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**OFFICE OF THE LIEUTENANT GOVERNOR  
ALASKA**

**M E M O R A N D U M**

**TO:** Triptaa Surve  
Department of Health & Social Services

**FROM:** Scott Meriwether, Office of the Lieutenant Governor   
465.4081

**DATE:** June 1, 2017

**RE:** Filed Permanent Regulations: Department of Health & Social Services

Department of Health and Social Services regulation re: centralized facilities licensure, barrier crimes and conditions, and background checks for barrier crimes and conditions 7 AAC 10.010; 7 AAC 10.015(1); 7 AAC 10.900 - 7 AAC 10.990; 7 AAC 10.9500(b)(3); 7 AAC 12.541(b)(3); 7 AAC 12.605; 7 AAC 12.660(a)(5); 7 AAC 41.205; 7 AAC 41.370; 7 AAC 50.030; 7 AAC 50.210(c); 7 AAC 53.226(4)(A)(i); 7 AAC 56.070(c)(6); 7 AAC 56.210; 7 AAC 57; 7 AAC 75.215; 7 AAC 75.340(a); 7 AAC 75.405(b); 7 AAC 105.210(b)(6); 7 AAC 105.400(30); 7 AAC 125.080(a)(4); 7 AAC 125.090(c); 7 AAC 125.100(a); 7 AAC 160.990(b)(10), (107)

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Attorney General File:	JU2015200970
Regulation Filed:	5/30/2017
Effective Date:	6/29/2017
Print:	222, July 2017

cc with enclosures: Linda Miller, Department of Law  
Judy Herndon, LexisNexis

**ORDER ADOPTING CHANGES TO REGULATIONS  
OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES**

The attached 80 pages of regulations, dealing with Barrier Crimes, Criminal History Checks, Firearms; Criminal History Checks for Relative Providers, are adopted and certified to be a correct copy of the regulation changes that the Department of Health & Social Services adopts under the authority of AS 18.05.010; AS 18.05.040; AS 44.29.020; AS 47.05.300; AS 47.05.310; AS 47.05.320; AS 47.05.330; AS 47.05.340; AS 47.14.120; AS 47.25.001; AS 47.32.010; AS 47.32.020; AS 47.32.030; AS 47.33.005; AS 47.33.010, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

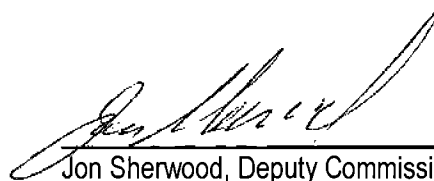
In considering public comments, the Department of Health & Social Services paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect [on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date:

5-24-17

Juneau, AK



Jon Sherwood, Deputy Commissioner  
Department of Health & Social Services

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that<sup>1</sup> on May 30, 2017, at 400 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Byron Mallott, Lieutenant Governor

Effective:

June 29, 2017

Register:

222, July 2017

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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 [ENTITIES AND INDIVIDUAL SERVICE] providers **defined in 7 AAC 10.990** [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 6/29/2017, Register 222)

<b>Authority:</b>	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

7 AAC 10.015(1) is amended to read:

(1) 7 AAC 10.900 - 7 AAC 10.990 (Barrier Crimes **and Conditions**;

**Background** [, CRIMINAL HISTORY] Checks [, AND CENTRALIZED REGISTRY]) apply to **a provider** [AN ENTITY OR INDIVIDUAL] described in **7 AAC 10.990** [7 AAC 10.990(b)];

(Eff. 6/23/2006, Register 178; am 12/3/2006, Register 180; am 2/9/2007, Register 181; am 6/29/2017, Register 222)

<b>Authority:</b>	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

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AS 47.05.300

AS 47.32.010

AS 47.33.010

The article heading for 7 AAC 10, Article 3, is changed to read:

**Article 3. Barrier Crimes and Conditions; Background [, CRIMINAL HISTORY] Checks  
[, AND CENTRALIZED REGISTRY].**

7 AAC 10.900(a) is amended to read:

(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 and with background [, CRIMINAL HISTORY] checks, [AND THE CENTRALIZED REGISTRY,] including

(1) the identification of barrier crimes [OFFENSES] and conditions that would bar an individual from

(A) licensure, certification, or approval by the department;

(B) a finding of eligibility to receive certain payments from the department; and

(C) association with a [AN ENTITY OR INDIVIDUAL SERVICE] provider in a manner described in (b) of this section;

(2) requirements for requesting a background [CRIMINAL HISTORY] check and procedures to determine whether a barrier crime or condition exists; and

(3) requirements for maintaining compliance with AS 47.05.300 - 47.05.390, AS 47.32, and 7 AAC 10.900 - 7 AAC 10.990, including standards for association and requirements for continued monitoring and notification [; AND



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(4) THE ESTABLISHMENT OF A CENTRALIZED REGISTRY AS  
REQUIRED BY AS 47.05.330].

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

(b) The provisions of 7 AAC 10.900 - 7 AAC 10.990 apply to a [AN ENTITY OR  
INDIVIDUAL SERVICE] provider seeking **approval from an oversight division to provide  
services or** [LICENSURE, CERTIFICATION, APPROVAL, OR A FINDING OF  
ELIGIBILITY TO] receive payments from the department. Each individual who is to be  
associated with a [THE ENTITY OR] provider in a manner described in this subsection must  
have a valid **background** [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] provider as

• • •

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

(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

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OR] 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:

(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:

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

...

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

(B) access to personal or financial records maintained by the [ENTITY OR] 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

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

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

7 AAC 10.900(b)(5) is amended to read:

(5) except as provided in (c) and **(d)(9)** [(d)(10)] of this section, an individual who resides in a part of an entity, including a residence if services are provided in the residence, if the individual remains, or intends to remain, in the entity **or residence** for 45 days or more, in total, in a 12-month period; or

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 **(A)** is present in the entity, **including in a residence if services are provided in the residence;** and **(B)** would have regular contact with recipients of services.

7 AAC 10.900(c) is amended to read:

(c) A **background** [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.

