

R501. Human Services, Administration, Administrative Services, Licensing.

R501-14. Human Service Program Background Screening.

R501-14-1. Authority and Purpose.

- (1) This Rule is authorized by Sections 62A-2-106, 62A-2-120, 62A-2-121, and 62A-2-122.
- (2) This Rule clarifies the standards for approving, denying, or revoking an applicant's background screening.

R501-14-2. Definitions.

(1) "Abuse" is defined in Sections 78A-6-105 and 62A-3-301, and may include "Severe Abuse", "Severe Neglect", and "Sexual Abuse", as these terms are defined in Sections 78A-6-105 and 62A-3-301.

(2) "Adult-only Substance Use Disorder Program" is a program serving substance use disorder related clients and does not serve the following:

- (a) clients under the age of 18; or
- (b) those with any serious mental illness or cognitive impairments.

(3) "Applicant" means a person whose identifying information is submitted to the Office under Sections 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78B-6-128, and 78B-6-113. Applicant includes the legal guardian of an individual described in Subsection 62A-2-120-1(a).

(a) "Applicant" does not mean an individual, including an adult, who is in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services.

(4) "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, responsible for maintaining criminal records in the State of Utah.

(5) "Child" is defined in Section 62A-2-101.

(6) "Child Placing" is defined in Section 62A-2-101.

(7) "Committee" means the comprehensive review committee appointed to conduct reviews in accordance with Section 62A-2-120.

(8) "DAAS Statewide Database" is the Division of Aging and Adult Services database created by Section 62A-3-311.1 to maintain reports of vulnerable adult abuse, neglect, or exploitation.

(9) "Determination" is the result of the background clearance findings in the online system. There are four determinations that directly inform a screening agent's hiring decisions:

(a) "eligible" for hire and may work unsupervised;

(b) "ineligible" for hire and may not work;

(c) "supervised only" to work at all times under direct supervision of another employee with an "eligible" DHS clearance while in the presence of clients or client records; or

(d) "conditional hire" under conditions outlined in Subsection R501-14-7(2).

(10) "Direct Access" is defined in Section 62A-2-101.

(11) "Direct Service Worker" is defined in Section 62A-5-101.

(12) "Directly Supervised" is defined in Section 62A-2-101. The agency is responsible to document and provide upon request how the individual remains supervised for the entirety of their supervised employment term prior to full clearance.

(13) "FBI Rap Back System" is defined in Section 53-10-108.

(14) "Fingerprints" means an individual'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 screening agent.

(15) "Foster Home" is defined in Section 62A-2-101.

(16) "Harm" is defined in Subsection R501-1-2(14) and for the purpose of background screenings also includes causing or threatening to cause financial damage or fraud.

(17) "Human Services Program" is defined in Section 62A-2-101.

(18) "Licensee" is defined in Section 62A-2-101.

(19) "Licensing Information System" (LIS) is created by Section 62A-4a-1006, as a sub-part of the Division of Child and Family Services' Management Information System (MIS) created by Section 62A-4a-1003.

(20) "Neglect" may include "Severe Neglect", as these terms are defined in Sections 78A-6-105 and 62A-3-301.

(21) "Office" is defined in Subsection 62A-2-101(30).

(22) "Online system" is the Office's electronic online background clearance system.

(23) "Personal Care Attendant" is defined in Section 62A-3-101.

(24) "Personal Identifying Information" is defined in Section 62A-2-120, and shall include:

(a) a current, valid state driver's license or state identification card bearing the applicant's photo, current name, and address;

(b) any current, valid government-issued identification card bearing the applicant's name and photo, including passports, military identification and foreign government identification cards; or

(c) other records specifically requested in writing by the Office.

(25) "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.

(26) "Request Type" means the type of employment the applicant is applying to work under as categorized in the online system.

(a) Request types delineate the clearance level statutorily required for each type of employment.

