

IOWA DEPARTMENT OF

INSPECTIONS & APPEALS

Background Check Study Committee Report

**Pursuant to SF 347:
An Act Relating to Record Checks of Prospective and
Current Health Care Employees and Certain Students**

**Submitted by:
The Iowa Department of Inspections and Appeals
December 24, 2013**

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SF 347 Background Check Study Committee Members

- **Angell Boyd**, Department of Public Safety
- **Erin Drinnin**, Department of Public Health
- **Dawn Fisk**, Department of Inspections and Appeals
- **Jeff Franklin**, Department of Administrative Services, Information Technology Enterprise
- **David Jobes**, Department of Public Safety
- **Lori Lipscomb**, Department of Human Services
- **Deborah Svec-Carstens**, Department of Inspections and Appeals

- Co-Facilitator Sara Throener, Department of Inspections and Appeals
- Co-Facilitator Beverly Zylstra, Department of Inspections and Appeals

The Committee held four meetings – September 13, October 21, November 18 and December 16, 2013.

In addition, the following stakeholders were in attendance and participated in the discussions:

- 3rd Degree Screening
- Iowa Alliance in Home Care
- Iowa Association of Community Providers
- Iowa Department on Aging
- Iowa Health Care Association
- Iowa Hospital Association
- LeadingAge Iowa
- Legislative Services Agency
- Ultimate Nursing Services

Executive Summary

The 85th General Assembly, during its 2013 session, passed Senate File 347. Section 5 of the legislation provided for the Department of Inspections and Appeals, in conjunction with the Departments of Administrative Services, Human Services, Public Health and Public Safety, to conduct a study of the background check system to identify improvements and to consider applying record check requirements to unregulated home health services.

The Committee Members, along with interested stakeholders, reviewed the current background check system, identified gaps, considered information from other states, considered recent legislative changes, and identified recent system changes either in process or implemented. Based on the discussion and information gathered, the Committee makes the following recommendations, some of which will require adequate funding to implement:

1. Modify the Single Contact Repository (SING) system to allow more surnames, such as aliases, to be included on an original request.
2. Develop a list of crimes that would automatically prohibit an individual from working in an environment covered under 135B.34 or 135C.33 permanently or for a specified period of time.
3. Change the 48-hour requirement for a facility, service, or program employer to verify information after notification by an employee or other credible information of a criminal conviction or entry of a founded child or dependent adult abuse record to 7 calendar days. [Iowa Code sections 135B.34(5) (a and b) and 135C.33(7)(a and b)]
4. Explore, and seek adequate funding to develop, more up-to-date alternatives to mail and FAX for sending and receiving DHS evaluation requests and decisions.
5. Explore ways to better provide information and training to providers, etc. on the background check requirements, process, and evaluations, which may improve turnaround time and seek adequate funding, as necessary.
6. Continue to evaluate expanding the current state process to include a national criminal history record check through the Federal Bureau of Investigation (FBI), which would require fingerprinting.

The Committee makes the following recommendations regarding applying record check requirements to unregulated home health services:

1. The Departments of Inspections and Appeals, Human Services, Public Health, Public Safety and Aging shall work collaboratively to design a toolkit for consumers hiring in-home care providers.

The toolkit could be used to provide information to consumers seeking in-home providers through Aging and Disability Resource Centers and to the medical community provide to patients.

The toolkit could be posted on state agency websites.

Purpose/Charge of Committee

The 85th General Assembly in its 2013 legislative session passed Senate File 347 related to background checks of prospective employees of hospitals, health care facilities and other health-related providers. Section 5 of the legislation required a study as follows:

Sec. 5. STUDY OF BACKGROUND CHECK IMPROVEMENTS AND REQUIREMENTS FOR CERTAIN PROVIDERS OF HOME HEALTH SERVICES. The department of inspections and appeals, in conjunction with the departments of administrative services, human services, public health, and public safety, shall study the potential for applying new technologies and other improvements that may be implemented for the current processes of performing and evaluating child and dependent adult abuse and criminal record checks of persons providing health care services. In addition, the study shall consider applying record check requirements to individuals and agencies providing home health services that are not subject to certification, licensing, or other regulation by state government. The department shall submit a report with findings and recommendations to the governor and general assembly on or before December 15, 2013.

Study of Improvements for the Current Background Check Process

To initiate the discussion of ways to improve the current background check process, stakeholders shared comments and issues at the first meeting of the Committee. These comments and issues included:

- DHS should maintain its current 5-day timeframe to complete an evaluation
- Lack of multi-state information, especially from the border states
- Need for a unique identifier for names to streamline system
- Issue of the 48 hours requirement to check SING when staff self-report a conviction because the information is not yet on the system at that point
- What does "with supervision" mean on the evaluation?
- Can DCI verify that a background check was done on a certain date?
- Add Frequently Asked Questions to the Single Contact Repository (SING) website
- What does "further research needed" mean and what is timeline to finalize information.
- Need one system to get background check information inside and outside of Iowa
- Should "old" convictions be evaluated or can they be exempt from the evaluation?
- Can more aliases be entered without additional cost?
- Can 135B, 135C, 231B, 231C, and 231D be given priority in processing?
- How long does it take to get an FBI check done?
- It was suggested to have an employer checklist for the evaluation packet sent to DHS
- Training of providers on the process

The Committee members shared the current process and timelines, including the result of legislative changes made over the last few years to address some of the timeline concerns. The Departments of Public Safety and Human Services shared some of the changes that have occurred or are in process to further improve the process and timeliness. The Department of Inspections and Appeals shared an opportunity for some time limited Federal funding for a national background check process. The Office of Information Technology shared that technological advances in encryption and cooperation with the Federal government could provide opportunities in the future for improving the process. Research was conducted on abuse registries, background checks, and accesses of bordering states to compare with what occurs in Iowa.

The attached Appendices provide more detail information related to information and discussions at the various meetings through the minutes and handouts.

Recommendations

After a thorough review and discussion of the current process, feedback from stakeholders, recent system changes, and information from other states, the Committee makes the following recommendations related to improvements to the background check process:

1. Modify the SING system to allow more surnames, such as aliases, to be included on an original request.

The current system only allows two surnames to be submitted at a time – current last name and maiden name, if applicable. If more than two names need to be entered, a facility must submit two separate requests and pay a double fee. Based on feedback from stakeholders, it is common for an individual to have more than two names, especially if the person has been married more than once.

This recommendation could easily be implemented but would require a system change to the Single Contact Repository (SING). A programming cost would be incurred, which would require obtaining a funding source to cover the cost.

This recommendation may require an enhanced fee when more than two names are entered but the cost should still be less than the current cost of doing multiple requests. It was suggested that instead of the \$30 to check 3 or 4 aliases today, the cost may be able to be reduced with implementation of this recommendation.

2. Develop a list of crimes that would automatically prohibit an individual from working in an environment covered under 135B.34 or 135C.33 permanently or for a specified period of time.

This recommendation would expedite the process in those cases meeting the criteria. Developing a list of crimes that is similar to what is required today in Iowa for child care and is similar to what Minnesota and Wisconsin have implemented. Implementation would require legislation to either specify the crimes or provide language to allow DIA to specify the crimes by rule. The

Committee recommends working with stakeholders to develop the appropriate list of crimes.

- 3. Change the 48-hour requirement for a facility, service, or program employer to verify information after notification by an employee or other credible information of a criminal conviction or entry of a founded child or dependent adult abuse record to 7 calendar days.**

This recommendation is necessary as the verification information may take up to 7 calendar days to be available on the system.

The recommendation would require a legislative change to Iowa Code sections 135B.34(5)(a and b) and 135C.33(7)(a and b).

- 4. Explore, and seek adequate funding to develop, more up-to-date alternatives to mail and FAX for sending and receiving DHS evaluation requests and decisions.**

Possible alternatives include but are not limited to:

- Allow providers to email requests to DHS and DHS to email back their evaluation decision. The communication would have to be done in a secure manner to protect any personally identifiable information of the prospective or current employee. Secure email is available through an Authorization and Authentication (A & A) System, which is encrypted for security purposes.
- Develop an automated online system. The provider would fill out the requisite forms online, with the DHS employee conducting the evaluation and entering the DHS evaluation decision online. The decision would be available for viewing by the provider. The automated system could have built in decision making capabilities, so if a conviction would automatically prohibit eligibility, the system would automatically let the provider know that after filling out the form online.

- 5. Explore ways to better provide information and training to providers, etc. on the background check requirements, process, and evaluations, which may improve turnaround time and seek adequate funding, as necessary.**

Providing readily accessible information to stakeholders that fully explains the background check process, what documents are required, how SING works, and what information is required for an evaluation to be conducted by DHS would be beneficial to all parties involved and could further limit some of the delays in the process.

Initial recommendations are to:

- a. Add Frequently Asked Questions (FAQs) to the SING website

- b. Consider putting links to training and documents from agencies and providers on the SING website
- c. Agencies collaborate to develop an Background Check 101 in an “on-demand” training format and notify providers of location on-line
- d. Develop on-line forms required during the process and evaluation
- e. Provide a link to the DHS Record Check Evaluation Decision Guidance document
- f. Encourage training for providers

6. Continue to evaluate expanding the current state process to include a national criminal history record check through the Federal Bureau of Investigation (FBI), which would require fingerprinting.

It is anticipated that federally certified health care facilities may eventually be required by the Centers for Medicare and Medicaid Services to conduct FBI record checks.

This would assist providers in hiring employees from bordering states and improve consumer protection.

Study of Requiring Background Checks of Unregulated Home Health Services

The Committee identified current barriers, such as a clear definition of home health providers, lack of knowledge of who these providers are and where they are located, lack of a current enforcement mechanism, such as licensure or credentialing, and balancing consumer rights, in making a recommendation to require background checks. Further direction from the General Assembly is necessary in order to address the identified barriers.

For Medicare-certification purposes, the Centers for Medicare and Medicaid Services defines home health services and home health agency, both of which seem to focus on health-related care. (See Appendix Q) The Department of Public Health breaks down home care aid services into five categories of direct care worker with a specific scope of services for each category. (See Appendix P) Senate File 347 did not define what home health services were to be considered.

Currently there is no verified data available to determine who home health services providers are and where they are located. The Iowa Alliance in Home Care shared that they estimate there are 120 non-Medicare-certified home health agencies operating in Iowa. This does not include individuals not associated with an agency who may be providing home health services. It is possible that many of these agencies already conduct background checks of their prospective employees, but it is unknown for certain. The Direct Care Worker Advisory Council estimates there are 75,000 direct care professionals providing services in a variety of settings, including home health.

There are around 180 Medicare-certified home health agencies in Iowa which receive oversight by the Department of Inspections and Appeals under an agreement with the Centers for Medicare and Medicaid Services (CMS). Other individuals or entities

receiving state oversight are Department of Human Services' Consumer-Directed Attendant Care (CDAC) contractors and direct care workers under home care aid services with oversight by the Department of Public Health.

Currently, there is no state enforcement mechanism available to ensure compliance by unregulated providers with a background check requirement. Even with a mechanism, such as licensure, locating these providers would be the greatest challenge.

It was noted that requiring background checks of unregulated home health service providers would increase the volume checking on SING and the number of evaluations requested, which could have a significant fiscal impact on both state agencies and the service provider.

One key factor discussed was how to balance consumer rights with protecting the consumer from harm or elder abuse. A question arose about an individual wanting a relative or friend provide a service but that relative or friend has a criminal or abuse background. Would the individual be prevented from hiring that relative or friend under a requirement for a background check to be conducted prior to hiring?

The attached Appendices provide more detailed information related to information and discussions at the various meetings through the minutes and handouts.

Recommendations:

Following the discussion and ensuring that consumer rights are considered, the Committee makes the following recommendation:

- 1. The Departments of Inspections and Appeals, Human Services, Public Health, Public Safety and Aging shall work collaboratively to design a toolkit for consumers hiring in-home care providers.***

The toolkit could be used to provide information to consumers seeking in-home providers through Aging and Disability Resource Centers.

The toolkit could be posted on state agency websites.

The toolkit could be used to provide information to the medical community to provide to patients.



**Background Check Study Committee
September 13, 2013 Minutes**

Committee Members in Attendance:

Angell Boyd, Department of Public Safety
 Dawn Fisk, Department of Inspections and Appeals
 Jeff Franklin, Department of Administrative Services
 Michelle Holst on behalf of Erin Drinnin, Department of Public Health
 Dave Jobes, Department of Public Safety
 Lori Lipscomb, Department of Human Services
 Deborah Svec-Carstens, Department of Inspections and Appeals
 Beverly Zylstra, Department of Inspections and Appeals

Other Attendees:

Greg Boattenhamer, Iowa Hospital Association
 Edie Bogaczyk, Iowa Association of Community Providers
 Amber Markham, Department of Public Safety
 Kimberly Murphy, Department on Aging
 Bill Nutty, LeadingAge Iowa
 Kathy Sutton, Department of Inspections and Appeals
 Jeanie Waters, 3rd Degree Screening
 Ken Watkins, Iowa Health Care Association

Attendees were provided a packet of information consisting of:

- Senate File 347
- Current law under Iowa Code chapters 135B and 135C related to background check requirements
- Survey and Certification letters from the Centers for Medicare and Medicaid Services related to National Background Check Program Funding
- Frequently Asked Questions on Record Checks

Purpose/Charge of Committee

The purpose/charge of the Committee is to "study the potential for applying new technologies and other improvements that may be implemented for the current processes of performing and evaluating child and dependent adult abuse and criminal record checks of persons providing health care services." In addition, the study "shall consider applying record check requirements to individuals and agencies providing

home health services that are not subject to certification, licensing, or other regulation by state government”.

It was noted that administrative improvements made by the Department of Human Services (DHS) has improved the turnaround time in the process. Also, several legislative changes made over the past few years have had a positive impact on the process.

Provider Perspective of Current Background Check Process

Providers were asked to share their perspective of the current background check process and what issues exist with the process.

- DHS should maintain its current 5-day timeframe to complete an evaluation
- Lack of multi-state information, especially from the border states
- Need a unique identifier for names to streamline system
- Issue of the 48 hours requirement to check SING when staff self-report a conviction because the information is not yet on the system at that point
- What does “with supervision” mean on the evaluation?
- Can DCI verify that a background check was done on a certain date?
- Add Frequently Asked Questions to the Single Contact Repository (SING) website
- What does “further research needed” mean and what is timeline to final information. (DPS says 2 days is the goal)
- Need one system to get background check information inside and outside of Iowa
- Should “old” convictions be evaluated or can they be exempt from the evaluation?
- Can more aliases be entered without additional cost?
- Can 135B, 135C, 231B, 231C, and 231D be given priority in processing (what do other entities, such as schools, require prior to employment?)?
- How long does it take to get an FBI check done? (DPS says 1 to 2 weeks)
- It was suggested to have an employer checklist for the evaluation packet sent to DHS
- Training of providers on the process

Current Process and Technology

The state agencies shared how the current process works and what technology is used.

- Enter information into the web-based Single Contact Repository (SING) using a user id and password
- Designate which registries, etc. you want checked, such as criminal, dependent adult abuse, child abuse, direct care worker, etc.
- The electronic response is broken down by registry and designates if a record (“hit”) or no record

- If a record under the criminal history, the Form "S" and the rap sheet is either faxed or mailed to the facility; the rap sheet details the conviction
- If further research is designated for the criminal history, the research is conducted and either no record or Form S and Rap Sheet, as applicable, notification is sent
- If a record on the Dependent Adult Abuse or Child Abuse Registries, the facility requests information from the Department of Human Services (DHS)
- If no record, the facility makes a decision to hire or not
- If there is a record and the facility wants to consider employment of the individual, the facility requests an evaluation from DHS
- The length of time to complete the evaluation depends on the circumstances of the position being filled and the crime/abuse; generally it is a maximum of 3 working days
- Evaluation is based on the information submitted in the evaluation packet
- If evaluation packet is incomplete when submitted, the evaluation will be delayed until the complete information is submitted
 - Often the explanation is what is missing from the packet, along with demographics; sometimes received by DHS outside the 30-day timeframe
 - Information that is helpful:
 - Need details of crime
 - What rehabilitation has occurred
 - Work history
 - Education
 - What was going on at the time and what have done since
 - DHS has some samples by various crimes of what they are looking for on the new form, which has helped
- Evaluation is done on all pieces where a record occurred – criminal, Dependent Adult Abuse and Child Abuse
- The evaluation will determine the applicant is approved to work or is denied; approval may be with conditions, such as no driving; there is a 90% approval to work rate
- A denial may be appealed and a contested case hearing is conducted.
- The Department of Inspections and Appeals (DIA) looks for documents, such as the SING response and evaluation from DHS, to verify checks were done
- With various law changes, will also be looking for prior information taken from one facility to another
- The check on the Direct Care Worker Registry is to determine if a certified nursing assistant (CNA) is Active vs Inactive as a result of the 24 month employment requirement and whether the CNA has committed abuse; this is a federal requirement for long term care facilities (nursing facility, skilled nursing facility, or skilled or swing bed unit of a hospital) receiving Medicare or Medicaid

Opportunities

There are various changes previously made or already in progress to streamline or improve the process:

- New form at DHS

- Department of Public Safety (DPS) and Information Technology are working to make improvements with SING
- DPS is working with courts to improve notification of dispositions
- SING identifies processing days and DHS voice mail gives what day they are processing
- Various legislative changes over the past few years, including those made in SF 347 during the 2013 legislative session

Jeff Franklin from the Office of Information Technology shared that technological advances around encryption and cooperation with the Federal government will provide some opportunities for improving the process.

Dawn Fisk and Kathy Sutton from DIA shared information regarding a federal grant opportunity for national background checks. Additional information is included in the survey and certification letters included in the handout.

- \$3 million maximum for a 36 month period; requires a 1/3 state match
- Civil Monetary Penalty (CMP) funds could be used for the state match
- A concern expressed by states at an informational seminar is the ability to sustain after the federal money runs out
- The checks would be fingerprint-based, which DPS says has some procedural challenges, including:
 - Availability at local level
 - Quality (have to have a full set of prints)
 - Need a consistent method
 - 3rd Party vendors doing today but DPS can't take electronically
 - Many states use a 3rd party vendor through an RFP process – price based on volume and by state \$9.95 to \$25
 - Nothing in the Iowa Code on what local law enforcement has to charge for fingerprints - \$27 charge by FBI alone per card
 - Cards have to be submitted electronically to FBI; cards are mailed to DPS then DPS has to digitize to send to FBI electronically
 - Live scan may be possible
 - DPS turn-around is 8 to 10 business days
 - Would have to do new fingerprinting process if new employment
 - Can't disseminate FBI results
 - FBI gets info from some federal and other states
 - FBI information would not include Dependent Adult Abuse or Child Abuse, unless the person was convicted of a related crime
 - Simple misdemeanors are not fingerprinted
 - Suggestion was made to authorize legislation to retain fingerprints by DPS

Additional information shared:

- Rap Back by FBI within the next year
 - This will be a subscription with automatic notification to facility/employer if new issue
 - Annual fee will be per employee

- Retention of prints – Iowa would need legislation to retain prints
 - Would require a full set of prints upfront from the employee
 - Uncertain if Iowa will be able to participate – mainly technological issues and age of current system
 - Concerns expressed included the added time and cost to employers; facilities would want to conditionally employ while waiting for the information; benefit vs time and cost
- For evaluations conducted by DHS, 85% are related to criminal hits and 15% are related to abuse hits
 - 2,000 plus accounts use SING

Potential Improvements

The committee identified additional information needed:

- Research other states, especially border states, on what criteria is used for persons to be on registries regarding criminal, Dependent Adult Abuse (DAA) and Child Abuse (CA); limit DAA and CA to border states
- Research law for what other entities are required related to pre-employment
- Check to see how long info is kept on SING for history on checks

The committee brainstormed some initial potential improvements:

- Eliminate evaluations for certain crimes or aged crimes, such as 5 years or older
- Add more names, such as aliases, to original request
- Change the 48-hour requirement for checking on employee self-reported convictions/founded abuse to a timeframe when the information would be available – recommended 7 days minimum
- Move from mail and FAX to secure email, although could be costly
- DPS prioritize pre-employment background checks
- Do training of providers via webinar, conferences, fact sheets, websites, mini sessions, PowerPoint
- Add Frequently Asked Questions (FAQs) to the SING website

Next Steps

Continue discussion and brainstorming of potential improvements and identifying implementation timeframes, legislative changes required, and possible budgetary impacts.

Discussion of the inclusion of unregulated home health providers in background check requirements, including but not limited to defining who would be covered, enforcement, etc.

Next Meeting

The next meeting will be scheduled in October. The report is due to the Governor and General Assembly by December 15, 2013. Meeting adjourned.

Senate File 347

AN ACT

RELATING TO RECORD CHECKS OF PROSPECTIVE AND CURRENT HEALTH
CARE EMPLOYEES AND CERTAIN STUDENTS AND INCLUDING EFFECTIVE
DATE AND APPLICABILITY PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 135B.34, subsection 2, Code 2013, is amended by adding the following new paragraph:

NEW PARAGRAPH. *Ob.* (1) If a person being considered for employment, other than employment involving the operation of a motor vehicle, has been convicted of a crime listed in subparagraph (2) but does not have a record of founded child or dependent abuse and the hospital has requested an evaluation in accordance with paragraph "a" to determine whether the crime warrants prohibition of the person's employment, the hospital may employ the person for not more than sixty calendar days pending completion of the evaluation.

(2) Subparagraph (1) applies to a crime that is a simple misdemeanor offense under section 123.47 or chapter 321, and to a crime that is a first offense of operating a motor vehicle while intoxicated under section 321J.2, subsection 1.

Sec. 2. Section 135B.34, subsection 4, paragraph b, Code 2013, is amended to read as follows:

b. A person with a criminal or abuse record who is or was employed by a hospital licensed under this chapter and is hired by another ~~licensee without a lapse in employment~~ hospital

shall be subject to the criminal history and abuse record checks required pursuant to subsection 1. ~~If However, if an evaluation was previously performed by the department of human services concerning the person's criminal or abuse record and it was determined that the record did not warrant prohibition of the person's employment and the latest record checks do not indicate a crime was committed or founded abuse record was entered subsequent to that evaluation, the person may commence employment with the other licensee while hospital in accordance with the department of human services' evaluation of the latest record checks is pending and an exemption from the requirements in paragraph "a" for reevaluation of the latest record checks is authorized.~~ Otherwise, the requirements of paragraph "a" remain applicable to the person's employment. Authorization of an exemption under this paragraph "b" from requirements for reevaluation of the latest record checks by the department of human services is subject to all of the following provisions:

- (1) 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.
- (2) Any restrictions placed on the person's employment in the previous evaluation by the department of human services shall remain applicable in the person's subsequent employment.
- (3) The person subject to the record checks has maintained a copy of the previous evaluation and provides the evaluation 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, the record checks shall be reevaluated.
- (4) Although an exemption under this lettered paragraph "b" may be authorized, the subsequent employer may instead request a reevaluation of the record checks and may employ the person while the reevaluation is being performed.

Sec. 3. Section 135C.33, subsection 2, Code 2013, is amended by adding the following new paragraph:

NEW PARAGRAPH. Ob. (1) If a person being considered for employment, other than employment involving the operation of a motor vehicle, has been convicted of a crime listed in subparagraph (2) but does not have a record of founded child or dependent abuse and the licensee has requested an evaluation in accordance with paragraph "a" to determine whether the crime warrants prohibition of the person's employment, the licensee

may employ the person for not more than sixty calendar days pending completion of the evaluation.

