**R501. Health and Human Services, Human Services Program Licensing.**

**R501-14. Human Services Program Background Checks.**

**R501-14-1. Authority and Purpose.**

(1) Sections 26B-2-120 through 26B-2-122 authorize this rule.

(2) This rule clarifies the standards for approving, denying, or revoking an applicant's background check.

**R501-14-2. Definitions.**

(1) "Abuse" means the same as defined in Sections 26B-6-201 and 80-1-102 and may include severe abuse, severe neglect, and sexual abuse..

(2) "Applicant" means the same as defined in Section 26B-2-120 and includes anyone associated with a licensee as defined in Section 26B-2-101 and any person whose identifying information is submitted to OBP under Sections 26B-2-120, 26B-6-107, 26B-6-410, 78B-6-128, and 78B-6-131.

(3) "BCI" means the Bureau of Criminal Identification and is the designated state agency of the Division of Criminal Investigation and Technical Services Division within the Department of Public Safety that is responsible for maintaining criminal records.

(4) "Child" means the same as defined in Section 26B-2-101.

(5) "Child placing" means the same as defined in Section 26B-2-101.

(6) "Clearance" means the determination level OBP is statutorily required to make, based on the provider the applicant is associated with in DACS.

(7) "Comprehensive review" means the same as outlined in Subsection 26B-2-120(7)(a).

(8) "Congregate care program" means the same as defined in Section 26B-2-101 and may be referred to as a youth residential program in rules under Title R501.

(9) "Criminal finding" means the same as defined in Section 26B-2-120.

(10) "DAAS statewide database" means the Division of Aging and Adult Services database created by Section 26B-6-210 to maintain reports of vulnerable adult abuse, neglect, or exploitation.

(11) "DACS" or "Direct Access Clearance System" means the online system used by the Division of Licensing and Background Checks (DLBC) for maintaining background check information and determinations.

(12)(a) "Determination" means the listing of results of OBP's statutorily-guided review of criminal and non-criminal findings in DACS.

(b) OBP may determine an applicant is:

(i) eligible for conditional hire or conditional approval under conditions outlined in Subsection R501-14-7(2);

(ii) eligible for hire or approval and may work unsupervised;

(iii) not eligible for hire and may not work; or

(iv) supervised only to work under direct supervision of another employee with an eligible department clearance while in the presence of a client or client record.

(13) "Direct access" means the same as defined in Section 26B-2-101.

(14) "Direct service worker" means the same as defined in Section 26B-6-401.

(15) "Directly supervised" means the same as defined in Section 26B-2-101.

(16) "Fingerprints" means an applicant's fingerprints as copied electronically through a fingerprint scanning device or on two ten-print fingerprint cards by a law enforcement agency, an agency approved by the BCI, or a provider representative.

(17) "Foster home" means the same as defined in Section 26B-2-101.

(18) "Harm" means the same as defined in Subsection R380-600-2(17).

(19) "Human Services Program" means the same as defined in Section 26B-2-101.

(20) "Licensee" means the same as defined in Section 26B-2-101.

(21) "Licensing Information System" or "LIS" means the system created by Section 80-2-1002, as a sub-part of the Division of Child and Family Services' Management Information System (MIS) created by Section 80-2-1001.

(22) "Neglect" means the same as defined in Sections 26B-6-201 and 80-1-102.

(23) "Non-criminal finding" means the same as defined in Section 26B-2-120.

(24) "OBP" means the Office of Background Processing within the DLBC.

(25) "Personal identifying information" means the same as defined in Section 26B-2-120 and includes a government-issued photo identification or government-issued document identifying requested information.

(26) "Program" means a human services program as defined in Section 26B-2-101.

(27) "Provider" means the same as defined in Section R380-600-2.

(28)(a) "Provider representative" means the individual or individuals responsible, on the program's behalf, to:

(i) ensure information remains current in DACS for each applicant and program;

(ii) enter applications for each applicant;

(iii) initiate, maintain, and monitor background communications with OBP;

(iv) protect personal identifying information; and

(v) verify employment.

(b) "Provider representative" also means a background screening agent under Title R501.

(29) "Rapback system" means the same as defined in Section 53-10-108.

(30)(a) "Reside" means retaining a residence for six or more consecutive months.

(b) Reside does not mean religious, educational, or military service as long as the primary state of residence is maintained.

(31) "Supported" means the same as defined in Sections 26B-6-201 and 80-1-102.

(32) "Vulnerable adult" means the same as defined in Section 26B-2-101.