(b) Clearance transfers are allowed amongst the same request types or from higher level clearance to lower level clearance only. New clearances and committee review if applicable, are required when moving from a lower level request type to a higher-level request type.

(27) "Screening Agent" is the individual or individuals who are responsible for initiating, monitoring and maintaining background clearance communications with the Office, entering applications, verifying and protecting personally identifying information and ensuring information is current for their agency, applicants and providers in the online system.

(28) "Substance Abuse Treatment Program" is defined in Section 62A-2-101.

(29) "Substantiated" is defined in Section 62A-4a-101.

(30) "Supported" is defined in Sections 62A-3-301 and 62A-4a-101.

(31) "Vulnerable Adult" is defined in Section 62A-2-101.

(32) "Youth Residential Program" is also known as "congregate care" and means a 24-hour group living environment serving 4 or more youth. This does not include foster homes or child placing agency certified homes.

R501-14-3. Initial Background Screening Procedure.

(1) A screening agent shall ensure that an applicant for initial background screening completes any required application fields and disclosure statements to authorize the Office's continual monitoring of their fingerprints and applicable state registries.

(2) An applicant shall disclose any criminal charges, including pending charges, and any supported or substantiated findings of abuse, neglect or exploitation during the background screening application process.

(3) An applicant may provide disclosure statements and related documents as direct attachments to the application to be uploaded into the online system by a screening agent or directly emailed to the Office. If the applicant submits a sealed envelope, the background screening agent shall forward it unopened.

(4) An applicant seeking a position in a youth residential program, a prospective foster parent or prospective adoptive parent, adult in the home of a prospective foster or adoptive parent and DHS employee shall require the highest level of clearance to include out of state registry checks for associated applicants who have resided outside of Utah within the past five years.

(5) An applicant applying to work in a youth residential program who has resided outside of the state of Utah within the 5 years immediately preceding the date of the background screening application shall provide a child abuse and neglect registry record for each State in which the applicant has resided within those 5 years.

(a) Instructions for obtaining out of state child abuse and neglect registry records from each state may be found on the Office website at: <https://hslic.utah.gov/Out-of-state-registries>.

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

(c) For youth residential providers who do not have a DHS contract to provide services for DHS, applicants experiencing delays in receiving requested out of state registry record must be supervised while record are pending, unless:

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

(ii) the Office otherwise approves the applicant's background screening with no committee review required.

(d) A renewal clearance will not be issued if the original out of state registry results have not been provided to the Office within the 12 month initial clearance time frame.

(e) This allowance does not apply to DHS contracted youth residential settings, as federal law requires that employees of these settings must have complete clearance prior to working in a licensed youth residential facility.

(f) Any out of state registry record that contains information that constitutes background screening denial under this rule, shall result in a denial or revocation of background screening and the employee direct access to clients and client records must be terminated immediately upon notification.

(6) An applicant must present valid government-issued identification.

(7) The background screening application, personal identifying information, signed consent disclosure statement and applicable fee shall be submitted by the background screening agent into the online system.

(a) The background screening agent shall inspect the applicant's government-issued identification card and determine that it does not appear to have been forged or altered.

(b) The background screening agent may withdraw a background screening application at any point in the process.

R501-14-4. Renewal Background Screening Procedure.

(1) Renewal applications are not necessary if the applicant has an application entered into the online system under the program for which they work, a signed disclosure statement form uploaded and initial fingerprints that are enrolled in rap back system.

(2) The Office will monitor criminal records on an ongoing basis and applicable state registries on annual basis.

(3) It is a screening agent's responsibility to keep their agency's roster and employee information current in the online system.

(a) A screening agent shall check the roster at least monthly to verify employment of employees due for a renewal review.

(b) A screening agent shall update any names, addresses or other employee information immediately upon becoming aware of changes.

(c) When an employee no longer works for the program, a screening agent must separate that employee from the program's roster in the online system within five days of employee separation from the program.

