

1082 DRUG SCREENS AND CRIMINAL BACKGROUND CHECKS OF PROVIDERS OF CERTAIN MEDICAID IN HOME CARE SERVICES

I. Purpose:

- (a) Implement Act 1336 of 2013; and
- (b) Enhance the integrity of the Department of Human Services Medicaid program by providing for drug screens and criminal background checks of caregivers.

II. Definitions:

- (a) “Assuming the responsibility by contract” means entering into an agreement, for consideration, to provide in-home care, protection, or custody, including an employment agreement with a home health or similar agency.
- (b) “Caregiver” means an individual who has responsibility for the protection, in-home care, or custody of a Medicaid enrollee as a result of assuming the responsibility by contract.
- (c) “Drug screen” means a 5-panel drug screen administered by a drug testing agency.
- (d) “Felony or crime involving moral turpitude or dishonesty” means:
 - (1) Criminal attempt, § 5-3-201, criminal complicity, § 5-3-202, criminal solicitation, § 5-3-301, or criminal conspiracy, § 5-3-401, to commit any of the offenses 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, §§ 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 an 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 et seq.;
- (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;
- (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.
- (e) “Qualifying drug screen” means a drug screen for which the test results are all “negative.”
 - (f) “Random drug screen” means drug screens that on average occur every 54 months and no less often than every 60 months.

III. Caregiver Screening Criminal Background Check and Drug Screens Required:

- (a) On and after September 1, 2013, current caregivers and applicants to become caregivers paid in whole or in part with Medicaid funds:
 - (1) Who have lived in Arkansas during the previous five (5) years, must comply with all requirements of the Identification Bureau of the Department of Arkansas State Police for the completion of a state criminal background check;
 - (2) Who have not resided continuously in Arkansas during the previous five (5) years, must comply with all requirements, including, without limitation, fingerprinting requirements of the Federal Bureau of Investigation for the completion of a federal criminal background check at such times as required below;
 - (3) Must pay all costs and fees for the required criminal background checks; and
 - (4) Must execute a release authorizing the criminal background check.
- (b) Caregivers must submit to a drug screen upon employment and to subsequent random drug screens.

IV. Caregiver Disqualification:

No caregiver or applicant to become a caregiver is suitable to become a caregiver, or to continue as a caregiver, paid in whole or in part with Medicaid funds if:

- (a) A criminal background check establishes that the caregiver applicant or caregiver pled guilty or nolo contendere to or has been found guilty of a felony or crime involving moral turpitude or dishonesty;
- (b) A drug screen is a disqualifying drug screen. A drug screen is disqualifying if it yields a result other than negative for controlled substances. Exception: if the disqualifying drug screen is more than six (6) months old and the caregiver applicant or caregiver's subsequent screen(s) is/are qualifying drug screen(s), then the caregiver or caregiver applicant is not disqualified based on the earlier drug screen.

V. Notification of Results:

After receiving criminal background check results from the Federal Bureau of Investigation or the Identification Bureau of the Department of Arkansas State Police, the Department of Human Services shall notify the caregiver applicant's prospective employer or the caregiver's employer whether criminal history disqualifies the caregiver or caregiver applicant from employment paid in whole or in part with Medicaid funds.

VI. Proof of Compliance:

- (a) Self-directed care: the beneficiary shall maintain copies of criminal history and drug screen results;
- (b) Other than under a self-directed care: The Medicaid provider who employs the caregiver shall maintain copies of criminal history and drug screen results at the provider's principle place of business.
- (c) Upon request, Department of Human Services representatives are entitled to immediate access to records maintained under this rule. If Department of Human Services representatives request copies and copying facilities are available where the records are maintained, copies shall be provided. If copying facilities are not available where the records are maintained, department representatives may remove the records for the time reasonably necessary to make copies.