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7 AAC 10.900(d) is amended to read:

(d) A **background** [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] provider in any manner described in (b)(1) - (5) of this section;

(2) a visitor of a recipient of services, unless that visitor is also associated with the [ENTITY OR] provider in any manner described in (b)(1) - (4) of this section;

(3) an individual for whom the [ENTITY OR] provider submits evidence to the department of a fingerprint-based **criminal history** [BACKGROUND] check [(A)] conducted and implemented under a process that meets or exceeds the standards of 7 AAC 10.900 - 7 AAC 10.990; [AND (B) THAT IS REQUIRED (i) AS A CONDITION FOR OBTAINING A PROFESSIONAL LICENSE OR CERTIFICATION UNDER AS 08; (ii) BY FEDERAL LAW FOR AN ENTITY OR INDIVIDUAL SERVICE PROVIDER DESCRIBED IN AS 47.05.300; OR (iii) AS A CONDITION OF EMPLOYMENT OR ASSOCIATION THAT IS IMPOSED BY AN ENTITY OR INDIVIDUAL SERVICE PROVIDER DESCRIBED IN AS 47.05.300;]

(4) **a person listed in (A) or (B) of this paragraph, as follows, if that person is not associated with the provider in any manner described in (b)(1) - (4) of this section:**

(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];

(5) [AN APPROVED RELATIVE PROVIDER UNDER 7 AAC 41.200(e);

(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] provider in any manner described in [UNDER] (b) of this section; and

(B) provides support services to the [ENTITY OR] provider, or to a recipient of services;

(6) [(7)] an individual who is a vendor or an industry representative, or who provides delivery, installation, maintenance, or repair services;

(7) [(8)] an individual who resides in any part of an entity, including a residence if services are provided in the residence, if the individual remains in the entity or residence for less than 45 days, in total, in a 12-month period;

(8) [(9)] a parent's designee to drop off and pick up a child in care, unless the designee is also associated in a manner described in (b) of this section with the provider of [ENTITY PROVIDING] child care;

(9) [(10)] a parent who receives money from the department for purposes of paying an approved in-home child care caregiver [PROVIDER] under 7 AAC 41.370, and any other individual who resides in that parent's household; however, the exemption in this paragraph does not apply to an approved in-home child care caregiver [PROVIDER] who

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resides in the household;

(10) [(11)] an occasional guest of the administrator or operator of [AN ENTITY OR OF] a provider.

7 AAC 10.900(e) is amended to read:

(e) A [AN ENTITY OR INDIVIDUAL SERVICE] provider must provide supervised access for an individual exempted under (d) of this section if the individual is present in the entity during hours of operation. Supervised access is not required in a residence where in-home child care is provided under 7 AAC 41.370.

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

(f) For purposes of (b)(5) and (d)(7) [(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] provider, as evidenced by

...

(Eff. 2/9/2007, Register 181; am 6/29/2017, Register 222)

<b>Authority:</b>	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 background check.** An applicant may request a

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background check under 7 AAC 10.900 - 7 AAC 10.990 to comply with 7 AAC 10.900(a)(1).

(Eff. 6/29/2017, Register 222)

**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 background 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 background check process under 7 AAC 10.900 - 7 AAC 10.990 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 background check process under 7 AAC 10.900 - 7 AAC 10.990, 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 program review or audit to which the information relates.

(c) Unless otherwise authorized by law, 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 October 1, 2016, and adopted by reference. (Eff.

6/29/2017, Register 222)

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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 10.905(a) is 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 prohibits a provider or an applicant from being approved under 7 AAC 10.900 [IS INCONSISTENT WITH THE STANDARDS FOR LICENSURE, CERTIFICATION, APPROVAL, OR ELIGIBILITY TO RECEIVE PAYMENTS]. The [BARRIER CRIME] standards and prohibitions in this section apply to an individual who [(1)] seeks to be associated or to remain associated in a manner described in 7 AAC 10.900(b) with 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, [;] and

(1) [(2)] has been charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a crime listed in this section or a crime with similar elements in another jurisdiction; or

(2) 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.



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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 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, except that the barrier time for an adjudication as a minor for crimes under this subsection is limited to 10 years from the date of the individual's majority:**

(1) an unclassified, a class A, or a class B felony under AS 11.41 (Offenses Against the Person);

(2) a crime involving domestic violence that is a felony under AS 11;

(3) a crime that is a felony and involves a victim who was a child under 18 years of age at the time of the conduct, including a crime involving a perpetrator who was a person responsible for the child's welfare; in this paragraph, "person responsible for the child's welfare" has the meaning given in AS 47.17.290;

(4) a crime under AS 11.41.220 (Assault in the Third Degree);

(5) a crime under AS 11.41.460 (Indecent Exposure in the Second Degree);

(6) a crime under AS 11.46.400 or 11.46.410 (Arson in the First or Second Degree);

(7) a crime under AS 11.51 (Offenses Against the Family and Vulnerable Adults) as follows:

(A) AS 11.51.100 (Endangering the Welfare of a Child in the First Degree);

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(B) AS 11.51.200 (Endangering the Welfare of a Vulnerable Adult in the First Degree);

(C) AS 11.51.210 (Endangering the Welfare of a Vulnerable Adult in the Second Degree);

(8) a crime under AS 11.56 (Offenses Against Public Administration) as follows:

(A) AS 11.56.835 (Failure to Register as a Sex Offender or Child Kidnapper in the First Degree);

(B) AS 11.56.840 (Failure to Register as a Sex Offender or Child Kidnapper in the Second Degree);

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

(A) AS 11.61.123 (Indecent Viewing or Photography);

(B) AS 11.61.125 (Distribution of Child Pornography);

(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);

(11) any sex offense, as defined in AS 12.63.100, that is not already listed in this

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subsection [;

(12) TWO OR MORE CLASS B FELONIES THAT ARE NOT INCLUDED IN THIS SUBSECTION].

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

(11) a crime under AS 47.05.210 (Medical Assistance Fraud).

7 AAC 10.905(d)(5) is amended to read:

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

(A) **AS 11.61.118 (Harassment in the First Degree);**

**(B)** AS 11.61.130 (Misconduct Involving a Corpse);

**(C)** [(B)] AS 11.61.140 (Cruelty to Animals);

**(D)** [(C)] AS 11.61.145 (Promoting an Exhibition of Fighting Animals), if

the crime is a class C felony;

**(E)** [(D)] AS 11.61.200 (Misconduct Involving Weapons in the Third

Degree);

**(F)** [(E)] AS 11.61.240 (Criminal Possession of Explosives), if the crime

is a class C felony;

**(G)** [(F)] AS 11.61.250 (Unlawful Furnishing of Explosives);

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

(f) Except as otherwise provided in this section, the following are conditions that are

inconsistent with the standards for protection of public health, safety, and welfare and constitute a 10-year barrier:

(1) a criminal offense or civil finding for which one or more of the following federal laws prohibit certain approvals or restrict payment of benefits, during the most stringent barrier time set by the federal law for that crime or civil finding, regardless of whether the federal law is directly applicable to the applicant or provider:

(A) 42 U.S.C. 670 - 679c (secs. 470 - 479B of the Social Security Act), dealing with federal payments for foster care and adoption assistance, revised as of October 1, 2016, 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 October 1, 2016, and adopted by reference;

