

Proposed Rulemaking

Title

To Amend Rules concerning Name Removal from the Arkansas Adult Maltreatment Registry

Promulgated by:

Division of Aging, Adult, and Behavioral Health Services

Title 12. Law Enforcement, Emergency Management, and Military Affairs

Chapter XVII. Division of Aging, Adult, and Behavioral Health Services,

Department of Human Services

Subchapter A. Generally

**Part 100. Policy and Procedure for Name Removal from the Arkansas Adult
Maltreatment Registry**

Subpart 1. Generally

12 CAR § 100-101. Consideration for removal by review team.

The Adult Maltreatment Registry Review Team shall operate as follows:

(1)(A) The Director of the Division of Aging, Adult, and Behavioral Health Services will appoint the members of the review team.

(B) The review team will be made up of the Adult Protective Services Unit of the Department of Human Services central office and field staff.

(C) There will be five (5) members with five (5) alternates in case of scheduling conflicts.

(D) A representative of OCC may provide legal advice and assistance to the team but will not be a member of the review team.

(E) In cases where the Name Removal Request is responsive to a "Founded" finding made by either the Office of Long-Term Care or the

Attorney General's office, the Review Team will include at least one (1) member from the Office of Long-Term Care or the Attorney General's office, depending on which office made the initial "Founded" finding.

(2) The review team will select an alternating chairperson for each quarter;

(3) The review team will determine a regular meeting schedule for the review of any requests that meet all criteria but shall meet no less than on an annual, quarterly basis;

(4) Review requests must be received sixty (60) days in advance of the review meeting, and all review team members will be provided with the case information fifteen (15) days prior to the review team meeting;

(5) All decisions will be determined by a majority vote of the review team members; and

(6)(A) All review team decisions will be sent in writing by the director or designee.

(B) Denials will be sent to the applicants by certified mail within fifteen (15) days from the review team's decision.

(C) Approvals will be sent to the applicants by regular mail within fifteen (15) days of the review team's decision.

12 CAR § 100-102. Name request removal.

(a) An offender may request his or her name be removed from the Adult and Long-term Care Facility Resident Maltreatment Central Registry when:

(1) The individual has not had a subsequent true report for one (1) year;

(2) More than one (1) year has passed since the offender's name was placed on the registry; and

(3) More than one (1) year has passed from the completion of any court-imposed sentence.

(b) However, the offender may not request removal from the registry if any of the following apply:

(1) The offender was placed into the registry for any type of maltreatment that resulted in a fatality as a direct result of the offender's act or omission;

(2) The offender:

(A) Is still involved in an open criminal court case based on the same underlying facts for which he or she was placed onto the registry; or

(B) Has not completed the terms and the conditions of any sentence arising from the conviction based on the same underlying facts for which he or she was placed onto the registry;

(3) The offender was placed onto the registry for any of the maltreatment types or type involving any of the injury characteristics or details listed below:

(A) Abuse with deadly weapon;

(B) Bone fractures;

(C) Brain damage/skull fracture;

(D) Burns/scalding;

(E) Human trafficking;

(F) Immersion;

(G) Interfering with a person's breathing;

(H) Internal injuries;

(I) Malnutrition;

(J) Oral sex;

(K) Poison/noxious substances;

(L) Restraint of the liberty of another involving threats or violence;

(M) Sexual exploitation;

(N) Sexual penetration;

(O) Sexual violence;

(P) Subdural hematoma; or

(Q) Suffocation; or

(4) The offender is convicted of a criminal offense for an act or omission listed in subdivision (b)(3) of this section that constitutes adult maltreatment and for which the offender is named in the registry regardless of any subsequent expungement of the

offense from the offender's criminal record, so long as the offender's conviction has not been reversed or vacated.

12 CAR § 100-103. Application format for an offender.

(a) An application for name removal from the Adult and Long-term Care Facility Resident Maltreatment Central Registry shall conform to the following:

(1) The offender will submit his or her request/petition to:

DAABHS/Adult Maltreatment Registry Name Removal
P.O. Box 1437 – Slot W241
Little Rock, AR 72203-1437

; and

(2) The offender shall also submit:

(A) A personal letter describing:

(i) The offender's reason for the removal request;

(ii) The events and circumstances surrounding the adult maltreatment finding;

(iii) The offender's rehabilitation; and

(iv) Why the offender does not pose a risk of maltreatment to vulnerable populations, including without limitation:

(a) Children;

(b) The elderly;

(c) Persons with a disability; and

(d) Persons with a mental health illness;

(B) Registry results free from a true finding of the same maltreatment type for the preceding year, or for one (1) year following the completion of any court-ordered sentence, if applicable;

(C) Registry results from the offender's current state of residence and any state in which the offender has resided in the preceding year free from a true finding of the same maltreatment type for the preceding year, or for one (1) year following the completion of any court-ordered sentence, if applicable;

