

NOTE:

Effective 8/16/2013 the Child Welfare Agency Licensing Act located in the Appendix (page 63) has been amended.

Please follow the link below to access the current Child Welfare Agency Licensing Act.

http://humanservices.arkansas.gov/dccece/licensing_docs/Child%20Welfare%20Agency%20Licensing%20Act--8-16-13.pdf

Minimum Licensing Standards for Child Welfare Agencies



Child Welfare Agency Review Board

&

Arkansas Department of Human Services

Division of Child Care and Early Childhood Education

Placement and Residential Licensing Unit



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Introduction

“The Child Welfare Licensing Act,” Ark. Code Ann. **9-28-401** et. seq., (the Act) is the legal authority under which the Child Welfare Agency Review Board prescribes minimum licensing standards for child welfare agencies, as defined under the statute.

Child Welfare Agency Review Board

The Child Welfare Agency Review Board shall promulgate and publish rules and regulations setting minimum standards governing the granting, revocation, refusal, conversion, and suspension of licenses for a child welfare agency and the operation of a child welfare agency.

The board may consult with such other agencies, organizations, or individuals as it shall deem proper.

The board shall take any action necessary to prohibit any person, partnership, group, corporation, organization, or association not licensed or exempted from licensure pursuant to this chapter from advertising, placing, planning for, or assisting in the placement of any unrelated minor for purposes of adoption or for care in a foster home. The prohibition against advertising shall not apply to persons who are seeking to add to their own family by adoption.

The board may amend the rules and regulations promulgated pursuant to this section from time to time, in accordance with the rule promulgation procedures in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

The board shall promulgate rules and regulations that:

1. Promote the health, safety, and welfare of children in the care of a child welfare agency;
2. Promote safe and healthy physical facilities;
3. Ensure adequate supervision of the children by capable, qualified, and healthy individuals;
4. Ensure appropriate educational programs and activities for children in the care of a child welfare agency;
5. Ensure adequate and healthy food service;
6. Include procedures for the receipt, recordation, and disposition of complaints regarding allegations of violations of this subchapter, of the rules promulgated under the Child Welfare Agency Licensing Act, or of child maltreatment laws;
7. Include procedures for the assessment of child and family needs and for the delivery of services designed to enable each child to grow and develop in a permanent family setting;
8. Ensure that criminal record checks and central registry checks are completed on owners, operators, employees, volunteers, foster parents, adoptive parents, and

- other persons in the homes as set forth in this subchapter.
9. Require the compilation of reports and making those reports available to the division when the board determines it is necessary for compliance determination or data compilation;
 10. Ensure that a child placement agency:
 - a. Treats clients seeking or receiving services in a professional manner, as defined by regulations promulgated pursuant to this act; and
 - b. Provides clients seeking or receiving services from a child placement agency that provides adoption services with the phone number and address of the Child Welfare Agency Licensing Unit of the Department of Human Services where complaints can be lodged.
 11. Require that all child welfare agencies that provide adoption services fully apprise in writing all clients involved in the process of adopting a child of the agency's adoption program or services, including all possible costs associated with the adoption program.
 12. Establish rules governing retention of licensing records maintained by the division.

A licensed child welfare agency may adopt and apply internal operating procedures that meet or exceed the minimum standards required by the board.

The Arkansas Administrative Procedure Act, Ark. Code Ann. **25-15-201** et seq., shall apply to all proceedings brought to the Board under this subchapter, except that the following provisions shall control during adverse action hearings to the extent that they conflict with the Arkansas Administrative Procedure Act:

1. All parties to an adverse action shall be entitled to engage in and use formal discovery as provided for in Rules 26, 28, 29, 30, 31, 32, 33, 34, and 36 of the Arkansas Rules of Civil Procedure including:
 - a. Requests for admission
 - b. Request for production of documents and things
 - c. Written interrogatories
 - d. Oral and written depositions
2. All evidentiary rulings in an adverse action hearing shall be governed by the Arkansas Rules of Evidence with respect to the following types of evidence:
 - a. The requirements of personal knowledge of a witness as required by Rule 602
 - b. The admissibility of character evidence as set forth by Rules 608 and 609
 - c. The admissibility of character evidence as set forth by Rules 701-703
 - d. The admissibility of hearsay evidence as set forth by Rules 801-806

Agencies Requiring Licensing

Any person, organization, corporation, partnership, voluntary association or other entity which provides care, training, education, custody, or supervision for a total of six (6) or more unrelated minors on a twenty-four (24) hour basis, and is not otherwise exempt by the Act, requires a license.

Any person, organization, corporation, partnership, voluntary association, or other entity which places, plans for or assists in the placement of any unrelated minor for care in a foster home, adoptive home, or residential facility, and is not otherwise exempt by the Act, requires a license.

The Board shall take any action necessary to prohibit any person, partnership, group, corporation, organization or association not licensed or exempted from licensure from advertising, placing, planning for, or assisting in the placement of any unrelated minor for the purposes of adoption or for care in a foster home. The prohibition against advertising shall not apply to persons who are seeking to add to their own family by adoption.

The Board may impose a civil penalty upon any person, partnership, group, corporation, organization or association not licensed or exempt from licensure as a child welfare agency in the State of Arkansas that advertises, places, plans for or assists in the placement of any unrelated minor for purposes of adoption or for care in a foster home. The prohibition against advertising does not apply to persons who are seeking to add to their own family by adoption.

Types of Licenses

RESIDENTIAL CHILD CARE FACILITY

Any child welfare agency that provides care, training, education, custody or supervision on a twenty-four (24) hour basis for six (6) or more unrelated minors.

EMERGENCY RESIDENTIAL CHILD CARE FACILITY

Any child welfare agency that provides twenty-four (24) hour custodial care for six (6) or more unrelated children on an emergency basis, not to exceed ninety (90) days. Any child admitted as an emergency placement shall be designated as such and must be discharged within ninety (90) days. The child may be discharged to the same facility, but the child's record must reflect the date the child was admitted into regular residential care.

PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY

A residential child care facility in a non-hospital setting that provides a structured, systematic, therapeutic program of treatment under the supervision of a physician licensed by the Arkansas State Medical Board who has experience in the practice of psychiatry. It is for children who are emotionally disturbed and in need of daily nursing services, physician's supervision and residential care, but who are not in an acute phase of illness requiring the services of an inpatient psychiatric hospital.

SEXUAL REHABILITATIVE PROGRAM

A treatment program that offers a specific and specialized therapeutic program for children with sexually maladaptive behaviors. A licensed sexual rehabilitative program may be in a residential childcare facility, a therapeutic foster care home, or a psychiatric residential treatment facility.

INDEPENDENT LIVING

A child welfare agency that provides specialized services in adult living preparation in an experiential setting for persons sixteen (16) years of age or older.

CHILD PLACEMENT AGENCY - ADOPTION

A child welfare agency which places, plans for or assists in the placement of an unrelated minor in a household of one (1) or more persons which has been approved to accept a child for adoption.

CHILD PLACEMENT AGENCY – FOSTER CARE

A child welfare agency which places, plans for or assists in the placement of an unrelated minor in a private residence of one (1) or more family members for care and supervision on a twenty-four (24) hour basis.

CHILD PLACEMENT AGENCY – THERAPEUTIC FOSTER CARE

Any child welfare agency that places, plans for or assists in the placement of an unrelated minor in a therapeutic foster home. Therapeutic foster care is intensive therapeutic care for children provided in specially trained family homes supported by licensed mental health professionals (as recognized by Arkansas Medicaid). A therapeutic foster care program is a family-based services delivery approach providing individualized treatment for children, youth, and their families. Treatment is delivered through an integrated constellation of services with key interventions and supports provided by therapeutic foster parents who are trained, supervised, and supported by qualified program staff. Therapeutic foster care services shall be provided in a separately identified program of a larger agency or be provided by an independent agency.

CHILD PLACEMENT AGENCY- RESIDENTIAL

A child welfare agency which places, plans for, or assists in the placement of an unrelated minor into a residential child care facility.

An agency may be licensed for any or all types of licenses, depending on the types of services it provides.

License Status

The Board shall issue all licenses to child welfare agencies upon majority vote of members present during each properly called board meeting at which a quorum is present when the meeting is called to order. The Board shall have the power to deny an application to operate a child welfare agency or to revoke or suspend a previously issued license to operate a child welfare agency. The Board may also issue letters of reprimand or caution to a child welfare agency. Any denial of application or revocation or suspension of a license shall be effective when made.

PROVISIONAL

Issued to a newly licensed agency for a one (1) year period, to give the agency time to demonstrate substantial compliance with minimum licensing standards. At the discretion of the Board, a provisional license may be issued up to an additional year.

PROBATIONARY

Issued to an agency that has not maintained compliance with minimum licensing standards, but the Board believes that compliance can be restored and subsequently maintained. This license may be issued for up to one (1) year, at the discretion of the Board.

REGULAR

Issued either to a previously licensed agency that continues to meet all minimum licensing standards, or issued to an agency that meets all essential standards and has a favorable compliance history, which predicts full compliance with all standards within a reasonable time. A regular license shall remain open and effective until closed at the request of the agency or Board action.

SUSPENDED

Board action taken when an agency has failed to maintain compliance with minimum licensing standards, but the violations do not warrant revocation. A license may not be suspended for longer than one (1) year at a time. The Board may issue a provisional or regular license when compliance is restored.

CLOSED

Action taken when the agency requests that the license be closed.

REVOKED

Board action taken when an agency has failed to maintain compliance with minimum licensing standards. The agency may not apply for a new license for at least one (1) year from the date of revocation.

Status Change

An amended license shall be issued any time there is a change in the agency's program that affects the license type, status, capacity, ages of children served, or a name change.

A license to operate a child welfare agency shall apply only to the address and location stated on the application and license issued, and it shall be transferable from one holder of the license to another or from one place to another.

Whenever ownership of a controlling interest in the operation of a child welfare agency is sold, the following procedures must be followed:

1. The seller shall notify the division of the sale at least thirty days prior to the completed sale
2. The seller shall remain responsible for the operation of the child welfare agency until such time as the agency is closed or a license is issued to the buyer.
3. The seller shall remain liable for all penalties assessed against the child welfare agency which are imposed for violations or deficiencies occurring before the transfer of a license to the buyer
4. The buyer shall be subject to any corrective action notices to which the seller was subject; and
5. The provisions of subsection (a) of this section, including those provisions regarding obtaining licenses or permits from the Office of Long-Term Care of the Division of Medical Services of the Department of Human Services and regarding obtaining any permits from the Health Services Permit Agency or the Health Services Permit Commission shall apply in their entirety to the new owner of the Child Welfare Agency.

INFORMING CLIENTS OF LICENSE STATUS CHANGES – Child Placement Agencies

The Child Placement Agency shall inform current and potential clients if their license has been suspended or revoked, or if they have voluntarily surrendered their license.

How To Apply The Standards

Section 100 of the Minimum Licensing Standards for Child Welfare Agencies applies to all agencies that engage in residential care or placement of children into residential facilities, foster homes, or adoptive homes. Subsequent sections apply to specific types of residential facilities or child placement agencies. Not all sections of the Minimum Licensing Standards for Child Welfare Agencies apply to a specific license. Each agency must meet the license requirements of its agency category.

Alternative Compliance

The Board may grant an agency's request for alternative compliance upon a finding that the child welfare agency does not meet the letter of a regulation promulgated under the Child Welfare Agency Licensing Act, but that the child welfare agency meets or exceeds the intent of that rule through alternative means.

If the board grants a request for alternative compliance, the child welfare agency's practice as described in the request for alternative compliance shall be the compliance terms under which the child welfare agency will be held responsible and violations of those terms shall constitute a rule violation.

The Child Welfare Agency Review Board has authorized the Managers and Supervisors of the Licensing Unit to make temporary rulings regarding Alternative Compliance requests when the best interests of a child requires an immediate decision, subject to final approval at the next regularly scheduled meeting of the Board.

Alternative Compliance requests granted, after this rule goes into effect, in the areas listed below must be time limited and shall not exceed two (2) years in length. These alternative compliances shall be monitored on an ongoing basis for compliance and shall be reviewed by the CWARB every two (2) years.

1. Floor space
2. Staff to Child ratio
3. Capacity
4. Sleeping arrangements
5. Bathrooms

100 General Requirements

The standards in Section 100 apply to all agencies unless otherwise indicated.

101 Applications & Licensing Procedure

1. The owner or board shall prepare and furnish an application for a license that contains the following minimum licensing standards:
 - a. A completed application form;
 - b. A letter from the agency's board or owner (as applicable) authorizing a person to sign the application;
 - c. A copy of the Articles of Incorporation, bylaws, and current board roster, if applicable, including names and addresses of officers. Out of state agencies shall have legal authorization from the Arkansas Secretary of State to do business in Arkansas;
 - d. A personnel list with verifications of qualifications and experience;
 - e. Substantiation of the agency's financial soundness including but not limited to: a budget showing sufficient resources to operate for a period of six (6) months either with resources on hand or with projected revenue from verifiable sources, verifiable letters of financial support and/or monthly bank account statements may be included to project income;
 - f. All agencies licensed in Arkansas shall maintain general and professional liability insurance (does not apply to State agencies);
 - g. A written description of the agency's program of care, including intake policies, types of services offered, and a written plan for providing health care services to children in care;
 - h. In addition, residential childcare facilities:
 - Fire inspection
 - Arkansas Department of Health inspection, where applicable;
 - Proof of liability insurance;
 - Floor plan with room dimensions;
 - Zoning approval, where applicable.
2. The agency or facility shall furnish the Licensing Specialist with any additional information reasonably needed to verify compliance with these standards and to make a recommendation regarding the granting of a license.
3. Once a completed application has been received, the Division shall complete a recommendation within ninety days. If a recommendation is not made within ninety days, the applicant may appear before the CWARB to request a license.

102 Inspections, Investigations & Corrective Action

1. The Licensing Specialist shall conduct inspections to ensure continued compliance with licensing standards.
2. The Licensing Specialist shall investigate complaints of alleged violation of licensing standards against all placement agencies and residential facilities, and may participate in investigations of alleged child maltreatment.
3. The agency shall cooperate with the Licensing Unit in conducting inspections and investigations, and shall provide information required to verify compliance with rules.
4. Inspections and investigations may be scheduled or unscheduled, at the discretion of the Licensing Specialist, and may be conducted outside regular working hours.
5. The frequency of inspections shall be at the discretion of the Licensing Unit, and may be based on the agency's compliance history.
6. At the discretion of the Licensing Unit, a multi-disciplinary team may be asked to advise the Licensing Specialist during initial approval or during inspections. This team may include a professional in the appropriate field.
7. Upon finding any violations of licensing standards, the Licensing Specialist shall issue to the agency a corrective action notice, which shall state:
 - a. A factual description of the conditions that constitute a violation of the standard;
 - b. The specific law or standard violated;
 - c. A reasonable time frame within which the violation must be corrected;
8. The agency shall provide a written corrective action plan when requested to do so by the Licensing Specialist in a corrective action notice.
9. Any owner/operator, employee, foster parent, or volunteer in a child welfare agency shall immediately notify the Child Abuse Hotline if he or she has reasonable cause to suspect that a child has been subjected to child maltreatment, died as a result of child maltreatment or if they observe a child being subjected to conditions or circumstances that would reasonably result in child maltreatment.
10. If a complaint of child maltreatment is filed against any owner/operator, employee, foster parent, volunteer, or other person in a child welfare agency, the agency administration shall evaluate the risk to children and determine the suitability of the person(s) to supervise, be left alone with children, have disciplinary control over children, or remain in the child welfare agency until the allegations are determined to be true or unsubstantiated. Any interim corrective action measures shall be approved by the Licensing Unit.
11. The agency shall notify the Licensing Unit by the next business day and log, or maintain in a single file, whenever a report of child maltreatment is made against the owner/operator, employee, foster parent, volunteer, child, or other person in a child welfare agency.
12. The agency and all staff shall cooperate fully with investigators during a child maltreatment investigation.

13. The agency shall take steps to prevent harm or retaliation against the child while an allegation of child maltreatment is being investigated.
14. Any person with a true finding of child maltreatment shall be reviewed by the owner or administrator of the agency, in consultation with the Child Welfare Agency Review Board or its designee, to determine corrective action. Corrective action may include, but is not limited to, counseling, training, probationary employment, non-selection for employment, or termination.
15. Any employee who has been sanctioned by any licensing or certifying entity for any reason pertaining to child safety shall be reviewed by the owner or administrator of the agency, in consultation with the Child Welfare Agency Review Board or its designee, to determine corrective action. Corrective action may include, but is not limited to, counseling, training, probationary employment, non-selection for employment, or termination.
16. The agency shall notify the Licensing Unit of serious injuries requiring emergency medical treatment, arrests, suicide attempts, or deaths, and log, or maintain these incidents in a single file.

103 Organization & Administration

1. The purpose and mission of the agency, including treatment philosophy, services provided, and characteristics of children it is designed to serve, shall be stated in writing.
2. The following policies of the agency shall be current and available to all employees of the agency and the Licensing Specialist:
 - a. Personnel policies;
 - b. Volunteer/Student intern policy;
 - c. Admission policy;
 - d. Intake policy;
 - e. Behavior Management policy;
 - f. Crisis Management policy;
 - g. Child Maltreatment/Mandated Reporter policy; according to Arkansas law, including, procedures to ensure that alleged, suspected, or witnessed incidents of maltreatment are reported to the Child Maltreatment Hotline, and documented as required by these or other applicable regulations or laws;
 - h. Child Exploitation policy;
 - i. Visitation policy;
 - j. Family Therapy/Therapeutic Pass policy (Psychiatric only);
 - k. Admission Health Assessments policy (Psychiatric only);
 - l. Public Safety policy (Sexual Rehabilitative Programs policy only);
 - m. Target Population, Admission/Exclusion Criteria, and Discharge Criteria policy (Sexual Rehabilitative Programs only);

- n. Emergency, Respite Care, and Disruption policy (Placement Agencies only).
3. The child placement agency shall obtain a license before placing, or planning for the placement of, children in a foster home, adoptive home, or institution. The residential facility shall obtain a license before receiving six (6) or more children who are unrelated to the caregiver for care on a twenty-four hour basis.
 4. The agency shall be legally authorized to conduct business in Arkansas by state law and local ordinance.
 5. The agency shall meet all federal, state, and local laws and ordinances that apply to child welfare agencies and to the proper care of children in such facilities.
 6. The Owner and/or Board of Directors shall be responsible for operating the facility and shall have final responsibility to ensure that the facility meets licensing requirements. Names and addresses of Board members shall be provided to the Licensing Specialist annually.
 7. All agencies shall maintain a current organizational chart showing the administrative structure of the organization.
 8. The agency shall notify the Licensing Unit within five (5) days of any change of Administrator or Social Service Director.
 9. The agency shall establish and follow written policies and procedures that meet or exceed the *Minimum Licensing Standards for Child Welfare Agencies*.
 10. All agencies applying for an Arkansas license shall provide proof that they are licensed in good standing in their home state, if applicable, and are in good standing in all other states where they are licensed. If an agency is being disciplined or sanctioned in another jurisdiction, the board shall be notified.
 11. All agencies licensed in Arkansas after January 18, 2002 shall have an office in Arkansas.
 12. All agencies licensed in Arkansas shall maintain all required files for licensing review as needed. They may choose to:
 - a. Maintain these files in their office in Arkansas; or
 - b. Arrange to provide the required files to the licensing staff.
 13. All agencies licensed in Arkansas shall have a qualified person on call to supervise emergency services. [Pursuant to 106-108]
 14. A residential child care facility license shall not be granted to an applicant to operate the facility in his/her own residence, or in a home owned and occupied by an employee of the agency.
 15. If electronic records are kept, these records must be made available to the Licensing Specialist for purposes of monitoring and investigation.
 16. Any disciplinary action taken against the agency by another licensing jurisdiction shall be reported to the Licensing Unit.