(2) Subparagraph (1) applies to a crime that is a simple misdemeanor offense under section 123.47 or chapter 321, and to a crime that is a first offense of operating a motor vehicle while intoxicated under section 321J.2, subsection 1.

Sec. 4. Section 135C.33, subsection 8, Code 2013, is amended by adding the following new paragraph:

NEW PARAGRAPH. *0d.* (1) If a student's clinical education component of the training program involves children or dependent adults but does not involve operation of a motor vehicle, and the student has been convicted of a crime listed in subparagraph (2), but does not have a record of founded child or dependent adult abuse, and the training program has requested an evaluation in accordance with paragraph "c" to determine whether the crime warrants prohibition of the student's involvement in such clinical education component, the training program may allow the student's participation in the component for not more than sixty days pending completion of the evaluation.

(2) Subparagraph (1) applies to a crime that is a simple misdemeanor offense under section 123.47 or chapter 321, and to a crime that is a first offense of operating a motor vehicle while intoxicated under section 321J.2, subsection 1.

Sec. 5. STUDY OF BACKGROUND CHECK IMPROVEMENTS AND REQUIREMENTS FOR CERTAIN PROVIDERS OF HOME HEALTH SERVICES. The department of inspections and appeals, in conjunction with the departments of administrative services, human services, public health, and public safety, shall study the potential for applying new technologies and other improvements that may be implemented for the current processes of performing and evaluating child and dependent adult abuse and criminal record checks of persons providing health care services. In addition, the study shall consider applying record check requirements to individuals and agencies providing home health services that are not subject to certification, licensing, or other regulation by state government. The department shall submit a report with findings and recommendations to the governor and general assembly on or before December 15, 2013.

Sec. 6. EFFECTIVE UPON ENACTMENT. This Act, being deemed of immediate importance, takes effect upon enactment.

Sec. 7. APPLICABILITY. This Act applies retroactively to

persons for whom a record check was requested not more than sixty calendar days prior to the effective date of this Act.

PAM JOCHUM
President of the Senate

KRAIG PAULSEN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 347, Eighty-fifth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 2013

TERRY E. BRANSTAD
Governor

135B.34 Hospital employees — criminal history and abuse record checks — penalty.

1. Prior to employment of a person in a hospital, the hospital shall request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks of the person in this state. A hospital shall inform all persons prior to employment regarding the performance of the record checks and shall obtain, from the persons, a signed acknowledgment of the receipt of the information. A hospital shall include the following inquiry in an application for employment:

Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?

2. *a.* If it is determined that a person being considered for employment in a hospital has committed a crime, the department of public safety shall notify the hospital that upon the request of the hospital the department of human services will perform an evaluation to determine whether the crime warrants prohibition of the person's employment in the hospital.

b. If a department of human services child or dependent adult abuse record check shows that the person has a record of founded child or dependent adult abuse, the department of human services shall notify the hospital that upon the request of the hospital the department of human services will perform an evaluation to determine whether the founded child or dependent adult abuse warrants prohibition of the person's employment in the hospital.

c. An evaluation performed under this subsection shall be performed in accordance with procedures adopted for this purpose by the department of human services.

d. (1) If a person owns or operates more than one hospital, and an employee of one of such hospitals is transferred to another such hospital without a lapse in employment, the hospital is not required to request additional criminal and child and dependent adult abuse record checks of that employee.

(2) If the ownership of a hospital is transferred, at the time of transfer the record checks required by this section shall be performed for each employee for whom there is no documentation that such record checks have been performed. The hospital may continue to employ such employee pending the performance of the record checks and any related evaluation.

3. In an evaluation, the department of human services shall consider the nature and seriousness of the crime or founded child or dependent adult abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child or dependent adult abuse, the circumstances under which the crime or founded child or dependent adult abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child or dependent adult abuse again, and the number of crimes or founded child or dependent adult abuses committed by the person involved. If the department of human services performs an evaluation for the purposes of this section, the department of human services has final authority in determining whether prohibition of the person's employment is warranted.

4. *a.* Except as provided in paragraph "b" and subsection 2, a person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed in a hospital licensed under this chapter unless an evaluation has been performed by the department of human services.

b. A person with a criminal or abuse record who is employed by a hospital licensed under this chapter and is hired by another licensee without a lapse in employment shall be subject to the criminal history and abuse record checks required pursuant to subsection 1. If an evaluation was previously performed by the department of human services concerning the person's criminal or abuse record and it was determined that the record did not warrant prohibition of the person's employment and the latest record checks do not indicate a crime was committed or founded abuse record was entered subsequent to that evaluation, the person may commence employment with the other licensee while the department of human

services' evaluation of the latest record checks is pending. Otherwise, the requirements of paragraph "a" remain applicable to the person's employment.

5. a. If a person employed by a hospital that is subject to this section 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 hospital of such information within forty-eight hours of the criminal conviction or entry of the record of founded child or dependent adult abuse. The hospital shall act to verify the information within forty-eight hours of notification. If the information is verified, the requirements of subsections 2, 3, and 4 regarding employability and evaluations shall be applied by the hospital to determine whether or not the person's employment is continued. The hospital may continue to employ the person pending the performance of an evaluation by the department of human services to determine whether prohibition of the person's employment is warranted. A person who is required by this subsection 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.

b. If a hospital receives credible information, as determined by the hospital, that a person employed by the hospital 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 from a person other than the employee and the employee has not informed the hospital of such information within the period required under paragraph "a", the hospital shall act to verify the credible information within forty-eight hours of receipt of the credible information. If the information is verified, the requirements of subsections 2, 3, and 4 regarding employability and evaluations shall be applied by the hospital to determine whether or not the person's employment is continued.

c. The hospital may notify the county attorney for the county where the hospital is located of any violation or failure by an employee to notify the hospital of a criminal conviction or entry of an abuse record within the period required under paragraph "a".

6. A hospital licensed in this state may access the single contact repository established by the department pursuant to section 135C.33 as necessary for the hospital to perform record checks of persons employed or being considered for employment by the hospital.

2002 Acts, ch 1034, §1; 2008 Acts, ch 1187, §111

135C.33 Employees and certified nurse aide trainees — child or dependent adult abuse information and criminal record checks — evaluations — application to other providers — penalty.

1. a. For the purposes of this section, the term “*crime*” does not include offenses under chapter 321 classified as a simple misdemeanor or equivalent simple misdemeanor offenses from another jurisdiction.

b. Prior to employment of a person in a facility, the facility shall request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks of the person in this state. A facility shall inform all persons prior to employment regarding the performance of the record checks and shall obtain, from the persons, a signed acknowledgment of the receipt of the information. A facility shall include the following inquiry in an application for employment:

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 chapter 321 or equivalent provisions, in this state or any other state?

2. a. If it is determined that a person being considered for employment in a facility has been convicted of a crime under a law of any state, the department of public safety shall notify the licensee that upon the request of the licensee the department of human services will perform an evaluation to determine whether the crime warrants prohibition of the person’s employment in the facility.

b. If a department of human services child or dependent adult abuse record check shows that such person has a record of founded child or dependent adult abuse, the department of human services shall notify the licensee that upon the request of the licensee the department of human services will perform an evaluation to determine whether the founded child or dependent adult abuse warrants prohibition of employment in the facility.

c. An evaluation performed under this subsection shall be performed in accordance with procedures adopted for this purpose by the department of human services.

d. (1) If a person owns or operates more than one facility, and an employee of one of such facilities is transferred to another such facility without a lapse in employment, the facility is not required to request additional criminal and child and dependent adult abuse record checks of that employee.

(2) If the ownership of a facility is transferred, at the time of transfer the record checks required by this section shall be performed for each employee for whom there is no documentation that such record checks have been performed. The facility may continue to employ such employee pending the performance of the record checks and any related evaluation.

3. In an evaluation, the department of human services shall consider the nature and seriousness of the crime or founded child or dependent adult abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child or dependent adult abuse, the circumstances under which the crime or founded child or dependent adult abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child or dependent adult abuse again, and the number of crimes or founded child or dependent adult abuses committed by the person involved. If the department of human services performs an evaluation for the purposes of this section, the department of human services has final authority in determining whether prohibition of the person’s employment is warranted.

4. a. Except as provided in paragraph “b” and subsection 2, a person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed in a facility licensed under this chapter unless an evaluation has been performed by the department of human services.

b. A person with a criminal or abuse record who is or was employed by a facility licensed under this chapter and is hired by another licensee shall be subject to the criminal history and abuse record checks required pursuant to subsection 1. However, if an evaluation was

previously performed by the department of human services concerning the person's criminal or abuse record and it was determined that the record did not warrant prohibition of the person's employment and the latest record checks do not indicate a crime was committed or founded abuse record was entered subsequent to that evaluation, the person may commence employment with the other licensee in accordance with the department of human services' evaluation and an exemption from the requirements in paragraph "a" for reevaluation of the latest record checks is authorized. Otherwise, the requirements of paragraph "a" remain applicable to the person's employment. Authorization of an exemption under this paragraph "b" from requirements for reevaluation of the latest record checks by the department of human services is subject to all of the following provisions:

(1) 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.

(2) Any restrictions placed on the person's employment in the previous evaluation by the department of human services shall remain applicable in the person's subsequent employment.

(3) The person subject to the record checks has maintained a copy of the previous evaluation and provides the evaluation 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, the record checks shall be reevaluated.

(4) Although an exemption under this paragraph "b" may be authorized, the subsequent employer may instead request a reevaluation of the record checks and may employ the person while the reevaluation is being performed.

5. a. This section shall also apply to prospective employees of all of the following, if the provider is regulated by the state or receives any state or federal funding:

(1) An employee of a homemaker-home health aide, home care aide, adult day services, or other provider of in-home services if the employee provides direct services to consumers.

(2) An employee of a hospice, if the employee provides direct services to consumers.

(3) An employee who provides direct services to consumers under a federal home and community-based services waiver.

(4) An employee of an elder group home certified under chapter 231B, if the employee provides direct services to consumers.

(5) An employee of an assisted living program certified under chapter 231C, if the employee provides direct services to consumers.

b. In substantial conformance with the provisions of this section, prior to the employment of such an employee, the provider shall request the performance of the criminal and child and dependent adult abuse record checks. The provider shall inform the prospective employee and obtain the prospective employee's signed acknowledgment. The department of human services shall perform the evaluation of any criminal record or founded child or dependent adult abuse record and shall make the determination of whether a prospective employee of a provider shall not be employed by the provider.

6. a. The department of inspections and appeals, in conjunction with other departments and agencies of state government involved with criminal history and abuse registry information, shall establish a single contact repository for facilities and other providers to have electronic access to data to perform background checks for purposes of employment, as required of the facilities and other providers under this section.

b. The department may access the single contact repository for any of the following purposes:

(1) To verify data transferred from the department's nurse aide registry to the repository.

(2) To conduct record checks of applicants for employment with the department.

7. a. If a person employed by a facility, service, or program employer that is subject to this section 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 forty-eight hours of the criminal conviction or entry of the record of founded child or dependent adult abuse. The employer shall act to verify the information within forty-eight hours of notification. If the information is

verified, the requirements of subsections 2, 3, and 4 regarding employability and evaluations shall be applied by the employer to determine whether or not the person's employment is continued. The employer may continue to employ the person pending the performance of an evaluation by the department of human services to determine whether prohibition of the person's employment is warranted. A person who is required by this subsection 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.

b. If a facility, service, or program employer receives credible information, as determined by the employer, that a person employed by the employer 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 from a person other than the employee and the employee has not informed the employer of such information within the period required under paragraph "a", the employer shall act to verify the credible information within forty-eight hours of receipt of the credible information. If the information is verified, the requirements of subsections 2, 3, and 4 regarding employability and evaluations shall be applied to determine whether or not the person's employment is continued.

c. 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 paragraph "a".

8. a. For the purposes of this subsection, unless the context otherwise requires:

(1) "*Certified nurse aide training program*" means a program approved in accordance with the rules for such programs adopted by the department of human services for the training of persons seeking to be a certified nurse aide for employment in any of the facilities or programs this section applies to or in a hospital, as defined in section 135B.1.

(2) "*Student*" means a person applying for, enrolled in, or returning to a certified nurse aide training program.

b. Prior to a student beginning or returning to a certified nurse aide training program, the program shall request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks, in this state, of the student. The program may access the single contact repository established pursuant to this section as necessary for the program to initiate the record checks.

c. If a student has a criminal record or a record of founded child or dependent adult abuse, the student shall not be involved in a clinical education component of the certified nurse aide training program involving children or dependent adults unless an evaluation has been performed by the department of human services. Upon request of the certified nurse aide training program, the department of human services shall perform an evaluation to determine whether the record warrants prohibition of the student's involvement in a clinical education component of the certified nurse aide training program involving children or dependent adults. The evaluation shall be performed in accordance with the criteria specified in subsection 3, and the department of human services shall report the results of the evaluation to the certified nurse aide training program. The department of human services has final authority in determining whether prohibition of the student's involvement in the clinical education component is warranted.

d. (1) If a student is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the record checks and any evaluation have been performed, the student shall inform the certified nurse aide training program of such information within forty-eight hours of the criminal conviction or entry of the record of founded child or dependent adult abuse. The program shall act to verify the information within forty-eight hours of notification. If the information is verified, the requirements of paragraph "c" shall be applied by the program to determine whether or not the student's involvement in a clinical education component may continue. The program may allow the student involvement to continue pending the performance of an evaluation by the department of human services. A student who is required by this subparagraph to inform the program of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor.

(2) If a program receives credible information, as determined by the program, that a

student has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after the record checks and any evaluation have been performed, from a person other than the student and the student has not informed the program of such information within the period required under subparagraph (1), the program shall act to verify the credible information within forty-eight hours of receipt of the credible information. If the information is verified, the requirements of paragraph "c" shall be applied to determine whether or not the student's involvement in a clinical education component may continue.

(3) The program may notify the county attorney for the county where the program is located of any violation or failure by a student to notify the program of a criminal conviction or entry of an abuse record within the period required under subparagraph (1).

e. If a certified nurse aide training program is conducted by a health care facility and a student of that program subsequently accepts and begins employment with the facility within thirty days of completing the program, the criminal history and abuse registry checks of the student performed pursuant to this subsection shall be deemed to fulfill the requirements for such checks prior to employment pursuant to subsection 1.

94 Acts, ch 1130, §12; 97 Acts, ch 42, §1; 98 Acts, ch 1141, §2; 98 Acts, ch 1223, §20, 21; 99 Acts, ch 96, §11; 99 Acts, ch 114, §5; 2001 Acts, ch 8, §1; 2001 Acts, ch 20, §2, 3; 2001 Acts, ch 64, §4; 2002 Acts, ch 1050, §18; 2003 Acts, ch 166, §2; 2006 Acts, ch 1069, §1; 2008 Acts, ch 1187, §112; 2009 Acts, ch 133, §36; 2010 Acts, ch 1012, §1, 2; 2012 Acts, ch 1074, §1

Referred to in §135B.34, 135C.36, 152.5, 231B.2, 231C.3, 231D.14, 235A.15, 235A.16, 235B.6, 237A.5

[P] Legislative intent; 98 Acts, ch 1217, §36

[T] Subsection 4, paragraph b amended

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C2-21-16
Baltimore, Maryland 21244-1850



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 13-41-NH

DATE: June 21, 2013

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Notice –Revision to the Ninth Opportunity National Background Check Program Funding

Memorandum Summary

- **Notice:** The Centers for Medicare & Medicaid Services (CMS) is revising the ninth solicitation for the National Background Check Program (NBCP) for any States or U.S. Territories that were unable to meet the previous deadline for submitting their applications under the previous solicitation.
- **Application Deadline:** Applications will be accepted on a flow basis and acted on every 30 days.

Overview

The CMS will revise the ninth multi-year *National Background Check Program for Patient Protection* solicitation for Federal matching grants to all States and the U.S. Territories that did not submit proposals during previous solicitations. States that applied during the previous solicitations, but did *not* receive the full award amount may apply for the remaining amount allowed under the provisions of the law at section 6201 of the Affordable Care Act. The Federal matching funds and State funds will be used by States to perform criminal background checks for direct patient access employees of long-term care facilities and other providers.

The nationwide program will identify efficient, effective and economical procedures for long term care facilities and other providers to conduct background checks on prospective direct patient/resident access employees. Eligible facilities and other providers include skilled nursing facilities, nursing facilities, home health agencies, hospice care providers, long-term care hospitals, personal care service providers, adult day care providers, residential care providers, assisted living facilities, intermediate care facilities for individuals with intellectual disabilities and other entities that provide long-term care services, as specified by each participating State. The State Office of the Governor, State Medicaid Agency, or the State Survey Agency may apply for funding under this grant opportunity. In order to participate in this nationwide

The State Office of the Governor, State Medicaid Agency, or the State Survey Agency may apply for funding under this grant opportunity. In order to participate in this nationwide program, a State must guarantee that it will make available non-Federal funds to cover a portion of the cost to be incurred by the State to carry out the Program in their State. The participating State must make available non-Federal contributions as a condition of receiving the Federal match under this Agreement. CMS will provide Federal grant funds to each newly participating State that enters into this Agreement with CMS at a rate which will be three times the amount that the State guarantees, not to exceed \$3 million dollars in Federal funds from the beginning of the award period through a 36-month project/budget period. For States that previously participated in the Pilot Program (2004-2007), funding may not exceed \$1.5 million dollars. States may use civil monetary penalty funds to meet state match requirements.

Ninth Opportunity for States to Apply

The ninth solicitation for the NBCP will be released soon and applications will be due May 31, 2013. **We encourage all States that have not applied to take this opportunity to participate.** The ninth opportunity will be particularly useful to those States that have been considering the potential for an effective background check program to ensure a quality long-term care workforce, but needed more time to work with all State level interested parties. Additionally, for States that have identified issues that would impact their ability to implement the program, CMS is available to work individually with those States that are interested in applying.

The Nationwide Program for National and State Background Checks for Direct Patient Access Employees of Long Term Care Facilities and Providers solicitation will soon be posted at: <http://www.grants.gov>.

Information about the National Background Check Program will be updated periodically. In the meantime, States may wish to review the solicitation, as well as the Questions and Answers document and Pilot Evaluation located on our CMS website at: <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/BackgroundCheck.html>

If you have any questions about this upcoming opportunity, you may contact Background Check Program staff via the mailbox at background_checks@cms.hhs.gov. We hope you will consider becoming a part of this important new Federal and State partnership opportunity to enhance the safety and quality of care for our nation's long-term care population.

Effective Date: Immediately. This policy should be shared with all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days of this memorandum.

/s/
Thomas E. Hamilton

cc: Survey and Certification Regional Office Management



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 13-12- NH

DATE: March 1, 2013
TO: State Survey Agency Directors
FROM: Director
Survey and Certification Group
SUBJECT: Notice -Ninth Opportunity National Background Check Program Funding

Memorandum Summary

- **Notice:** The Centers for Medicare & Medicaid Services (CMS) will release a ninth solicitation for the National Background Check Program (NBCP) for any States or U.S. Territories that were unable to meet the previous deadline for submitting their applications under the previous solicitation.
- **Application Deadline:** Applications will be due on May 31, 2013.

Overview

The CMS will issue a ninth multi-year *National Background Check Program for Patient Protection* solicitation for Federal matching grants to all States and the U.S. Territories that did not submit proposals during previous solicitations. States that applied during the previous solicitations, but did *not* receive the full award amount may apply for the remaining amount allowed under the provisions of the law at section 6201 of the Affordable Care Act. The Federal matching funds and State funds will be used by States to perform criminal background checks for direct patient access employees of long-term care facilities and providers. CMS received applications from 26 States and Territories that met the time frame for submitting a proposal under the first eight solicitations. To date, 22 States have been awarded grants.

The nationwide program will identify efficient, effective and economical procedures for long term care facilities and providers to conduct background checks on prospective direct patient/resident access employees. Eligible facilities and providers include skilled nursing facilities, nursing facilities, home health agencies, hospice care providers, long-term care hospitals, personal care service providers, adult day care providers, residential care providers, assisted living facilities, intermediate care facilities for individuals with intellectual disabilities and other entities that provide long-term care services, as specified by each participating State.

program, a State must guarantee that it will make available non-Federal funds to cover a portion of the cost to be incurred by the State to carry out the Program in their State as a condition of receiving the Federal match under this Agreement. CMS will provide Federal grant funds to each newly participating State that enters into this Agreement with CMS at a rate which will be three times the amount that the State guarantees, not to exceed \$3 million dollars in Federal funds from the beginning of the award period through a 36-month project/budget period. For States that previously participated in the Pilot Program (2004-2007), funding may not exceed \$1.5 million dollars. States may use civil monetary penalty funds to meet State match requirements.

Ninth Opportunity for States to Apply

We encourage all States that have not applied to take this opportunity to participate. Applications for the ninth solicitation will be acted on every 30 days. The ninth solicitation will be particularly useful to those States that have been considering the potential for an effective background check program to ensure a quality long-term care workforce, but needed more time to work with all State level interested parties. For States that have identified issues that would impact their ability to implement the program, CMS will be available to work individually with those States that are interested in applying.

The Nationwide Program for National and State Background Checks for Direct Patient Access Employees of Long Term Care Facilities and Providers solicitation will be posted at:
<http://www.grants.gov>.

Information about the National Background Check Program will be updated periodically. In the meantime, States may wish to review the solicitation, as well as the Questions and Answers document and Pilot Evaluation located on our CMS website at:
<http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/BackgroundCheck.html>

If you have any questions about this upcoming opportunity, you may contact Background Check Program staff via the mailbox at background_checks@cms.hhs.gov. We hope you will consider becoming a part of this important new Federal and State partnership opportunity to enhance the safety and quality of care for our nation's long-term care population.

Effective Date: Immediately. This policy should be shared with all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days of this memorandum.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management

**Iowa Department of Inspections and Appeals
Health Facilities Division
Record Checks – Frequently Asked Questions**

Introduction

Iowa Code section 135C.33 requires health care facilities to request criminal and child and dependent adult abuse record checks of prospective employees prior to employment. This section also applies to prospective employees of the following, if the provider is regulated by the state or receives any state or federal funding:

- An employee of a home health agency, home care aide, adult day services, or other provider of in-home services if the employee provides direct services to consumers.
- An employee of a hospice, if the employee provides direct services to consumers.
- An employee who provides direct services to consumers under a federal home and community-based services (HCBS) waiver.
- An employee of an elder group home certified under chapter 231B, if the employee provides direct services to consumers.
- An employee of an assisted living program certified under chapter 231C, if the employee provides direct services to consumers.

Iowa Code section 135B.34 requires hospitals to request criminal and child and dependent adult abuse record checks of prospective employees.

Administrative rules implementing Code sections 135C.33 and 135B.34 are found at 481—50.9 (health care facilities licensed pursuant to 135C) (effective September 11, 2013); 481—67.19 (assisted living, elder group homes, adult day services) (effective September 25, 2013); and 481—51.41 (hospitals) (rulemaking process for rule 51.41 to begin later in 2013).

The Department routinely receives questions related to record checks. The following are representative of the most commonly asked questions.

Definitions: “employee” and “crime”

Q1: Who is an “employee” for purposes of the records check requirement?

