



# Report on Possible Consolidation of Background Check Systems

September 1, 2014

Department of Human Services

Department of Health

Utah State Office of Rehabilitation

Department of Technology Services

Department of Workforce Services

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In accordance with intent language in HB002 item 67 of the 2014 Legislative General Session, *Report on Possible Consolidation of Background Check Systems*, the Departments of Workforce Services, Health, Human Services, Technology Services, and the Utah State Office of Rehabilitation provide this report regarding all current background checks of individuals and possible efficiencies for consolidation.

*The Legislature intends that the Departments of Workforce Services, Health, Human Services, Technology Services, and the Utah State Office of Rehabilitation provide a report regarding all current background checks of individuals and possible efficiencies for consolidation. The Legislature intends that agencies provide a report to the Office of the Legislative Fiscal Analyst by September 1, 2014. The report shall include the following regarding each background check program:*

- (1) name and purpose of the program,*
- (2) expenditures and staffing for the last three years,*
- (3) types of problems the background check is looking for,*
- (4) the databases searched, and*
- (5) technology used.*

*The report should provide recommendations where different background check systems might be combined.*

## **Potential Efficiencies**

Each agency has different statute, rule, and policy requirements for background checks. These include a large variety of different systems and databases that are used due to the types of clearance and based on particular reasons for the clearance. Each agency has different criteria for analysis of pass or fail; however, there are two potential areas where efficiencies could be gained through sharing of background check systems.

### ***Department of Health Direct Access Clearance System***

The Department of Health is utilizing funding received from a grant awarded by the Centers for Medicare/Medicaid Services (CMS) to develop and implement an electronic background clearance program including a rap-back process. This system is called Direct Access Clearance System (DACS).

DACS will allow coordination between the Department of Health and Department of Public Safety for a federal and state criminal record search on fingerprints. The Department of Public Safety will retain submitted fingerprints and run a nightly routine to match these fingerprints against any new charges, arrests, warrants or convictions and notify the DACS system. This rap-back process allows the Department of Health the ability to only require an applicant to be fingerprint once because of the continuous monitoring of the system.

The DACS system and rap-back process could potentially be used by other agencies to gain further efficiencies. The Department of Health will not have unrestricted access to the DACS system until July 2015. During the next two years, the agencies involved in this report will review business requirements and coordinate to determine the feasibility of expanding the system to other agencies.

The actual background check takes only a few minutes, but the analysis of reports requires much more time. Even with the implementation of the DACS system and rap-back process, the

agencies will still need to maintain employees to perform comparisons and analysis of reports provided through the system.

***LiveScan Machines***

It is also possible to gain efficiencies through the consolidation and sharing of LiveScan machines across the State. It could be beneficial to all agencies if machines were accessible to all agencies as opposed to only being available to the owner of the machine.

## Department of Human Services

### Office of Licensing (OL)

#### Name and Purpose:

The bulk of DHS background checks are done through the Office of Licensing. The Office of Licensing conducts statutory background checks on Human Services' licensees and all licensee's employees per *UCA 62A-2-119*. The timeframe to conduct checks is 30 days per *UCA 62A-2-120(6) - (6) (a)*.

Within DHS, Juvenile Justice Services, Aging and Adult Services and Office of Recovery Services also run background screenings on their own employees. The Utah Developmental Center staff has background screenings run through the Department of Health. The Utah State Hospital has employee background screenings run through the ERIC HR system.

Division of Child and Family Services also performs UCJIS checks on preliminary emergency kinship placements for unlicensed families of child in foster care (approx. 1,000 per year). DCFS also has 13 LiveScan machines statewide to collect the fingerprints on foster parents. OL receives the results of those foster family LiveScan results.

#### Expenditures and Staffing:

The following applies *only* to the screenings done through the Office of Licensing.

	Fiscal Year		
	2013	2012	2011
Salary & Wages (six staff)	\$ 336,115.39	\$ 321,307.82	\$ 305,763.78
Rent (six offices/print room)	4,931.26	5,159.35	9,763.93
Approval Committee	18,000.00	18,000.00	18,000.00
Technology	13,680.48	13,272.00	13,464.00
Miscellaneous	17,472.31	26,098.46	25,815.60
<b>Grand Total</b>	<b>\$ 372,727.13</b>	<b>\$ 344,467.17</b>	<b>\$ 333,527.71</b>

*\*Lower rents in 2013, and 2012 due to rebates from DFCM not continued.*

*\* Approval committee consists of at least 6 managers from various divisions*

*meeting 2-3 times monthly to review possible approvals*

*\*Miscellaneous includes buss pass, DHRM rates, postage & mailing*

*\*No Credit Cards are currently accepted, so the cost is not included*

Last fiscal year, OL processed 40,784 background checks. 10% required FBI processing, and 819 required the comprehensive background review process.

**Types of Problems Checked:**

Specific crimes outlined in *UCA 62A-2-119* are the subject of query by OL on the 40,000 plus checks that OL does, as well as the emergency placement checks run by DCFS. Different standards may exist for employee checks run by the other agencies.

Child abuse and elder abuse/neglect is checked by OL on all background checks in a separate database system. In addition, for foster homes a full Adam Walsh compliant search is done which also includes other states' child abuse/neglect registries.

OL also has an extensive background screening review process outlined in statute, as well as an administrative review hearing process for anyone denied to work with children and vulnerable adults through a background check.

**Databases Searched:**

OL does UCJIS checks, including sending qualifying fingerprints for applicants who have not lived continuously in Utah for 5 years to Public Safety for FBI processing, as well as queries for child and elder abuse/neglect within the State of Utah on the SAFE system. In addition, OL does an OSCAR (Out of State Child Abuse Registries) search on all foster homes. OL also must elicit documentation for clearances on applicants who have spent significant time out of the country.

**Technology Used:**

OL utilizes the following technology for background checks:

- LiveScan digital fingerprinting and scanning of fingerprint cards (one location)
- SAFE adult abuse/neglect management information system
- SAFE child abuse/neglect licensing information system
- UCJIS access

## Department of Health Bureau of Emergency Medical Services

**Name and Purpose:**

Background clearances for persons seeking certification or recertifying with Emergency Medical Services are used to determine whether the individual has been convicted of a crime that bears upon the individual's fitness to be certified or to have responsibility for the safety and well-being of children, the elderly, or persons with disabilities. Certification types include, Emergency Medical Responder, Emergency Medical Technician, Advanced Emergency Medical Technician, Emergency Medical Technician Intermediate Advanced, Paramedic or Emergency Medical Dispatcher.

*Utah Code, Title 26, Chapter 8a, Section 310* (Appendix 1) gives authority to the Bureau to complete background clearances for persons seeking certification or recertifying with Emergency Medical Services. *Utah Administrative Code R426-5-2600* (Appendix 2) describes the process that will be followed by the Bureau.

**Staffing and Expenditures:**

The funding for the background screening process is obtained through certification and recertification fees.

EMS Background Check

1.25 FTE

Personnel Expenditures \$63,968 / SFY

TOTAL EMS PERSONNEL \$63,968

Local Clearance	2011	2012	2013	2014 YTD
Total Reviewed	3575	3856	3441	1596
Criminal Findings	291	203	141	78

FBI Clearances	2011	2012	2013	2014 YTD
Total Reviewed	692	681	671	247
Criminal Findings	71	34	24	13

2 Year Checks	2012	2013	2014
Processed	936	1455	1065
Criminal Findings	28	36	36

**Types of Problems Checked:**

The Bureau of Emergency Medical Services utilizes the background screening data to determine denial, probation or approval of certification.

“Shall deny” criminal convictions include sexual misconduct, sexual or physical abuse of a child, crimes against a person entrusted to the care of the person, crimes of violence against a person, crimes related to the pre-hospital care of patients, crimes involving a minor or a person with diminished capacity.