**R501-14-3. Initial Background Check Procedure.**

(1) A provider representative shall ensure that an applicant for an initial background check completes the required application fields and disclosure statements to authorize OBP's continual monitoring of the applicant's fingerprints and applicable state registries.

(2) An applicant shall disclose any criminal findings, including pending charges, and any non-criminal findings during the background check application process.

(3)(a) An applicant may provide disclosure statements and related documents as direct attachments to the application to be uploaded into DACS by a provider representative or directly emailed to OBP.

(b) If an applicant submits a sealed envelope, the provider representative shall forward it unopened to OBP.

(4) OBP will conduct the highest level clearance, including out-of-state child abuse and neglect registry checks, for any of the following applicants who have lived out-of-state within the past five years:

(a) a prospective foster parent or prospective adoptive parent;

(b) an adult in the home of a prospective foster parent or prospective adoptive parent; and

(c) an applicant seeking a position in a congregate care program.

(5)(a) An applicant applying to work in a congregate care program who has resided outside of Utah within the five years immediately before the date of the background check application shall provide a child abuse and neglect registry record for each state in which the applicant has resided within those five years.

(b) Instructions for obtaining out-of-state child abuse and neglect registry records from each state are found on the DLBC website.

(c) Out-of-state child abuse and neglect registry records are not required a second time for a background check transfer or renewal as long as a record from every state the applicant has resided in over the past five years has been previously submitted and reviewed by OBP.

(d) Any applicant for prospective foster or adoptive care is not required to submit the applicant's own out-of-state child abuse and neglect registry records, as they are included in the background check conducted by OBP.

(e) A congregate care program provider who is not department-contracted shall supervise an applicant experiencing delays in receiving a requested out-of-state registry record while the record is pending, unless:

(i) the applicant has initiated the out-of-state record search and the search is actively in progress; and

(ii) OBP otherwise approves the applicant's background check with no comprehensive review required.

(f) OBP may not issue a renewal clearance if the original out-of-state registry results have not been provided to OBP within the 12-month initial clearance time frame.

(g) The allowance outlined in Subsection (d) does not apply to a department-contracted congregate care program provider.

(h)(i) OBP shall deny or revoke a background check if any out-of-state registry record contains information that constitutes background check denial under this rule.

(ii) The provider representative shall end the employee's direct access to clients and client records immediately upon an ineligible determination notification from OBP.

(6) A prospective foster parent, prospective adoptive parent, or an adult living in the home of a prospective foster parent or prospective adoptive parent shall identify any state they have resided in over the past five years for OBP to conduct the out-of-state registry search for the clearance of the prospective foster parent or prospective adoptive parent and any adult living in the home.

(7)(a) The provider representative shall require an applicant to present valid government-issued photo identification to verify the application.

(b) The provider representative shall inspect each applicant's government-issued photo identification card and determine that the identification does not appear to have been forged or altered.

(c) The provider representative shall submit the background check application, personal identifying information, signed consent disclosure statement, and applicable fee into DACS.

(d) The provider representative may withdraw a background check application any time during the process.

**R501-14-4. Renewal Background Check Procedure.**

(1) A renewal application is not required if the applicant has an application entered into DACS under the program where the applicant works, a signed disclosure statement form uploaded, and initial fingerprints that are enrolled in the rapback system.

(2) OBP shall continuously monitor criminal records and annually monitor applicable state registries.

(3)(a) The provider representative shall keep the program's roster and employee information current in DACS.

(b) The provider representative shall check the roster at least monthly to verify employee information and the employment of employees due for a renewal review.

(c) When an employee no longer works for the program, the provider representative shall separate that employee from the program's roster in DACS within five days of the employee's separation from the program.

(4) An applicant who is no longer affiliated with any licensed or certified program has 180 days to become re-employed before OBP reports to the Department of Public Safety to cancel the applicant's rapback subscription.

**R501-14-5. General Background Check Procedure.**

(1)(a) OBP may not process an application without the required applicable fee, applicant information, and a signed disclosure statement.

(b) OBP shall use personal identifying information to perform a search in accordance with Section 26B-2-120.

(2)(a) The provider representative shall submit a background check application for each applicant for an initial background check no later than two weeks from the date the applicant becomes associated with the licensee, certification, or contract.

(b)(i) The provider representative shall ensure an applicant is directly supervised until OBP issues a conditional or eligible clearance determination.

(ii) The provider representative shall document how the applicant remains supervised for the entirety of the applicant's supervised employment term before receiving a clearance determination.

