

## Part 2 Clearance for Direct Patient Access

### 26-21-201 Definitions.

As used in this part:

- (1) "Clearance" means approval by the department under Section 26-21-203 for an individual to have direct patient access.
- (2) "Covered body" means a covered provider, covered contractor, or covered employer.
- (3) "Covered contractor" means a person that supplies covered individuals, by contract, to a covered employer or covered provider.
- (4) "Covered employer" means an individual who:
  - (a) engages a covered individual to provide services in a private residence to:
    - (i) an aged individual, as defined by department rule; or
    - (ii) a disabled individual, as defined by department rule;
  - (b) is not a covered provider; and
  - (c) is not a licensed health care facility within the state.
- (5) "Covered individual":
  - (a) means an individual:
    - (i) whom a covered body engages; and
    - (ii) who may have direct patient access;
  - (b) includes:
    - (i) a nursing assistant, as defined by department rule;
    - (ii) a personal care aide, as defined by department rule;
    - (iii) an individual licensed to engage in the practice of nursing under Title 58, Chapter 31b, Nurse Practice Act;
    - (iv) a provider of medical, therapeutic, or social services, including a provider of laboratory and radiology services;
    - (v) an executive;
    - (vi) administrative staff, including a manager or other administrator;
    - (vii) dietary and food service staff;
    - (viii) housekeeping and maintenance staff; and
    - (ix) any other individual, as defined by department rule, who has direct patient access; and
  - (c) does not include a student, as defined by department rule, directly supervised by a member of the staff of the covered body or the student's instructor.
- (6) "Covered provider" means:
  - (a) an end stage renal disease facility;
  - (b) a long-term care hospital;
  - (c) a nursing care facility;
  - (d) a small health care facility;
  - (e) an assisted living facility;
  - (f) a hospice;
  - (g) a home health agency; or
  - (h) a personal care agency.
- (7) "Direct patient access" means for an individual to be in a position where the individual could, in relation to a patient or resident of the covered body who engages the individual:
  - (a) cause physical or mental harm;
  - (b) commit theft; or

- (c) view medical or financial records.
- (8) "Engage" means to obtain one's services:
  - (a) by employment;
  - (b) by contract;
  - (c) as a volunteer; or
  - (d) by other arrangement.
- (9) "Long-term care hospital":
  - (a) means a hospital that is certified to provide long-term care services under the provisions of 42 U.S.C. Sec. 1395tt; and
  - (b) does not include a critical access hospital, designated under 42 U.S.C. Sec. 1395i-4(c)(2).
- (10) "Patient" means an individual who receives health care services from one of the following covered providers:
  - (a) an end stage renal disease facility;
  - (b) a long-term care hospital;
  - (c) a hospice;
  - (d) a home health agency; or
  - (e) a personal care agency.
- (11) "Personal care agency" means a health care facility defined by department rule.
- (12) "Resident" means an individual who receives health care services from one of the following covered providers:
  - (a) a nursing care facility;
  - (b) a small health care facility;
  - (c) an assisted living facility; or
  - (d) a hospice that provides living quarters as part of its services.
- (13) "Residential setting" means a place provided by a covered provider:
  - (a) for residents to live as part of the services provided by the covered provider; and
  - (b) where an individual who is not a resident also lives.
- (14) "Volunteer" means an individual, as defined by department rule, who provides services without pay or other compensation.

Enacted by Chapter 328, 2012 General Session

**26-21-202 Clearance required.**

- (1) A covered provider may engage a covered individual only if the individual has clearance.
- (2) A covered contractor may supply a covered individual to a covered employer or covered provider only if the individual has clearance.
- (3) A covered employer may engage a covered individual who does not have clearance.
- (4)
  - (a) Notwithstanding Subsections (1) and (2), if a covered individual does not have clearance, a covered provider may engage the individual or a covered contractor may supply the individual to a covered provider or covered employer:
    - (i) under circumstances specified by department rule; and
    - (ii) only while an application for clearance for the individual is pending.
  - (b) For purposes of Subsection (4)(a), an application is pending if the following have been submitted to the department for the individual:
    - (i) an application for clearance;
    - (ii) the personal identification information specified by the department under Subsection 26-21-204(4)(b); and

(iii) any fees established by the department under Subsection 26-21-204(9).