17. If an agency is inactive for one (1) year the license shall be closed in good standing, unless the agency requests annually in writing that the license remains open. This request shall be approved by the CWARB.
18. The agency shall not permit, aid, or abet an unlicensed person to perform activities requiring a license.
19. The agency shall not misrepresent the type or status of education, training, expertise, licensure, or professional affiliations.

104 Central Registry & Criminal Record Checks

1. The agency shall conduct background checks as required by the Child Welfare Agency Licensing Act (§ 9-28-409) using forms approved by the Licensing Unit. Background checks conducted by or for other licensing authorities (e.g., Office of Long Term Care, Division of Developmental Services, et.al) do not meet the requirement of this standard.
2. The following persons in a child welfare agency shall be checked with the Child Maltreatment Central Registry in his state of residence, if available, and any state of residence in which the person has lived for the past six years, and in the person's state of employment, if different, for reports of child maltreatment:
 - a. Employees having direct and unsupervised contact with children;
 - b. Volunteers/student interns/visiting resources having direct and unsupervised contact with children;
 - c. Foster parents, house parents, and each member of the household age ten years and older, excluding children in foster care. These checks must be made prior to approval and shall be repeated every two years thereafter;
 - d. Adoptive parents, and each member of the household age ten years and older, residing in Arkansas, excluding children in foster care. Adoptive parents and each member of the household age ten years and older, excluding children in foster care, residing out of state shall provide Child Maltreatment Central Registry Checks from their state of residence, if available. These checks must be made prior to approval and shall be repeated annually thereafter until the adoption decree has been issued;
 - e. Owners having direct and unsupervised contact with children;
 - f. Members of the agency's board of directors having direct and unsupervised contact with children.
3. Persons required to have the Child Maltreatment Central Registry Check shall repeat the check every two years, except that adoptive parents, and each member of the household age ten years and older, shall repeat the check, if available, every year until the adoption decree has been issued.
4. Any person found to have a record of child maltreatment shall be reviewed by the owner or administrator of the agency, in consultation with the Child Welfare Agency Review Board or its designee, to determine corrective action. Corrective action may include, but is not

limited to, counseling, training, probationary employment, non-selection for employment, or termination.

5. The following persons in a Child Welfare Agency shall be checked with the Identification Bureau of the Arkansas State Police for convictions of offenses listed in Arkansas Code Annotated **9-28-409**:
 - a. Employees having direct and unsupervised contact with children;
 - b. Volunteers/student interns/visiting resources having direct and unsupervised contact with children;
 - c. Foster parents, house parents, and each member of the household age eighteen (18) years and older, excluding children in foster care. The foster parents shall certify in writing that household members age 10 thru 17 do not have criminal records;
 - d. Adoptive parents and each member of the household age eighteen (18) years and older residing in Arkansas. Adoptive parents and each member of the household age eighteen (18) years and older residing out of state shall provide State Police Criminal Record Checks from their state of residence, if available. The out of state adoptive families do not need to do an Arkansas State Police Check if they have never resided in Arkansas;
 - e. Owners having direct and unsupervised contact with children;
 - f. Members of the agency's board of directors having direct and unsupervised contact with children.
6. If any person (listed in #5 above) has not resided in Arkansas continuously for the past six years, a record check with the Federal Bureau of Investigation shall be completed. (These record checks are not required for international adoptions as background checks are already part of USCIS requirements for adoption.) Adoptive parents residing outside of Arkansas who have lived in their state of residence continuously for the past six (6) years do not need to do the FBI checks.
7. A child in the custody of the Department of Human Services shall not be placed in an approved home of any foster parent or adoptive parent unless all household members eighteen (18) years of age and older, excluding children in foster care, have had a fingerprint-based criminal background check performed by the Federal Bureau of Investigation.
8. All persons required to be checked with the Department of Arkansas State Police under this subsection shall repeat the check at a minimum of every five (5) years, except that adoptive parents who reside in Arkansas shall repeat the check every year pending court issuance of a final decree of adoption, at which point repeat checks shall no longer be required.
9. A child in the custody of the Department of Human Services shall not be placed in an approved home of any foster parent or adoptive parent unless all household members eighteen (18) years of age and older, excluding children in foster care, have been checked with the Identification Bureau of the Department of Arkansas State Police at a minimum of every two (2) years.
10. Child Maltreatment Central Registry Checks and Arkansas State Police/FBI Criminal Record Checks shall be initiated within ten days of employment.

11. The agency shall maintain on file evidence that background checks have been initiated as required and results of the checks.
12. No person guilty of an excluded criminal offense pursuant to ACA§9-28-409(e)(1) shall be permitted to have direct and unsupervised contact with children, except as provided in the statute.
13. A child welfare agency shall immediately notify the Licensing Unit when a person(s) listed in #5 above is found to have a record of an excluded criminal offense.

105 General Personnel Requirements

All personnel employed on or after April 12, 1999 shall meet the following requirements:

1. The Administrator, Social Services Director, and each caseworker of a child welfare agency shall have twenty-four (24) hours of job-related continuing education each year.
2. All Owner/operators, employees, foster parents, or volunteers in a child welfare agency shall be responsible for ensuring the proper care, treatment, safety, and supervision of the children they supervise.
3. All Owner/operators, employees, foster parents, or volunteers in a child welfare agency shall not engage in behavior that could be viewed as sexual, dangerous, exploitative, or physically harmful to children.
4. Documentation verifying annual training shall be a certificate, letter, or signed statement of completion that is dated and indicates the number of hours, the name of the source, and topic/title.
5. The agency shall maintain a personnel file for each employee, which shall include
 - a. A resume or application;
 - b. Date of hire;
 - c. Verifications of qualifications;
 - d. Documentation of required annual training;
 - e. Criminal Record Check and Child Maltreatment Central Registry Check information as required by law;
 - f. Documentation that applicable employees are informed that they are mandated reporters of suspected child maltreatment, according to A.C.A § 12-18-402, and are provided the information needed to make a report;
 - g. A functional job description;
 - h. At least three (3) positive personal references.

106 Administrator

1. Each agency shall have an Administrator who shall be responsible for the general management of the agency.
2. The Administrator shall possess at least one of the following qualifications [Only “a” and “b” meet requirements for Psychiatric facilities]:
 - a. A doctorate degree;
 - b. A master’s degree in a human services field (child development, psychology, sociology, social work, guidance and counseling, divinity, education) or in administration, business, or a related field;
 - c. A bachelor’s degree in a human services field or in administration, business, or a related field, and at least two (2) years of work experience in a human services agency.

107 Social Services Director

1. The agency shall have a Social Services Director who shall supervise child placement activities and/or casework services by the agency.
2. The Social Services Director shall possess at least one of the following qualifications:
 - a. A master’s degree or higher in a human services field (child development, psychology, sociology, social work, counseling and guidance, divinity, education);
 - b. A bachelor’s degree in a human services field and two (2) years of work experience in a child welfare agency.
3. Anyone permitted to supervise child placement or casework services shall meet the qualifications for Social Services Director.

108 Caseworkers

1. Each agency shall assign a caseworker to each child who is responsible for doing assessment, case planning, and casework services.
2. Caseworkers shall have a bachelor’s degree in a human services field, or a bachelor’s degree and two (2) years work experience in a human services field.
3. If casework services are contracted, the agency shall maintain all required personnel information on the contracted caseworkers.
4. A caseworker shall not have more than twenty-five (25) children’s cases at a time.

109 Volunteers & Student Interns

1. Each agency shall have a policy clearly defining the qualifications, duties, and supervision of volunteers and student interns.
2. Volunteers and interns shall be supervised by an appropriate and designated staff person.

3. A volunteer or intern who works unsupervised and substitutes as staff shall meet the qualifications required for a paid employee in that position.

110 Exploitation of Children

1. The agency shall not require a child to acknowledge dependency, destitution, or neglect or to make public statements about his/her background.
2. The agency shall not use or allow to be used, any reports, pictures, or any other information from which a child can be identified, except under the following conditions:
 - a. The child and the parent/guardian sign a consent form that describes the purposes for which the identification is being made;
 - b. The signed consent shall say in which publication or broadcast the identification will appear;
 - c. The parent/guardian and child shall be informed that the consent may be withdrawn.
3. All information regarding children and their families shall be kept strictly confidential and may only be released with the consent of the child or parent/guardian, except to authorized persons or agencies.

111 Ethical Standards

The Arkansas Child Welfare Agency Review Board sets forth this section as a Code of Ethics/Standards for Practice for all child welfare agencies within the State of Arkansas that place children in adoptive or foster homes pursuant to A.C.A. 9-28-401. Violations shall be grounds for disciplinary action.

1. **Confidentiality:** In providing services, a child placement agency must safeguard information given by clients. A child welfare agency must obtain the client's informed written consent before releasing confidential information, except when consent to disclose is permitted by law or required by judicial order. If the client is a minor, then the written consent shall be made with the minor and their legal representative or guardian.
2. **Responsibility:** A child welfare agency must provide a clear, written description of what the client may expect in the way of services, reports, risks, fees, billing, estimated schedules and grievance procedures.
3. **Misrepresentation:** A child welfare agency must not misrepresent its program services or experience.
4. **Client Relationships:** Relationships with clients must not be exploited by the child placement agency staff for personal gain.

Unprofessional conduct in the practice of child welfare activities shall include, but not limited to the following:

1. Violations of the Child Welfare Agency Licensing Act or the Regulations published by the Child Welfare Agency Review Board.
2. Permitting, aiding, or abetting an unlicensed person to perform activities requiring a license.
3. Misrepresenting type or status of education, training, expertise, licensure, or professional affiliations.
4. Failing to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of services.
5. Violating the ethical standards adopted by the Board.
6. Failing to report to the Board any disciplinary action taken against the child welfare agency by another licensing jurisdiction or failing to report to the board the surrender of a license or authorization to practice child placement activities in another jurisdiction.
7. Failing to comply with any stipulation or agreement with the Board involving probation or a settlement of any disciplinary matters.
8. Engaging in sexual behavior with a client.

200 Child Placement Agencies: Foster Care

In addition to all standards in Section 100, the following standards shall be met:

201 Admission

1. Each child welfare agency shall establish written criteria for admitting/excluding children.
2. The agency shall not admit any child for whom the agency cannot provide adequate care.
3. Each child shall have a medical exam no more than sixty days before admission, or scheduled within one (1) week of admission.
4. Age-appropriate immunizations shall be current or scheduled within one (1) week of admission.
5. The child placement agency shall obtain written authority from the parent(s), guardian(s), or court before placement, or within 72 hours if an emergency placement.
6. The agency shall obtain written authority for medical care for the child from the parent(s), guardian(s), or court at the time of placement, or within 72 hours in an emergency placement.
7. The agency shall comply with the Interstate Compact on the Placement of Children when placing/admitting children from outside Arkansas.

202 Intake & Assessment

1. An intake study shall be completed on each child in care within ten (10) working days after admission.
2. The intake study shall include the following information from the parent, guardian, custodian, previous placement, or from the child when no other sources of information are available:
 - a. Demographic information on the child and parent(s), including name, address, birth date, sex, race, and religious preference;
 - b. A factual description of the circumstances requiring placement;
 - c. A brief social history of the family;
 - d. The child's current legal status/custody;
 - e. Any history of previous placements outside the family, if applicable;
 - f. An assessment of services needed to ensure the health and welfare of the child, including medical history and psychological history.

203 Case Planning

1. A case plan shall be developed for each child placed into a foster home by a child placement agency. The plan shall address the child's needs as identified in the intake study.
2. When a placement agency places a child with another placement agency the receiving agency shall develop a case plan for each child received for care.
3. The case plan shall be developed within thirty days after placement.
4. The case plan shall be developed after a staffing. If applicable, the parents, foster parents, facility staff, caseworker, social worker or probation officer, and the child shall be invited to the staffing.
5. The child's case plan shall contain, at the minimum:
 - a. Specific needs of the child;
 - b. Plan for meeting child's needs;
 - c. Special treatment issues (e.g., psychotropic medications, sexual misconduct, neurological disorders) shall be identified, with a statement of how the special needs shall be met;
 - d. A plan to ensure that the child's educational needs are met according to state law;
 - e. Visitation plan, if applicable;
 - f. Date of next review of the case plan, if applicable.
6. A copy of the case plan shall be made available to the parent(s), guardian(s), court, or other agencies involved in case plan services delivery.
7. The case plan shall be reviewed at least semi-annually, and shall be updated to reflect the child's progress.
8. If independence is a goal, the case plan shall include training in independent living skills.

204 Children's Records

1. The agency shall keep a confidential case record for each child that includes the following:
 - a. Demographic information;
 - b. Plan of safe care/protection, if applicable;
 - c. A complete intake study;
 - d. Consents, including consent for medical care and authority to place the child;
 - e. Interstate Compact information, if applicable;
 - f. Case plans and case plan reviews;
 - g. Copies of legal documents (e.g., birth certificate, social security card, court orders), or shall document their attempts to obtain the documents;

- h.** Physical exams and immunization records, or shall document their attempts to obtain the documents;
 - i.** Psychological reports, if applicable;
 - j.** Educational reports, if applicable;
 - k.** Disciplinary and incident reports;
 - l.** Progress reports;
 - m.** Records of visitation and family contacts, if applicable;
 - n.** Documentation of casework services and client contact, current to within one (1) month of occurrence;
 - o.** Discharge summary.
- 2.** Records for each child shall be kept for five (5) years from the date of discharge, unless otherwise specified by Arkansas law.
- 3.** A plan of safe care/protection shall be documented for all children with physical limitations, medical conditions, or behaviors that are indicative of harm to self or others; to include, but not limited to: arson, physical/sexual aggression, and/or suicidal or other self harming tendencies. This plan shall identify the behavior/problem, and shall specify the safeguards that are to be implemented. A copy of the plan shall be provided to the direct caregiver(s), as well as a copy placed in the child's case file.

205 Behavior Management

- 1.** The agency shall have a written discipline policy that is consistently followed.
- 2.** Discipline shall be directed toward teaching the child acceptable behavior and self-control.
- 3.** Discipline shall be appropriate to the child's age, development, and history.
- 4.** The following forms of discipline shall not be used:
 - a.** Denial of meals, sleep, shelter, essential clothing, or case plan activities;
 - b.** Denial of parental visits or regular phone/mail contact with family. Non-disciplinary case planning issues are accepted;
 - c.** Lewd or obscene language;
 - d.** Derogatory comments about the child, the child's family, race, or gender;
 - e.** Restriction to a room for more than a short period of time without periodic observation;
 - f.** Locked isolation (psychiatric facilities excepted);
 - g.** Physical injury or threat of bodily harm;
 - h.** Humiliating or degrading action;
 - i.** Extremely strenuous work or exercise;
 - j.** Mechanical/chemical restraints (psychiatric facilities excepted).

5. Physical restraint shall be initiated only by trained staff, and only to prevent injury to the child, other people or property, and shall not be initiated solely as a form of discipline.
6. A child shall not be allowed to administer discipline, except teen parents may discipline their own children.
7. Searches of a child or a child's personal property shall be for reasons limited to safety and security of children and staff, or in cases of suspected theft.
8. Any searches requiring removal of clothing shall be done in privacy, and except in foster homes, shall be witnessed by two (2) staff of the same sex as the child.

206 Discharge

1. The agency shall discharge a child when the case planning team decides that the child is no longer in need of services or can no longer benefit from services provided by the agency.
2. Except in the case of an emergency discharge, the discharge shall be planned by appropriate agency staff, parent(s), child, and any agency that will offer post-discharge services.
3. The agency may discharge a child on an emergency basis if failure to do so could result in harm to the child, other persons, or significant property damage.
4. A child shall be discharged to the custody of the child's parent or a person with authorization from the parent, guardian or a person authorized by court order to assume custody of the child.
5. The agency shall complete a discharge summary on each child and provide a copy of it to the child's custodian.

207 Content of the Home Study

The home study shall include the following information:

1. The agency shall complete a home study for each foster home applicant.
2. The agency shall conduct at least two (2) visits in person with the foster parent applicants, including at least one (1) visit to the home, and shall interview every age-appropriate member of the household.
3. Motivation: The individual's motivation for becoming foster parents.
4. Household Composition: The full legal names of everyone residing in the home, birth dates, relationships to one another, and a brief physical description.
5. Housing: Address and location, type of structure, length of time at residence, upkeep and housekeeping standards, future residence plans, and sleeping arrangements.
6. Safety Hazards: An assessment of the safety of the home and grounds including water hazards, swimming pools, hot tubs, dangerous pets, and other hazardous items/areas.