(3) An applicant is eligible to work unsupervised when:

(a) both in-state and out-of-state registry checks are completed, as applicable, except as outlined in Subsection R501-14-3(5)(f);

(b) the criminal record check reveals no criminal findings subject to automatic denial in accordance with Section 26B-2-120; and

(c) there is no comprehensive review required as outlined in Section 26B-2-120.

(4) The provider representative shall ensure an applicant with a pending comprehensive review is always supervised until OBP makes the final determination.

(5)(a) The provider representative may not allow an applicant whose background check application is denied to have any supervised or unsupervised direct access to clients unless:

(i) OBP approves a subsequent application; or

(ii) the denial is overturned in an administrative hearing or by the OBP director.

(b) The provider representative shall ensure an applicant initiating an appeal of a denied application works under direct supervision until OBP issues a determination regarding the appeal.

(6) The provider representative shall ensure the applicant or provider representative promptly notifies OBP of any updated application details or new investigations of any abuse, neglect, or new criminal finding by:

(a) emailing any new allegation or investigation of any abuse, neglect, or new criminal finding; and

(b) updating DACS with any change to the applicant's name or contact information.

(7)(a) The provider representative may conduct livescan fingerprinting on an independent livescan machine for submission to OBP only after completing training in the proper methods of taking fingerprints and ensuring each department billing code is accurately entered into the machine.

(b) The provider representative shall verify the identity of the applicant by inspecting the applicant's personally identifying information when the application is entered into the livescan machine.

(c) The applicant shall present the same government-issued photo identification required in Subsection R501-14-3(7)(a) with the fingerprint authorization form to the livescan operator.

(d) A minor applicant who submits a youth application with no fingerprints and is not currently on the rapback system shall submit fingerprints within 30 days before the minor applicant's 18th birthday.

**R501-14-6. Background Check Fees.**

(1) An applicant and provider representative shall ensure the accuracy of information submitted with each application and fee payment.

(2) The provider representative shall ensure any fee is made by E-check, credit card, or internal department transfer.

(3) The provider representative may choose to submit payments individually or in a batch.

(4) OBP may not refund or transfer a fee unless the fingerprints were never submitted to the Department of Public Safety and the Department of Public Safety never billed OBP.

(5) The legislatively set OBP processing fee is not refundable.

**R501-14-7. Application Processing and Results.**

(1)(a) OBP shall approve an application for a background check in accordance with Section 26B-2-120.

(b) OBP shall notify an applicant, through the provider representative, when the applicant's background check application is approved or denied.

(c) OBP shall only provide approval or denial information to a provider representative through a determination in DACS.

(d) OBP approval is valid until:

(i) 180 days after the applicant is no longer associated with the licensee, certification, or contract in accordance with Subsection R501-14-4(4); or

(ii) a new criminal or non-criminal finding constitutes background check clearance review or revocation.

(2)(a) OBP may conditionally approve an application for a background check in accordance with Subsection 26B-2-120(9) only when awaiting the results of a criminal history search of national background databases from the Bureau of Criminal Identification.

(b) OBP may not issue a conditional approval for an initial applicant who is:

(i) a resident of a child placing foster or adoption home; or

(ii) working in a department-contracted congregate care program.

(c) A provider representative seeking the conditional approval of an applicant may only request conditional approval if:

(i) ten business days have passed since OBP received the applicant's complete background check application; and

(ii) the provider representative has not received notification of the application's approval or denial.

(d) The provider representative shall submit a written request for conditional approval that includes the:

(i) applicant's full name;

(ii) date the application was submitted in DACS with any required consent disclosure and fee; and

(iii) last four digits of the applicant's social security number.

(e) The provider representative shall submit the written conditional approval request through DACS or by email to the OBP criminal background screening (CBS) unit email on the DLBC website.

(f) OBP shall make a conditional determination within three business days of receiving a written request for conditional approval that complies with Subsections (2)(c) and (d).

(g) A conditional approval expires within 60 days unless the applicant is awaiting the results of an out-of-state registry check as the only remaining item prohibiting clearance.

(h) OBP may issue renewal clearance or new conditional clearance only if the applicant has provided the out-of-state registry check within 12 months of the initial application.

(i) If OBP does not provide a standard approval before the expiration date of the conditional approval, the provider shall ensure the applicant is directly supervised until approval is granted.

(j) OBP may revoke the conditional approval before the expiration date.

(3) OBP shall deny an application for a background check in accordance with Section 26B-2-120.

(4) OBP shall conduct a comprehensive review of an application in accordance with Subsection 26B-2-120(7).

