

DEPARTMENT OF HEALTH AND SOCIAL SERVICES



PROPOSED CHANGES TO REGULATIONS

**7 AAC 10 – LICENSING, CERTIFICATION, & APPROVALS
(Including Barrier Crimes, Criminal History Checks, & Firearms)**

AND

**7 AAC 41 - CHILD CARE ASSISTANCE PROGRAM
(Including criminal history checks for relative providers)**



PUBLIC REVIEW DRAFT
December 28, 2015

COMMENT PERIOD ENDS: April 25, 2016
*Please see public notice for details about how to comment on
these proposed changes.*

Notes to reader:

1. New text that amends an existing regulation is **bolded and underlined**.
2. [ALL-CAPS TEXT WITHIN BRACKETS] indicates text that is to be deleted.
3. If the changes to a section include reorganizing the section in addition to adding and deleting text, the lead-in line will indicate that the section is "repealed and readopted" and no bolding, underlining, or bracketing is used.
4. When the word "including" is used, Alaska Statutes provide that it means "including, but not limited to."
5. Only the text that is being changed within a section of the current regulations is included in this draft. Refer to the text of that whole section, published in the current Alaska Administrative Code, to determine how a proposed change relates within the context of the whole section and the whole chapter.

**Title 7. Health and Social Services.
Part 1. Administration.
Chapter 10. Licensing, Certification, and Approvals.
Article 1. Purpose, Applicability, and Administrative Provisions.**

7 AAC 10.010 is amended to read:

7 AAC 10.010. Purpose of chapter. The purpose of this chapter is to establish certain licensing, certification, approval, and other requirements for **individuals**, entities, and individual service providers referred to in 7 AAC 10.015, and to establish standards for the protection of public health, safety, and welfare. (Eff. 6/23/2006, Register 178; am 12/3/2006, Register 180; am 2/9/2007, Register 181; am ___/___/___, Register ___)

Authority:	AS 18.05.010	AS 47.05.310	AS 47.32.020
	AS 18.05.040	AS 47.05.330	AS 47.32.030
	AS 44.29.020	AS 47.14.120	AS 47.33.005
	AS 47.05.300	AS 47.32.010	AS 47.33.010

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7 AAC 10.015(1) is amended to read:

7 AAC 10.015. Applicability of chapter.

The provisions of

(1) 7 AAC 10.900 - 7 AAC 10.990 (Barrier Crimes **and Conditions**, Criminal History Checks, and Centralized Registry) apply to an **individual**, entity, or individual **service provider** described in 7 AAC 10.900(b);

....

(Eff. 6/23/2006, Register 178; am 12/3/2006, Register 180; am 2/9/2007, Register 181; am ___/___/___, Register ___)

Authority:	AS 18.05.010	AS 47.05.310	AS 47.32.020
	AS 18.05.040	AS 47.05.330	AS 47.32.030
	AS 44.29.020	AS 47.14.120	AS 47.33.005
	AS 47.05.300	AS 47.32.010	AS 47.33.010

The heading for article 3 is amended to read:

Article 3.

Barrier Crimes **and Conditions**, Criminal History Checks, and Centralized Registry

7 AAC 10.900(a)(2) is amended to read:

7 AAC 10.900. Purpose and applicability; exceptions.

(a) The purpose of 7 AAC 10.900 – 7 AAC 10.990 is to establish standards, requirements, and procedures dealing with barrier crimes and conditions, criminal history checks, and the centralized registry, including

....

(2) requirements for requesting a criminal history check and procedures to determine whether a barrier crime **or condition** exists;

The introductory language of 7 AAC 10.900(b)(3) is amended to read:

(b) The provisions of 7 AAC 10.900 - 7 AAC 10.990 apply to an entity or individual service provider seeking licensure, certification, approval, or a finding of eligibility to receive payments from the department. Each individual who is to be associated with the entity or **individual service** provider in a manner described in this subsection must have a valid criminal history check conducted under 7 AAC 10.900 - 7 AAC 10.990 if that individual is 16 years of age or older and will be associated with the entity or **individual service** provider as

....

(3) an employee, an independent contractor, **an apprentice**, an unsupervised volunteer, or a board member if that individual has

...

7 AAC 10.900(b)(3)(B) is amended to read:

(B) access to personal or financial records maintained by the entity or **individual service** provider regarding recipients of services, **including access to** [;]

(i) personal identifying information, financial information, treatment information, or medical records; and

(ii) a recipient's money or other property in any manner that could result in misappropriation of that money or property; or

7 AAC 10.900(b)(3)(C)(iii) is amended to read:

(C) control over or impact on the financial well-being of recipients of services, unless the only recipient whose financial well-being is affected is a

....

(iii) recipient for whom a court has authorized that individual to make financial decisions **for that recipient**;

The introductory language of 7 AAC 10.900(b)(4) is amended to read:

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(4) an officer, **a** director, **a** partner, **a** member, or **a** principal of the business organization that owns **the** [AN] entity, if that individual has

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7 AAC 10.900(b)(4)(B) is amended to read:

(B) access to personal or financial records maintained by the entity or **individual service** provider regarding recipients of services, [;] **including access to**
(i) personal identifying information, financial information, treatment information, or medical records; and
(ii) a recipient's money or other property in any manner that could result in misappropriation of that money or property; or

7 AAC 10.900(b)(4)(C)(iii) is amended to read:

(C) control over or impact on the financial well-being of recipients of services, unless the only recipient whose financial well-being is affected is a

• • •

(iii) recipient for whom a court has authorized that individual to make financial decisions **for that recipient;**

• • • •

7 AAC 10.900(b)(6) is amended to read:

(6) except as provided in (c) and (d) of this section, any other individual who is present in the entity, **including in a residence if services are provided in the residence,** and would have regular contact with recipients of services.

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7 AAC 10.900(c) is amended to read:

(c) A criminal history check under 7 AAC 10.900 - 7 AAC 10.990 is not required for a recipient of services, unless that **recipient** [INDIVIDUAL] is also associated with the entity or individual service provider in any manner described in (b)(1) - (4) of this section.

7 AAC 10.900(d)(1) is amended to read:

(d) A criminal history check under 7 AAC 10.900 - 7 AAC 10.990 is not required for the following individuals, if supervised access is provided in accordance with (e) of this section:

(1) a relative of a recipient of services, unless that relative is also associated with the entity or **individual service** provider in any manner described in (b)(1) - (5) of this section;

7 AAC 10.900(d)(2) is amended to read:

(2) a visitor of a recipient of services, unless that visitor is also associated with the entity or **individual service** provider in any manner described in (b)(1) - (4) of this section;

The introductory language of 7 AAC 10.900(d)(3) is amended to read:

(3) an individual for whom the entity or **individual service** provider submits evidence to the department of a fingerprint-based **criminal history** [BACKGROUND] check

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7 AAC 10.900(d)(4) is amended to read:

(4) **an individual listed in (A) or (B) of this paragraph if that individual is not associated with the entity or individual service provider in any manner described in (b)(1) - (4) of this section:**

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(A) an employee, an independent contractor, an apprentice, or an unsupervised volunteer; [,]

(B) a board member, an officer, a director, a partner, a member, or a principal of the business organization that owns an entity [IF THAT INDIVIDUAL IS NOT ASSOCIATED WITH THE ENTITY OR AN INDIVIDUAL SERVICE PROVIDER IN ANY MANNER DESCRIBED IN (b)(1) - (4) OF THIS SECTION];

7 AAC 10.900(d)(5) is repealed:

(5) repealed ___/___/___; [AN APPROVED RELATIVE PROVIDER UNDER 7 AAC 41.200(e)]; (Eff. 2/9/2007, Register 181; am ___/___/___, Register ___)

7 AAC 10.900(d)(6)(A) is amended to read:

(6) a personal physician, an infant learning teacher, an attendant for a child with special needs as described in 7 AAC 57.940, a licenser, a fire marshal, a food services sponsor, or another similar individual who

(A) is not associated with the entity or individual service provider in any manner described in [UNDER] (b) of this section; and

7 AAC 10.900(d)(6)(B) is amended to read:

(B) provides support services to the entity or individual service provider, or to a recipient of services;

7 AAC 10.900(d)(11) is amended to read:

(11) an occasional guest of the administrator or operator of an entity or [OF A] individual service provider.

.....

7 AAC 10.900(f) is amended to read:

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(f) For purposes of (b)(5) and (d)(8) of this section, "individual who resides in any part of an entity" means an individual who dwells continuously in, or legally occupies, the premises housing the entity or **individual service** provider, as evidenced by

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(Eff. 2/9/2007, Register 181; am ___/___/___, Register _____)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030
AS 47.05.320

7 AAC 10 is amended by adding new sections to read:

7 AAC 10.902. Request for a criminal history check by any individual. Nothing in this chapter precludes any individual who seeks or intends to seek association with an entity or individual service provider from requesting a criminal history check in accordance with and subject to the provisions of this chapter, including payment of any applicable fee.

(Eff. ___/___/___, Register _____)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030
AS 47.05.320

7 AAC 10.903. Limited disclosure of criminal history check and variance review committee information.

(a) The department, including the variance review committee appointed under 7 AAC 10.935, will limit the use of information gathered during the criminal history check process under this chapter as stated in this section.

(b) The department will not disclose information obtained by a representative, agent, volunteer, or employee of the department in the course of discharging the criminal history check program, or in the course of discharging the responsibilities of the variance review committee, to anyone outside the department, except as authorized by state or federal law governing the program or review to which the information relates.

(c) The department will not use or disclose protected health information except as required or permitted by 42 C.F.R. Part 2 (Confidentiality of Alcohol and Drug Abuse Patient Records), 45 C.F.R. Part 160, subpart C (Compliance and Investigations), and 45 C.F.R. Part 164, subpart E (Privacy of Individually Identifiable Health Information), each as revised as of _____, ____ [*the department will enter the most recent revision to this law when it adopts this amendment*], and adopted by reference. (Eff. ___/___/____, Register ____)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030
AS 47.05.320

The heading of 7 AAC 10.905 and the introductory language of 7 AAC 10.905(a) are amended to read:

7 AAC 10.905. Barrier crimes and conditions.

(a) A barrier crime **or condition** is a criminal offense **or civil finding** that is inconsistent with the standards for licensure, certification, **or approval; the standards for protecting the health, safety, and welfare of recipients of care; [,] or the standards related to** eligibility to receive payments. The [BARRIER CRIME] standards and prohibitions in this section apply to an individual who

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7 AAC 10.905(a) is amended by adding a new paragraph to read:

(3) has been found by a court or agency of this state or of another jurisdiction to have been involved in a matter that the department determines would be inconsistent with the standards for protection of the health, safety, and welfare of recipients of care.

