

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

Arkansas Department of Human Services  
Division of Developmental Disabilities Services

Effective Date June 30, 2014  
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## AUTHORITY

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

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

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

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

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

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## **100 DEFINITIONS**

The following definitions shall apply unless clearly stated otherwise:

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

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

Bureau - The Identification Bureau of the Department of the Arkansas State Police

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

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

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

Employee -

1. A person who:

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

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

2. Employee does not include a person who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **200 IMPLEMENTATION REQUIREMENTS**

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

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

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

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

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

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

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

- a. Was not disqualified on August 31, 2009; and
- b. Has been continuously employed by the service provider who initiated the criminal record check or continues to be the operator of a service provider; and,
- c. Has not been found guilty of or pleaded guilty or nolo contendere to any offense listed in Section 201, a similar offense in another state, or a similar federal offense since August 31, 2009; and
- d. Submits proof of prior non-disqualification through the service provider

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

### **300 PROCESS FOR EMPLOYMENT APPLICANTS AND EMPLOYEES**

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

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

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

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

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

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

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

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

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

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

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

#### **500 EXCEPTIONS, EXCLUSIONS, and WAIVERS**

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

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

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

1. The determination must be made by:
  - a. The Division of Child Care and Early Childhood Education (DCCECE) for an applicant or employee of a child care facility or church-exempt child care facility; or,
  - b. The Division of Medical Services, Office of Long Term Care, for an applicant or employee of an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID)
2. The DDS service provider employee or applicant has not have a break in continuous employment with the service provider in the child care facility or ICF/IID; and,
3. The child care facility or ICF/IID in which the employee or applicant works is operated and administered by the same service provider operating the DDS program; and,
4. The licensed or certified DDS service provider maintains evidence acceptable to DDS that the child care facility or ICF/IID is operated and administered by the same service provider; and,
5. The DDS service provider, the child care facility, and the ICF/IID in which the employee or applicant is employed maintains a copy of the determination letter by the Divisions listed in 1(a) or (b), above.

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

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

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

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

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

- a. The conviction or plea of guilty or nolo contendere was for any of the non-violent offenses listed below:
  1. Interference with court-ordered visitation, § 5-26-501;
  2. Interference with court-ordered custody, § 5-26-502;
  3. Theft by receiving, § 5-36-106;
  4. Forgery, § 5-37-201;
  5. Criminal impersonation, in the second degree § 5-37-208(b);
  6. Financial identity fraud, 5-37-227;
  7. Resisting arrest, §5-54-103;
  8. Prostitution, §5-70-102;
  9. Patronizing a prostitute, §5-70-103;
- b. the service provider wants to hire the person;
- c. the person remains in the employment of the service provider granting the waiver;
- d. the service provider maintains documentation to verify that the person has:
  - i. completed probation or parole supervision,
  - ii. paid all court-ordered fees or fines, including restitution, and
  - iii. fully complied with all court orders pertaining to the conviction or plea of guilty or nolo contendere;
- e. The person will be employed by:
  - i. A long-term care facility licensed by the Office of Long Term Care;
  - ii. An Intermediate Care Facility for Persons with Intellectual Disabilities licensed by the Office of Long Term Care;
  - iii. A Developmental Day Treatment Clinic Services provider (DDTCS) licensed by the Division of Developmental Disabilities Services (DDS);
  - iv. A group home operated by a service provider certified by DDS to provide Home and Community Based Services under the ACS Waiver Program
- f. After employment by the service provider granting the waiver, the person is not convicted of or does not plead guilty or nolo contendere to any offense listed in Section 201; and
- g. The person does not have a true or founded report of child or adult maltreatment on a central registry.

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

## **600 SANCTIONS and PENALTIES**

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

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

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

## **700 APPEALS**

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

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

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