

Superseded 5/12/2015

62A-5-103.5 Disbursal of public funds -- Background check of a direct service worker.

- (1) For purposes of this section:
 - (a) "directly supervised" means that the person being supervised is under the uninterrupted visual and auditory surveillance of the person doing the supervising; and
 - (b) "office" is as defined in Section 62A-2-101.
- (2) Subject to Subsection (4), public funds may not be disbursed to pay a direct service worker for personal services rendered to a person, unless:
 - (a) subject to Subsections (5) and (7), the direct service worker is approved by the office to have direct access and provide services to children or vulnerable adults pursuant to Section 62A-2-120;
 - (b) except as provided in Subsection (5):
 - (i) during the time that the direct service worker renders the services described in this Subsection (2), the direct service worker who renders the services is directly supervised by a direct service worker who is approved by the office to have direct access and provide services to children or vulnerable adults pursuant to Section 62A-2-120;
 - (ii) the direct service worker who renders the services described in this Subsection (2) has submitted the information required for a background check pursuant to Section 62A-2-120; and
 - (iii) the office has not determined whether to approve the direct service worker described in Subsection (2)(b)(ii) to have direct access and provide services to children or vulnerable adults; or
 - (c) except as provided in Subsection (5), the direct service worker:
 - (i)
 - (A) is a direct ancestor or descendent of the person to whom the services are rendered, but is not the person's parent;
 - (B) is the aunt, uncle, or sibling of the person to whom the services are rendered; or
 - (C)
 - (I) has submitted the information required for a background check pursuant to Section 62A-2-120; and
 - (II) the office has not determined whether to approve the direct service worker to have direct access and provide services to children or vulnerable adults; and
 - (ii) is not listed in:
 - (A) the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-1006;
 - (B) the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1 as having a substantiated finding of abuse, neglect, or exploitation; or
 - (C) juvenile court records as having a substantiated finding under Section 78A-6-323 that the direct service worker committed a severe type of child abuse or neglect.
- (3) For purposes of Subsection (2), the office shall conduct a background check of a direct service worker:
 - (a) except as provided in Subsection (2)(b) or (c), before public funds are disbursed to pay the direct service worker for the personal services described in Subsection (2); and
 - (b) using the same procedures established for a background check of an applicant for an initial license under Section 62A-2-120.
- (4) The background check and the approval determination described in this section shall be conducted for a direct service worker on an annual basis.

- (5) Notwithstanding Subsections (1) through (4), and except as provided in Subsection (6), a child who is in the legal custody of the department or any of the department's divisions may not be placed with a direct service worker unless, before the child is placed with the direct service worker, the direct service worker passes a background check, pursuant to the requirements of Section 62A-2-120, that includes:
- (a) submitting the direct service worker's fingerprints for an FBI national criminal history records check, through the Criminal Investigations and Technical Services Division;
 - (b) checking the child abuse and neglect registry in each state where the direct service worker resided in the five years immediately preceding the day on which the direct service worker applied to be a direct service worker; and
 - (c) checking the child abuse and neglect registry in each state where each adult living in the home where the child will be placed resided in the five years immediately preceding the day on which the direct service worker applied to be a direct service worker.
- (6) The requirements under Subsection (5) do not apply to the extent that federal law or rule permits otherwise.
- (7) If a public transit district, as described in Title 17B, Chapter 2a, Part 8, Public Transit District Act, contracts with the division to provide services:
- (a) the provisions of Subsections (2) through (5) are not applicable to a direct service worker employed by the public transit district; and
 - (b) the division may not reimburse the public transit district for services provided unless a direct service worker hired or transferred internally after July 1, 2013, by the public transit district to drive a paratransit route:
 - (i) is approved by the office to have direct access to children and vulnerable adults in accordance with Section 62A-2-120; and
 - (ii) is subject to a background check established in a statute or rule governing a public transit district or other public transit district policy.