7. **Income and Expenses:** Employment history for the last six years (duration, salary, duties/title, degree of job security, hours), other sources of income, monthly living expenses, outstanding debts, and insurance.
8. **Health:** Current health of each family member, prior illnesses or medical problems, disabilities, clinic or doctor utilized and frequency of use, counseling (when and purpose), and hospitalization for alcohol abuse, drug abuse, or mental illness.
9. **Education:** Parents' educational attainment, future educational plans, parenting classes attended.
10. **Childcare Arrangements or Plans:** Current arrangement or proposed arrangement as it relates to their working hours and income.
11. **Child Rearing Practices:** Purpose of behavior management, behavior guidance practices, how they show affection, how they handle stress, allowance, chores, and homework.
12. **Daily Schedule**
13. **Social History:** Highlights and verification regarding action of marriages and divorces, children, relationships' support system, future plans, any significant extended family members not living in the home, and any significant personal, developmental, personality or legal problems.
14. **Family Activities:** Religious interests, social organizations, activities with children, and family roles.
15. **Impressions, Conclusions and Recommendations:** Evaluate the family's situation and ability to provide for a child based on the information obtained during the home study.
16. **Approval:** If the agency approves the foster parent(s), the agency shall specify in the home study the number, age, sex, and other characteristics of children for whom the home is approved to provide care.

208 Approval of Foster Homes

1. A foster home can be approved only by one (1) agency.
2. At least three (3) confidential positive personal references must be obtained on the foster family.
3. Each member of the foster family shall have a physical exam within six (6) months before the initial approval.
4. The agency shall ensure that the foster parents receive at least 10 hours of pre-service training (excluding CPR and First Aid) before placing a child in the home.
5. In addition to the required hours of pre-service training, the foster parent(s) shall have current CPR and First Aid training. A foster home shall not have a child placed in their care until they have received the CPR and First Aid training.
6. Foster parents shall provide documentation that they carry homeowner's or renter's insurance and general liability insurance.

7. Foster homes shall not also operate as Child Care Family Homes.
8. Foster homes shall not provide compensated care for any non-related adults, unless providing transitional care for a person placed in care prior to age eighteen (18).
9. There shall be an annual approval letter from the approving agency in the foster home record.
10. A provisional foster home means a foster home opened for no more than six (6) months by the Division of Children and Family Services of the Department of Human Services or any Licensed Agency, on a relative of a child in the custody of the division /or agency after the division or agency:
 - a. Conducts a health and safety check, including a central registry check and a criminal background check or check with local law enforcement on the relative's home; and
 - b. Performs a visual inspection of the home of the relative to verify that the relative will meet the standards for opening a regular foster home.

209 Foster Parent Qualifications

1. In a two-parent home, both shall be joint applicants, each sign the application, and participate in the approval process.
2. Foster parents shall be at least twenty-one (21) years of age.
3. The stability of the foster family shall be evaluated and determined to be appropriate.
4. Foster parents shall be physically, mentally, and emotionally capable of caring for children.
5. The foster family shall provide documentation of sufficient financial resources to meet their needs.
6. All members of the household older than twelve (12) years shall receive a skin test for tuberculosis in accordance with the guidelines set forth by the Arkansas State Health Department, as long as test results remain negative. A household member with a positive skin test must provide documentation from a physician every two years certifying that he/she is free from communicable tuberculosis.
7. All children in the household shall have proof of current health immunizations in accordance with the Arkansas Department of Health.
8. When routine child care is needed, foster children shall attend licensed child care or have a caregiver approved by the agency.

210 Physical Requirements of the Home

1. The foster home shall be accessible to community resources needed by foster children.
2. The foster home shall be clean and free of hazards.

3. The foster home shall have a continuous supply of sanitary drinking water. If the source is not a municipal water system, the water must be tested and approved by the Arkansas Department of Health annually. This approval shall be kept in the foster home case record.
4. The foster home shall have at least one (1) flush toilet, one sink with running water, and one bath or shower with hot and cold running water.
5. There shall be operational smoke detectors within ten (10) feet of the kitchen and each bedroom.
6. There shall be an operational chemical fire extinguisher in the cooking area of the home.
7. The foster parents shall practice and document emergency evacuation drills with each new child entering the home, and at least quarterly thereafter.
8. All heating units with hot external areas shall be screened or otherwise shielded.
9. The home shall have at least two (2) exterior doors situated to provide safe exit or the home shall have a written statement from the Fire Department that the alternative escape route is approved. This approval shall be kept in the foster home case record.
10. The home shall have an operational telephone. Working cell phones kept on the premises are acceptable. The phone shall be accessible for children.
11. Each child shall have adequate space for storing clothing and personal belongings.
12. All household pets shall have proof of current rabies vaccinations as required by Arkansas law.
13. All firearms shall be maintained in a secure, locked location or secured by a trigger lock.
14. The foster home record shall contain an agency approved safety plan for any noted hazards. The safety plan shall be signed by all caregivers in the foster home and an agency representative.
15. A current floor plan of the home with room dimensions for all areas/rooms used for sleeping shall be in the foster home record.
16. Manufactured homes, used as foster homes, shall have an agency approved safety plan for tornado safety.

211 Sleeping Arrangements

The home shall provide bedrooms for children that meet the following requirements:

1. Each bedroom shall have at least fifty (50) square feet of floor space per occupant.
2. Each bedroom used for foster children shall have a window to the outside which is capable of serving as an emergency escape.
3. Bars, grilles, grates, or other items that block access to the window are permitted only if they can be removed from the inside without the use of a key, tool, or force greater than that required for normal operation of the window. In this event, each such bedroom must have a working smoke detector in the bedroom.

4. No more than four (4) children shall share a bedroom.
5. Each foster child shall be provided with a comfortable bed, in good condition.
6. Children of the opposite sex shall not share the same bedroom if either child is four (4) years old or older, except for a mother in foster care with her child.
7. No children shall share a bed if either child is four (4) years old or older.
8. No child under age six (6) years shall occupy a top bunk.
9. Foster children, except infants under age two (2) years, shall not share a sleeping room with adults; this age would increase to age four (4) in case of a grandparent to the child.
10. Each foster child shall be provided with clean bedding, in good condition, that shall be laundered at least weekly, or as needed.

212 Transportation

1. Foster families shall have their own transportation available.
2. Any vehicles used to transport foster children shall be maintained in compliance with motor vehicle laws, and be insured.
3. Foster parents and anyone else, transporting foster children shall have a valid driver's license.
4. Children shall be transported according to Arkansas law, including, but not limited to, use of safety belts, child safety seats, and smoking restrictions.

213 Medications

1. Foster parents shall administer medications only in accordance with directions on the label.
2. All over the counter medications shall be stored in an area not readily accessible to children, and all prescription medications shall be locked.
3. Foster parents shall be aware of possible side effects of all medications administered to foster children.
4. All medication shall be logged by the foster parent at the time the medication is administered.
5. The medication logs shall include:
 - a. Child's name;
 - b. Time and date;
 - c. Medication and dosage;
 - d. Initials of the person administering the medication.
6. It is permissible for an age-appropriate child to be provided a daily supply of medication (over-the-counter or prescription) for use when the child is away from the foster home during times the dose is needed. Examples include pain relievers, fever reducers and anti-

inflammatory and other related medications, or prescribed antibiotics or inhalers. These medications shall be logged at the time they are given to the child.

214 Selection of Foster Home

1. The agency shall select the home that is in the best interest of the child, the least restrictive possible, and is matched to the child's physical and emotional needs. The placement decision shall be based on an individual assessment of the child's needs.
2. No children shall be placed in a foster home unless there is an approval letter in the record from the approving agency.
3. The agency shall place children only in approved foster homes.
4. When a placement agency places a child with another placement agency the receiving agency shall maintain a record for and provide casework services to the children placed into their foster homes.
5. Foster homes shall not have more than five unrelated children in care. The foster home may care for up to eight children if they are all related to each other. A foster home shall not have more than eight children in their home, including their own children. This includes placement or respite care.

For example:

0 children of the foster parent and 8 children that are related (to each other)

1 child of the foster parent and 7 children that are related (to each other)

2 children of the foster parent and 6 children that are related (to each other)

3 children of the foster parent and 5 children that are related (to each other) or unrelated

6. Foster homes shall not have more than two (2) children under the age of two (2) years, including the foster parent's own children.
7. No new placements of children shall occur with foster parents who have not satisfied the annual training requirements. Administrative-level staff, designated by the agency Director, may grant an exemption to this restriction for up to sixty (60) days. The administrator shall review the quality of care provided by the foster parents, and the reasons for failing to complete the training on time, in deciding whether to grant an exception.

215 Continued Training of Foster Parents

1. Each foster parent shall obtain at least fifteen (15) hours of training each year after the first year. This does not apply to foster parents for infants in short term foster care awaiting adoptive placement. Such foster parents shall obtain ten (10) hours of training for the primary care giver and five (5) hours of training for the secondary care giver each year.
2. Documentation verifying annual training shall be a certificate, letter, or signed statement of completion that is dated and indicates the number of hours, the name of the presenter, and topic.

3. Each foster parent shall maintain current CPR certification and First Aid training.

216 Responsibilities of Foster Parents

1. Foster Parents shall be responsible for providing the level of supervision, care, and treatment necessary to ensure the safety and well being of each child placed into their home, taking into account the child's age, individual differences and abilities, surrounding circumstances, hazards and risks.
2. Foster parents shall provide regular activities to promote the physical, social, intellectual, spiritual, and emotional development of the children in care.
3. Foster parents shall provide each child their own clothing that is clean, well-fitted, seasonal, appropriate to age and sex, and comparable to community standards.
4. Foster parents shall allow foster children to acquire and keep personal belongings.
5. Foster parents shall fully cooperate with the child placement agency's case plan for each foster child, including visitation.
6. Foster parents shall provide routine transportation for each child.
7. Foster parents shall participate in case planning and case plan reviews.
8. Foster parents shall attend school conferences concerning a foster child, and shall notify the placing agency of any situations that may affect the case plan or require agency involvement.
9. Foster parents shall notify the child placement agency promptly of serious illness, injury, or unusual circumstances affecting the health, safety, or welfare of the foster child.
10. Foster parents shall cooperate with the child placement agency and the Licensing Unit in conducting inspections and investigations, and shall provide information required to verify compliance with rules.
11. Foster parents shall maintain absolute confidentiality of private information about each foster child and the birth family.
12. The foster parents shall give advance notice to the agency of any major changes that affect the life and circumstances of the foster family, including a change of residence, whenever possible.
13. Foster parents shall keep for each foster child:
 - a. Periodic photographs of the child;
 - b. A record of the child's memberships, activities, and participation in extracurricular school or church activities;
 - c. trophies, awards, ribbons, etc.

217 Monitoring & Re-evaluation

1. The agency shall monitor the foster home at least quarterly for continued compliance with licensing standards for foster homes. This does not apply to foster homes for infants in

short term foster care awaiting adoptive placement. Before a child can be placed in such a foster home, a monitoring visit shall be done within the three (3) months prior to placement. An annual re-evaluation is required.

2. The child placement agency shall conduct an annual re-evaluation of the foster family home. Any foster home that does not substantially comply with the standards for approval shall not be approved for placement until compliance is achieved.
3. If the foster family experiences any major life changes (e.g., marriage, divorce, separation, health problems, death, change of residence, change of household composition), the child placement agency shall re-evaluate the home at that time.
4. The agency shall keep documentation of quarterly monitoring visits and annual re-evaluations in the foster home record signed and dated by the person conducting the visit and the foster parent.

218 Visitation

The standards in 218 do not apply to children in short term foster care awaiting adoptive placement.

1. The agency that has legal responsibility for the child shall develop a visitation plan that specifies when and how visits will occur between the child and the parents.
2. The child placement agency shall carry out the visitation plan to meet the terms of the plan.
3. Foster parents shall allow foster children and their families to communicate according to the child's case plan.

219 Agency Responsibilities

1. The agency shall provide the foster parents with the information necessary to provide adequate care to each foster child, including the child's health, reason for entering care, probable length of placement, and siblings. As additional information is obtained by the caseworker, it shall be promptly shared with the foster parents.
2. The agency shall provide foster parents with instructions for contacting agency personnel any time.
3. An agency caseworker shall visit the child in person at least monthly while the child is in foster care.
4. The agency shall ensure that each child in foster care has a medical exam at least annually.
5. Foster parents shall be included in case planning for each child, and shall be provided a copy of the current case plan and visitation plan.
6. The child placement agency shall remain legally responsible for the supervision and decision making regarding foster children. Foster parents have daily responsibility for the care of the children.
7. The child placement agency shall have a written plan that provides for timely reimbursements to foster parents for costs of care and fees for services.

8. The agency shall develop policies that address the following types of care:
 - a. **Babysitting:** Foster parent identified, taking place in the foster home for no more than 6 continuous hours of occasional care. Transportation of the foster children is prohibited. Background checks on these individuals are not required;
 - b. **Foster Family Support System:** Identified individuals that provide no more than 72 hours of continuous care, longer periods require approval from the agency. Documentation of Arkansas State Police Criminal Record Checks, Child Maltreatment Central Registry Checks and at least one (1) home visit for evaluation purposes are required. The agency shall be notified when child is with the foster family support system. This shall not be used in place of respite care or as a placement;
 - c. **Alternative Caregiver/Respite:** An agency identified approved foster home that provides care for no more than 14 continuous days.
9. If the child placement agency receives a report of non-compliance with licensing standards, the agency shall investigate to learn if the foster home remains in compliance. A report of findings and any corrective action shall be maintained in the foster home record. The investigation shall be completed within 60 days of receiving the report of non-compliance, unless good cause is documented.
10. The agency shall approve respite care and babysitting arrangements, and documentation shall be kept in the foster home record.
11. The agency shall maintain a record for each foster family that contains all information and documentation required by licensing standards. To include:
 - a. Complete and signed application;
 - b. Approval letter;
 - c. Home Study;
 - d. Minimum age verification;
 - e. 3 positive references;
 - f. Marriage license, if applicable;
 - g. Initial physical exam;
 - h. Pre-service training verification;
 - i. Initial and current criminal, Child Maltreatment, and FBI checks, as required;
 - j. Initial and current CPR and First Aid certification;
 - k. Current health immunizations of children;
 - l. Current T.B. test;
 - m. Current auto insurance;
 - n. Current homeowner's or renter's insurance and general liability insurance;
 - o. Current rabies vaccinations for household pets as required by law;

- p. Documentation of annual training;
 - q. Safety plans;
 - r. Floor plan;
 - s. Approved annual water system test, if applicable;
 - t. Approved alternative fire escape route, if applicable;
 - u. Documentation of quarterly monitoring visits;
 - v. Documentation of annual re-evaluations;
 - w. Reports of non-compliance with licensing standards including findings, and any corrective actions;
 - x. Closing summary.
12. The agency shall prepare a closing summary, including reasons, if the home closes.
 13. The agency shall promptly notify the Arkansas office of the Interstate Compact on the Placement of Children upon discharging a child from outside Arkansas.

220 Branch Offices

Any Child Placement Agency licensed in Arkansas, shall provide the following information to the Licensing Unit prior to opening a branch office:

1. The address, telephone numbers (if available), and office hours for the branch office;
2. The name(s), qualifications, and contact information of the person(s) responsible for the day-to-day operation of the branch office and the child-placement activities at the branch;
3. The name and contact information of the person responsible for providing services in case of emergencies or child-placement crises.

300 Child Placement Agencies: Therapeutic Foster Care

In addition to all requirements in Section 100 and Section 200, the following standards shall be met in order to be licensed as a Therapeutic Foster Care Agency:

301 Therapeutic Foster Home Capacity

1. The number of children placed into one therapeutic foster home shall not exceed two (2), except to keep a sibling group together, in that case up to a maximum of three (3) children may be placed into the home. The sibling group shall be the only children placed into the therapeutic foster home. This includes placement or respite care. In the case of an emergency respite placement that would exceed capacity the agency shall notify the Licensing Unit the next business day.
2. Before placing more than one (1) child (therapeutic or otherwise) in a home, the agency shall consider extraordinary problems/needs of each child (e.g., violent behavior, sexual offenses, and seizure disorders). Justification of the appropriateness of placing a child in a home with another child shall be documented.
3. Non-therapeutic foster children may be placed into therapeutic foster homes under the following circumstances:
 - a. The non-therapeutic foster child is a sibling of the therapeutic foster child;
 - b. The non-therapeutic foster child is the child of the therapeutic foster child;
 - c. The non-therapeutic foster child was previously a therapeutic foster child placed in the foster home.
4. Before placing a non-therapeutic foster child into a therapeutic foster home with a therapeutic foster child, the agency shall consider the potential risk to the non-therapeutic foster child. Justification of the appropriateness of placing a non-therapeutic child in a home with another therapeutic foster child shall be documented. The agency shall maintain section 200 standards in reference to the non-therapeutic foster child's record and the services the agency provides to the child.

302 Staffing Requirements, Staff Training & Support

1. Primary responsibilities of program staff shall include treatment planning, leadership of the treatment team, case management, clinical and administrative supervision, twenty-four (24) hour crisis intervention, and discharge planning.
2. The therapeutic foster care agency shall employ a Clinical Director who shall be clearly responsible for implementation of treatment planning and service delivery. The Clinical Director shall be qualified by a master's degree in a human service field, shall have two years' experience in placement or treatment, and shall be a licensed mental health professional (as recognized by Arkansas Medicaid).

3. The therapeutic foster care agency shall employ at least one caseworker who shall coordinate the implementation of the treatment plan. The caseworker shall be qualified by a bachelor's degree in a human service field, or shall be a mental health paraprofessional, and shall be supervised by the Clinical Director.
4. All casework staff shall be trained in crisis prevention and intervention, CPR, and First Aid within the first sixty (60) days of employment.
5. All casework staff shall be provided with eight (8) hours of orientation, either prior to employment or within the first week of employment, which shall provide an overview of the following areas:
 - a. The agency's policies and procedures;
 - b. The client's rights, including confidentiality;
 - c. How to handle medical and non-medical emergencies;
 - d. The caseworker's clinical limitations;
 - e. How to document clinical information in the child's and family's records;
 - f. General information regarding commonly prescribed medications and their side effects.
6. The agency shall provide twenty-four (24) hour on-call crisis intervention support to supplement that provided by the caseworker.

303 Therapeutic Foster Parent Responsibilities

1. The therapeutic foster parents shall be provided with a written list of duties clearly detailing their responsibilities.
2. Therapeutic foster parents shall be responsible for implementing in-home treatment strategies specified in each child's treatment plan.
3. Therapeutic foster parents shall keep an ongoing written record of each child's behavior and progress toward treatment goals.
4. The physical health of the therapeutic foster parents shall be equal to the stress inherent in the care of special needs children, as evidenced by the physician's statement.