(C) 45 C.F.R. 1356.30 (Safety Requirements for Foster Care and Adoptive Home Providers), revised as of October 1, 2015, and adopted by reference;

(2) placement on one or more of the following lists or registries, except that any barrier time that results from placement and that is more stringent than the 10-year barrier under this subsection continues to apply, unless the individual requests removal from the list or registry from the agency that maintains it and the agency grants the request:

(A) the List of Excluded Individuals and Entities (LEIE) that the United States Department of Health and Human Services, Office of Inspector General maintains under 42 U.S.C. 1320a-7 and 1320c-5 (secs. 1128 and 1156 of the Social Security Act);

(B) the Alaska Medical Assistance Excluded Provider List maintained

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under AS 47.05.240 or a list or registry maintained under a substantially similar law in another jurisdiction;

(C) the United States Department of Justice's Dru Sjodin National Sex Offender Public Website (NSOPW) maintained under 42 U.S.C. 16920, the Alaska Sex Offender/Child Kidnapper Registry that the Department of Public Safety maintains under AS 18.65.087, or a list or registry maintained under a substantially similar law in another jurisdiction;

(3) a barrier condition based upon a civil finding relating to abuse, neglect, or exploitation of a child or vulnerable adult under AS 47.10, AS 47.24, AS 47.32, or AS 47.62, for any case that did not result in the termination of parental rights; however, if parental rights were relinquished or terminated under AS 47.10, the barrier is permanent;

(4) a finding under 7 AAC 10.915(a) and (d).

7 AAC 10.905(g) is amended to read:

(g) If an **applicant** [INDIVIDUAL] does not pass a **background** [CRIMINAL HISTORY] check as a result of a barrier crime **or condition** established in this section, the **applicant** [INDIVIDUAL] is prohibited from associating with **a** [AN ENTITY OR] provider in **any** [A] manner described in 7 AAC 10.900(b). **If eligible under 7 AAC 10.930, an applicant may request** [, UNLESS THE DEPARTMENT GRANTS] a variance under 7 AAC 10.935.

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

(i) Except as otherwise provided in this section, a barrier time listed in this section

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begins to run from

(1) the date that an individual was charged with or convicted of the crime, or the date of a final civil finding establishing a barrier condition, whichever period ends at a later date;

(2) if the individual is subject to a judgment of a court related to sentencing, probation, or parole, or to a final civil finding, the date for the barrier time listed in this section or until the individual has fully complied with the conditions of the sentencing, probation, parole, or final civil finding, whichever period is longer; or

(3) for a finding under AS 47.05.240, the date the person is unconditionally discharged from the federal Office of Inspector General list described in (f)(2)(A) of this section, unless the commissioner determines by clear and convincing evidence that a shorter time period is appropriate.

7 AAC 10.905(k) is amended to read:

(k) If an **applicant** [ENTITY OR INDIVIDUAL] is also subject to federal **background** [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.

(Eff. 2/9/2007, Register 181; am 6/29/2017, Register 222)

<b>Authority:</b>	AS 47.05.300	<b><u>AS 47.05.330</u></b>	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030
	AS 47.05.320		

7 AAC 10.910(a) is amended to read:

**7 AAC 10.910. Request for background [CRIMINAL HISTORY] check.** (a) 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 background [CRIMINAL HISTORY] check under this section, or provide proof of a valid fingerprint-based background [CRIMINAL HISTORY] check, for each individual to be associated [, OR TO REMAIN ASSOCIATED,] with the [ENTITY OR] provider in any [A] manner described in 7 AAC 10.900(b). A provider [AN ENTITY OR INDIVIDUAL] must request a background [CRIMINAL HISTORY] check

(1) when the [ENTITY OR] provider submits an initial application for a license, certification, approval, or finding of eligibility to receive payments from the department;

(2) for a new owner, officer, director, partner, member, or principal of the business organization if there is a change in ownership of the business organization, or if an officer, director, partner, member, or principal of the business organization is replaced; the background [CRIMINAL HISTORY] check must be completed before the individual begins association unless the department issues notice of a provisional valid background [CRIMINAL HISTORY] check under 7 AAC 10.920;

(3) except as provided otherwise in this section, if the [ENTITY OR] 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 background [CRIMINAL HISTORY] check must be completed before appointment or hiring unless the department issues notice of a provisional valid background [CRIMINAL HISTORY] check

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under 7 AAC 10.920;

(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 **background** [CRIMINAL HISTORY] check must be completed before the individual begins association unless

(A) the department issues notice of a provisional valid **background** [CRIMINAL HISTORY] check under 7 AAC 10.920; or

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

(5) at any time requested by the department

(A) to show compliance with 7 AAC 10.900 - 7 AAC 10.990 during inspection, monitoring, or investigation; or

(B) for an individual if the department has good cause to believe that the individual's **background** [CRIMINAL HISTORY] has changed [; OR

(6) 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



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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].

7 AAC 10.910(b) is amended to read:

(b) The **applicant** [ENTITY] or provider must submit the following with each request  
for a **background** [CRIMINAL HISTORY] check:

(1) **confirmation that** a **current** release of information authorization, on a form  
provided by the department **and** [,] signed by the individual for whom the request is submitted, **is**  
**on file with the provider;**

(2) **confirmation that** an authorization, on a form provided by the department,  
[AND] signed by the individual for whom the request is submitted, **and** permitting the  
department to mark the individual's name in the Alaska Public Safety Information Network  
(AP SIN) under 7 AAC 10.915(e), **is on file with the provider;**

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

(4) [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;

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(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,

(A) THE DEPARTMENT WILL NOT PAY A FEE FOR A VOLUNTEER WHO IS A HOUSEHOLD MEMBER WHO RESIDES IN THE ENTITY AS DESCRIBED IN 7 AAC 10.900(b)(5); AND

(B) AN ENTITY OR 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;]

(5) [(6)] an additional \$25 application fee; the department will waive this fee for an unpaid volunteer who provides services to a 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 background [CRIMINAL HISTORY] check is required under federal law, [OR FOR CERTAIN ENTITIES AND PROVIDERS

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UNDER (f) OF THIS SECTION,] a fingerprint-based **background** [CRIMINAL HISTORY] check is valid for **five** [SIX] years from the date the check became valid under (h) of this section for an individual

**(1) whose name has been marked in APSIN on a continuous basis;**

**(2) who has not had the background check revoked under 7 AAC 10.945, made invalid under 7 AAC 10.915(g), or rescinded under 7 AAC 10.915(h);**

**(3) who has not had a variance approval made invalid under 7 AAC 10.935(m) or revoked under 7 AAC 10.935(n); and**

**(4)** who

**(A)** [(1)] remains associated with **a** [AN ENTITY OR] provider in a manner described in 7 AAC 10.900(b), subject to verification under (d) of this section;

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

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

7 AAC 10.910(d) is repealed and readopted to read:

(d) At the time of association or re-association under (c) of this section, and annually after that date, each provider must verify that each applicant described in (c)(4)(A), (B), or (C) of this section, as applicable, has a valid background check. If the department determines that the

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background check is not valid, the department will notify the provider that a request for a new background check must be submitted under this section, subject to any applicable fee. Each provider, and each applicant described in 7 AAC 10.902, is responsible for ensuring that a background check is renewed before it expires under (c) of this section for each applicant described in (c)(4)(A), (B), or (C) of this section.

