

Title 25. State Government

Chapter VIII. Generally, Department of Human Services

Subchapter A. Generally

Part 30. Participant Exclusion

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules of provided as follows: "1088.0 DHS Participant Exclusion Rule".

Subpart 1. Generally

25 CAR § 30-101. Purpose — Intent.

(a)(1) The Department of Human Services shall conduct business only with responsible participants.

(2) Participants will be excluded from participation in department programs to protect:

- (A) Public funds;
- (B) The integrity of publicly funded programs; and
- (C) Public confidence in those programs.

(3) It is also the intent of this policy to prevent excluded participants from substituting others in their place, usually accomplished through related parties, as surrogates to continue the practices that caused the department or the Office of Medicaid Inspector General to exclude the participant.

(b)(1) Participant exclusion is a serious action that shall be used only in the state's best interests and for the protection of:

- (A) The public;
- (B) Public programs; and
- (C) The department.

(2) The department and the office shall impose exclusion only in accordance with this part.

Authority. Arkansas Code §§ 20-76-201, 20-77-2506, 25-10-129.

25 CAR § 30-102. Application.

(a)(1) This part applies to all participants, including related parties, as defined in 25 CAR § 30-103.

(2) The rights, obligations, and remedies created and imposed by this part are in addition to any rights, obligations, and remedies under any other applicable:

- (A) Law;
- (B) Regulation;
- (C) Policy; or
- (D) Rule.

(b) Notwithstanding the other provisions of this part, the Department of Human Services or the Office of Medicaid Inspector General may not exclude a participant based on a criminal offense identified on a criminal background check if:

(1) The participant is employed as, or is being considered for employment as, a peer support specialist or other similar position requiring that the individual has personally received services within the behavioral health system;

(2) The participant:

(A) Works or is applying to work with individuals receiving substance abuse treatment; or

(B) Obtains certification in peer recovery by the Arkansas Substance Abuse Certification Board and:

(i) The certification is obtained after the commission of the criminal offense; and

(ii) The certification process includes due process for appealing a decision based upon a disqualifying charge in the criminal background check; and

(3) The criminal offense does not involve violence or a sexual act.

Authority. Arkansas Code §§ 20-76-201, 20-77-2506, 25-10-129.

25 CAR § 30-103. Definitions.

As used in this part:

(1)(A) "Administrative adjudication" means an appeal hearing conforming to the Arkansas Administrative Procedure Act, codified as Arkansas Code § 25-15-201 et seq.

(B) Administrative appeals must be limited to the extent necessary to avoid compromising any ongoing criminal investigation;

(2) "Appropriation" means the authority granted by the General Assembly to expend public funds for specified purposes;

(3) "Civil judgment" means the disposition of a civil action by any court of competent jurisdiction, whether entered by:

(A) Verdict;

(B) Decision;

(C) Settlement;

(D) Stipulation; or

(E) Otherwise creating a civil liability for a wrongful act;

(4) "Collateral exclusion" means exclusion from one (1) program based upon a previous final exclusion from another program as provided in 25 CAR § 30-104(a)(2) and (3);

(5) "Common ownership" means when an entity, entities, an individual, or individuals possess five percent (5%) or more ownership or equity in the participant;

(6) "Control" means an individual or an organization has the power, directly or indirectly, to influence or direct the actions or policies of a participant, including control due to:

(A) Ownership interest;

(B) Management; or

(C) Administration;

(7) "DHS" means the Department of Human Services, including all divisions, offices, and units thereof;

(8) "Exclusion" means the process in which a participant or, when applicable, a related party, is prohibited from participating in any Department of Human Services program, including all contracts, grants, licenses, certifications, and agreements involving the expenditure of appropriated funds unless:

(A) Such funds are for proper charges approved before the date of exclusion; and

(B) The participant has reimbursed any funds owed to the Department of Human Services;

(9)(A) "Expungement" means the sealing of criminal records for the purpose of keeping the records confidential.