304 Therapeutic Foster Parent Training

1. Therapeutic foster parents shall be trained in crisis prevention and intervention before a child is placed in the home.
2. Prior to the placement of children in their home, therapeutic foster parents shall complete at least thirty (30) hours of skill-based pre-service training consistent with the agency's treatment methodology and the needs of the population served.
3. Each therapeutic foster parent shall complete at least twenty-four (24) hours of skill based training annually, excluding CPR and First Aid.

305 Medications

1. The agency shall have an intervention policy that is non-medical, unless a specific medical condition is indicated.
2. When psychotropic medications are prescribed by a physician they shall be used in concert with other interventions.

306 Service Delivery

1. The agency shall ensure that professional or casework staff visit with the child face-to-face at least once per week during the first three months after the child's placement with the agency, and at least every other week thereafter.
2. No caseworker shall be responsible for managing more than twelve (12) children's cases.
3. The agency shall have a written program description that is available to residents and parents/guardians. The following information shall be included:
 - a. Program philosophy and mission;
 - b. Services and treatment modalities;
 - c. Treatment planning procedures;
 - d. Behavior management program and expectations of each child;
 - e. Admission, exclusion, and discharge criteria;
 - f. Aftercare services.
4. The agency shall keep documentation that includes:
 - a. Prior treatment documents and intake information;
 - b. Assessments;
 - c. Master treatment plan;
 - d. Treatment plan review;
 - e. Ongoing observations;
 - f. Medication and physician's instructions, if applicable;
 - g. Progress notes.
5. If family involvement is contraindicated, the agency shall make reasonable efforts to identify acceptable substitutes and shall include them in the therapeutic process.
6. The agency shall establish procedures for hearing children's grievances, and shall ensure that each child understands the process.
7. The agency shall document information regarding the rate of reimbursement, including "difficulty of care" payments, paid to foster parents for each child placed in the foster home.

400 Child Placement Agencies: Adoptions

In addition to all standards in Section 100, the following standards shall be met:

401 Selection of Adoptive Home

1. The agency shall select the home that is in the best interest of each child, the least restrictive possible, and is matched to the child's physical and emotional needs. The placement shall be based on an individual assessment of each child's needs.
2. The agency shall place children only in approved adoptive homes. All adoptive homes shall be approved prior to placement.
3. The agency shall have an established fee schedule for adoption services. The agency is not required to charge the same fees for all adoptions, but a sliding fee schedule must have specified conditions and be equally applied. The fee schedule may take into consideration the income of the adoptive family and relevant factors such as children that are considered hard to place.
4. The agency must have a clear, written policy on refunds that is provided and explained to prospective adoptive parents during the application process.
5. The Adoption Agency must have a foster care license in order to place children in short-term foster care while awaiting an adoptive placement.

402 Approval Process of Prospective Homes

1. In a two-parent home, both shall actively participate in the approval process.
2. The agency shall ensure there is a completed home study for each prospective adoptive family to determine if they should be approved as an adoptive home.
3. The social worker or agency conducting the home study shall have at least two (2) visits in person with the prospective adoptive family during the initial approval process. One of the visits shall be in the home of the prospective adoptive family.
4. The worker shall have a separate, face to face interview with each prospective adoptive parent.
5. The caseworker shall interview each age-appropriate member of the household in person.
6. Each member of the adoptive household shall have a physical exam within six (6) months prior to the approval by the social worker or agency conducting the home study, and annually thereafter until placement to ensure that no person has a health condition or disability that would interfere with the family's ability to care for a child.
7. The agency shall notify applicants in writing within sixty (60) days of completion of the final home visit concerning the acceptance, reason for further delay, or denial of their application.

403 Contents of the Home Study

The adoptive home study shall contain the following information, current to within one (1) year prior to each adoptive placement: The home study shall be approved only by the social worker or agency conducting the home study.

1. The family's motivation for adoption and the desired characteristics of the child or children to be adopted.
2. Each family member's attitudes toward adoption.
3. Attitudes of the applicants toward the birth parents(s), including parent search issues.
4. Resolution of any infertility issues.
5. The mental health, emotional stability, and maturity of the applicants.
6. The physical health of all household members, including a physician's statement to the social worker or agency conducting the home study that a medical exam was performed.
7. The financial status and stability of the family, including proof to the social worker or agency conducting the home study of income and employment.
8. At least three (3) confidential personal references on the family. The references do not need to be updated unless this is a new adoption in the family or there have been significant changes.
9. The family's ability to cope with stress, loss, and crisis.
10. Adjustment and well-being of any minors residing in the home.
11. The family's child-caring skills and willingness to acquire additional skills.
12. The family's discipline practices.
13. Religious affiliation.
14. A description of the home, its location, and its environment.
15. An assessment of the safety of the home, including all water hazards, dangerous pets, and firearm safety. All firearms shall be maintained in a secure, locked location.
16. A statement in the home study narrative or an addendum that the adoptive parents report to the social worker or agency conducting the home study that they have or have not been denied approval as an adoptive home in the past, and if so, why.
17. A statement regarding the availability and results from criminal records and child maltreatment central registry checks, dated to within one (1) year prior to placement.
18. The stability of the adoptive family and their marriage, if applicable, shall be discussed and determined to be appropriate.
19. A recommendation regarding adoption, including the age, sex, characteristics, and special needs of children best served by this family.
20. If the adoptive family experiences any major life changes (e.g., marriage, divorce, separation, health changes, change of residence, change of household composition), the

social worker or agency shall re-evaluate the family prior to placement of a child. An additional home visit is required if there has been a change of residence.

404 Services to the Adoptive Parents

1. The agency shall provide services to the adoptive applicants to help them make an informed decision about adoption.
2. The agency shall provide a written statement of exclusion (e.g., single parents, unwed couples), if applicable, to adoptive applicants before a home study is conducted.
3. The following information (if available) shall be provided to adoptive parents regarding the child being considered for adoption:
 - a. Specific and accurate information about the needs and characteristics of the child.
 - b. The health/medical history of the child and the child's biological family.
 - c. The health status of the child at the time of placement.
 - d. Genetic and social history of biological relatives, including:
 - Medical history;
 - Health status, if alive;
 - Cause of and age at death, if deceased;
 - Height, weight, eye and hair color;
 - Levels of education and professional achievement;
 - Ethnic origins;
 - Religion.
4. The agency caseworker shall ensure that at least two (2) face to face post-placement visits are made within six (6) months after the placement of the child. One of the visits shall be in the home of the adoptive family.
5. The agency shall have a plan for caring for children in case the placement disrupts before the issuance of a decree of adoption.
6. The agency shall offer supportive services to the adoptive family for at least six (6) months following placement.

405 Services to Birth Parents

If the agency is providing casework services to either birth parent, the following services shall be offered:

1. An intake study completed within thirty (30) days after the client's decision to work with the agency.
2. Counseling for both parents (if applicable) that shall include the following:

- a. Information, rights, options, and obligations regarding the adoption process;
 - b. Issues related to grief and loss.
3. Financial assistance to the birth mother may only be provided during the time of the pregnancy and after the pregnancy during the time the birth mother requires inpatient or outpatient postpartum care. This does not apply to future social services provided by an agency that offers a broader range of services other than adoptions.
 4. All financial assistance to the birth mother must be documented, including the amount and purpose of payment. This documentation must be maintained in the individual file of the birth mother.

406 Birth Parent Records

The agency may elect to keep birth parent records and the child's records in the same file. If the agency has provided casework services to the birth parents, the following information shall be kept in a confidential file:

1. The parents' case plan, including any reviews/updates;
2. All correspondence with the birth parents;
3. All signed documents between the agency and the birth parents;
4. Documentation of all casework services provided before and after the adoption, current to within one (1) month of occurrence.

407 Agency Responsibilities

1. The agency shall provide written policy that includes a complete description of all types of the birth mother's expenses that may be passed through to the adoptive parents. The policy shall include notice to the adoptive parents that they may be responsible for unforeseeable medical and legal expenses.
2. The agency must inform the adoptive parents in writing that a birth mother may choose not to relinquish a child for adoption, including the applicable postpartum period during which the birth mother may withdraw her consent for placement of a child.
3. Agencies shall apprise prospective adoptive parents in writing that any financial assistance given to the birth parent(s) is not recoverable if the birth parent(s) should decide not to complete an adoption plan. The only exception is if intent to defraud the prospective adoptive parents can be proven.
4. If the agency closes or ceases to provide adoption services, all adoption records including adoptive parents, birth mother (if applicable), and children placed shall be transferred to a licensed adoption agency by written agreement.
5. The closing agency shall provide written notification to the Placement and Residential Licensing Unit regarding the transfer of records.

408 Adoptive Family Records

The agency shall keep a confidential case record for each family that received a child for adoption. The record shall contain:

1. The application to adopt;
2. The completed home study;
3. Criminal Record checks and Child Maltreatment Central Registry checks;
4. A copy of the information given to the adoptive parents regarding the child they received;
5. Copies of all legal documents concerning the adoption.

409 Record Maintenance

1. The agency shall maintain a permanent file on any adoption finalized, which shall be accessed according to Arkansas law.
2. If the agency establishes or contracts with a Mutual Consent Voluntary Adoption Registry, it shall be maintained according to Arkansas law.

410 Branch Offices

Any agency licensed in Arkansas, shall provide the following information to the Licensing Unit prior to opening a branch office in Arkansas:

1. The address, telephone numbers (if available), and office hours for the branch office;
2. The name(s), qualifications, and contact information of the person(s) responsible for the day-to-day operation of the branch office and the child-placement activities at the branch;
3. The name and contact information of the person responsible for providing services in case of emergencies or child-placement crises.

500 Child Placement Agencies: Residential

In addition to all applicable standards in section 100 the following standards shall be met:

1. The agency shall select the placement that is in the best interest of the child and is matched to the child's physical and emotional needs, based on an individual assessment.
2. A child placement agency shall only place a child into a licensed or exempt facility; documentation of current license is required for any out-of-state placement.
3. The agency shall maintain a record of all placements.

600 Residential Child Care Facilities

In addition to all standards in Section 100, the following standards shall be met:

601 Admission

1. Each child welfare agency shall establish written criteria for admitting/excluding children.
2. The agency shall not admit any child for whom the agency cannot provide adequate care.
3. Each child shall have a medical exam no more than sixty days before admission, or scheduled within one (1) week of admission.
4. Age-appropriate immunizations shall be current or scheduled within one (1) week of admission.
5. The residential childcare facility shall attempt, and shall document their attempts, to obtain written verification of the placing agents authority to place the child at the time of admission, or within five (5) working days if an emergency placement.
6. The agency shall obtain written authority for medical care for the child from the parent(s), guardian(s), or court at the time of placement, or within 72 hours in an emergency placement.
7. The facility shall establish that all persons referred for admission are under the age of eighteen (18) years at the time of admission. Residents may remain in the program after reaching age eighteen (18) years with the reason for continued placement documented. The resident must be discharged no later than his/her twenty-first (21) birthday.
8. The facility shall admit a child under age five (5) years only if that child is a part of a sibling group of whom one child is age five (5) years or older, or if it is the summer before the child is eligible to enter kindergarten. Exception is also made for the infant child of a mother who is admitted to the facility.
9. Emergency shelters may admit children under age five (5).
10. Emergency shelters may admit children for a maximum of ninety (90) days. Any child admitted as an emergency placement shall be designated as such and must be discharged within 90 days or admitted as a regular placement.
11. At the time of an emergency admission the following information must be documented in the child's record:
 - a. Name, signature and role or relationship of the person who relinquished the child into care;
 - b. A brief description of the circumstances requiring the emergency admission;
 - c. The date and time of the admission;
 - d. A brief description of the child's history (if known) including behavioral history;
 - e. Any known medical history and known current health conditions;

- f. All medications currently prescribed for the child (if known and available);
 - g. The child's current behavior or known emotional condition.
12. When a child under the age of five (5) years is in care, the facility shall evaluate the continued appropriateness of the placement every ninety (90) days and document the evaluation in the child's record.
 13. Facilities that have an adult program shall provide sleeping, living, transportation, and dining arrangements to ensure separation of adults from children.
 14. If a facility has been inactive for more than six (6) months, the Licensing Unit shall be notified before children are taken into care.
 15. If a facility becomes inactive, the Licensing Unit shall be notified within 30 days.

602 Intake & Assessment

1. An intake study shall be completed on each child in care within ten (10) working days after admission.
2. The intake study shall include the following information from the parent, guardian, custodian, previous placement, or from the child when no other sources of information are available:
 - a. Demographic information on the child and parent(s), including name, address, birth date, sex, race, and religious preference;
 - b. A factual description of the circumstances requiring placement;
 - c. A brief social history of the family;
 - d. The child's current legal status/custody;
 - e. Any history of previous placements outside the family;
 - f. An assessment of services needed to ensure the health and welfare of the child, including medical history and psychological history.

603 Case Planning

1. A case plan shall be developed for each resident received for care by a residential facility. The plan shall address the child's needs as identified in the intake study.
2. The case plan shall be developed within thirty days after placement.
3. The case plan shall be developed after a staffing. If applicable, the parents, foster parents, facility staff, caseworker, social worker or probation officer, and the child shall be invited to the staffing.
4. The child's case plan shall contain, at the minimum:
 - a. Specific needs of the child;
 - b. Plan for meeting child's needs;

- c. Special treatment issues (e.g., psychotropic medications, sexual misconduct, neurological disorders) shall be identified, with a statement of how the special needs shall be met;
 - d. A plan to ensure that the child's educational needs are met according to state law;
 - e. Visitation plan, if applicable;
 - f. Date of next review of the case plan, if applicable;
5. A copy of the case plan shall be made available to the parent(s), guardian(s), court, or other agencies involved in case plan services delivery.
 6. The case plan shall be reviewed at least semi-annually, and shall be updated to reflect the child's progress.
 7. If independence is a goal, the case plan shall include training in independent living skills.

604 Children's Records

1. The agency shall keep a confidential case record for each child that includes the following:
 - a. Demographic information;
 - b. Plan of safe care/protection, if applicable;
 - c. A complete intake study;
 - d. Consents, including consent for medical care and authority to place the child;
 - e. Interstate Compact information, if applicable;
 - f. Case plans and case plan reviews;
 - g. Copies of legal documents (e.g., birth certificate, social security card, court orders), or shall document their attempts to obtain the documents;
 - h. Physical exams and immunization records, or shall document their attempts to obtain the documents;
 - i. Psychological reports, if applicable;
 - j. Educational reports, if applicable;
 - k. Disciplinary and incident reports;
 - l. Progress reports;
 - m. Records of visitation and family contacts, if applicable;
 - n. Documentation of casework services and client contact, current to within one (1) month of occurrence;
 - o. Discharge summary.
2. Records for each child shall be kept for five (5) years from the date of discharge, unless otherwise specified by Arkansas law.

3. A plan of safe care/protection shall be documented for all children with physical limitations, medical conditions, or behaviors that are indicative of harm to self or others; to include, but not limited to: arson, physical/sexual aggression, and/or suicidal or other self harming tendencies. This plan shall identify the behavior/problem, and shall specify the safeguards that are to be implemented. The agency shall document that the direct caregiver(s) are informed of the provisions of the plan and place a copy of the plan in the child's case file.

605 Behavior Management

1. The agency shall have a written discipline policy that is consistently followed.
2. Discipline shall be directed toward teaching the child acceptable behavior and self-control.
3. Discipline shall be appropriate to the child's age, development, and history.
4. The following forms of discipline shall not be used:
 - a. Denial of meals, sleep, shelter, essential clothing, or case plan activities;
 - b. Denial of parental visits or regular phone/mail contact with family. Non-disciplinary case planning issues are accepted;
 - c. Lewd or obscene language;
 - d. Derogatory comments about the child, the child's family, race, or gender;
 - e. Restriction to a room for more than a short period of time without periodic observation;
 - f. Locked isolation (psychiatric facilities excepted);
 - g. Physical injury or threat of bodily harm;
 - h. Humiliating or degrading action;
 - i. Extremely strenuous work or exercise;
 - j. Mechanical/chemical restraints (psychiatric facilities excepted).
5. Physical restraint shall be initiated only by trained staff, and only to prevent injury to the child, other people or property, and shall not be initiated solely as a form of discipline.
6. A child shall not be allowed to administer discipline, except teen parents may discipline their own children.
7. Searches of a child or a child's personal property shall be for reasons limited to safety and security of children and staff, in cases of suspected theft, or suspicion of possession of items which are not permitted by agency policy.
8. Any searches requiring removal of clothing shall be done in privacy, and except in foster homes, shall be witnessed by two (2) staff of the same sex as the child.

606 Discharge

1. The agency shall discharge a child when the case planning team decides that the child is no longer in need of services or can no longer benefit from services provided by the agency.
2. Except in the case of an emergency discharge, the discharge shall be planned by appropriate agency staff, parent(s), child, and any agency that will offer post-discharge services.
3. The agency may discharge a child on an emergency basis if failure to do so could result in harm to the child, other persons, or significant property damage.
4. A child shall be discharged to the custody of the child's parent or a person with authorization from the parent, guardian or a person authorized by court order to assume custody of the child.
5. The agency shall complete a discharge summary on each child and provide a copy of it to the child's custodian.

607 Personnel

1. Child caring staff shall be responsible for providing the level of supervision, care, and treatment necessary to ensure the safety and well being of each child at the facility, taking into account the child's age, individual differences and abilities, surrounding circumstances, hazards and risks.
2. There shall be a staff/child ratio of at least 1:9 during waking hours and at least 1:12 during sleeping hours. If any child is under age six (6) years, the ratio shall be at least 1:7 at all times. Only staff who directly supervises children shall be counted in this ratio. Staff members own children shall be counted in the ratio. *Psychiatric facilities see Section 700.*
3. Agencies that mix children requiring different levels of supervision shall maintain the most intensive staff/child ratio.
4. Child caring staff shall be at least twenty-one (21) years old and have a high school diploma or the equivalent.
5. Assistant child caring staff shall be at least nineteen (19) years old, have a high school diploma or the equivalent, and be under the direct supervision of regular staff.
6. All child caring staff and each member of a houseparent's family older than twelve (12) years shall receive a skin test for tuberculosis upon employment and in accordance with the guidelines set forth by the Arkansas State Health Department, as long as test results remain negative. A person with a positive skin test must provide documentation from a physician every two years certifying that he/she is free from communicable tuberculosis.
7. All children in the household shall have proof of current health immunizations in accordance with the Arkansas Department of Health.