The introductory language of 7 AAC 10.905(b) is amended to read:

(b) Except as otherwise provided in this section, the following are permanent **barriers** [BARRIER CRIMES], including the attempt, solicitation, or conspiracy to commit any of the following crimes **or conditions**, or to violate a law or ordinance of this **state** or **of** another jurisdiction **if that law or ordinance has** [WITH] similar elements **to one or more of the following crimes or conditions**:

• • •

7 AAC 10.905(b)(10) is amended to read:

(10) a crime under AS 11.66 (Offenses Against Public Health and Decency) as follows, if the person induced or caused to engage in **sex trafficking** [PROSTITUTION] was under 18 years of age at the time of the offense:

(A) AS 11.66.110 (**Sex Trafficking** [PROMOTING PROSTITUTION] in the First Degree);

(B) AS 11.66.120 (**Sex Trafficking** [PROMOTING PROSTITUTION] in the Second Degree);

(C) AS 11.66.130 (**Sex Trafficking** [PROMOTING PROSTITUTION] in the Third Degree);

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7 AAC 10.905(b) is amended by adding new paragraphs to read:

(13) a criminal offense or civil finding for which the following federal laws prohibit certain approvals or restrict payment of benefits, during the most stringent barrier period set by the federal law for that crime or civil finding, regardless of whether the federal law is directly applicable to the individual, entity, or individual service provider:

(A) 42 U.S.C. 670 - 679b (secs. 470 - 479A of the Social Security Act), dealing with federal payments for foster care and adoption assistance, revised as of _____, _____ [*the department will enter the most recent revision to this law when it adopts this amendment*], and adopted by reference;

(B) 42 U.S.C. 1320a-7(a) (sec. 1128(a) of the Social Security Act), dealing with exclusion of certain individuals and entities from participation in Medicare and state health care programs, revised as of _____, _____ [*the department will enter the most recent revision to this law when it adopts this amendment*], and adopted by reference;

(C) 45 C.F.R. 1356.30, dealing with safety requirements for foster care and adoptive home providers, revised as of _____, _____ [*the department will enter the most recent revision to this law when it adopts this amendment*], and adopted by reference;

(D) another applicable federal statute or regulation;

(14) placement on a registry or database for a reason that is inconsistent with the standards for protection of public health, safety, and welfare; or

(15) an offense described in AS 47.05.310(c)(1), including

(A) neglect, abuse, or exploitation of a child or vulnerable adult; and

(B) medical assistance fraud under AS 47.05.210.

7 AAC 10.905(d)(5) is repealed and readopted to read:

(5) a crime under AS 11.61 (Offenses Against Public Order) as follows:

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- (A) AS 11.61.118 (Harassment in the First Degree);
- (B) AS 11.61.130 (Misconduct Involving a Corpse);
- (C) AS 11.61.140 (Cruelty to Animals);
- (D) AS 11.61.145 (Promoting an Exhibition of Fighting Animals), if the crime is a class C felony;
- (E) AS 11.61.200 (Misconduct Involving Weapons in the Third Degree);
- (F) AS 11.61.240 (Criminal Possession of Explosives), if the crime is a class C felony;
- (G) AS 11.61.250 (Unlawful Furnishing of Explosives);

7 AAC 10.905(f) is repealed:

(f) Repealed ____/____/____. [THE FOLLOWING ARE ONE-YEAR BARRIER CRIMES, INCLUDING THE ATTEMPT, SOLICITATION, OR CONSPIRACY TO COMMIT ANY OF THE FOLLOWING CRIMES OR TO VIOLATE A LAW OR ORDINANCE OF THIS OR ANOTHER JURISDICTION WITH SIMILAR ELEMENTS: (1) A CRIME UNDER AS 11.46.486 (CRIMINAL MISCHIEF IN THE FIFTH DEGREE), IF IT IS A CRIME INVOLVING DOMESTIC VIOLENCE; (2) A CRIME UNDER AS 11.56.750 OR 11.56.755 (UNLAWFUL CONTACT IN THE FIRST OR SECOND DEGREE); (3) A CRIME UNDER AS 11.61.120 (HARASSMENT), IF IT IS A CRIME INVOLVING DOMESTIC VIOLENCE]. (Eff. 2/9/2007, Register 181; am ____/____/____, Register ____)

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7 AAC 10.905(g) is amended to read:

(g) If an individual does not pass a criminal history check as a result of a barrier crime **or condition** established in this section, the individual is prohibited from associating with an entity or **individual service** provider in **any** [A] manner described in 7 AAC 10.900(b), unless the department grants a variance under 7 AAC 10.935, **if allowed under 7 AAC 10.930.**

7 AAC 10.905(i) is amended to read:

(i) Except as otherwise provided in this section, the barrier times listed in this section begin to run from the date that an individual was charged with or convicted of the crime, **or the date of a final administrative order governing a barrier condition,** whichever period ends at a later date. If the individual is subject to a judgment of a court related to sentencing, probation, or parole, **or to a final administrative order,** the individual is barred as described in (a)(1) of this section for the barrier time listed in this section or until the individual has fully complied with the conditions of the sentencing, probation, [OR] parole, **or the final administrative order,** whichever period is longer.

.....

7 AAC 10.905(k) is amended to read:

(k) If an **individual,** entity or individual **service provider** is also subject to federal criminal history check requirements, and the federal standards, including standards related to civil findings, are more stringent than those set out in this section, the federal standards apply.

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(Eff. 2/9/2007, Register 181; am ___/___/___, Register ___)

Authority:	AS 47.05.300	AS 47.05.320	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030

7 AAC 10.910(a)(1) is amended to read:

7 AAC 10.910. Request for criminal history check.

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(a) An entity or individual service provider that is subject to AS 47.05.300 - 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990 must request a criminal history check under this section, or provide proof of a valid fingerprint-based criminal history check, for each individual to be associated [, OR TO REMAIN ASSOCIATED,] with the entity or **individual service** provider in **any** [A] manner described in 7 AAC 10.900(b). An entity or individual **service provider** must request a criminal history check

(1) when the entity or **individual service** provider submits an initial application for a license, certification, approval, or finding of eligibility to receive payments from the department;

.....

7 AAC 10.910(a)(3) is amended to read:

(3) except as provided otherwise in this section, if the entity or **individual service** provider wishes to **appoint a board member, or to** hire or retain an employee, **an** independent contractor, **an apprentice,** or **an** unsupervised volunteer described in 7 AAC 10.900(b)(3); the criminal history check must be completed before **appointment or** hiring unless the department issues notice of a provisional valid criminal history check under 7 AAC 10.920;

7 AAC 10.910(a)(4)(B) is amended to read:

(4) for an individual 16 years of age or older who is not a recipient of services, and who wishes to reside in the entity or to be present as described in 7 AAC 10.900(b)(5) or (6); the criminal history check must be completed before the individual begins association unless

.....

(B) the individual is residing in the entity before that individual's 16th birthday; for an individual described in this subparagraph, the entity or **individual service** provider must submit the information required under (b) of this section within 30 days before the individual's 16th birthday;

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7 AAC 10.910(a)(6) is repealed:

(6) repealed ____/____/____; [ON OR BEFORE APRIL 10, 2007, FOR EACH INDIVIDUAL WHO IS ASSOCIATED WITH AN ENTITY OR PROVIDER OPERATING UNDER A CURRENT LICENSE, CERTIFICATION, APPROVAL, OR FINDING OF ELIGIBILITY TO RECEIVE PAYMENTS, AND WHO (A) DOES NOT HAVE A VALID CRIMINAL HISTORY CHECK; OR (B) PASSED A CRIMINAL HISTORY CHECK CONDUCTED BEFORE FEBRUARY 9, 2007 THAT (i) WAS NOT FINGERPRINT-BASED; OR (ii) WAS FINGERPRINT-BASED AND CONDUCTED MORE THAN SIX YEARS BEFORE FEBRUARY 9, 2007].

(Eff. 2/9/2007, Register 181; am 8/25/2010, Register 195; am ____/____/____, Register ____)

The introductory language of 7 AAC 10.910(b) is amended to read:

(b) The entity or **individual service provider, or an individual described in 7 AAC 10.902 if the request is not submitted by an entity or individual service provider,** must submit the following with each request for a criminal history check:

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7 AAC 10.910(b)(3) is amended to read:

(3) **one set** [TWO SETS] of fingerprints for the individual for whom the request is submitted;

7 AAC 10.910(b)(4) is repealed:

(4) repealed ____/____/____; [A SIGNED STATEMENT, ON A FORM PROVIDED BY THE DEPARTMENT, FROM THE INDIVIDUAL WHO TOOK THE FINGERPRINTS, ATTESTING THAT AT LEAST ONE GOVERNMENT-ISSUED PICTURE IDENTIFICATION WAS USED TO VERIFY THE IDENTITY OF THE INDIVIDUAL FINGERPRINTED]

(Eff. 2/9/2007, Register 181; am 8/25/2010, Register 195; am ____/____/____, Register ____)

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7 AAC 10.910(b)(5)(B) is amended to read:

(5) the fees required by the Department of Public Safety under 13 AAC 68.900(a)(2)(B) and (5); if the legislature makes an appropriation for the department to pay those fees for unpaid volunteers,

.....

(B) an entity or **individual service** provider must reimburse the fee to the department if an unpaid volunteer for whom the department paid a fee becomes a paid employee within 60 days after that fee was paid;

7 AAC 10.910(b)(6) is amended to read:

(6) an additional \$25 application fee; the department will waive this fee for an unpaid volunteer **who provides services to an entity or individual service provider that is operated by the state or recognized by the United States Internal Revenue Service as a nonprofit entity under 26 U.S.C. 501(c)(3)** [, UNLESS THAT VOLUNTEER IS A HOUSEHOLD MEMBER WHO RESIDES IN THE ENTITY AS DESCRIBED IN 7 AAC 10.900(b)(5); IF AN UNPAID VOLUNTEER FOR WHOM THE DEPARTMENT WAIVED AN APPLICATION FEE BECOMES A PAID EMPLOYEE WITHIN 60 DAYS AFTER THAT FEE WAS WAIVED, THE ENTITY OR PROVIDER MUST PAY THE WAIVED FEE].

7 AAC 10.910(c) is amended to read:

(c) Unless a more frequent fingerprint-based criminal history check is required under federal law, [OR FOR CERTAIN ENTITIES AND PROVIDERS UNDER (F) OF THIS SECTION,] a fingerprint-based criminal history check is valid for **five** [SIX] years from the date the check became valid under (h) of this section for an individual **whose name has been marked on a continuous basis in APSIN, who has not had the criminal history check revoked under 7 AAC 10.945, made invalid under 7 AAC 10.915(g), or rescinded under 7 AAC 10.915(h); who has not had a variance approval made invalid under 7 AAC 10.935(l) or revoked under 7 AAC 10.935(m); and who**

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(1) remains associated with an entity or **individual service** provider in a manner described in 7 AAC 10.900(b), subject to verification under (d) of this section;

(2) becomes re-associated with the same entity or **individual service** provider in a manner described in 7 AAC 10.900(b) within 100 days after terminating association with that entity or **individual service** provider, subject to verification under **(d)** [(e)] of this section; or

(3) becomes associated with another entity or **individual service** provider in a manner described in 7 AAC 10.900(b) within 100 days after terminating association with a previous entity or **individual service** provider, subject to verification under **(d)** [(e)] of this section.