Q1: An employee is any individual who is paid either by the facility or any other entity (i.e., temporary agency, private duty, Medicare/Medicaid or independent contractors). *See also Q24.*

Q2: What is a “crime” for purposes of the records check statute?

A2: “Crime” does not include offenses under chapter 321 classified as a simple misdemeanor or equivalent simple misdemeanor offenses from another jurisdiction. **NOTE:** Simple misdemeanors under chapter 321 do not appear on a DCI criminal history record check.

Conviction

Q3: Is a deferred judgment a conviction for purposes of the records check statute?

A3: Yes, a deferred judgment is considered a conviction for purposes of the records check statute. If a criminal background check comes back with a deferred judgment – whether it is successfully completed (discharged) or not – the employer must request a Record Check Evaluation by the Department of Human Services (DHS) in order to employ the individual. *See Q7. NOTE: DCI criminal history reports may use the term “non-conviction” in reports where a deferred judgment has been discharged. A DHS Record Check Evaluation is required even if the deferred judgment has been discharged.*

Q4: Is a deferred sentence a conviction for purposes of the records check statute?

A4: Yes. A deferred sentence is considered a conviction for purposes of the records check statute. If a criminal background check comes back with a deferred sentence, the employer must request a Record Check Evaluation by the Department of Human Services (DHS) in order to employ the individual.

Q5: Is the adjudication of a juvenile delinquent in juvenile court a “conviction” for purposes of the records check statute?

A5: No. A juvenile who has been adjudicated a delinquent in juvenile court has not been convicted of a crime. Because a juvenile adjudication is not a “conviction,” DHS does not have the authority under Iowa law to perform a Record Check Evaluation when an individual’s background check reveals a juvenile adjudication. An employer (or nurse aide training program) may decide to adopt internal personnel policies to address how they will handle a juvenile adjudication on a criminal record check. DHS and/or DIA have no regulatory authority over those policies.

Record Check Evaluation

Q6: How long are the results of a background check valid?

A6: The results of a background check are valid for 30 calendar days from the date the results are received by the facility (or nurse aide program).

Q7: What is a “hit”?

A7: A “hit” is generated when there is a conviction on the Criminal Background Check or a founded abuse on the Central Abuse Registry check.

Q8: If a records check comes back with a “hit,” what must the employer do?

A8: When a “hit” is triggered by something that is listed on a Criminal Background or Central Abuse Registry (Dependent Adult or Child Abuse) check, and the employer intends to employ the individual, it must request a Record Check Evaluation by the Department of Human Services (DHS). DHS will determine whether the individual is employable at that specific entity at that time. *See also Q10.*

Q9: How long after receiving a records check with a “hit” must the facility request a Record Check Evaluation?

A9: DHS rules provide that if a record check comes back with a “hit,” the facility has 30 days to request an evaluation. (441 IAC 119.3(1))

Q10: How long after receiving an evaluation decision from DHS must the individual begin employment with the facility?

A10: DHS rules provide that once the facility receives an evaluation decision from DHS, employment must commence within 30 days. (441 IAC 119.3(1))

Q11: Person #1 required a Record Check Evaluation by DHS while working for Employer A. As a result of the evaluation, Person #1 was permitted to work. Employer B wants to hire Person #1, and has conducted the required record checks. (Employer A and Employer B are not owned by the same corporation.) The latest record checks reveal no criminal conviction or founded abuse since the prior evaluation. Is a new Record Check Evaluation by DHS required?

A11: Not necessarily. In 2012, the Iowa Legislature amended Iowa Code section 135C.33 to address this scenario (Senate File 2164, effective July 1, 2012). If **all** of the following apply, Employer B would **not** be required to request a Record Check Evaluation:

- The position with the subsequent employer (“Employer B”) is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed. “Substantially the same or has the same job responsibilities” means that 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 the same or substantially the same job responsibilities as a licensed nurse.
- Any restrictions placed on the person’s employment in the previous evaluation by DHS shall remain applicable in the person’s subsequent employment.
- The person subject to the record checks provides a copy of the previous evaluation to the subsequent employer (“Employer B”); or, the previous employer (“Employer A”) 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 (“Employer B”), the record checks must be reevaluated by DHS.

NOTE: Although an exemption from the evaluation requirement may be authorized, the subsequent employer may choose to request an evaluation of the record checks and may employ the person while the reevaluation is being performed.

Q12: May the facility employ a person pending the completion of the Record Check Evaluation?

A12: Senate File 347, effective in April 2013, allows employment pending a Record Check Evaluation in certain circumstances. If **all** the following apply, the facility may employ a person for not more than 60 calendar days (beginning the first day of the person’s employment) pending the completion of a Record Check Evaluation by DHS:

- The person is being considered for employment other than employment involving the operation of a motor vehicle;
- The person does not have a record of founded child or dependent adult abuse;
- The person has been convicted of a crime that is a simple misdemeanor offense under Iowa Code section 123.47 (providing alcohol to a minor or minor in possession of alcohol) or a first offense of operating a motor vehicle while intoxicated under Iowa Code section 321J.2(1); and
- The facility has requested that DHS perform an evaluation to determine whether the crime warrants prohibition of the person’s employment.

Q13: Who do I contact for more information about the Record Check Evaluation process?

A13: For more information regarding this process, contact staff at DHS directly:

Main email address: recordcheckevals@dhs.state.ia.us

Sonia Houghton (support staff) 515.362.7420 or shought@dhs.state.ia.us

Russ Saunders 515.362.7440 or rsaunde@dhs.state.ia.us

Rex Hall 515.362.7441 or rhall@dhs.state.ia.us

Conviction after Hire

Q14: What must a current employee of the facility do if the employee 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?

A14: If an employee 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, the person is required by law to inform the employer of the information within 48 hours of the conviction or entry of the record of founded abuse.

Q15: What if a current employee fails to notify the employer of a criminal conviction or entry of an abuse record within the time period required?

A15: Failure to inform the employer within the required time period is a serious misdemeanor. The employer may notify the county attorney for the county where the employer is located of any violation.

Q16: What is the employer's duty upon learning of a current employee's conviction or founded abuse record?

A16: The employer must act to verify the information within 48 hours of notification by the employee. If the information is provided by someone other than the employee, and the employer determines it is credible information, the employer must still act to verify the information within 48 hours.

Q17: How must the employer verify a current employee's conviction or founded abuse?

A17: The employer may verify a conviction or founded abuse that occurs after the person's employment by accessing the single contact repository (SING) to perform a background check, by requesting a criminal background check from the department of public safety, by requesting an abuse record check from the department of human services, by conducting an online search through the Iowa Courts Online web site (www.iowacourtsonline.org), or by contacting the county clerk of court office to obtain a copy of any documents showing a conviction. **NOTE:** There may be a time delay between when a conviction occurs and when it appears in the SING system.

Q18: What must the employer do after verifying a conviction or founded abuse?

A18: The employer must request a Record Check Evaluation by DHS to determine whether prohibition of the person's employment is warranted. The employer may continue to employ the person pending performance of the evaluation.

Q19: What is the employer's duty, if the employer learns that a current employee has been charged with a crime (but not yet convicted), to follow up with the employee to determine the disposition of the charges?

A19: While not required by law, the Department recommends the employer check quarterly to determine the status of the charges, and maintain documentation of the checks in the personnel file.

Single Contact Repository (SING)

Q20: What is the Single Contact Repository (SING)?

A20: The Single Contact Repository (SING) is an internet application developed and sponsored by the Iowa Department of Administrative Services / Information Technology Enterprise (DAS/ITE) that allows registered users to perform background checks from a single web screen. The application lets a user check Iowa criminal history, three abuse registries (child, dependent adult, and sex offender), and over 40 Public Health professional license types from one click on the screen. The SING web site is a secured site - only registered users can access the information. The type of organization determines to which of the databases they have legal access.

Q21: How can an employer access SING?

A21: For more information about SING and how to access it, visit <http://das.ite.iowa.gov/aegs/enterprise/sing.html> or contact Patsy Tallman, Application and E-Government Services, DAS/ITE at (515) 281-5503 or patsy.tallman@iowa.gov.

Q22: Are employers required to use SING?

A22: No. If an employer chooses not to use SING, the proper forms must be obtained from the DCI (criminal check) and DHS (child and dependent adult abuse check), completed and submitted. Additional information and forms are available at:

DCI (criminal history):

http://www.dps.state.ia.us/DCI/supportoperations/crimhistory/obtain_records.shtml

DHS (child and dependent adult abuse): <http://www.dhs.state.ia.us/dhsforms.html>

Q23: What if a prospective employee discloses a conviction on her/his job application, but the conviction does not appear on the SING report?

A23: There may be a time delay between when a conviction occurs and when it appears in the SING system. Iowa law prohibits a person who has been convicted of a crime or has a record of founded abuse from employment unless an evaluation has been performed by DHS. If the employer has knowledge of an applicant's conviction, and the conviction does not appear on the SING report, the employer should follow-up on the information and seek a Record Check Evaluation where appropriate. Follow-up may include, but is not limited to: searching Iowa Courts Online (www.iowacourtsonline.org) or contacting the county courthouse for the county where the conviction occurred to obtain a copy of any documents showing a conviction. Those documents may be forwarded to DHS for the Record Check Evaluation.

Independent Contractors / Staffing Agency

Q24: What is the facility's duty regarding records checks if an individual working in the facility is employed by a temporary employment agency or contractor, rather than the facility?

A24: Generally, the temporary employment agency or contractor is responsible for conducting the records check, and proof of the checks may be kept in files maintained by the temporary agency or contractor. The facility may require the temporary agency or contractor to provide a copy of the results of the records checks, including any DHS Record Check Evaluation. The facility must be able to provide record check and evaluation information for temporary or contracted employees upon request of the Department.

Employee Transfer

Q25: An employee at Employer A transfers to Employer B, owned and operated by the same corporation, without a lapse in employment. Does Iowa law require a new record check?

A25: No.

Q26: An employee at an Iowa facility transferred to a facility in another state owned by the same corporation. Thereafter, the same employee transferred back to an Iowa facility, again within the same corporation. There was no lapse in employment and no change in ownership. Does Iowa law require a new background check be conducted in Iowa?

A26: Iowa Code section 135C.33(2)(d)(1) provides that if an employee of one facility owned and operated by the same entity transfers to another facility without a lapse in employment, a new background check is not required. Iowa law does not specify whether both of those facilities must be in Iowa.

Q27: An employee who had never worked in Iowa transferred from an out-of-state facility to a facility in Iowa owned by the same corporation. Does Iowa law require a record check be conducted in Iowa?

A27: Yes. Although the employee has maintained employment with the same corporation, the employee has not worked in an Iowa facility for that corporation. As a result, Iowa law requires that an Iowa background check be conducted.

Change of Ownership

Q28: Ownership of the facility is transferred. Does Iowa law require that new record checks be performed on all employees?

A28: No. At the time of transfer of ownership, record checks must be performed only for employees for whom there is no documentation that such record checks have been performed. The facility may continue to employ such employees pending the performance of the record checks and any related evaluation.

Re-employment

Q29: An employee leaves her/his employment and later returns to work for the same employer. Is a new background check required?

A29: Yes. If the employer-employee relationship was terminated, a new background check is required if the employee returns to work for the same employer.

Certified Nurse Aide Students

Q30: Does Iowa law require certified nurse aide students to have record checks?

A30: Yes. In 2010, the Iowa Legislature added a requirement that certified nurse aide training programs must conduct records check of students prior to a student beginning or returning to a certified nurse aide training program.

Q31: Are students in other healthcare related programs of study, such as nursing or physical therapy, required by Iowa law to have record checks prior to enrollment?

A31: Iowa Code section 152.5 requires a record check for nursing students. DIA does not regulate or enforce background checks for students in programs of study other than certified nurse aide programs. Please contact the licensing board for the specific profession for more information.

Maiden Name / Multiple Surnames

Q32: Are facilities required by law to run a record check using an individual's maiden name?

A32: If the SING system is used, the Department's administrative rules require the facility to submit the person's maiden name, if applicable, with the background check request. A check of the maiden name can be performed for no extra charge.

Q33: Are facilities required by law to run a record check using an individual's prior surname(s) or aliases?

A33: No, Iowa law does not require a record check of all surnames / aliases.



**Background Check Study Committee
October 21, 2013 Minutes**

Committee Members in Attendance:

Angell Boyd, Department of Public Safety
Erin Drinnin, Department of Public Health
Dawn Fisk, Department of Inspections and Appeals
Jeff Franklin, Department of Administrative Services
Dave Jobes, Department of Public Safety
Lori Lipscomb, Department of Human Services
Deborah Svec-Carstens, Department of Inspections and Appeals
Beverly Zylstra, Department of Inspections and Appeals

Other Attendees:

Sara Allen, Iowa Hospital Association
Greg Boattenhamer, Iowa Hospital Association/Iowa Alliance in Home Care
Edie Bogaczyk, Iowa Association of Community Providers
Kelsey Clark, Iowa Association of Community Providers
Erika Eckley, Iowa Hospital Association
Amber Markham, Department of Public Safety
Marcus Miller, Ultimate Nursing Services
Kimberly Murphy, Department on Aging
Bill Nutty, LeadingAge Iowa
John Pollak, Legislative Services Agency
Ron Robinson, Legislative Services Agency
Ted Stopulos, Iowa Health Care Association
Jeanie Waters, 3rd Degree Screening
Ken Watkins, Iowa Health Care Association

Attendees were provided a packet of information consisting of:

- Agenda
- September 13, 2013 meeting minutes
- Report on child abuse registries in other states
- Potential Improvements identified at the 9-13-13 meeting
- Social Security Act definitions for home health services and home health agency

Approval of Minutes

Motion made by Jeff Franklin and seconded by Angell Boyd to approve the minutes from the September 13, 2013 meeting. Minutes approved as written.

Review of additional information from other states

Information was shared regarding child abuse registries in other states. For the next meeting, Lori will put together a summary of information for border states.

Deborah will get dependent adult abuse background check information for border states for the next meeting.

Discussion on recommendations

At the previous meeting, some initial recommendations for improvements were discussed. The Committee and Attendees provided additional recommendations and expanded discussion of prior recommendations.

- Eliminate evaluations for certain crimes or aged crimes, such as 5 years or older
 - Entities need to be aware that even if certain or aged crimes are eliminated for evaluation purposes, liability insurance companies may still consider these crimes in determining insurability and rates
 - Need to include in FAQs
 - If a crime is going to always be eliminated by DHS in their evaluation of the person for work purposes, why not just exempt
 - Would need to identify which crimes, what timeframe
 - Would require legislation
 - Need more data before a final recommendation is made
- Add more names, such as aliases, to original request
 - Current system allows 2 names
 - Would require a system change to SING, which would incur a cost
 - May require an enhanced fee when more than two names are entered
- Change the 48-hour requirement for a facility, service, or program employer to verify information after notification by an employee or other credible information of a criminal conviction or entry of a founded child or dependent adult abuse record. [Iowa Code section 135C.33(7)(a and b)]
 - Change to 7 calendar days
 - Would require a legislative change
- Move from mail and FAX to secure email, although could be costly
 - Purpose would be for providers to email requests to DHS and DHS would email back their evaluation decision
 - Secure email is available through an Authorization and Authentication (A & A) System, which is encrypted for security purposes
 - Could do a pilot to see how well it works
- Give top processing priority to pre-employment background checks

- Department of Public Safety reported that child care and entities covered under Iowa Code sections 135B.34 and 135C.33 are required to do pre-employment background checks.
- Under Iowa Code chapter 279, a school district must initiate a record check from a variety of sources prior to entering into an initial contract with a teacher who holds a license other than one issued by the Board of Educational Examiners.
- Under Iowa Code chapter 272 and associated rules under 282 IAC chapters 12 and 13, a background check is conducted prior to the Board of Educational Examiners issuing an initial license.
- In order to determine if this recommendation is feasible/practicable, data on the number of requests by category of employer is necessary. Public Safety will research and provide the information at the next meeting.
- Do training of providers via webinar, conferences, fact sheets, websites, mini-sessions, PowerPoint
 - Add Frequently Asked Questions (FAQs) to the SING website
 - Be cautious about how much is placed on the site
 - Iowa Association of Community Providers is developing a PowerPoint
 - Need Background Check 101 in an "on-demand" training
 - DHS has done a webinar and provided a checklist of information needed to evaluate a conviction or founded abuse
- On-line forms, etc.
 - IowaAccess is a possible funding source
 - Website/Web Portal
 - On-demand training
 - Front end that would link to other sites
 - Possible same front end that would go to a site specifically related to a category, such as long-term care, hospital, child care, etc.
 - Board of Nursing may be an example of how this would work
 - May improve turnaround

Discussion on Background Checks for Unregulated Home Health

- How to identify
 - Currently no verified data available
 - Greg shared 180 certified home health agencies and estimate of 120 non-certified home health agencies
 - Greg said that they think most of the non-certified home health agencies of which they are aware are probably already doing background checks but not certain
 - According to HFD website – 170 Medicare-certified home health agencies in Iowa
 - Would have to do massive and directed outreach
 - Range of Services
 - How to define home health services
 - Erin will get their definition of home care

- CMS definition was provided in packets
- Enforcement
 - Currently nothing in place to enforce a background check requirement, if there was such a requirement for uncertified home health providers
 - Licensure?
 - Different structure
 - Cost?
- Direct Care Professionals providing home health services
 - Has been discussed by the Direct Care Worker Advisory Council
 - Estimate 75,000 DCPs in a variety of settings (includes CNAs)
 - Certification?
- Would increase volume checking on SING and number of evaluations
- How to balance consumer rights
 - Can I have my daughter who has a criminal or abuse background provide care to me? Would this be prevented?
- Initial recommendation
 - Start with education of public, providers, various organizations
 - What should you be looking for when hiring care providers
 - Also talk about elder abuse

Next Steps

Finalize recommendations for improvements to the current background check process, including any technology improvements.

Continue discussion of the inclusion of unregulated home health providers in background check requirements and finalize recommendation.

Assignments

Angell will get data on categories and number of requests

Lori will get data on categories of crimes evaluated

Erin will send their definition of home care

Lori will put together a summary of information for border states on child abuse registries.

Deborah will get dependent adult abuse background check information for border states.

Next Meeting

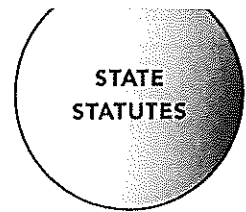
The next meeting will be November 18, 2013 at 9:00 a.m. in Conference Rooms 319 and 320 at the Lucas State Office Building, 3rd Floor, 321 E. 12th Street, Des Moines. The report is due to the Governor and General Assembly by December 15, 2013.

Meeting adjourned.



Child Welfare Information Gateway

PROTECTING CHILDREN ■ STRENGTHENING FAMILIES



Current Through
June 2011

Establishment and Maintenance of Central Registries for Child Abuse Reports

Every State has procedures for maintaining records of child abuse and neglect. Most States maintain a central registry, which is a centralized database of child abuse and neglect investigation records. Approximately 40 States, the District of Columbia, American Samoa, Guam, and Puerto Rico require central registries in statute.¹ Registries

¹ The word *approximately* is used to stress the fact that States frequently amend their laws. This information is current through June 2011. States that mandate a central registry in their statutes include Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, and Wyoming.

Electronic copies of this publication may be downloaded at http://www.childwelfare.gov/systemwide/laws_policies/statutes/centreg.cfm

To find statute information for a particular State, go to http://www.childwelfare.gov/systemwide/laws_policies/search/index.cfm

To find information on all the States and territories, order a copy of the full-length PDF by calling 800.394.3366 or download it at http://www.childwelfare.gov/systemwide/laws_policies/statutes/centreg.pdf



U.S. Department of Health and Human Services
Administration for Children and Families
Administration on Children, Youth and Families
Children's Bureau



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Purpose of Central Registries

in other States, however, may be maintained as a matter of administrative or agency policy rather than statutory mandate and are beyond the scope of this publication.²

In approximately six States, the statutes do not authorize statewide, centralized registries.³ In these States, the individual State agencies that received the reports of suspected abuse or neglect are required to maintain these records. Four States, the Northern Mariana Islands, and the U.S. Virgin Islands do not address the issue of central registries in their statutes.⁴

Central registries and the systematic record keeping of child abuse and neglect reports serve to assist in the identification and protection of abused and neglected children. Central registry reports are typically used to aid social services agencies in the investigation, treatment, and prevention of child abuse cases and to maintain statistical information for staffing and funding purposes.

In many States, central registry records are used to screen persons who will be entrusted with the care of children. Approximately 31 States and the District of Columbia allow or require a check of central registry or department records for individuals applying to be child or youth care providers.⁵ Information is made available to employers in the child care business, schools, or health-care industry. Most States also require a check of central registry records as part of the background check for foster and adoptive parent applicants.⁶

² For information on State registries, see Chapter 4 of the April 2003 *National Study of Child Protective Services Systems and Reform Efforts: Review of State CPS Policy* by the U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, and Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau: <http://aspe.hhs.gov/hsp/CPS-status03/state-policy03/chapter4.htm>

³ Colorado, Maine, Minnesota, Washington, West Virginia, and Wisconsin.

⁴ Kansas, Kentucky, New Mexico, and Ohio.

⁵ Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, and Wyoming. See Information Gateway's *Disclosure of Confidential Child Abuse and Neglect Records*: http://www.childwelfare.gov/systemwide/laws_policies/statutes/confide.cfm

⁶ For more information on requirements to obtain central registry clearances for prospective foster and adoptive parents, see Information Gateway's *Criminal Background Checks for Prospective Foster and Adoptive Parents*: http://www.childwelfare.gov/systemwide/laws_policies/statutes/background.cfm

Contents and Maintenance

The type of information contained in central registries and department records varies from State to State but usually includes the child's name and address; the name of the mother, father, or guardian; the name of any siblings; the nature of the harm to the child; the name of the alleged perpetrator(s); and the findings of any investigations. Some States maintain all investigated reports of abuse and neglect in their central registries, while others maintain only substantiated reports. Access to information maintained in registries and department records also varies among States.⁷ In addition, the length of time the information is held and the conditions for expunction vary from State to State.⁸

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be complete, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.

Suggested Citation:

Child Welfare Information Gateway. (2011). *Establishment and maintenance of central registries for child abuse reports*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.

⁷ See Information Gateway's *Disclosure of Confidential Child Abuse and Neglect Records*: http://www.childwelfare.gov/systemwide/laws_policies/statutes/confide.cfm

⁸ See Information Gateway's *Review and Expunction of Central Registries and Reporting Records*: http://www.childwelfare.gov/systemwide/laws_policies/statutes/registry.cfm

Alabama

Establishment

Ala. Code § 26-14-8

The Department of Human Resources shall establish a statewide central registry.

Purpose

Ala. Code § 26-14-8

The purpose of the central registry is to:

- Contain reports of child abuse and neglect
- Prevent or to discover abuse or neglect of children through the information contained therein

Reports or records in cases determined to be 'not indicated' shall not be used or disclosed for purposes of employment or other background checks.

Contents

Ala. Code § 26-14-8

The central registry shall contain:

- All information in any written reports
- The record of the final disposition of the report, including services offered and services accepted
- The plan for rehabilitative treatment
- The names of persons requesting information from the registry

Maintenance

Ala. Code § 26-14-8

Requests for information where no report exists may be destroyed 3 years from the date of the request.