“May deny” criminal convictions include domestic violence or crimes involving controlled substances, or total number of convictions. (See Appendix 2 R426-5-2600 for specifics)

**Databases Searched:**

*Utah Code 26-8a-310* grants the department authority to review relevant information obtained from the following sources to determine whether an individual should be granted or retain certification, which may include:

- (1) The department shall obtain information from a criminal history record or warrant of arrest information maintained by the Department of Public Safety pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.*
- (2) An applicant who has not had residency in the state for the last five years shall submit fingerprints and other identifying information. The department shall submit fingerprints obtained to the Department of Public Safety to be forwarded to the Federal Bureau of Investigation for a nationwide criminal history record check.*
- (3) The department shall have access to juvenile court records to determine whether the applicant has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor if:*
  - (a) the applicant is under the age of 28; or*
  - (b) the applicant is over the age of 28 and has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.*
- (4) Information obtained may be used to:*
  - (a) withhold certification or renewal;*
  - (b) commence or substantiate disciplinary action under Section 26-8a-503;*
  - (c) enforce the provisions of this chapter; and*
  - (d) notify the individual's employer as necessary to protect the public.*

**Technology Used:**

The Bureau of Emergency Medical Services utilizes the Utah Criminal Justice Information System (UCJIS) database for applicant local criminal background checks. For applicants who have lived outside of Utah in the last 5 years, live scan finger prints are sent to public safety for a federal criminal records search. The Department of Public Safety populates a web based application called Applicant Background Clearance (ABC) with these findings, our authorized staff reviews and determines if the applicant can be certified.

## Department of Health Bureau of Health Facility Licensing and Certification

**Name and Purpose:**

Background clearances for employees in licensed health care facilities are designed to protect some of Utah’s most vulnerable citizens from possible abuse, neglect or exploitation. Anyone who has direct patient access must have a background clearance approval. This includes anyone in a position where the individual could, in relation to a patient or resident of the licensed health care facility who engages the individual, cause physical or mental harm, commit theft or view medical or financial records.

*Utah Code, Title 26, Chapter 21, Part 2* (Appendix 3) gives authority to the Bureau to complete background clearances for employees who have direct patient access in licensed health care facilities in Utah. *Utah Administrative Code R432-35* (Appendix 4) describes the process that will be followed by the Bureau.

Licensed Health Care Facilities include:

1. End Stage Renal Disease facilities
2. Long-Term Care hospitals
3. Nursing care facilities
4. Small Health Care facilities
5. Assisted Living facilities
6. Hospice Agencies
7. Home Health Agencies
8. Personal Care Agencies.

**Staffing and Expenditures:**

Health Facility Licensing is implementing a new web based background screening program called Direct Access Clearance System (DACs). The funding for this new system is through a Federal Grant. The ongoing funding for the background screening process is obtained through facility licensing fees.

HFL State Background Check

2.9 Total FTE (2.35 Staff, .30 Temporary Staff and .25 Administrative/Financial Staff)

HFL State Background Check Expenditures	Average / SFY
AA Personnel Services	\$272,898.00
BB Travel/In State	\$100.00
CC Travel/Out of State	\$0.00
DD Current Expense	\$9,410.00
EE Data Processing Current Expense	\$5,152.00
FF Data Processing Capital Expenditure	\$0.00



HH Other Charges/Pass Through	\$0.00
TOTAL	\$287,560.00

Federal National Background Check Grant  
(Note: SFY 2014 expenditures through PPE 05/09/2014)

Federal National Background Check Expenditures	SFY 2012	SFY 2013	SFY 2014 to date
AA Personnel Services	\$ 64,033.65	\$ 84,367.40	\$ 110,690.10
BB Travel/In State	\$ 9.36	\$ 756.42	\$ 174.20
CC Travel/Out of State	\$ 4,338.39	\$ 1,083.60	
DD Current Expense	\$ 650.42	\$ 456,993.86	\$ 43,814.41
EE Data Processing Current Expense	\$ 54,645.13	\$ 52,155.99	\$ 3,004.85
FF Data Processing Capital Expenditure		\$ 71,770.00	
HH Other Charges/Pass Through	\$ 1,357.03	\$ 24,966.00	
TOTAL	\$ 125,033.98	\$ 692,093.27	\$ 157,683.56

Since May 8, 2012, the effective date of the Health Facility Licensing background screenings statute and rule, the Bureau has received 54,368 applications for clearance in the following direct patient access positions:

Technical, Unlicensed Health Aide	24421	44.9%
Professional/Licensed Health Aide	15050	27.7%
Laboratory and Radiology Services	1790	3.3%
Housekeeping and Engineer Services	2354	4.3%
Food and Dietary Services	3318	6.1%
Executive, Administrative and Managerial	4661	8.6%
Any other Direct Access Employee	2774	5.1%

**Types of Problems Checked:**

The Bureau of Health Facility Licensing and Certification utilizes the background screening data to determine denial or approval of a clearance for direct patient access in licensed health care facilities.

Deniable criminal convictions or pending charges include any felony or class A misdemeanor under Utah criminal code and any class B or C misdemeanor conviction under Offenses Against the Person, Bestiality, Lewdness - Sexual Battery, Lewdness Involving Child, Pornographic and Harmful Materials and Performances or Prostitution, or a pattern of convictions. (See Appendix 4 for specifics). Adjudications by a juvenile court are also deniable. An individual may be excluded from direct patient access, if the adjudications refer to an act that, if committed by an adult, would be a felony or a misdemeanor.

Supported finding(s) from Adult Protective Services or Child Protective Services, revocation of a Certified Nurse Aide or Professional License, or listed as an excluded individual on the Office of Inspector General list are also reasons for denial.

The following factors may be considered in determining under what circumstance, if any, the covered individual will be allowed direct patient access in a covered provider:

- (a) Types and number of offenses.
- (b) Passage of time since the offense was committed; offenses more than five years old do not bar approval.
- (c) Circumstances surrounding the commission of the offense.
- (d) Intervening circumstances since the commission of the offense.

**Databases Searched:**

*Utah Code 26-21-204* grants the department authority to review relevant information obtained from 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.*

**Technology Used:**

The Bureau of Health Facility Licensing is utilizing funding received from a grant awarded by the Centers for Medicare/Medicaid Services (CMS) to develop and implement an electronic background clearance program including a rap-back process. This system is called Direct Access Clearance System (DACCS). Licensed health facility providers utilize the program to enter employee information and then refer them for live scan fingerprints. These fingerprints are

electronically sent to Department of Public Safety for a federal and state criminal record search. The Department of Public Safety transmits to the DACS system an electronic record for any application without a criminal record. Those applications that have a criminal finding, the Department of Public Safety populates a web based application called Applicant Background Clearance (ABC) with these findings, our authorized staff reviews and determines if direct patient access should be approved or denied. The Department of Public Safety retains submitted fingerprints and runs a nightly routine to match these fingerprints against any new charges, arrests, warrants or convictions and notifies the DACS system. This rap-back process allows us the ability to only require an applicant to be fingerprint once because of the continuous monitoring of the system.

# Department of Health

## Bureau of Child Development, Child Care Licensing Program

### **Name and Purpose:**

Utah Statute provides child care licensing the authority to perform background screenings under *Title 26, Chapter 39, Section 404* (Appendix 5). Administrative rules governing these background checks are found in *R430-6* (Appendix 6).

The Child Care Licensing Program conducts background checks of all covered individuals in licensed child care facilities. Covered individuals include all those defined in *R430-6-2(3)* (Appendix 6).

In the past three years, The Child Care Licensing Program has conducted 15,464 initial (new provider) background screenings, and 18,317 license renewal background screenings.

### **Expenditures and Staffing:**

The Child Care Licensing Program has two FTEs who perform background checks for the program. The total annual expense for these employees is \$62,472.96. This funding is a combination of State General Fund, and federal CCDF (Child Care Development Fund) funds through an interagency agreement with the Department of Workforce Services.

### **Types of Problems Checked:**

The statute (*26-39-404*) requires the agency to define in rule those misdemeanors we would *NOT* deny on, so the list of problems that would cause an individual to not pass the child care licensing background screening includes all felonies, and all misdemeanors *except for those listed in the attached administrative rule*.