(B) "Expungement" includes a criminal conviction, or a pre-adjudication plea of guilty or nolo contendere, that is sealed pursuant to:

(i) The Comprehensive Criminal Record Sealing Act of 2013, Arkansas Code § 16-90-1401 et seq.;

(ii) A similar Arkansas state statute sealing criminal records;

(iii) A similar statute of another state; or

(iv) A federal statute or federal court order;

(10) "Final determination" means, unless provided otherwise in federal law or regulation:

(A) All appeals have been exhausted; or

(B) The deadline to appeal the determination upon which the exclusion is based has passed;

(11) "Immediate family member" means a person's:

(A) Spouse;

(B) Natural or adoptive parent, child, or sibling;

(C) Stepparent, stepchild, or stepsibling;

(D) Father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law; or

(E) Grandparent or grandchild;

(12) "Mandatory exclusion" means exclusion imposed following and based upon a final adjudication of one (1) or more acts or omissions described in 25 CAR § 30-104;

(13) "Nonconforming commodities or services" means goods or services not in accordance with the obligations under the:

- (A) Contract;
- (B) Agreement;
- (C) Standards; or
- (D) Manual;

(14) "Participant" means a person or entity that:

(A) Is a party to or is seeking to become a party to a contract, grant, or any type of agreement with the Department of Human Services to furnish commodities or services to, on behalf of, or as a grantee or sub-grantee of:

- (i) The Department of Human Services; or
- (ii) Any recipient of Department of Human Services services;

(B) Is issued or is seeking a license, certification, or authorization by the Department of Human Services;

(C) Is receiving or seeking to receive appropriated funds from the Department of Human Services;

(D) Was substantially involved in the act or omission giving rise to the exclusion; or

(E) Is an employee or independent contractor engaged to deliver healthcare goods or services for an individual or entity that is an enrolled Medicaid provider;

(15)(A) " Related party" means a person or an entity:

- (i) Associated or affiliated with the participant;
- (ii) That shares common ownership, control, or common board members with the participant;
- (iii) That has control of the participant;
- (iv) That is controlled by the participant; or

(v) That has significant influence over the participant.

(B) "Related party" may include but is not limited to:

(i) Principal owners of the entity and members of their immediate families;

(ii) Management of the entity and members of their immediate families;

(iii) Other parties that can significantly influence the management or operating policies of the transacting parties or that have an ownership interest in one (1) of the transacting parties and can significantly influence the other to an extent that one (1) or more of the transacting parties might be prevented from fully pursuing its own separate interests; or

(iv) Any person or entity who was substantially involved in the act or omission giving rise to the exclusion.

(C) "Related party" does not include a:

(i) Managed care organization (MCO);

(ii) Provider-led Arkansas Shared Savings Entity (PASSE); or

(iii) Similar type of entity with its own network of direct service providers merely due to the business agreement with the network providers;

(16) "Secretary" means the Secretary of the Department of Human Services or his or her designee; and

(17) "Temporary exclusion" means exclusion from participation or payment pending the outcome of:

(A) An investigation;

(B) An adjudication (if the participant timely requests adjudication); or

(C) A trial.

Authority. Arkansas Code §§ 20-76-201, 20-77-2506, 25-10-129.

25 CAR § 30-104. Mandatory exclusion.

(a) The Department of Human Services or the Office of Medicaid Inspector General with respect to Arkansas Medicaid programs, shall automatically exclude a participant:

(1) If the participant is the subject of a final determination that the participant has wrongfully acted or failed to act with respect to, or has been found guilty, or pled guilty or nolo contendere, to any crime related to:

(A) Obtaining, attempting to obtain, or performing a public or private contract or subcontract;

(B) Embezzlement, theft, forgery, bribery, falsification or destruction of records, any form of fraud, receipt of stolen property, or any other offense indicating moral turpitude or a lack of business integrity or honesty;

(C) Controlled substances or other drug-related offenses when the offense is a felony;

(D) Federal antitrust statutes;

(E) The submission of bids or proposals;

(F) Any physical abuse, sexual abuse, or neglect when the offense is a felony;

(G) The neglect or abuse of a patient in connection with the delivery of a healthcare item or service; or

(H) Child pornography, when the offense is a felony;

(2)(A) That is presently subject to debarment, suspension, or other exclusion by any unit of the federal government or any unit of a state government, if:

(i) The debarment, suspension, or exclusion was imposed after an opportunity for due process; and

(ii) Federal law does not expressly prohibit collateral exclusion under the circumstances.