7 AAC 10.910(e) is repealed:

(e) Repealed 6/29/2017.

7 AAC 10.910(f) is repealed:

(f) Repealed 6/29/2017.

7 AAC 10.910(g) is amended to read:

(g) A willful misrepresentation of an individual's **background** [CRIMINAL OR CIVIL] history by **a** [AN ENTITY OR] provider [,] or **an applicant** [BY THE INDIVIDUAL,] is cause for immediate denial of a request for a **background** [CRIMINAL HISTORY] check, or revocation of a valid **background** [CRIMINAL HISTORY] check.

7 AAC 10.910(h) is amended to read:

(h) A valid **background** [CRIMINAL HISTORY] check means that, within **any applicable period** [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;

(2) the department determined that a barrier crime or condition did not exist;

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

(A) the background 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(m) or revoked under 7 AAC 10.935(n); and

(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 PROVIDER].

7 AAC 10.910(i) is amended to read:

(i) Nothing in this section precludes a [AN ENTITY OR] provider from requiring

(1) an individual who is subject to a background [CRIMINAL HISTORY] check under 7 AAC 10.900 - 7 AAC 10.990 to pay a cost involved in the submittal of a request under this section; the provisions of this paragraph do not apply to a foster home; or

(2) a background [CRIMINAL HISTORY] check for an individual who is not otherwise subject to 7 AAC 10.900 - 7 AAC 10.990.

7 AAC 10.910 is amended by adding new subsections to read:

(j) If a provider required to request or obtain a valid background check required under

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7 AAC 10.900 - 7 AAC 10.990 does not request or obtain the required background check, that provider is disqualified, until the time a valid background check is obtained, from

- (1) applying for licensure, certification, or approval to be a provider;
- (2) receiving any payment from the department; or
- (3) associating with another provider in any manner described in 7 AAC

10.900(b).

(k) For purposes of this section, an individual's name is marked in APSIN on a continuous basis if an individual's APSIN record has been electronically associated with the department's background check program to ensure that any new criminal history is relayed to the department on a real-time basis. (Eff. 2/9/2007, Register 181; am 8/25/2010, Register 195; am

6/29/2017, Register 222)

Authority:	AS 47.05.300	<u>AS 47.05.330</u>	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030

[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](http://DHSS.ALASKA.GOV/DHCS/PAGES/CL/BGCHECK/DEFAULT.ASPX).

AS OF REGISTER 207 (OCTOBER 2013), AND ACTING UNDER AS 44.62.125(b)(6) AND SEC. 29, CH. 42, SLA 2013, THE REGULATIONS ATTORNEY MADE A

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TECHNICAL CHANGE TO 7 AAC 07.910(f), TO CHANGE "INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED OR PERSONS WITH RELATED CONDITIONS" TO "INTERMEDIATE CARE FACILITY FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITION." CHAPTER 42, SLA 2013 AMENDED TERMINOLOGY IN THE ALASKA STATUTES TO REPLACE REFERENCES TO "MENTAL RETARDATION" AND "MENTALLY RETARDED" WITH MORE CURRENT TERMS. SECTION 29, CH. 42, SLA 2013 INSTRUCTED THAT SIMILAR CHANGES BE MADE IN THE ALASKA ADMINISTRATIVE CODE.]

7 AAC 10.915 is repealed and readopted to read:

**7 AAC 10.915. Background check.** (a) To perform its functions under AS 47.05.330, the department will screen a request for a background check through

- (1) the registry of certified nurse aides under AS 08.68.333;
- (2) the Alaska Sex Offender/Child Kidnapper Registry that the Department of Public Safety maintains under AS 18.65.087;
- (3) the List of Excluded Individuals and Entities (LEIE) that the United States Department of Health and Human Services, Office of Inspector General maintains under 42 U.S.C. 1320a-7 and 1320c-5 (secs. 1128 and 1156 of the Social Security Act); and
- (4) any other registry or database determined by the department to be relevant to the screening being conducted under AS 47.05.330 for an individual, including
  - (A) professional licensing registries; and
  - (B) any registry or database maintained by this state or by another state.

(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 background check.

(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 applicant or provider that the determination is available through the department's electronic database.

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

(1) issue a written notification to the applicant that explains

- (A) that a barrier crime or condition exists;
- (B) the applicable barrier time for the crime or condition;
- (C) the right to request a variance, if allowed under 7 AAC 10.930; and
- (D) the right to seek redetermination under 7 AAC 10.927; and

(2) provide notification to the provider that an applicant is not eligible for a valid background check, and that the provider may have the right to apply for a variance under 7 AAC 10.930; the department may provide notification electronically or in writing.

(e) For each request for a background check processed under this section, the department will mark in APSIN the name of the applicant who was the subject of the background check. If the department receives notification under APSIN of law enforcement activity for an applicant,



or receives new notification of a civil action, the department will review the information. If the department determines that the activity creates a barrier crime or condition under 7 AAC 10.905, the department will immediately notify the provider and the applicant of the change in the department's determination. The department will notify the applicant that

(1) the department intends to immediately revoke the valid background check in accordance with 7 AAC 10.945; the department will identify the barrier crime or condition in the notice;

(2) the applicant may request a redetermination under 7 AAC 10.927 if the applicant believes that the department's determination was made in error or that there was an error in the information that the department relied on, or if the applicant has new or additional factual information that could change the department's determination; and

(3) if the applicant for whom the request was submitted by the provider wishes to disclose the barrier crime or condition to the provider, the provider may request a variance, if allowed under 7 AAC 10.930; if the request was submitted by an applicant under 7 AAC 10.902, the department will notify that applicant of the right to request a variance, if allowed under 7 AAC 10.930.

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

(1) the applicant is removed from direct contact with recipients of services; and

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

(g) If an applicant remains out of association with a provider for 100 days or longer, or if an applicant described in 7 AAC 10.902 fails to become associated with a provider within 100 days after the department's notification under (c) of this section, the background check becomes immediately invalid without prior notice. A new background check must be requested if the applicant wishes to become associated with any provider in any manner described in 7 AAC 10.900(b).