### **Databases Searched:**

- UCJIS – in-state check
- FBI fingerprint database, national check through UCJIS
- Utah Juvenile Crime Records
- Utah Court Exchange
- LIS (Licensing Information System) in Human Services. LIS lists individuals with substantiated cases of child abuse and neglect.

### **Technology Used:**

The Child Care Licensing Program utilizes the following technology for background checks:

- Child Care Licensing database (web-based)
- UCJIS database (web-based access)
- Utah Court Exchange database (web-based access)
- Electronic faxing of fingerprints for the FBI
- Identix to enter information on fingerprints for the FBI

## Utah State Office of Rehabilitation

**Name and Purpose:**

The Utah State Office of Rehabilitation (USOR) must hire qualified individuals whose past history will not adversely affect their ability to perform their work duties, nor affect their co-workers ability to provide services to the citizens of Utah. USOR has determined that conducting background checks through the Bureau of Criminal Identification (BCI) as part of the employee selection process will provide a mechanism to enhance safety and security. Background checks will help USOR obtain additional applicant related information to determine an applicant's overall employability, and enhance the safety of clients and current employees, state property, and information of the agency.

**Expenditures and Staffing for the last three years:**

Staffing includes the USOR BCI Coordinator and the Executive Secretary to the USOR Executive Director. Staffing expenditures are \$7,634 annually for a total of \$22,904 for the last three years. Payments to BCI and reimbursements to staff for fingerprints totaled \$14,219 for the last three years.

**Types of Problems Checked:**

Any criminal record that might increase the risk to USOR clients, a vulnerable population, and USOR data, as covered above.

**Databases searched:**

Western states (WIN) and FBI (national).

**Technology Used:**

USOR computers to access the BCI database and for standard communication with applicants and supervisors.

## Department of Technology Service (DTS)

### Name and Purpose:

DTS implemented Policy 2000-0014 Background Investigations (Appendix 7) to ensure the security of information and resources entrusted to its care, to reduce risk of liability to the State of Utah, and to promote the trust of DTS customers.

DTS conducts criminal background checks of all new hires. DTS also conducts background checks on current DTS employees every two years. Current employees may also be subject to background checks if an employee transfers into a position with higher security level.

### Expenditures and Staffing for the last three years:

For the last 3 years, DTS has utilized .5 FTE to perform background checks for DTS employees. The total annual expense is \$37,238.

.5 FTE	\$30,316
Fingerprint Machine (3 year depreciation)	\$3,267
Current Expenses for employee	\$2,000
Materials to run machine	\$1,655

### Types of Problems Checked:

BCI conducts the UCJIS fingerprint background searches for DTS. BCI searches for any hits on the Criminal History Databases and any active Warrants/Fugitive Lists from State Databases, surrounding State Databases, and Federal Databases. DTS reviews any criminal conviction that relates to the job duties of the employee's position.

### Databases Searched:

BCI conducts the UCJIS fingerprint background searches for DTS. BCI searches the Criminal History Databases and Warrants/Fugitive Lists from State Databases, surrounding State Databases, and Federal Databases.

### Technology Used:

DTS utilizes the following technology for background checks:

- Manual fingerprinting
- LiveScan digital fingerprinting
- AFIS technology at the BCI and the FBI

## Department of Workforce Services (DWS) Human Resources

### **Name and Purpose:**

DHRM performs background checks through the Utah Criminal Justice Information System (UCJIS) administered by the FBI on all new employees hired for the Department of Workforce Services to help ensure the security of information and resources entrusted to the care of DWS and to reduce risk of liability to the State of Utah. In addition, background checks are performed on incumbents in a position deemed sensitive due to the nature of their work every five years.

### **Expenditures and Staffing for the last three years:**

DWS does not have a position designated specifically to perform background checks. Background checks are conducted by the Department of Human Resource Management (DHRM). DHRM has two positions designated to conduct criminal background checks for a number of departments statewide, including DWS.

DHRM conducted 232 background checks in the last year for DWS. Depending on the results of the background check it takes approximately 10 to 20 minutes per background check. The average salary rate for DHRM employees who perform the background checks is \$13.35/hour. Therefore, the average cost to DWS for background checks last year ranges between \$516.20 to \$1,032.40.

### **Types of Problems Checked:**

The search will detect any criminal activity in the State of Utah to include felony and misdemeanor charges or convictions.

### **Databases Searched:**

DHRM employees conduct the background checks for DWS through UCJIS.

### **Technology Used:**

- State computer systems
- UCJIS computer data access
- FBI data bank

## Department of Workforce Services (DWS) Child Care Office

### **Name and Purpose:**

Utah Statute provides the authority to perform background screenings for license exempt Family, Friend and Neighbor (FFN) child care providers under *Title 35A, Chapter 3, Section 310.5*. Administrative rules governing these background checks are found in *R986-700-751 through R986-700-756*.

Background checks are conducted on the provider and everyone age 12 or older living in the home where care is given.

The Department of Workforce Services, Office of Child Care has an Inter-agency Agreement with the Department of Health, Child Care Licensing Program to administer the background checks since they already have the infrastructure and similar background check policy requirements in place.

### **Expenditures and Staffing:**

The Child Care Licensing Program has two FTEs who perform background checks for Department of Workforce Services. The total annual expense for these employees is approximately \$62,000. This funding is paid through the federal Child Care Development Fund (CCDF).

### **Types of Problems Checked:**

A complete explanation is found in DWS Administrative Rules R986-700-751 through R986-700-756. Generally, a person will be denied for any felony conviction, and certain misdemeanor convictions, including those that are a considered a crime against a person. A person will also be denied for a supported finding of abuse or neglect on the Licensing Information System (LIS) in Human Services.

### **Databases Searched:**

- UCJIS – in-state check
- Utah Juvenile Court Records
- Utah Court Exchange
- LIS in Human Services. LIS lists individuals with substantiated cases of child abuse and neglect.
- Applicant Background Checks (ABC) through BCI to get FBI results

### **Technology Used:**

The Child Care Licensing Program utilizes the following technology for background checks:

- LIS database (web-based)
- UCJIS database (web-based access)
- Utah Court Exchange database (web-based access)
- Electronic faxing of fingerprints for the FBI
- Identix to enter information on fingerprints for the FBI
- ABC database (web-based)



## **Department of Workforce Services (DWS) Workforce Development Division**

### **Name and Purpose:**

The Workforce Development Division of DWS contracts with many third party companies that provide services for DWS customers. DWS requires each of these contractors to obtain an annual Utah Bureau of Criminal Identification (BCI) criminal background check for all their employees and volunteers who have access to DWS customer confidential information. In addition, the contractors are required to obtain an annual fingerprint-based national criminal history record check for all employees and volunteers who provide direct services to or have direct access to minors or vulnerable adults. Utah Code Ann. 53-10-108(g).

### **Expenditures and Staffing for the last three years:**

The third party contractor is responsible for all fees associated with the background check unless otherwise assigned to the individual by the contractor. DWS does not cover these costs. The Contractor also has the responsibility to keep the annual and verifiable background checks on file and to monitor when they need to be updated. The Contractor is required to notify DWS if any employee or volunteer's records shows criminal history.

### **Types of Problems Checked:**

The background check is meant to identify workers who have a conviction or a plea in abeyance involving such offenses as theft, illegal drug use and/or trafficking, fraud, sexual offenses, lewdness, domestic violence, assault, battery, identity theft, any felony, any class A misdemeanor, or any other conduct or action that may, in the judgment of DWS, create a risk of harm to a DWS customer, minor and/or vulnerable adult and/or suggests the individual is at risk for compromising confidential information.

### **Databases Searched:**

BCI conducts the UCJIS fingerprint background searches for the third party contractors. BCI searches the Criminal History Databases and Warrants/Fugitive Lists from State Databases, surrounding State Databases, and Federal Databases.