(B) Exclusion under subdivision (a)(2)(A) of this section shall be concurrent with the period of debarment, suspension, or exclusion imposed by the federal or state government;

(3)(A) Upon learning that the participant was terminated or excluded for cause from participation in a program by any unit of the federal government or any unit of a state government, provided that:

(i) The debarment or exclusion was imposed after an opportunity for due process; and

(ii) Federal law does not expressly prohibit collateral exclusion under the circumstances.

(B) The term of exclusion under subdivision (a)(3)(A) of this section shall be determined under 25 CAR § 30-108; or

(4) When that participant agrees to exclusion as part of a final settlement agreement to resolve potential or pending criminal charges or any civil matter involving a state healthcare plan.

(b) Participants automatically excluded are not permitted to re-litigate through the administrative process the facts or law determined by the final adjudication under subsection (a) of this section.

Authority. Arkansas Code §§ 20-76-201, 20-77-2506, 25-10-129.

25 CAR § 30-105. Discretionary exclusion.

The Department of Human Services or the Office of Medicaid Inspector General, with respect to Arkansas Medicaid programs, may exclude participants for any of the following acts or omissions that are of a character regarded by the Secretary of the Department of Human Services or the office to be so serious as to justify exclusion:

(1) Any true or substantiated final finding of abuse, neglect, or other maltreatment on the part of the provider under the:

(A) Child Maltreatment Act, Arkansas Code § 12-18-101 et seq.; or

(B) Adult and Long-Term Care Facility Resident Maltreatment Act, Arkansas Code § 12-12-1701 et seq.;

(2) Refusal or knowing failure, without good cause, to comply:

- (A) With applicable requirements, including requirements contained or incorporated in statutes, rules, contracts, or purchase orders; or
- (B) Within the time provided in the contract or grant;
- (3) Failure to perform or unsatisfactory performance, provided that the failure to perform or unsatisfactory performance beyond the control of the contractor or grantee shall not be considered to be a basis for exclusion;
- (4) Failure to post any surety bond or to provide similar guarantees acceptable to the department required under any contract or grant;
- (5) Substitution of commodities or services without prior written approval of the department;
- (6) Failure to cure nonconforming commodities or services within the lesser of:
 - (A) A reasonable time; or
 - (B) The time specified in the contract or in a corrective action plan;
- (7) Refusal to accept a contract or grant awarded in accordance with the:
 - (A) Request for proposal; or
 - (B) Invitation for bid;
- (8) Making material misrepresentations or failing to make representations or disclosures when:
 - (A) Required; or
 - (B) A reasonable person would naturally have been expected to affirm or deny the existence of a material fact;
- (9) Collusion or collaboration with any bidder, proposer, or applicant in the submission of any proposal, bid, or grant application for the purpose of lessening or reducing competition;
- (10) Failure to submit to or to supply an audit as required by federal or state law or rule;
- (11) Failure or refusal, after request by the department or the office, to supply records related to the:
 - (A) Contract;
 - (B) Proposal;

(C) Bid; or

(D) Application;

(12) Any act or omission that causes or materially contributes to placement of a lien upon the assets of the state;

(13) Conviction related to the use of illegal drugs, controlled substances, or other drug-related offenses when the offense is a misdemeanor;

(14) Any physical abuse, sexual abuse, or neglect when the offense is a misdemeanor;

(15) Submitting, without good cause, a bill or claim for payment exceeding the amount to which the participant is entitled;

(16) Failure to make repayment arrangements acceptable to the department to repay any funds owed the department, or failure to strictly adhere to the terms of any agreed-to repayment arrangements;

(17) Failure to comply with professional standards of care or conduct applicable to the service provided;

(18) Failure to comply with standards or requirements relating to any license, permit, certification, other publicly granted authority, or accreditation needed to provide any service funded in whole or in part with public funds;

(19) Failure to fully and accurately make any disclosures required by contract, federal or state law or rule;

(20) Transaction of business in knowing contravention of an exclusion imposed under this part; or

(21) Child pornography, when the offense is a misdemeanor.