(D) Arkansas Crime Information Center background check and an adult maltreatment-related check that is free from disqualifying offenses for the preceding one (1) year, one (1) year prior to the date of application;

(E) State background check results from the offender's current state of residence and any state in which the offender has resided in the preceding year free from adult maltreatment-related offenses for the preceding one (1) year, one (1) year prior to the date of the application;

(F) Description and documentation (e.g., court records, letter from the offender's attorney, probation officer, or prosecuting attorney) of any current pending criminal charges, if applicable;

(G) Evidence of the offender's rehabilitation, including, but not limited to:

(i) Documentation proving completion of treatment, remediation, or rehabilitation programs as related to the specific offense, if applicable; and

(ii) For removal requests related to sexual abuse, proof of rehabilitation must include documentation from a licensed mental health professional that:

(a) States that the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense;

(b) States total length of time the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense and the frequency of therapy sessions during that period of time;

(c)(1) Indicates whether a sex offender specific assessment was conducted during the therapy period (e.g., the Vermont Assessment of Sex Offender Risk (VASOR), Clarke Sex History Questionnaire for Males Revised, Hare Psychotherapy Scale).

(2) **Note.** The use of such an assessment is not necessarily a requirement for removal but the presence or absence of such an assessment will be considered; and

(d) Provides the licensed mental health professional's assessment of the requestor's participation during the therapy period; and

(H)(i) One (1) to three (3) letters of reference from professionals (not to include Adult Protective Services Unit of the Department of Human Services employees), employers, spiritual counselors, friends, or family describing the offender's rehabilitation and whether the offender poses a risk of maltreatment to vulnerable populations, including without limitation:

(a) Children;

(b) The elderly;

(c) Persons with a disability; and

(d) Persons with a mental health illness.

(ii) No more than one (1) letter of reference can be submitted from a family member.

(b) The Adult Maltreatment Registry Review Team may select additional, nonadult maltreatment-related offenses which prevent name removal from the registry.

12 CAR § 100-104. Determination of name removal request by an offender.

(a) The Adult Maltreatment Registry Review Team will consider requests for removal of names from the registry.

(b) In determining whether to remove an offender from the registry, the review team shall consider any relevant evidence, which may include without limitation the following:

(1) The circumstances surrounding the maltreatment;

(2) The seriousness of the harm caused by the maltreatment;

(3) The probability of the offender engaging in future maltreatment;

(4) Evidence of the offender's:

- (A) Completion of training;
- (B) Rehabilitation; and
- (C) Efforts to learn effective strategies to care for adults;
- (5) Information submitted by the petitioner;
- (6) Any other information that is relevant to the specific offense; and
- (7) Input from any victim or surviving family member of a victim of the underlying facts for which the offender/petitioner was placed onto the registry.

(c) If the review team denies the request-for-removal of the name from the registry, the review team shall send a denial letter to the offender explaining the reason for denial as it relates to:

- (1) The circumstances surrounding the maltreatment;
- (2) The seriousness of the harm caused by the maltreatment;
- (3) The probability of the offender engaging in future maltreatment;
- (4) Evidence of the offender's:
 - (A) Completion of training;
 - (B) Rehabilitation; and
 - (C) Efforts to learn effective strategies to care for adults;
- (5) Any pending criminal charges surrounding the maltreatment; and
- (6) Any other information that is relevant to the specific offense.

(d)(1) The offender shall wait one (1) year from the date of the request for removal before filing a new petition with the Adult Protective Services Unit of the Department of Human Services requesting the offender's name be removed from the registry.

(2) However, if the review team needs additional information from the offender in order to make the determination as to whether to remove his or her name from the registry, the review team may request that the offender provide the additional information without requiring the offender to wait an additional year to file a new petition.

(3) The review team shall inform the offender in writing of the specific additional information requested.

(4)(A) The offender shall have ten (10) calendar days from the date of the request to submit the requested additional information.

(B) If the request is sent via mail, the offender shall be given an additional three (3) calendar days to submit the information.

(C) If the requested information is not submitted within the specified timeframe, then the offender shall wait one (1) year from the date of the request to file a new petition requesting his or her name be removed from the registry.

(e) If the review team denies the request-for-removal of the name from the registry, the offender may request judicial review pursuant to the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

12 CAR § 100-105. Notice.

In addition to the above, we propose that notice of the petition for removal be given to the Medicaid Fraud Control Unit of the Office of the Attorney General if:

- (1) The underlying conduct resulted in a criminal prosecution; and
- (2) One (1) of its attorneys represented the State of Arkansas in the proceeding, so that the unit's prosecutor is given the opportunity to provide a response/recommendation.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE _____

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes No

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes No

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:
(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.