608 Staff Training

1. Child caring staff (routinely counted in the staff/child ratio) shall complete pre-service orientation prior to being counted in the staff/child ratio. This training may be counted toward training hours for the first year. This applies to personnel employed on or after January 1, 2011.
2. Pre-service orientation shall include but is not limited to:
 - a. Confidentiality;
 - b. Resident grievance process (psychiatric only);
 - c. Fire and disaster plans;
 - d. Suicide awareness and protocol;
 - e. Behavior management;
 - f. Crisis intervention strategies;
 - g. Agency policies and procedures;
 - h. Child Maltreatment/Mandated Reporter policy;
 - i. *Minimum Licensing Standards for Child Welfare Agencies*.
3. No staff shall be allowed to participate in a physical restraint until properly trained to do so. Psychiatric facility staff shall be certified in physical intervention.
4. All child caring staff shall have thirty (30) hours of job related in-service or workshop training each year. First aid, CPR, and in-service training at the facility may be included. Part-time staff shall have at least fifteen (15) hours of job related in-service or workshop training each year.
5. Documentation verifying annual training shall be a certificate, letter, or signed statement of completion that is dated and indicates the number of hours, the name of the source, and topic/title.
6. At least one (1) staff currently certified in CPR and First Aid must be able to immediately respond to an emergency.

609 Visiting Resources

A visiting resource is defined as a non-related situation in which a visit occurs away from the facility, excluding normal age-appropriate activities such as overnight visit with friends, extra-curricular activities, church activities, or short-term summer camps. A visiting resource who takes a child away from a facility shall meet 2 and 3 (below). A visiting resource who takes the child to the visiting resource's home shall meet all of the following:

1. Documentation and narrative of at least one (1) home visit for evaluation purposes prior to visitation occurring;
2. At least three (3) character references;

3. Documentation of State Police Criminal Record Checks, FBI Criminal Record Checks, if applicable, and Child Maltreatment Central Registry Checks, if available;
4. All members of the household older than twelve (12) years shall receive a skin test for tuberculosis in accordance with the guidelines set forth by the Arkansas State Health Department, as long as test results remain negative. A household member with a positive skin test must provide documentation from a physician every two years certifying that he/she is free from communicable tuberculosis;
5. Narrative of continuing contact and an annual review, in person, of the visiting resource.

610 Personal & Medical Care

1. The facility shall provide each child with adequate and nutritious food.
2. The facility shall ensure that each child has sufficient sleep for his/her age and physical condition.
3. Each child shall have a medical exam at least annually. Health exams need not be repeated during the year if a child moves from one facility or agency to another, provided the results of the exam are available to the receiving facility or agency.
4. Each child shall be instructed in good grooming and personal hygiene habits.
5. Each child shall be provided with opportunities for regular recreational activities and exercise.
6. Each child shall be provided with his/her own clothing that is clean, well fitting, seasonal, and appropriate to age and sex, unless otherwise directed by a physician.
7. All medications shall be administered to children by staff according to medical instructions. *Psychiatric facilities see Section 700.*
8. The dispensing of all medications, including over-the-counter, shall be logged at the time the medication is given.
9. Currently prescribed medications belonging to children shall be returned to the parent or custodian upon discharge. *Psychiatric facilities see Section 700.*
10. When psychotropic medications are prescribed by a physician, they shall be used in conjunction with other treatment interventions.
11. The facility shall notify a child's parent(s) or legal guardian and law enforcement immediately after the child is discovered to have run away, and promptly upon the child's return.
12. The parent or guardian shall be promptly notified of any serious illness or injury.

611 Education, Work, & Training

1. The facility shall teach each child the daily living tasks required as a part of living in a group setting, and shall assign only light chores that are age-appropriate.

2. The facility shall safeguard money earned by each child, and shall ensure that each child's earnings are available to that child under staff supervision for personal use.
3. The facility shall not allow a child's outside employment, chores, or extracurricular activities to interfere with the child's time for school, sleep, family visits, or case plan activities.
4. The facility shall not use a child as a substitute for staff.
5. No child shall be allowed to operate machinery or dangerous equipment without proper adult supervision.

612 Grounds

1. The grounds of the facility shall be kept clean and free of safety hazards.
2. The facility shall provide sufficient outdoor recreation space and age-appropriate play equipment to meet the needs of each child in care.
3. Swimming pools shall be inspected and approved annually by the Arkansas Department of Health.

613 Buildings

1. All buildings used by children or staff shall be inspected and approved annually for fire safety as required by authorized fire inspection officials.
2. All buildings used by children or staff shall be inspected and approved annually for health and sanitation as required by the Arkansas Department of Health.
3. All buildings shall comply with local zoning ordinances and land use requirements where those exist.
4. All buildings shall comply with building codes in effect at the time the building was converted to use as a child care facility.
5. All buildings and furnishings shall be maintained in a safe and clean condition.
6. There shall be no more than twelve (12) children in a sleeping unit. Sleeping units sharing the same building shall be separated by a wall, kitchen, dining room, or other such area that gives a sense of separation. This does not apply to psychiatric treatment facilities.
7. All parts of buildings used as living, sleeping, or bath areas shall have a heating and ventilation system that keep the temperature a minimum of 65 degrees.
8. The facility shall provide a living area that has at least thirty-five (35) square feet of floor space per child. The dining area and indoor recreation area may be included in this space.
9. The facility shall provide a dining room.
10. The facility shall have a kitchen.
11. Manufactured homes, used as residential facilities, shall be tied down and underpinned as required by the Arkansas Manufactured Home Commission. The home shall obtain an

inspection and approval from the Arkansas Manufactured Home Commission prior to being licensed.

614 Sleeping Arrangements

The facility shall provide bedrooms for the children that meet the following requirements:

1. There shall be no more than four (4) children per bedroom.
2. There shall be at least fifty (50) square feet of floor space per child in each bedroom.
3. No child age four (4) years or over shall share a bedroom with a child of the opposite sex, except teenaged mothers who participate in the care of their own children.
4. Each child shall have a separate bed with a mattress, sheets, pillow, pillowcase, and adequate cover, all in good condition.
5. Beds shall be positioned to ensure all children can easily exit the room in case of emergency.
6. No child under the age of six (6) shall occupy a top bunk.
7. Bedding shall be changed at least weekly, more often if needed.
8. Each child shall have an area to store personal belongings.
9. Staff sleeping quarters shall be separate from children's sleeping rooms.
10. Room arrangements shall be based on characteristics of the individual resident to ensure the safety of each child.
11. Facilities that admit adult clients shall provide sleeping arrangements to ensure separation of adults from children.

615 Bathrooms

The facility shall provide bathrooms for the children that meet the following requirements:

1. There shall be a separate toilet, bathtub or shower, and sink for each six (6) children.
2. There shall be an adequate supply of hot and cold running water.
3. The bathroom shall be clean and sanitary.
4. There shall be separate bath and toilet facilities for boys and girls.
5. There shall be an adequate supply of soap, towels, and tissues.

616 Health & Safety

1. The facility shall have an operable telephone or comparable communication system.

2. The facility shall have a continuous supply of clean drinking water. If the water source is not a municipal system, the source must be approved by the Arkansas Department of Health annually.
3. A private sewage/septic system shall be approved by the Arkansas Department of Health.
4. There shall be operational smoke detectors near the cooking area, heating units, and within ten (10) feet of each bedroom.
5. An operational chemical fire extinguisher or other fire suppression system approved by local fire inspection officials shall be in the cooking area of each building. Approval of the fire suppression system shall be documented.
6. There shall be an emergency evacuation plan diagramed and posted in each building used by children.
7. Fire drills shall be practiced each month, and severe weather and other appropriate emergency drills shall be practiced quarterly. A record of drills shall be maintained, showing date and time of day of the drill, number of participants, and length of time required to reach safety. Each newly admitted child shall be instructed in emergency procedures during orientation.
8. All medications shall be kept securely locked.
9. The facility shall have proof of current rabies vaccinations for all household pets as required by Arkansas law.

617 Transportation

1. The facility shall have its own transportation available.
2. Any vehicles used to transport children shall be maintained in compliance with motor vehicle laws, and be insured.
3. Children shall be transported only by an authorized person possessing a valid driver's license.
4. Children shall be transported according to Arkansas law, including, but not limited to, use of safety belts, child safety seats, and smoking restrictions.

700 Psychiatric Residential Treatment Facilities

In addition to all standards in Sections 100 and 600, the following standards shall be met:

701 Licensing Approval & Monitoring

1. At the discretion of the Licensing Unit a multi-disciplinary team may be asked to assist the Licensing Specialist in the initial study, or during an investigation of a licensing complaint. This team may include a licensed mental health professional (as recognized by Arkansas Medicaid), or a person with professional expertise in the appropriate field.
2. At the discretion of the Licensing Unit, a multi-disciplinary team may be asked to assist the Licensing Specialist during inspections for advisory purposes.
3. All applicants for a Psychiatric Residential Treatment Facility license after January 1, 2000 shall obtain a Permit of Approval (POA) from the Arkansas Health Services Agency prior to submitting an application or change of status request to the Child Welfare Agency Review Board.

702 Personnel

The agency shall employ:

1. A physician licensed by the Arkansas State Medical Board who has experience in the practice of psychiatry.
2. A Director of Nursing/Nurse Manager who is licensed in Arkansas as a Registered Nurse;
3. A Program Director who has at least a master's degree in a human services field and is licensed in Arkansas as a mental health professional (as recognized by Arkansas Medicaid);
4. One or more therapists having at least a master's degree in a human services field and licensed as mental health professionals (as recognized by Arkansas Medicaid);
5. Child caring staff who are at least twenty-one (21) years of age and have a high school diploma or the equivalent;
6. The staff/child ratio shall be at least 1:6 during waking hours and at least 1:8 during sleeping hours. Only staff who directly supervise children shall be counted in this ratio.

703 Program

1. The agency shall have a written program description that is available to residents and parents or guardians. The following information shall be included:
 - a. Program philosophy and mission;

- b. Services and treatment modalities;
 - c. Treatment planning procedures;
 - d. Behavior management program and expectations of each child;
 - e. Levels and privileges (if applicable);
 - f. Admission, exclusion, and discharge criteria;
 - g. Aftercare services.
 2. The agency shall keep documentation that includes:
 - a. Intake information;
 - b. Assessments;
 - c. Master treatment plan;
 - d. Treatment plan review;
 - e. Daily behavioral observations;
 - f. Medication and physician's orders;
 - g. Therapy progress notes;
 - h. Physician notes.
 3. The child's case plan shall be reviewed monthly, and shall be updated to reflect the child's progress.
 4. The agency shall establish safeguards to limit access to records by authorized individuals only.
 5. The agency shall have written policies and procedures for family therapy, family visitation, and therapeutic passes subject to progress, treatment and physician's orders.
 6. If family involvement is contraindicated, the agency shall make reasonable efforts to identify acceptable substitutes and shall include them in the therapeutic process.
 7. The agency shall establish and post a written list of children's rights.
 8. The agency shall establish a procedure for hearing children's grievances, and shall ensure that each child understands the process.

704 Behavior Management

1. The agency shall have a written policy governing the use of behavior control measures with children, including physical, mechanical, or chemical restraints and seclusion rooms.
2. Chemical restraints shall be used only if ordered by a physician. A chemical restraint is an emergency behavioral intervention that uses pharmaceuticals by topical application, oral administration, injection, or other means to modify a child's behavior. Prescribed treatment medications that have a secondary effect on the child's behavior are not considered chemical restraint.

3. Seclusion or mechanical restraints shall be used only if ordered by a physician, clinically qualified registered nurse, or other licensed independent practitioner. The agency may authorize other qualified, trained staff members who are not licensed independent practitioners to initiate the use of seclusion or restraint before an order is obtained from the licensed independent practitioner. The following licensed independent practitioners, if clinically qualified, may be approved by the agency to order seclusion or restraints or to conduct the face-to-face assessments required following such order: licensed certified social worker, licensed marriage and family therapist, licensed psychological counselor, licensed Ph.D. psychologist, licensed professional counselor, licensed professional associate counselor, or other licensed mental health professional (as recognized by Arkansas Medicaid). The licensed professionals shall work under the supervision and/or review of the agency medical director.
4. Each written order for a physical restraint or seclusion is limited to two (2) hours for children ages nine (9) to seventeen (17) years, or one (1) hour for children under age nine (9) years. A physician, clinically qualified registered nurse or other authorized licensed independent practitioner must conduct a face-to-face assessment of the child within one (1) hour after the initiation of the ordered intervention.
5. The original order may only be renewed in accordance with these limits for up to a total of twenty-four (24) hours. After the original order expires, a physician, clinically qualified registered nurse or other authorized licensed independent practitioner must see and assess the child before issuing a new order.
6. Staff shall search each child before placement in seclusion, and all potentially hazardous items shall be removed.
7. Staff shall continually monitor each child in seclusion or restraints and shall document.

705 Health Care Services

1. The agency shall have a written policy for conducting health and related exams and assessments upon admission.
2. All controlled substances shall be kept under double lock.
3. Medication shall be dispensed in accordance with state and federal laws.
4. The agency shall have a written plan for prescribing, receipt, storage, dispensing, and accounting for all medications, including medications in the client's possession at the time of admission.
5. Disposal of unused medications and contaminated medical supplies shall follow established medical procedures.
6. Any stimulant or psychotropic medicine requiring intra-muscular injection shall be administered only by a physician, registered nurse, or LPN.
7. The agency shall require medical representation at major treatment staffings on each child.

706 Building Requirements

1. Seclusion rooms shall meet the following criteria:
 - a. At least thirty-five (35) square feet of floor space;
 - b. Sufficient lighting, with a shatterproof, recessed light fixture beyond reach of the child;
 - c. A door able to be opened from the outside at all times without use of a key or a removable locking device;
 - d. A door with a shatterproof observation window;
 - e. Located reasonably near to the staff work area.
2. Areas used by children shall be designed, constructed, and furnished to reduce risk of suicide and assault including, but not limited to:
 - a. Light fixtures that are recessed or abut to the ceiling;
 - b. No wooden or wire hangers;
 - c. Non-breakable windows;
 - d. No loose wires, cords, chains, or ropes;
 - e. Sturdy, well-constructed furniture that cannot be broken for use as a weapon or means of self-inflicted injuries;
 - f. Children's personal items that contain cords, pull-ties, strings, or other parts that could be used to inflict self-injury shall not be left in the child's room unless the dangerous component has been removed.
3. Beds shall be positioned to minimize opportunity for physical contact between children.

800 Sexual Rehabilitative Programs

In addition to all standards in Section 100, and standards in Section 300, 600 and/or 700, as applicable, the following standards shall be met:

801 Licensing Approval & Monitoring

1. At the discretion of the Licensing Unit a multi-disciplinary team may be asked to assist the Licensing Specialist in the initial study, or during an investigation of a licensing complaint. This team may include a licensed mental health professional (As recognized by Arkansas Medicaid.), or a person with professional expertise in the appropriate field.
2. At the discretion of the Licensing Unit, a multi-disciplinary team may be asked to assist the Licensing Specialist during inspections for advisory purposes.

802 General Requirements

1. A sexual rehabilitative program shall not be located within one thousand (1000) feet of an elementary school, child care center, or child care family home.
2. The agency shall have written policies governing the supervision and monitoring of children in the buildings, on the grounds, and in the community, including direct visual or auditory monitoring of moderate or high risk children (based on 803.2). Policy shall include appropriate grouping of children according to chronological age and/or cognitive development.
3. The agency shall have a written safety plan to protect children in the program and to ensure public safety.
4. The staff/child ratio shall be at least 1:6 during waking hours and at least 1:8 during sleeping hours.
5. The agency shall have a written plan providing for appropriate supervision of during activities away from the facility.
6. Twenty-four (24) hour awake supervision is required if this program is in residential child care programs and psychiatric residential treatment programs.
7. If cameras, heat sensors, or motion detectors are used as part of the safety plan, they must be operational and placed for effective monitoring according to the plan.

803 Admission & Assessment

1. The agency shall have written policies regarding description of the target population, admission/exclusion criteria, and discharge criteria.
2. The agency shall have a written policy describing children with sexually maladaptive behaviors' risk levels it will accept for admission, and therapeutic interventions it will utilize for each risk level.

3. In order to be admitted to the program, one of the following shall be met:
 - a. The child has committed a sexual offense that has been found true by an official investigation by the Department of Human Services or the Arkansas State Police
 - b. The child has committed an offense involving the use of power, control, threat, coercion, or intimidation;
 - c. The child has committed an offense in which there was at least a three (3) year age difference between the offender and the victim;
 - d. The child has a documented pattern of deviant sexualized behavior, sexual misconduct, or sexually maladaptive behaviors as indicated by the psychosexual assessment.
4. Children admitted to the program shall have the cognitive ability to benefit from the treatment program.
5. Intake information shall include:
 - a. Description of the offense or sexually maladaptive behavior, including police reports and victim statements (if available);
 - b. Psychosexual assessment (if available);
 - c. Discharge summary from previous offender-specific treatment (if applicable and available).
6. A psychosexual evaluation shall be conducted by a licensed mental health professional (as recognized by Arkansas Medicaid) that is a member of the Association for the Treatment of Sexual Abusers or has forty (40) hours of sexual offender treatment training. The evaluation must be completed within the past twelve (12) months, or within seven (7) days following admission of the child.
7. A psychological evaluation shall be conducted within the past eighteen (18) months which evaluates the child's intellectual ability and identifies any learning disabilities and/or language disorders. If a child is admitted without a psychological evaluation, the evaluation shall be completed within ninety (90) days of admission.

804 Personnel

1. The Program Director or Clinical Director (the person supervising casework services) shall meet all other requirements, plus have not less than forty (40) hours of sexual offender treatment training and a minimum of two (2) years of sexual offender treatment experience. Certification as a sexual offender treatment trainer may be substituted for the required experience.
2. Therapy services shall be provided by a licensed mental health professional (as recognized by Arkansas Medicaid) who has at least one (1) of the following:
 - a. At least two (2) years of experience in a sexual offender treatment program and at least forty (40) hours of sexual offender treatment training; or

- b. At least three (3) years of experience in sexual offender-specific treatment; or
- c. Maintains current membership in or is actively working toward fulfilling the requirements for membership from the Association for the Treatment of Sexual Abusers.