(5) OBP shall conduct a comprehensive review of an applicant's background check if the applicant:

(a) has a driving offense that includes any criminal finding that is substantially similar to:

(i) an accident involving bodily harm or death, as described in Sections 41-6a-401.3 and 41-6a-401.5;

(ii) driving while impaired, as described in Sections 41-6a-502.5 and 41-6a-517;

(iii) exhibition driving, as described in Section 41-6a-606; or

(iv) reckless driving, as described in Section 41-6a-528;

(b) has any criminal or non-criminal findings within the time frames listed in Subsections 26B-2-120(6), (12), and (13);

(c) has any felony listed in Subsection 26B-2-120(5);

(d) has been convicted of, has pled no contest, or is subject to a plea and abeyance or diversion agreement;

(e) is applying as a prospective foster parent or prospective adoptive parent and has a listing in MIS;

(f) is applying to work in a congregate care program and has a listing in MIS; or

(g) has a criminal or non-criminal finding that is substantially similar to a criminal or non-criminal finding described in this section.

(6) OBP may not conduct a comprehensive review of a criminal finding identified as an infraction or misdemeanor of:

(a) a minor traffic violation as listed in Title 41, Chapter 6a, Traffic Code, except:

(i) a minor traffic violation that includes driving under the influence or reckless driving, as listed in Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving: or

(ii) a minor traffic violation that results in the bodily harm of another person; or

(b) a violation of any local ordinance related to:

(i) animal licensing;

(ii) business licensing;

(iii) construction;

(iv) dog at large;

(v) land use;

(vi) littering;

(vii) noise;

(viii) park access hours;

(ix) storm water;

(x) utilities;

(xi) yard sales; or

(xii) zoning.

(7) OBP shall conduct a comprehensive review upon learning of a potentially disqualifying criminal or non-criminal finding described in Subsection 26B-2-120(6) if the criminal or non-criminal finding was not previously considered by OBP.

(8) OBP may provide the status of an application to a provider representative but may not share the specific criminal or non-criminal findings or history of findings.

**R501-14-8. Comprehensive Review.**

(1) OBP shall conduct a comprehensive review of:

(a) an applicant's background check application;

(b) any record from an open court case or conviction not automatically denied in Subsection 26B-2-120(5)(a);

(c) any outstanding warrant for a criminal or non-criminal finding that requires a comprehensive review;

(d) any non-criminal finding;

(e) any applicant-submitted out-of-state child abuse and neglect registry record; and

(f) any related circumstance in accordance with Subsection 26B-2-120(6).

(2) OBP may not conduct a comprehensive review of an applicant's background check application if:

(a) the applicant has been previously reviewed and approved by OBP for the same employment clearance, even if the applicant has not been employed in any human services program for the past 180 days or longer; and

(b) the applicant has no new criminal or non-criminal findings.

(3)(a) OBP may not review a background check application without OBP first sending the applicant a written notice that OBP is investigating the applicant's criminal or non-criminal history.

(b) The applicant may submit any written statement or record that OBP may need to make a determination of the risk of harm, including any:

(i) evidence of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed, as established in Subsection 26B-2-120(7);

(ii) investigatory and charging document;

(iii) original police report;

(iv) personal statement;

(v) proof of compliance with a court order; and

(vi) reference letter specific to the potential risk of harm.

(c) OBP shall evaluate information using the criteria established by Subsection 26B-2-120(7)(a).

(d) The applicant shall submit any written statement or record within 15 calendar days of the written notice unless an extension is requested by the provider representative or applicant and granted by OBP.

(4) OBP shall gather the information described in Subsection 26B-2-120(7)(a)(vii) from the applicant.

(5) OBP may request additional information from any available source, including:

(a) the applicant;

(b) any victim;

(c) any witness;

(d) any investigator;

(e) the criminal justice system;

(f) any law enforcement agency;

(g) the courts; and

(h) any others deemed necessary for the comprehensive evaluation of an application.

(6) An applicant with a denied application may re-apply for a background check to OBP after two years from the date of a not eligible determination or upon a substantial change to circumstances.

**R501-14-9. Determination.**

(1)(a) OBP shall evaluate any application and information provided by the applicant to determine if an applicant poses a risk of harm to any child or vulnerable adult.

(b) In assessing the risk of harm, OBP shall consider the type of employment the applicant is seeking and the type of license under which the applicant seeks employment.

(2)(a) OBP may transfer a previously reviewed and cleared background check approval without further review to another human services program when providing the same service under the same statutory background check requirements.