### **Technology Used:**

DWS does not control, nor does it obtain a reporting on what technology is used for the background checks. They are all required to use BCI, however, to run their background checks and they are required to obtain a fingerprint-based national criminal history record through BCI if the employee is working with minors or vulnerable adults.

**Appendix 1: Department of Health Bureau of Emergency Medical Services**

26-8a-310. Criminal background check.

(1) At the time of application for, or renewal of, a certificate, the department shall obtain, at the applicant's expense, information from a criminal history record or warrant of arrest information maintained by the Department of Public Safety pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, to determine whether the individual has been convicted of a crime that bears upon the individual's fitness to be certified or to have responsibility for the safety and well-being of children, the elderly, or persons with disabilities.

(2) (a) An applicant who has not had residency in the state for the last five years shall submit fingerprints and other identifying information.

(b) The department shall submit fingerprints obtained under Subsection (2)(a) to the Department of Public Safety to be forwarded to the Federal Bureau of Investigation for a nationwide criminal history record check to determine whether the individual has been convicted of a crime that bears upon the individual's fitness to be certified or to have responsibility for the safety and well-being of children, the elderly, or persons with disabilities.

(3) The department shall have access to juvenile court records to determine whether the applicant has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor and that bears upon the applicant's fitness to be certified or to have responsibility for the safety and well-being of children, the elderly, or persons with disabilities if:

(a) the applicant is under the age of 28; or

(b) the applicant is over the age of 28 and has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.

(4) Information obtained pursuant to Subsections (1) through (3) may be used to:

(a) withhold certification or renewal;

(b) commence or substantiate disciplinary action under Section 26-8a-503;

(c) enforce the provisions of this chapter; and

(d) notify the individual's employer as necessary to protect the public.

(5) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under which an applicant who has been convicted of a criminal offense may receive a certification under this chapter.

Amended by Chapter 382, 2008 General Session

**Appendix 2: Department of Health Bureau of Emergency Medical Services**

R426. Health, Family Health and Preparedness, Emergency Medical Services.

R426-5. Emergency Medical Services Training and Certification Standards.

R426-5-2600. Refusal, Suspension, or Revocation of Certification.

(1) The Department shall exclude from EMS certification an individual who may pose an unacceptable risk to public health and safety, as indicated by his criminal history. The Department shall conduct a background check on each individual who seeks to certify or recertify as an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD, including an FBI background investigation if the individual has resided outside of Utah within the past consecutive five years.

(2) An individual convicted of certain crimes presents an unreasonable risk and the Department shall deny all applications for certification or recertification from individuals convicted of any of the following crimes:

(a) Sexual misconduct if the victim's failure to affirmatively consent is an element of the crime, such as forcible rape;

(b) sexual or physical abuse of children, the elderly or infirm, such as sexual misconduct with a child, making or distributing child pornography or using a child in a sexual display, incest involving a child, assault on an elderly or infirm person;

(c) abuse, neglect, theft from, or financial exploitation of a person entrusted to the care or protection of the applicant, if the victim is an out-of-hospital patient or a patient or resident of a health care facility; and

(d) crimes of violence against persons, such as aggravated assault, murder or attempted murder, manslaughter except involuntary manslaughter, kidnapping, robbery of any degree; or arson; or attempts to commit such crimes.

(3) Except in extraordinary circumstances, established by clear and convincing evidence that certification or recertification will not jeopardize public health and safety, the Department shall deny applicants for certification or recertification in the following categories:

(a) Persons who are convicted of any crime not listed in (a) and who are currently incarcerated, on work release, on probation or on parole;

(b) conviction of crimes in the following categories, unless at least three years have passed since the conviction or at least three years have passed since release from custodial confinement, whichever occurs later:

(i) Crimes of violence against persons, such as assault;

(ii) crimes defined as domestic violence under Section 77-36-1;

(iii) crimes involving controlled substances or synthetics, or counterfeit drugs, including unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act; and

(iv) crimes against property, such as grand larceny, burglary, embezzlement or insurance fraud.

(c) the Department may deny certification or recertification to individuals convicted of crimes, including DUIs, but not including minor traffic violations chargeable as infractions after consideration of the following factors:

(i) the seriousness of the crime;

(ii) whether the crime relates directly to the skills of pre-hospital care service and the delivery of patient care;

- (iii) the amount of time that has elapsed since the crime was committed;
  - (iv) whether the crime involved violence to or abuse of another person;
  - (v) whether the crime involved a minor or a person of diminished capacity as a victim;
  - (vi) whether the applicant's actions and conduct since the crime occurred are consistent with the holding of a position of public trust;
  - (vii) the total number of arrests and convictions; and
  - (viii) whether the applicant was truthful regarding the crime on his or her application.
- (4) Certified EMS personnel must notify the Department of any arrest, charge, or conviction within seven days of the arrest, charge or conviction. If the person works for a licensed or designated EMS agency, the agency is also responsible to inform the Bureau of the arrest, charge or conviction.
- (5) An official EMS agency representative verified by the supervisor of the agency may receive information pertaining to Department actions about an employee or a potential employee of the agency if a Criminal History Non-Disclosure Agreement is signed by the EMS agency representative.
- (6) The Department may require EMS personnel to submit to a background examination or a drug test upon Department request.
- (7) The Department may refuse to issue a certification or recertification, or suspend or revoke a certification, or place a certification on probation, for any of the following causes:
- (a) Any of the reasons for exclusion listed in Subsection (1);
  - (b) a violation of Subsection (2);
  - (c) a refusal to submit to a background examination pursuant to Subsection (3);
  - (d) habitual or excessive use or addiction to narcotics or dangerous drugs;
  - (e) refusal to submit to a drug test administered by the individual's EMS provider organization or the Department;
  - (f) habitual abuse of alcoholic beverages or being under the influence of alcoholic beverages while on call or on duty as an EMS personnel or while driving any Department-permitted vehicle;
  - (g) failure to comply with the training, certification, or recertification requirements for the certification;
  - (h) failure to comply with a contractual agreement as an EMS instructor, a training officer, or a course coordinator;
  - (i) fraud or deceit in applying for or obtaining a certification;
  - (j) fraud, deceit, incompetence, patient abuse, theft, or dishonesty in the performance of duties and practice as a certified individual;
  - (k) unauthorized use or removal of narcotics, drugs, supplies or equipment from any emergency vehicle or health care facility;
  - (l) performing procedures or skills beyond the level of certification or agency licensure;
  - (m) violation of laws pertaining to medical practice, drugs, or controlled substances;
  - (n) conviction of a felony, misdemeanor, or a crime involving moral turpitude, excluding minor traffic violations chargeable as infractions;
  - (o) mental incompetence as determined by a court of competent jurisdiction;
  - (p) demonstrated inability and failure to perform adequate patient care;
  - (q) inability to provide emergency medical services with reasonable skill and safety because of illness, under the influence of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any other mental or physical condition, when the individual's

condition demonstrates a clear and unjustifiable threat or potential threat to oneself, coworkers, or the public health, safety, or welfare that cannot be reasonably mitigated; and

(r) misrepresentation of an individual's level of certification;

(s) failure to display a state-approved emblem with level of certification during an EMS response, and

(t) other or good cause, including conduct which is unethical, immoral, or dishonorable to the extent that the conduct reflects negatively on the EMS profession or might cause the public to lose confidence in the EMS system.

(8) The Department may suspend an individual for a felony, misdemeanor arrest, or charges pending the resolution of the charge if the nature of the charge is one that, if true, the Department could:

(a) Revoke the certification under subsection (1); and

(b) the Department may order EMS personnel not to practice when an active criminal or administrative investigation is being conducted.

**Appendix 3: Bureau of Health Facility Licensing and Certification**

Title 26 Chapter 21 Section 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 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 an application for clearance; and

(b) indicates for each applicant whether an application is pending and whether clearance has been granted and retained.

(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 Subsection (1) 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.

Enacted by Chapter 328, 2012 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

R432. Health, Family Health and Preparedness, Licensing.