7 AAC 10.910(d) is amended to read:

(d) **At the time of association or re-association under (c) of this section, and annually after that date, each** [UPON RENEWAL OF A LICENSE, CERTIFICATION, OR APPROVAL, OR WHEN A FINDING IS MADE FOR CONTINUED ELIGIBILITY TO RECEIVE PAYMENTS, AN] entity or individual service provider must **verify** [PROVIDE TO THE DEPARTMENT PROOF] that **each** [AN] individual described in **(c)(1), (2), or (3)** [(c)(1)] of this section, **as applicable**, has a valid criminal history check. If the department determines that the criminal history check is not valid, the department will notify the entity or **individual service** provider that a request for a new criminal history check must be submitted under this section, **[.] subject to any applicable fee. Each entity or individual service provider, and each individual described in 7 AAC 10.902, is responsible for ensuring that a criminal history check is renewed before it expires under (c) of this section for each individual described in (c)(1), (2), or (3) of this section.**

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7 AAC 10.910(e) is repealed:

(e) Repealed ____/____/____. [AN INDIVIDUAL DESCRIBED IN (c)(2) OR (c)(3) OF THIS SECTION MUST VERIFY WITH THE DEPARTMENT THAT THE CURRENT FINGERPRINT-BASED CRIMINAL HISTORY CHECK IS STILL VALID. THE ENTITY OR PROVIDER SHALL SUBMIT TO THE DEPARTMENT A \$25 FEE FOR THIS VERIFICATION. THE DEPARTMENT WILL WAIVE THE FEE FOR AN UNPAID VOLUNTEER, UNLESS THAT VOLUNTEER IS A HOUSEHOLD MEMBER WHO RESIDES IN THE ENTITY AS DESCRIBED IN 7 AAC 10.900(b)(5). IF AN UNPAID VOLUNTEER FOR WHOM THE DEPARTMENT WAIVED A VERIFICATION FEE BECOMES A PAID EMPLOYEE WITHIN 60 DAYS AFTER THE DEPARTMENT WAIVED THE FEE, THE ENTITY OR PROVIDER MUST PAY THE WAIVED FEE. IF THE DEPARTMENT DETERMINES DURING THE VERIFICATION PROCESS THAT THE CRIMINAL HISTORY CHECK IS NOT VALID, THE DEPARTMENT WILL NOTIFY THE ENTITY OR PROVIDER THAT A REQUEST FOR A NEW CRIMINAL HISTORY CHECK MUST BE SUBMITTED UNDER THIS SECTION, AND THAT THE DEPARTMENT WILL CONSIDER THE VERIFICATION FEE THE DEPARTMENT'S APPLICATION FEE UNDER (b)(6) OF THIS SECTION]. (Eff. 2/9/2007, Register 181; am 8/25/2010, Register 195; am ____/____/____, Register ____)

7 AAC 10.910(f) is amended to read:

(f) **Unless** [EXCEPT AS PROVIDED OTHERWISE IN THIS SUBSECTION, AND UNLESS] the department granted a variance under 7 AAC 10.935, a new criminal history check is not required if a person associated with an entity or **individual service** provider in a manner described in 7 AAC 10.900(b) is transferred from one site operated by the entity or **individual service** provider to another site operated by that entity or **individual service** provider, if

(1) the request for the criminal history check was made for the overall operation, not one particular site; and

(2) all sites are identified in the request for a criminal history check. [BEFORE OCTOBER 1, 2007, AN ENTITY OR PROVIDER MUST SUBMIT THE ITEMS

REQUIRED UNDER (b) OF THIS SECTION FOR AN INDIVIDUAL DESCRIBED IN THE FOLLOWING LIST, EACH TIME THAT INDIVIDUAL CHANGES EMPLOYMENT, REGARDLESS OF WHAT ENTITIES OR PROVIDERS WERE LISTED ON THE REQUEST FOR A CRIMINAL HISTORY CHECK:

- (1) AN INDIVIDUAL ASSOCIATED WITH (A) A NURSING FACILITY; (B) A HOSPITAL THAT PROVIDES SWING-BED SERVICES OR THAT IS REIMBURSED UNDER 7 AAC 140 - 7 AAC 150 FOR TREATMENT DESCRIBED IN THE DEFINITION OF "SWING-BED DAY" SET OUT IN 7 AAC 150.990; FOR PURPOSES OF THIS SUBPARAGRAPH, (i) "HOSPITAL THAT PROVIDES SWING-BED SERVICES" HAS THE MEANING GIVEN "SWING-BED HOSPITAL" IN 42 C.F.R. 413.114(b); and (ii) THE DEFINITION OF "SWING-BED HOSPITAL" IN 42 C.F.R. 413.114(b), AS REVISED AS OF OCTOBER 1, 2006, IS ADOPTED BY REFERENCE;
- (C) AN INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED OR PERSONS WITH RELATED CONDITIONS;
- (D) AN ASSISTED LIVING HOME;
- (E) A HOSPICE AGENCY;
- (F) A HOME AND COMMUNITY-BASED WAIVER SERVICES PROVIDER AS DEFINED IN 7 AAC 160.990;
- (G) A HOME HEALTH AGENCY; OR
- (H) A PERSONAL CARE AGENCY ENROLLED UNDER 7 AAC 125.130 OR 7 AAC 125.150;
- (2) AN INDIVIDUAL PROVIDING CARE COORDINATION, CASE MANAGEMENT, ADULT DAY SERVICES, OR RESPITE CARE SERVICES].

7 AAC 10.910(g) is amended to read:

(g) A willful misrepresentation of an individual's criminal or civil history by an entity or **individual service** provider, or by the individual, is cause for immediate denial of a request for a criminal history check, or revocation of a valid criminal history check.

7 AAC 10.910(h)(1) is amended to read:

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(h) A valid criminal history check means that, within **any applicable timeframe** [THE APPLICABLE TIMEFRAMES] referred to in this section,

(1) the [PERSON SUBMITTED ALL] items listed under (b) of this section **were submitted to the department;**

7 AAC 10.910(h)(3) is amended to read:

(3) the **individual's** [PERSON'S] name has been marked in APSIN on a continuous basis **and the individual has not had**

(A) the criminal history check revoked under 7 AAC 10.945, made invalid under 7 AAC 10.915(g), or rescinded under 7 AAC 10.915(h); or

(B) a variance approval made invalid under 7 AAC 10.935(l) or revoked under 7 AAC 10.935(m); and

7 AAC 10.910(h)(4) is amended to read:

(4) if applicable, any variance granted under 7 AAC 10.935 is still in effect and authorized by the department, and the individual who was the subject of the variance is associated with the same entity or **individual service** provider.

The introductory language of 7 AAC 10.910(i) is amended to read:

(i) Nothing in this section precludes an entity or **individual service** provider from requiring

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7 AAC 10.910 is amended by adding a new subsection to read:

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(j) If an entity or individual service provider required to request or obtain a valid criminal history check required under 7 AAC 10.900 – 7 AAC 10.990 does not request or obtain the required check, that entity or individual service provider is barred from

(1) seeking licensure, certification, or approval, or a finding of eligibility to receive payment from the department; and

(2) allowing any individual described in 7 AAC 10.900(b) to be associated with the entity or individual service provider in any manner described in 7 AAC 10.900(b). (Eff. 2/9/2007, Register 181; am 8/25/2010, Register 195; am ___/___/___, Register ___)

Authority: AS 47.05.300 AS 47.05.340 AS 47.32.030
AS 47.05.310 AS 47.32.010

The editor's note for 7 AAC 10.910 is removed:

**[EDITOR'S NOTE: FORMS REFERRED TO IN 7 AAC 10.910 MAY BE OBTAINED FROM THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DIVISION OF PUBLIC HEALTH, SECTION OF CERTIFICATION AND LICENSING, 619 EAST SHIP CREEK AVENUE, SUITE 232, ANCHORAGE, ALASKA 99501, OR ARE AVAILABLE AT THE DEPARTMENT'S WEBSITE:
[HTTP://DHSS.ALASKA.GOV/DHCS/PAGES/CL/BGCHECK/DEFAULT.ASPX#FAQ.](http://DHSS.ALASKA.GOV/DHCS/PAGES/CL/BGCHECK/DEFAULT.ASPX#FAQ.)]**

7 AAC 10.915(a) is amended to read:

7 AAC 10.915. Criminal history check.

(a) The department will screen a request for a criminal history check through [THE]

(1) **the** centralized registry established under 7 AAC 10.955 to determine whether a barrier condition exists for the individual who is the subject of the criminal history check;

(2) **the** registry of certified nurse aides under AS 08.68.333;

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(3) **the** central registry of sex offenders and child kidnappers under AS 15.65.087;

(4) **the** United States Department of Health and Human Services, Office of the Inspector General database of individuals and entities excluded under 42 U.S.C. 1320a-7 and 1320c-5 (secs. 1128 and 1156 of the Social Security Act); and

(5) any other registry or database determined by the department to be relevant to the screening being conducted for an individual, including

(A) professional licensing registries; and

(B) any registry or database maintained by **this state or by** another state where that individual has resided.

7 AAC 10.915(b) is amended to read:

(b) In addition to its review under (a) of this section, the department will review the criminal justice information supplied by the Department of Public Safety, court or other applicable government agency records, and the national criminal history record check supplied by the Federal Bureau of Investigation, to determine whether a barrier crime **or condition** exists for the individual who is the subject of the criminal history check.

7 AAC 10.915(c) is amended to read:

(c) If, after reviewing all available information described in (a) and (b) of this section, the department determines that a barrier crime or condition does not exist, the department will notify the **requesting individual**, entity, or **individual service** provider that **the determination is available through the department's electronic database.** [SUBMITTED THE REQUEST, AND THE INDIVIDUAL WHO WAS THE SUBJECT OF THE CRIMINAL HISTORY CHECK, THAT THE INDIVIDUAL PASSED THE CRIMINAL HISTORY CHECK. THE DEPARTMENT WILL INCLUDE IN THE NOTIFICATION THE FOLLOWING: (1) THE PERIOD DURING WHICH THE CRIMINAL HISTORY CHECK IS VALID, UNLESS REVOKED OR RESCINDED UNDER THIS SECTION; (2) A

STATEMENT THAT THE VALID CRIMINAL HISTORY CHECK IS CONDITIONED UPON THE INDIVIDUAL CONTINUING TO MEET THE APPLICABLE STANDARDS OF AS 47.05.300 - 47.05.390 AND 7 AAC 10.900 - 7 AAC 10.990; (3) A STATEMENT THAT, IF THE INDIVIDUAL CEASES TO BE ASSOCIATED WITH THE ENTITY OR PROVIDER IN A MANNER DESCRIBED IN 7 AAC 10.900(b), (A) THE INDIVIDUAL'S CONTINUED COMPLIANCE WITH THE APPLICABLE STANDARDS OF AS 47.05.300 - 47.05.390 AND 7 AAC 10.900 - 7 AAC 10.990 MUST BE VERIFIED BY THE DEPARTMENT IN ACCORDANCE WITH 7 AAC 10.910(e) BEFORE THAT INDIVIDUAL MAY BECOME ASSOCIATED WITH ANOTHER ENTITY OR PROVIDER, OR RE-ASSOCIATED WITH THE SAME ENTITY OR PROVIDER; AND (B) A TIME PERIOD DURING WHICH THE INDIVIDUAL IS NOT ASSOCIATED WITH AN ENTITY OR PROVIDER THAT IS 100 DAYS OR LONGER IS SUBJECT TO (g) OF THIS SECTION].

