

**DEPARTMENT OF HUMAN SERVICES**  
**DIVISION OF DEVELOPMENTAL DISABILITIES**

**EFFECTIVE DATE:** July 24, 2023

**DATE ISSUED:** September 5, 2023

(Rescinds Division Circular #40, "Background Checks" issued April 4, 2016)

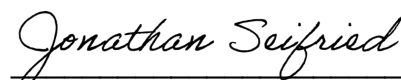
**I. TITLE: BACKGROUND CHECKS**

**II. PURPOSE:** To establish guidelines for obtaining criminal history background checks of employees of agencies under contract with the Division of Developmental Disabilities and community care residence applicants, community care residence licensees, community care residence alternates, and community care residence household members.

**III. SCOPE:** Background checks shall be conducted for those employees of agencies under contract with the Division, working in such contracted programs, who have direct contact with the persons served by the agency. Such employees include, but are not limited to, consultants, interns, and seasonal employees. Background checks shall also be conducted for all community care residence applicants, community care residence licensees, community care residence alternates, and community care residence household members.

**IV. GENERAL STANDARDS:**

The remainder of this circular is the background check rule as it appears at N.J.A.C. 10:48A.



---

Jonathan Seifried  
Assistant Commissioner

## **SUBCHAPTER 1. GENERAL PROVISIONS**

### **10:48A-1.1 Purpose**

The purpose of this subchapter is to establish guidelines for obtaining criminal history background checks of employees of agencies under contract with the Division of Developmental Disabilities and community care residence applicants, community care residence licensees, community care residence alternates, and community care residence household members.

### **10:48A-1.2 Scope**

Background checks shall be conducted for those employees of agencies under contract with the Division, working in such contracted programs, who have direct contact with the persons served by the agency. Such employees include, but are not limited to, consultants, interns, and seasonal employees. Background checks shall also be conducted for all community care residence applicants, community care residence licensees, community care residence alternates, and community care residence household members.

### **10:48A-1.3 Definitions**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

"Archive request" means an excel spreadsheet submitted electronically for a two-year Criminal History Record Information report (CHRI).

"Assistant Commissioner" means the Assistant Commissioner of the Division of Developmental Disabilities.

"Community agency" means a public or private agency under contract with, or licensed by, the Department to provide services to Department individuals who have developmental disabilities.

"Community agency board" means the board of directors of a community agency.

"Community agency employee" means any individual, age 18 and older, who is employed by a public or private agency under contract with, or licensed by, the Department to provide services to Department individuals who have developmental disabilities, and includes all personnel who may come into direct contact with individuals who have developmental disabilities.

"Community agency head" means the person responsible for the overall operation of the agency under contract with the Department.

"Community care residence" means a private house or apartment in which a person 18 years or older is under contract with, or licensed by, the Department to provide individuals with developmental disabilities or persons with brain injury, with care and a level of training and supervision that is based upon the documented needs of the individuals.

"Community care residence alternate" means a person 18 years of age or older who has been selected by the applicant to provide care and supervision for individuals who require supervision at the community care residence.

"Community care residence applicant" means a person age 18 or older who satisfactorily initiates and completes the application process in order to obtain a license to operate a community care residence.

"Community care residence household member" means a person 18 years of age or older who resides in a community care residence, but does not include the individual who is receiving services from the Department.

"Community care residence licensee" means a person who has applied for and obtained a license to operate a community care residence.

"DDD fingerprint liaison" means the staff person in the Division of Developmental Disabilities (DDD) who directs the community agency to transmit electronic requests to the live scan vendor.

"Department" means the Department of Human Services.

"DHS Coordinator" means the staff member in the Department of Human Services Employment Controls and Compliance Unit (ECCU) who advises the agency of the results of the criminal history background checks.

"Division" means the Division of Developmental Disabilities.

"Under contract" means a provider under a written agreement with the Division or a provider approved by the Division to provide disability services to individuals that are eligible to receive services from the Division.