(h) If an applicant with a valid background check ceases to be, or fails to become, associated with a provider, and wishes to have the applicant's name unmarked in APSIN, the applicant must submit a written request to the department that the valid background check be rescinded. (Eff. 2/9/2007, Register 181; am 6 / 29 / 2017, Register 222)

**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(a) is amended to read:

**7 AAC 10.920. Provisional valid background [CRIMINAL HISTORY] check.** (a) **Subject to (b) and (c) of this section, the** [THE] department may issue notification of a provisional valid **background** [CRIMINAL HISTORY] check after screening **an applicant** [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) the [AN ENTITY OR] 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 the fees required under 7 AAC 10.910(b)(4) and (5); 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)(4) and (5) [7 AAC 10.910(b)(4) - (6)] that were not included with the request; or

(3) a request for a background [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] 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)(4) and (5) [7 AAC 10.910(b)(4) - (6)] that were not included with the request.

7 AAC 10.920(b) is repealed and readopted to read:

(b) Except as provided in (c) of this section, a provisional valid background check issued under this section is valid for 90 days, pending completion of the background check or during the pendency of any request for a redetermination, a variance, or a reconsideration of a variance request. A provider shall ensure that if an applicant requests a redetermination under 7 AAC

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10.927, a variance under 7 AAC 10.930 and 7 AAC 10.935, or reconsideration under 7 AAC 10.950 of a variance request, the applicant has direct onsite supervision. The department may extend the 90-day limit if any delay occurs that was not caused by any failure of the applicant or provider.

7 AAC 10.920 is amended by adding a new subsection to read:

(c) If the provider fails to submit fingerprints and other required items within 30 days, or if the department determines that a barrier crime or condition exists with respect to the applicant, the provisional valid background check is automatically revoked, and the provider must terminate association with the applicant in accordance with 7 AAC 10.960. (Eff. 2/9/2007,

Register 181; am 6/29/2017, Register 222)

Authority:	AS 47.05.300	<u>AS 47.05.330</u>	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030
	AS 47.05.320		

7 AAC 10.925(a) is repealed and readopted to read:

(a) A provider shall monitor to ensure that all applicants associated with the provider in any 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 provider shall require each applicant for whom a background check is required to report to the provider within 24 hours or the next business day if the applicant is 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.

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7 AAC 10.925(b) is repealed and readopted to read:

(b) The 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 provider has knowledge that an applicant associated with the provider has been 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;

(2) 14 days after any change in association with the provider for an applicant who has a valid background check or is the subject of a provisional valid background check, including a change that involves an applicant 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.

(Eff. 2/9/2007, Register 181; am 6/29/2007, Register 222)

**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 10.927. Request for a redetermination.** (a) If the department makes a determination under 7 AAC 10.915(d) or (e) that a barrier crime or condition exists, or if the department revokes an applicant's background check under 7 AAC 10.945(a), the applicant who was the subject of the background check may submit a request for a redetermination under this

section if the applicant

- (1) believes that the department's determination was made in error;
- (2) believes there was an error in the information that the department relied on; or
- (3) has new or additional factual information that could change the department's determination.

(b) A request for a redetermination must be submitted within 90 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.

(c) Within 30 days after receiving a request for a redetermination, the department will review the request and issue a decision regarding whether to grant or deny a redetermination. If the department denies a redetermination, the department will inform the requester in the notice of decision that a barrier crime or condition exists and that

- (1) if the applicant for whom a barrier crime or condition exists is willing to disclose the barrier crime or condition to the provider, the provider may, if allowed under 7 AAC 10.930, request a variance under 7 AAC 10.935, within 90 days after the notice of decision is issued under this subsection; or

- (2) if the notice of decision under this subsection is issued to an applicant described in 7 AAC 10.902, the applicant may, if allowed under 7 AAC 10.930, request a

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variance under 7 AAC 10.935 within 90 days after the notice of decision is issued under this subsection.

(d) Unless the department grants a variance under 7 AAC 10.935, the decision issued under (c) of this section is a final agency decision and may be appealed to the superior court under the Alaska Rules of Appellate Procedure. (Eff. 6/29/2017, Register 222)

**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:

(a) Except for a crime or condition listed in (g) of this section, **if a** [AN ENTITY OR] provider **or an applicant is** notified under 7 AAC 10.915(d) **or 7 AAC 10.927(c)** that a barrier crime or condition exists **under 7 AAC 10.900 - 7 AAC 10.990, the provider or the applicant** may request a variance under this **section** [SUBSECTION]. The request must be submitted to the **provider's oversight division** [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 **90** [30] days after the **department issues notification under 7 AAC 10.915(d) that a barrier crime or condition exists or the department issues a notice of decision under 7 AAC 10.927(c) denying a request for a redetermination** [ENTITY OR PROVIDER RECEIVES NOTICE UNDER 7 AAC 10.915(d) OR, IF THE INDIVIDUAL WHO WAS THE SUBJECT OF THE CRIMINAL HISTORY CHECK SUBMITS A REQUEST FOR

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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:

• • •

The introductory language of 7 AAC 10.930(a)(3) is amended to read:

(3) copies of all known **and available** 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:

• • •

The introductory language of 7 AAC 10.930(a)(3)(A) is amended to read:

(A) a copy [, AS APPLICABLE,] of that individual's record of **, or if a record is inapplicable, a statement that the individual has no record of**

• • •

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

(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;



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

(vii) any circumstance that led to a barrier condition under 7 AAC

10.915 [7 AAC 10.955];

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

(iv) any circumstance that led to a barrier condition under 7 AAC

10.915 [7 AAC 10.955];

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

(H) any 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 background [CRIMINAL AND CIVIL] history, behavioral health problem, or domestic violence problem, and who would, despite that knowledge, 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 a [THE ENTITY OR] provider who [THAT] submitted the request for a variance; nothing in this subparagraph precludes the [ENTITY OR] provider or an applicant from submitting additional letters of recommendation;

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

(I) [IF THE INDIVIDUAL IS AN EMPLOYEE OR VOLUNTEER, OR A POTENTIAL EMPLOYEE OR VOLUNTEER,] information related to job

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responsibilities that would be performed, hours and days of service, whether the individual would be in contact with recipients of services, and plans for supervision, including whether the individual would be subject to direct supervision while on the premises during hours of operation;

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

(4) **a statement from the individual requesting a variance that describes all 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; the 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

...

