



Division Provider Services & Quality Assurance  
700 Main Street, Slot S-427  
Little Rock, AR 72203-1437  
P: 501-320-6287  
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## MEMORANDUM (DPSQA)

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To: Long-term Care Facilities

From: Division of Provider Services and Quality Assurance

Date: 04/27/2020

Re: Background Checks for Employees of Long-term Care Facilities During the COVID-19 Outbreak

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The Governor declared a public health emergency on March 12, 2020, due to the Coronavirus (COVID-19) outbreak in Arkansas. In response to this declaration, the Department of Human Services (DHS) is suspending parts of section 304 of the Rules for Conducting Criminal Background Checks for Employees of Long-term Care Facilities. Specifically, DHS is suspending (1) the requirement that an applicant provide to law enforcement DMS Form-736, a pre-printed fingerprint card, and Form FBI-1 DHS Verification, and, (2) the requirement that law enforcement complete the forms, place the forms in a sealed envelope, and return the forms to the applicant.

By suspending these rules, long-term care facilities will be able to hire individuals pending the results of criminal background checks as allowed by § 20-38-103 of the Arkansas Code, including individuals who require a national, fingerprint-based check without initially sending in a fingerprint card and Form FBI-1 DHS Verification. As described in more detail below, this means that long-term care facilities will be able to hire individuals requiring a fingerprint-based background through either the normal process, where fingerprints are collected and processed for a national, fingerprint-based check, or through a new process, where a federal, name-based national check is conducted initially and fingerprints are collected and processed at a later date.

However, all other state and federal rules related to background checks still apply. This means that facilities must still provide applicants with Form DMS-736 to complete and return to the facility. It is essential for the facility to provide applicants with the complete DMS-736 form, including the instructions on page 2 and the Privacy Act Statement on page 3. It is also essential that the completed form be returned to the facility notarized with all needed signatures, including the signature on page 3.

This also means that long-term care facilities must still ensure that employees successfully pass employment clearance checks, state criminal background checks, and have no prior criminal convictions listed on DMS Form-736 before the facility can make a conditional offer of employment. See sections 303 to 305 of the Rules for Conducting Criminal Background Checks for Employees of Long-term Care Facilities. And if the long-term care facility uses the normal process for national, fingerprint-based checks, the facility must still provide to the applicant the fingerprint card and Form FBI-1 DHS Verification, and use those documents normally to request the national, fingerprint-based check.

Facilities can sign up with the Information Network of Arkansas (INA) to run certain state and federal background checks for certain limited authorized purposes. State checks are processed normally because no changes have been made to how state background checks are run. For federal, fingerprint-based background checks, the INA system now gives the facility two options: (1) a “traditional background check” process, and (2) a “Purpose Code X” process.

The “traditional background check” process will allow facilities to conduct a state-based background check as normal and initiate a federal fingerprint-based background check. The Arkansas State Police, however, will not process the fingerprint-based background check unless it receives the fingerprint card and all other normally required paperwork. Due to the COVID-19 outbreak, facilities have had difficulty in obtaining fingerprinting by law enforcement, but the Arkansas State Police maintains a list of commercial providers that can harvest fingerprints for federal fingerprint-based checks of applicants for employment at long-term care facilities, including through the use of “Livescan” locations that automatically send the fingerprints to the Arkansas State Police for processing. Some commercial providers also offer mobile fingerprint harvester services.

The Purpose Code X process allows the facility to use a name-based check temporarily without a fingerprint card and pending the later submission of fingerprints. To use the Purpose Code X, facilities option must pay the \$14.25 National/FBI check request online. The provider must enter physical description information for the applicant in the INA system. The descriptive information required is located on the fingerprint card and includes sex, race, height, weight, eye color, and hair. In addition, facilities must provide applicants with the form, Application of Background Check During the Public Health Emergency (Purpose Code X Waiver). Applicants must read, complete, and sign the Purpose Code X Waiver, and return the completed and signed form to the facility.

To use the Purpose Code X process, facilities must then send the completed Form DMS-736, Purpose Code X Waiver, and all required payments to: Arkansas Department of Human Services, Division of Provide Services and Quality Assurance, P.O. Box 8059, Little Rock, Arkansas 72203. The Department will retain the Form DMS-736 and a copy of the Purpose Code X form; the Department will send the Purpose Code X Waiver to the Identification Bureau of the Arkansas State Police to process the name-based background check.

When the Department receives the results of the name-based background check from the Arkansas State Police, the Department will send a letter to the facility informing the facility whether the applicant is qualified or disqualified for employment. If the applicant was disqualified, the Department will contact the facility by phone immediately and will send a letter to the applicant with appeal information.

Even if the Purpose Code X process is used, the applicant is still required to be fingerprinted and complete the fingerprint-based background check as soon as possible. As provided on the Purpose Code X Waiver, the applicant must be fingerprinted within 180 days from the date the name-based background check was performed or within 90 days from the expiration of the Governor’s emergency declaration, whichever occurs sooner. This means that facilities will need to ensure that applicants are fingerprinted within the earlier of these periods to be in compliance.

**Please keep all records as required by all applicable rules, including licensing rules and Medicaid billing rules. This rule suspension is effective immediately and will continue until the end of the emergency declared by the Governor.**