(b) OBP shall reconsider any previously cleared or denied background check when the applicant requires a new clearance for a new type of employment.

(3) OBP shall deny the background check of an applicant when OBP finds that approval would likely create a risk of harm to the specific population the applicant would serve.

(4) The provider representative shall ensure an applicant initiating an appeal of a denied application works under direct supervision until there is a determination made regarding the appealwhen:

(a) OBP approves the application based on a comprehensive review; or

(b) the determination is overturned by an administrative hearing.

**R501-14-10. Background Check Approval Transfer or Concurrent Use.**

(1)(a) An applicant is eligible to have a current background check approval shared with, or transferred to, another human services program only if:

(i) the applicant is enrolled in the rapback system; and

(ii) the human services program background check was processed under the same statutory authority as the original background check.

(b) Clearance transfers are allowed:

(i) among the same level of clearance; or

(ii) from higher-level clearance to lower-level clearance.

(c) New clearances and comprehensive review, if applicable, are required when moving from a lower-level clearance to a higher-level clearance.

(2)(a) An applicant who seeks to have that applicant's current background check shared with, or transferred to, another human services program shall complete a background check application through a provider representative of the new program.

(b) An applicant may not transfer an eligible clearance from a non-congregate care program to a congregate care program, including a foster home, adoptive home, or certified home, without a subsequent review under the new level of clearance.

(c) An applicant shall submit out-of-state registry records for a transfer from a non-congregate care program to a congregate care program when the applicant has resided in another state within five years of the date the application was submitted.

(d) An applicant may transfer an eligible clearance from a congregate care program to a non-congregate care program.

(3) The provider shall ensure an applicant is directly supervised until the applicant's status in DACS reflects eligible or eligible for hire.

**R501-14-11. Post-Approval Responsibilities.**

(1) An applicant or provider representative shall immediately notify OBP if the applicant has any new criminal or non-criminal finding.

(2) OBP shall issue a new supervised only determination as described in Subsection R501-14-2(11) until a disposition on the case is reached if an eligible applicant has any new criminal or non-criminal finding.

(3) OBP may revoke a background check approval of an applicant if:

(a) the applicant is convicted of a felony, misdemeanor, or infraction listed in Subsection 26B-2-120(5)(a); and

(b) OBP granted the background check approval while the conviction was pending.

(4)(a) A provider representative shall notify OBP of each termination of an employee with fingerprints retained under Section 26B-2-120.

(b) OBP shall report each termination to the Department of Public Safety within 180 days if the applicant has not transferred the clearance to a transfer-eligible program within that time frame.

**R501-14-12. Confidentiality.**

(1)(a) OBP may disclose registry and criminal background check information details only to the applicant in accordance with Section 63G-2-202.

(b) OBP may grant the provider representative and department auditor with oversight of the licensed program minimal, read-only access to DACS solely to see an application determination with no additional case details viewable.

(2) OBP may not transfer or share background check information between human services programs, except as described in Section R501-14-10.

(3) The provider representative or OBP representative may, in accordance with Subsection 53-10-108(4), provide the approval letter generated by DACS to:

(a) another licensed child placing agency;

(b) the attorney for the adoptive parents;

(c) the court; or

(d) the person who is the subject of the approval.

**R501-14-13. Retention of Background Check Information.**

OBP shall keep the background check information of each applicant in DACS for a minimum of seven years after the termination of the applicant's association with the licensee, certification, or contract.

**R501-14-14. Expungement.**

An applicant whose background check application is denied due to the applicant's criminal record may submit a new application with an official copy of an order of expungement.

**R501-14-15. Administrative Hearing.**

A notice of agency action issued by the OBP director or designee that denies the applicant's background check application or revokes the applicant's background check approval shall inform the applicant of the right to appeal in accordance with Rule R497-100 and Section 63G-4-201.

**R501-14-16. Compliance.**

(1) Each provider shall ensure compliance with this rule.

(2) If OBP determines credible evidence exists that an applicant has any criminal or non-criminal finding that would be excluded under Section 26B-2-120, OBP may take action to protect the health and safety of clients.

(3) Any provider found in noncompliance with any rule or statute governing OBP may be subject to the penalties in Rule R380-600 and Title 26B, Chapter 2, Part 7, Penalties and Investigations.

**KEY: licensing, background screening, background check, fingerprinting, human services**

**Date of Last Change: July 2, 2025**

**Notice of Continuation: September 1, 2020**

**Authorizing, and Implemented or Interpreted Law: 26B-2-120; 26B-2-121; 26B-2-122**