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

(C) [THE FOLLOWING INFORMATION, IF APPLICABLE: (i)]  
evidence that the individual is licensed under AS 08, or became licensed after the individual was convicted of the offense or **after the department under 7 AAC 10.915 determined a barrier condition to exist** [WAS LISTED ON THE CENTRALIZED REGISTRY; (ii) EVIDENCE THAT THE INDIVIDUAL PASSED A CRIMINAL HISTORY CHECK CONDUCTED BY THE DEPARTMENT BEFORE FEBRUARY 9, 2007, BUT AFTER THE INDIVIDUAL WAS CONVICTED OF THE OFFENSE;

(iii) EVIDENCE THAT THE INDIVIDUAL WAS ISSUED A VARIANCE BY THE DEPARTMENT BEFORE FEBRUARY 9, 2007, BUT AFTER THE INDIVIDUAL WAS CONVICTED OF THE OFFENSE FOR WHICH THE VARIANCE WAS ISSUED].

The introductory language of 7 AAC 10.930(b) is repealed and readopted to read:

(b) The oversight division shall review each request for a variance and shall, within 30 days after receipt of the variance request, determine if the variance request is complete. If the variance request is incomplete, the department will notify the provider or applicant and identify the material needed to complete the variance request. In the notification the department will include a statement of the material that is missing and that the missing material must be submitted to the department within 30 days after the date of the notification, or the variance request will be denied. If after the deadline for submittal of the missing material the variance request remains incomplete, the oversight division shall deny the variance request and advise the provider or applicant of the right to reapply for a variance. If the oversight division determines that the variance request is complete, the oversight division shall

• • •

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

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

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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 may [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.

7 AAC 10.930(d) is repealed:

(d) Repealed 6/29/2017.

7 AAC 10.930(e) is repealed:

(e) Repealed 6/29/2017.

7 AAC 10.930(f) is repealed and readopted to read:

(f) The department may grant a variance under AS 47.05.310(f) from all or part of the requirements for conducting a background check under 7 AAC 10.900 - 7 AAC 10.990 if a provider submits a request for a variance to the oversight division on a form provided by the department, includes a comprehensive rationale for the request, and demonstrates that the health, safety, and welfare of recipients of services will be adequately protected. A variance issued under this subsection may not be transferred to another provider.

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7 AAC 10.930(g) is amended to read:

(g) **The** [EXCEPT AS PROVIDED IN (h) - (k) OF THIS SECTION, THE] department will not grant a variance for a [(1) CONVICTION FOR AN OFFENSE THAT IS A PERMANENT BARRIER UNDER 7 AAC 10.905; OR (2)] crime or civil finding for which federal law prohibits certain approvals, or restricts payment of benefits, during the most stringent barrier **time** [PERIOD] set by federal law for that crime or civil finding. **For** [; FOR] purposes of this **subsection** [PARAGRAPH],

**(1)** [(A)] "federal law" includes an offense described in

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

**(B)** [(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(f)**;

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

**(D)** [(iv)] another applicable federal statute or regulation; [AND]

**(2)** [(B)] the prohibition applies to all [ENTITIES AND] providers subject to 7 AAC 10.900 - 7 AAC 10.990, regardless of whether the federal law is directly applicable to only one of **the** [THOSE ENTITIES OR] providers; **and**

**(3) for an applicant who has requested a variance under 7 AAC 10.900 - 7 AAC 10.990, the prohibition applies regardless of whether the federal law is directly applicable to the provider with which the applicant seeks to become associated.**

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7 AAC 10.930(h) is amended to read:

(h) Repealed 6/29/2017.

7 AAC 10.930(i) is repealed:

(i) Repealed 6/29/2017.

7 AAC 10.930(j) is repealed:

(j) Repealed 6/29/2017.

7 AAC 10.930(k) is repealed:

(k) Repealed 6/29/2017. (Eff. 2/9/2007, Register 181; am 10/17/2007, Register 184; am 2/13/2008, Register 185; am 6/29/2017, Register 222)

<b>Authority:</b>	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, including a chair, to serve as a variance review committee whose primary responsibility is to evaluate variance requests submitted under 7 AAC 10.900 - 7 AAC 10.990. The commissioner will include at least one employee from each oversight division. An employee who is substantively involved in any recommendation made under 7 AAC

10.930(b) to the variance review committee shall recuse oneself from participation in committee's review of the variance request for which the employee made the recommendation. A director making a recommendation under (h) of this section shall recuse oneself from participation in the committee's review of the variance request for which the director makes the recommendation.

(b) In reviewing a request for a variance, the chair of the variance review committee shall determine whether a variance is prohibited under 7 AAC 10.930. If a variance is prohibited, the chair of the variance review committee, without involving the full variance review committee, shall immediately send the commissioner a recommendation under (g) of this section and clearly indicate the prohibition in the recommendation.

(c) The chair of the variance review committee shall initially evaluate a variance request within 10 days after the oversight division determines a variance request to be complete under 7 AAC 10.930(b). The initial evaluation must include an initial assessment of the basis for the variance request and a determination, using the standards that the full variance review committee would use under (d) and (e) of this section, of how the variance if granted would impact the health, safety, or welfare of any recipient of services authorized or services paid in full or in part by the department. At the end of the evaluation, the chair may

(1) without involving the full variance review committee immediately send the commissioner a recommendation under (g) of this section to grant the variance request; or

(2) refer the matter to the full variance review committee to evaluate the variance request as provided in this section.

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

- (1) consider the recommendations that the oversight division made under 7 AAC 10.930(b);
- (2) consider all material supplied with the variance request and any other relevant information available to the department;
- (3) verify, if applicable, that
  - (A) any conditions of parole or probation were met;
  - (B) any court-ordered restitution has been made, or payments are current;
  - (C) the individual is in compliance with any treatment required by the court, or that any required treatment has been successfully completed;
  - (D) if the barrier crime or condition is related to financial exploitation, including theft, fraud, and bribery, or involved another form of dishonesty, including perjury and official misconduct, that the individual's duties make it unlikely that exploitation or dishonesty could occur with regard to recipients of services; and
  - (E) if the barrier crime or condition is related to the abuse, neglect, or exploitation of a child or vulnerable adult, that the individual's duties make it unlikely that abuse, neglect, or exploitation could occur with regard to recipients of services; and
- (4) consider any mitigating factors, including the amount of time that has elapsed since the barrier crime or condition occurred and whether the individual has been employed by a 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.
- (e) For a request for a variance for a permanent barrier crime or condition, in addition to



the matters described in (d)(1) - (4) of this section the variance review committee shall consider

(1) whether mitigating circumstances were involved at the time that the barrier crime or condition occurred;

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

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

(4) whether the individual was previously issued a variance by the department after the occurrence of the barrier crime or condition for which the variance was issued.

(f) Before issuing a decision, 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.

(g) Except as provided in (h) of this section, and within 30 days after the oversight division determines a variance request to be complete under 7 AAC 10.930(b), the variance review committee shall recommend to the commissioner that it has determined that the health, safety, and welfare of recipients

(1) will be adequately protected, and the variance review committee shall recommend that the commissioner grant the variance request; or

(2) will not be adequately protected, and the variance review committee shall recommend that the commissioner deny the variance request.