Alaska

Establishment

Alaska Stat. § 47.17.040(a)

The Department of Health and Social Services shall maintain a central registry.

Purpose

Alaska Stat. § 47.17.040(b)

In accordance with department regulations, investigation reports may be used by appropriate governmental agencies with child-protection functions, inside and outside the State, in connection with investigations or judicial proceedings involving child abuse, neglect, or custody.

Contents

Alaska Stat. § 47.17.040(a)

The registry shall contain all investigation reports but not the reports of harm.

Maintenance

The registry shall contain all investigation reports but not the reports of harm.

American Samoa**Establishment****Ann. Code § 45.2020**

A central registry is established within the Child Protection Agency of the Department of Human Resources.

Purpose**Ann. Code § 45.2021**

Reports in the registry are used to determine the existence of prior records in order to evaluate the circumstances of the child.

Contents**Ann. Code § 45.2022**

The registry shall contain:

- All information in the written reports
- The final disposition of the report, including services offered and services accepted
- The plan for rehabilitative treatment
- The names of persons requesting information from the registry

Maintenance

The registry shall contain all investigation reports but not the reports of harm.

Arizona**Establishment****Rev. Stat. § 8-804(A)**

The Department of Economic Security shall maintain a central registry.

Purpose**Rev. Stat. §§ 8-804; 8-804.01**

The records in the registry may be used:

- To conduct background checks as one factor to determine qualifications for foster home licensing, adoptive parent certification, child care home certification, registration of unregulated child care homes with the child care resource and referral system, and home and community-based services certification for services to children
- To conduct background checks as one factor to determine qualifications for persons applying for employment in positions that provide direct service to children or vulnerable adults
- To identify and review reports concerning individual children and families, in order to facilitate the assessment of risk
- To determine the nature and scope of child abuse and neglect in this State and to provide statewide statistical and demographic information concerning trends in child abuse and neglect
- To allow comparisons of this State's statistical data with national data
- To comply with § 8-804.01(B), which allows use of the records:
 - » To assess the safety and risk to a child
 - » To determine placement
 - » To determine type and level of services
 - » To assist in a criminal investigation
 - » To meet Federal and State reporting requirements

Contents**Rev. Stat. § 8-804(A)-(B)**

A finding made by a court pursuant to § 8-844(C) that a child is dependent based upon an allegation of abuse or neglect shall be recorded as a substantiated finding of abuse or neglect. The registry will maintain reports of child abuse and neglect that are substantiated and the outcome of investigations.

Maintenance**Rev. Stat. §§ 8-804; 8-804.01**

If the department received a report before September 1, 1999, and determined that the report was substantiated, the department shall maintain the report in the central registry until 18 years from the child victim's date of birth.

If the department received a report on or after September 1, 1999, and determined that the report was substantiated, the department shall maintain the report in the central registry for 25 years after the date of the report.

All reports of child abuse and neglect and related records shall be maintained in the department's case management information system in accordance with the timeframes established in the department's records retention schedule.

Arkansas**Establishment****Ann. Code § 12-18-901**

There is established within the Department of Human Services a statewide Child Maltreatment Central Registry.

Purpose

This issue is not addressed in the statutes reviewed.

Contents**Ann. Code §§ 12-18-902; 15-18-906**

The Child Maltreatment Central Registry shall contain records of cases on all true investigative determinations of child maltreatment. Records of all cases in which allegations are determined to be unsubstantiated shall not be included in the central registry.

Maintenance**Ann. Code §§ 12-18-908; 12-18-910**

If an adult offender is found guilty of, pleads guilty to, or pleads nolo contendere to an act that is the same act for which the offender is named in the central registry, regardless of any subsequent expunction of the offense from the offender's criminal record, the offender shall always remain in the central registry, unless the conviction is reversed or vacated.

Hard copy records of unsubstantiated reports shall be retained no longer than 18 months for purposes of audit.

Information included in the automated data system shall be retained indefinitely to assist in future risk and safety assessment.

California**Establishment****Penal Code § 11170**

The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to § 11169.

Purpose**Penal Code § 11170**

Information from the Child Abuse Central Index shall be provided to specific persons or agencies for the following purposes:

- For investigating a case of known or suspected child abuse or neglect
- For conducting background checks of employment or volunteer candidates
- For placing children or assessing the possible placement of children
- For conducting a background investigation of an applicant seeking employment as a peace officer
- For conducting a background investigation of an applicant seeking employment or volunteer status in a position that will give the person direct contact with children

Contents**Penal Code §§ 11167; 11169**

Reports of suspected child abuse or neglect pursuant to § 11166 or § 11166.05 shall include the name, business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; and the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information.

The report shall include the following information, if known:

- The child's name
- The child's address, present location, and, if applicable, school, grade, and class
- The names, addresses, and telephone numbers of the child's parents or guardians
- The name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child

An agency shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect that is determined not to be unfounded. An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded.

Maintenance**Penal Code § 11170**

The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

The Department of Justice shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index. The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.

Colorado**Establishment****Rev. Stat. § 19-3-313.5***Effective January 1, 2004, Colorado repealed its law providing for a central registry.*

The State Department [of Social Services] shall maintain the records and reports of child abuse and neglect.

Purpose**Rev. Stat. § 19-3-313.5**

Records or reports may be used for purposes of employment checks or other background checks unless it is determined that a report is to be unsubstantiated or false.

The State Department may maintain such records and reports in case files for assisting in determinations of future risk and safety assessments.

Contents**Rev. Stat. § 19-3-313.5**

The State Department shall provide reliable, accurate, and timely information concerning records and reports of child abuse or neglect.

Maintenance**Rev. Stat. § 19-3-313.5**

The State Department shall provide training to county departments to achieve consistency and standardization in entering data into computer systems maintaining information related to records and reports of child abuse or neglect.

Connecticut**Establishment****Gen Stat. § 17a-101k**

The Commissioner of Children and Families shall maintain a registry of the Commissioner's findings of abuse or neglect of children.

Purpose**Gen Stat. § 17a-101k**

Regulations shall be adopted that shall provide for the use of the registry on a 24-hour basis to prevent or discover abuse of children.

Contents**Gen Stat. § 17a-101k**

The Commissioner shall adopt regulations that implement the provisions of this section.

Maintenance**Gen Stat. § 17a-101k**

The Commissioner shall establish a hearing process for any appeal by a person of a determination that a person is responsible for the abuse of a child.

Delaware**Establishment****Ann. Code Tit. 16, § 921**

The Division of Family Services shall maintain a Child Protection Registry.

Purpose**Ann. Code Tit. 16, § 921**

The primary purpose of the registry is to protect children and to ensure the safety of children in child care, health-care, and public educational facilities.

Contents**Ann. Code Tit. 16, § 921**

The registry will contain information about persons who have been substantiated for abuse or neglect as provided in this subchapter or who were substantiated between August 1, 1994, and February 1, 2003.

Maintenance**Ann. Code Tit. 16, § 922**

The registry must indicate 'substantiated for abuse' or 'substantiated for neglect' and the Child Protection Level as designated in § 923 for any person who:

- Based on the same incident of abuse or neglect on which the substantiation proceeding is premised, has been convicted of any criminal offense set out in § 923 of this subchapter or any equivalent offense in another State
- Has been found by the family court in a child welfare proceeding, by a preponderance of the evidence, to have abused or neglected a child
- Fails to make a timely, written request for a hearing as provided in § 924(a)(2) after being given notice by the division of its intent to substantiate the person for abuse or neglect and enter the person on the registry
- Is entered on the registry by court order in a proceeding on a Petition for Substantiation
- Was substantiated for abuse or neglect between August 1, 1994, and February 1, 2003

District of Columbia**Establishment****Ann. Code § 4-1302.01**

The Child and Family Services Agency shall maintain a Child Protection Register.

Purpose**Ann. Code § 4-1302.01**

The purposes of the register are to:

- Maintain a confidential index of cases of abused or neglected children
- Assist in identification and treatment of abused and neglected children and their families
- Serve as a resource for the evaluation, management, and planning of programs and services for abused and neglected children

Contents**Ann. Code § 4-1302.02**

The register shall retain the following information about each substantiated and inconclusive report:

- The recipient of the report
- The date and time of the receipt of the report
- The information required by § 4-1321.03
- The ward in which the child lives and other demographic information concerning the incident
- The agencies to which the report was referred and the date and time of the referral
- The agency making the initial investigation, the summary of the results of the initial investigation, and the dates and the times the investigations were begun and terminated
- The agency making the social investigation, the summary of the results of the social investigation, the dates and the times said investigation was begun and terminated, the services offered, and when they were offered
- The agency or agencies to which the referrals were made and the services requested, with the dates of the opening and the closing of the case
- The placements of the child and the dates of each placement
- Court actions concerning the child and the dates thereof
- The date the case was closed
- Other information required for research, planning, evaluation, and management purposes

Maintenance**Ann. Code § 4-1302.02**

The staff that maintains the register shall review all open cases every 6 months to assure that information is current.

Florida**Establishment****Ann. Stat. § 39.201**

The Department of Children and Family Services shall establish and maintain a central abuse hotline to receive all reports made pursuant to this section in writing, via fax, via web-based reporting, or through a single statewide toll-free telephone number, which any person may use to report known or suspected child abuse, abandonment, or neglect at any hour of the day or night, any day of the week.

Purpose**Ann. Stat. § 39.201**

The central abuse hotline shall be operated in such a manner as to enable the department to:

- Immediately identify and locate prior reports or cases of child abuse, abandonment, or neglect through utilization of the department's automated tracking system
- Monitor and evaluate the effectiveness of the department's program for reporting and investigating suspected abuse, abandonment, or neglect of children through the development and analysis of statistical as well as other information
- Track critical steps in the investigative process to ensure compliance with all requirements for any report of abuse, abandonment, or neglect
- Maintain and produce aggregate statistical reports monitoring patterns of child abuse, child abandonment, and child neglect
- Serve as a resource for the evaluation, management, and planning of preventive and remedial services for children who have been subject to abuse, abandonment, or neglect
- Initiate and enter into agreements with other States for the purpose of gathering and sharing information contained in reports on child maltreatment to further enhance programs for the protection of children

Contents**Ann. Stat. § 39.201**

The department shall voice-record all incoming or outgoing calls that are received or placed by the central abuse hotline that relate to suspected or known child abuse, neglect, or abandonment. The department shall maintain an electronic copy of each fax and web-based report. The recording or electronic copy of each fax and web-based report shall become a part of the record of the report.

Maintenance**Ann. Stat. § 39.202**

The department shall make and keep reports and records of all cases under this chapter and shall preserve the records pertaining to a child and family until the child who is the subject of the record is age 30, and the department may then destroy the records.

Georgia**Establishment****Ann. Code § 49-5-181**

The Division of Family and Children Services shall establish and maintain a central registry.

Purpose**Ann. Code § 49-5-182**

The registry shall enable abuse investigators to:

- Immediately identify and locate prior reports of child abuse
- Maintain and produce aggregate statistical data of reported cases of child abuse

Contents**Ann. Code §§ 49-5-181; 49-5-183**

The central registry shall receive all information regarding confirmed and unconfirmed cases of child abuse reported to the division.

The abuse investigator shall make a report that shall include:

- The name, age, sex, race, Social Security number if known, and the birth date of the alleged child victim and the child's parents or caregiver
- The name, age, sex, race, Social Security number, and birth date of the person believed to have committed the abuse
- A summary of known details of the child abuse

Maintenance**Ann. Code § 49-5-184**

The division shall include on the abuse registry the name of the alleged abuser, whether the report was confirmed or unconfirmed, and the investigator's report.

Guam

Establishment

Ann. Code Tit. 19, § 13208

There shall be established in Child Protective Services:

- An active file of reports under investigation
- A central register of child abuse and neglect
- A 'suspected' file (for cases where an investigation is not able to determine whether a report is indicated, substantiated, or unsubstantiated)

Purpose

This issue is not addressed in the statutes reviewed.

Contents

Ann. Code Tit. 19, § 13208

The central register shall consist of substantiated and indicated reports of abuse or neglect. It shall be limited to the following information:

- The names and home addresses of the subjects of the reports
- The dates and nature and extent of the suspected abuse
- The age and sex of the children harmed or threatened with harm
- The locality in which the harm or threatened harm occurred
- Whether the report was classified as substantiated or indicated
- The progress of any legal proceedings brought on the basis of the report

Maintenance

Ann. Code Tit. 19, § 13208

If an investigation of a report of suspected child abuse or neglect does not determine, within 60 days from the date of the report, that the report is an indicated report, substantiated report, or an unsubstantiated report, all information identifying the subjects of such report shall be placed in the Child Protective Services' suspected file for a period of 1 year.

Hawaii

Establishment

Rev. Stat. § 350-2(d)

The Department of Human Services shall maintain a central registry.

Purpose

This issue is not addressed in the statutes reviewed.

Contents

Rev. Stat. § 350-2(d)

It shall be a registry of reported child abuse or neglect cases.

Maintenance

Rev. Stat. § 350-2(d)

The department may retain records and information of alleged abuse or neglect with respect to a child who is the subject of the alleged abuse. Reports of cases that are found to be unsubstantiated or are dismissed by a court shall be promptly expunged.

Idaho**Establishment****Idaho Code § 16-1629(3)**

The Department of Health and Welfare shall be required to maintain a central registry.

Purpose**Idaho Code § 16-1629(3)**

The registry shall be maintained for the reporting of child neglect, abuse, and abandonment information.

Contents**Idaho Code § 16-1629(6)**

The department shall keep written records of investigations, evaluations, prognoses, and all orders concerning disposition or treatment.

Maintenance**Idaho Code § 16-1629(6)**

The department shall keep the records of every person over whom it has legal custody.

Illinois**Establishment****Comp. Stat. Ch. 325, § 5/7.7**

There shall be a central register of all cases of suspected child abuse or neglect maintained by the Department of Children and Family Services.

Purpose**Comp. Stat. Ch. 325, § 5/7.7**

The register shall enable the department to:

- Immediately identify and locate prior reports of child abuse or neglect
- Continuously monitor the current status of all reports
- Regularly evaluate the effectiveness of laws and programs through the development and analysis of statistical and other information

Contents**Comp. Stat. Ch. 325, §§ 5/7.7; 5/7.8; 5/7.15**

The central register shall record all initial, preliminary, and final reports. The names and other identifying data and the dates and the circumstances of any persons requesting or receiving information from the central register shall be entered in the register record.

The central register may contain such other information that the department determines to be in furtherance of the purposes of this Act.

Maintenance**Comp. Stat. Ch. 325, §§ 5/7.7; 5/7.15**

The department shall maintain in the central register:

- A listing of unfounded reports where the subject of the unfounded report requests that the record not be expunged because the subject alleges an intentional false report was made
- A listing of unfounded reports where the report was classified as a priority 1 or priority 2 report in accordance with the department's rules, or the report was made by a mandated reporter
- A listing for 3 years of unfounded reports involving the death, sexual abuse, or serious physical injury of a child
- All other unfounded reports for 12 months following the date of the final finding

The department may amend or remove from the central register appropriate records upon good cause shown and upon notice to the subjects of the report and the Child Protective Service Unit.

Indiana**Establishment****Ann. Code § 31-33-26-2**

The Department of Child Services shall establish and maintain a centralized, computerized child protection index to organize and access data regarding substantiated reports of child abuse and neglect that the department receives from throughout Indiana.

Purpose**Ann. Code §§ 31-33-26-3; 31-33-26-10**

The index must include:

- Automated risk assessment for reviewing a substantiated child abuse or neglect case to determine prior case history
- The capability to allow supervisors to monitor child abuse and neglect cases and reports
- The automated production of standard reports that compiles information gathered on forms used by family case managers to report on child abuse and neglect cases
- The automation of other data for planning and evaluation
- The capability of same-day notification and transfer of statistical information to the department regarding new and closed child abuse and neglect cases
- The enabling of child welfare supervisors to review a child abuse or neglect determination at any point after the assessment is initially classified as substantiated, to confirm the status of the case, and to allow for the consolidated management of cases
- The capability for adjusting the index's programming at a later date if additional reporting requirements occur
- A word processing capability to allow case notes to be recorded with each substantiated case

The department shall administer the index in a manner that enables the department to do the following:

- Immediately identify and locate prior reports of child abuse or neglect through the use of the department's computerized tracking system and automated risk assessment system
- Track steps in the investigative process to ensure compliance with all requirements for a report of child abuse or neglect
- Maintain and produce aggregate statistical reports monitoring patterns of child abuse and neglect that the department shall make available to the public upon request
- Serve as a resource for the evaluation, management, and planning of preventive and remedial services to children who have been subject to child abuse or neglect

Contents**Ann. Code § 31-33-26-6**

The department shall store data regarding child abuse or neglect reports in a manner that allows the data to be retrieved based on the following, if known:

- The child's name
- The child's date of birth
- The alleged perpetrator's name
- The child's mother's name
- The child's father's name
- The name of a sibling of the child
- The name of the child's guardian or custodian, if applicable

Maintenance**Ann. Code § 31-33-26-18**

The department shall maintain and administer all reports and documents transferred to and included in the child protection index as provided in this chapter.

Iowa**Establishment****Ann. Stat. § 235A.14**

There is created within the State Department of Human Services a central registry for child abuse information.

Purpose**Ann. Stat. § 235A.14**

The registry shall collect, maintain, and disseminate child abuse information.

Contents**Ann. Stat. § 235A.14**

The registry shall:

- Accept reports of suspected child abuse or neglect
- Maintain records of any previous reports of abuse or neglect of the same child or another child in the same family
- Include report data and disposition data

The registry shall not include assessment data.

Maintenance**Ann. Stat. § 235A.14**

The department shall organize and staff the registry and adopt rules for its operation.

Kansas**Establishment**

Note: Ann. Stat. § 38-1520, establishing a child in need of care information system, was repealed by 2006 Kan. Sess. Laws 200, effective January 1, 2007.

Purpose

This issue is not addressed in the statutes reviewed.

Contents

This issue is not addressed in the statutes reviewed.

Maintenance

This issue is not addressed in the statutes reviewed.

Kentucky

Right of the Reported Person to Review and Challenge Records

Rev. Stat. § 620.050(5)(a)

The report of suspected child abuse, neglect, or dependency and all information obtained by the Cabinet of Health and Family Services or its delegated representative, as a result of an investigation or assessment made pursuant to this chapter, may be released to persons suspected of causing dependency, neglect, or abuse.

When Records Must Be Expunged

Rev. Stat. § 620.050(10)(c)

Unless objected to by the victim or victims, the court, on its own motion, or on motion of the attorney for the Commonwealth, shall order all recorded interviews that are introduced into evidence or are in the possession of the children's advocacy center, law enforcement, the prosecution, or the court to be sealed.

Louisiana

Right of the Reported Person to Review and Challenge Records
Children's Code Art. 616.1

When a report alleging abuse or neglect is recorded as justified by the Department of Social Services in the central registry but when no petition is subsequently filed alleging that the child is in need of care, the individual who is the subject of the finding may file a written motion seeking correction of that entry and all related department records in the court exercising juvenile jurisdiction in the parish in which the finding was made. If neither the department nor the district attorney files a written objection, the court may enter an order.

If, after a contradictory hearing with the department and the district attorney, the court finds that the report was not justified, and correction of the record is not contrary to the best interests of the child, it may order the department to correct the central registry entry.

If the central registry entry is ordered to be corrected, the department and any law enforcement office having any record of the report shall be ordered to correct those records and any other records, notations, or references thereto, and the court shall order the department and other custodians of these records to file a sworn affidavit to the effect that their records have been corrected. The affidavit of the department shall also attest to the correction of the central registry entry.

When Records Must Be Expunged
Children's Code Art. 616.2

The Bureau of Identification and Information in the Office of State Police shall maintain a central index registry of all reports of sexual abuse. All information regarding the reports shall be maintained by the Department of Public Safety and Corrections for 10 years from the date of receipt of the report, unless a subsequent report is received during that time, in which case, information from all reports will be maintained indefinitely.

Maine**Right of the Reported Person to Review and Challenge Records**

This issue is not addressed in the statutes reviewed.

When Records Must Be Expunged
Rev. Stat. Tit. 22, § 4008(5)

The Department of Human Services shall retain unsubstantiated child protective services case records for no more than 18 months following a finding of unsubstantiation and then expunge unsubstantiated case records from all departmental files or archives unless a new referral has been received within the 18-month retention period.

Unsubstantiated child protective services records of persons who were eligible for Medicaid services under the Federal Social Security Act, title XIX, at the time of the investigation may be retained for up to 5 years for the sole purpose of State and Federal audits of the Medicaid program. Unsubstantiated child protective services case records retained for audit purposes must be stored separately from other child protective services records and may not be used for any other purpose.

Maryland

Right of the Reported Person to Review and Challenge Records
Family Law § 5-706.1

Within 30 days after the completion of an investigation in which there has been a finding of indicated or unsubstantiated abuse or neglect, the local Department of Social Services shall notify in writing the individual alleged to have abused or neglected a child:

- Of the finding
- Of the opportunity to appeal the finding
- If the individual has been found responsible for indicated abuse or neglect, that the individual may be identified in a central registry as responsible for abuse or neglect

In the case of a finding of indicated abuse or neglect, an individual may request a contested case hearing to appeal the finding by responding to the notice of the local department in writing within 60 days. Unless the individual and the department agree on another location, a contested case hearing shall be held in the jurisdiction in which the individual alleged to have abused or neglected a child resides.

If a criminal proceeding is pending on charges arising out of the alleged abuse or neglect, the Office of Administrative Hearings shall stay the hearing until a final disposition is made. If after final disposition of the criminal charge, the individual requesting the hearing is found guilty of any criminal charge arising out of the alleged abuse or neglect, the Office of Administrative Hearings shall dismiss the administrative appeal.

If a child in need of assistance (CINA) case is pending concerning a child who has been allegedly abused or neglected by the appellant or a child in the care, custody, or household of the appellant, the Office of Administrative Hearings shall stay the hearing until the CINA case is concluded. After the conclusion of the CINA case, the Office of Administrative Hearings shall vacate the stay and schedule further proceedings in accordance with this section.

In the case of a finding of unsubstantiated abuse or neglect, an individual may request a conference with a supervisor in the local department by responding to the notice of the local department in writing within 60 days.

In response to a timely request for a conference, a local department supervisor shall schedule a conference, to occur within 30 days after the supervisor receives the request, to allow the individual an opportunity to review the redacted record, and request corrections or to supplement the record. Within 10 days after the conference, the local department shall send to the individual:

- A written summary of the conference and of any modifications to be made in the record
- Notice of the individual's right to request a contested case hearing

The individual may request a contested case hearing to appeal the outcome of the conference by responding to the summary in writing within 60 days. If the individual does not receive the written summary and required notice within 20 days, the individual may request a contested case hearing.

In the case of an unexpunged finding of indicated or unsubstantiated abuse or neglect made prior to June 1, 1999, the local department shall provide the individual with an opportunity to appeal the finding in accordance with this section if the individual:

- Requests such an appeal
- Has not been offered an opportunity to request a contested case hearing
- Has not been found guilty of any criminal charge arising out of the alleged abuse or neglect

When Records Must Be Expunged
Family Law § 5-707(b)

The local Department of Social Services shall expunge a report of suspected abuse or neglect and all assessments and investigative findings:

- Within 5 years after the date of referral if the investigation concludes that the report is unsubstantiated, and no further reports of abuse or neglect are received during the 5 years
 - Within 120 days after the date of referral if the report is ruled out, and no further reports of abuse or neglect are received during the 120 days
-

Massachusetts**Right of the Reported Person to Review and Challenge Records**

This issue is not addressed in the statutes reviewed.

