

481—67.18(135C,231B,231C,231D) Criminal, dependent adult abuse, and child abuse record checks.

67.18(1) Definitions. The following definitions apply for the purposes of this rule.

“*Background check*” or “*record check*” means criminal history, child abuse and dependent adult abuse record checks.

“*Comprehensive preliminary background check*” means a criminal history check of all states in which the applicant has worked or resided over the seven-year period immediately prior to applying for employment that is conducted by an approved third-party vendor.

“*Direct services*” means services provided through person-to-person contact. “Direct services” excludes services provided by individuals such as building contractors, repair workers, or others who are in a program for a very limited purpose, who are not in the program on a regular basis, and who do not provide any treatment or services for residents, patients, tenants, or participants of the provider.

“*Employed in a program*” or “*employment within a program*” means all of the following, if the provider is regulated by the state or receives any federal or state funding:

1. An employee of an assisted living program certified under Iowa Code chapter 231C, if the employee provides direct services to consumers;
2. An employee of an elder group home certified under Iowa Code chapter 231B, if the employee provides direct services to consumers;
3. An employee of an adult day services program certified under Iowa Code chapter 231D, if the employee provides direct services to consumers.

“*Employee*” means any individual who is paid, either by the program or any other entity (i.e., temporary agency, private duty, Medicare/Medicaid or independent contractors).

“*Evaluation*” means review by the department of health and human services (HHS) to determine whether a founded child abuse, dependent adult abuse or criminal conviction warrants the person’s being prohibited from employment in a program.

“*Indirect services*” means services provided without person-to-person contact such as those provided by administration, dietary, laundry, and maintenance.

“*Program,*” for purposes of this rule, means the following, if the provider is regulated by the state or receives any federal or state funding:

1. An assisted living program certified under Iowa Code chapter 231C;
2. An elder group home certified under Iowa Code chapter 231B;
3. An adult day services program certified under Iowa Code chapter 231D.

67.18(2) Explanation of “crime.” For purposes of this rule, the term “crime” does not include offenses under Iowa Code chapter 321 classified as simple misdemeanor or equivalent simple misdemeanor offenses from another jurisdiction.

67.18(3) Requirements for employer prior to employing an individual. Prior to employment of a person in a program, the program shall complete the background check requirements set forth below.

a. Informing the prospective employee. A program will ask each person seeking employment by the program, “Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime other than a simple misdemeanor offense relating to motor vehicles and laws of the road under Iowa Code chapter 321 or equivalent provisions in this state or any other state?” The person will be informed that a background check will be conducted and sign an acknowledgment.

b. Conducting a background check. The program will either request that the department of public safety perform a criminal history check and that HHS perform child and dependent adult abuse record checks of the person in this state or access the single contact repository (SING) to perform the required background check. If SING is used, the program will submit the person’s maiden name, if applicable, with the background check request.

c. If a person considered for employment has been convicted of a crime under the law of any state. The program will request that HHS perform an evaluation to determine whether the crime warrants prohibition of the person’s employment in the program.

d. If a person considered for employment has a record of founded child abuse or dependent adult abuse under the laws of any state. The program will request that HHS perform an evaluation to determine whether the founded child or dependent adult abuse warrants prohibition of employment in the program.

e. Employment pending evaluation. The program may provisionally employ a person prior to completion of the required record check and evaluation by HHS, as applicable, subject to all of the following:

(1) The program shall have accessed SING to perform the required record check and be awaiting results from SING or awaiting evaluation by HHS, as applicable;

(2) If applicable, the program shall request an evaluation by HHS in accordance with paragraph 67.18(3)“c” or “d” within 30 days of receipt of SING record check results;

(3) The program shall have utilized an approved third-party vendor to perform a comprehensive preliminary background check;

(4) If the comprehensive preliminary background check determines that the person being considered for employment has been convicted of a crime, the crime does not constitute a felony as defined in Iowa Code section 701.7 and is not a crime specified pursuant to Iowa Code chapter 708, 708A, 709, 709A, 710, 710A, 711, or 712 or pursuant to Iowa Code section 726.3, 726.7, or 726.8;

(5) The comprehensive preliminary background check shall have determined that the person being considered for employment does not have a record of founded child abuse or dependent adult abuse, or if the comprehensive preliminary background check determines the person being considered for employment does have a record of founded child abuse or dependent adult abuse, subrule 67.18(8) is applicable;

(6) The provisional employment may continue until such time as the required record check through SING and evaluation by HHS, as applicable, are completed.

