or identifiable group of
22 entities having a coordinated ownership of controlling interest, whether
23 established for profit or otherwise, that is not excluded under this
24 subchapter and engages in any of the following activities:

25 (A) Receives a total number of six (6) or more unrelated
26 minors for care on a twenty-four-hour basis for the purpose of ensuring the
27 minors receive care, training, education, custody, or supervision, whether or
28 not there are six (6) or more children cared for at any single physical
29 location;

30 (B) Places any unrelated minor for care on a twenty-four-
31 hour basis with persons other than themselves;

32 (C) Plans for or assists in the placements described in
33 subdivision (8)(B) of this section; or

34 (D) Receives, places, plans, or assists in the placement
35 of a child victim of human trafficking in a home or any type of shelter or
36 facility;

1
2 SECTION 8. Arkansas Code § 9-28-402(12), concerning the definition of
3 "exempt child welfare agency" within the Child Welfare Agency Licensing Act,
4 is amended to read as follows:

5 (12) "Exempt child welfare agency" means any person,
6 corporation, partnership, voluntary association or other entity, whether
7 established for profit or otherwise, that otherwise fits the definition of a
8 child welfare agency but that is specifically exempt from the requirement of
9 obtaining a license under this subchapter. Those agencies specifically exempt
10 from the license requirement are:

11 (A) A facility or program owned or operated by an agency
12 of the United States Government;

13 (B)(i) Any agency of the State of Arkansas that is
14 statutorily authorized to administer or supervise child welfare activities.

15 (ii) In order to maintain exempt status, the state
16 child welfare agency shall state every two (2) years in written form signed
17 by the persons in charge that their agency is in substantial compliance with
18 published state agency child welfare standards.

19 (iii) Visits to review and advise exempt state
20 agencies shall be made as deemed necessary by the Child Welfare Agency Review
21 Board to verify and maintain substantial compliance with the standards;

22 (C) A facility or program owned or operated by or under
23 contract with the Division of Correction;

24 ~~(D) A hospital providing acute care licensed pursuant to §~~
25 ~~20-9-201 et seq.;~~

26 ~~(E)~~(D) Any facility governed by the Department of Human
27 Services State Institutional System Board or its successor;

28 ~~(F) Human development centers regulated by the Board of~~
29 ~~Developmental Disabilities Services pursuant to the Location Act for~~
30 ~~Community Homes for Individuals with Intellectual and Developmental~~
31 ~~Disabilities, § 20-48-601 et seq.;~~

32 ~~(G) Any facility licensed as a family home pursuant to the~~
33 ~~Location Act for Community Homes for Individuals with Intellectual and~~
34 ~~Developmental Disabilities, § 20-48-601 et seq.;~~

35 ~~(H)~~(E) Any boarding school as defined in this section;

36 ~~(I)~~(F) Any temporary camp as defined in this section;

1 ~~(J)~~(G) Any state-operated facility to house juvenile
 2 delinquents or any serious offender program facility operated by a state
 3 designee to house juvenile delinquents. Those facilities shall be subject to
 4 program requirements modeled on nationally recognized correctional facility
 5 standards that shall be developed, administered, and monitored by the
 6 Division of Youth Services; and

7 ~~(K)~~(H) Any child welfare agency operated solely by a
 8 religious organization that elects to be exempt from licensing and that
 9 complies within the conditions of the exemption for church-operated agencies
 10 as set forth in this subchapter;

11 ~~(L) The Division of Developmental Disabilities Services;~~
 12 ~~and~~

13 ~~(M) Any intellectual or other developmental disabilities~~
 14 ~~services waiver provider licensed under § 20-48-208 or the Location Act for~~
 15 ~~Community Homes for Individuals with Intellectual and Developmental~~
 16 ~~Disabilities, § 20-48-601 et seq.;~~

17
 18 SECTION 9. Arkansas Code § 9-28-402(18) is repealed.

19 ~~(18) "Psychiatric residential treatment facility" means a~~
 20 ~~residential childcare facility in a nonhospital setting that provides a~~
 21 ~~structured, systematic, therapeutic program of treatment under the~~
 22 ~~supervision of a psychiatrist, for children who are emotionally disturbed and~~
 23 ~~in need of daily nursing services, psychiatrist's supervision, and~~
 24 ~~residential care but who are not in an acute phase of illness requiring the~~
 25 ~~services of an inpatient psychiatric hospital;~~

26
 27 SECTION 10. Arkansas Code § 9-28-402(22), concerning the definition of
 28 "residential childcare facility" within the Child Welfare Agency Licensing
 29 Act, is amended to read as follows:

30 (22)(A) "Residential childcare facility" means any child welfare
 31 agency that is not an excluded child welfare agency under this subchapter and
 32 provides care, training, education, custody, or supervision on a twenty-four-
 33 hour basis for six (6) or more unrelated children, excluding foster homes
 34 that have six (6) or more children who are all related to each other but who
 35 are not related to the foster parents.