(4) An individual who is no longer affiliated with any licensed or certified program will have 90 days to become re-employed before the individual's rap back subscription will be reported to the Department of Public Safety to be cancelled.

R501-14-5. General Background Screening Procedure.

(1) An application that lacks a signed disclosure statement, applicant information, or applicable fees will not be processed until the requirements are provided to the Office.

(a) Personal identifying information shall be used to perform a search in accordance with Section 62A-2-120.

(2) Except as permitted by Subsection 62A-2-120(9), an application for an initial background screening shall be submitted no later than two weeks from the applicant becoming associated with the licensee. The applicant shall be directly supervised prior to receiving conditional or full clearance approval from the Office.

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

(i) the criminal record check reveals no criminal offenses subject to automatic denial in accordance with Section 62A-2-120;

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

(iii) there is no comprehensive review as required by Section 62A-2-120.

(b) An applicant with a pending committee review must be supervised at all times until the Office makes the final determination.

(c) An applicant whose background screening application has been denied shall have no further supervised or unsupervised direct access to clients unless the denial is overturned in an administrative hearing or by the Office Director or the Office approves a subsequent application.

(d) An applicant initiating an appeal of a denied application shall work under supervision at all times until there is a disposition made regarding the appeal.

(3) The applicant or background screening agent shall promptly notify the Office of updated application details or new investigations of abuse or neglect or any new criminal charge:

(a) by updating the online system with changes to name and contact information; and

(b) by emailing cbsunit@utah.gov of any new allegations or investigations of abuse or neglect or new criminal charges.

(4) A background screening agent may conduct livescan fingerprinting on an independent livescan machine for submission to the Office only after they have received and applied training in the proper methods of taking fingerprints and ensured all DHS billing codes are accurately entered into the machine.

(a) The background screening agent shall verify the identity of the applicant via personally identifying information at the time that the application is entered.

(b) The applicant is required to present to the livescan operator the same government-issued photo identification under Subsection (4)(a) and the fingerprint authorization form.

(c) A minor applicant that submitted a youth application with no fingerprints and is not currently on the FBI Rap Back System must submit fingerprints within 30 days prior to the minor's 18th birthday.

R501-14-6. Background Screening Fees.

(1) The applicant and background screening agent are responsible for ensuring the accuracy of information submitted with applications and fee payments.

(2) Fees shall only be made by E-check, credit card or internal DHS transfer.

(3) A background screening agent may choose to submit payments individually or in a batch.

(4) Fees are not refundable or transferable, unless the fingerprints were never taken and the Office was never billed by the Department of Public Safety.

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

R501-14-7. Application Processing and Results.

(1) The Office shall approve an application for background screening in accordance with Subsection 62A-2-120(7). The Office shall notify the applicant through their screening agent when an applicant's background screening application is approved or denied. Only approval or denial information shall be provided to a screening agent via a determination in the online system.

(b) The approval granted by the Office shall be valid until the individual is either no longer associated with any licensed or DHS contracted program for 90 days per Subsection R501-14-2(b) or until a new criminal or supported finding of abuse or neglect constitutes screening clearance review or revocation.

(2) The Office may conditionally approve an application for background screening in accordance with Subsection 62A-2-120(8).

(a) Conditional approvals are prohibited for initial applicants who are residents of child placing foster or adoption homes and for applicants working in a DHS contracted youth residential program.

(b) A background screening agent seeking the conditional approval of an applicant may not request conditional approval unless 10 business days have passed after the applicant's complete background screening application is received by the Office without receiving notification of the approval or denial of the application.

(c) A written request for conditional approval shall include the applicant's full name, the last four digits of the applicant's social security number, and the date the application was submitted with the required consent disclosures and fees in the online system. This request must be submitted via the online system or via the cbsunit@utah.gov.

(d) Upon receipt of a written request for conditional approval that complies with Subsection (2)(b), the Office shall make a conditional determination within three business days.