When Records Must Be Expunged
Ann. Laws Ch. 119, § 51E

The name and all other identifying information relating to any child, or to his or her parents or guardian, shall be removed from the reports 1 year after the department determines that the allegation of serious physical or emotional injury resulting from abuse or neglect cannot be substantiated, or, if the allegations are substantiated, when the child reaches age 18 or 1 year after the date of termination of services to the child or his or her family, whichever date occurs last.

Michigan**Right of the Reported Person to Review and Challenge Records**
Comp. Laws § 722.627

If the Family Independence Agency (department) classifies a report of suspected child abuse or neglect as a central registry case, the department shall maintain a record in the central registry and, within 30 days after the classification, shall notify in writing each person who is named in the record as a perpetrator of the child abuse or neglect. The notice shall set forth the person's right to request expunction of the record and the right to a hearing if the department refuses the request.

A person who is the subject of a report or record may request the department to amend an inaccurate report or record from the central registry and local office file. A person who is the subject of a report or record may request the department to expunge from the central registry a report or record in which no relevant and accurate evidence of abuse or neglect is found to exist. A report or record filed in a local office file is not subject to expunction except as the department authorizes, if it is considered in the best interests of the child.

If the department refuses a request for amendment or expunction, or fails to act within 30 days after receiving the request, the department shall hold a hearing to determine by a preponderance of evidence whether the report or record in whole or in part should be amended or expunged from the central registry on the grounds that the report or record is not relevant or accurate evidence of abuse or neglect. The hearing shall be held before a hearing officer appointed by the department and shall be conducted as prescribed by the administrative procedures act of 1969.

When Records Must Be Expunged
Comp. Laws § 722.627

If the investigation of a report conducted under this act fails to disclose evidence of abuse or neglect, the information identifying the subject of the report shall be expunged from the central registry.

If evidence of abuse or neglect exists, the department shall maintain the information in the central registry until the department receives reliable information that the perpetrator of the abuse or neglect is dead.

Minnesota**Right of the Reported Person to Review and Challenge Records**
Ann. Stat. § 626.556, Subd. 10f & 10i

The investigating agency shall notify the parent or guardian of the child who is the subject of the report, and any person or facility determined to have maltreated a child, of their appeal or review rights under this section or § 256.022. Administrative reconsideration is not applicable in family assessments since no determination concerning maltreatment is made.

For an investigation in which an individual or facility has been determined to have maltreated a child, an interested person acting on behalf of the child who contests the investigating agency's final determination regarding maltreatment may request the investigating agency to reconsider its final determination regarding maltreatment.

The request for reconsideration must be submitted in writing to the investigating agency within 15 calendar days after receipt of notice of the final determination or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the parent or guardian of the child.

Effective January 1, 2002, an individual who was determined to have maltreated a child and who was disqualified for employment or licensure based on serious or recurring maltreatment, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted within 30 calendar days of the individual's receipt of the notice of disqualification.

If the investigating agency denies the request or fails to act upon the request within 15 working days after receiving the request for reconsideration, the person or facility entitled to a fair hearing may submit to the Commissioner of Human Services or the Commissioner of Education a written request for a hearing. For reports involving maltreatment of a child in a facility, an interested person acting on behalf of the child may request a review by the Child Maltreatment Review Panel under § 256.022 if the investigating agency denies the request or fails to act upon the request or if the interested person contests a reconsidered determination. The investigating agency shall notify persons who request reconsideration of their rights under this paragraph. The request must be submitted in writing to the review panel and a copy sent to the investigating agency within 30 calendar days of receipt of notice of a denial of a request for reconsideration or of a reconsidered determination. The request must specifically identify the aspects of the agency determination with which the person is dissatisfied. If, as a result of a reconsideration or review, the investigating agency changes the final determination of maltreatment, that agency shall notify the parties specified in subdivisions 10b, 10d, and 10f.

If an individual or facility contests the investigating agency's final determination regarding maltreatment by requesting a fair hearing under § 256.045, the Commissioner of Human Services shall ensure that the hearing is conducted and a decision is reached within 90 days of receipt of the request for a hearing. The time for action on the decision may be extended for as many days as the hearing is postponed or the record is held open for the benefit of either party.

When Records Must Be Expunged**Ann. Stat. § 626.556, Subd. 11c**

For family assessment cases and cases where an investigation results in no determination of maltreatment or the need for child protective services, the assessment or investigation records must be maintained for a period of 4 years. These records may not be used for employment, background checks, or purposes other than to assist in future risk and safety assessments.

All records relating to reports that upon investigation indicate either maltreatment or a need for child protective services shall be maintained for at least 10 years after the date of the final entry in the case record.

All records regarding a report of maltreatment, including any notification of intent to interview that was received by a school, shall be destroyed by the school when ordered to do so by the agency conducting the assessment or investigation. The agency shall order the destruction of the notification when other records relating to the report under investigation or assessment are destroyed.

Private or confidential data released to a court services agency must be destroyed by the court services agency when ordered to do so by the local welfare agency that released the data. The local welfare agency or agency responsible for assessing or investigating the report shall order destruction of the data when other records relating to the assessment or investigation are destroyed.

Mississippi**Right of the Reported Person to Review and Challenge Records****Ann. Code § 43-21-257**

The Department of Human Services shall adopt rules and administrative procedures, especially those procedures to afford due process to individuals who have been named as substantiated perpetrators before the release of their names from the central registry, as may be necessary to carry out this subsection.

When Records Must Be Expunged**Ann. Code § 43-21-263**

The youth court may order the sealing of records involving children under the following conditions:

- If the child who was the subject of the case has attained 20 years of age
- If the youth court dismisses the case
- If the youth court sets aside an adjudication in the case

Missouri

Right of the Reported Person to Review and Challenge Records Ann. Stat. § 210.152

Within 90 days after receipt of a report of abuse or neglect that is investigated, the alleged perpetrator named in the report and the parents of the child named in the report, if the alleged perpetrator is not a parent, shall be notified in writing of any determination made by the division based on the investigation. The notice shall advise either:

- That the Division of Family Services has determined by a probable cause finding (prior to August 28, 2004) or by a preponderance of evidence (after August 28, 2004) that abuse or neglect exists and that the division shall retain all identifying information regarding the abuse or neglect; that such information shall remain confidential and will not be released except to law enforcement agencies or prosecuting or circuit attorneys or as provided in § 210.150; that the alleged perpetrator has 60 days from the date of receipt of the notice to seek reversal of the division's determination through a review by the child abuse and neglect review board
- That the division has not made a probable cause finding or determined by a preponderance of evidence that abuse or neglect exists

Any person named in an investigation as a perpetrator who is aggrieved by a determination of abuse or neglect by the division may seek an administrative review by the child abuse and neglect review board. The request for review must be made within 60 days of notification of the division's decision. In those cases where criminal charges based on the facts of the investigation are pending, the request for review shall be made within 60 days from the court's final disposition or dismissal of the charges.

In any action for administrative review, the child abuse and neglect review board shall sustain the division's determination if that determination was supported by evidence of probable cause prior to August 28, 2004, or is supported by a preponderance of evidence after August 28, 2004, and is not against the weight of the evidence. The child abuse and neglect review board hearing shall be closed to all persons except the parties, their attorneys, and those persons providing testimony on behalf of the parties.

If the alleged perpetrator is aggrieved by the decision of the child abuse and neglect review board, the alleged perpetrator may seek *de novo* judicial review in the circuit court. The request for a judicial review shall be made within 60 days of notification of the decision of the child abuse and neglect review board. In reviewing these decisions, the circuit court shall provide the alleged perpetrator the opportunity to appear and present testimony. The alleged perpetrator may subpoena any witnesses except the alleged victim or the reporter.

In the action for administrative review, the child abuse and neglect review board shall notify the child or the parent, guardian, or legal representative of the child that a review has been requested.

When Records Must Be Expunged Ann. Stat. § 210.152

For investigation reports where there is insufficient evidence of abuse or neglect, and the Division of Family Services determines that the allegation was made maliciously, for purposes of harassment, or in retaliation for the filing of a report, identifying information shall be expunged within 45 days from the conclusion of the investigation.

For investigation reports initiated by a mandated reporter, where insufficient evidence of abuse or neglect is found by the division, identifying information shall be retained for 5 years from the conclusion of the investigation.

For all other reports where there is insufficient evidence, identifying information shall be retained for 2 years. At the end of that time, the identifying information shall be removed from the records of the division and destroyed.

For reports in which the division is unable to locate the child alleged to have been abused or neglected, identifying information shall be retained for 10 years from the date of the report and then shall be removed from the records of the division.

Montana**Right of the Reported Person to Review and Challenge Records****Ann. Code § 41-3-202**

A person who is the subject of an unsubstantiated report that was made prior to October 1, 2003, and after which a period of 3 years has elapsed without there being submitted a subsequent substantiated report or an order issued based on the circumstances surrounding the initial allegations, may request that the department destroy all of the records concerning the unsubstantiated report.

When Records Must Be Expunged**Ann. Code § 41-3-202**

If it is determined from the investigation that the child has not suffered abuse or neglect, and the initial report is determined to be unfounded, the Department of Public Health and Human Services and the social worker, county attorney, or peace officer who conducted the investigation shall destroy all of their records concerning the report and the investigation. The destruction must be completed within 30 days of the determination that the child has not suffered abuse or neglect.

If the report is unsubstantiated, the department and the social worker who conducted the investigation shall destroy all of the records, except for medical records, concerning the unsubstantiated report and the investigation within 30 days after the end of the 3-year period starting from the date the report was determined to be unsubstantiated, unless:

- There had been a previous or there is a subsequent substantiated report concerning the same person.
- An order has been issued based on the circumstances surrounding the initial allegations.

Nebraska**Right of the Reported Person to Review and Challenge Records****Rev. Stat. § 28-723**

At any time subsequent to the completion of the investigation by the Department of Social Services, the subject of the report of child abuse or neglect may request the department to amend, expunge identifying information from, or remove the record of the report from the central register of child protection cases.

If the department refuses to do so or does not act within 30 days, the subject of the report of child abuse or neglect shall have the right to a fair hearing within the department to determine whether the record of the report should be amended, expunged, or removed on the grounds that it is inaccurate or that it is being maintained in a manner inconsistent with the Child Protection Act.

The fair hearing shall be held within a reasonable time after the subject's request and at a reasonable place and hour. In such hearings, the burden of proving the accuracy and consistency of the record shall be on the department. A juvenile court finding of child abuse or child neglect shall be presumptive evidence that the report was not unfounded.

The hearing shall be conducted by the head of the department who is authorized and empowered to order the amendment, expunction, or removal of the record to make it accurate or consistent with the requirements of the act.

The decision shall be made in writing, at the close of the hearing, or within 30 days thereof, and shall state the reasons upon which it is based. Decisions of the department may be appealed under the provisions of the Administrative Procedure Act.

When Records Must Be Expunged**Rev. Stat. § 28-721**

At any time, the Department of Social Services may amend, expunge, or remove from the central register of child protection cases any record upon good cause shown and upon notice to the subject of the report of child abuse or neglect and to the division.

Nevada**Right of the Reported Person to Review and Challenge Records**

This issue is not addressed in the statutes reviewed.

When Records Must Be Expunged**Rev. Stat. § 432.120**

The information contained in the central registry concerning cases in which a report of abuse or neglect of a child has been substantiated by an agency that provides child welfare services must be deleted from the central registry no later than 10 years after the child who is the subject of the report reaches age 18.

New Hampshire**Right of the Reported Person to Review and Challenge Records****Rev. Stat. § 169-C:35**

Upon receipt by the Department of Health and Human Services of a written request and verified proof of identity, an individual shall be informed by the department if that individual's name is listed in the founded reports maintained in the central registry.

Any individual whose name is listed in the founded reports maintained on the central registry may petition the district court to have his or her name expunged from the registry. A petition to expunge shall be filed in the district court where the abuse and neglect petition was heard. In cases where the department makes a finding but no petition is filed with the court, a petition to expunge shall be filed in the district court where the petition for the abuse and neglect could have been brought.

When a petition to expunge is filed, the district court shall require the department to report to the court concerning any additional founded abuse and neglect reports on the petitioner and shall require that the department submit the petitioner's name, birth date, and address to the State police to obtain information about criminal convictions. The court may require the department to provide any additional information that the court believes may aid it in making a determination on the petition.

Upon the receipt of the department's report, the court may act on the petition without further hearing or may schedule the matter for hearing at the request of either party. If the court determines that the petitioner does not pose a present threat to the safety of children, the court shall grant the petition and order the department to remove the individual's name from the central registry. Otherwise, the petition shall be dismissed.

When an individual's name is added to the central registry, the department shall notify individuals of their right to petition to have their name expunged from the central registry. No petition to expunge shall be brought within 1 year from the date that the petitioner's name was initially entered on the central registry. If the petition to expunge is denied, no further petition shall be brought more frequently than every 3 years thereafter.

When Records Must Be Expunged**Rev. Stat. § 169-C:35-a**

The department shall retain a screened-out report for 1 year from the date that the report was screened-out, after which time the department shall delete or destroy all electronic and paper records of the report. A report is 'screened-out' when the department has determined it does not rise to the level of a credible report of abuse or neglect and is not referred for assessment.

The department shall retain an unfounded report for 3 years from the date that the department determined the case to be unfounded, after which time, the department shall delete or destroy all electronic and paper records of the report.

The department shall retain a founded report for 7 years from the date that the department closes the case, after which time, the department shall delete or destroy all electronic and paper records of the report. This paragraph shall not apply to foster placement records or to adoption records.

New Jersey**Right of the Reported Person to Review and Challenge Records****Ann. Stat. § 9:6-8.10a(b)(12)**

The Division of Youth and Family Services may upon written request release the records and reports of child abuse and neglect, or parts thereof, consistent with the provisions of § 9:6-8.83, *et al.*, to any person appealing a department service or status action or a substantiated finding of child abuse or neglect and his or her attorney or authorized lay representative upon a determination by the department or the presiding administrative law judge that such disclosure is necessary for a determination of the issue on appeal.

When Records Must Be Expunged**Ann. Stat. § 9:6-8.40a**

The division shall expunge from its records all information relating to a report, complaint, or allegation of an incident of child abuse or neglect when an investigation has determined that the allegation was unfounded.

New Mexico**Right of the Reported Person to Review and Challenge Records**

This issue is not addressed in the statutes reviewed.

When Records Must Be Expunged

This issue is not addressed in the statutes reviewed.

New York**Right of the Reported Person to Review and Challenge Records****Soc. Serv. Law § 422(5), (7)-(8)**

Notwithstanding any other provision of law, the Office of Children and Family Services may, at its discretion, grant a request to expunge an unfounded report when:

- The source of the report was convicted of knowingly making a false allegation about that report.
- The subject of the report presents clear and convincing evidence that affirmatively refutes the allegation of abuse or maltreatment.

The absence of credible evidence supporting the allegation of abuse or maltreatment shall not be the sole basis to expunge the report. Nothing in this paragraph shall require the Office of Children and Family Services to hold an administrative hearing to decide whether to expunge a report. That office shall make its determination upon reviewing the written evidence submitted by the subject of the report and any records or information obtained from the State or local agency that investigated the allegations of abuse or maltreatment.

At any time, a subject of a report and other persons named in the report may receive, upon request, a copy of all information contained in the central register.

At any time subsequent to the completion of the investigation but in no event later than 90 days after the subject of the report is notified that the report is indicated, the subject may request the commissioner to amend the record of the report. If the commissioner does not amend the report within 90 days, the subject shall have the right to a fair hearing to determine whether the record of the report in the central register should be amended on the grounds that it is inaccurate or is being maintained in a manner inconsistent with the law.

When Records Must Be Expunged**Soc. Serv. Law § 422(6)**

The record of the report to the central register shall be expunged 10 years after the 18th birthday of the youngest child named in the report. In the case of a child in residential care, the record of the report to the central register shall be expunged 10 years after the reported child's 18th birthday.

North Carolina**Right of the Reported Person to Review and Challenge Records****Gen. Stat. § 7B-311(d)**

The Social Services Commission shall adopt rules regarding the operation of the central registry and responsible individuals list, including procedures for notifying a responsible individual of a determination of abuse or serious neglect.

The name of an individual who has been identified as a responsible individual shall be placed on the responsible individuals list only after one of the following:

- The individual is properly notified pursuant to § 7B-320 and fails to file a petition for judicial review in a timely manner.
- The court determines that the individual is a responsible individual as a result of a hearing on:
 - » The individual's petition for judicial review
 - » A juvenile petition that alleges and seeks a determination that the individual is a responsible person
- The individual is criminally convicted as a result of the same incident involved in an investigative assessment response.

When Records Must Be Expunged

Gen. Stat. § 7B-311(d)

The Social Services Commission shall adopt rules regarding the operation of the central registry and responsible individuals list, including procedures for correcting and expunging information.

North Dakota

Right of the Reported Person to Review and Challenge Records

Cent. Code § 50-25.1-05.4

The Department of Human Services shall adopt rules to resolve complaints and conduct appeal hearings requested by the subject of a report of suspected child abuse, neglect, or death resulting from abuse or neglect who is aggrieved by the conduct or result of an assessment.

When Records Must Be Expunged

This issue is not addressed in the statutes reviewed.

Northern Mariana Islands

Right of the Reported Person to Review and Challenge Records

This issue is not addressed in the statutes reviewed.

When Records Must Be Expunged

This issue is not addressed in the statutes reviewed.

Ohio

Right of the Reported Person to Review and Challenge Records

This issue is not addressed in the statutes reviewed.

When Records Must Be Expunged

This issue is not addressed in the statutes reviewed.

Oklahoma

Right of the Reported Person to Review and Challenge Records

This issue is not addressed in the statutes reviewed.

When Records Must Be Expunged

Ann. Stat. Tit. 10A, § 1-2-108

Records obtained by the Department of Human Services shall be maintained by the department until otherwise provided by law.

Oregon**Right of the Reported Person to Review and Challenge Records**

This issue is not addressed in the statutes reviewed.

When Records Must Be Expunged

This issue is not addressed in the statutes reviewed.

Pennsylvania**Right of the Reported Person to Review and Challenge Records****Cons. Stat. Tit. 23, § 6341**

Any person named as a perpetrator and any school employee named in an indicated report of child abuse may, within 45 days of being notified of the status of the report, request the secretary of the Department of Public Welfare to amend or expunge an indicated report on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with law. If the secretary grants the request, the statewide central register, appropriate county agency, appropriate law enforcement officials, and all subjects shall be so advised of the decision.

The county agency and any subject have 45 days in which to file an administrative appeal with the secretary. If an administrative appeal is received, the secretary or his designated agent shall schedule a hearing. If no administrative appeal is received within the designated time, the statewide central register shall comply with the decision of the secretary and advise the county agency to amend or expunge the information in their records so that the records are consistent at both the State and local levels.

If the secretary refuses the request for a hearing or does not act within a reasonable time, but in no event later than 30 days after receipt of the request, the perpetrator or school employee shall have the right to a hearing before the secretary or a designated agent of the secretary to determine whether the indicated report in the statewide central register should be amended or expunged on the grounds that it is inaccurate or that it is being maintained in a manner inconsistent with law.

The perpetrator or school employee shall have 45 days from the date of the letter giving notice of the decision to deny the request in which to request a hearing. The appropriate county agency and appropriate law enforcement officials shall be given notice of the hearing. The burden of proof in the hearing shall be on the appropriate county agency. The department shall assist the county agency as necessary.

Any administrative appeal proceeding shall be automatically stayed upon notice to the department by either of the parties when there is a pending criminal proceeding or a dependency or delinquency proceeding.

The secretary or designated agent may make any appropriate order respecting the amendment or expunction of records to make them accurate or consistent with the requirements of this chapter. Written notice of an expunction of any child abuse record shall be served upon the subject of the record who was responsible for the abuse or injury and the appropriate county agency.

When Records Must Be Expunged**Cons. Stat. Tit. 23, §§ 6337; 6338**

When a report of suspected child abuse is determined to be unfounded, the information concerning that report shall be maintained for 1 year, then expunged from the pending complaint file as soon as possible, but no later than 120 days after the end of the 1-year period.

If an investigation of a report of suspected child abuse is unable, within 60 days, to determine whether the report is founded, indicated, or unfounded, or unless within that same 60-day period court action has been initiated and is responsible for the delay, the report shall be considered to be an unfounded report, and all information identifying the subjects of the report shall be expunged no later than 120 days following the expiration of 1 year after the date the report was received by the department.

All information identifying the subjects of any report of suspected child abuse, and of any report relating to students in public and private schools determined to be an unfounded report, shall be expunged from the pending complaint file.

All information that identifies the subjects of founded and indicated child abuse reports shall be expunged when the subject child reaches the age of 23 years.

Puerto Rico**Right of the Reported Person to Review and Challenge Records****Ann. Laws Tit. 8, § 446d**

The subject of the report shall be entitled to request in writing from the secretary of the Department of the Family a copy of the information found in the central registry referring to his or her case. The secretary or his or her designee shall furnish the information, provided this does not go against the best interests of the minor and if the necessary steps are taken to protect the confidentiality of the person who in good faith reported the case or cooperated during its investigation. If the request for information is denied, the person affected by the secretary's decision may resort to the court of appeals within 30 days of the date of notice of the final decision.

In those referrals lacking grounds, the subject of the report may request in writing that his or her name be amended or deleted from the registry within 30 days following the date of the notification that there are no grounds. The Commonwealth Center for the Protection of Minors shall have 30 days from the date of receipt of the request to act thereon. If the request is denied or the center fails to act thereon, the subject of the report shall have 30 days to file his or her petition for review with the court of appeals.

When Records Must Be Expunged

This issue is not addressed in the statutes reviewed.

Rhode Island**Right of the Reported Person to Review and Challenge Records**

This issue is not addressed in the statutes reviewed.

When Records Must Be Expunged**Gen. Laws §§ 40-11-3; 40-11-13.1**

Any person who has been reported for child abuse and/or neglect, and who has been determined not to have neglected and/or abused a child, shall have his or her record expunged as to that incident 3 years after that determination.

All records concerning reports of child abuse and neglect made pursuant to this chapter, including reports made to the Department of Children, Youth and Families, shall be destroyed 3 years after the date of a final determination by either the family court or the department that the reported child abuse or neglect did not in fact occur.

South Carolina**Right of the Reported Person to Review and Challenge Records****Ann. Code §§ 63-7-1410 through 63-7-1440**

This article provides for a child protective services appeals process for reports that have been indicated and are not being brought before the family court for disposition and for reports indicated and entered in the central registry and not being brought before the family court for disposition. This process is available only to the person determined to have abused or neglected the child.

If a person requests an appeal and the family court has determined that the person is responsible for abuse or neglect of the child, an appeal is not available. If the family court reaches such a determination after the initiation of the appeal, the Department of Social Services shall terminate the appeal. If a proceeding is pending in the family court, the department shall stay the appeal pending the court's decision.