(h) For a variance request submitted for a permanent barrier crime or condition under 7 AAC 10.900 - 7 AAC 10.990, and within 20 days after the oversight division determines a variance request to be complete under 7 AAC 10.930(b), the variance review committee shall

submit to the director of the oversight division the recommendation to grant or deny the variance request under (g)(1) or (2) of this section with respect to the health, safety, and welfare of recipients. Within 30 days after the oversight division determines a variance request to be complete under 7 AAC 10.930(b), the director shall consider the committee's recommendation and make a written recommendation that the commissioner grant or deny the variance request.

(i) The commissioner will consider a recommendation made under (b), (c), (g), or (h) of this section and will issue a decision on the variance request within 30 days after receiving the recommendation. If the commissioner determines that the variance request does not provide enough information for the commissioner 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 variance review committee or from the provider or applicant who requested the variance.

(j) The commissioner will inform the provider or applicant in writing of the commissioner's decision to grant or deny, with or without terms and conditions, a variance request. In the decision the commissioner will include the specific reasons for the denial and will advise that if the provider or applicant believes that the decision was made in error or that there was an error in the information the department relied on, or if the provider or applicant has new or additional factual information that could change the decision, the provider or applicant 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 background checks and to the oversight division.

(k) 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, as applicable. For an applicant, the department will include in the notification a reference to the provisions of (m) of this section.

(l) Unless the variance is a nontransferable variance issued under 7 AAC 10.930(f), a variance may be transferred with the approval of the department to another provider, except that a variance issued for employment or volunteering in a behavioral health services provider to which 7 AAC 70.010(a) applies may be transferred with the approval of the department only to another behavioral health services provider to which 7 AAC 70.010(a) applies. The new provider shall ensure that any conditions of the variance are followed.

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

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

(2) fails to become associated with a provider within 100 days after ceasing to be associated with a provider or receiving the notification under (j) and (k) of this section if the individual is an applicant described in 7 AAC 10.902.

(n) The oversight division shall, in accordance with 7 AAC 10.945, immediately revoke a variance granted under this section if

(1) the oversight division determines that the variance was granted based on false information provided by the individual to whom the variance applies or by a 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 civil finding governing a barrier condition.

(o) A variance granted under this section remains valid unless made invalid under (m) of this section or revoked under (n) of this section.

(p) A variance granted under this section does not exempt the applicant from 7 AAC 10.910(c).

(q) In this section, "commissioner" means the commissioner or the commissioner's designee substantively uninvolved in a recommendation made under 7 AAC 10.930(b) or this section. (Eff. 2/9/2007, Register 181; am 10/17/2007, Register 184; am 2/13/2008, Register 185; am 6/29/2017, Register 222)

<b>Authority:</b>	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 repealed and readopted to read:

**7 AAC 10.940. Posting of variance decision required.** (a) Except as provided in (b) and (c) of this section, if the department grants a variance under 7 AAC 10.935, the provider shall 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 in a conspicuous place where the

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copy of the variance can be readily viewed by persons interested in obtaining the services offered by the provider.

(b) The requirements of (a) of this section do not apply to a variance granted to an applicant unless that applicant becomes associated with a 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 departmental office that oversees children's services. (Eff. 2/9/2007, Register 181; am 6/29/2017, Register 222)

**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 repealed and readopted to read:

**7 AAC 10.945. Revocation of a valid background check or variance.** (a) Subject to AS 47.32, if the department decides to revoke a valid background check issued under 7 AAC 10.900 - 7 AAC 10.990, the department will provide electronic notice of the change in determination to the provider for whom the background check was conducted. The department will provide written notice of revocation to the applicant for whom the background check was conducted. In the notice to the applicant, the department will include the reasons for the department's decision and will advise an applicant of the right to request a redetermination under 7 AAC 10.927 if the applicant believes that the department's determination was made in error or believes that there was an error in the information that the department relied on, or if the

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applicant has new or additional factual information that could change the department's decision.

Nothing in this section precludes the submission of a request for a variance under 7 AAC 10.930.

(b) If the oversight division decides to revoke a variance issued under 7 AAC 10.900 - 7 AAC 10.990, the oversight division shall provide written notice of revocation to the provider to whom the variance was issued and to any applicant who was the subject of the variance. In the notice to the applicant, the oversight division shall include the reasons for the oversight division's decision and will advise the applicant of the right to request reconsideration under 7 AAC 10.950 if the applicant believes that the oversight division's determination was made in error or believes that there was an error in the information that the oversight division relied on, or if the applicant has new or additional factual information that could change the oversight division's decision.

Nothing in this section precludes the resubmission of a request for variance under 7 AAC 10.930.

(c) A notice of revocation issued under this section is effective immediately after the department issues the notice, unless a delay is granted under (d) of this section.

(d) At the request of the provider or applicant, the department may delay the effective date of a revocation under this section for not more than 30 days after its issuance if the department determines that closer supervision and revised work conditions under which the applicant must operate will not threaten the health, safety, and welfare of a recipient of services.

(Eff. 2/9/2007, Register 181; am 6 / 29 / 2017, Register 222)

**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 or revocation.** (a) If a variance request is denied or made subject to terms or conditions under 7 AAC 10.935(j) and (k) or if the oversight division revokes a variance under 7 AAC 10.945(b), the provider or applicant may submit a request for reconsideration under this section if the provider or applicant

- (1) believes that the department's determination was made in error;
- (2) believes there was an error in the information that the department relied on; or
- (3) has new or additional factual information that could change the department's determination.

(b) A request for reconsideration be submitted within 30 days after the variance decision or the notice of revocation is issued. 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.

(c) Within 30 days after receiving a request for reconsideration, the commissioner will review the request and will issue a decision in writing regarding whether to grant or deny reconsideration. If granting reconsideration, the commissioner will state in the decision that a barrier crime or condition does not exist or that the variance is granted, with or without terms and conditions. If denying reconsideration, the commissioner will state in the decision that

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(1) a barrier crime or condition still exists or the variance remains denied or subject to the same terms and conditions; and

(2) the decision is a final agency decision subject to appeal to the superior court under the Alaska Rules of Appellate Procedure.

(d) A copy of a decision on reconsideration under this section will be provided to the department office responsible for conducting background checks and to the oversight division.