(e) Conditional approvals shall have expiration dates not to exceed 60 days unless:

(i) the applicant is awaiting the results of an out of state registry check as the only remaining item prohibiting clearance, they may be granted a conditional approval; and

(ii) a renewal clearance or new conditional clearance will not be issued if the out-of-state registry check has not been provided within 12 months of initial application.

(f) If the Office does not provide a standard approval before the expiration date of the conditional approval, the applicant shall be directly supervised until such an approval is granted.

(g) The Office may revoke the conditional approval prior to the expiration date.

(3) The Office shall deny an application for background screening in accordance with Subsection 62A-2-120-5(a) and 62A-2-120-14(c).

(4) An applicant whose background screening has been denied shall have no further supervised or unsupervised direct access.

(5) The Office shall refer an application to the committee in accordance with Subsection 62A-2-120(5)(b) and 62A-2-120(6).

(a) In accordance with Subsection 62A-2-120(6)(a)(ii), any misdemeanor convictions except those listed in Subsection (5)(b), within the ten years prior to submission of the application to the Office shall be reviewed by the committee.

(b) The following misdemeanors will not be reviewed:

(i) violation of local ordinances related to animal licenses, littering, dogs at large, noise, yard sales, land uses, storm water, utilities, business licenses, zoning, building, construction and park or access hours;

(ii) misdemeanors listed in Title 41 Chapter 6a, Traffic Codes, except, Section 41-6a-5, Subsections 41-6a-4(401.3), 41-6a-4(401.5), 41-6a-4(401.7), 41-6a-17(1716), 41-6a-17(1717), and 41-6a-18(1803); (iii) misdemeanors listed in Section 76-10-2, 76-10-21, and 76-10-27, and Subsection 76-10-1(105);

(iv) failure to appear, a misdemeanor charge under Section 77-7-22;

(v) a misdemeanor resulting from unauthorized hunting under Section 23-20-3;

(vi) a misdemeanor resulting from a failure to have the appropriate fishing license under Section 23-19-1;

(vii) a misdemeanor resulting from a failure to comply with the boating safety requirements outlined in Section 73-18-8;

(viii) a misdemeanor resulting from failure to have a business license as required under 76-8-410;

(ix) juvenile misdemeanors except those listed in Subsection 62A-2-120(5)(a) unless there is a pattern of at least three or more similar offenses within the five years prior to the submission of the application; and

(c) Any misdemeanor or felony conviction that occurred more than ten years prior to the date the application is submitted in the online system, if the applicant has not committed a misdemeanor or felony offense since the day on which the conviction occurred, will not be reviewed. This comprehensive review exception does not apply to prospective foster or adoptive parents.

(d) The Office shall refer an applicant to the committee upon learning of a potentially disqualifying offense or finding described in Subsection 62A-2-120(6)(a) not previously considered by the committee.

(6) The Office may provide the status of an application to a background screening agent, but may not share any specific criminal history or abuse or neglect history or findings.

R501-14-8. Comprehensive Review Committee.

(1) The Director of the following Department of Human Services divisions and offices shall appoint at minimum one member and one alternate to serve on the committee:

(a) the Executive Director's Office;

(b) the Division of Aging and Adult Services;

(c) the Division of Child and Family Services;

(d) the Division of Juvenile Justice Services;

(e) the Division of Services for People with Disabilities;

(f) the Division of Substance Abuse and Mental Health; and

(g) the Office.

(2) Committee members and alternates shall be professional staff persons who are familiar with the programs they represent.

(3) The appointed Office member shall chair the committee as a non-voting member.

(4) Four voting members shall constitute a quorum.

(5) The committee shall conduct a comprehensive review of an applicant's background screening application, records from open court cases or convictions not automatically denied in Subsection 62A-2-102-5(a) involving felony or misdemeanor offenses that are no more than ten years old, outstanding warrants for any offenses that require a committee review, abuse, neglect or exploitation records, applicant submitted child abuse and neglect registry records from other states and related circumstances, in accordance with Subsection 62A-2-120(6).