805 Staff Training

1. All child caring staff shall have at least ten (10) hours of sexual offender training annually, which may be included in the required thirty (30) hours of annual training.
2. Training shall be provided in accordance with a written annual in-service plan established by July 1 of each year.
3. The initial ten (10) hours of sexual offender training shall be completed within sixty (60) days of employment.
4. At least one (1) hour of training on the program's safety plan shall be provided before an employee has direct supervision of children.

806 Program

1. The agency shall develop a treatment plan for each child that includes tasks appropriate to the needs of the child as identified in the intake study, psychosexual assessment and (if applicable) the psychological evaluation.
2. The child's treatment plan shall include a diagnosis related to their sexually maladaptive behavior.
3. The child's treatment plan shall be reviewed quarterly, and shall be updated to reflect the child's progress.
4. If treatment services are contracted, there shall be evidence of participation by the contracted therapist in treatment planning reviews and individualized program implementation.

807 Sleeping Arrangements

1. Children shall be placed in individual bedrooms unless each child's treatment plan specifically approves sharing a bedroom. If children are approved to share a bedroom there must be three (3) or four (4) children in the room so as to limit the ability to keep secret any improper physical contact. When three (3) or four (4) children share a bedroom the agency shall have a clearly defined supervision plan to ensure the safety of each child.
2. Males and females shall not share an unsupervised common sleeping area (hallway, unit, and suite).
3. Beds shall be positioned to minimize opportunity for physical contact between children.

900 Independent Living

In addition to all standards in Sections 100, 200 and /or 600 as applicable, the following standards shall be met:

901 Agency Responsibilities

1. The agency shall have a residential or placement license in good standing.
2. The agency shall have written policies and procedures specific to the Independent Living program, which shall include written rules of conduct and potential consequences for rule violations.
3. The agency shall assign a specific caseworker to each youth in the Independent Living program who will be responsible for delivery of all treatment services to the youth according to the case plan.
4. A case plan must be completed and entered into the youth's record showing a goal of Independence and indicating all persons responsible for services to be provided.
5. The case plan or accompanying documents shall show a complete budget for the youth. This budget shall be developed jointly by the youth and the caseworker.
6. The case plan, or accompanying documents, shall include written rules of conduct for the youth and shall include, but not limited to an agreement to abide by all federal, state and local laws including curfew ordinances.
7. Written policies shall include emergency and crisis intervention procedures, including the youth's 24-hour ability to contact the agency.
8. The assigned caseworker shall visit the youth in the youth's residence not less than once per month. This visit and observations shall be documented in the case record.
9. The agency shall ensure that agency personnel or qualified volunteers visit the youth in the youth's residence at least once each week and this visit shall be documented in the case record.

902 Eligibility Requirements

To be eligible for placement into an out-of-home independent living program, the youth must:

1. Be evaluated by the caseworker or administrative staff to determine that placement in the Independent Living program does not present a health or safety risk to the youth or the community.
2. Be at least 16 years of age.
3. Must be 17 years of age to live in an off campus residence.
4. Have been assessed in basic life-skills, including, but not limited to:

- a. money management;
 - b. food management;
 - c. personal appearance;
 - d. personal hygiene/health/birth control;
 - e. housekeeping;
 - f. transportation;
 - g. emergency and safety skills;
 - h. knowledge of community resources;
 - i. interpersonal skills;
 - j. legal skills;
 - k. housing;
 - l. educational planning;
 - m. job-seeking and job maintenance skills.
5. Be actively engaged in an educational program such as high school, GED, or post-secondary education including college or vocational training. If the youth has completed all educational requirements according to state law, he/she must be employed or actively involved in a supervised job search program.

903 Living Unit / Health / Safety

1. The living unit shall be accessible to community resources, including public transportation if necessary.
2. The living unit shall be clean and free of safety hazards. The safety assessment shall include all potential water hazards, such as swimming pools, hot tubs, ponds and nearby lakes or streams.
3. Each living unit shall have operable toilet, hygienic kitchen and other standard features for independent living. Any exceptions (e.g. laundry arrangements) shall be noted in the case plan or accompanying documentation.
4. There shall be operational smoke alarms within ten (10) feet of the kitchen and each bedroom.
5. There shall be a chemical fire extinguisher in the cooking area of the living unit and the youth shall be instructed in its use.
6. The living unit shall have an operable telephone or the youth shall be provided with an alternative means of emergency communication (e.g. cell phone).
7. Any pets shall be approved by the caseworker and shall have rabies vaccinations as required by law.

- 8.** No firearms, dangerous weapons, or illegal substances shall be permitted in any living unit.
- 9.** If the participating youth is the parent of a child living in his/her care, the parent shall have current CPR/First Aid certification and an approved child care plan.
- 10.** Each living unit shall be occupied by members of the same gender.
- 11.** Overnight guests must have prior approval of the caseworker and cannot include unrelated members of the opposite gender.

Title 9 Family Law
Subtitle 3. Minors
Chapter 28 Placement Or Detention
Subchapter 4 -- Child Welfare Agency Licensing Act

9-28-401. Short title.

This subchapter shall be known as the "Child Welfare Agency Licensing Act".

HISTORY: Acts 1997, No. 1041, § 1.

9-28-402. Definitions.

As used in this subchapter:

(1) "Adoptive home" means a household of one (1) or more persons that has been approved by a licensed child placement agency to accept a child for adoption;

(2) "Adverse action" means any petition by the Department of Human Services before the Child Welfare Agency Review Board to take any of the following actions against a licensee or applicant for a license:

(A) Revocation of license;

(B) Suspension of license;

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

(D) Imposition of a civil penalty;

(E) Denial of application; or

(F) Reduction of licensed capacity;

(3) "Alternative compliance" means a request for approval from the Child Welfare Agency Review Board to allow a licensee to deviate from the letter of a regulation, provided that the licensee has demonstrated how an alternate plan of compliance will meet or exceed the intent of the regulation;

(4) "Board" means the Child Welfare Agency Review Board;

(5) "Boarding school" means an institution that is operated solely for educational purposes and that meets each of the following criteria:

(A) The institution is in operation for a period of time not to exceed the minimum number of weeks of classroom instruction required of schools accredited by the Department of Education;

(B) The children in residence must customarily return to their family homes or legal guardians during school breaks and must not be in residence year round, except that this provision does not apply to students from foreign countries; and

(C) The parents of children placed in the institution retain custody and planning and financial responsibility for the children;

(6) "Child welfare agency" means any person, corporation, partnership, voluntary association, or other entity or identifiable group of entities having a coordinated ownership of controlling interest, whether established for profit or otherwise, that engages in any of the following activities:

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

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

(C) Plans for or assists in the placements described in subdivision (6)(B) of this section;

(7) "Child placement agency" means a child welfare agency, not including any person licensed to practice medicine or law in the State of Arkansas, who engages in any of the following activities:

(A) Places a child in a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter;

(B) Plans for the placement of a child into a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter; or

(C) Assists the placement of a child in a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter;

(8) (A) "Class A violation" means violations of essential standards, including those governing fire, health, safety, nutrition, staff-to-child ratio, and space.

(B) Operation of an unlicensed child welfare agency shall also be a Class A violation unless specifically exempted as provided in this subchapter;

(9) "Class B violation" means any other violations of standards that are not Class A violations;

(10) "Emergency child care" means any residential child care facility that provides care to children on a time-limited basis, not to exceed ninety (90) days;

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

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

(B) (i) Any agency of the State of Arkansas that is statutorily authorized to administer or supervise child welfare activities. (ii) In order to maintain exempt status, the state child welfare agency shall state every two (2) years in written form signed by the persons in charge that their agency is in substantial compliance with published state agency child welfare standards. Visits to review and advise exempt state agencies shall be made as deemed necessary by the Child Welfare Agency Review Board to verify and maintain substantial compliance with the standards. (iii) Visits to review and advise exempt state agencies shall be made as deemed necessary by the Child Welfare Agency Review Board to verify and maintain substantial compliance with the standards;

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

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

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

(F) Human development centers regulated by the Board of Developmental Disabilities Services pursuant to § 20-48-201 et seq.;

(G) Any facility licensed as a family home pursuant to § 20-48-601 et seq.;

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

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

(J) Any state-operated facility to house juvenile delinquents or any serious offender

program facility operated by a state designee to house juvenile delinquents. Those facilities shall be subject to program requirements modeled on nationally recognized correctional facility standards that shall be developed, administered, and monitored by the Division of Youth Services of the Department of Human Services;

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

(L) The Division of Developmental Disabilities Services of the Department of Human Services; and

(M) Any developmental disabilities services waiver provider licensed under § 20-48-208 or § 20-48-601 et seq.;

(12) "Foster home" means a private residence of one (1) or more family members that receives from a child placement agency any minor child, juvenile member of a family in need of services, or dependent or dependent-neglected juvenile under § 9-27-303 who is unattended by a parent or guardian in order to provide care, training, education, custody, or supervision on a twenty-four-hour basis, not to include adoptive homes;

(13) "Independent living home" means any child welfare agency that provides specialized services in adult living preparation in an experiential setting for persons sixteen (16) years of age or older;

(14) "Minimum standards" means those rules and regulations as established by the Child Welfare Agency Review Board that set forth the minimum acceptable level of practice for the care of children by a child welfare agency;

(15) "Provisional foster home" means a foster home opened for no more than six (6) months by the Division of Children and Family Services of the Department of Human Services for a relative of a child in the custody of the division after it:

(A) Conducts a health and safety check, including a central registry check and a criminal background check or a check with local law enforcement, of the relative's home;

(B) Performs a visual inspection of the home of the relative to verify that the relative and the home will meet the standards for opening a regular foster home;

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

(17) "Relative" means a person within the fifth degree of kinship by virtue of blood or adoption;

(18) "Religious organization" means a church, synagogue, or mosque or association of same whose purpose is to support and serve the propagation of truly held religious beliefs;

(19) "Residential child care facility" means any child welfare agency that provides care, training, education, custody, or supervision on a twenty-four-hour basis for six (6) or more unrelated minors, juvenile members of a family in need of services, or dependent or dependent-neglected juveniles under § 9-27-303, excluding foster homes that have six (6) or more minors, juvenile members of a family in need of services, or dependent or dependent-neglected juveniles under § 9-27-303 who are all related to each other but who

are not related to the foster parents;

(20) (A) "Substantial compliance" means compliance with all essential standards necessary to protect the health, safety, and welfare of the children in the care of the child welfare agency.

(B) Essential standards include, but are not limited to, those relating to issues involving fire, health, safety, nutrition, discipline, staff-to-child ratio, and space;

(21) "Temporary camp" means any facility or program providing twenty-four-hour care or supervision to children that meets the following criteria:

(A) The facility or program is operated for recreational, educational, or religious purposes only;

(B) No child attends the program more than forty (40) days in a calendar year; and

(C) The parents of children placed in the program retain custody and planning and financial responsibility for the children during placement; and

(22) "Unrelated minor" means a child who is not related by blood, marriage, or adoption to the owner or operator of the child welfare agency and who is not a ward of the owner or operator of the child welfare agency pursuant to a guardianship order issued by a court of competent jurisdiction.

HISTORY: Acts 1997, No. 1041, § 2; 2005, No. 1766, § 1; 2005, No. 2234, § 1; 2007, No. 634, § 1; 2009, No. 723, § 1; 2011, No. 522, §§ 1-5.

9-28-403. Child Welfare Agency Review Board -- Creation -- Authority.

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

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

(b) The board may also identify and implement alternative methods of regulation and enforcement that may include, but not be limited to:

(1) Expanding the types and categories of licenses issued for programs falling within the definition of "child welfare agency", as may be required by changes in the types of child welfare programs that may occur, and to promulgate separate regulations for each category of license as it may deem proper;

(2) Using the standards of other licensing authorities or compliance-reviewing professionals as being equivalent to partial compliance with board-promulgated rules, when those standards have been shown to predict compliance with the board-promulgated rules; and

(3) Using an abbreviated inspection that employs key standards that have been shown to predict full compliance with the rules.

(c) (1) The Department of Human Services is designated as the governmental agency charged with the enforcement of this subchapter.

(2) Only the department, licensees, agencies specifically exempted by this subchapter, and applicants for a license shall have standing to initiate formal proceedings before the board, except when otherwise provided by law.

(d) When any person, corporation, partnership, voluntary association, or other entity shall be found to operate or assist in the operation of a child welfare agency that has been licensed by the board or has had the license denied, revoked, or suspended by the board, and therefore has been ordered to cease and desist operation in accordance with the provisions of this subchapter, the board shall have the right to go into the circuit court in

the jurisdiction in which the child welfare agency is being operated and upon affidavit secure a writ of injunction, without bond, restraining and prohibiting the person, corporation, partnership, voluntary association, or other entity from operating the child welfare agency.

(e) The Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall apply to all proceedings brought under this subchapter, except that the following provisions shall control during adverse action hearings to the extent that they conflict with the Arkansas Administrative Procedure Act § 25-15-201 et seq.:

(1) All parties to an adverse action shall be entitled to engage in and use formal discovery as provided for in Rules 26, 28 -- 34, and 36 of the Arkansas Rules of Civil Procedure including:

- (A) Requests for admission;
- (B) Requests for production of documents and things;
- (C) Written interrogatories; and
- (D) Oral and written depositions; and

(2) All evidentiary rulings in an adverse action hearing shall be governed by the Arkansas Rules of Evidence with respect to the following types of evidence:

- (A) The requirement of personal knowledge of a witness as required by Rule 602;
- (B) The admissibility of character evidence as set forth by Rules 608 and 609;
- (C) The admissibility of opinion evidence as set forth by Rules 701 -- 703; and
- (D) The admissibility of hearsay evidence as set forth by Rules 801 -- 806.

(f) (1) Requests for subpoenas shall be granted by the Chief Counsel of the Department of Human Services or a designee if the testimony or documents desired are considered necessary and material without being unduly repetitious of other available evidence.

(2) Subpoenas provided for in this section shall be served in the manner as now provided by law, returned, and a copy made and kept by the department.

(3) The fees and mileage for officers serving the subpoenas and witnesses answering the subpoenas shall be the same as now provided by law.

(4) Witnesses duly served with subpoenas issued under this section who shall refuse to testify or give evidence may be cited on an affidavit through application of the chief counsel of the department to the Pulaski County Circuit Court or any circuit court of the state where the subpoenas were served.

(5) Failure to obey the subpoena may be deemed a contempt, punishable accordingly.

HISTORY: Acts 1997, No. 1041, § 3; 2009, No. 723, §§ 2, 3; 2011, No. 522, § 6.

9-28-404. Child Welfare Agency Review Board -- Composition.

(a) The Child Welfare Agency Review Board shall consist of Arkansas residents who shall be qualified as follows:

(1) The director of the division within the Department of Human Services designated by the Director of the Department of Human Services to administer this subchapter or his or her designee;

(2) One (1) representative from a privately owned, licensed child placement agency with expertise in foster care;

(3) One (1) representative from a privately owned, licensed child placement agency with expertise in adoptions;

(4) Two (2) representatives from licensed residential child care facilities;

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

(6) One (1) representative from a licensed emergency shelter; and

(7) One (1) representative from the public at large.

(b) Members shall be appointed by the Governor for four-year terms expiring on March 1 of the appropriate year, except that in making initial appointments, one (1) of the members representing licensed child placement agencies and the member representing the public at large shall serve for two (2) years and two (2) of the members representing residential facilities shall serve for three (3) years.

(c) Members of the board shall serve without compensation, but each member of the board shall be entitled to reimbursement for expenses for necessary meals, lodging, and mileage in attending board meetings, to be payable from funds appropriated for the maintenance and operation of the department.

(d) The members of the board shall select a chair from among its voting membership.

HISTORY: Acts 1997, No. 1041, § 4; 2001, No. 1414, §§ 1, 2; 2003, No. 1157, § 2; 2011, No. 522, §§ 7, 8.

9-28-405. Child Welfare Agency Review Board -- Duties.

(a) (1) The Child Welfare Agency Review Board shall promulgate and publish rules setting minimum standards governing the granting, revocation, refusal, conversion, and suspension of licenses for a child welfare agency and the operation of a child welfare agency.

(2) The board may consult with such other agencies, organizations, or individuals as it shall deem proper.

(3) (A) The board shall take any action necessary to prohibit any person, partnership, group, corporation, organization, or association not licensed or exempted from licensure pursuant to this chapter from advertising, placing, planning for, or assisting in the placement of any unrelated minor for purposes of adoption or for care in a foster home.

(B) The prohibition against advertising shall not apply to persons who are seeking to add to their own family by adoption.

(b) The board may amend the rules and regulations promulgated pursuant to this section from time to time, in accordance with the rule promulgation procedures in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c) (1) The board shall have exclusive authority to promulgate rules that:

(A) Promote the health, safety, and welfare of children in the care of a child welfare agency;

(B) Promote safe and healthy physical facilities;

(C) Ensure adequate supervision of the children by capable, qualified, and healthy individuals;

(D) Ensure appropriate educational programs and activities for children in the care of a child welfare agency;

(E) Ensure adequate and healthy food service;

(F) Include procedures for the receipt, recordation, and disposition of complaints regarding allegations of violations of this subchapter, of the rules promulgated under this subchapter, or of child maltreatment laws;

(G) Include procedures for the assessment of child and family needs and for the delivery of services designed to enable each child to grow and develop in a permanent family setting;

(H) Ensure that criminal record checks and central registry checks are completed on

owners, operators, and employees of a child welfare agency as set forth in this subchapter;

(I) Require the compilation of reports and making those reports available to the Division of Youth Services of the Department of Human Services when the board determines it is necessary for compliance determination or data compilation;

(J) Ensure that a child placement agency:

(i) Treats clients seeking or receiving services in a professional manner, as defined by rules promulgated pursuant to this section; and

(ii) Provides clients seeking or receiving services from a child placement agency that provides adoption services with the phone number and address of the Child Welfare Agency Licensing Unit of the Department of Human Services where complaints can be lodged;

(K) Require that all child welfare agencies that provide adoption services fully apprise in writing all clients involved in the process of adopting a child of the agency's adoption program or services, including all possible costs associated with the adoption program; and

(L) Establish rules governing retention of licensing records maintained by the department.

(2) This subchapter shall not be construed to prevent a licensed child welfare agency from adopting and applying internal operating procedures that meet or exceed the minimum standards required by the board.