## **SUBCHAPTER 2. ADMINISTRATION**

### **10:48A-2.1 General standards**

- a) N.J.S.A. 30:6D-63 to 72 requires that any community agency under contract with, or licensed by, the Department shall not pay or contract for any employee or agency head for the provision of services unless it has first been determined that no criminal history record information exists on file in the Federal Bureau of Investigation Identification Division, or in the State Bureau of Identification in the Division of State Police, which would disqualify the community agency head, or the community agency employee from such employment. N.J.S.A. 30:6D-63 through 72 also requires that a community care residence shall not be qualified to house individuals unless it has first been determined that no criminal history record information exists on file in the Federal Bureau of Investigation Identification Division, or in the State Bureau of Identification in the Division of State Police, which would disqualify the community care residence applicant, community care residence licensee, community care residence alternate, or community care residence household member.
- b) Fingerprints shall be taken electronically through a "live scan" process. The agency staff, community care residence applicant, community care residence licensee, community care residence alternate, or community care residence household member shall be responsible to schedule an appointment to have fingerprints taken by the current approved vendor using the information on the unique fingerprint form provided by the employer or the Division. The State Bureau of Identification will check its own records and forward an inquiry to the Federal Bureau of Investigation.
- c) It shall be the responsibility of the community agency head, community care residence applicant, or community care residence licensee to ensure compliance with this chapter.
- d) If the criminal history record indicates a conviction for certain criminal or disorderly persons offenses, the employee shall be terminated from employment, or the community care residence shall not be qualified to house individuals unless the employee, the community care residence applicant, community care residence licensee, community care residence alternate, or community care residence household member affirmatively demonstrates to the Department, clear and convincing evidence of his or her rehabilitation.
- e) If a prospective employee, community care residence applicant, prospective community care residence alternate, or prospective community care residence household member refuses to consent to or cooperate in securing a background check, the person shall not be

considered for employment, or the community care residence shall not be qualified to house individuals.

- f) If a current employee, refuses to consent to or cooperate in securing fingerprints for the purpose of a background check, the person shall be immediately removed from his or her position and the person's employment shall be terminated. If a community care residence licensee, community care residence alternate, or community care residence household member refuses to consent to or cooperate in securing fingerprints for the purpose of a background check, the community care residence shall not be qualified to house individuals.
- g) A background check shall be conducted at least once every two years through the electronic submission of an archive request. An archive request shall be submitted by the community agency electronically to the DDD fingerprint liaison to be forwarded to the live scan vendor. The Department shall submit the archive request for a community care residence. The CHRI result will be forwarded to the DHS Coordinator for distribution to the requesting community agency or to the community care residence.
- h) The community agency head and all employees who may come in contact with persons served by the agency shall submit their fingerprints prior to employment to the Department of Human Services office, as directed by the Division. A community care residence applicant, community care residence licensee, community care residence alternate, or community care residence household member shall submit their fingerprints to the Department, as directed by the Division.
- i) If the background check of the community agency head, community care residence applicant, or community care residence licensee reveals a criminal record as identified below, the Department shall determine within 60 days, if the community agency head, community care residence applicant, or community care residence licensee has been rehabilitated in accordance with N.J.A.C. 10:48A-3.4.
- j) The community agency head shall ensure that each employee who may come in contact with persons served by the agency shall be fingerprinted in accordance with the procedures in this chapter. The community care residence applicant or community care residence licensee shall ensure that each community care residence alternate or community care residence household member shall be fingerprinted in accordance with the procedures set forth in this chapter.
- k) All employees, community care residence applicants, community care residence licensees, community care residence alternates, and

community care residence household members shall sign a written consent to the criminal background check (refer to the chapter Appendix, incorporated herein by reference) prior to the time the fingerprints are taken. This consent shall remain on file in the agency or community care residence.

- l) Individuals shall be disqualified for employment and community care residences shall be disqualified from housing individuals if any employee, any community care residence applicant, community care residence licensee, community care residence alternate, or community care residence household member has been convicted of any of the following crimes or disorderly persons offenses in New Jersey:
  1. Any crime or disorderly person offense involving danger to the person as set forth in N.J.S.A. 2C:11-1 et seq. through 2C:15-1 et seq., including the following:
    - i. Murder;
    - ii. Manslaughter;
    - iii. Death by auto;
    - iv. Simple assault;
    - v. Aggravated assault;
    - vi. Recklessly endangering another person;
    - vii. Terroristic threats;
    - viii. Kidnapping;
    - ix. Interference with custody of children;
    - x. Sexual assault;
    - xi. Criminal sexual contact;
    - xii. Lewdness; or
    - xiii. Robbery;
  2. Any crime against children or incompetents as set forth in N.J.S.A. 2C:24-1 et seq., including the following:
    - i. Endangering the welfare of a child; or
    - ii. Endangering the welfare of an incompetent person;
  3. A crime or offense involving the manufacture, transportation, sale, possession or habitual use of a controlled dangerous substance as defined in N.J.S.A. 24:21-1 et seq.; or
  4. In any other state or jurisdiction, conduct, which, if committed in New Jersey, would constitute any of the crimes or disorderly person's offenses, described in (l) 1 through 3 above.