(6) The committee may not conduct a comprehensive review of an applicant's background screening application if:

(a) the applicant has been previously reviewed and approved by the committee for the same employment request type even if lapsed; and

(b) the applicant has no new criminal charges or findings of abuse or neglect.

R501-14-9. Comprehensive Review Investigation.

(1) The committee may not review a background screening application without the Office first sending the applicant a written notice that the Office is investigating the applicant's criminal history or findings of abuse, neglect or exploitation.

(a) The applicant may submit any written statements or records that the committee needs to make a determination of risk of harm including:

(i) original police reports;

(ii) investigatory and charging documents;

(iii) proof of any compliance with court orders;

(iv) any evidence of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed;

(v) personal statements;

(vi) reference letters specific to the potential risk of harm; and

(vii) any other information that specifically addresses the criteria established in Subsection 62A-2-120(6)(b).

(b) The committee evaluates information using the criteria established by Subsection 62A-2-120(6)(b).

(c) Applicant submissions of written statements or records must be received within 15 calendar days of the written notice unless an extension has been requested by the background screening agent or applicant and granted by the Office.

(2) The Office shall gather information described in Subsection 62A-2-120(6)(b) from the applicant and provide available information to the committee.

(3) The Office may request additional information from any available source, including the applicant, victims, witnesses, investigators, the criminal justice system, law enforcement agencies, the courts and any others it deems necessary for the comprehensive evaluation of an application.

(4) A denied application may be re-submitted to the Office after 6 months or upon substantial change to circumstances.

R501-14-10. Comprehensive Review Determination.

(1) The committee shall evaluate the applications and information provided to the committee by the Office to determine if an applicant poses a risk of harm to children or vulnerable adults. In assessing the risk of harm, the committee shall consider the type of employment the applicant is seeking and the type of license under which the applicant will be employed.

(a) A previously reviewed and cleared background screening approval may be transferred without further committee review to other human service programs when providing the same service under the same statutory screening requirements.

(b) The committee shall re-consider previously cleared or denied screenings when the applicant requires a new clearance for a new type of employment.

(2) Each application that goes to the committee requires an individual review by the committee members.

(3) The comprehensive review committee shall recommend approval of the background screening of an applicant only after a simple majority of the voting members of the committee determines that approval will not likely create a risk of harm to a child or vulnerable adult in the request type for which they applied.

(4) The committee shall recommend denial of the background screening of an applicant when it finds that approval will likely create a risk of harm to the specific population that the applicant will be serving. Each voting member shall independently document how the voting member reached the conclusion that the individual does or does not pose a risk of harm to the population the applicant is applying to serve.

(5) If the applicant fails to provide additional information requested by the Office within 30 days of initial request, the committee may consider and weigh only what was submitted to the committee and only consider additional information that is publicly available in making the committee's evaluation of the risk of harm to clients. The committee may not deny an application simply due to lack of information.

(6) The Office Director or designee shall make the final determination to approve or deny the application after considering the comprehensive review committee's recommendation.

(7) An applicant whose background screening has been denied shall have no further supervised or unsupervised direct access unless overturned by an administrative hearing or by the Office Director or the Office approves a subsequent application.

(a) An applicant initiating an appeal of a denied application shall work under supervision at all times until there is a disposition made regarding the appeal.

R501-14-11. Background Screening Approval Transfer or Concurrent Use.

(1) An applicant is eligible to have their current background screening approval shared with or transferred to another human services program only if the applicant is currently enrolled in the FBI Rap Back System and the screening was run under the same statutory authority as the original screening.

(2) An applicant who wishes to have their current background screening shared with or transferred to another human services program shall complete a background screening application through a screening agent of the new program.

(i) Transfers from a non-youth residential program to a youth residential program, including a foster home, adoptive home, certified home or DHS employee position is not permitted.

(ii) Transfers from a non-youth residential to a youth residential program shall require submission of out of state registry records when the applicant has resided in another state within 5 years of the application.