R432-35. Background Screening -- Health Facilities.

R432-35-1. Authority.

This rule is adopted pursuant to Title 26 Chapter 21 Part 2.

R432-35-2. Purpose.

To outline the process required for individuals to be cleared to have direct patient access while employed by a covered provider, covered contractor or covered employer.

R432-35-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 21 Part 2.

In addition:

(1) "Aged" means an individual who is 60 years of age or older.

(2) "Clearance" means approval by the department under Section 26-21-203 for an individual to have direct patient access.

(3) "Covered body" means a covered provider, covered contractor, or covered employer.

(4) "Corporation" means a corporation that has business interest/connection to covered providers that employ individuals who provide consultative services which may result in direct patient access.

(5) "Covered contractor" means a person or corporation that supplies covered individuals, by contract, to:

- (a) a covered employer, or
- (b) a covered provider for services within the scope of the health facility license.

(6) "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.

(7) "Covered individual":

(a) means an individual:

(i) whom a covered body engages; and

(ii) who may have direct patient access;

(b) which may include:

(i) a nursing assistant;

(ii) a personal care aide;

(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;

(ix) transportation staff;

(x) maintenance staff; and

(xi) volunteer as defined by department rule.

(c) does not include a student directly supervised by a member of the staff of the covered body or the student's instructor.

(8) "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.

(9) "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.

(10) "Disabled individual" means an individual who has limitations with two or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and employment.

(11) "Engage" means to obtain one's services:

- (a) by employment;
- (b) by contract;
- (c) as a volunteer; or
- (d) by other arrangement.

(12) "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).

(13) "Nursing Assistant" means an individual who performs duties under the supervision of a nurse, which may include a nurse aide, personal care aide or certified nurse aide.

(14) "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.

(15) "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.

(16) "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.

(17) "Volunteer" means an individual who may have unsupervised direct patient access who is not directly compensated for providing services.

The following groups or individuals are excluded as volunteers and are not required to complete the background clearance process as defined in R432-35:

- (a) Clergy;
- (b) Religious groups;
- (c) Entertainment groups;
- (d) Resident family members;
- (e) Patient family members; and
- (f) Individuals volunteering services for 20 hours per month or less.

#### R432-35-4. Covered Provider - Direct Access Clearance System Process.

(1) Utah Code, Title 26, Chapter 21, Part 2 requires that a covered provider enter required information into the Direct Access Clearance System to initiate a clearance for each

covered individual prior to issuance of a provisional license, license renewal or engagement as a covered individual.

(2) The covered provider must ensure that the engaged covered individual:

(a) Signs a criminal background screening authorization form which must be available for review by the department; and

(b) Submits fingerprints within 15 working days of engagement.

(3) The covered provider must ensure the Direct Access Clearance System reflects the current status of the covered individual within 5 working days of the engagement or termination.

(4) A covered provider may provisionally engage a covered individual while direct patient access clearance is pending.

(5) If the Department determines an individual is not eligible for direct patient access, based on information obtained through the Direct Access Clearance System, the Department shall send a Notice of Agency Action to the covered provider and the individual explaining the action and the individual's right of appeal as defined in R432-30.

(6) The Department may allow a covered individual direct patient access with conditions, during an appeal process, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(7) A covered provider that provides services in a residential setting must enter required information into the Direct Access Clearance System to initiate and obtain a clearance for all individuals 12 years of age and older, who are not residents, and reside in the residential setting. If the individual is not eligible for clearance as defined in R432-35-8, the Department may revoke an existing license or deny licensure for healthcare services in the residential setting.

(8) Covered individuals under the age of 18 are not required to submit fingerprints as part of the Direct Access Clearance process. Covered individuals, while engaged with a covered provider, are required to submit fingerprints within 15 working days of their 18th birthday.

(9) Covered providers requesting to renew a license as a health care facility must enter required information into the Direct Access Clearance System to initiate and obtain a clearance for each covered individual.

(10) Individuals or covered individuals requesting to be licensed as a covered provider must submit required information to the Department to initiate and obtain a clearance prior to the issuance of the provisional license. If the individuals are not eligible for clearance as defined in R432-35-8, the Department may revoke an existing license or deny licensure as a health care facility.

**Appendix 4: Bureau of Health Facility Licensing and Certification****R432-35-5. Covered Contractor - Direct Access Clearance System Process.**

(1) Utah Code, Title 26, Chapter 21, Part 2 requires that a covered contractor enter required information into the Direct Access Clearance System to initiate a clearance for each covered individual prior to being supplied by contract to a covered provider.

(2) A covered contractor must ensure that the covered individual, being supplied by contract to a covered provider:

(a) Signs a criminal background screening authorization form which must be available for review by the department; and

(b) Submits fingerprints within 15 working days of placement with a covered provider.

(3) The covered contractor must ensure the Direct Access Clearance System reflects the current status of the covered individual within 5 working days of placement or termination.

(4) A covered contractor may provisionally supply a covered individual to a covered provider while clearance is pending.

(5) If the Department determines an individual is not eligible for direct patient access, based on information obtained through the Direct Access Clearance System, the Department shall send a Notice of Agency Action to the covered contractor and the individual explaining the action and the individual's right of appeal as defined in R432-30.

(6) The Department may allow a covered individual direct patient access with conditions, during an appeal process, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(7) Covered individuals under the age of 18 are not required to submit fingerprints as part of the Direct Access Clearance process. Covered individuals, while engaged with a covered contractor, are required to submit fingerprints within 15 working days of their 18th birthday.

**R432-35-6. Covered Employer - Direct Access Clearance System Process.**

(1) Utah Code, Title 26, Chapter 21, Part 2 requires that a covered employer be allowed to enter required information into the Direct Access Clearance System to initiate and obtain a clearance for a covered individual.

(2) If the Department determines an individual is not eligible for direct patient access, based on information obtained through the Direct Access Clearance System, the Department shall send a Notice of Agency Action to the covered employer and the individual explaining the action and the individual's right of appeal as defined in R432-30.

**R432-35-7. Sources for Background Review.**

(1) As required in Utah Code 26-21-204 the department may review relevant information obtained from the following sources:

(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 Title 42 Code of Federal Regulations Section 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.

(2) If the Department determines an individual is not eligible for direct patient access based upon the criminal background screening and the individual disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the individual may challenge the information as provided in Utah Code Annotated Sections 77-18a.

(3) If the Department determines an individual is not eligible for direct patient access based upon the non-criminal background screening and the individual disagrees with the information provided, the individual may challenge the information through the appropriate agency.

#### R432-35-8. Exclusion from Direct Patient Access.

##### (1) Criminal Convictions or Pending Charges

(a) As required by Utah Code Subsection 26-21-204, if an individual or covered individual has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement, for the following offenses, they may not have direct patient access:

(i) any felony or class A conviction under Utah Criminal Code.

(ii) any felony or class A, B or C conviction under Title 76, Chapter 5 Offenses Against the Person, Utah Criminal Code;

(iii) any felony or class A conviction under Title 76, Chapter 6, Offenses Against Property, Utah Criminal Code;

(iv) any felony or class A conviction under Title 76, Chapter 6a, Pyramid Schemes, Utah Criminal Code;

(v) any felony or class A conviction under Title 76, Chapter 8, Offenses Against the Administration of Government, Utah Criminal Code;

(vi) any felony or class A conviction under Title 76, Chapter 9, Offenses Against Public Order and Decency, Utah Criminal Code;

(vii) any felony or class A, B or C conviction under the following Utah Criminal Codes:

(A) 76-9-301.8, Bestiality;

(B) 76-9-702, Lewdness - Sexual Battery - Public urination; and

(C) 76-9-702.5, Lewdness Involving Child.