(d) (1) Provided that the health, safety, and welfare of children in the care of a child welfare agency are not endangered, nothing in this subchapter shall permit the board to promulgate or enforce any rule that has the effect of:

(A) Interfering with the religious teaching or instruction offered by a child welfare agency;

(B) Infringing upon the religious beliefs of the holder or holders of a child welfare agency license;

(C) Infringing upon the right of an agency operated by a religious organization to consider creed in any decision or action relating to admitting or declining to admit a child or family for services;

(D) Infringing upon the parent's right to consent to a child's participating in prayer or other religious practices while in the care of the child welfare agency; or

(E) Prohibiting the use of corporal discipline.

(2) (A) (i) A child welfare agency that articulates a sincerely held religious belief that is violated by a specific rule promulgated by the board shall notify the department in writing of the belief and the specific rule that violates the belief.

(ii) The rule shall be presumptively invalid as applied to that child welfare agency.

(B) (i) The department may then file a petition before the board seeking to enforce the rule.

(ii) The department shall bear the burden of showing that the health, safety, or welfare of children would be endangered by the exemption, and if the board so finds by a preponderance of the evidence, the board shall render a finding of fact so concluding.

(e) The board shall issue all licenses to child welfare agencies upon majority vote of board members present during each properly called board meeting at which a quorum is present when the meeting is called to order.

(f) (1) (A) The board shall have the power to deny an application to operate a child welfare agency or revoke or suspend a previously issued license to operate a child welfare agency.

(B) The board may deny, suspend, convert, or revoke a child welfare agency license or issue letters of reprimand or caution to a child welfare agency if the board finds by a preponderance of the evidence that the applicant or licensee:

(i) Fails to comply with the provisions of this subchapter or any published rule of the board relating to child welfare agencies;

(ii) Furnishes or makes any statement or report to the department that is false or misleading;

(iii) Refuses or fails to submit required reports or to make available to the department any records required by it in making an investigation of the agency for licensing purposes;

(iv) Refuses or fails to submit to an investigation or to reasonable inspection by the department;

(v) Retaliates against an employee who in good faith reports a suspected violation of the provisions of this subchapter or the rules promulgated under this subchapter;

(vi) Fails to engage in a course of professional conduct in dealing with clients being served by the child placement agency, as defined by rules promulgated pursuant to this section;

(vii) Demonstrates gross negligence in carrying out the duties at the child placement agency; or

(viii) Fails to provide clients involved in the process of adoption of a child with correct and sufficient information pertaining to the adoption process, services, and costs.

(2) Any denial of application or revocation or suspension of a license shall be effective when made.

(g) The board shall review the qualifications of persons required to have background checks under this subchapter.

(h) (1) The board may grant an agency's request for alternative compliance upon a finding that the child welfare agency does not meet the letter of a regulation promulgated under this subchapter but that the child welfare agency meets or exceeds the intent of that rule through alternative means.

(2) (A) If the board grants a request for alternative compliance, the child welfare agency's practice as described in the request for alternative compliance shall be the compliance terms under which the child welfare agency will be held responsible.

(B) Violations of those terms shall constitute a rule violation.

(i) (1) (A) The board shall have the authority to impose a civil penalty upon any person violating any provisions of this subchapter and any person assisting any partnership, group, corporation, organization, or association in violating any provisions of this subchapter, except that the imposition of civil penalties shall not apply to agencies that have been granted a church-operated exemption pursuant to this subchapter.

(B) (i) The board may impose a civil penalty upon any person, partnership, group, corporation, organization, or association not licensed or exempt from licensure as a child welfare agency in the State of Arkansas pursuant to this subchapter that advertises, places, plans for, or assists in the placement of any unrelated minor for purposes of adoption or for care in a foster home.

(ii) The prohibition against advertising does not apply to persons who are seeking to add to their own family by adoption.

(2) The board shall have the discretion to impose a civil penalty pursuant to this section when the board determines by clear and convincing evidence that the person sought to be charged has violated this subchapter or the rules promulgated thereunder willfully, wantonly, or with conscious disregard for law or regulation.

(3) The board may impose civil penalties as follows:

(A) (i) Class A violations as defined in this subchapter shall be subject to a civil penalty of five hundred dollars (\$500) for each violation, with each day of noncompliance constituting a separate violation.

(ii) In no event shall the board impose civil penalties of more than two thousand five hundred dollars (\$2,500) for Class A violations occurring in any one (1) calendar month; and

(B) (i) Class B violations as defined in this subchapter shall be subject to a civil penalty of one hundred dollars (\$100) for each violation with each day of noncompliance constituting a separate violation.

(ii) In no event shall the board impose civil penalties of more than five hundred dollars (\$500) for Class B violations occurring in any one (1) calendar month.

(4) If any person upon whom the board has levied a civil penalty fails to pay the civil penalty within sixty (60) days of the board's decision to impose the penalty, the amount of the fine shall be considered to be a debt owed the State of Arkansas and may be collected by civil action by the Attorney General.

(j) (1) (A) The board shall notify the applicant or licensee of the department's petition for adverse action in writing and set forth the facts forming the basis for the request for the adverse action.

(B) This notice shall offer the licensee the opportunity for a predeprivation adverse action hearing to determine if the adverse action should be taken against the licensee or applicant.

(2) This section does not prevent the department or the board from closing a child welfare agency on an emergency basis if emergency closure is immediately required to protect the health, safety, or welfare of children, in which case the licensee shall be entitled to a postdeprivation adverse action hearing.

(k) (1) Adverse action hearings shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) (A) Within ten (10) business days after rendering a decision, the board shall forward to the applicant or licensee written findings of fact and conclusions of law articulating the board's decision.

(B) The board shall also issue an order that the applicant or licensee cease and desist from the unlawful operation of a child welfare agency if the adverse action taken was revocation or suspension of the license or denial of an application.

(l) (1) If, upon the filing of a petition for a judicial review, the reviewing court determines that there is a substantial possibility that the board's decision against the licensee or applicant may be reversed, the circuit court may enter a stay prohibiting enforcement of a decision of the board, provided that the court articulates the facts from the adverse action hearing record that constitute a substantial possibility of reversal.

(2) (A) Thereafter, the court shall complete its review of the record and announce its

decision within one hundred twenty (120) days of the entry of the stay.

(B) If the court does not issue its findings within one hundred twenty (120) days of the issuance of the stay, the stay shall be considered vacated.

(m) All rules promulgated under this section and all public comment received in writing by the department in response shall be made available for review by the Senate Interim Committee on Children and Youth and the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs, and by the Governor or his or her designee from among the Governor's staff.

(n) (1) (A) The validity or application of any rule or regulation promulgated by the board under authority of this subchapter shall be subject to remedies provided by law for obtaining declaratory judgments at the suit of any interested person instituted in the circuit court of any county in which the plaintiff resides or does business or in Pulaski County Circuit Court.

(B) However, the board must be named a party defendant and the board must be summoned as in an action by ordinary proceedings.

(2) If a juvenile is found to be maltreated due to the acts or omissions of a person other than the parent or guardian of the juvenile, the court may enter an order restraining or enjoining the person or facility employing that person from providing care, training, education, custody, or supervision of juveniles of whom the person or facility is not the parent or guardian.

(3) (A) If the person or facility other than the parent or guardian of the juvenile found to be maltreated was not subject to this subchapter, the court may order the person or facility to obtain a license from the board as a condition precedent to the person or facility providing care, training, education, custody, or supervision of any juveniles of whom the person or facility is not the parent or guardian.

(B) If the court so orders, this subchapter shall thereafter apply to the person or facility subject to the court order.

(o) (1) The Department of Human Services shall maintain a website accessible to the general public that contains information on child placement agencies.

(2) The website shall contain:

(A) The name, phone number, and address of all child placement agencies licensed by the board;

(B) Information on each child placement agency, specifically if the license is in good standing, if the license has ever been revoked or suspended, or if any letters of caution or reprimand have been issued by the board; and

(C) The name and contact information for a person in the unit who handles complaints about child placement agencies.

HISTORY: Acts 1997, No. 1041, § 5; 2005, No. 2225, § 1; 2005, No. 2234, § 2; 2009, No. 723, §§ 4-6; 2011, No. 522, §§ 9-14.

9-28-406. Department enforcement duties.

(a) (1) The Department of Human Services shall advise the Child Welfare Agency Review Board regarding proposed rules and regulations. (2) The department shall obtain comments from the board prior to initiating the rule promulgation process.

(b) (1) The board is authorized to make an inspection and investigation of any proposed or operating child welfare agency and of any personnel connected with that agency to the extent that an inspection and investigation are necessary to determine whether the child

welfare agency will be or is being operated in accordance with this subchapter and the rules and regulations promulgated by the board.

(2) The board may delegate this authority to any agencies of the State of Arkansas whom the board deems proper.

(c) (1) The department or any other public agency having authority or responsibility with respect to child maltreatment shall have the authority to investigate any alleged or suspected child maltreatment in any child welfare agency, whether licensed or exempt.

(2) Nothing contained in this section shall be construed to limit or restrict that authority.

(d) (1) The department shall assist licensees and applicants in complying with published rules and regulations by issuing advisory opinions regarding matters of rule compliance when so requested.

(2) The procedure for issuing advisory opinions shall be as follows:

(A) (i) Any licensee or applicant for a license may submit a written request for an advisory opinion on whether or not a practice in any planned or existing child welfare agency complies with the rules promulgated pursuant to this subchapter. (ii) The department must respond to the request in writing within twenty (20) business days of receiving the request. (iii) If the department's response is that the subject of the request would not comply with published standards, the department shall suggest an alternative practice that in its opinion would comply with published standards when it is possible to do so; and

(B) (i) A written opinion required in subdivision (d)(2)(A) of this section is binding on the department as a declaratory order if the applicant or licensee has acted in reliance on the opinion. (ii) Notwithstanding the foregoing, in no event shall the advisory opinion be binding on the board if the compliance issue that is the subject of the advisory opinion is presented to the board for review.

(e) (1) The department shall issue a report following inspections of child welfare agencies as provided in this subsection.

(2) If the department finds that a child welfare agency has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or welfare of the persons served by the program, the department shall issue a corrective action notice with the report to the child welfare agency. The corrective action notice must require the licensee to outline a corrective action plan. The department's corrective action notice shall contain:

(A) A factual description of the conditions that constitute a violation of the law or rule;

(B) The specific law or rule violated; and

(C) A reasonable time frame within which the violation must be corrected.

(3) (A) (i) If the child welfare agency believes that the contents of the department's corrective action notice are in error, the child welfare agency may ask licensing authorities to reconsider the parts of the corrective action notice that are alleged to be in error. (ii) The request for reconsideration must be in writing, delivered by certified mail, specify the parts of the corrective action notice that are alleged to be in error, explain why they are in error, and include documentation to support the allegation of error.

(B) (i) The department shall render a decision on the request for reconsideration within fifteen (15) working days after the date the request for reconsideration was received. (ii) The licensee's request for reconsideration and supporting documentation

shall be retained by the department and made a part of the licensee's record.

(4) (A) If upon reinspection, the department finds that the licensee has corrected the violation or violations specified in the corrective action notice, the department employee shall indicate this correction and the date the correction was verified in the licensee's file.

(B) If upon reinspection, the department finds that the licensee has not corrected the violations specified in the corrective action order within the required time frame, the department may in its discretion petition the board to impose appropriate adverse action against the licensee.

(C) In the case of an applicant for a license, if the applicant has not corrected the violations in a previously issued corrective action notice, the department may recommend denial of the application for a child welfare agency license.

HISTORY: Acts 1997, No. 1041, § 6; 2011, No. 522, § 15.

9-28-407. Licenses required and issued.

(a) (1) It shall be unlawful for any person, partnership, group, corporation, association, or other entity or identifiable group of entities having a coordinated ownership of controlling interest to operate or assist in the operation of a child welfare agency that has not been licensed by the Child Welfare Agency Review Board from licensing pursuant to this subchapter.

(2) This license shall be required in addition to any other license required by law for all entities that fit the definition of a child welfare agency and are not specifically exempted, except that no nonpsychiatric residential treatment facility or agency licensed or exempted pursuant to this subchapter shall be deemed to fall within the meaning of § 20-10-101 for any purpose.

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

(A) Obtaining any license or permit from the Office of Long-Term Care of the Division of Medical Services of the Department of Human Services;

(B) Obtaining any permit from the Health Services Permit Agency or the Health Services Permit Commission to operate at the capacity licensed by the board as of March 1, 2003; and

(C) Obtaining any permit from the agency or the commission to operate at any future expanded capacity serving only non-Arkansas residents unless a permit is required by federal law or regulation.

(4) Any further expansion of capacity by a licensee of the board shall require a license or permit from the Office of Long-Term Care and the agency unless the bed expansion is exempted under subdivisions (a)(3)(A) -- (C) of this section.

(5) (A) Subdivisions (a)(3) and (4) of this section shall be construed to include a child welfare agency that is licensed or permitted by the board as a residential facility as of March 1, 2003, if the licensee then met and continues to meet the following criteria:

(i) The licensee is a nonhospital-based residential facility that specializes in providing treatment and care for seriously emotionally disturbed children under eighteen (18) years of age who have co-occurring substance abuse and psychiatric disorders;

(ii) The licensee possesses accreditation from at least one (1) of the following national accreditation entities:

(a) The Commission on Accreditation of Rehabilitation Facilities;

- (b) The Council on Accreditation of Services for Families and Children; or
- (c) The Joint Commission on Accreditation of Healthcare Organizations;
- (iii) The licensee is licensed by the Office of Alcohol and Drug Abuse Prevention or its successor; and
- (iv) The licensee is operating a nontraditional program that is approved by the Department of Education.

(B) (i) Licensees described in subdivision (a)(5)(A) of this section shall be eligible for reimbursement by the Arkansas Medicaid Program under the same methodology and at the same reimbursement rates as residential treatment facilities that do not specialize in treating children with co-occurring substance abuse and psychiatric disorders.

(ii) However, Medicaid payments shall be reduced by payments received from other payors in connection with Medicaid-covered care and treatment furnished to Medicaid recipients.

(b) (1) It shall be unlawful for any person to falsify an application for licensure, to knowingly circumvent the authority of this subchapter, to knowingly violate the orders issued by the board, or to advertise the provision of child care or child placement when not licensed under this subchapter to provide those services, unless determined by the board to be exempt from licensure under this subchapter.

(2) Any violation of this section shall constitute a Class D felony.

(c) (1) Any person, partnership, group, corporation, organization, association, or other entity or identifiable group of entities having a coordinated ownership of controlling interest, desiring to operate a child welfare agency shall first make application for a license or a church-operated exemption for the facility to the board on the application forms furnished for this purpose by the board.

(2) (A) The Department of Human Services shall also furnish to the applicant upon request a copy of this subchapter and the policies and procedures of the board at the time the person requests an application form. **(B)** The child welfare agency shall submit a separate application for license for each separate physical location of a child welfare agency.

(d) (1) The Department of Human Services shall review, inspect, and investigate each applicant to operate a child welfare agency and shall present a recommendation to the board whether the board should issue a license and what the terms and conditions of the license should be.

(2) The Department of Human Services shall complete its recommendation within ninety (90) days after receiving a complete application from the applicant. A complete application shall consist of:

- (A)** A completed application form prepared and furnished by the board;
- (B)** A copy of the articles of incorporation, bylaws, and current board roster, if applicable, including names and addresses of the officers;
- (C)** A complete personnel list with verifications of qualifications and experience;
- (D)** Substantiation of the financial soundness of the agency's operation; and
- (E)** A written description of the agency's program of care, including intake policies, types of services offered, and a written plan for providing health care services to children in care.

(e) (1) The board shall issue a regular license that shall be effective until adverse action is taken on the license if the board finds that:

(A) The applicant for a child welfare agency license meets all licensing requirements;
or

(B) The applicant for a child welfare agency license meets all essential standards, has a favorable compliance history, and has the ability and willingness to comply with all standards within a reasonable time.

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

(B) The board shall at no time issue a regular or provisional license to any agency or facility that does not meet all essential standards.

(f) (1) A license to operate a child welfare agency shall apply only to the address and location stated on the application and license issued, and it may be transferable from one (1) holder of the license to another, along with all capacity and rights of licensure, if permitted under subdivision (f)(2) of this section.

(2) Whenever ownership of a controlling interest in the operation of a child welfare agency is sold, the following procedures shall be followed:

(A) The seller shall notify the Department of Human Services of the sale at least thirty (30) days before the completed sale;

(B) The seller shall remain responsible for the operation of the child welfare agency until the agency is closed or an amended license is issued to the buyer;

(C) The seller shall remain liable for all penalties assessed against the child welfare agency that are imposed for violations occurring before the transfer of a license to the buyer;

(D) The buyer shall be subject to any corrective action notices to which the seller was subject; and

(E) The provisions of subsection (a) of this section, including those provisions regarding obtaining licenses or permits from the Office of Long-Term Care and regarding obtaining any permits from the Health Services Permit Agency or the Health Services Permit Commission, shall apply in their entirety to the new owner of the child welfare agency.

(g) If the board votes to issue a license to operate a child welfare agency, the license must be posted in a conspicuous place in the child welfare agency and must state at a minimum:

(1) The full legal name of the entity holding the license, including the business name, if different;

(2) The address of the child welfare agency;

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

(4) The type of child welfare agency the licensee is authorized to operate;

(5) The maximum number and ages of children that may receive services from the agency, if applicable;

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

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

(h) (1) Reports, correspondence, memoranda, case histories, or other materials, including protected health information, compiled or received by a licensee or a state agency engaged in placing a child, including both foster care and protective services records,

shall be confidential and shall not be released or otherwise made available except to the extent permitted by federal law and only:

- (A) To the director as required by regulation;
- (B) For adoptive placements as provided by the Revised Uniform Adoption Act, § 9-9-201 et seq.;
- (C) To multidisciplinary teams under § 12-18-106(a);
- (D) (i) To the child's parent, guardian, or custodian.
 (ii) However, the licensee or state agency may redact information from the record such as the name or address of foster parents or providers when it is in the best interest of the child.
 (iii) The licensee or state agency may redact counseling records, psychological or psychiatric evaluations, examinations, or records, drug screens or drug evaluations, or similar information concerning a parent if the other parent is requesting a copy of a record;
- (E) To the child;
- (F) (i) To health care providers to assist in the care and treatment of the child at the discretion of the licensee or state agency and if deemed to be in the best interest of the child.
 (ii) "Health care providers" includes doctors, nurses, emergency medical technicians, counselors, therapists, mental health professionals, and dentists;
- (G) To school personnel and day care centers caring for the child at the discretion of the licensee or state agency and if deemed to be in the best interest of the child;
- (H) (i) To foster parents, the foster care record for foster children currently placed in their home.
 (ii) However, information about the parents or guardians and any siblings not in the foster home shall not be released;
- (I) (i) To the board.
 (ii) However, at any board meeting no information that identifies by name or address any protective services recipient or foster care child shall be orally disclosed or released in written form to the general public;
- (J) To the Division of Children and Family Services of the Department of Human Services, and the Department of Education, including child welfare agency licensing specialists;
- (K) For any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency that is authorized by law to conduct the audit or activity;
- (L) Upon presentation of an order of appointment, to a court-appointed special advocate;
- (M) To the attorney ad litem for the child;
- (N) For law enforcement or the prosecuting attorney upon request;
- (O) To circuit courts, as provided for in the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;
- (P) In a criminal or civil proceeding conducted in connection with the administration of any such plan or program;
- (Q) For purposes directly connected with the administration of any of the state plans as outlined at 42 U.S.C. § 671(a)(8), as in effect January 1, 2001;

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

(S) (i) To individual federal and state representatives and senators in their official capacity and their staff members with no redisclosure of information.