Enacted by Chapter 328, 2012 General Session

**26-21-203 Department authorized to grant, deny, or revoke clearance -- Department may limit direct patient access.**

- (1) As provided in Section 26-21-204, the department may grant, deny, or revoke clearance for an individual, including a covered individual.
- (2) The department may limit the circumstances under which a covered individual granted clearance may have direct patient access, based on the relationship the factors under Subsection 26-21-204(4)(a) and other mitigating factors may have to patient and resident protection.

Enacted by Chapter 328, 2012 General Session

**26-21-204 Clearance.**

- (1) The department shall determine whether to grant clearance for each applicant for whom it receives:
  - (a) the personal identification information specified by the department under Subsection 26-21-204(4)(b); and
  - (b) any fees established by the department under Subsection 26-21-204(9).
- (2) The department shall establish a procedure for obtaining and evaluating relevant information concerning covered individuals, including fingerprinting the applicant and submitting the prints to the Criminal Investigations and Technical Services Division of the Department of Public Safety for checking against applicable state, regional, and national criminal records files.
- (3) The department may review the following sources to determine whether an individual should be granted or retain clearance, which may include:
  - (a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;
  - (b) juvenile court arrest, adjudication, and disposition records, as allowed under Section 78A-6-209;
  - (c) federal criminal background databases available to the state;
  - (d) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;
  - (e) child abuse or neglect findings described in Section 78A-6-323;
  - (f) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;
  - (g) registries of nurse aids described in 42 C.F.R. Sec. 483.156;
  - (h) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions; and
  - (i) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General.
- (4) The department shall adopt rules that:
  - (a) specify the criteria the department will use to determine whether an individual is granted or retains clearance:
    - (i) based on an initial evaluation and ongoing review of information under Subsection (3); and

- (ii) including consideration of the relationship the following may have to patient and resident protection:
  - (A) warrants for arrest;
  - (B) arrests;
  - (C) convictions, including pleas in abeyance;
  - (D) pending diversion agreements;
  - (E) adjudications by a juvenile court of committing an act that if committed by an adult would be a felony or misdemeanor, if the individual is over 28 years of age and has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, or the individual is under 28 years of age; and
  - (F) any other findings under Subsection (3); and
- (b) specify the personal identification information that must be submitted by an individual or covered body with an application for clearance, including:
  - (i) the applicant's Social Security number; and
  - (ii) except for applicants under 18 years of age, fingerprints.
- (5) For purposes of Subsection (4)(a), the department shall classify a crime committed in another state according to the closest matching crime under Utah law, regardless of how the crime is classified in the state where the crime was committed.
- (6) The Department of Public Safety, the Administrative Office of the Courts, the Department of Human Services, the Division of Occupational and Professional Licensing, and any other state agency or political subdivision of the state:
  - (a) shall allow the department to review the information the department may review under Subsection (3); and
  - (b) except for the Department of Public Safety, may not charge the department for access to the information.
- (7) The department shall adopt measures to protect the security of the information it reviews under Subsection (3) and strictly limit access to the information to department employees responsible for processing an application for clearance.
- (8) The department may disclose personal identification information specified under Subsection (4)(b) to the Department of Human Services to verify that the subject of the information is not identified as a perpetrator or offender in the information sources described in Subsections (3)(d) through (f).
- (9) The department may establish fees, in accordance with Section 63J-1-504, for an application for clearance, which may include:
  - (a) the cost of obtaining and reviewing information under Subsection (3);
  - (b) a portion of the cost of creating and maintaining the Direct Access Clearance System database under Section 26-21-209; and
  - (c) other department costs related to the processing of the application and the ongoing review of information pursuant to Subsection (4)(a) to determine whether clearance should be retained.

