

DEPARTMENT OF HUMAN SERVICES
Med-QUEST Division

CRIMINAL HISTORY RECORD AND BACKGROUND CHECK STANDARDS

I. PURPOSE

The Med-QUEST Division (MQD) of the Department of Human Services (DHS), develops these standards to protect the health, safety and welfare of Medicaid beneficiaries. Both criminal history and abuse registries shall be reviewed on an individual who wishes to serve as a direct service provider or serve in direct contact with a Medicaid beneficiary. The reviews shall be considered in determining whether the individual is suitable to serve in direct contact with MQD beneficiaries.

II. CRIMINAL HISTORY RECORD CHECKS

- A. The MQD or designee utilizes Hawaii Revised Statute §346-97, Criminal History Record Check, in developing these standards.
- B. The criminal history record check shall include the submission of fingerprints to the Federal Bureau of Investigation (FBI) and Criminal Justice Information System (CJIS) data system for a State of Hawaii (State) criminal history record check.
- C. Individuals shall have a criminal history record check upon initial hire and a second criminal history record check twelve months later. Thereafter, State name checks shall be conducted every year for providers participating in the Developmental Disability/Intellectual Disability (DD/ID) 1915(c) waiver and every other year for all other Medicaid providers.
- D. The responsibility for assuring a criminal history record check is conducted shall rest with the employer hiring the individual as a direct service provider or an individual who serves in direct contact with a Medicaid beneficiary.
- E. The criminal history record checks shall be conducted through:
 - 1. The DHS designee contracted to fingerprint applicants and to submit information to and receive information from the FBI and CJIS. The applicant shall register with the DHS designee for fingerprint collection.
 - 2. The applicant shall electronically sign a waiver stating that the DHS and its designee acting for the DHS shall not be liable to the individual.
 - 3. State name checks are to be obtained from the Hawaii Criminal Justice Data Center (HCJDC) website: (<http://ecrim.ehawaii.gov/ahewa/>).

Individuals who do not have access to a computer may request information from the following:

Oahu: Hawaii Criminal Justice Data Center
465 South King Street, Room 101
Honolulu, Hawaii 96813

The Oahu office, for an additional fee, will process mailed-in requests for criminal history records checks.

Neighbor Islands: County police stations where HCJDC computer terminals are available. Molokai and Lanai are covered through the main police station on Maui.

- F. When name checks into the State name inquiry system are required for employment, a printed report of each certified name record check accompanied by a signed Statement of Authenticity that the criminal history record report is a true and unaltered copy shall be retained in the hired individual's personnel file and made available for review by DHS staff or its designee for compliance monitoring purposes.
- G. Fingerprint results dated no more than six (6) months before the date an initial criminal history record check is required, may be accepted instead of a new criminal history record check being performed.
- H. DHS shall not be directly responsible for any cost related to the criminal history record check.

III. ADULT PROTECTIVE SERVICES (APS) AND CHILD ABUSE AND NEGLECT (CAN) REGISTRY CHECKS

- A. The MQD or designee utilizes Hawaii Revised Statute §346-335, Background Checks, and TITLE VI – TRANSPARENCY AND PROGRAM INTEGRITY, PART III – Improving Staff Training, Section 6201 of the Affordable Care Act (ACA) of 2010 in developing these standards.
- B. The registry check shall include the search of the individuals name in the APS and CAN registries for confirmed abuse.
- C. Individuals shall have a registry check upon initial hire and a second registry check twelve months later. Thereafter, registry checks shall be conducted every year for providers participating in the Developmental Disability/Intellectual Disability (DD/ID) 1915(c) waiver and every other year for all other Medicaid providers.

- D. The responsibility for assuring a criminal history record check is conducted shall rest with the employer hiring the individual as a direct service provider or an individual who serves in direct contact with a Medicaid beneficiary.
- E. The registry checks shall be conducted through:
 - 1. The DHS designee contracted to review the registry checks. The applicant shall register with the DHS designee for registry checks as part of the fingerprint collection or for registry checks alone.
 - 2. The applicant shall electronically sign a waiver stating that the DHS and its designee acting for the DHS shall not be liable to the individual.
- F. Registry results dated no more than six (6) months before the date an initial registry check may be accepted instead of a new registry check being performed.
- G. DHS shall not be directly responsible for any cost related to the registry checks.

IV. HIRING AND TERMINATING EMPLOYEES

Employers shall take information contained in criminal history record and registry check reports into consideration when hiring and terminating direct service providers or an individual who serves in direct contact with a Medicaid beneficiary. Since employers are not able to view criminal history record or registry check information, the DHS's designee shall apply the standards DHS has set that are listed in Sections III A., B., and C. below to make a fitness determination. The DHS' designee, in acting on the DHS' behalf, is presumed to be acting in good faith and shall be immune from civil liability for recommending action based upon the criminal history record or registry check information.