67.18(4) Validity of background check results. The results of a background check conducted pursuant to this rule shall be valid for a period of 30 calendar days from the date the results of the background check are received by the program.

67.18(5) Employment prohibition. Except as provided in paragraph 67.18(3)“e,” a person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed in a program unless an evaluation has been performed by HHS.

67.18(6) Transfer of an employee to another program owned or operated by the same person without a lapse in employment. The program is not required to request additional criminal and child and dependent adult abuse record checks of that employee.

67.18(7) Transfer of ownership of a program. At the time of transfer of ownership of a program, the background check required by this rule will be performed for each employee for whom there is no documentation that such background check has been performed. The program may continue to employ such employee pending the performance of the background check and any related evaluation.

67.18(8) Change of employment—person with criminal or abuse record—exception to record check evaluation requirements. A person with a criminal or abuse record who is or was employed by a certified program and is hired by another certified program shall be subject to the background check.

a. A reevaluation of the latest record check is not required, and the person may commence employment with the other certified program if the following requirements are met:

(1) HHS previously performed an evaluation concerning the person’s criminal or abuse record and concluded the record did not warrant prohibition of the person’s employment;

(2) The latest background check does not indicate a crime was committed or founded abuse record was entered subsequent to the prior evaluation;

(3) The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed;

(4) Any restrictions placed on the person’s employment in the previous evaluation by HHS and still applicable remain applicable in the person’s subsequent employment;

(5) The person subject to the background check has maintained a copy of the previous evaluation and provided it to the subsequent employer, or the previous employer provides the previous evaluation from the person’s personnel file pursuant to the person’s authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, a current record check evaluation will be performed.

b. For purposes of this subrule, a position is “substantially the same or has the same job responsibilities” if the position requires the same certification, licensure, or advanced training. For example, a licensed nurse has substantially the same or the same job responsibilities as a director of

nursing; a certified nurse aide does not have substantially the same or the same job responsibilities as a licensed nurse.

c. The subsequent employer must maintain the previous evaluation in the employee's personnel file for verification of the exception to the requirement for a record check evaluation.

d. The subsequent employer may request a reevaluation of the background check and may employ the person while the reevaluation is being performed, even though an exemption under paragraph 67.18(8) "a" may be authorized.

67.18(9) *Employee notification of criminal convictions or founded abuse after employment.* If a person employed by an employer that is subject to this rule is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the person's employment application date, the person shall inform the employer of such information within 48 hours of the criminal conviction or entry of the record of founded child or dependent adult abuse.

a. The employer shall act to verify the information within seven calendar days of notification. "Verify," for purposes of this subrule, means to access SING to perform a background check, to request a criminal background check from the department of public safety, to request an abuse record check from HHS, to conduct an online search through the Iowa Courts Online website, or to contact the county clerk of court office and obtain a copy of relevant court documents.

b. If the information is verified, the program shall follow the requirements of paragraphs 67.18(3) "c" and "d."

c. The employer may continue to employ the person pending the performance of an evaluation by HHS.

d. A person who is required by this subrule to inform the person's employer of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor under Iowa Code section 135C.33.

e. The employer may notify the county attorney for the county where the employer is located of any violation or failure by an employee to notify the employer of a criminal conviction or entry of an abuse record within the period required under this subrule.

67.18(10) *Program receipt of credible information that an employee has been convicted of a crime or founded for abuse.* If the program receives credible information, as determined by the program, from someone other than the employee, that the employee has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after employment, and the employee has not informed the employer of the information within the time required by subrule 67.18(9), the program shall take the following actions:

a. The program will act to verify credible information within seven calendar days of receipt. "Verify," for purposes of this subrule, means to access SING to perform a background check, to request a criminal background check from the department of public safety, to request an abuse record check from HHS, to conduct an online search through the Iowa Courts Online website, or to contact the county clerk of court office and obtain a copy of relevant court documents.

b. If the information is verified, the program shall follow the requirements of paragraphs 67.18(3) "c" and "d."

67.18(11) *Proof of background checks for temporary employment agencies and contractors.* Proof of background checks may be kept in the files maintained by temporary employment agencies and contractors. Facilities may require temporary employment agencies and contractors to provide a copy of the result of the background checks. Copies of such results shall be made available to the department upon request.

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