7 AAC 10.915(d)(1) is amended to read:

(d) If, while conducting a criminal history check, the department determines that a barrier crime or condition exists, the department will notify the

(1) entity or **individual service** provider that submitted the request under 7 AAC 10.910, **or an individual who submitted the request under 7 AAC 10.902, regarding the department's determination;** [THE DEPARTMENT WILL INCLUDE IN THE NOTIFICATION THE FOLLOWING STATEMENTS: (A) THAT THE DEPARTMENT HAS DETERMINED A BARRIER CRIME OR CONDITION EXISTS; THE DEPARTMENT WILL NOT IDENTIFY THE CRIME OR CONDITION, BUT WILL IDENTIFY THE APPLICABLE BARRIER TIME UNDER 7 AAC 10.905 OR 7 AAC 10.955, AS APPLICABLE; (B) THAT THE INDIVIDUAL WHO WAS THE SUBJECT OF THE CRIMINAL HISTORY CHECK HAS BEEN GIVEN AN OPPORTUNITY TO CHALLENGE THE DEPARTMENT'S DETERMINATION UNDER 7 AAC 10.950 IF THE INDIVIDUAL BELIEVES THE DETERMINATION WAS BASED ON ERRONEOUS INFORMATION, OR IF THE INDIVIDUAL HAS ADDITIONAL INFORMATION FOR THE DEPARTMENT TO CONSIDER; (C) THAT IF THE INDIVIDUAL IS WILLING TO DISCLOSE THE BARRIER CRIME OR CONDITION TO THE ENTITY OR PROVIDER, AND IF THE ENTITY OR PROVIDER CONTINUES TO DESIRE A VALID CRIMINAL

HISTORY CHECK FOR THAT INDIVIDUAL, THE ENTITY OR PROVIDER MAY REQUEST A VARIANCE, IF ALLOWED UNDER 7 AAC 10.930;] and

7 AAC 10.915(d)(2)(B) is amended to read:

(2) individual who was the subject of the criminal history check; the department will include in the notification the following:

.....

(B) a statement that if the individual **for whom the request was submitted by an entity or individual service provider** wishes to disclose the barrier crime or condition to **that** [THE] entity or **individual service** provider [THAT SUBMITTED THE REQUEST], the entity or **individual service** provider may be able to obtain a variance, if allowed under 7 AAC 10.930; **if the request was submitted by an individual under 7 AAC 10.902, the department will notify that individual of the right to request a variance, if allowed under 7 AAC 10.930;**

7 AAC 10.915(d)(2)(C) is amended to read:

(C) a statement that if the individual believes **that the department's determination was made in error or that** there is an error in the information relied upon by the department, or if the individual has **new or additional factual** information **that could change the department's determination** [FOR THE DEPARTMENT TO CONSIDER], the individual may submit a request for **a redetermination** [RECONSIDERATION] under **7 AAC 10.927** [7 AAC 10.950].

7 AAC 10.915(e) is amended to read:

(e) For each request for a criminal history check processed under this section, the department will mark in APSIN the name of the individual who was the subject of the criminal history check. If the department receives notification under APSIN of law enforcement activity for an individual, the department will review the information. If the department determines that the activity creates a barrier under 7 AAC 10.905, the department will immediately notify the entity or **individual service** provider and the individual **of the change in the department's determination**. The department will **notify** [INCLUDE IN THE NOTIFICATION INFORMATION ADVISING THE ENTITY OR PROVIDER AND] the individual that

(1) the department intends to **immediately** revoke the valid criminal history check in accordance with 7 AAC 10.945; the department [WILL NOT IDENTIFY THE BARRIER CRIME OR CONDITION IN THE NOTICE TO THE ENTITY OR PROVIDER, BUT] will identify the crime or condition in the notice [TO THE INDIVIDUAL];

(2) the individual may request **a redetermination** [RECONSIDERATION] under **7 AAC 10.927** [7 AAC 10.950] if the individual believes there was an error in the information relied upon by the department **or if the individual has new or additional factual information that could change the department's determination**; and

(3) if the individual **for whom the request was submitted by an entity or individual service provider** wishes to disclose the barrier crime or condition to the entity or provider, the entity or provider may request a variance, if allowed under 7 AAC 10.930; **if the**

request was submitted by an individual under 7 AAC 10.902, the department will notify that individual of the right to request a variance, if allowed under 7 AAC 10.930.

The introductory language of 7 AAC 10.915(f) is amended to read:

(f) Except as provided otherwise in this subsection, an entity or **individual service** provider must, within 24 hours after receiving notification under (d) or (e) of this section, terminate association with the individual in accordance with 7 AAC 10.960. If the entity or **individual service** provider, **or the individual**, requests a variance under 7 AAC 10.930, or if the individual requests **redetermination** [RECONSIDERATION] under **7 AAC 10.927** [7 AAC 10.950], the individual may remain associated with the entity or **individual service** provider, pending a decision on the request, if

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7 AAC 10.915(f)(2) is amended to read:

(2) the entity or **individual service** provider ensures that the individual is provided with direct supervision if the individual is present in any area where services are provided, during hours of operation.

7 AAC 10.915(g) is amended to read:

(g) If an individual remains out of association with an entity or **individual service** provider, **or if an individual described in 7 AAC 10.902 fails to become associated with an entity or provider**, for 100 days or longer, the [DEPARTMENT WILL REVOKE A VALID] criminal history check **becomes immediately invalid** without prior notice. A new criminal history check is required if the individual wishes to become associated with any entity or **individual service** provider in **any** [A] manner described in 7 AAC 10.900(b).

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7 AAC 10.915(h) is amended to read:

(h) If an individual with a valid criminal history check ceases to be, **or fails to become,** associated with an entity or **individual service** provider, and wishes to have the individual's name unmarked in APSIN, the individual shall submit a written request to the department that the valid criminal history check be rescinded. [THE DEPARTMENT WILL SEND A WRITTEN ACKNOWLEDGMENT OF THE RESCISSION TO THE INDIVIDUAL AND TO THE ENTITY OR PROVIDER WITH WHOM THE INDIVIDUAL WAS MOST RECENTLY ASSOCIATED.] (Eff. 2/9/2007, Register 181; am ___/___/___, Register ___)

Authority:	AS 47.05.300	AS 47.05.330	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030
	AS 47.05.320		

7 AAC 10.920 is amended to read:

7 AAC 10.920. Provisional valid criminal history check. (a) **Subject to (b) and (c) of this section, the** [THE] department may issue notification of a provisional valid criminal history check after screening **an** [THE] individual under 7 AAC 10.915(a) and reviewing the criminal justice information supplied by the Department of Public Safety, if a barrier crime or condition is not discovered in that screening and review and if

- (1) the department determines that [ITS] further review time **by the department** might unduly delay the process;
- (2) an entity or **individual service** provider has requested an expedited review and has
 - (A) included justification for the expedited review;
 - (B) submitted, at a minimum, the documents required under 7 AAC 10.910(b)(1) and (2) **and each applicable fee**; and
 - (C) agreed to submit within 30 days the fingerprints required under 7 AAC 10.910(b)(3) and any items required under **7 AAC 10.910(b)(5) - (6)** [7 AAC 10.910(b)(4) - (6)] that were not included with the request; or

(3) a request for a criminal history check does not include the required [SETS OF] fingerprints because fingerprinting acceptable to the Department of Public Safety is not available within 100 miles by road, and the entity or **individual service** provider agrees to submit within 30 days the fingerprints required under 7 AAC 10.910(b)(3) and any items required under **7 AAC 10.910(b)(5) - (6)** [7 AAC 10.910(b)(4) - (6)] that were not included with the request.

(b) **Except as provided in (c) of this section,** [NOTIFICATION OF] a provisional valid criminal history check issued under this section is valid **for 60 days, pending completion of the criminal history check or, if an individual has appealed the results of the criminal history check, pending completion of any request for a redetermination, a variance, or a reconsideration of a variance request, during which process the entity or individual service provider shall ensure that the individual has direct onsite supervision. The department may extend the 60-day limit if any delay beyond that limit was not caused by any failure of the individual involved, or by the entity or individual service provider** [UNTIL THE RESULTS OF A FINGERPRINT-BASED CRIMINAL HISTORY CHECK ARE PROCESSED UNDER 7 AAC 10.915, UNLESS REVOKED UNDER THIS SECTION.].

(c) If the entity or **individual service** provider fails to submit fingerprints and other required items within 30 days, or **if** the individual does not pass the criminal history check, the provisional valid criminal history check is automatically revoked, and the entity or **individual service** provider must terminate association with the individual in accordance with 7 AAC 10.960. (Eff. 2/9/2007, Register 181; am ___/___/___, Register ___)

Authority: AS 47.05.300 AS 47.05.320 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030

The introductory language of 7 AAC 10.925(a) is amended to read:

7 AAC 10.925. Monitoring and notification requirements.

(a) an entity or **individual service** provider shall monitor to ensure that all individuals associated with the entity or **individual service** provider in **any** [A] manner described in 7 AAC 10.900(b) continue to meet the applicable requirements of as 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990. The entity or **individual service** provider shall require each individual for whom a criminal history check is required to report to the entity or **individual service** provider within 24 hours, or the next business day if the individual is

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7 AAC 10.925(a) is amended by adding a new paragraph to read:

(3) placed on a registry or database for reasons inconsistent with the standards for the protection of public health, safety, and welfare.

7 AAC 10.925(b) is amended to read:

(b) In addition to the reporting requirements of 7 AAC 10.955(c) for the centralized registry, the entity or **individual service** provider shall notify the department by telephone, by electronic mail, by facsimile, by letter, or in person within

(1) 24 hours, or the next business day, after the entity or **individual service** provider has knowledge that an individual associated with the entity or **individual service** provider has been

(A) arrested for, charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a barrier crime listed in 7 AAC 10.905; or

(B) is the subject of a matter that must be reported under 7 AAC 10.955(c) for the centralized registry; or

(2) 14 days after any change in association with the entity or **individual service** provider for an individual who has a valid criminal history check or is the subject of a

provisional valid criminal history check, including a change that involves **an individual whose association described in 7 AAC 10.900(b) has been terminated; notification under this paragraph may be provided through a change in the department's electronic database** [AN INDIVIDUAL (A) WHOSE ASSOCIATION DESCRIBED IN 7 AAC 10.900(B) HAS BEEN TERMINATED; OR (B) WHO HAS NOT BEEN ASSOCIATED WITH THE ENTITY OR PROVIDER FOR 61 DAYS OR MORE, BUT BECOMES RE-ASSOCIATED WITHIN 100 DAYS].

....
(Eff. 2/9/2007, Register 181; am ___/___/____, Register _____)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030
AS 47.05.320

7 AAC 10 is amended by adding a new section to read:

7 AAC 927. Request for a redetermination.

(a) If an individual who was the subject of a criminal history check believes that the department's determination under 7 AAC 10.915(d) that a barrier crime or condition exists was made in error, that there is an error in the information relied upon by the department, or that there is new or additional factual information that could change the department's determination, the individual may submit a request for a redetermination under this section.

(b) A request for a redetermination must be submitted within 30 days after the department issues its determination. The request for a redetermination must include

(1) the requester's name, mailing address, telephone number, and, if available, electronic mail address and facsimile number;

(2) a clear description of the department's determination to be reviewed; and

(3) a clear and concise statement of the reason for the request, including copies of any documents or other information that would assist the department in its review.

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(c) After reviewing a request for a redetermination, the department will issue a decision within 30 days regarding whether to grant or deny a redetermination. If denied, the notice will inform the requester that a barrier crime or condition exists, and that

(1) if the individual for whom a barrier crime or condition applies is willing to disclose the barrier crime or condition to the entity or individual service provider, the entity or individual service provider may request a variance under 7 AAC 10.935, if allowed under 7 AAC 10.930, within 30 days after the notice is issued under this subsection; or

(2) if the notice under this subsection is issued to an individual described in 7 AAC 10.902, the individual may request a variance under 7 AAC 10.935, if allowed under 7 AAC 10.930, within 30 days after the notice is issued under this subsection.