If the department determines that a report of suspected child abuse or neglect is indicated, or if the case was entered in the central registry and the department is not taking the case to the family court for disposition, the department shall provide notice of the case decision by certified mail to the person determined to have abused or neglected the child. The notice must inform the person of the right to appeal the case decision and that if he or she intends to appeal the decision, he or she must notify the department of this intent in writing within 30 days of receipt of the notice. If the person does provide notice within 30 days, the right to appeal is waived by the person and the case decision becomes final. Within 14 days after receipt of a notice of intent to appeal, an appropriate official of the department must conduct an interim review of the case.

If the official conducting the interim review decides that the determination against the appellant is not supported by a preponderance of evidence, this decision must be reflected in the department's case record and database. If the person's name was in the central registry and the interim review results in a reversal of the decision that supports that entry, the person's name must be removed from the central registry.

The State director shall appoint a hearing officer to conduct a contested case hearing for each case decision appealed. The purpose of the hearing is to determine whether there is a preponderance of evidence that the appellant was responsible for abuse or neglect of the child.

After a contested case hearing, if the State director decides that the determination against the appellant is not supported by a preponderance of evidence, this decision must be reflected in the department's case record and database. If the person's name was in the central registry as a result of a determination and the State director reverses the decision that supports that entry, the person's name must be removed from the central registry. If the State director affirms the determination against the appellant, the appellant has the right to seek judicial review in the family court of the jurisdiction in which the case originated.

An appellant seeking judicial review shall file a petition in the family court within 30 days after the final decision of the department. The family court shall conduct a judicial review of the pleadings and a certified transcript of the record that must include the evidence upon which the findings and decisions appealed are based. The judgment must include a determination of whether the decision of the department that a preponderance of evidence shows that the appellant abused or neglected the child should be affirmed or reversed.

When Records Must Be Expunged
Ann. Code §§ 63-7-1950; 63-7-1960

If it is determined that a report is unfounded, the Department of Social Services must immediately purge information identifying that person as a perpetrator from the registry and from department records.

The names, addresses, birth dates, identifying characteristics, and other information unnecessary for auditing and statistical purposes of persons named in department records of indicated cases other than the central registry must be destroyed 7 years from the date services are terminated.

South Dakota**Right of the Reported Person to Review and Challenge Records**
Ann. Laws § 26-8A-11

Within 30 days after the Department of Social Services notifies any person that he or she will be placed on the central registry for child abuse and neglect based upon a substantiated investigation, the person may request an administrative hearing. The administrative hearing is limited to determining whether the record should be amended or removed on the grounds that it is inaccurate. The request shall be made in writing and directed to the person designated by the department in the notice.

If there has been a court finding of child abuse or neglect, the record's accuracy is conclusively presumed and the person has no right to an administrative hearing.

In the hearing, the burden of proving the accuracy of the record is on the department. The hearing examiner may order the amendment or removal of the record. The decision of the hearing examiner shall be made in writing within 90 days after the date of receipt of the request for a hearing and shall state the reasons upon which it is based. Decisions of the department under this section are administrative decisions subject to judicial review under chapter 1-26.

When Records Must Be Expunged
Ann. Laws §§ 26-8A-11; 26-8A-12

In any case where there has been no substantiated report of child abuse and neglect, the Department of Social Services may not maintain a record or other information of unsubstantiated child abuse and neglect for longer than 3 years if there has been no further report within that 3-year period.

The secretary may not adopt any rule that would permit the removal from the central registry of any person who has been convicted of any violation of chapter 22-22 [sex offenses], chapter 22-24A [obscenity and indecency], § 22-22A-3 [aggravated incest], or § 26-10-1 [felony abuse of or cruelty to a minor], if the victim of the crime was a child.

Tennessee**Right of the Reported Person to Review and Challenge Records**

This issue is not addressed in the statutes reviewed.

When Records Must Be Expunged

This issue is not addressed in the statutes reviewed.

Texas**Right of the Reported Person to Review and Challenge Records****Family Code § 261.315**

At the conclusion of an investigation in which the department determines that the person alleged to have abused or neglected a child did not commit abuse or neglect, the department shall notify the person of the person's right to request that the department remove information about the person's alleged role in the abuse or neglect report from the department's records.

On request from a person whom the department has determined did not commit abuse or neglect, the department shall remove information from the department's records concerning the person's alleged role in the abuse or neglect report.

The board shall adopt rules necessary to administer this section.

When Records Must Be Expunged

This issue is not addressed in the statutes reviewed.

Utah**Right of the Reported Person to Review and Challenge Records****Ann. Code § 62A-4a-1009**

The Division of Child and Family Services shall send a notice of agency action to a person about whom the division has made a supported finding. The notice shall state that:

- The division has conducted an investigation regarding alleged child abuse, neglect, or dependency.
- The division has made a supported finding of abuse, neglect, or dependency.
- Facts gathered by the division support the supported finding.
- The person has the right to request a copy of the report and an opportunity to challenge the supported finding.
- Failure to request an opportunity to challenge the supported finding within 30 days of receiving the notice will result in an unappealable supported finding of child abuse, neglect, or dependency unless the person can show good cause why compliance within the 30-day requirement was virtually impossible or unreasonably burdensome.

A person may make a request to challenge a supported finding within 30 days of a notice being received. Upon receipt of a request, the Office of Administrative Hearings shall hold an adjudicative proceeding pursuant to the Administrative Procedures Act.

In an adjudicative proceeding, the division shall have the burden of proving, by a preponderance of evidence, that there is a reasonable basis to conclude that child abuse, neglect, or dependency occurred and that the alleged perpetrator was substantially responsible for the abuse or neglect that occurred. Any party shall have the right of judicial review of final agency action.

Except as otherwise provided in this chapter, an alleged perpetrator who, after receiving notice, fails to challenge a supported finding, may not further challenge the finding and shall have no right to agency review, an adjudicative hearing, or judicial review of the finding.

An alleged perpetrator may not make a request to challenge a supported finding if a court of competent jurisdiction entered a finding, in a proceeding in which the alleged perpetrator was a party, that the alleged perpetrator is substantially responsible for the abuse, neglect, or dependency that was also the subject of the supported finding.

An adjudicative proceeding may be stayed during the time a judicial action on the same matter is pending.

When Records Must Be Expunged**Ann. Code § 62A-4a-1008**

Unless the executive director determines that there is good cause for keeping a report of abuse or neglect in the Management Information System, based on standards established by rule, the Division of Child and Family Services shall delete any reference to:

- A report that is without merit, if no subsequent report involving the same alleged perpetrator has occurred within 1 year
- A report that has been determined by a court of competent jurisdiction to be unsubstantiated or without merit, if no subsequent report involving the same alleged perpetrator has occurred within 5 years

Vermont**Right of the Reported Person to Review and Challenge Records****Ann. Stat. Tit. 33, §§ 4916a; 4916b**

If an investigation results in a determination that a report of child abuse or neglect should be substantiated, the Department for Children and Families shall notify the person alleged to have abused or neglected a child of the right to request a review of the substantiation determination by an administrative reviewer and the right to receive a copy of the commissioner's written findings. A person who wishes to challenge placement of his or her name on the registry must notify the department within 14 days of the date the department mailed notice of the right to review.

The department shall hold an administrative review conference within 35 days of receipt of the request for review. At least 10 days prior to the administrative review conference, the department shall provide to the person requesting the review a copy of the redacted investigation file, notice of time and place of the conference, and conference procedures, including information that may be submitted and mechanisms for providing testimony. The department shall also provide to the person those redacted investigation files that relate to prior investigations that the department has relied upon to make its substantiation determination in the case in which a review has been requested.

The administrative review may be stayed upon request of the person if there is a pending criminal or family division of the superior court case that is related to the same incident of abuse or neglect for which the person was substantiated. During this period, the person's name shall be placed on the registry. Upon resolution of the court case, the person may exercise his or her right to review.

If the administrative reviewer accepts the department's substantiation determination, a registry record shall be made immediately. If the reviewer rejects the department's substantiation determination, no registry record shall be made.

If no administrative review is requested, the department's decision in the case shall be final, and the person shall have no further right of review. The commissioner may grant a waiver and permit such a review upon good cause shown. Good cause may include an acquittal or dismissal of a criminal charge arising from the incident of abuse or neglect.

A commissioner's decision that creates a registry record may be appealed to the Human Services Board. Within 30 days of the date on which the administrative reviewer mailed notice of placement of a report on the registry, the person who is the subject of the substantiation may apply in writing to the Human Services Board for relief. The board shall hold a hearing within 60 days of the receipt of the request for a hearing and shall issue a decision within 30 days of the hearing. Priority shall be given to appeals in which there are immediate employment consequences for the person appealing the decision.

A hearing may be stayed upon request of the petitioner if there is a pending court case related to the same incident of abuse or neglect for which the person was substantiated.

If no review by the board is requested, the department's decision in the case shall be final, and the person shall have no further right for review under this section. The board may grant a waiver and permit such a review upon good cause shown.

When Records Must Be Expunged**Ann. Stat. Tit. 33, §§ 4916c; 4916d**

A person whose name has been placed on the registry prior to July 1, 2009, and has been listed on the registry for at least 3 years may file a written request with the Commissioner for Children and Families, seeking a review for the purpose of expunging an individual registry record. A person whose name has been placed on the registry on or after July 1, 2009, and has been listed on the registry for at least 7 years may file a written request seeking a review for the purpose of expunging an individual registry record. The commissioner shall grant a review upon request.

The person shall have the burden of proving that a reasonable person would believe that he or she no longer presents a risk to the safety or well-being of children.

At the review, the person who requested the review shall be provided with the opportunity to present any evidence or other information, including witnesses, that supports his or her request for expunction. A person may seek a review no more than once every 36 months.

The person may appeal the decision of the commissioner to the Human Services Board. The person shall be prohibited from challenging his or her substantiation at such hearing, and the sole issue before the board shall be whether the commissioner abused his or her discretion in denial of the petition for expunction.

Registry entries concerning a person who was substantiated for behavior occurring before the person reached age 10 shall be expunged when the person reaches age 18, provided that the person has had no additional substantiated registry entries.

A person substantiated for behavior occurring before the person reached age 18 and whose name has been listed on the registry for at least 3 years may file a written request seeking a review for the purpose of expunging an individual registry record.

Virgin Islands**Right of the Reported Person to Review and Challenge Records**

This issue is not addressed in the statutes reviewed.

When Records Must Be Expunged

This issue is not addressed in the statutes reviewed.

Virginia**Right of the Reported Person to Review and Challenge Records****Ann. Code § 63.2-1526**

A person who is suspected of or is found to have committed abuse or neglect may, within 30 days of being notified of that determination, request the local Department of Social Services making the determination to amend the determination and the local department's related records.

Upon written request, the local department shall provide the appellant all information used in making its determination. The local department shall hold an informal conference where this person, who may be represented by counsel, shall be entitled to informally present testimony of witnesses, documents, factual data, arguments, or other submissions of proof to the local department.

If the local department refuses the request for amendment or fails to act within 45 days after receiving the request, the person may, within 30 days thereafter, petition the commissioner, who shall grant a hearing to determine whether it appears, by a preponderance of evidence, that the determination or record contains information that is irrelevant or inaccurate regarding the commission of abuse or neglect by the person who is the subject of the determination.

The hearing officer shall have the authority to issue subpoenas for the production of documents and the appearance of witnesses, and to determine the number of depositions that will be allowed. The person who is the subject of the report has the right to submit oral or written testimony or documents, and to be informed of the procedure by which information will be made available or withheld. The alleged child victims of the person and their siblings shall not be subpoenaed, deposed, or required to testify.

The hearing officers are empowered to order the amendment of such determination or records as required to make them accurate and consistent with the requirements of law or regulation.

If, after hearing the facts of the case, the hearing officer determines that the person who is the subject of the report has presented information that was not available to the local department at the time of the local conference and that, if available, may have resulted in a different determination by the local department, he or she may remand the case to the local department for reconsideration.

The local department shall have 14 days in which to reconsider the case. If, at the expiration of 14 days, the local department fails to act or fails to amend the record to the satisfaction of the appellant, the case shall be returned to the hearing officer for a determination. If aggrieved by the decision of the hearing officer, the appellant may obtain further review of the decision in accordance with article 5 of the Administrative Process Act.

When an appeal of the local department's finding is made and a criminal charge is also filed against the appellant for the same conduct involving the same victim as investigated by the local department, the appeal process shall automatically be stayed until the criminal prosecution in circuit court is completed. During that stay, the appellant's right of access to the records of the local department regarding the matter being appealed shall also be stayed.

Once the criminal prosecution in circuit court has been completed, the local department shall advise the appellant in writing of his or her right to resume his or her appeal within the timeframes provided by law and regulation.

When Records Must Be Expunged**Ann. Code § 63.2-1514**

The record of unfounded investigations and complaints and reports determined to be not valid shall be purged 1 year after the date of the complaint or report if there are no subsequent complaints or reports regarding the same child or the person who is the subject of the complaint or report in that 1 year.

The record of family assessments shall be purged 3 years after the date of the complaint or report if there are no subsequent complaints or reports regarding the same child or the person who is the subject of the report in that 3-year period.

The child protective services records regarding the petitioner that result from the complaint or report shall be purged immediately by any custodian of the records upon presentation to the custodian of a certified copy of a court order that there has been a civil action that determined that the complaint or report was made in bad faith or with malicious intent. After purging the records, the custodian shall notify the petitioner in writing that the records have been purged.

Washington**Right of the Reported Person to Review and Challenge Records****Rev. Code § 26.44.125**

A person who is named as an alleged perpetrator after October 1, 1998, in a founded report of child abuse or neglect has the right to seek review and amendment of the finding. Within 20 calendar days after receiving written notice from the Department of Social and Health Services that a person is named as an alleged perpetrator in a founded report of child abuse or neglect, he or she may request that the department review the finding. The request must be made in writing.

If a request for review is not made, the alleged perpetrator may not further challenge the finding and shall have no right to agency review, adjudicative hearing, or judicial review of the finding.

Upon receipt of a written request for review, the department shall review and, if appropriate, may amend the finding. The review must be conducted in accordance with procedures the department establishes by rule.

Upon completion of the review, the department shall notify the alleged perpetrator in writing of the agency's determination. If, following agency review, the report remains founded, the person named as the alleged perpetrator in the report may request an adjudicative hearing to contest the finding. The request for an adjudicative proceeding must be filed within 30 calendar days after receiving notice of the agency review determination. If a request for an adjudicative proceeding is not made, the alleged perpetrator may not further challenge the finding.

Reviews and hearings conducted under this section are confidential and shall not be open to the public.

When Records Must Be Expunged**Rev. Code § 26.44.031**

The Department of Social and Health Services shall destroy all of its records concerning:

- A screened-out report within 3 years from the receipt of the report
- An unfounded or inconclusive report within 6 years of completion of the investigation, unless a prior or subsequent founded report has been received regarding the child who is the subject of the report, a sibling or half-sibling of the child, or a parent, guardian, or legal custodian of the child, before the records are destroyed

West Virginia

Right of the Reported Person to Review and Challenge Records

This issue is not addressed in the statutes reviewed.

When Records Must Be Expunged

Ann. Code § 49-6A-5

Unless there are pending proceedings, all reports shall be destroyed 30 years following their preparation.

Wisconsin

Right of the Reported Person to Review and Challenge Records

Ann. Stat. § 48.981(3)(c)(5m)

If the Department of Children and Families or a licensed child welfare agency under contract with the department determines that a specific person has abused or neglected a child, the department or agency, within 15 days after the date of the determination, shall notify the person in writing of the determination, the person's right to appeal the determination, and the procedure by which the person may appeal the determination.

The person may appeal the determination in accordance with the procedures established by the department. Those procedures shall include a procedure permitting an appeal to be held in abeyance pending the outcome of any criminal proceedings based on the alleged abuse or neglect, or the outcome of any investigation that may lead to the filing of a criminal complaint.

When Records Must Be Expunged

This issue is not addressed in the statutes reviewed.

Wyoming

Right of the Reported Person to Review and Challenge Records

Ann. Stat. § 14-3-213

Any person named as a perpetrator of child abuse or neglect in any report maintained in the central registry that is classified as a substantiated report shall have the right to have included in the report his or her statement concerning the incident giving rise to the report. Any person seeking to include a statement pursuant to this subsection shall provide the State agency with the statement.

The State agency shall provide notice to any person identified as a perpetrator of his or her right to submit his or her statement in any report maintained in the central registry.

When Records Must Be Expunged

Ann. Stat. § 14-3-213

Upon good cause shown and upon notice to the subject of an 'under investigation' or 'substantiated' report, the State agency may list, amend, expunge, or remove any record from the central registry in accordance with rules and regulations adopted by the State agency.

Within 6 months, all reports classified as 'under investigation' shall be reclassified as 'substantiated' or expunged from the central registry, unless the State agency is notified of an open criminal investigation or criminal prosecution. Unsubstantiated reports shall not be contained within the central registry.

POTENTIAL IMPROVEMENTS

- Eliminate evaluations for certain crimes or aged crimes, such as 5 years or older
- Add more names, such as aliases, to original request
- Change the 48 hour requirement for checking on employee self-reported convictions/founded abuse to a timeframe when the information would be available – recommended 7 days minimum
- Move from mail and FAX to secure email, although could be costly
- DPS prioritize pre-employment background checks
- Do training of providers via webinar, conferences, fact sheets, websites, mini-sessions, PowerPoint
- Add Frequently Asked Questions (FAQs) to the SING website

Federal Definitions of Home Health Services & Home Health Agency

Social Security Act Section 1861 (m) & (o) (42 U.S.C. 1395x)

Home Health Services

(m) The term "home health services" means the following items and services furnished to an individual, who is under the care of a physician, by a home health agency or by others under arrangements with them made by such agency, under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician, which items and services are, except as provided in paragraph (7), provided on a visiting basis in a place of residence used as such individual's home—

- (1) part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse;
- (2) physical or occupational therapy or speech-language pathology services;
- (3) medical social services under the direction of a physician;
- (4) to the extent permitted in regulations, part-time or intermittent services of a home health aide who has successfully completed a training program approved by the Secretary;
- (5) medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care, and a covered osteoporosis drug (as defined in subsection (kk)), but excluding other drugs and biologicals) and durable medical equipment while under such a plan;
- (6) in the case of a home health agency which is affiliated or under common control with a hospital, medical services provided by an intern or resident-in-training of such hospital, under a teaching program of such hospital approved as provided in the last sentence of subsection (b); and
- (7) any of the foregoing items and services which are provided on an outpatient basis, under arrangements made by the home health agency, at a hospital or skilled nursing facility, or at a rehabilitation center which meets such standards as may be prescribed in regulations, and—
 - (A) the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in such place of residence, or
 - (B) which are furnished at such facility while he is there to receive any such item or service described in clause (A),
 but not including transportation of the individual in connection with any such item or service; excluding, however, any item or service if it would not be included under subsection (b) if furnished to an inpatient of a hospital. For purposes of paragraphs (1) and (4), the term "part-time or intermittent services" means skilled nursing and home health aide services furnished any number of days per week as long as they are furnished (combined) less than 8 hours each day and 28 or fewer hours each week (or, subject to review on a case-by-case basis as to the need for care, less than 8 hours each day and 35 or fewer hours per week). For purposes of sections 1814(a)(2)(C) and 1835(a)(2)(A), "intermittent" means skilled nursing care that is either provided or needed on fewer than 7 days each week, or less than 8 hours of each day for periods of 21 days or less (with extensions in exceptional circumstances when the need for additional care is finite and predictable).

Home Health Agency

- (o) The term "home health agency" means a public agency or private organization, or a subdivision of such an agency or organization, which—
- (1) is primarily engaged in providing skilled nursing services and other therapeutic services;
 - (2) has policies, established by a group of professional personnel (associated with the agency or organization), including one or more physicians and one or more registered professional nurses, to govern the services (referred to in paragraph (1)) which it provides, and provides for supervision of such services by a physician or registered professional nurse;
 - (3) maintains clinical records on all patients;
 - (4) in the case of an agency or organization in any State in which State or applicable local law provides for the licensing of agencies or organizations of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing agencies or organizations of this nature, as meeting the standards established for such licensing;
 - (5) has in effect an overall plan and budget that meets the requirements of subsection (z);
 - (6) meets the conditions of participation specified in section 1891(a) and such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such agency or organization;
 - (7) provides the Secretary with a surety bond—
 - (A) effective for a period of 4 years (as specified by the Secretary) or in the case of a change in the ownership or control of the agency (as determined by the Secretary) during or after such 4-year period, an additional period of time that the Secretary determines appropriate, such additional period not to exceed 4 years from the date of such change in ownership or control;
 - (B) in a form specified by the Secretary; and
 - (C) for a year in the period described in subparagraph (A) in an amount that is equal to the lesser of \$50,000 or 10 percent of the aggregate amount of payments to the agency under this title and title XIX for that year, as estimated by the Secretary that Secretary determines is commensurate with the volume of the billing of the supplier; and
 - (8) meets such additional requirements (including conditions relating to bonding or establishing of escrow accounts as the Secretary finds necessary for the financial security of the program) as the Secretary finds necessary for the effective and efficient operation of the program; except that for purposes of part A such term shall not include any agency or organization which is primarily for the care and treatment of mental diseases. The Secretary may waive the requirement of a surety bond under paragraph (7) in the case of an agency or organization that provides a comparable surety bond under State law.



**Background Check Study Committee
November 18, 2013 Minutes**

Committee Members in Attendance:

Angell Boyd, Department of Public Safety
 Erin Drinnin, Department of Public Health
 Dawn Fisk, Department of Inspections and Appeals
 Jeff Franklin, Department of Administrative Services
 Dave Jobses, Department of Public Safety
 Lori Lipscomb, Department of Human Services (via phone)
 Deborah Svec-Carstens, Department of Inspections and Appeals
 Beverly Zylstra, Department of Inspections and Appeals
 Sara Throener, Department of Inspections and Appeals, Facilitator

Other Attendees:

Edie Bogaczyk, Iowa Association of Community Providers
 Amber Markham, Department of Public Safety
 Kimberly Murphy, Department on Aging
 Dwayne Ferguson, Legislative Services Agency
 Ted Stopulos, Iowa Health Care Association
 Kathy Sutton, Department of Inspections and Appeals

Attendees were provided a packet of information consisting of:

- Agenda
- October 21, 2013 meeting minutes
- Summary of child abuse registries in bordering states
- Summary of dependent adult abuse/background checks in bordering states
- Report on changes in the works for the Single Contact Repository (SING)
- Document on Record Check Evaluation Decision Guidance from DHS
- Draft Recommendations from the 10-21-13 meeting
- IDPH Administrative Rules identifying the various levels of services provide by direct care workers in home care
- Social Security Act definitions for home health services and home health agency

Approval of Minutes

Motion made by Erin Drinnin and seconded by Jeff Franklin to approve the minutes from the October 21, 2013 meeting. Minutes approved as written.

Review of additional information

Lori provided a summary of child abuse registries in bordering states showing information maintained by the registry, length of time maintained, who can access, and how to request information from the registry. Each of the states has a registry but the remainder of the information varies.

Deborah provided a summary of dependent adult abuse/background check information for border states. Both Minnesota and Wisconsin provide for automatic disqualification from working in certain environments if the prospective employee was convicted of certain crimes. Based on the crime, the disqualification may be permanent or just for a specific period of time.

Angell reported that 42% of the 800,000 to 850,000 requests received each year during the past three years are for health care-related employers, such as hospitals, health care facilities, assisted living programs and regulated home health agencies. This is the largest single group, by far, submitting requests.