36 (B) A "residential childcare facility" does not include a

1 facility that provides inpatient psychiatric treatment, which shall not be
 2 licensed as a residential childcare facility;

3
 4 SECTION 11. Arkansas Code § 9-28-402, concerning the definitions
 5 within the Child Welfare Agency Licensing Act, is amended to add an
 6 additional subdivision to read as follows:

7 (32) "Excluded child welfare agency" means any person,
 8 corporation, partnership, voluntary association, or other entity, whether
 9 established for-profit or otherwise, that meets the definition of a child
 10 welfare agency or an exempt child welfare agency but is licensed or certified
 11 by the Department of Human Services or the Department of Health and is
 12 enrolled in the Arkansas Medicaid Program.

13
 14 SECTION 12. Arkansas Code § 9-28-403(a), concerning the creation and
 15 authority of the Child Welfare Agency Review Board, is amended to read as
 16 follows:

17 (a)(1) There is created the Child Welfare Agency Review Board to serve
 18 as the administrative body to carry out the provisions of this subchapter.

19 (2) The board shall have the authority to promulgate rules to
 20 enforce the provisions of this subchapter.

21 (3) An excluded child welfare agency is not subject to the
 22 provisions of this subchapter.

23
 24 SECTION 13. Arkansas Code § 9-28-404(a)(5), concerning the membership
 25 of the Child Welfare Agency Review Board, is repealed.

26 ~~(5) One (1) representative from a licensed psychiatric~~
 27 ~~residential treatment facility;~~

28
 29 SECTION 14. Arkansas Code § 9-28-407(a)(2) and (3), concerning
 30 licenses required and issued by the Child Welfare Agency Review Board, are
 31 amended to read as follows:

32 (2) This license shall be required in addition to any other
 33 license required by law for all entities that fit the definition of a child
 34 welfare agency and are not specifically exempted, ~~except that no~~
 35 ~~nonpsychiatric residential treatment facility or agency licensed or exempted~~
 36 ~~under this subchapter shall be deemed to fall within the meaning of § 20-10-~~

1 ~~101 et seq. for any purpose.~~

2 (3) Any child welfare agency ~~capacity licensed by the board as~~
3 ~~of March 1, 2003~~, whether held by the original licensee or by a successor in
4 interest to the original licensee, ~~is exempted from~~ shall:

5 (A) ~~Obtaining any~~ Obtain a license or permit from the
6 Office of Long-Term Care if the facility type is required to obtain a license
7 or permit from the Office of Long-Term Care; and

8 (B)(i) ~~Obtaining any~~ Obtain a permit from the Health
9 Services Permit Agency or the Health Services Permit Commission to operate at
10 the capacity licensed by the board as of March 1, 2003, except as required
11 under subdivision (a)(3)(B)(ii) of this section if the facility type is
12 required to obtain a permit from the Health Services Permit Agency.

13 (ii)(a) ~~If a licensee is operating at less than or~~
14 ~~at the capacity licensed by the board as of March 1, 2021, the licensee shall~~
15 ~~obtain a permit from the Health Services Permit Agency or the Health Services~~
16 ~~Permit Commission for any increase in capacity.~~

17 (b) ~~For the purposes of subdivision~~
18 ~~(a)(3)(B)(ii)(a) of this section, both in-state and out-of-state clients~~
19 ~~shall be counted in capacity for the purpose of obtaining a license from the~~
20 ~~board and a permit from the Health Services Permit Agency or the Health~~
21 ~~Services Permit Commission.~~

22 (ii)(a) Any facility that is required to obtain a
23 permit from the Health Services Permit Agency shall obtain a permit for any
24 increase in capacity.

25 (b) If a child welfare agency is operating at
26 less than or at the capacity licensed by the board as of March 1, 2021, the
27 licensee shall obtain a permit from the Health Services Permit Agency or the
28 Health Services Permit Commission for any increase in capacity.

29 (c) For the purposes of (a)(3)(B)(ii)(a) of
30 this section, both in-state and out-of-state clients shall be counted in
31 capacity for the purpose of obtaining a license from the board and a permit
32 from the Health Services Permit Agency or Health Services Permit Commission.

33
34 SECTION 15. Arkansas Code § 9-28-416 is repealed.

35 ~~9-28-416. Admission of children to psychiatric residential treatment~~
36 ~~facilities.~~

1 ~~(a) A psychiatric residential treatment facility licensed under this~~
2 ~~subchapter and holding a permit from the Health Services Permit Agency or the~~
3 ~~Health Services Permit Commission shall not admit a child for psychiatric~~
4 ~~residential treatment unless the child is:~~

5 ~~(1) An Arkansas resident;~~

6 ~~(2) A child of a parent who is an Arkansas resident;~~

7 ~~(3) A child placed by or on behalf of another state's child~~
8 ~~welfare agency;~~

9 ~~(4) A child for whom the facility is being paid by another~~
10 ~~state's Medicaid program;~~

11 ~~(5) A child of an active-duty member or veteran of the uniformed~~
12 ~~services as defined in § 6-4-302; or~~

13 ~~(6) A nonresident child victim of human trafficking when the~~
14 ~~regulated facility maintains responsibility for the return of the child to~~
15 ~~the out-of-state custodian.~~

16 ~~(b) The Department of Human Services may promulgate rules to enforce~~
17 ~~this section.~~

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