(d) A decision under (c) of this section is a final agency decision unless the department grants a variance under 7 AAC 10.935, if allowed under 7 AAC 10.930. For a final agency decision, the individual may obtain judicial review of the denial by appealing the denial to the superior court as provided by AS 40.25.124. (Eff. ___/___/___, Register ___)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030
AS 47.05.320

The introductory language of 7 AAC 10.930(a) is amended to read:

7 AAC 10.930. Request for a variance.

(a) Except for a crime or condition listed in (g) of this section, an entity or **individual service provider, or an individual who has requested a criminal history check under 7 AAC 10.902,** notified under 7 AAC 10.915(d) **or 7 AAC 10.927(b)** that a barrier crime or condition exists may request a variance under this subsection. The request must be submitted to the department office responsible for [THAT ENTITY'S OR PROVIDER'S] licensing, certification, approval, or finding of eligibility to receive payments. The request must be submitted no later than 30 days after the [ENTITY OR PROVIDER RECEIVES] notice **is issued** under 7 AAC 10.915(d) **or under 7 AAC 10.927(b), if applicable,** [OR, IF THE INDIVIDUAL WHO WAS THE SUBJECT OF THE CRIMINAL HISTORY CHECK SUBMITS A REQUEST FOR RECONSIDERATION AS ALLOWED UNDER 7 AAC 10.915(D)(2)(C), NO LATER THAN 30 DAYS AFTER THE DEPARTMENT ISSUES ITS DECISION ON RECONSIDERATION UNDER 7 AAC 10.950(B)(3),] whichever date is later. The request must be submitted on a form provided by the department, and must include the following:

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7 AAC 10.930(a)(3)(A)(i) is amended to read:

(3) copies of all known information relevant to determining whether the health, safety, and welfare of recipients of services are adequately protected, including the following information regarding the individual for whom a variance is sought:

(A) a copy **of the following records, or, if a record is inapplicable, a statement that the individual has no** [, AS APPLICABLE, OF THAT INDIVIDUAL'S] record of

(i) **any** protective **order** [ORDERS] issued or filed under AS 18.66 (Domestic Violence and Sexual Assault) or a substantially similar law or ordinance of another jurisdiction;

7 AAC 10.930(a)(3)(H) is amended to read:

(H) other evidence of the individual's present fitness, including at least two letters of recommendation from credible persons who are aware of the individual's criminal and civil history, behavioral health problem, or domestic violence problem, and who recommend that a variance be granted; any letters must be from persons who are unrelated to the individual for whom the variance is requested and who are not associated with an [THE] entity or individual service provider, if an entity or individual service provider [THAT] submitted the request for a variance; nothing in this subparagraph precludes an [THE] entity, [OR] individual service provider, or an individual from submitting additional letters of recommendation;

The introductory language of 7 AAC 10.930(a)(4) is amended to read:

(4) a statement from the individual for whom the variance is requested that describes actions that the individual has taken to reduce the risk of reoffending, including proof of active participation in or completion of any treatment program required by a court; this statement [FOR A REQUEST SUBMITTED UNDER (K) OF THIS SECTION, IN ADDITION TO THE INFORMATION AND DOCUMENTATION REQUIRED UNDER (1) - (3) OF THIS SUBSECTION, THE REQUEST] must also include

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7 AAC 10.930(a)(4)(C)(ii) is amended to read:

(C) the following information, if applicable:

(ii) evidence that the individual previously passed a criminal history check conducted by the department [BEFORE FEBRUARY 9, 2007, BUT] after the individual was convicted of the offense or was subject to a final administrative order;

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7 AAC 10.930(a)(4)(C)(iii) is amended to read:

(iii) evidence that the individual was **previously** issued a variance by the department [BEFORE FEBRUARY 9, 2007, BUT] after the individual was convicted of the offense **or was subject to a final administrative order** for which the variance was issued.

7 AAC 10.930(b)(1) is amended to read:

(b) The department office responsible for [THE] licensing, certification, approval, or finding of eligibility to receive payments [FOR THE ENTITY OR PROVIDER SEEKING A VARIANCE] will review each request for a variance received by that office **from an entity or individual service provider or from an individual under 7 AAC 10.902, and will, within 30 days after receipt of the variance request application, determine if the application is complete. If the application is incomplete, the department will notify the applicant and identify the required documents or information needed to complete the application. The notification will include a statement that the documents or information must be submitted to the department within 30 days of the date of the notification, or the request for variance will be denied. If, after the deadline for submittal of the requested documents or information, the application remains incomplete, the department will deny the application and advise the applicant of the right to reapply for a variance. If the department determines that the application is complete, the department will**

(1) make a written recommendation to the variance **review** committee appointed under 7 AAC 10.935 to grant or deny the request;

7 AAC 10.930(c) is amended to read:

(c) If the individual was convicted of a lesser charge, in the department's review under (b) of this section, the department will consider information regarding the original charge in making its recommendation to the variance **review** committee, including whether the original charge was a permanent barrier crime or condition for which a variance would be prohibited under (g) of this section.

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7 AAC 10.930(d) is repealed:

(d) Repealed ____/____/____. [IF THE DEPARTMENT GRANTED A VARIANCE FOR AN OFFENSE REVEALED IN A FINGERPRINT-BASED CRIMINAL HISTORY CHECK CONDUCTED SIX OR MORE YEARS BEFORE FEBRUARY 9, 2007, AND IF THE OFFENSE FOR WHICH THE VARIANCE WAS GRANTED IS NOT A PERMANENT BARRIER UNDER 7 AAC 10.905, THE ENTITY OR PROVIDER MUST SUBMIT A NEW REQUEST FOR A VARIANCE, IF ALLOWED UNDER THIS SECTION, AT THE TIME OF APPLICATION FOR RENEWAL OF THAT ENTITY'S CURRENT LICENSE, CERTIFICATION, APPROVAL, OR FINDING OF ELIGIBILITY TO RECEIVE PAYMENTS. EXCEPT AS PROVIDED IN (h) AND (i) OF THIS SECTION, IF THE OFFENSE FOR WHICH THE DEPARTMENT GRANTED THE VARIANCE IS A PERMANENT BARRIER UNDER 7 AAC 10.905, THE VARIANCE IS VOID AND THE ENTITY MUST TERMINATE ASSOCIATION WITH THE INDIVIDUAL IN ACCORDANCE WITH 7 AAC 10.960]. (Eff. 2/9/2007, Register 181; am 10/17/2007, Register 184; am 2/13/2008, Register 185; am ____/____/____, Register ____)

7 AAC 10.930(e) is repealed:

(e) Repealed ____/____/____. [IF THE DEPARTMENT GRANTED A VARIANCE FOR A BARRIER CONDITION DESCRIBED IN 7 AAC 10.955 SIX OR MORE YEARS BEFORE FEBRUARY 9, 2007, THE ENTITY OR PROVIDER MUST SUBMIT A NEW REQUEST FOR A VARIANCE AT THE TIME OF APPLICATION FOR RENEWAL OF THAT ENTITY'S CURRENT LICENSE, CERTIFICATION, APPROVAL, OR FINDING OF ELIGIBILITY TO RECEIVE PAYMENTS]. (Eff. 2/9/2007, Register 181; am 10/17/2007, Register 184; am 2/13/2008, Register 185; am ____/____/____, Register ____)

7 AAC 10.930(f) is amended to read:

(f) The department will not grant a variance from the requirement in AS 47.05.310 for conducting a criminal history check for an individual who has regular contact with recipients of services. For any other individual subject to as 47.05.300 - 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990, an entity or **individual service** provider may request a variance from the

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requirement to conduct a criminal history check by submitting a written request to the department office responsible for that entity's or **individual service** provider's licensing, certification, approval, or finding of eligibility to receive payments. The request must be submitted on a form provided by the department and must include a comprehensive rationale for the request and demonstrate that the health, safety, and welfare of recipients of services will be adequately protected.

7 AAC 10.930(g)(1) is repealed:

(g) Except as provided in (h) - (k) of this section, the department will not grant a variance for a

(1) repealed ____/____/____; [(1) CONVICTION FOR AN OFFENSE THAT IS A PERMANENT BARRIER UNDER 7 AAC 10.905; OR]

(Eff. 2/9/2007, Register 181; am 10/17/2007, Register 184; am 2/13/2008, Register 185; am ____/____/____, Register ____)

7 AAC 10.930(g)(2)(A)(i), (ii), and (iii) are amended to read:

(2) crime or civil finding for which federal law prohibits certain approvals, or restricts payment of benefits, during the most stringent barrier period set by federal law for that crime or civil finding; for the purpose of this paragraph,

(A) "federal law" includes an offense described in

(i) 42 U.S.C. 670 - 679b (secs. 470 - 479A of the Social Security Act), [REVISED AS OF AUGUST 21, 2006, AND] adopted by reference **in 7 AAC 10.905(b)(13)**;

(ii) 42 U.S.C. 1320a-7(a) (sec. 1128(a) of the Social Security Act), [REVISED AS OF AUGUST 21, 2006, AND] adopted by reference **in 7 AAC 10.905(b)(13)**;

(iii) 45 C.F.R. 1356.30, [REVISED AS OF OCTOBER 1, 2005, AND] adopted by reference **in 7 AAC 10.905(b)(13)**; and

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7 AAC 10.930(g)(2)(B) is amended to read:

(B) the prohibition applies to all entities and **individual service** providers subject to 7 AAC 10.900 - 7 AAC 10.990, regardless of whether the federal law is directly applicable to only one of those entities or **individual service** providers.

7 AAC 10.930(g)(2) is amended by adding a new subparagraph to read:

(C) for an individual described in 7 AAC 10.902 who has requested a variance for a crime or civil finding subject to this paragraph, the prohibition applies regardless of whether the federal law is directly applicable to the entity or provider with which the individual seeks to become associated.

