

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas      *As Engrossed: H2/27/13 S3/27/13 S4/4/13*  
89th General Assembly      **A Bill**  
Regular Session, 2013

HOUSE BILL 1384

By: Representative Miller

By: *Senator Irvin*

**For An Act To Be Entitled**

*AN ACT TO REQUIRE THAT IN-HOME CAREGIVERS WHO ARE PAID THROUGH THE MEDICAID PROGRAM BE TESTED FOR ILLEGAL DRUG USE; TO REQUIRE CRIMINAL BACKGROUND CHECKS; AND FOR OTHER PURPOSES.*

**Subtitle**

*TO REQUIRE THAT IN-HOME CAREGIVERS WHO ARE PAID THROUGH MEDICAID BE TESTED FOR ILLEGAL DRUG USE AND UNDERGO CRIMINAL BACKGROUND CHECKS.*

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

*SECTION 1. Arkansas Code Title 20, Chapter 77, Subchapter 1, is amended to add an additional section to read as follows:*

*20-77-125. In-home caregiver drug tests and criminal background checks.*

*(a) As used in this section, "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 or*

*(b)(1) A caregiver shall submit to a drug screen that tests for the use of illegal drugs through a program established by the Department of Human Services.*

*(2) A drug screen under this section shall be administered to:*

*(A) A caregiver on or after September 1, 2013; and*

*(B)(i) A random sampling of caregivers on or after*



September 1, 2013.

(ii) The random sampling shall be designed to ensure that each caregiver is tested for illegal drug use under this section at least one (1) time every five (5) years.

(iii) A caregiver who has been tested through a home health agency within the previous five (5) years for the use of illegal drugs may satisfy the testing requirement under this subsection (b) by providing verification of the home health agency test.

(3)(A) A caregiver who refuses to submit to a drug screen required under this section or who tests positive for the use of illegal drugs in a drug screen required under this section shall be ineligible for employment paid with Medicaid funds for six (6) months after the date of the refusal or the date of the positive test result.

(B)(i) After the six-month period under subdivision (b)(3)(A) of this section, the caregiver may volunteer to undergo a new test for the use of illegal drugs under this section.

(ii) If the caregiver tests positive for the use of illegal drugs in a voluntary drug screen under this section, the caregiver shall be ineligible for future employment paid with Medicaid funds.

(c)(1) The Department of Human Services shall:

(A) Require a state criminal background check of a caregiver and of an applicant to become a caregiver by the Identification Bureau of the Department of Arkansas State Police that conforms to the applicable standards; and

(B) For a person who has not resided continuously in Arkansas during the previous five (5) years, require a federal criminal background check of a caregiver and of an applicant to become a caregiver by the Federal Bureau of Investigation that conforms to the applicable standards and includes the taking of fingerprints.

(2) A caregiver or an applicant to become a caregiver shall pay for the payment of any fee associated with the criminal records check under this subsection.

(3) Before a criminal background check is performed, a caregiver or an applicant to become a caregiver shall sign a release authorizing the background check.

(4) Upon completion of the criminal background check, the

Identification Bureau of the Department of Arkansas State Police shall forward to the Department of Human Services information obtained concerning the caregiver or applicant to become a caregiver that indicates that the caregiver or applicant to become a caregiver has pleaded guilty or nolo contendere to or has been found guilty of a felony or crime involving moral turpitude or dishonesty.

(5) The results of the background check shall be used by the Department of Human Services to determine the suitability of:

(A) An applicant to become a caregiver paid with Medicaid funds; or

(B) A caregiver for continued employment paid with Medicaid funds.

(6) A caregiver or applicant to become a caregiver who has pleaded guilty or nolo contendere to or has been found guilty of a felony or crime involving moral turpitude or dishonesty shall not be employed to provide services paid with Medicaid funds.

(7) The criminal background information of a caregiver or applicant to become a caregiver is confidential.

(d)(1) The Department of Human Services shall adopt rules to implement this section.

(2) If necessary, the Department of Human Services shall seek a waiver from the Centers for Medicare and Medicaid Services for approval of the rules adopted under this section.

/s/Miller