(iii) transfers from youth residential program to a non-youth residential program are permitted

(3) An applicant shall be directly supervised until the applicant's status in the online system reflects "eligible", "eligible for hire" and has been "permanently hired" by a screening agent.

R501-14-12. Post-Approval Responsibilities.

(1) An applicant and background screening agent shall immediately notify the Office via cbsunit@utah.gov if the applicant is charged with any felony, misdemeanor, or infraction, or has a new finding in the Licensing Information System, juvenile court records, or the DAAS Statewide Database after a background screening application is approved.

(2) An applicant who has been charged with any felony, misdemeanor, or infraction listed in Subsection 62A-2-120(5)(a) or has a new finding in the Licensing Information System or the DAAS Statewide Database, after a background screening application is approved will have a new clearance status indicating that they shall be directly supervised until a disposition on the case is reached.

(3) The Office may revoke the background screening approval of an applicant who has been convicted of any felony, misdemeanor or infraction listed in Subsection 62A-2-120(5) after a background screening approval had already been granted by the Office while charges were pending.

(4) The Office shall process identifying information received pursuant to Subsection R501-14-12(2) in accordance with Rule R501-14.

(5) The background screening agent shall notify the Office of the termination of each employee for whom fingerprints have been retained under Section 62A-2-120. The Office shall report the termination to BCI within 90 days if the individual has not transferred the clearance to a transfer-eligible program within that time frame.

R501-14-13. Confidentiality.

(1) The Office may disclose registry and criminal background screening information, only to the applicant in accordance with Section 63G-2-101.

(2) The background screening agents and DHS auditors with over oversight of the licensed program may be granted minimal, read-only access to the online system solely to see application determinations. No additional case details will be viewable.

(3) Except as described in Section R501-14-11, background screening information may not be transferred or shared between human service programs.

(4) A background screening agent or Office representative may provide the approval letter generated by the online system to the person who is the subject of the approval, the court, another licensed child-placing agency, or the attorney for the adoptive parents, in accordance with Section 53-10-108(4).

R501-14-14. Retention of Background Screening Information.

(1) The online system shall retain the background screening information of associated individuals for a minimum of seven years after the termination of the individual's association with the program.

R501-14-15. Expungement.

(1) An applicant whose background screening application has been denied due to the applicant's criminal record may submit a new application with an official copy of an Order of Expungement.

R501-14-16. Administrative Hearing.

(1) A Notice of Agency Action issued by the Office Director or designee that denies the applicant's background screening application or revokes the applicant's background screening approval shall inform the applicant of the right to appeal in accordance with Rule R497-100 and Section 63G-4-1.

R501-14-17. Exemption.

(1) Subsection 62A-2-120(13) provides an exemption for substance abuse programs providing services to adults only. In order to claim this exemption, an applicant, human services program, or DHS contractor may request this exemption on a form provided by the Office, and demonstrate that they meet exemption criteria. Final determination shall be made by the Office.

(2) The substance abuse program exemption limits the exemption with regard to program directors and members. Ownership and management of a human services program, as included in the definition of member, for purposes of this rule means a person or entity who alone or in conjunction with other persons or entities has a majority voice in the decision-making and administration of the program.

R501-14-18. Automatic Denial Exemption.

(1) Programs serving only adults whose only impairment is a mental health diagnosis with or without co-occurring substance use disorder are exempt from the automatic denial provisions of Subsection 62A-2-120-5(a) and are entitled instead to a committee review per Subsection 62A-2-120-5(c). A Program claiming exemption must identify on their program application how they meet the exemption criteria. Final determination regarding potential exemption will be made by the Office.

(2) Programs approved for exempted screening processes listed in this section are responsible for informing the Office immediately upon any program changes that would render them ineligible for the exemption.

KEY: licensing, background screening, fingerprinting, human services

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Authorizing, and Implemented or Interpreted Law: 62A-2-108 et seq.