The introductory language of 7 AAC 10.930(h) is amended to read:

(h) **The** [NOTWITHSTANDING THE PROHIBITION IN (g)(1) OF THIS SECTION, THE] department may grant a variance for an individual convicted of a permanent barrier crime **or condition** [LISTED IN (i) OF THIS SECTION,] if

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7 AAC 10.930(h)(1) is amended to read:

(1) a behavioral health problem was a factor in the commission of the crime **or condition**; and

7 AAC 10.930(h)(2)(A) is amended to read:

(2) the individual

(A) is associated **or seeks to be associated** in **any** [A] manner described in 7 AAC 10.900(b) with an entity that provides a treatment program to individuals with a behavioral health problem;

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7 AAC 10.930(i) is repealed:

(i) Repealed ____/____/____. [FOR THE PURPOSE OF (h) OF THIS SECTION, THE DEPARTMENT MAY GRANT A VARIANCE FOR THE FOLLOWING PERMANENT BARRIER CRIMES, INCLUDING THE ATTEMPT, SOLICITATION, OR CONSPIRACY TO COMMIT ANY OF THE FOLLOWING CRIMES OR TO VIOLATE A LAW OR ORDINANCE OF THIS OR ANOTHER JURISDICTION WITH SIMILAR ELEMENTS:

- (1) AS 11.41.200 (ASSAULT IN THE FIRST DEGREE);
- (2) AS 11.41.210 (ASSAULT IN THE SECOND DEGREE);
- (3) AS 11.41.220 (ASSAULT IN THE THIRD DEGREE);
- (4) AS 11.41.320 (CUSTODIAL INTERFERENCE IN THE FIRST DEGREE);
- (5) AS 11.41.460 (INDECENT EXPOSURE IN THE SECOND DEGREE);
- (6) AS 11.41.500 (ROBBERY IN THE FIRST DEGREE);
- (7) AS 11.41.510 (ROBBERY IN THE SECOND DEGREE);
- (8) AS 11.41.520 (EXTORTION);
- (9) AS 11.46.400 (ARSON IN THE FIRST DEGREE);
- (10) AS 11.46.410 (ARSON IN THE SECOND DEGREE)]. (Eff. 2/9/2007, Register 181; am 10/17/2007, Register 184; am 2/13/2008, Register 185; am ____/____/____, Register ____)

7 AAC 10.930(j) is repealed:

(j) Repealed ____/____/____. [NOTWITHSTANDING THE PROHIBITION IN (g)(1) OF THIS SECTION, THE DEPARTMENT MAY GRANT A VARIANCE FOR AN INDIVIDUAL ADJUDICATED AS A DELINQUENT FOR A PERMANENT BARRIER CRIME UNDER 7 AAC 10.905(b)]. (Eff. 2/9/2007, Register 181; am 10/17/2007, Register 184; am 2/13/2008, Register 185; am ____/____/____, Register ____)

7 AAC 10.930(k) is amended to read:

(k) **The** [NOTWITHSTANDING THE PROHIBITION IN (g)(1) OF THIS SECTION, THE] department may grant a variance for an individual convicted of a permanent barrier crime **or condition** listed under 7 AAC 10.905. A request under this subsection is subject to

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the review criteria set out in **7 AAC 10.935(d)(10)** [7 AAC 10.935(c)(10)] and additional consideration under **7 AAC 10.935(g)** [7 AAC 10.935(e)] by the director of the department office responsible for [THE] licensing [OF], certification [OF], approval [FOR], or finding of eligibility to receive payments [FOR THE ENTITY OR PROVIDER SEEKING THE VARIANCE]. (Eff. 2/9/2007, Register 181; am 10/17/2007, Register 184; am 2/13/2008, Register 185; am ___/___/___, Register ___)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030
AS 47.05.320

7 AAC 10.935 is repealed and readopted to read:

7 AAC 10.935. Review of request for a variance. (a) The commissioner will appoint three or more department employees to serve as a variance review committee to review requests for a variance submitted under 7 AAC 10.930, and will, from the appointees, select the chair of the committee. The commissioner will include at least one employee from each department office responsible for licensing, certification, approval, or finding of eligibility to receive payments, but will not include an employee who is substantively involved in any recommendation to the review committee made under 7 AAC 10.930(b).

(b) In reviewing a request for a variance, the chair of the review committee shall determine whether a variance is prohibited under 7 AAC 10.930. If a variance is prohibited, the review committee shall clearly indicate the prohibition in its recommendation under (f) or (g) of this section.

(c) If a variance is not prohibited under 7 AAC 10.930, the chair shall review the request and, within 30 days after receiving a complete request, determine if the health, safety, and welfare of recipients of services will be adequately protected if a variance is granted. If the chair

(1) can determine without involving the full variance review committee, that recipients of services will be protected, the chair shall immediately send the commissioner a recommendation under (f) of this section to grant the request; or

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(2) determines that a review by the full variance review committee is required, the chair shall immediately refer the matter to the committee for review under this section.

(d) In its review of a request for a variance, the review committee shall

(1) consider the recommendations made by the department office under 7 AAC 10.930(b);

(2) consider the information supplied with the request and any other relevant information available to the department;

(3) determine whether the individual

(A) charged with a crime was subsequently convicted;

(B) charged with a crime is awaiting adjudication; or

(C) was issued a final administrative order related to a barrier condition;

(4) if the individual was convicted of a lesser charge, determine whether the original charge was a permanent barrier crime or condition for which a variance would be prohibited under 7 AAC 10.930(g);

(5) determine whether any suspended imposition of sentence is still in effect, and review the nature of any applicable conditions;

(6) verify, as applicable, that

(A) any conditions of parole or probation were met;

(B) any court-ordered restitution has been made, or payments are current; and

(C) the individual is in compliance with any treatment required by the court, or that any required treatment has been successfully completed;

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(7) if the crime or condition is related to financial exploitation, including theft, fraud, and bribery, or involved another form of dishonesty, including perjury and official misconduct, verify that the individual's duties make it unlikely that exploitation or dishonesty could occur with regard to recipients of services;

(8) if the barrier crime or condition is related to the abuse, neglect, or exploitation of a child or vulnerable adult, verify that the individual's duties make it unlikely that abuse, neglect, or exploitation could occur with regard to recipients of services;

(9) consider any mitigating factors, including whether the individual has been employed by an entity or individual service provider for a substantial period, has performed duties in a responsible and trustworthy manner, and has not been the subject of any complaint from a recipient of services or a representative of a recipient of services; and

(10) for a request for a variance for a permanent barrier crime or condition submitted under 7 AAC 10.930(k), in addition to the matters described in (1) - (9) of this subsection, the committee shall consider

(A) whether there were mitigating circumstances involved at the time of the offense;

(B) the individual's educational and employment history;

(C) any current letters of recommendation from employers or others submitted in addition to the minimum required under 7 AAC 10.930(a)(3)(H);

(D) whether the individual is licensed under AS 08, or became licensed after the individual was convicted of the offense or listed on the centralized registry;

(E) whether the individual previously passed a criminal history check conducted by the department after the individual was convicted of the offense; and

(F) whether the individual was previously issued a variance by the department after the individual was convicted of the offense for which the variance was issued.

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(e) The commissioner or the variance review committee may require the individual for whom a variance is sought to appear in person or by telephone for an interview.

(f) Except as provided in (g) of this section, within 30 days after receiving a complete request for a variance,

(1) if the variance review committee, after its review of available information and documentation, determines that the health, safety, and welfare of recipients of services will be adequately protected, the committee shall recommend that the commissioner grant the request for a variance; or

(2) if the committee determines that the health, safety, and welfare of recipients of services will not be adequately protected, the committee shall recommend that the commissioner deny the request.

(g) For a request submitted for a permanent barrier crime or condition under 7 AAC 10.930(k), the variance review committee shall, within 30 days after receiving a complete request for a variance, submit its recommendation to grant or deny the request to the director of the department office responsible for the licensing of, certification of, approval for, or finding of eligibility to receive payments for an entity or provider seeking the variance. The director shall, within 30 days after receiving a complete request, consider the committee's recommendation and make a written recommendation that the commissioner grant or deny the request.

(h) The commissioner will consider a recommendation made under (f) or (g) of this section and will issue a decision on a request for a variance within 30 days after receiving the recommendation. If the commissioner determines that there is not enough information provided in the request for a variance to make a determination, the commissioner may refer the matter back for a review by the full variance review committee. During any point in the process, the commissioner may seek additional information from the committee or from the requester.

(i) If the commissioner grants the request for a variance, the commissioner will issue a final agency decision to the requester. If the commissioner denies the request, the commissioner will deliver a copy of the decision to the requester. The decision will include the reasons for the denial, and will advise that the requester may seek review by the full variance review committee if a full committee review has not already occurred, or that, if the requester believes the decision was based on a department error, an error in the information relied upon, or on insufficient information, and the requester has new or additional information related to the crime or condition that might change the results of the criminal history check, the requester may request reconsideration of the variance decision under 7 AAC 10.950. A copy of the commissioner's decision to grant or deny the request for a variance will be provided to the department office responsible for conducting criminal history checks, the department office responsible for maintaining the centralized registry established under 7 AAC 10.955, and the department office responsible for licensing, certification, approval, or a finding of eligibility to receive payments.

(j) In a variance granted under this section, the department will not identify the individual for whom the variance was requested, but will specify the barrier crime or condition for which the variance was granted. The department will set out the terms and conditions of the variance, and will include in the notification an expiration date not to exceed the expiration date of the license, certification, approval, or finding of eligibility to receive payments applicable to an entity or provider that requested the variance unless the initial variance is issued within the 90-day biennial renewal period under AS 47.32.060. For a requester who is an individual described in 7 AAC 10.902, the notification will include a reference to the provisions of 7 AAC 10.915(g), should the requester fail to become or remain associated with an entity or individual service provider within 100 days after the variance is granted.

(k) A variance may not be transferred to another entity or individual service provider. A variance may be transferred from site to another site operated by the same entity or individual service provider if the individual performs the same job duties and responsibilities identified in the variance request and complies with any conditions stated in the variance approval.

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(l) A variance approval becomes immediately invalid without prior notice if the individual for whom the variance was granted

(1) ceases to be associated with the entity or provider that requested the variance; or

(2) fails to become associated with an entity or individual service provider within 100 days after the variance was granted if the requester is an individual described in 7 AAC 10.902.

(m) The department office responsible for the licensing, certification, approval, or finding of eligibility to receive payments for an entity or individual service provider will, in accordance with 7 AAC 10.945, immediately revoke a variance granted under this section if

(1) the department learns that it granted the variance based on false information provided by the individual to whom the variance applies or by an entity or individual service provider that requested the variance; or

(2) the individual to whom the variance applies

(A) violates a term or condition of the variance; or

(B) subsequently becomes subject to AS 47.05.310(c), is charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a crime listed in 7 AAC 10.905, or a similar crime in another jurisdiction, or is issued a final administrative order governing a barrier condition. (Eff. 2/9/2007, Register 181; am 10/17/2007, Register 184; am 2/13/2008, Register 185; am ___/___/___, Register ___)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030
AS 47.05.320

7 AAC 10.940 is amended to read:

7 AAC 10.940. Posting of variance decision required.

(a) Except as provided in (b) and (c) of this section, if [IF] the department grants a variance under 7 AAC 10.935, the entity or individual service provider shall, **unless the variance is stated on the license, certification, approval, or finding of eligibility to receive payments that was issued by the department,** post a copy of the variance decision with the copy of the license, certification, approval, or finding of eligibility to receive payments. **The posting must be** [THAT WAS ISSUED BY THE DEPARTMENT,] in a conspicuous place where the copy of the variance can be readily viewed by persons interested in obtaining the services offered by the entity or **individual service** provider.

7 AAC 10.940 is amended by adding new subsections to read:

(b) The requirements of (a) of this section do not apply to a variance granted to an individual described in 7 AAC 10.902 unless that individual becomes associated with an entity or individual service provider in any manner described in 7 AAC 10.900(b).

(c) The requirements of (a) of this section do not apply to a facility licensed for foster care or to an approval for an adoption subsidy issued by the Office of Children's Services. (Eff. 2/9/2007, Register 181; am ___/___/___, Register ___)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030
AS 47.05.320

7 AAC 10.945 is amended to read:

7 AAC 10.945. Revocation of a valid criminal history check or variance.

(a) Subject to AS 47.32, if the department decides to revoke a valid criminal history check issued under 7 AAC 10.900 - 7 AAC 10.990, the department will provide written notice of revocation to the entity or **individual service** provider, and to the individual for whom the criminal history check was conducted. The notice will include the reasons for the department's decision and will advise the individual of the right to request **a redetermination under 7 AAC**

10.927 if the individual believes the department's decision was based on an error or mistake in fact. Nothing in this section precludes the submission of a request for a variance under 7 AAC 10.930 [RECONSIDERATION UNDER 7 AAC 10.950]. A notice of revocation issued under this **subsection** [SECTION] is effective **immediately** [30 DAYS] after it is **issued by the department** [RECEIVED BY THE INDIVIDUAL] unless a **delay is granted under (c) of this section** [REQUEST FOR RECONSIDERATION IS SUBMITTED].