(viii) any felony or class A conviction under Title 76, Chapter 10, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code;

(ix) any felony or class A, B or C conviction under the following Utah Criminal Codes:

(A) 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances; and

(B) 76-10-1301 to 1314, Prostitution;



(x) any felony or class A conviction under Utah Criminal Code 76-10-2301, Contributing to the Delinquency of a Minor;

(b) As required by Utah Code Subsection 26-21-204, if an individual or covered individual has a warrant for arrest or an arrest for any of the identified offenses in R432-35-8(1)(a), the department may deny clearance based on:

- (i) the type of offense;
- (ii) the severity of offense; and
- (iii) potential risk to patients or residents.

(c) The following factors may be considered in determining under what circumstance, if any, the covered individual will be allowed direct patient access in a covered provider:

- (i) types and number of offenses;
- (ii) passage of time since the offense was committed; offenses more than five years old do not bar approval or a license, certificate or employment;
- (iii) circumstances surrounding the commission of the offense; and
- (iv) intervening circumstances since the commission of the offense. The Executive Director may exclude, on a case-by-case basis, misdemeanors listed under paragraph (a) of this section if the misdemeanor did not involve violence against a child or a family member or unauthorized sexual conduct with a child or disabled adult.

(d) The Department shall rely on the criminal background screening and search of court records as conclusive evidence of the conviction and may deny clearance based on that evidence.

#### (2) Juvenile Records

(a) As required by Utah Code Subsection 26-21-204(4)(a)(ii)(E), juvenile court records shall be reviewed if an individual or covered individual is:

- (i) under the age of 28.
- (ii) over the age of 28, and has convictions or pending charges identified in R432-35-8(1)(a).

(b) Adjudications by a juvenile court may exclude the individual from direct patient access if the adjudications refer to an act that, if committed by an adult, would be a felony or a misdemeanor.

#### (3) Non-Criminal Records

(a) As required by Utah Code Subsection 26-21-204(3), the Department may review findings from the following sources to determine whether an individual or covered individual should be granted or retain direct patient access:

- (i) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;
- (ii) child abuse or neglect findings described in Section 78A-6-323;
- (iii) 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;
- (iv) registries of nurse aids described in Title 42 Code of Federal Regulations Section 483.156;

(v) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions; and

(vi) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General.

R432-35-9. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would be excluded under R432-35-8(1), the Department may act to protect the health and safety of patients or residents in covered providers.

(2) The Department may allow a covered individual direct patient access with conditions, until the arrest or criminal charges are resolved, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(3) If the Department denies or revokes a license, or denies direct patient access based upon arrest or criminal charges, the Department shall send a Notice of Agency Action to the covered provider and the covered individual notifying them of the right to appeal in accordance with R432-30.

R432-35-10. Penalties.

The department may impose civil monetary penalties in accordance with Title 26, Chapter 23, Utah Health Code Enforcement Provisions and Penalties, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

(1) if significant problems exist that are likely to lead to the harm of an individual resident, the department may impose a civil penalty of \$50 to \$1,000 per day; and

(2) if significant problems exist that result in actual harm to a resident, the department may impose a civil penalty of \$1,050 to \$10,000 per day.

KEY: health care facilities, background screening

Date of Enactment or Last Substantive Amendment: December 12, 2012

Notice of Continuation: March 25, 2013

Authorizing, and Implemented or Interpreted Law: 26-21-9.5

**Appendix 5: Bureau of Child Development, Child Care Licensing Program**

**26-39-404. Disqualified individuals -- Criminal history checks -- Payment of costs.**

(1) (a) Each person requesting a residential certificate or to be licensed or to renew a license under this chapter shall submit to the department the name and other identifying information, which shall include fingerprints, of existing, new, and proposed:

- (i) owners;
- (ii) directors;
- (iii) members of the governing body;
- (iv) employees;
- (v) providers of care;
- (vi) volunteers, except parents of children enrolled in the programs; and
- (vii) all adults residing in a residence where child care is provided.

(b) A person seeking renewal of a residential certificate or license under this section is not required to submit fingerprints of an individual referred to in Subsections (1)(a)(i) through (vi), if:

(i) the individual has resided in Utah for the last five years and applied for a certificate or license before July 1, 2013;

(ii) the individual has:

(A) previously submitted fingerprints under this section for a national criminal history record check; and

(B) resided in Utah continuously since that time; or

(iii) as of May 3, 1999, the individual had one of the relationships under Subsection (1)(a) with a child care provider having a residential certificate or licensed under this section and the individual has resided in Utah continuously since that time.

(c) (i) The Utah Division of Criminal Investigation and Technical Services within the Department of Public Safety shall process the information required under Subsection (1)(a) to determine whether the individual has been convicted of any crime.

(ii) The Utah Division of Criminal Investigation and Technical Services shall submit fingerprints required under Subsection (1)(a) to the FBI for a national criminal history record check.

(iii) The applicant for the license or residential certificate shall pay the cost of conducting a record check under this Subsection (1)(c).

(2) (a) Each person requesting a residential certificate or to be licensed or to renew a license under this chapter shall submit to the department the name and other identifying information of any person age 12 through 17 who resides in the residence where the child care is provided. The identifying information required for a person age 12 through 17 does not include fingerprints.

(b) The department shall access the juvenile court records to determine whether a person described in Subsection (1) or (2)(a) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor if:

(i) the person described in Subsection (1) is under the age of 28; or

(ii) the person described in Subsection (1) is:

(A) over the age of 28; and

(B) has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.

(3) Except as provided in Subsection (4), a licensee under this chapter may not permit a person who has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for any felony or misdemeanor, or if the provisions of Subsection (2)(b) apply, who has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or a misdemeanor, to:

(a) provide child care;

(b) provide volunteer services for a licensed child care program or a child care program operating under a residential child care certificate;

(c) reside at the premises where child care is provided; or

(d) function as an owner, director, or member of the governing body of a licensed child care program or a child care program operating under a residential child care certificate.

(4) (a) The department may, by rule, exempt the following from the restrictions of Subsection (3):

(i) specific misdemeanors; and

(ii) specific acts adjudicated in juvenile court, which if committed by an adult would be misdemeanors.

(b) In accordance with criteria established by rule, the executive director may consider and exempt individual cases involving misdemeanors, not otherwise exempt under Subsection (4)(a) from the restrictions of Subsection (3).

Amended by Chapter 276, 2013 General Session

**Appendix 6: Bureau of Child Development, Child Care Licensing Program**

R430. Health, Family Health and Preparedness, Child Care Licensing.

R430-6. Background Screening.

R430-6-1. Authority and Purpose.

This rule is promulgated pursuant to Title 26, Chapter 39. It establishes requirements for background screenings for child care programs.

R430-6-2. Definitions.

Terms used in this rule are defined in Title 26, Chapter 39. In addition:

(1) "Applicant" means a person who has applied for a new child care license or residential certificate from the Department, or a currently licensed or certified child care provider who is applying for a renewal of their child care license or certificate.

(2) "Background finding" means a determination by the Department that an individual:

(a) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.

(b) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor.

(3) "Covered individual" means:

(a) owners;

(b) directors;

(c) members of the governing body;

(d) employees;

(e) providers of care, including children residing in a home where child care is provided;

(f) volunteers, excluding parents of children enrolled in the program;

(g) all individuals age 12 and older residing in a residence where child care is provided;  
and

(h) anyone who has unsupervised contact with a child in care.

(4) "Department" means the Utah Department of Health.

(5) "Involved with child care" means to do any of the following at or for a facility with a child care license or certificate issued by the Department:

(a) provide child care;

(b) volunteer at a child care facility;

(c) own, operate, direct, or be employed at a child care facility;

(d) reside at a facility where care is provided;

(e) function as a member of the governing body of a child care facility; or

(e) be present at a facility while care is being provided, except for parents dropping off or picking up their child, or attending a scheduled event at the child care facility.

(6) "Supported finding" means an individual is listed on the Licensing Information System child abuse and neglect database maintained by the Utah Department of Human Services.

(7) "Unsupervised Contact" means contact with children that provides the person opportunity for personal communication or touch when not under the direct supervision of a child care provider or employee who has passed a background screening.

(8) "Volunteer" means an individual who receives no form of direct or indirect compensation for providing care.