Lori provided a document entitled, Record Check Evaluation Decision Guidance, used by DHS in their decision-making. On the back of the document, there are automatic prohibitions for certain providers. Lori stated that while DHS doesn't collect or maintain specific data on categories of crimes evaluated, anecdotal information from the evaluation staff is that 40% of the subjects have just one conviction and that one conviction is typically an OWI and that 60% have 2 or more convictions. Of those multiple conviction cases, the majority will have an OWI in combination with theft 5th degree and/or a founded abuse report. The staff is seeing more forgeries (identity theft). Serious crimes, such as sex abuse, theft 1st degree, and serious assaults, are only about 10% of what DHS health care related record check evaluators see.

A question was asked regarding whether the DHS staff evaluates charges or convictions. In follow-up to the meeting, Lori provided information that the Code is clear that they are to evaluate convictions, not charges. DHS does ask the subject to explain the situation and that information, along with the initial charges, may influence their decision.

Angell explained the document with the changes being made to the response screens on the Single Contact Repository (SING). This would allow that for those cases that require additional research but result in "not found" cases, they would no longer have to be mailed or faxed; the system would automatically show on the screen and the facility could do a screen print for their records.

Discussion on recommendations

After review and discussion of the previous recommendations, the Committee came up with the following final recommendations:

- Modify the SING system to allow more names, such as aliases, to be included on an original request
 - Current system allows 2 names
 - Would require a system change to SING, which would incur a cost
 - May require an enhanced fee when more than two names are entered but the cost should still be less than the cost of doing multiple requests today
- Develop a list of crimes that would automatically prohibit an individual from working in an environment covered under 135B.34 or 135C.33 permanently or for a specified period of time
 - Similar to what is required in Iowa for Child care
 - Similar to what is required in Minnesota and Wisconsin
 - Would require legislation or legislation to allow DIA to do by rule
 - Work with providers in developing the list
- Change the 48-hour requirement for a facility, service, or program employer to verify information after notification by an employee or other credible information of a criminal conviction or entry of a founded child or dependent adult abuse record to 7 calendar days. [Iowa Code section 135C.33(7)(a and b)]
 - Would require a legislative change
- Explore receiving and sending DHS evaluation decisions from mail and FAX to secure email with a possible pilot project
 - Purpose would be for providers to email requests to DHS and DHS would email back their evaluation decision
 - Secure email is available through an Authorization and Authentication (A & A) System, which is encrypted for security purposes
- Explore ways to better provide information and training to providers, etc. on the background check requirements, process, and evaluations, which may improve turnaround time
 - Add Frequently Asked Questions (FAQs) to the SING website
 - Consider putting links to training and documents from agencies and providers on the SING website
 - Agencies collaborate to develop Background Check 101 in an “on-demand” training format and notify providers of location
 - Develop on-line forms required during the process and evaluation
 - Provide link to Record Check Evaluation Decision Guidance document
 - Encourage training for providers
 - Seek alternative funding sources, such as IowaAccess, as necessary

Discussion on Background Checks for Unregulated Home Health

Erin shared the home health provider levels of direct care worker based on services utilized by Public Health. Direct care worker II, III, and IV would be most applicable to the group being considered by the Committee.

The Medicare definition of home health services and home health agency was shared from the prior meeting.

The Committee identified potential barriers, such as a clear definition of home health providers, lack of knowledge who these providers are and where located, lack of a current enforcement mechanism, such as licensure, and balancing consumer rights, in making a recommendation for background checks to be required.

The Committee did make the following recommendations:

- Utilize the Department on Aging and their networks to educate the public, providers, and various organizations on what the consumer should be looking for when hiring care providers
 - Develop a fact sheet for physicians and other health care providers to provide to patients, including how to get a background check
 - Make sure consumers and family members know that the people being hired are trained/qualified to provide the services
- Review results from the Elder Abuse Task Force regarding where and what type of abuse is occurring in the community to assist in determining possible additional recommendations

Next Steps

A draft report will be sent to Committee members for review and comment.

Next Meeting

A final meeting to approve a final report will be scheduled, either in-person or conference call. Committee members and interested parties will be notified, along with receiving a copy of the proposed final report.

The report is due to the Governor and General Assembly by December 15, 2013.

Meeting adjourned.

State Abuse Registry Information
(Iowa and surrounding states)

State	Information maintained by the Registry	Length of time maintained	May be accessed by	How to request information from the Registry
Iowa	<p>Founded child/Dependent Adult abuse information. Maintain records of any previous reports of abuse or neglect of the same child or another child in the same family. Includes report data and disposition data. The Registry shall not include assessment data.</p>	<p>Depends on outcome of report. 5/10 Years from last Founded Report</p>	<p>Subjects, Persons Involved in Assessment, Providers of Care, Judicial and Administrative proceedings. It depends on the role of the person requesting and the disposition of the report.</p>	<p>In writing, orally with a follow up written request within 72 hours (Does not apply to DHS, Juvenile Court, and Attorney representing Department.</p>
Illinois	<p>The central register shall record all initial, preliminary, and final reports. The names and other identifying data and the dates and the circumstances of any persons requesting or receiving information from the central register shall be entered in the register record. The central register may contain such other information that the department determines to be in furtherance of the purposes of this Act.</p>	<p>Depends on outcome of report. Founded/priority 1 or 2: 7 years</p> <ul style="list-style-type: none"> • A listing of unfounded reports where the subject of the unfounded report requests that the record not be expunged because the subject alleges an intentional false report was made • A listing of unfounded reports where the report was classified as a priority 1 or priority 2 report in accordance with the department's rules, or the report was made by a mandated reporter • A listing for 3 years of unfounded reports involving the death, sexual abuse, or serious physical injury of a child • All other unfounded reports for 12 months following the date of the final finding 	<p>Depends on role of person requesting.</p>	<p>Signed and notarized written statement or with a release of information.</p>

State Abuse Registry Information
(Iowa and surrounding states)

State	Information maintained by the Registry	Length of time maintained	May be accessed by	How to request information from the Registry
Missouri	Information is on the Family Care Safety Registry if there is a finding of abuse	<p>For investigation reports initiated by a mandated reporter, where insufficient evidence of abuse or neglect is found by the division, identifying information shall be retained for 5 years from the conclusion of the investigation.</p> <p>For all other reports where there is insufficient evidence, identifying information shall be retained for 2 years. At the end of that time, the identifying information shall be removed from the records of the division and destroyed.</p> <p>For reports in which the division is unable to locate the child alleged to have been abused or neglected, identifying information shall be retained for 10 years from the date of the report and then shall be removed from the records of the division.</p>	Employers; People that are approved users of Family Care Safety Registry Background Screening and Employment Eligibility System	Form or FCSR system.
Nebraska	Records of individuals who the Department or the courts find responsible for abuse and neglect of a child or vulnerable adult.	At any time, the Department of Social Services may amend, expunge, or remove from the central register of child protection cases any record upon good cause shown and upon notice to the subject of the report of child abuse or neglect and to the division.	Subjects of the report Others with stipulations (see next box)	<p>Information released to third parties only when the third party has a signed release of information from the subject the Department will check. The information that is released to third parties is limited to whether or not a record was found in the Registry.</p> <p>The Department will also release information to individuals who would like to check if their name is on the Registry.</p>

State Abuse Registry Information
(Iowa and surrounding states)

State	Information maintained by the Registry	Length of time maintained	May be accessed by	How to request information from the Registry
Minnesota	Child abuse information	<p>For family assessment cases and cases where an investigation results in no determination of maltreatment or the need for child protective services, the assessment or investigation records must be maintained for a period of 4 years.</p> <p>All records relating to reports that upon investigation indicate either maltreatment or a need for child protective services shall be maintained for at least 10 years after the date of the final entry in the case record.</p>	Subjects of the report and local law enforcement.	Web based application. Some requests require a \$20 fee.
South Dakota	Parent or caretaker who has a court finding of child abuse or neglect or a substantiated report of abuse or neglect by CPS.	Unknown	Only staff from the Department of Social Services who have legal responsibility and subjects of the report.	Unknown, other than contact the Central Registry for Abuse and Neglect

Prepared for Background Check Study Committee (SF347)
November 2013

DEPENDENT ADULT ABUSE / BACKGROUND CHECKS SURROUNDING STATES

MINNESOTA

Adult Protective Services Unit in Department of Human Services
Vulnerable Adult – 18 or older, resident or inpatient of a facility
Three types of maltreatment: abuse, neglect, financial exploitation
MN Statutes – chapter 245C – background studies
Section 245C.14 – disqualification
Section 245C.15 – disqualifying crimes or conduct

- List of specific crimes, provides for permanent, 15-year, 10-year, 7-year disqualification

SOUTH DAKOTA

Abuse & neglect of elder / disabled adults has been a crime since 2007
Mandatory reporting of elder / disabled adult abuse by individuals in medical and mental health professions and employees or entities that have ongoing contact with and exposure to elders and adults with disabilities began in 2011

NEBRASKA

Adult Protective Services (protection of "vulnerable adults")
Adult Abuse and Neglect Central Registry used to conduct pre-employment background checks
Neb. Rev. Stat. § 28-376 adult protective services central registry
Neb. Rev. State. § 28-348-387 adult protective services act

MISSOURI

Family Care Safety Registry (FCSR) -- families and employers can contact the registry to request background information on registered child care, elder care and personal care workers or to request licensure status information on licensed child care and elder care providers
Applicant or employee required to register with FCSR within 15 days of the beginning of employment. It is the responsibility of the caregiver to register with the FCSR. Those required to register include employees of:

- A long-term care and residential care facility licensed by the Missouri Department of Health and Senior Services (DHSS) or the Missouri Department of Mental Health (DMH);
- A home health agency licensed by the DHSS;
- An in-home service provider under contract with the DHSS;
- A hospice agency licensed by the DHSS;
- A hospital licensed by the DHSS that has long-term care beds;
- A licensed or license-exempt child care facility or licensed child care home regulated by the DHSS;
- A residential care facility for children licensed or operated by the DHSS or DMH;
- A foster family home or foster group home, a child placing agency, or a residential care facility for children licensed by the Missouri Department of Social Services (DSS);
- A foster family home or foster group home licensed by the DSS or DMH;
- A group home licensed or operated by the DSS or DMH;

- A personal care provider who performs routine services or provides necessary support for a person with a physical or mental disability to enter and maintain employment or to live independently. This includes those under contract with the DMH and the DHSS;
- A caregiver who receives state or federal funds for the care of a child, senior or disabled person.

If an individual is "registered," they have completed the FCSR registration form or on-line registration, and paid the applicable fee. Their name will be listed in the FCSR database of caregivers, allowing employers to request their background screening results. Those wishing to hire a caregiver may contact the FCSR to obtain background screening information about registered individuals.

If I have information on my record, will it restrict me from working?

Although the FCSR provides the background screening, all questions regarding eligibility to work should be directed to the agency regulating the employer.

<http://health.mo.gov/safety/fcsr/>

The **Employee Disqualification List (EDL)** maintained by the Department of Health and Senior Services is a listing of individuals who have been determined to have:

- A. abused or neglected a resident, patient, client, or consumer;
- B. misappropriated funds or property belonging to a resident, patient, client, or consumer; or
- C. falsified documentation verifying delivery of services to an in-home services client or consumer.

These acts must have occurred while the individual was employed or by reason of their employment by a long-term care facility, an in-home services provider agency, by a hospital, home health agency, hospice, or ambulatory surgical center, or by a consumer or vendor. Individuals are notified that an investigation has indicated that they have committed acts of abuse, neglect, misappropriation or falsification and they are given an opportunity to appeal before being placed on the EDL.

Long-term care facilities, in-home services provider agencies, hospitals, home-health agencies, hospices and ambulatory surgical centers are prohibited from employing a person, in any capacity, whose name appears on the EDL. These providers are required to check the EDL before hiring an individual and they may not continue to employ a person whose name appears on the EDL.

<http://health.mo.gov/safety/edl/index.php>

ILLINOIS

Health Care Worker Background Check Act (225 ILCS 46)

- Prohibits those with certain convictions, listed in the act, from being employed by health care employer unless the prospective employee obtains a waiver
- If employer, after hire, becomes aware that employee has been convicted of one of the listed crimes, the employee must obtain a waiver
- Uses fingerprint-based criminal history records check
- May conditionally employ applicant for up to 3 months pending results of fingerprint-based criminal history record check
- Waiver – applicant or employee may request a waiver

Prepared for Background Check Study Committee (SF347)
November 2013

- Employer cannot employ an individual from the time the employer receives notice of a records check w/ disqualifying conviction until waiver is received

Reporting of elder abuse goes to the long-term care ombudsman's office; does not appear to be any central registry in IL

WISCONSIN

Caregiver background check law (50.065 Wis. Stats.)

See form P-00274 (07/11), Wisconsin Caregiver Program -- Offenses Affecting Caregiver

Eligibility for Chapter 50 Programs

WISCONSIN CAREGIVER PROGRAM OFFENSES AFFECTING CAREGIVER ELIGIBILITY FOR CHAPTER 50 PROGRAMS

INTRODUCTION

This document lists Wisconsin crimes and other offenses that the Wisconsin State Legislature, under the Caregiver Law, Chapter 50.065, Wis. Stats., has determined require rehabilitation review approval before a person may receive regulatory approval, work as a caregiver, reside as a non client resident at, or contract with an entity.

For more information, see DQA publication P-00038, *Wisconsin Caregiver Program Manual*, at:

<http://www.dhs.wisconsin.gov/publications/DQAnum.asp>

Unless the person is approved through the Rehabilitation Review process, the crimes and findings by government agencies included on the Offenses List (Tables I and II), and comparable crimes and offenses from other states or other U.S. jurisdictions, prohibit:

- employment as a caregiver in regulated entities;
- licensure, certification, or registration of a person to operate an entity; and
- residence of a non client resident.

Any conviction not on the Offenses List may be determined to be substantially related to the duties or the circumstances of the job. This may result in:

- refusal to hire a candidate for that reason, although an employer is not required to bar the person from employment;
- denial, revocation, or suspension of a license, certificate, or approval or registration; or
- denial of residency of a non client resident.

A criminal record that indicates "not guilty," "no prosecution," "dropped," or "dismissed" means that the person was not convicted of the crime for which they were charged.

Additional information must be obtained when:

1. The person reports a conviction for a crime on the Offense List that does not appear on the Department of Justice (DOJ) report to the criminal history record request.
2. The DOJ report does not provide a conclusive disposition on a criminal charge for a crime on the Offense List;
3. The military discharge was other than "honorable;" or
4. The Background Information Disclosure (BID) or DOJ response indicates a conviction of any of the following, where the conviction occurred five years or less from the date on which the information was obtained.

- Misdemeanor battery s. 940.19(1), Wis. Stats.
- Battery to an unborn child s. 940.195, Wis. Stats.
- Battery, special circumstances s. 940.20, Wis. Stats.
- Reckless endangerment s. 941.30, Wis. Stats.
- Invasion of privacy s. 942.08, Wis. Stats.
- Disorderly conduct s. 947.01, Wis. Stats.
- Harassment s. 947.013, Wis. Stats.

Note: These seven convictions do not prohibit employment, but do require the entity to obtain the criminal complaint and judgment of conviction from the Clerk of Courts office in the county where the person was convicted.

**WISCONSIN CAREGIVER PROGRAM
OFFENSES AFFECTING CAREGIVER ELIGIBILITY FOR CHAPTER 50 PROGRAMS**

Table I

Entities and Programs Serving Only Persons 18 Years of Age or Older

Regulatory approval, employment as a caregiver, and non client residency at or contracting with an entity are prohibited until rehabilitation approval is received, for all programs and entities that serve only clients 18 years of age or older.

CONVICTIONS

Wisconsin State Statute	Offense
940.01	First degree intentional homicide
940.02	First degree reckless homicide
940.03	Felony murder
940.05	Second degree intentional homicide
940.12	Assisting suicide
940.19 (2), (3), (4), (5) or (6)	Battery; substantial battery; aggravated battery (felony)
940.22 (2) or (3)	Sexual exploitation by therapist; duty to report
940.225 (1), (2) or (3)	Sexual assault (first, second, or third degree)
940.285 (2)	Abuse of individuals at risk
940.29	Abuse of residents of penal facilities
940.295	Abuse and neglect of patients and residents
948.02 (1)	Sexual assault of a child (first degree)
948.025	Engaging in repeated acts of sexual assault of the same child
948.03 (2)(a)	Physical abuse of a child (Intentional causation of bodily harm)
	Violation of the law of any other state or U.S. jurisdiction that would be a violation of any of the above.

OTHER OFFENSES

	Finding by a government agency of abuse or neglect of a client or of misappropriation of a client's property
	Finding by a government agency of child abuse or neglect

**WISCONSIN CAREGIVER PROGRAM
OFFENSES AFFECTING CAREGIVER ELIGIBILITY FOR CHAPTER 50 PROGRAMS**

Table II

Entities and Programs Serving Any Persons Under the Age of 18 Years

Regulatory approval, employment as a caregiver, and non client residency at or contracting with an entity are prohibited until rehabilitation approval is received, for all programs and entities that serve any clients who are under the age of 18.

CONVICTIONS

Wisconsin State Statute	Offense
940.01	First degree intentional homicide
940.02	First degree reckless homicide
940.03	Felony murder
940.05	Second degree intentional homicide
940.12	Assisting suicide
940.19 (2), (3), (4), (5) or (6)	Battery; substantial battery; aggravated battery (felony)
940.22 (2) or (3)	Sexual exploitation by therapist; duty to report
940.225 (1), (2) or (3)	Sexual assault (first, second, or third degree)
940.285 (2)	Abuse of individuals at risk
940.29	Abuse of residents of penal facilities
940.295	Abuse and neglect of patients and residents
948.02 (1) or (2)	Sexual assault of a child (first and second degree)
948.025	Engaging in repeated acts of sexual assault of the same child
948.03 (2)(a), (b) or (c)	Physical abuse of a child (intentional causation of bodily harm)
948.05	Sexual exploitation of a child
948.051	Trafficking of a child
948.055	Causing a child to view or listen to sexual activity
948.06	Incest with a child
948.07	Child enticement
948.08	Soliciting a child for prostitution
948.085	Sexual assault of a child placed in substitute care
948.11 (2)(a) or (am)	Exposing a child to harmful material or harmful descriptions or narrations
948.12	Possession of child pornography
948.13	Child sex offender working with children
948.21 (1)	Neglecting a child
948.30	Abduction of another's child; constructive custody
948.53	Child unattended in child care vehicle
	Violation of the law of any other state or U.S. jurisdiction that would be a violation of any of the above.

OTHER OFFENSES

	Finding by a government agency of abuse or neglect of a client or of misappropriation of a client's property
	Finding by a government agency of child abuse or neglect

Changes in the works for Single Contact Repository (SING)

Angell Boyd with Department of Public Safety has provided the following information regarding some changes that are in the works for SING and how the user receives responses. Also, below are some screen shots of what it will generally look like for the user.

Currently, when an agency requests criminal history record information through SING they will either receive an immediate "no record found" response or a "further research is required" response.

If they receive a "further research required" response SING generates an electronic form, so to speak, and sends it to DCI automatically for processing. DCI processes the request manually, completes the form online indicating the results, prints the request/results off and either mails or faxes the final results to the agency. The final results could ultimately be "no record found" or "record found" in which we would also mail/fax the "rap" sheet along with the form to the agency.

The new process will allow the agency to access the results online at their convenience. It will eliminate the need for DCI to fax/mail any results that are ultimately "no record found" results after we have done our further research. The agency will be able to see the results and print them off directly. In addition, the agency will be able to see when the final results show a "record found". However, DCI will still need to print off and mail/fax the electronic request form (Form S) with the "rap sheet" as we currently do because we do not have a method for sending the rap sheets electronically through SING. This will also provide the user with the ability to monitor the process of the requests that require "further research". The last 3 columns in each screen shot provide updated information for the user as the request moves through the process. The first column lets them know what the initial results of the record check at the time of request. The second column provides the date that the record check was completed; might be the same day for instant "no record found" results, might be a couple days later for those that require "further research." The third column provides the final results of the record check.

At this time this change is for criminal history record checks and sex offender registry responses. However, it was designed with the intent to expand it to the other checks/registries in the future.

Angell attached 3 different scenarios. The first screen shot is what the User sees now on SING. The following 3 cases are the changes that will be implemented.

Case #1 – Initial SING request - "No CCH Record Found" immediate response.

Case #2 – Initial SING request - "further research required" response. Final results indicate "No CCH Record Found".

Case #3 – Initial SING request - "further research required" response. Final results indicate "CCH Record Found Results to be faxed"

SING initial Search criteria/current screen.

Single Contact License & Background Check

Results

Abuse Registries Background Check	
Last Name a	First Name b
Other Last Name	DOB
SSN	
Results	
Registry	Not found in Registry
Sex Offender	Not found in Registry
Child Abuse	Not found in Registry
Criminal History Background Check	
Last Name a	First Name b
Other Last Name	DOB
SSN	
Results	
Not found in Database	

Background Check Complete As Of 11/13/2013 3:58:15 PM
NOTE: The first and last names, date of birth, and SSN displayed in the above registry and criminal history results are just as they were entered on the screen.
Billing Account 4321 Cash Deposit Currently at \$326.35

Generate PDF

Search Again

Case #2 – “further research required” response/final results “No CCH Record Found”

Single Contact License & Background Check

DOB: [REDACTED] (Month/Day/Year)

Database codes are: CRM Criminal History
 DAR Dependent Adult Abuse Registry
 SEX Sex Offender
 CHI Child Abuse Registry
 AID Nurse Aid Registry
 NUR Nurses

Records Matching Last Name a And DOB '05-05-1962'

EVENT/TIMESTAMP	LAST NAME	OTHER LAST NAME	FIRST NAME	SSN	LICENSE NUMBER	DOB	DATABASE CODE	RESULTS	STATUS	FINAL RESULT
10/30/2013 11:51:55 AM a	b		b	[REDACTED]	12345	[REDACTED]	CHI	Record Not Found	Completed	10-30-2013 No Record Found
10/30/2013 11:51:55 AM a	b		b	[REDACTED]	12345	[REDACTED]	SEX	Record Not Found	Completed	10-30-2013 No Record Found
10/30/2013 11:51:55 AM a	b		b	[REDACTED]	12345	[REDACTED]	CRM	Further Research	Completed	11-12-2013 No CCH Record Found
10/30/2013 11:51:55 AM								CHARGE \$15.00		

Generate PDF

Case #3 – “further research required” response/final result “CCH Record Found Results to be Faxed”

Single Contact License & Background Check

Log Off

Return To Search Screen

This Month's Transactions

Previous Month's Transactions

LAST NAME test DOB (Month/Day/Year) Find Transactions Matching

Database codes are: CRM Criminal History
 DAR Dependent Adult Abuse Registry
 SEX Sex Offender
 CHI Child Abuse Registry
 AID Nurse Aid Registry
 NUR Nurses

Records Matching Last Name test And DOB '05-05-1962'

EVENT/TIMESTAMP	LAST NAME	OTHER LAST NAME	FIRST NAME	SSN	LICENSE NUMBER	DOB	DATABASE CODE	RESULTS	STATUS	FINAL RESULT
10/25/2013 1:53:52 PM	test		dps	change			CHI	Record Not Found	Completed	10-25-2013 No Record Found
10/25/2013 1:53:52 PM	test		dps	change			SEX	Record Not Found	Completed	10-25-2013 No Record Found
10/25/2013 1:53:52 PM	test		dps	change			CRM	Further Research	Completed	10-25-2013 CCH RECORD FOUND RESULTS TO BE FAXED
10/25/2013 1:53:52 PM								CHARGE		\$15.00

Generate PDF

Record Check Evaluation Decision Guidance

NOTE: All convictions and transgressions require a response from the individual completing the 2310.