(b) Subject to AS 47.32, if the department decides to revoke a variance issued under 7 AAC 10.900 - 7 AAC 10.990, the department will provide written notice of revocation to the entity or **individual service** provider to whom the variance was issued, and to the individual who was the subject of the variance. The notice will include the reasons for the department's decision and will advise the entity or **individual service** provider, **and the individual**, of the right to request reconsideration under 7 AAC 10.950 **if the entity, individual service provider, or individual believes the department's decision was based on an error or mistake in fact. Nothing in this section precludes the resubmission of a request for variance under 7 AAC 10.930.** A notice of revocation issued under this **subsection** [SECTION] is effective **immediately** [30 DAYS] after it is **issued by the department** [RECEIVED BY THE ENTITY OR PROVIDER] unless a **delay is granted under (c) of this section** [REQUEST FOR RECONSIDERATION IS SUBMITTED].

(c) **The department may delay the effective date of a revocation under this section for up to 30 days after its issuance if the department believes closer supervision and revised work conditions under which the individual must operate will not threaten the health, safety, and welfare of a recipient of services.** [NOTHING IN THIS SECTION PRECLUDES THE DEPARTMENT FROM ISSUING A NOTICE OF IMMEDIATE REVOCATION IF THE DEPARTMENT FINDS THAT THE LIFE, HEALTH, SAFETY, OR WELFARE OF A RECIPIENT OF SERVICES IS THREATENED]. (Eff. 2/9/2007, Register 181; am ___/___/___, Register ___)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030
AS 47.05.320

7 AAC 10.950 is repealed and readopted to read:

7 AAC 10.950. Request for reconsideration of a variance request decision.

(a) A request for reconsideration of a variance request decision under 7 AAC 10.935 must be submitted within 30 days after the decision is issued by the department. The request for reconsideration must include

(1) the requester's name, mailing address, telephone number, and, if available, electronic mail address and facsimile number;

(2) a clear description of the department's decision to be reviewed; and

(3) a clear and concise statement of the reason for the request, including copies of any documents or other information that would assist the department in its review.

(b) After reviewing a request for reconsideration, the department will issue a decision within 30 days regarding whether to grant or deny the reconsideration. If granted, a clearance letter will be sent. If denied, the notice will inform the requester that a barrier crime or condition exists, that it is a final agency decision, and that, as provided by AS 40.25.124, the requester may obtain judicial review of the denial by appealing the denial to the superior court.

(c) A copy of a decision on reconsideration under this section will be provided to the department office responsible for conducting criminal history checks, and to the department office responsible for licensing, certification, approval, or a finding of eligibility to receive payments. (Eff. 2/9/2007, Register 181; am ___/___/___, Register ___)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030
AS 47.05.320

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7 AAC 10.955(h) is amended to read:

(h) If a hearing is requested under (f) of this section,

(1) the department will hold the hearing within 45 days after receiving the request; and

(2) the entity or **individual service** provider may allow the individual to remain associated with the entity or **individual service** provider, pending a decision on the request, if

(A) the individual is removed from direct contact with individuals receiving services; and

(B) the entity or **individual service** provider ensures that the individual has supervised access if present in any area where services are provided, during hours of operation.

.....

7 AAC 10.955(k) is amended to read:

(k) If a hearing or waiver of hearing under this section results in a finding that an individual committed abuse, neglect, or exploitation, the department will notify any entity or **individual service** provider that made a report under (c) of this section, and the individual who is the subject of the hearing, of the hearing or waiver results and of the entry of the information on the centralized registry. The department will notify the individual of the right to request that the department delete or modify the information on the centralized registry to correct an inaccuracy in accordance with AS 47.05.330(j).

.....

(Eff. 2/9/2007, Register 181; am 2/13/2008, Register 185; am ___/___/___, Register ___)

Authority:	AS 47.05.300	AS 47.05.330	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030
	AS 47.05.320		

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The introductory language of 7 AAC 10.960(a) is amended to read:

7 AAC 10.960. Termination of association.

(a) Except as provided in (b) and (c) of this section, if an entity or **individual service** provider is required to terminate association with an individual, the entity or **individual service** provider shall

7 AAC 10.960(a)(1) is amended to read:

(1) notify the individual that the individual's employment, volunteer services, or other association with the entity or **individual service** provider under 7 AAC 10.900(b) is ended, effective immediately, unless the entity or **individual service** provider takes immediate action under (2) of this subsection; the entity or **individual service** provider must notify the individual under this paragraph

(A) immediately, if the individual is present at the [ENTITY OR] premises where the entity or **individual service** provider is providing services; or

(B) before or upon the individual's next arrival at **those premises** [THE ENTITY]; or

7 AAC 10.960(a)(2) is amended to read:

(2) if the entity or **individual service** provider intends to request a variance under 7 AAC 10.930, immediately reassign the duties and responsibilities of that individual so that the individual

7 AAC 10.960(a)(2)(A) is amended to read:

(A) immediately, if the individual is present at the entity or premises where the **individual service** provider is providing services; or

7 AAC 10.960(a)(2)(B), (a)(2)(C)(iii), and (a)(2)(D) is amended to read:

(B) cannot access personal or financial records maintained by the entity or **individual service** provider regarding recipients of services;

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7 AAC 10.960(a)(2)(C)(iii) is amended to read:

(C) has no control over or impact on the financial well-being of a recipient of services, unless the only recipient whose financial well-being is affected is a

(iii) recipient for whom a court has authorized that individual to make financial decisions **for that recipient**; and

7 AAC 10.960(a)(2)(D) is amended to read:

(D) is provided with direct supervision if present **at** [IN] the [IN THE ENTITY OR] premises where the entity or **individual service** provider is providing services during hours of operation.

7 AAC 10.960(b) is amended to read:

(b) If the entity or **individual service** provider is required to terminate association with an individual who is subject to a union agreement or employment contract that requires more notice than allowed under (a) of this section, the entity or **individual service** provider shall, within 24 hours after receiving notice to terminate association, deliver a copy of the relevant language of the agreement or contract to the department. The entity or **individual service** provider shall cooperate with the department in developing an appropriate termination plan for the individual that includes the measures set out in (a)(2)(A) - (D) of this section during the notice period mandated by the agreement or contract.

7 AAC 10.960(c) is amended to read:

(c) If the individual for whom termination of association is required is a relative of the operator, administrator, or **individual service** provider, and resides **at** [IN] the [ENTITY OR] premises where services are provided, termination of association must occur within 24 hours, and the entity or **individual service** provider shall ensure that the individual

(1) does not have contact with recipients of services; and

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(2) is provided with direct supervision if, during that 24-hour period, the individual is present **at** [IN] the [ENTITY OR] premises where the entity or **individual service** provider is providing services during hours of operation. (Eff. 2/9/2007, Register 181; am ___/___/___, Register _____)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030
AS 47.05.320

7 AAC 10.990(a)(2) is amended to read:

7 AAC 10.990. Definitions.

(a) In 7 AAC 10.900 - 7 AAC 10.990, unless the context requires otherwise,

.....

(2) "barrier time" means the length of time a barrier crime **or condition** under 7 AAC 10.905 bars an individual from association with an entity or **individual service** provider under 7 AAC 10.900(b);

7 AAC 10.990(a)(6) is amended to read:

(6) "commissioner" means the commissioner of **the department** [HEALTH AND SOCIAL SERVICES];

7 AAC 10.990(a)(7) is amended to read:

(7) "condition" means a barrier to association under 7 AAC 10.900(b) that results from **a civil finding identified as a permanent barrier under 7 AAC 10.905(b)** [(A) A MATTER DESCRIBED IN AS 47.05.330(B)(1)(A) INVOLVING THE ABUSE, NEGLECT, OR EXPLOITATION OF A CHILD OR VULNERABLE ADULT; AND (B) THE ENTRY OF THAT INFORMATION IN THE CENTRALIZED REGISTRY];

7 AAC 10.990(a)(17) is repealed:

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(17) repealed ____/____/____; ["PROVIDER" MEANS AN INDIVIDUAL SERVICE PROVIDER] (Eff. 2/9/2007, Register 181; am ____/____/____, Register ____)

7 AAC 10.990(a)(20) is amended to read:

(20) "supervised access" means that the entity or **individual service** provider maintains a prudent level of awareness of the whereabouts of an individual for whom supervised access is required, to ensure the protection of recipients of services;

7 AAC 10.990(a)(21) is amended to read:

(21) "terminate association" means to sever an individual's association under 7 AAC 10.900(b) with an entity or **individual service** provider;

7 AAC 10.990(a)(22) is amended to read:

(22) "volunteer" means an individual who regularly or routinely provides services or care, without pay, on behalf of an entity or **individual service** provider.

7 AAC 10.990(a) is amended by adding a new paragraph to read:

(23) "apprentice" means an individual, other than an individual service provider, who is in training, or who is completing a course of study or an internship through a structured and supervised educational program to provide care or services for one or more recipients of services;

7 AAC 10.990(b)(2) is amended to read:

(b) Notwithstanding 7 AAC 10.9990, in 7 AAC 10.900 - 7 AAC 10.990, unless the context requires otherwise,

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(1) "entity" has the meaning given in AS 47.05.390;

(2) "recipient of services" means an individual receiving services from an entity or **individual service** provider.

7 AAC 10.990(d)(1) is amended to read:

(1) "certified" means certified under **7 AAC 125.060 (personal care provider certification and enrollment) or 7 AAC 130.220 (provider certification and enrollment)** [7 AAC 43.1090];

(Eff. 2/9/2007, Register 181; am ___/___/___, Register _____)

Authority:	AS 47.05.300	AS 47.05.330	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030
	AS 47.05.320		

Article 4. Environmental Health and Safety.

7 AAC 10.1080(a) is amended to read:

7 AAC 10.1080. Firearms and ammunition.

(a) Firearms and ammunition are prohibited in an assisted living home, [LICENSED FOR SIX OR MORE RESIDENTS, AND IN] a child care center, a residential child care facility, **a residential psychiatric treatment center**, and a maternity home.

....
(Eff. 6/23/2006, Register 178; am ___/___/___)

Authority:	AS 18.05.010	AS 47.32.010	AS 47.32.140
	AS 18.05.040	AS 47.32.030	AS 47.33.005
	AS 44.29.020	AS 47.32.130	AS 47.33.010
	AS 47.14.120		

**Chapter 41. Child Care Assistance Program.
Article 2. Provisions for Providers.**

7 AAC 41.015(b)(2)(A is amended to read:

7 AAC 41.015. Responsibilities of designees.

....

(b) If the department designates an entity or municipal government to perform certain functions on the department's behalf, those functions may include one or more of the following:

....