## **SUBCHAPTER 3. PROCEDURES**

### **10:48A- 3.1 Fingerprints**

- (a) Prior to employment, the community agency head or employee shall make an appointment to have his or her fingerprints taken through the live scan process with an agent designated by the Department of Human Services.
- (b) At the time, the fingerprints are taken, the employee, community care residence applicant, community care residence licensee, community care residence alternate, or community care residence household member is required to:
  - 1. Complete the Certification and Permission for Background Check and Release of Information (see N.J.A.C. 10:48A Appendix), which will be witnessed by a representative of the community agency, in the case of an agency head or employee. The community agency or community care residence shall retain the consent with the employee's personnel information or in the community care residence, as applicable. The Division shall retain the agency head consent;
  - 2. Obtain a receipt from the representative of the agency taking the fingerprints that they have been taken;
  - 3. Return the receipt to the community agency head, or designee, or the community care residence applicant or community care residence licensee; and
  - 4. If the State Police or FBI rejects the prints as unclassifiable, make an appointment to be reprinted within 10 days of notification that the prints are rejected.
- (c) After the fingerprint results are received:
  - 1. The DHS Coordinator shall review the results and determine what may be released to the agency or community care residence;
  - 2. No later than 14 days from receipt of the results, the Department shall make a determination regarding the qualification or disqualification of the individual and shall notify the individual and the community agency or the community care residence in writing. If the individual is disqualified, the conviction(s), which constitutes the basis for the disqualification, shall be identified in the written notice. The written notice may be transmitted electronically, if the individual authorized the Department to transmit the information electronically;

3. The Department's determination of qualification shall not require the community agency to employ the individual, or the community care residence to utilize the individual as a community care residence alternate. The Department's determination of disqualification shall require the community agency to terminate or not offer employment to the individual. The community care residence shall not be qualified to house individuals if the Department has determined that the community care residence applicant, community care residence licensee, community care residence alternate, or community care residence household member is disqualified;
4. If the fingerprints are rejected twice, the State Police shall check the name, date of birth and Social Security number and forward the results to the DHS Coordinator. The Department of Human Services will, at the same time, request a similar search by the FBI on all prints rejected twice; and
5. In the case of a community agency head, the DHS Coordinator shall convey, in writing, the results of the review to the Assistant Commissioner of the Division of Developmental Disabilities. The Assistant Commissioner will advise the board president in writing.

#### **10:48A-3.2 Background Checks**

- (a) The DHS Coordinator shall assign each community agency or community care residence an identification number.
- (b) The confidential results of all criminal history background checks shall be maintained in a database by the DHS Coordinator.
- (c) The community agency shall be responsible to keep the information obtained regarding employees in a confidential and secure manner. The records are not public.

#### **10:48A-3.3 New Employees**

- (a) Prior to employment, the employee shall be responsible to make an appointment to have his or her fingerprints taken.
- (b) A new employee may be provisionally employed by the community agency for a period of up to six months pending the completion of a criminal history background check if the individual provides a sworn statement to the executive director attesting that he or she has not been convicted of any crimes or disorderly person offense(s) described in this procedure. (See Appendix A.)



- (c) If the new employee indicates that he or she has been convicted of a crime or disorderly person offense(s) as described in this chapter, he or she may not be employed unless the Department determines that the applicant has affirmatively demonstrated clear and convincing evidence of his or her rehabilitation in accordance with N.J.A.C. 10:48A-3.4.
- (d) An individual who is provisionally employed shall, where possible, perform his or her duties under the supervision of a superior who acts in a supervisory capacity over that individual until the determination concerning the Federal and State criminal background check is completed.

#### **10:48A-3.4 Rehabilitation**

- (a) No individual shall be disqualified from employment, and no community care residence shall be disqualified from housing individuals, on the basis of any conviction if the individual, community care residence applicant, community care residence licensee, community care residence alternate, or community care residence household member has affirmatively demonstrated to the Department, clear and convincing evidence of his or her rehabilitation.
- (b) In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:
  - 1. The nature and responsibility of the position which the convicted individual would hold, has held or currently holds;
  - 2. The nature and seriousness of the offense;
  - 3. The circumstances under which the offense occurred;
  - 4. The date of the offense;
  - 5. The age of the individual when the offense was committed;
  - 6. Whether the offense was an isolated or repeated incident;
  - 7. Any social conditions which may have contributed to the offense; and
  - 8. Any evidence of rehabilitation including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release program or the recommendation of those who have had the individual under their supervision.
- (c) A conviction of a crime or disorderly persons offense against children, as set forth at N.J.S.A. 2C:24-4, permanently disqualifies an individual from

employment at a community agency that involves or would involve working directly with a person under 18 years of age, and from being a community care resident applicant, community care licensee, community care alternate, or community care household member.