#### R430-6-3. Submission of Background Screening Information.

(1) Each applicant requesting a new or renewal child care license or residential certificate must submit to the Department the name and other required identifying information on all covered individuals.

(a) Unless an exception is granted under Subsection (4) below, the applicant shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.

(b) The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.

(2) The applicant shall state in writing, based upon the applicant's information and belief, whether each covered individual:

(a) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.

(b) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor;

(c) has ever had a supported finding by the Department of Human Services, or a substantiated finding from a juvenile court, of abuse or neglect of a child.

(3) Within five days of a new covered individual beginning work at a child care facility or moving into a licensed or certified home, or a child turning 12 who resides in the facility where care is provided, the licensee or certificate holder must submit to the Department the name and other required identifying information for that individual.

(a) Unless an exception is granted under Subsection (4) below, the licensee or certificate holder shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.

(b) The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.

(4)(a) Fingerprint cards are not required if:

(i) the covered individual has resided in Utah continuously for the past five years, or is less than 23 years of age and has resided in Utah continuously since the individual's 18th birthday; and

(ii) The covered individual will only be involved with child care in a facility that was licensed or certified prior to 1 July 2013,

(b) A covered individual who has previously submitted a fingerprint card under this section for a national criminal history record check and has resided in Utah continuously since that time is not required to submit a fingerprint card.

#### R430-6-4. Criminal Background Screening.

(1) Regardless of any exception under R430-6-4(4), if an in-state criminal background screening indicates that a covered individual age 18 or older has a background finding, the Department may require that individual to submit a fingerprint card and fee from which the Department may conduct a national criminal background screening on that individual.



(2) Except for the offenses listed under Subsection (3), if a covered individual has a background finding, that individual may not be involved with child care. If such a covered individual resides in a home where child care is provided, the Department shall revoke an existing license or certificate or refuse to issue a new license or certificate.

(3) A background finding for any of the following offenses does not prohibit a covered individual from being involved with child care:

(a) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for an offense under section 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, that is punishable as a Class A misdemeanor under subsection 41-6a-503(1)(b) ;

(c) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for:

(i) 76-4-401, Enticing a Minor;

(g) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 6, Offenses Against Property;

(h) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 6a, Pyramid Scheme Act;

(i) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 8, Offenses Against the Administration of Government;

(k) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 9, Offenses Against Public Order and Decency, except for:

- (i) 76-9-301, Cruelty to Animals;
- (ii) 76-9-301.1, Dog Fighting;
- (iii) 76-9-301.8, Bestiality;
- (iv) 76-9-702, Lewdness;
- (v) 76-9-702.5, Lewdness Involving Child; and
- (vi) 76-9-702.7, Voyeurism; and

(l) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 10, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

- (i) 76-10-509.5, Providing Certain Weapons to a Minor;
- (ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;
- (iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;
- (iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;
- (v) 76-10-1301 to 1314, Prostitution; and
- (vi) 76-10-2301, Contributing to the Delinquency of a Minor.

(4) A covered individual with a Class A misdemeanor background finding may be involved with child care if either of the following conditions is met:

(a) if the Class A misdemeanor background finding is for any of the excluded misdemeanor offenses in Subsection (3), and:

- (i) ten or more years have passed since the Class A misdemeanor offense; and
- (ii) there is no other background finding for the individual in the past ten years; or

(b) if the Class A misdemeanor background finding is for any of the excluded misdemeanor offenses in Subsection (3) and five or more years have passed, but ten years have not passed since the Class A misdemeanor offense, and there is no other background finding since the Class A misdemeanor offense, then the individual may be involved with child care as an employee of an existing licensed or certified child care program for up to six months if:

(i) the individual provides documentation for an active petition for expungement of the disqualifying offense within 30 days of the notice of the disqualifying background finding; and

(ii) the licensee or certificate holder ensures that another employee who has passed the background screening is always present in the same room as the individual, and ensures that the individual has no unsupervised contact with any child in care.

(5) If the court denies a petition for expungement from an individual who has petitioned for expungement and continues to be involved with child care as an employee under Subsection (4)(b), that individual may no longer be employed in an existing licensed or certified child care program, even if six months have not passed since the notice of the disqualifying background finding.

(6) The Department may rely on the criminal background screening as conclusive evidence of the arrest warrant, arrest, charge, or conviction, and the Department may revoke or deny a license, certificate, or employment based on that evidence.

(7) If a covered individual is denied a license, certificate or employment based upon the criminal background screening and the covered individual disagrees with the information provided by the Department of Public Safety, the covered individual may challenge the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

(8) If the Department takes an action adverse to any covered individual based upon the criminal background screening, the Department shall send a written decision to the licensee or certificate holder and the covered individual explaining the action and the right of appeal.

(9) All licensees, certificate holders, and covered individuals must report to the Department any felony or misdemeanor arrest, charge, or conviction of a covered individual within 48 hours of becoming aware of the arrest warrant, arrest, charge, or conviction. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license or certificate.

(10) The Executive Director of the Department of Health may consider and exempt individual cases under the following conditions:

(a) the background finding is not for a felony; and

(b) the Executive Director determines that the nature of the background finding, or mitigating circumstances related to the background finding, are such that the individual with the background finding does not pose a risk to children.

R430-6-5. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If a covered individual has an outstanding arrest warrant for, or has been arrested or charged with a felony or a misdemeanor that would not be excluded under R430-6-4(3), the Department may revoke or suspend any license or certificate of a provider, or deny employment, if necessary to protect the health and safety of children in care.

(2) If the Department denies or revokes a license or certificate or denies employment based upon the arrest warrant, arrest, or charge, the Department shall send a written decision to the licensee or certificate holder and the covered individual notifying them that a hearing with the Department may be requested.

(3) The Department may hold the license, certificate, or employment denial in abeyance until the arrest warrant, arrest, or felony or misdemeanor charge is resolved.

R430-6-6. Child Abuse and Neglect Background Screening.

(1) If the Department finds that a covered individual has a supported finding on the Department of Human Services Licensing Information System, that individual may not be involved with child care.

(a) If such a covered individual resides in a home where child care is provided the Department shall revoke the license or certificate for the child care provided in that home.

(b) If such a covered individual resides in a home for which an application for a new license or certificate has been made, the Department shall refuse to issue a new license or certificate.

(2) If the Department denies or revokes a license, certificate, or employment based upon the Licensing Information System maintained by the Utah Department of Human Services, the Department shall send a written decision to the licensee or certificate holder and the covered individual.

(3) If the covered individual disagrees with the supported finding on the Licensing Information System, the individual cannot appeal the supported finding to the Department of Health but must direct the appeal to the Department of Human Services and follow the process established by the Department of Human Services.

(4) All licensees, certificate holders, and covered individuals must report to the Department any supported finding on the Department of Human Services Licensing Information System concerning a covered individual within 48 hours of becoming aware of the supported finding. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license or certificate.

#### R430-6-7. Emergency Providers.

(1) In an emergency, not anticipated in the licensee or certificate holder's emergency plan, a licensee or certificate holder may assign a person who has not had a criminal background screening to provide emergency care for and have unsupervised contact with children for no more than 24 hours per emergency incident.

(a) Before the licensee or certificate holder may leave the children in the care of the emergency provider, the licensee or certificate holder must first obtain a signed, written declaration from the emergency provider that the emergency provider has not been convicted of, pleaded no contest to, and is not currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, and does not have a supported finding from the Department of Human Services.

(b) During the term of the emergency, the emergency provider may be counted as a provider of care for purposes of maintaining the required care provider to child ratios.

(c) The licensee or certificate holder shall make reasonable efforts to minimize the time that the emergency provider has unsupervised contact with children.

#### R430-6-8. Restrictions on Volunteers.

A parent volunteer who has not passed a background screening may not have unsupervised contact with any child in care, except the parent's own child.

#### R430-6-9. Statutory Penalties.

(1) A violation of any rule is punishable by an administrative civil money penalty of up to \$5,000 per day as provided in Utah Code Section 26-39-601.