(2) in addition to (1) of this subsection

(A) for a [NONRELATIVE] provider approved under 7 AAC 41.200(d) **or (e)**, monitor providers for compliance with the applicable health and safety standards of this chapter; the provisions of this subparagraph do not apply to the requirement dealing with criminal history checks under 7 AAC 41.205(b); and

7 AAC 41.015(b)(2)(B) is repealed:

(B) repealed ____/____/____; [FOR A RELATIVE PROVIDER APPROVED UNDER 7 AAC 41.200(e),

(i) OBTAIN DOCUMENTS AND REVIEW INFORMATION RELATED TO BACKGROUND CHECKS IN ACCORDANCE WITH 7 AAC 41.205(c) AND (d);

(ii) AS NECESSARY, REQUEST THE DEPARTMENT TO REVIEW INFORMATION OBTAINED UNDER 7 AAC 41.205(c) AND (d); AND

(iii) MONITOR PROVIDERS FOR COMPLIANCE WITH THE APPLICABLE HEALTH AND SAFETY STANDARDS OF THIS CHAPTER].

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9Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am ____/____/____, Register ____)

Authority: AS 47.05.300 AS 47.05.340 AS 47.25.001
AS 47.05.310

7 AAC 41.200(g)(6) is amended to read:

7 AAC 41.200. Provider eligibility; application requirements.

....

(g) An application for approval under (d) or (e) of this section must contain the following information on a form prescribed by the department:

....

(6) proof that the provider has met the requirements of 7 AAC 10.910(b) [; OR 7 AAC 41.205(c) AS APPLICABLE];

....

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am ____/____/____, Register ____)

Authority: AS 47.05.300 AS 47.05.340 AS 47.25.001
AS 47.05.310

7 AAC 41.205(b) is amended to read:

7 AAC 41.205. Child protection and criminal history check requirements. .

....

(b) **To** [EXCEPT AS PROVIDED IN (c) AND (d) OF THIS SECTION, TO] participate in the child care assistance program, a child care provider identified in 7 AAC 41.200(a)(1) - (6) must meet the applicable requirements of AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry) for that provider and for each individual associated with that provider in a manner described in 7 AAC 10.900(b). If the provider requests and receives a provisional valid criminal history check under 7 AAC 10.920 for that provider or another individual, the

department office responsible for approvals under this chapter will, or the designee shall, issue a provisional approval if the department or designee determines that the provider or other individual is otherwise eligible to provide care for children under this section. If the department determines under 7 AAC 10.915 that the provider or other individual did not pass the criminal history check, or if the provisional valid criminal history check issued under 7 AAC 10.920 expires, the department will, or the designee shall, revoke the provisional approval unless the provider requests a variance under 7 AAC 10.930, and the department grants that request under 7 AAC 10.935.

7 AAC 41.205(c) is repealed:

(c) Repealed ____/____/____. [TO PARTICIPATE IN THE CHILD CARE ASSISTANCE PROGRAM UNDER THIS CHAPTER, AN INDIVIDUAL SEEKING APPROVAL AS A RELATIVE PROVIDER UNDER 7 AAC 41.200(e) MUST SUBMIT TO THE DEPARTMENT OR DESIGNEE, FOR THAT PROVIDER, AND FOR EACH INDIVIDUAL IN CONTACT WITH CHILDREN IN CARE WHO IS (1) 16 YEARS OF AGE OR OLDER, A SIGNED RELEASE OF INFORMATION AUTHORIZATION TO REVIEW CRIMINAL HISTORY INFORMATION INCLUDING (A) CRIMINAL JUSTICE INFORMATION; (B) INFORMATION REGARDING ADJUDICATION AS A DELINQUENT FOR EACH INDIVIDUAL WHO IS 16 TO 20 YEARS OF AGE, IN ACCORDANCE WITH AS 47.12.310(e); (C) PROTECTIVE RECORDS DEVELOPED UNDER AS 47.17; AND (D) CHILD CARE LICENSING RECORDS; AND (2) 18 YEARS OF AGE OR OLDER, CRIMINAL JUSTICE INFORMATION AT THE LEVEL AVAILABLE TO AN INTERESTED PERSON UNDER AS 12.62.160(b)(9); IF THE PROVIDER IS IN A COMMUNITY THAT DOES NOT HAVE AN ALASKA STATE TROOPER'S OFFICE, AND DOES NOT HAVE ANOTHER MEANS OF OBTAINING THE REPORT, THE DEPARTMENT WILL OBTAIN THE REPORT, BASED ON INFORMATION SUPPLIED ON EACH SIGNED RELEASE SUBMITTED UNDER (1) OF THIS SUBSECTION].

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7 AAC 41.205(d) is repealed:

(d) Repealed ____/____/____. [THE DEPARTMENT WILL NOT APPROVE AN INDIVIDUAL SEEKING APPROVAL AS A RELATIVE PROVIDER UNDER 7 AAC 41.200(e) IF THE DEPARTMENT OR DESIGNEE FINDS THAT THE PROVIDER OR ANY INDIVIDUAL IN CONTACT WITH CHILDREN IN CARE FOR WHOM INFORMATION WAS REQUIRED TO BE SUBMITTED UNDER (c) OF THIS SECTION (1) IS NAMED ON THE CENTRALIZED REGISTRY ESTABLISHED UNDER 7 AAC 10.955; (2) WAS THE SUBJECT OF A PRIOR ADVERSE LICENSING ACTION OF THE KIND DESCRIBED IN AS 47.32.140(d)(5) - (7); OR (3) WAS CHARGED WITH, CONVICTED OF, FOUND NOT GUILTY BY REASON OF INSANITY FOR, OR ADJUDICATED AS A DELINQUENT FOR, AN OFFENSE THAT IS A BARRIER CRIME UNDER 7 AAC 10.905].

7 AAC 41.205(e) is repealed:

(e) Repealed ____/____/____. [FOR PURPOSES OF (c) - (d) OF THIS SECTION, AN INDIVIDUAL IN CONTACT WITH CHILDREN IN CARE IS AN INDIVIDUAL WHO HAS THE OPPORTUNITY TO GAIN ACCESS TO ANY AREA WHERE CHILD CARE IS PROVIDED, A MEMBER OF THE PROVIDER'S HOUSEHOLD, OR AN INDIVIDUAL WHO RESIDES IN A PART OF THE PREMISES WHERE CHILD CARE IS PROVIDED. HOWEVER, AN INDIVIDUAL IN CONTACT WITH CHILDREN IN CARE DOES NOT INCLUDE (1) A PARENT OF A CHILD IN CARE, UNLESS THE PARENT IS A CAREGIVER OR A MEMBER OF THE PROVIDER'S HOUSEHOLD; (2) A PARENT'S DESIGNEE TO DROP OFF AND PICK UP A CHILD IN CARE, UNLESS THE DESIGNEE IS A CAREGIVER; (3) A PERSONAL PHYSICIAN, AN INFANT LEARNING TEACHER, AN ATTENDANT FOR A CHILD WITH SPECIAL NEEDS AS DESCRIBED IN 7 AAC 57.940, A LICENSOR, A FIRE MARSHAL, A FOOD SERVICES SPONSOR, OR ANOTHER SIMILAR INDIVIDUAL WHO OCCASIONALLY PROVIDES SUPPORT SERVICES TO THE CHILD CARE FACILITY OR TO A CHILD IN CARE; (4) AN INDIVIDUAL WHO IS A VENDOR OR AN INDUSTRY REPRESENTATIVE, OR WHO PROVIDES DELIVERY, INSTALLATION, MAINTENANCE, OR REPAIR SERVICES, IF THE PROVIDER PROVIDES SUPERVISED ACCESS WHILE THAT INDIVIDUAL IS PRESENT IN THE CHILD CARE FACILITY WHILE CHILDREN ARE IN CARE; (5) AN

OCCASIONAL GUEST OF THE PROVIDER OR OF A CHILD IN CARE, IF THE PROVIDER PROVIDES SUPERVISED ACCESS WHILE THAT GUEST IS PRESENT IN THE CHILD CARE FACILITY; (6) AN INDIVIDUAL WHO RESIDES IN A PART OF THE PREMISES THAT HOUSE A CHILD CARE FACILITY, IF THE (A) INDIVIDUAL IS NOT A CAREGIVER; (B) INDIVIDUAL REMAINS OR INTENDS TO REMAIN IN THE CHILD CARE FACILITY FOR LESS THAN 45 DAYS, IN TOTAL, IN ANY 12-MONTH PERIOD; AND (C) PROVIDER PROVIDES SUPERVISED ACCESS IF THE INDIVIDUAL IS PRESENT IN THE CHILD CARE FACILITY WHILE CHILDREN ARE IN CARE; OR (7) AN INDIVIDUAL COMING INTO INCIDENTAL CONTACT WITH CHILDREN DURING AN OUTING AWAY FROM THE CHILD CARE FACILITY].

7 AAC 41.205(f) is repealed:

(f) Repealed ____/____/____. [FOR PURPOSES OF (e) OF THIS SECTION, (1) AN INDIVIDUAL WHO RESIDES IN A PART OF THE PREMISES THAT HOUSE THE CHILD CARE FACILITY IS AN INDIVIDUAL WHO DWELLS CONTINUOUSLY IN, OR LEGALLY OCCUPIES, THE PREMISES HOUSING THE CHILD CARE FACILITY AS EVIDENCED BY (A) THE INDIVIDUAL'S ADDRESS ON THE INDIVIDUAL'S PERMANENT FUND DIVIDEND RECEIVED UNDER AS 43.23, DRIVER'S LICENSE, FISHING OR HUNTING LICENSE, OR OTHER OFFICIAL RECORD; OR (B) OBSERVATION BY ANOTHER INDIVIDUAL OF THE INDIVIDUAL OCCUPYING THE PREMISES THAT HOUSE THE CHILD CARE FACILITY; AND (2) AN INDIVIDUAL WHO HAS THE OPPORTUNITY TO GAIN ACCESS TO ANY AREA WHERE CHILD CARE IS PROVIDED IS AN INDIVIDUAL WHO HAS THE ABILITY, RIGHT, OR PERMISSION TO ENTER, EXIT, OR MAKE USE OF THAT AREA DURING THE HOURS OF OPERATION.

7 AAC 41.205(g) is repealed:

(g) Repealed ____/____/____. [AN INDIVIDUAL DESCRIBED IN (f) OF THIS SECTION WHO HAS DIRECT ACCESS FROM THE INDIVIDUAL'S RESIDENCE TO THE PREMISES THAT HOUSE THE CHILD CARE FACILITY AND REMAINS OR

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INTENDS TO REMAIN IN THE RESIDENCE FOR 45 DAYS OR MORE, IN TOTAL, IN ANY 12-MONTH PERIOD, IS A MEMBER OF THE PROVIDER'S HOUSEHOLD].

7 AAC 41.205(h) is repealed:

(h) Repealed ____/____/____. [FOR THE PURPOSE OF (e) OF THIS SECTION, "SUPERVISED ACCESS" MEANS THAT THE PROVIDER MAINTAINS A PRUDENT LEVEL OF AWARENESS OF THE WHEREABOUTS OF AN INDIVIDUAL FOR WHOM SUPERVISED ACCESS IS REQUIRED, TO ENSURE THE PROTECTION OF CHILDREN IN CARE]. (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am ____/____/____, Register ____)

Authority:	AS 47.05.300	AS 47.05.320	AS 47.05.340
	AS 47.05.310	AS 47.05.330	AS 47.25.001