- (d) The individual shall have no longer, than 14 days from the date of the written notice of disqualification sent pursuant to N.J.A.C. 10:48A-3.1(c) to provide evidence of rehabilitation to the Department.
- (e) The Department shall have no longer than 60 days from the date of receipt of evidence of the individual's rehabilitation to make a determination on the individual's qualification. The Department shall notify the individual and the community agency or community care residence, in writing, of the determination no longer than 60 days from the date of receipt of the evidence. The written notice may be transmitted electronically, if the individual authorizes the Department to transmit the information electronically.

#### **10:48A-3.5 Subsequent Offenses**

- (a) All employees, community care residence alternates, and community care residence household members shall be advised, in writing, that they are responsible to notify the community agency head or community care residence licensee of any criminal charges related to the offenses listed in this chapter subsequent to the background check.
- (b) In the case of the community agency head or community care residence licensee, he or she shall be responsible to notify the Assistant Commissioner and the community agency board, if applicable, in writing, of any criminal charges subsequent to the background check.
- (c) The State Police will notify the Department in the event an individual who was the subject of a criminal history background check is arrested or convicted of a crime or offense in New Jersey after the date that the criminal history background check was performed. The Department shall advise the community agency head or community care residence licensee regarding the individual's subsequent arrest or conviction. If the community agency head or community care residence licensee is subsequently arrested or convicted, the DHS Coordinator shall notify the Assistant Commissioner. The Assistant Commissioner will then notify the community agency board, if applicable.
- (d) A background check shall be conducted at least once every two years through the electronic submission of an archive request. An archive request shall be submitted by the community agency electronically to the DDD fingerprint liaison to be forwarded to the live scan vendor. The Department shall submit archive requests for community care residences. The CHRI

result will be forwarded to the DHS Coordinator for distribution to the requesting community agency or to the community care residence. The Department may determine an alternative means to identify an individual who has been convicted of an offense covered in this procedure. This may include, but not be limited to, a match of a person's Social Security number or other identifying information.

#### **10:48A-3.6 Monitoring**

- (a) Annually, all community agencies shall certify, in writing, to the Assistant Commissioner that they are in full compliance with N.J.S.A. 30:6D-63 through 72 regarding background checks for community provider agencies.
- (b) The community agency shall develop written policies regarding background checks.
- (c) All community agency or community care residence licensee's records regarding criminal history background checks shall be available for review by Department and Division staff to ensure compliance with this procedure.

#### **10:48A-3.7 Appeals**

An individual may petition for a hearing on the accuracy of the criminal history record information with the appropriate State or Federal agency or court.

## APPENDIX

### CERTIFICATION AND PERMISSION FOR BACKGROUND CHECK AND RELEASE OF INFORMATION

I hereby authorize the Department of Human Services to conduct a criminal history background check and I agree to be fingerprinted in order to complete the State and Federal background check process. I further authorize the release of all information regarding the results of my background check to the Department of Human Services. Check one of the options listed below.

Option 1 \_\_\_\_\_ I hereby certify under penalties of perjury, that I have not been convicted of any of the offenses listed below and no such record exists in the State Bureau of Identification in the Division of State Police or in the Federal Bureau of Investigation, Identification Division.

Option 2 \_\_\_\_\_ I hereby affirm that I have been convicted of the following offense listed below \_\_\_\_\_ on \_\_\_\_\_.  
(Date)

If I have checked Option 2 or the criminal history background check reveals any conviction(s) for the offenses listed below, I understand that I may be subject to termination from employment.

FOR PROVISIONAL EMPLOYEES ONLY: As a provisional employee, I further understand that I may be employed by the agency for a period not to exceed six months during which time a background check will be completed. I understand that I will work under the supervision of a superior where possible.

Offenses covered under P.L. 1999, c.358:

In New Jersey, any crime or disorderly person offense:

--involving danger to the person as set forth in N.J.S.A. 2C:11-1 et seq. through 2C:15-1 et seq. including the following:

- i. Murder
- ii. Manslaughter
- iii. Death by auto
- iv. Simple assault
- v. Aggravated assault
- vi. Recklessly endangering another person
- vii. Terroristic threats
- viii. Kidnapping

- ix. Interference with custody of children
- x. Sexual assault
- xi. Criminal sexual contact
- xii. Lewdness
- xiii. Robbery

--against the children or incompetents as set forth in N.J.S.A. 2C:24-1 et seq. including the following:

- i. Endangering the welfare of a child
- ii. Endangering the welfare of an incompetent person

--a crime or offense involving the manufacture, transportation, sale, possession or habitual use of a controlled dangerous substance as defined in N.J.S.A. 2C:24-1 et seq.

--in any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described above.

FOR COMMUNITY AGENCY HEAD: I understand the results of this background check will be reported to the President of the Board of my agency.

PLEASE LIST THE NAME AND HOME OR BUSINESS ADDRESS OF THE BOARD PRESIDENT.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witnessed by (please print)

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date