(2) Assessment of any civil money penalty does not preclude the Department from also taking action to deny, place on conditional status, revoke, immediately close, or refuse to renew a license or certificate.

(3) Assessment of any administrative civil money penalty under this section does not preclude injunctive or other equitable remedies.

KEY: child care facilities, background screening

Date of Enactment or Last Substantive Amendment: September 1, 2013

Notice of Continuation: August 3, 2012

Authorizing, and Implemented or Interpreted Law: 26-39

## **Appendix 7: Department of Technology Services**

Background Investigations

DTS POLICY 2000-0014

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**Status:** Active Policy

**Effective Date:** June 2009

**Revised Date:** January 7, 2014

**Approved By:** Mark VanOrden, CIO

**Authority:** UCA §53-10-108; UCA 63F-1-103; Governor's Executive Order: Directing the Chief Information Officer to Develop and Implement Policy Promoting Security of State Information and Information Systems; DHRM Rule R477-11

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### 14.1 Purpose

This policy provides a mechanism for the Department of Technology Services (DTS) to ensure the security of information and resources entrusted to its care, reduce the risk of liability to the State of Utah, and promote the trust of DTS customers.

#### 14.1.1 Background

The Chief Information Officer (CIO) must develop and implement policies that promote the security of State information and information systems. The CIO has determined that DTS must hire and retain qualified individuals whose criminal history will not adversely affect the confidentiality, integrity, or availability of information and resources maintained by the State of Utah.

### 14.1.2 Scope

This policy applies to all individuals employed by DTS and DTS contractors. This policy and procedure also applies to all personal computers, file servers, or electronic storage equipment supported, maintained, or administered by DTS and DTS employees with responsibilities related to these devices.

## 14.2 Definitions

### **UCJIS Umbrella**

Positions within the UCJIS Umbrella are those which have the potential to access (and possibly misuse) UCJIS information by virtue of the job location, physical facility access, data access, etc. Business needs may require re-assessment of the UCJIS Umbrella status of any position at any time.

### **BCI Approval**

Approval given by the Utah Bureau of Criminal Investigations to allow an employee to be in proximity of UCJIS equipment or data. This approval is required because DTS employees may be assigned at any time to work near UCJIS equipment or data.

### **Security Level**

The Department of Technology Services designates a security level requirement to determine access authorization to classified systems and data. Systems and data are classified as restricted, protected, or public based on the sensitivity of the information stored and/or processed. Each security level designation correlates with the classification of the systems and data an employee is granted access to.

## 14.3 Policy

It is the policy of the Department of Technology Services to employ an honest and ethical workforce. As a result, DTS shall conduct criminal background checks of all new hires and current department employees. For the purpose of this policy, any current State employee transferring to employment with DTS is considered to be a new hire.



14.3.1 At a minimum, all DTS employees shall undergo a background investigation every two years. Employees may also be subject to background checks for any of the following reasons:

- Prior to a promotion or transfer into a position with a higher security level than the employee's current position;
- As required by law; or
- In any other circumstance wherein management reasonably believes BCI may deny an employee's access.

14.3.2 Current employees and applicants for employment shall be provided notice that retention and/or an employment offer is conditional on BCI approval prior to a background check.

14.3.3 Background investigations shall not be conducted without the written consent of the individual being investigated. Refusal to sign the disclosure and consent forms shall disqualify the individual from being considered for or retained in the position.

14.3.4 DTS shall pay all fees associated with the background investigation.

14.3.5 Results of the background investigation will be sent to the Human Resource Manager, or a designee. If BCI access is denied, the Human Resource Manager, or a designee, will consult with the DTS Executive Director or designee to execute appeals procedures per section 14.3.6 of this policy.

#### 14.3.6 Appeals

14.3.6.1 In the event that BCI denies access, an appeal to BCI may be filed by either the Human Resource Manager or the subject of the background check, whichever the Human Resource Manager deems most appropriate. The appeal may contain factors such as status of the case, pending fines, restitution, probation, education, and extent of history.

14.3.6.2 If the appeal is not successful, the new hire may be dismissed unless the denial was due to a felony for which 10 years has passed since any required prison time has been served and the new hire has been off supervised probation. In such case, DTS management will first consider the factors in section 14.5.2 to determine whether the new hire may continue working for DTS. If the new hire is then retained, the paragraphs under Section 14.4.2 apply.

#### 14.4 Procedures

14.4.1 New Hires and Contractors – All job offers made to non-DTS employees are contingent on BCI granting full access following the background check. If BCI denies access, the Human Resource Manager or the subject of the background check may submit an appeal to BCI. If the appeal is unsuccessful, then Paragraph 14.3.6.2 will apply.

14.4.2 Current Employees – There are four potential scenarios for current DTS employees whose access is denied by BCI depending on whether the employee's job is under the UCJIS Umbrella or not, and whether there is a vacant position outside the UCJIS Umbrella that matches the employee's qualifications and access restrictions.

14.4.2.1 Any current employee whose access has been denied by BCI, but whose position is outside the UCJIS Umbrella may be permitted to continue working under a written restriction. Restrictions under this circumstance may remain as long as the position remains outside the UCJIS Umbrella.

14.4.2.2 Any current employee whose access has been denied by BCI and whose position is under the UCJIS Umbrella, but whose job duties can be modified to accommodate the limited access without hardship to DTS may be permitted to continue working in their current position with appropriate modifications to job duties and written restrictions. Restrictions under this circumstance may remain as long as the modification to job duties does not pose a hardship as determined by DTS.

14.4.2.3 Any current employee whose access has been denied by BCI, whose position is under the UCJIS Umbrella, and whose job duties cannot be modified to accommodate the limited access without hardship, may be placed in a vacant position for which they qualify and which is outside of the UCJIS Umbrella with written restrictions. Reassignment under this circumstance would be considered a permanent move and the restrictions may remain as long as the position remains outside the UCJIS Umbrella.

14.4.2.4 Any current employee whose access has been denied by BCI, whose position is under the UCJIS Umbrella, whose job duties cannot be modified to accommodate access restrictions, and there is no vacant position for which the employee is qualified, shall be terminated from employment. This is a "for cause" termination.

#### 14.5 Special Circumstances for Existing Employees

14.5.1 DTS will avoid dismissing a current employee based on a record without disposition alone. For current employees, if BCI's denial is based only on a record without disposition, DTS shall first exercise the options listed in section 14.4.2 of this policy. If no option under 14.4.2 is available, DTS may grant an unpaid leave of absence for a reasonable time, determined by DTS, until a final disposition is recorded in the official record. Once said disposition is in the record, this section ceases operation and the policy applies as normal.

14.5.2 The following factors shall be reviewed and determined by management if DTS is considering dismissing an employee due to information in the criminal record despite BCI granting access:

14.5.2.1 Whether the crime is related to an employee's current job duties or which might reasonably be expected to prevent an employee from performing the duties of the position or which adversely affects the integrity of information resources maintained by the state.

14.5.2.2 Whether the conviction will adversely affect the trust of DTS customers and the citizens of the State of Utah.

14.5.2.3 The nature of the crime and the number of convictions.

14.5.2.4 The recency of the conviction.

14.5.2.5 The employee's conduct and demonstration of trust since the conviction.

14.5.2.6 False or misleading written or verbal statements, made by an employee regarding their criminal record.

14.5.2.7 Failure by any current employee to report an arrest in writing to management within 30 days of the arrest.

14.5.3 Generally, the department considers a criminal conviction that relates to the job duties of the position to be sufficient cause for termination if it occurred within five years of the date of hire or of the last background investigation for misdemeanors or within ten years for felonies. However, convictions relating to fraud and/or serious crime or a pattern of violence will be considered sufficient cause for termination unless the convictions are cleared from the record entirely.

14.5.4 Any person with a DUI arrest or conviction may not drive a state vehicle if the driver's license has been revoked or restrictions have been put in place by the State Driver Eligibility Board.