Authority. Arkansas Code §§ 20-76-201, 20-77-2506, 25-10-129.

25 CAR § 30-106. Persons and entities excluded.

In addition to excluded participants, exclusion applies to:

(1)(A) All the participant's related parties, and the heirs and assigns of the participants and related parties.

(B) Whether a related party should be excluded or prevented from being a substitute in place of an excluded person or entity will be based on the specific facts of the exclusion and the relationship between the related parties as determined by the Department of Human Services or the Office of Medicaid Inspector General; and

(2)(A) The participant's immediate family members, in order to prevent continued wrongdoing via a surrogate.

(B) Generally, immediate family members will be excluded from participation in:

- (i) Any entity to which the excluded participant was a related party;
- (ii) Any successor entity; or
- (iii) A start-up entity in the same or a similar program.

Authority. Arkansas Code §§ 20-76-201, 20-77-2506, 25-10-129.

25 CAR § 30-107. Effect of exclusion.

(a)(1) Those excluded may not receive appropriated funds except to the extent such funds are for proper charges approved before the date of exclusion.

(2) Payments are limited to the amount by which the proper charges exceed the amount of any indebtedness to the Department of Human Services.

(b)(1) The department shall maintain a list of those excluded.

(2) Upon being listed as excluded, the person or entity:

(A) Cannot continue as a party to any department contract, grant, license, certification, or agreement with the department involving the expenditure of appropriated funds and the issuance of licenses, certifications, or any type of authorization by the department;

(B) Is ineligible to submit, directly or indirectly, proposals, bids, or applications to the department for the term of the exclusion; and

(C) Cannot act as a participant in the delivery of healthcare goods or services in any department program for the term of the exclusion.

Authority. Arkansas Code §§ 20-76-201, 20-77-2506, 25-10-129.

25 CAR § 30-108. Term of exclusion.

(a)(1) The term of the exclusion shall be set after consideration of the:

(A) Nature and seriousness of the wrongful act or omission warranting exclusion;

(B) Length of time since any wrongful act or omission warranting exclusion; and

(C) Goals and purposes underlying this part.

(2) The term of exclusion must be stated in the exclusion determination.

(b)(1) Exclusion shall be for not less than one (1) year and at least until:

(A) All appropriated funds, costs, and penalties owed to the Department of Human Services by the participant are paid in full; and

(B) The participant meets all contract or grant requirements as well as all applicable requirements in federal rules and laws.

(2) Exclusion of immediate family members and related parties shall run concurrently not to exceed five (5) years.

Authority. Arkansas Code §§ 20-76-201, 20-77-2506, 25-10-129.

25 CAR § 30-109. Procedural rules.

(a)(1) The Department of Human Services or the Office of Medicaid Inspector General must prove the act or omission upon which the exclusion is based by a preponderance of the evidence.

(2) An excluded person or entity must prove the elements of any defense by a preponderance of the evidence.

(b) Administrative due process shall be accomplished via existing department processes for appeals by an excluded person or entity.

(c)(1) An excluded person or entity is entitled to an administrative hearing.

(2) The hearing must be held:

(A) Within a reasonable time after temporary exclusion; and

(B) Before any exclusion other than a temporary exclusion.

(d) Expunged records of a plea or finding of guilt shall be considered by the department for purposes of this part unless otherwise excluded by law or regulation.

Authority. Arkansas Code §§ 20-76-201, 20-77-2506, 25-10-129.