An offer of employment shall be withdrawn or the position of a current direct service provider or an individual who serves in direct contact with a Medicaid beneficiary shall be terminated when the individual has a criminal history record as indicated below:

- A. The criminal conviction shall have occurred within ten (10) years of the date of the criminal history record check. A criminal conviction occurring more than ten (10) years prior to the date of the criminal history record check may be considered when the criminal history of the individual may pose a risk to the health, welfare and safety of service beneficiaries;
- B. A criminal conviction of Driving Under the Influence (DUI) that is over ten (10) years from the date of the criminal history record check only, shall not be considered as a risk to the health, welfare and safety of service beneficiaries; and
- C. The crime for which there is a conviction shall have a rational relationship to the direct service provider's position. Rational relationship means the crime for

which there is a history is substantially related to the qualifications, duties and responsibilities of the direct service provider position. Crimes having rational relationships to direct service provider positions consist of any felony, including but not limited to murder, manslaughter, assault, sexual offenses, domestic violence, theft or forgery, arson, kidnapping, or possession, use, sale, manufacture, distribution of dangerous drugs or controlled substances, or Driving Under the Influence (DUI).

- D. Confirmed of either adult or child abuse within ten (10) years of the date of the registry check(s). A confirmed abuse occurring more than ten (10) years prior to the date of the registry check may be considered when the criminal history of the individual may pose a risk to the health, welfare and safety of service beneficiaries.
- E. DHS or its designee may consider charges that have not been confirmed as a conviction, when making a fitness determination. Charges having a rational relationships to direct service provider positions include but are not limited to murder, manslaughter, assault, sexual offenses, domestic violence, theft or forgery, arson, kidnapping, or possession, use, sale, manufacture, distribution of dangerous drugs or controlled substances, or Driving Under the Influence (DUI).
- F. If the employee has been employed when the criminal history record check is conducted and found to have a conviction record or charges that is described in IV A. to D., then they may continue their employment with the following conditions:
 - 1. An appeal or exemption has been filed with the DHS designee;
 - 2. The employee does NOT perform any direct services to a Medicaid beneficiary; and
 - 3. Anytime that the employee is around Medicaid beneficiaries, they must be under direct supervision or accompanied by another staff member who has been screened for convictions without incident.
- G. Appeals or exemptions from the requirements of sections IV. A. to D. may be approved for MQD providers by the DHS designee.
 - 1. Requests for exemptions shall be made in writing by using form DHS 1200, “Request for Exemption (From Criminal History Records Check Standards or Protective Services Central Registry Check Standards)”, or a similar form within thirty (30) days of applicant’s receipt of fitness determination. The individual seeking the exemption must complete the DHS 1200. A copy of the individual’s current results of a name inquiry into the State criminal history records check must accompany the request.

Fingerprint and registry check results for MQD providers should already be on file with the DHS designee.

2. The “Checklist for Exemption Request” may be used as a reminder of the documents to be submitted for EACH exemption request. All documents shall be submitted to the DHS designee.
3. Unless an individual is self-employed, the employer agency must be involved in the exemption process to assure the timely submittal of all required documents and appropriateness of the exemption request. Requests for exemptions shall be routed through the prospective employer agency prior to submittal to the DHS or its designee.
4. All documents shall be submitted to the DHS designee. Upon receipt of the written exemption request and other required documents listed on the “Checklist for Exemption Request”, the DHS designee shall convene a panel consisting of three (3) professional level multi-disciplinary team members to review the request. The panel shall include individuals in at least two different professions with backgrounds in criminal justice, legal and/or the therapeutic mental health field.
5. The exemption panel shall consider the following:
 - a. The relevancy of the individual’s conviction record to the qualifications, functions and duties of the direct service provider position the individual wishes to fill;
 - b. Passage of time since the crime was committed; and
 - c. Any evidence of rehabilitation, such as letters from counselors or therapists attesting to a sustained improvement in the individual’s behavior, character references, and activities since conviction, such as employment.
6. A single factor may not be evidence of rehabilitation. If necessary, the panel shall request additional information from the individual seeking the exemption.
7. Individuals requesting exemptions shall be informed in writing of the panel’s decision within forty-five (45) calendar days from the date the panel receives all documents needed for a decision to be made. The panel may extend the 45-day period with cause and a written explanation to the individual seeking the exemption.

8. Individuals who are dissatisfied with the panel decisions on their exemption requests may appeal the panel's decision to the MQD Administrator within thirty (30) days of receipt of exemption results.

MQD beneficiaries may choose not to conduct criminal history record checks on individuals they hire on their own. Beneficiaries who choose not to have criminal history record checks shall complete form DHS 1672, "Consumer-Employer Choice Regarding Criminal History Record Check and Adult Protective Services (APS) Central Registry Check", to acknowledge their understanding of these standards and the purpose for the checks, and their decision not to conduct criminal history record checks or APS/CAN Central Registry checks on individuals they plan to hire as direct service providers.