HIGH	<p>What Qualifies Under HIGH?</p> <ul style="list-style-type: none"> • 1st or 2nd degree non sex crimes • Related to sex abuse, any degree • Multiple incidents of victim in vulnerable category • Serious injury to others • Related to serious and recurring substance abuse • Pattern of multiple convictions/transgressions • Significant theft (value exceeding \$1,000) or property destruction • Vulnerable person has been removed from applicant's care • Applicant makes false statements regarding perpetration of child/dependant adult abuse 	<p>Direct Care Positions</p>	<p>0 - 5 Years Elapsed Time</p> <p>If unlikely to be approved or an automatic prohibition*, no further documentation is required. In order to potentially be approved, considerable information must be provided.↔ Response needs to address all HIGH level crimes within this 0 - 5 year timeframe. More of the documentation provided needs to address the 0 - 5 year timeframe crimes.</p>	<p>5 - 10 Years Elapsed Time</p> <p>Response needs to address all HIGH level crimes within this 5 - 10 year timeframe, providing substantial evidence of rehabilitation. More of the documentation provided needs to address the 5 - 10 year timeframe crimes.</p>	<p>10 + Years Elapsed Time</p> <p>Response needs to address all HIGH level crimes within this 10 + year timeframe, providing substantial evidence of rehabilitation.</p>
		<p>Indirect Care Positions</p>	<p>0 - 5 Years Elapsed Time</p> <p>If unlikely to be approved or an automatic prohibition, no further documentation is required. In order to potentially be approved, considerable information must be provided. Response needs to address all HIGH level crimes within this 0 - 5 year timeframe. More of the documentation provided needs to address the 0 - 5 year timeframe crimes.</p>	<p>5 - 10 Years Elapsed Time</p> <p>Response needs to address all HIGH level crimes within this 5 - 10 year timeframe, providing substantial evidence of rehabilitation. More of the documentation provided needs to address the 5 - 10 year timeframe crimes.</p>	<p>10 + Years Elapsed Time</p> <p>Response needs to address all HIGH level crimes within this 10 + year timeframe, providing substantial evidence of rehabilitation.</p>
		<p>* Automatic Prohibitions: See Page 2 for a listing of prohibitions by program.</p>			
		<p>↔ Supporting Documentation: job reference, sponsor reference, professional reference, work history, completed probation, completion of required substance abuse/batterers/mental health sessions, miscellaneous certificates of completion (parenting class, etc.), completion of continued education/coursework, police reports, etc.</p>			
MODERATE	<p>What Qualifies Under MODERATE?</p> <ul style="list-style-type: none"> • 3rd or 4th degree non sex crimes • Intermittent incidents of victim in vulnerable category • Non-serious injury to others • Related to intermittent substance abuse • Moderate theft (value between \$201 and \$1,000) or property destruction • Multiple thefts not arising from a single incident • Incidents of dishonesty (false reports to law enforcement, etc.) 	<p>Direct Care Positions</p>	<p>0 - 5 Years Elapsed Time</p> <p>Response needs to address all MODERATE level crimes within this 0 - 5 year timeframe. Response needs to include convincing supporting documentation, evidence of stability, and substantial evidence of rehabilitation. More of the documentation provided needs to address the 0 - 5 year timeframe crimes.</p>	<p>5 - 10 Years Elapsed Time</p> <p>Response needs to address all MODERATE level crimes within this 5 - 10 year timeframe, providing substantial evidence of rehabilitation. More of the documentation provided needs to address the 5 - 10 year timeframe crimes.</p>	<p>10 + Years Elapsed Time</p> <p>Response needs to address all MODERATE level crimes within this 10 + year timeframe and demonstrate acknowledgement and insight into their offense.</p>
		<p>Indirect Care Positions</p>	<p>0 - 5 Years Elapsed Time</p> <p>Response needs to address all MODERATE level crimes within this 0 - 5 year timeframes, providing substantial evidence of rehabilitation. More of the documentation provided needs to address the 0 - 5 year timeframe crimes. Stipulations might be imposed depending on the documentation received.</p>	<p>5 - 10 Years Elapsed Time</p> <p>Response needs to address all MODERATE level crimes within this 5 - 10 year timeframe, providing evidence of rehabilitation.</p>	<p>10 + Years Elapsed Time</p> <p>Response needs to address all MODERATE level crimes within this 10 + year timeframe and demonstrate acknowledgement and insight into their offense.</p>
		<p>* Automatic Prohibitions: See Page 2 for a listing of prohibitions by program.</p>			
		<p>↔ Supporting Documentation: job reference, sponsor reference, professional reference, work history, completed probation, completion of required substance abuse/batterers/mental health sessions, miscellaneous certificates of completion (parenting class, etc.), completion of continued education/coursework, police reports, etc.</p>			
LOW	<p>What Qualifies Under LOW?</p> <ul style="list-style-type: none"> • 5th degree crimes • Non-injurious domestic incident • Related to old (15+ years) or isolated substance use • Isolated theft (value up to \$200) or property destruction • Multiple thefts in the 5th arising from a single incident • All other simple misdemeanors not indicated under SERIOUS and MODERATE 	<p>Direct Care Positions</p>	<p>0 - 5 Years Elapsed Time</p> <p>Response needs to address all LOW level crimes within this 0 - 5 year timeframe and demonstrate acknowledgement and insight into their offense.</p>	<p>5 - 10 Years Elapsed Time</p> <p>Response needs to address all LOW level crimes within this 5 - 10 year timeframe and demonstrate acknowledgement and insight into their offense.</p>	<p>10 + Years Elapsed Time</p> <p>2310 response demonstrates acknowledgement and insight into their offense.</p>
		<p>Indirect Care Positions</p>	<p>0 - 5 Years Elapsed Time</p> <p>2310 response demonstrates acknowledgement and insight into their offense.</p>	<p>5 - 10 Years Elapsed Time</p> <p>2310 response demonstrates acknowledgement and insight into their offense.</p>	<p>10 + Years Elapsed Time</p> <p>2310 response speaks to acknowledgement and insight into their offense.</p>
		<p>* Automatic Prohibitions: See Page 2 for a listing of prohibitions by program.</p>			
		<p>↔ Supporting Documentation: job reference, sponsor reference, professional reference, work history, completed probation, completion of required substance abuse/batterers/mental health sessions, miscellaneous certificates of completion (parenting class, etc.), completion of continued education/coursework, police reports, etc.</p>			

Automatic Prohibitions

Adoption/Foster Care Licensing

An individual applying to be a foster parent licensee shall not be granted a license and an evaluation shall not be performed under this subsection if the individual has been convicted of any of the following felony offenses:

- Within the five-year period preceding the application dates, a drug-related offense.
- Child endangerment or neglect or abandonment of a dependent person.
- Domestic abuse.
- A crime against a child, including but not limited to sexual exploitation of a minor.
- A forcible felony.

Child Care Homes

Individuals with the following convictions or founded child abuse reports are prohibited from registration as a child development home provider, employment in a child development home, living in a child development home, receiving public funding for providing child care, or living in a child care home that receives public funding:

- Founded child or dependent abuse that was determined to be sexual abuse.
- Placement on the sex offender registry.
- Felony child endangerment or neglect or abandonment of a dependent person.
- Felony domestic abuse.
- Felony crime against a child including but not limited to sexual exploitation of a minor.
- A forcible felony.

Child Care Centers

Mandatory prohibition: A person with the following convictions or founded abuse reports is prohibited from involvement with child care:

- Founded child or dependent adult abuse that was determined to be sexual abuse.
- Placement on the sex offender registry.
- Felony child endangerment or neglect or abandonment of a dependent person.
- Felony domestic abuse.
- Forcible felony.
- Felony crime against a child including, but not limited to, sexual exploitation of a minor.

Mandatory time-limited prohibition: A person with the following convictions or founded abuse reports is prohibited from involvement with child care for five years from the date of the conviction or founded abuse report:

- Conviction of a controlled substance offense under Iowa Code chapter 124.
- Founded child abuse that was determined to be physical abuse.

Facilities/Hospitals

None

Draft Recommendations

Background Check Improvements

- Eliminate evaluations for certain crimes or aged crimes, such as 5 years or older
 - Entities need to be aware that even if certain or aged crimes are eliminated for evaluation purposes, liability insurance companies may still consider these crimes in determining insurability and rates
 - Need to include in FAQs
 - If a crime is going to always be eliminated by DHS in their evaluation of the person for work purposes, why not just exempt
 - Would need to identify which crimes, what timeframe
 - Would require legislation
 - Need more data before a final recommendation is made
- Add more names, such as aliases, to original request
 - Current system allows 2 names
 - Would require a system change to SING, which would incur a cost
 - May require an enhanced fee when more than two names are entered
- Change the 48-hour requirement for a facility, service, or program employer to verify information after notification by an employee or other credible information of a criminal conviction or entry of a founded child or dependent adult abuse record. [Iowa Code section 135C.33(7)(a and b)]
 - Change to 7 calendar days
 - Would require a legislative change
- Move from mail and FAX to secure email, although could be costly
 - Purpose would be for providers to email requests to DHS and DHS would email back their evaluation decision
 - Secure email is available through an Authorization and Authentication (A & A) System, which is encrypted for security purposes
 - Could do a pilot to see how well it works
- Give top processing priority to pre-employment background checks
 - Department of Public Safety reported that child care and entities covered under Iowa Code sections 135B.34 and 135C.33 are required to do pre-employment background checks.
 - Under Iowa Code chapter 279, a school district must initiate a record check from a variety of sources prior to entering into an initial contract with a teacher who holds a license other than one issued by the Board of Educational Examiners.
 - Under Iowa Code chapter 272 and associated rules under 282 IAC chapters 12 and 13, a background check is conducted prior to the Board of Educational Examiners issuing an initial license.
 - In order to determine if this recommendation is feasible/practicable, data on the number of requests by category of employer is necessary. Public Safety will research and provide the information at the next meeting.

- Do training of providers via webinar, conferences, fact sheets, websites, mini-sessions, PowerPoint
 - Add Frequently Asked Questions (FAQs) to the SING website
 - Be cautious about how much is placed on the site
 - Iowa Association of Community Providers is developing a PowerPoint
 - Need Background Check 101 in an “on-demand” training
 - DHS has done a webinar and provided a checklist of information needed to evaluate a conviction or founded abuse
- On-line forms, etc.
 - IowaAccess is a possible funding source
 - Website/Web Portal
 - On-demand training
 - Front end that would link to other sites
 - Possible same front end that would go to a site specifically related to a category, such as long-term care, hospital, child care, etc.
 - Board of Nursing may be an example of how this would work
 - May improve turnaround

Requiring Background Checks for Unregulated Home Health Providers

- Initial recommendation
 - Start with education of public, providers, various organizations
 - What should you be looking for when hiring care providers
 - Also talk about elder abuse

641—80.10(135) Home care aide services. Home care aide services are intended to enhance the capacity of consumers to attain or maintain their independence. Trained and supervised direct care workers provide services to consumers who, due to the absence, incapacity or limitations of the usual homemaker, are experiencing stress or crisis.

80.10(1) Program purpose. The purpose of this program is to reduce, prevent or delay inappropriate institutionalization of consumers and to preserve families through the provision of supportive services by direct care workers who have completed training and are professionally supervised.

80.10(2) Scope. The direct care worker provides services for consumers by following a plan of care identifying assigned tasks. A direct care worker participates in activities to safeguard the health and wellness of the community and to implement core public health functions and essential public health services.

80.10(3) Authorized agency.

a. The authorized agency shall establish policies for supervision of direct care workers.

b. The authorized agency shall ensure that each direct care worker has completed adequate training and demonstrated competency for each task assigned. The required preservice education for direct care workers is outlined in the following chart:

Level of Direct Care Worker	Direct Care Worker I (equivalent to chore)	Direct Care Worker II (equivalent to home helper)	Direct Care Worker III (equivalent to homemaker)	Direct Care Worker IV (equivalent to personal care)	Direct Care Worker V (equivalent to protective worker)
Scope of Services	Provides services to a consumer necessary to enable the consumer to live independently and that encompass heavier cleaning tasks, including outside maintenance and chores. For chore services, there is no physical contact between the consumer and the direct care worker	Under the supervision of a professional, provides services to protect the environment for a self-directing consumer to preserve a safe and sanitary home	Under the supervision of a professional, provides services primarily in the homes of consumers who, due to the absence, incapacity or limitations of the usual homemaker or caregiver, are experiencing stress or crisis, to promote consumer health and a safe, stable, sanitary home environment	Under the direction of nursing or medical staff, provides health-related services such as observation of self-administration of oral medications; checking the consumer's pulse rate, temperature, and respiration rate; helping with simple prescribed exercises; keeping the consumer's rooms neat; changing nonsterile dressings; providing skin care and back rubs; assisting with braces and artificial limbs; or assisting the consumer in using medical equipment	Provides services intended to stabilize a child's or adult's residential environment and relationships with relatives, caretakers, and other consumers and household members in order to alleviate a situation involving abuse or neglect or to otherwise protect the child or adult from a threat of abuse or neglect; also provides services intended to prevent situations which could lead to abuse or neglect of a child or adult when a definite potential for abuse or neglect exists
Services or tasks assigned	Heavy household cleaning, garbage removal,	Essential shopping and housekeeping	Money management, household	Personal care and rehabilitative therapies	Family preservation, family

Level of Direct Care Worker	Direct Care Worker I (equivalent to chore)	Direct Care Worker II (equivalent to home helper)	Direct Care Worker III (equivalent to homemaker)	Direct Care Worker IV (equivalent to personal care)	Direct Care Worker V (equivalent to protective worker)
include, but are not limited to:	snow shoveling, changing light bulbs, putting screens on windows, covering and uncovering air conditioners, lawn care and mowing		management, consumer education, transportation, meal preparation, family preservation, family management, child care, assistance with personal care, respite, essential shopping, and housekeeping		management, money management, child care, and transportation
Preservice Education	Direct care worker possesses skills for tasks assigned	4 hours on role of the home care aide; 2 hours on communication; 2 hours on understanding basic human needs; 2 hours on maintaining a healthy environment; 2 hours on infection control in the home; and 1 hour on emergency procedures	60-hour home care aide training: A Model Curriculum and Teaching Guide for the Instruction of the Homemaker-Home Health Aide OR 75-hour certified nurse aide course and Direct Care Worker II preservice education OR Home care aide training and prior approval by the department	60-hour home care aide training: A Model Curriculum and Teaching Guide for the Instruction of the Homemaker-Home Health Aide OR 75-hour certified nurse aide course and Direct Care Worker II preservice education OR Home care aide training and prior approval by the department	Training in a department-approved curriculum
Workforce Development (per calendar year)	None	3 hours prorated to employment	12 hours prorated to employment	12 hours prorated to employment	12 hours prorated to employment
Competency	Documented skills for assigned tasks	Documented skills for assigned tasks	Documented skills for assigned tasks	Documented skills for assigned tasks	Documented skills for assigned tasks

80.10(4) Professional staff as providers of home care aide services. An individual who is in the process of receiving or who has completed the training required for LPN or RN licensure or who possesses an associate's degree or higher in social work, sociology, home economics or other health or human services field may be assigned to provide home care aide services if the following conditions are met:

- a. Services or tasks assigned are appropriate to the individual's prior training.
- b. Orientation to home care is conducted. Orientation includes adaptation of the individual's knowledge and skills from prior education to the home setting and to the role of the home care aide.

80.10(5) Care coordinator and service manager qualifications.

a. An individual performing care coordination or service management shall meet one of the following criteria:

- (1) Be a registered nurse licensed to practice in the state of Iowa.
- (2) Possess a bachelor's degree in family and consumer science, education, social work or other health or human services field.
- (3) Be a licensed practical nurse with a current Iowa license.

b. A home care aide with an equivalent of two years' experience may be delegated care coordination/service management duties as long as a qualified individual who meets one of the criteria in paragraph "a" retains responsibility and provides supervision and evidence of supervision.

c. An individual who has provided home care aide care coordination and service management prior to June 30, 2007, shall be considered qualified to continue in the position.

80.10(6) A qualified care coordinator or service manager may provide direct care services as appropriate to the individual's level of education and competency for the assignment.

80.10(7) The service manager's scheduling duty may be delegated to an individual not possessing one of the qualifications in paragraph 80.10(5) "a" provided that a qualified individual who meets one of the qualifications in 80.10(5) "a" retains responsibility and provides supervision and evidence of supervision.

80.10(8) Consumer records. The authorized agency shall maintain records for each consumer. The records shall include:

- a.* An initial assessment.
- b.* A plan of care.
- c.* Assignment of direct care worker.
- d.* Assignment of tasks.
- e.* Reassessment.
- f.* Update of plan of care.
- g.* Direct care worker narrative notes.
- h.* Documented supervision.

80.10(9) Appropriation. The appropriation to each county is determined by the following formula: 15 percent of the total allocation shall be divided so that an equal amount is available for use in each county in the state. The following percentages of the remaining 85 percent shall be allocated to each county according to that county's proportion of state residents with the following demographic characteristics:

- a.* Sixty percent according to the number of elderly persons living in the county.
- b.* Twenty percent according to the number of persons below the federal poverty guidelines living in the county.
- c.* Twenty percent according to the number of substantiated cases of child abuse in the county during the three most recent years for which data is available.

Federal Definitions of Home Health Services & Home Health Agency

Social Security Act Section 1861 (m) & (o) (42 U.S.C. 1395x)

Home Health Services

(m) The term "home health services" means the following items and services furnished to an individual, who is under the care of a physician, by a home health agency or by others under arrangements with them made by such agency, under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician, which items and services are, except as provided in paragraph (7), provided on a visiting basis in a place of residence used as such individual's home—

- (1) part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse;
- (2) physical or occupational therapy or speech-language pathology services;
- (3) medical social services under the direction of a physician;
- (4) to the extent permitted in regulations, part-time or intermittent services of a home health aide who has successfully completed a training program approved by the Secretary;
- (5) medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care, and a covered osteoporosis drug (as defined in subsection (kk)), but excluding other drugs and biologicals) and durable medical equipment while under such a plan;
- (6) in the case of a home health agency which is affiliated or under common control with a hospital, medical services provided by an intern or resident-in-training of such hospital, under a teaching program of such hospital approved as provided in the last sentence of subsection (b); and
- (7) any of the foregoing items and services which are provided on an outpatient basis, under arrangements made by the home health agency, at a hospital or skilled nursing facility, or at a rehabilitation center which meets such standards as may be prescribed in regulations, and—
 - (A) the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in such place of residence, or
 - (B) which are furnished at such facility while he is there to receive any such item or service described in clause (A),
 but not including transportation of the individual in connection with any such item or service; excluding, however, any item or service if it would not be included under subsection (b) if furnished to an inpatient of a hospital. For purposes of paragraphs (1) and (4), the term "part-time or intermittent services" means skilled nursing and home health aide services furnished any number of days per week as long as they are furnished (combined) less than 8 hours each day and 28 or fewer hours each week (or, subject to review on a case-by-case basis as to the need for care, less than 8 hours each day and 35 or fewer hours per week). For purposes of sections 1814(a)(2)(C) and 1835(a)(2)(A), "intermittent" means skilled nursing care that is either provided or needed on fewer than 7 days each week, or less than 8 hours of each day for periods of 21 days or less (with extensions in exceptional circumstances when the need for additional care is finite and predictable).

Home Health Agency

- (o) The term "home health agency" means a public agency or private organization, or a subdivision of such an agency or organization, which—
- (1) is primarily engaged in providing skilled nursing services and other therapeutic services;
 - (2) has policies, established by a group of professional personnel (associated with the agency or organization), including one or more physicians and one or more registered professional nurses, to govern the services (referred to in paragraph (1)) which it provides, and provides for supervision of such services by a physician or registered professional nurse;
 - (3) maintains clinical records on all patients;
 - (4) in the case of an agency or organization in any State in which State or applicable local law provides for the licensing of agencies or organizations of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing agencies or organizations of this nature, as meeting the standards established for such licensing;
 - (5) has in effect an overall plan and budget that meets the requirements of subsection (z);
 - (6) meets the conditions of participation specified in section 1891(a) and such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such agency or organization;
 - (7) provides the Secretary with a surety bond—
 - (A) effective for a period of 4 years (as specified by the Secretary) or in the case of a change in the ownership or control of the agency (as determined by the Secretary) during or after such 4-year period, an additional period of time that the Secretary determines appropriate, such additional period not to exceed 4 years from the date of such change in ownership or control;
 - (B) in a form specified by the Secretary; and
 - (C) for a year in the period described in subparagraph (A) in an amount that is equal to the lesser of \$50,000 or 10 percent of the aggregate amount of payments to the agency under this title and title XIX for that year, as estimated by the Secretary that Secretary determines is commensurate with the volume of the billing of the supplier; and
 - (8) meets such additional requirements (including conditions relating to bonding or establishing of escrow accounts as the Secretary finds necessary for the financial security of the program) as the Secretary finds necessary for the effective and efficient operation of the program; except that for purposes of part A such term shall not include any agency or organization which is primarily for the care and treatment of mental diseases. The Secretary may waive the requirement of a surety bond under paragraph (7) in the case of an agency or organization that provides a comparable surety bond under State law.



**Background Check Study Committee
December 16, 2013 Minutes**

Committee Members in Attendance:

Angell Boyd, Department of Public Safety
 Erin Drinnin, Department of Public Health
 Dawn Fisk, Department of Inspections and Appeals
 Jeff Franklin, Department of Administrative Services
 Dave Jobses, Department of Public Safety
 Lori Lipscomb, Department of Human Services
 Deborah Svec-Carstens, Department of Inspections and Appeals

Beverly Zylstra, Department of Inspections and Appeals, Facilitator

Other Attendees:

Kimberly Murphy, Department on Aging
 Bill Nutty, LeadingAge Iowa
 Ted Stopulos, Iowa Health Care Association
 Kathy Sutton, Department of Inspections and Appeals

Attendees were provided a packet of information consisting of:

- Agenda
- November 18, 2013 meeting minutes

Approval of Minutes

Motion made by Jeff Franklin and seconded by Dave Jobses to approve the minutes from the November 18, 2013 meeting. Minutes approved as written.

Review of Draft Report

The Committee and stakeholders reviewed a revised draft report following feedback from Committee members, Department on Aging and the Iowa Health Care Association/Iowa Center for Assisted Living. Additional feedback was received from LeadingAge Iowa, the Hale Group and the Iowa CareGivers. Leading Age suggested the agencies continue to evaluate expanding the state process to include national background checks requiring fingerprinting. The Hale Group suggested exploring some kind of notification to, or registration requirements with, the State for those entities choosing to provide home care services. Iowa CareGivers suggested that the

implementation of the recommendations of the Direct Care Worker Advisory Council would have addressed some of the issues raised in SF 347.

The Committee fully considered all feedback received and modified the report to include any final considerations.

Final Approval of Report

All members of the Committee approved the report as amended.

Meeting adjourned.