(ii) No disclosure shall be made to any committee or legislative body of any information that identifies by name or address any recipient of services;

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

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

(V) To volunteers authorized by the licensee or the state agency to provide support or services to the child or his or her family at the discretion of the licensee or the state agency and only to the extent information is needed to provide the support or services.

(W) (i) To a person, agency, or organization engaged in a bona fide research or evaluation project that is determined by the Division of Children and Family Services of the Department of Human Services to have value for the evaluation or development of policies and programs within the Division of Children and Family Services of the Department of Human Services.

(ii) Any confidential information provided by the Department of Human Services for a research or evaluation project under this subdivision (h)(1)(W) shall not be redisclosed or published.

(2) Foster home and adoptive home records are confidential and shall not be released except:

(A) To the foster parents or adoptive parents;

(B) For purposes of review or audit, by the appropriate federal or state agency;

(C) Upon allegations of child maltreatment in the foster home or adoptive home, to the investigating agency;

(D) To the board;

(E) To the Division of Children and Family Services of the Department of Human Services and the Department of Education, including child welfare agency licensing specialists;

(F) To law enforcement or the prosecuting attorney upon request;

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

(H) (i) To individual federal and state representatives and senators in their official capacity and their staff members with no redisclosure of information.

(ii) No disclosure shall be made to any committee or legislative body of any information that identifies by name or address any recipient of services; or

(I) To the attorney ad litem and court-appointed special advocate, the home study on the adoptive family selected by the Department of Human Services to adopt the juvenile.

(3) (A) Any person or agency to whom disclosure is made shall not disclose to any other person reports or other information obtained pursuant to this subsection.

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

(C) Nothing in this subchapter shall be construed to prevent subsequent disclosure by

the child or his or her parent or guardian.

(i) Foster parents approved by a child placement agency licensed by the Department of Human Services shall not be liable for damages caused by their foster children, nor shall they be liable to the foster children nor to the parents or guardians of the foster children for injuries to the foster children caused by acts or omissions of the foster parents unless the acts or omissions constitute malicious, willful, wanton, or grossly negligent conduct.

(j) [Repealed.].

HISTORY: Acts 1997, No. 1041, § 7; 1999, No. 1319, § 1; 2001, No. 1211, § 1; 2001, No. 1800, § 1; 2003, No. 1157, § 1; 2003, No. 1166, § 39; 2003, No. 1285, § 1; 2005, No. 888, § 2; 2005, No. 1766, § 2; 2005, No. 2234, §§ 3, 4; 2007, No. 634, § 2; 2009, No. 723, § 7; 2009, No. 758, § 16; 2011, No. 522, §§ 16-20; 2011, No. 591, § 10.

9-28-408. Church-related exemption.

(a) (1) Any church or group of churches exempt from the state income tax levied by § 26-51-101 et seq. when operating a child welfare agency shall be exempt from obtaining a license to operate the facility by the receipt by the Child Welfare Agency Review Board of written request therefor, together with the written verifications required in subsection (b) of this section.

(2) A written request shall be made by those churches desiring exemption to the board, which is mandated under the authority of this subchapter to license all child welfare agencies.

(b) (1) In order to maintain an exempt status, the child welfare agency shall state every two (2) years in written form signed by the persons in charge that the agency has met the fire, safety, and health inspections and is in substantial compliance with published standards that similar nonexempt child welfare agencies are required to meet.

(2) Visits to review and advise exempt agencies shall be made as deemed necessary by the board to verify and maintain substantial compliance with all published standards for nonexempt agencies.

(3) Standards for substantial compliance shall not include those of a religious or curriculum nature so long as the health, safety, and welfare of the child are not endangered.

(c) (1) Any questions of substantial compliance with the published standards shall be reviewed by the board.

(2) Final administrative actions of the board shall be pursued by either party in the court of competent jurisdiction in the resident county of the facility under review.

(3) Challenge to the constitutionality or reasonableness of any regulation or statute may be made prior to any appeal under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) (1) As used in this section, the term "substantial compliance" and the term "is being operated in accordance with this subchapter" shall each mean that a church-operated exempt or a nonexempt child welfare agency is being operated within the minimum requirements for substantial compliance as promulgated by the board.

(2) It is the intent and purpose of this section that the term "substantial compliance" be applicable to all child welfare agencies.

HISTORY: Acts 1997, No. 1041, § 8.

9-28-409. Criminal record and child maltreatment checks.

(a) (1) Each of the following persons in a child welfare agency shall be checked with

the Child Maltreatment Central Registry in his or her state of residence and any state of residence in which the person has lived for the past six (6) years and in the person's state of employment, if different, for reports of child maltreatment in compliance with policy and procedures promulgated by the Child Welfare Agency Review Board:

- (A) An employee having direct and unsupervised contact with children;
- (B) A volunteer having direct and unsupervised contact with children;
- (C) A foster parent and all household members ten (10) years of age and older, excluding children in foster care;
- (D) An adoptive parent and all household members ten (10) years of age and older, excluding children in foster care;
- (E) An owner having direct and unsupervised contact with children; and
- (F) A member of the agency's board of directors having direct and unsupervised contact with children.

(2) The board shall have the authority to deny a license or church-operated exemption to any applicant found to have any record of founded child maltreatment in the official record of the registry.

(3) (A) Any person required to be checked under this section who is found to have any record of child maltreatment in the official record of the registry shall be reviewed by the owner or operator of the facility in consultation with the board to determine appropriate corrective action measures that would indicate, but are not limited to, training, probationary employment, or nonselection for employment.

(B) The board shall also have the authority to deny a license or church-operated exemption to an applicant who continues to employ a person with any record of founded child maltreatment.

(4) All persons required to be checked with the registry under this subsection shall repeat the check at a minimum of every two (2) years, except that adoptive parents who reside in Arkansas shall repeat the check every year pending court issuance of a final decree of adoption, at which point repeat checks shall no longer be required.

(b) (1) Each of the following persons in a child welfare agency who has lived in Arkansas continuously for six (6) years or more shall be checked with the Identification Bureau of the Department of Arkansas State Police for convictions of the offenses listed in this subchapter in compliance with policy and procedures promulgated by the board:

- (A) An employee having direct and unsupervised contact with children;
- (B) A volunteer having direct and unsupervised contact with children;
- (C) An owner having direct and unsupervised contact with children;
- (D) A member of the agency's board of directors having direct and unsupervised contact with children;

(E) Foster parents, house parents, and each member of the household eighteen (18) years of age and older, excluding children in foster care; and

(F) (i) Adoptive parents and each member of the household eighteen (18) years of age and older, excluding children in foster care.

(ii) Adoptive parents and each member of the household eighteen (18) years of age and older, excluding children in foster care, who are not residents of Arkansas shall provide state-of-residence criminal records checks, if available.

(2) A child in the custody of the Department of Human Services shall not be placed in an approved home of any foster parent or adoptive parent unless all household members

eighteen (18) years of age and older, excluding children in foster care, have been checked with the Identification Bureau of the Department of Arkansas State Police for convictions of the offenses listed in this subchapter in compliance with policy and procedures promulgated by the board at a minimum of every two (2) years.

(3) (A) The owner or operator of a child welfare agency shall maintain on file, subject to inspection by the board, evidence that Department of Arkansas State Police criminal records checks have been initiated on all persons required to be checked and the results of the checks.

(B) Failure to maintain that evidence on file will be prima facie grounds to revoke the license or church-operated exemption of the owner or operator of the child welfare agency.

(4) All persons required to be checked with the Department of Arkansas State Police under this subsection shall repeat the check at a minimum of every five (5) years, except that adoptive parents who reside in Arkansas shall repeat the check every year pending court issuance of a final decree of adoption, at which point repeat checks shall no longer be required.

(c) (1) Each of the following persons in a child welfare agency who has not lived in Arkansas continuously for the past six (6) years shall have a fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation for convictions of the offenses listed in this subchapter:

(A) An employee having direct and unsupervised contact with children;

(B) A volunteer having direct and unsupervised contact with children;

(C) An owner having direct and unsupervised contact with children;

(D) A member of the agency's board of directors having direct and unsupervised contact with children;

(E) Foster parents, house parents, and each member of the household eighteen (18) years of age and older, excluding children in foster care; and

(F) (i) Adoptive parents and each member of the household eighteen (18) years of age and older, excluding children in foster care.

(ii) Adoptive parents and each member of the household eighteen (18) years of age and older, excluding children in foster care, shall not be required to have a criminal background check performed by the Federal Bureau of Investigation if:

(a) The adoptive parents and each member of the household age eighteen (18) years of age and older, excluding children in foster care, have continuously resided in a state for at least six (6) years before the adoption; and

(b) The state-of-residence criminal records check is available.

(2) (A) A child in the custody of the Department of Human Services shall not be placed in an approved home of any foster or adoptive parent unless all household members eighteen (18) years of age and older, excluding children in foster care, have a fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation for convictions of the offenses listed in this subchapter.

(B) The owner or operator of a child welfare agency shall maintain on file, subject to inspection by the board, evidence that the Federal Bureau of Investigation's criminal records checks have been initiated on all persons required to be checked and the results of the checks.

(C) Failure to maintain that evidence on file will be prima facie grounds to revoke the license or church-operated exemption of the owner or operator of the child welfare agency.

(d) (1) Each person required to have a criminal records check under this subchapter shall complete a criminal records check form developed by the Department of Human Services and shall sign the form that contains the following under oath before a notary public:

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

(B) Certification that the subject of the check has not been convicted of a crime and if the subject of the check has been convicted of a crime, contains a description of the crime and the particulars of the conviction;

(C) Notification that the subject of the check 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 by the board with respect to his or her employment status or licensing status;

(D) Notification that the subject of the check may be denied a license or exemption to operate a child welfare agency or may be denied unsupervised access to children in the care of a child welfare agency due to information obtained by the check that indicates that the subject of the check has been convicted of, or is under pending indictment for, a crime listed in this subchapter; and

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

(2) The owner or operator of the child welfare agency shall submit the criminal records check form to the Identification Bureau of the Department of Arkansas State Police for processing within ten (10) days of hiring the employee or volunteer, who shall remain under conditional employment or volunteerism until the registry check and criminal records checks required under this subchapter are completed.

(3) Nothing in this section shall be construed to prevent the board from denying a license or exemption to an owner or preventing an operator or employee in a child welfare agency from having unsupervised access to children by reason of the pending appeal of a criminal conviction or child maltreatment determination.

(4) In the event a legible set of fingerprints as determined by the Department of Arkansas State Police and the Federal Bureau of Investigation cannot be obtained after a minimum of two (2) attempts by qualified law enforcement personnel, the board shall determine eligibility based upon a name check by the Department of Arkansas State Police and the Federal Bureau of Investigation.

(5) (A) An owner or operator of a child welfare agency shall not be liable during a conditional period of service for hiring any person required to have a background check pursuant to this subchapter who may be subject to a charge of false swearing upon completion of central registry and criminal records check.

(B) (i) Pursuant to this subchapter, false swearing shall occur when a person while under oath provides false information or omits information that the person knew or reasonably should have known was material.

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

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

(e) (1) Except as provided in subdivision (d)(2) or subdivision (h)(1) of this section, no

person who is required to have a criminal check under subdivision (b)(1) or subdivision (c)(1) of this section shall be eligible to have direct and unsupervised contact with a child in the care of a child welfare agency if that person has pleaded guilty or nolo contendere to, or has been found guilty of, any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court unless the conviction was vacated or reversed:

- (A) Capital murder as prohibited in § 5-10-101;
- (B) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
- (C) Manslaughter as prohibited in § 5-10-104;
- (D) Negligent homicide as prohibited in § 5-10-105;
- (E) Kidnapping as prohibited in § 5-11-102;
- (F) False imprisonment in the first degree and false imprisonment in the second degree as prohibited in §§ 5-11-103 and 5-11-104;
- (G) Permanent detention or restraint as prohibited in § 5-11-106;
- (H) Battery in the first degree, battery in the second degree, and battery in the third degree as prohibited in §§ 5-13-201, 5-13-202, and 5-13-203;
- (I) Aggravated assault as prohibited in § 5-13-204;
- (J) Assault in the first degree and assault in the second degree as prohibited in §§ 5-13-205 and 5-13-206;
- (K) Terroristic threatening in the first degree and terroristic threatening in the second degree as prohibited in § 5-13-301(a) and (b);
- (L) Any sexual offense as prohibited in § 5-14-101 et seq.;
- (M) Permitting abuse of a child as prohibited in § 5-27-221;
- (N) Endangering the welfare of a minor in the first degree and endangering the welfare of a minor in the second degree as prohibited in §§ 5-27-205 and 5-27-206;
- (O) Contributing to the delinquency of a minor as prohibited in § 5-27-209;
- (P) Engaging children in sexually explicit conduct for use in visual or print medium, transportation of minors for prohibited sexual conduct, use of a child or consent to use of a child in sexual performance, and producing, directing, or promoting sexual performance by a child as prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;
- (Q) Incest as prohibited in § 5-26-202;
- (R) Interference with visitation as prohibited in § 5-26-501;
- (S) Interference with custody as prohibited in § 5-26-502;
- (T) Engaging in conduct with respect to controlled substances as prohibited in the former § 5-64-401 and § 5-64-419 - § 5-64-442;
- (U) Distribution to minors as prohibited in § 5-64-406;
- (V) Public display of obscenity as prohibited in § 5-68-205;
- (W) Prostitution as prohibited in § 5-70-102;
- (X) Promoting prostitution in the first degree, promoting prostitution in the second degree, and promoting prostitution in the third degree as prohibited in §§ 5-70-104, 5-70-105, and 5-70-106;
- (Y) Computer child pornography as prohibited in § 5-27-603;
- (Z) Computer exploitation of a child in the first degree as prohibited in § 5-27-605(a);
- (AA) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401 to commit any of

the offenses listed in this section;

(BB) Any felony or any misdemeanor involving violence, threatened violence, or moral turpitude; and

(CC) Any former or future law of this or any other state or of the federal government that is substantially equivalent to one (1) of the aforementioned offenses.

(2) (A) Any person who is required to have a criminal check under subdivision (b)(1) or subdivision (c)(1) of this section who pleads guilty or nolo contendere to, or is found guilty of, any of the offenses listed in subdivision (e)(1) of this section, unless the conviction is vacated or reversed, shall be absolutely disqualified to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or employee in a child welfare agency during the period of his or her confinement, probation, or parole supervision.

(B) Except as provided in subdivision (f)(1) of this section, any person who is required to have a criminal check under subdivision (b)(1) or subdivision (c)(1) of this section who pleads guilty or nolo contendere to, or is found guilty of, any of the offenses listed in subdivision (e)(1) of this section, unless the conviction is vacated or reversed, shall be presumed to be disqualified to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or employee in a child welfare agency after the completion of his or her term of confinement, probation, or parole supervision. The operator, volunteer, foster parent, adoptive parent, household member of a foster parent or an adoptive parent, member of any agency's board of directors, or an employee in a child welfare agency cannot petition the board unless the agency supports the petition. This presumption can be rebutted in the following manner:

(i) (a) The applicant must petition the board to make a determination that the applicant does not pose a risk of harm to any person.

(b) The applicant shall bear the burden of making such a showing; and

(ii) The board in its discretion may permit an applicant to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or an employee in a child welfare agency notwithstanding having been convicted of an offense listed in this section upon making a determination that the applicant does not pose a risk of harm to any person served by the facility. In making this determination, the board shall consider the following factors:

(a) The nature and severity of the crime;

(b) The consequences of the crime;

(c) The number and frequency of crimes;

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

(1) The age and vulnerability of victims of the crime;

(2) The harm suffered by the victim; and

(3) The similarity between the victim and persons served by a child welfare agency;

(e) The time elapsed without a repeat of the same or similar event;

(f) Documentation of successful completion of training or rehabilitation pertinent to the incident; and

(g) Any other information that bears on the applicant's ability to care for children or any other relevant information.

(C) The board's decision to disqualify a person from being an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or an employee in a child welfare agency under this section shall constitute the final administrative agency action and shall not be subject to review.

(f) (1) For purposes of this section, an expunged record of a conviction or plea of guilty or nolo contendere to an offense listed in subdivision (e)(1) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (f)(2) of this section.

(2) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, the following shall result in permanent disqualification:

(A) Capital murder as prohibited in § 5-10-101;

(B) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;

(C) Kidnapping as prohibited in § 5-11-102;

(D) Rape as prohibited in § 5-14-103;

(E) Sexual assault in the first degree and second degree as prohibited in §§ 5-14-124 and 5-14-125;

(F) Endangering the welfare of a minor in the first degree and endangering the welfare of a minor in the second degree as prohibited in §§ 5-27-205 and 5-27-206;

(G) Incest as prohibited in § 5-26-202;

(H) Arson as prohibited in § 5-38-301;

(I) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201; and

(J) Adult abuse that constitutes a felony as prohibited in § 5-28-103.

HISTORY: Acts 1997, No. 1041, § 9; 1999, No. 328, § 1; 2001, No. 1211, § 2; 2003, No. 1087, § 11; 2005, No. 1766, § 3; 2005, No. 1923, § 1; 2007, No. 634, § 3; 2009, No. 723, §§ 8-10; 2011, No. 522, §§ 21, 22; 2011, No. 570, § 71; 2011, No. 591, § 11.

9-28-410 -- 9-28-414. [Repealed.]