Enacted by Chapter 328, 2012 General Session

**26-21-205 Department of Public Safety -- Retention of information -- Notification of Department of Health.**

The Criminal Investigations and Technical Services Division within the Department of Public Safety shall:

- (1) retain, separate from other division records, personal information, including any fingerprints, sent to it by the Department of Health pursuant to Subsection 26-21-204(3)(a); and

- (2) notify the Department of Health upon receiving notice that an individual for whom personal information has been retained is the subject of:
- (a) a warrant for arrest;
  - (b) an arrest;
  - (c) a conviction, including a plea in abeyance; or
  - (d) a pending diversion agreement.

Enacted by Chapter 328, 2012 General Session

**26-21-206 Covered providers and covered contractors required to apply for clearance of certain individuals.**

- (1) As provided in Subsection (2), each covered provider and covered contractor operating in this state shall:
- (a) collect from each covered individual it engages, and each individual it intends to engage as a covered individual, the personal identification information specified by the department under Subsection 26-21-204(4)(b); and
  - (b) submit to the department an application for clearance for the individual, including:
    - (i) the personal identification information; and
    - (ii) any fees established by the department under Subsection 26-21-204(9).
- (2) Clearance granted for an individual pursuant to an application submitted by a covered provider or a covered contractor is valid until the later of:
- (a) two years after the individual is no longer engaged as a covered individual; or
  - (b) the covered provider's or covered contractor's next license renewal date.

Enacted by Chapter 328, 2012 General Session

**26-21-207 Covered providers required to apply for clearance for certain individuals other than residents residing in residential settings -- Certain individuals other than residents prohibited from residing in residential settings without clearance.**

- (1) A covered provider that provides services in a residential setting shall:
- (a) collect the personal identification information specified by the department under Subsection 26-21-204(4)(b) for each individual 12 years of age or older, other than a resident, who resides in the residential setting; and
  - (b) submit to the department an application for clearance for the individual, including:
    - (i) the personal identification information; and
    - (ii) any fees established by the department under Subsection 26-21-204(9).
- (2) A covered provider that provides services in a residential setting may allow an individual 12 years of age or older, other than a resident, to reside in the residential setting only if the individual has clearance.

Enacted by Chapter 328, 2012 General Session

**26-21-208 Application for clearance by individuals.**

- (1) An individual may apply for clearance by submitting to the department an application, including:
- (a) the personal identification information specified by the department under Subsection 26-21-204(4)(b); and
  - (b) any fees established by the department under Subsection 26-21-204(9).

- (2) Clearance granted to an individual who makes application under Subsection (1) is valid for two years unless the department determines otherwise based on its ongoing review under Subsection 26-21-204(4)(a).

Enacted by Chapter 328, 2012 General Session

**26-21-209 Direct Access Clearance System database -- Contents -- Use.**

- (1) The department shall create and maintain a Direct Access Clearance System database, which:
- (a) includes the names of individuals for whom the department has received:
    - (i) an application for clearance under this part; or
    - (ii) an application for background clearance under Section 26-8a-310; and
  - (b) indicates whether an application is pending and whether clearance has been granted and retained for:
    - (i) an applicant under this part; and
    - (ii) an applicant for background clearance under Section 26-8a-310.
- (2)
- (a) The department shall allow covered providers and covered contractors to access the database electronically.
  - (b) Data accessible to a covered provider or covered contractor is limited to the information under Subsections (1)(a)(i) and (1)(b)(i) for:
    - (i) covered individuals engaged by the covered provider or covered contractor; and
    - (ii) individuals:
      - (A) whom the covered provider or covered contractor could engage as covered individuals; and
      - (B) who have provided the covered provider or covered contractor with sufficient personal identification information to uniquely identify the individual in the database.
  - (c)
    - (i) The department may establish fees, in accordance with Section 63J-1-504, for use of the database by a covered contractor.
    - (ii) The fees may include, in addition to any fees established by the department under Subsection 26-21-204(9), an initial set-up fee, an ongoing access fee, and a per-use fee.

Amended by Chapter 307, 2015 General Session

**26-21-210 No civil liability.**

A covered body is not civilly liable for submitting to the department information required under this part or refusing to employ an individual who does not have clearance to have direct patient access under Section 26-21-203.

Enacted by Chapter 328, 2012 General Session