

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