(Eff. 2/9/2007, Register 181; am 6/29/2017, Register 222)

**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 10.955 is repealed:

**7 AAC 10.955. Centralized registry.** Repealed. (Eff. 2/9/2007, Register 181; am 2/13/2008, Register 185; repealed 6/29/2017, Register 222)

7 AAC 10.960 is amended to read:

(a) Except as provided in (b) and (c) of this section, if a [AN ENTITY OR] provider is required to terminate association with an applicant [INDIVIDUAL], the [ ENTITY OR] provider shall

(1) notify the applicant [INDIVIDUAL] that the applicant's [INDIVIDUAL'S] employment, volunteer services, or other association with the [ENTITY OR] provider under 7 AAC 10.900(b) is ended, effective immediately, unless the [ENTITY OR] provider takes



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immediate action under (2) of this subsection; the [ENTITY OR] provider must notify the applicant [INDIVIDUAL] under this paragraph

(A) immediately, if the applicant [INDIVIDUAL] is present at the [ENTITY OR] premises where the [ENTITY OR] provider is providing services; or

(B) before or upon the applicant's [INDIVIDUAL'S] next arrival at those premises [THE ENTITY]; or

(2) if the [ENTITY OR] provider intends to request a variance under 7 AAC 10.930, immediately reassign the duties and responsibilities of that applicant [INDIVIDUAL] so that the applicant [INDIVIDUAL]

(A) does not have contact with the recipient of services;

(B) cannot access personal or financial records maintained by the [ENTITY OR] provider regarding recipients of services;

(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

(i) relative of the applicant, and [INDIVIDUAL WHO] has authorized that applicant [INDIVIDUAL] to make financial decisions for that relative;

(ii) recipient who has executed a power of attorney for that applicant [INDIVIDUAL] to make financial decisions for that recipient; or

(iii) recipient for whom a court has authorized that applicant [INDIVIDUAL] to make financial decisions for that recipient; and

(D) is provided with direct supervision if present at [IN] the [ENTITY

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OR] premises where the provider is providing services during hours of operation.

(b) If the [ENTITY OR] provider is required to terminate association with an **applicant** [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] 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] provider shall cooperate with the department in developing an appropriate termination plan for the **applicant** [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.

(c) If the **applicant** [INDIVIDUAL] for whom termination of association is required is a relative of the operator, administrator, or 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] provider shall ensure that the **applicant** [INDIVIDUAL]

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

(2) is provided with direct supervision if, during that 24-hour period, the **applicant** [INDIVIDUAL] is present **at** [IN] the [ENTITY OR] premises where the provider is providing services during hours of operation. (Eff. 2/9/2007, Register 181; am 6/29/2017, Register 222)

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) is repealed and readopted to read:

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

(1) "applicant"

(A) means an individual who requests a background check or a variance as required under 7 AAC 10.900 or under 7 AAC 10.930 and 7 AAC 10.935 for association with a provider, or for whom a provider requests a background check or a variance;

(B) includes an individual not currently associated with a provider as set out in 7 AAC 10.900;

(2) "apprentice" means an individual who is not an individual service provider, and who is in training or 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;

(3) "APSIN" means the Alaska Public Safety Information Network;

(4) "association" means an association described in 7 AAC 10.900(b) between an individual and a provider;

(5) "background check" means the screening and review that the department conducts under 7 AAC 10.915 for a barrier crime or condition;

(6) "barrier condition" means a barrier to association under 7 AAC 10.900(b) that results from civil finding described in 7 AAC 10.905(a) and (f);

(7) "barrier crime" means a criminal offense described in 7 AAC 10.905(a) - (e);

(8) "barrier time" means the length of time a barrier crime or condition under

7 AAC 10.905 bars an applicant from association with a provider under 7 AAC 10.900(b);

(9) "behavioral health problem" means a mental disorder, substance use disorder, or co-occurring disorder;

(10) "certification" has the meaning given "certified" in (b) of this section;

(11) "civil finding" means

(A) a decision, order, judgment, or adjudication, including an administrative order, that a provider or applicant committed

(i) abuse, neglect, or exploitation under AS 47.10, AS 47.24, AS 47.62, or a substantially similar provision in another jurisdiction; or

(ii) medical assistance fraud under AS 47.05.210 or a substantially similar provision in another jurisdiction; or

(B) an order, including an administrative order, under a state statute or a substantially similar provision in another jurisdiction that a license or certification of the provider or applicant to provide services related to the health, safety, and welfare of persons was denied, suspended, revoked, or conditioned;

(12) "commissioner" means the commissioner of health and social services;

(13) "co-occurring disorder" has the meaning given in 7 AAC 57.990;

(14) "crime" means a barrier crime;

(15) "crime involving domestic violence" has the meaning given in AS 18.66.990;

(16) "criminal justice information" has the meaning given in AS 12.62.900;

(17) "department" means the Department of Health and Social Services;

(18) "direct supervision" means that the administrator, or a care provider who is at least 18 years of age,

(A) is within sight or sound of the individual being supervised;

(B) has received the training required under applicable department regulations;

(C) is present to observe the individual; and

(D) is available to the individual for consultation or assistance;

(19) "domestic violence problem" means the individual

(A) has been charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for a crime involving domestic violence listed in AS 18.66.990(3); or

(B) is or has been subject to a protective order issued or filed under AS 18.66 or a substantially similar law or ordinance of another jurisdiction;

(20) "eligibility to receive payments" means eligibility to receive payments that are used for the direct provision of services for the health, safety, and welfare of persons who are served by programs administered by the department; in this paragraph, "payments" does not include payments used solely for administrative costs;

(21) "individual service provider" has the meaning given in AS 47.05.390;

(22) "oversight division" means any division or office in the department that is responsible for licensing, approving, or certifying a provider or who is responsible for determining whether a person is eligible to receive payments from the department;

(23) "provider" means an individual, an entity defined under AS 47.05.390, or an

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individual service provider as identified in AS 47.05.300;

(24) "relative" means an individual who is related to another by marriage, blood relationship, or court decree;

(25) "substance use disorder" has the meaning given in 7 AAC 57.990;

(26) "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 recipients of services;

(27) "terminate association" means to sever an applicant's association under 7 AAC 10.900(b) with a provider;

(28) "volunteer" means an individual who regularly or routinely provides services or care, without pay, on behalf of a provider.

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

(2) "recipient of services" means an individual receiving services from a [AN ENTITY OR] provider.

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

(1) "certified" means certified under

**(A) 7 AAC 125.060 (Medicaid Coverage; Personal Care Services and Home Health Care Services; Personal Care Provider Certification and Enrollment);**

**or**

**(B) 7 AAC 130.220 (Medicaid Coverage; Home and Community-**

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**Based Waiver Services; Provider Certification** [7 AAC 43.1090];

(Eff. 2/9/2007, Register 181; am 6/29/2017, Register 222)

**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 10.9500(b)(3) is amended to read:

(3) do not apply to a request for a variance from a provision of 7 AAC 10.900 - 7 AAC 10.990 (**barrier crimes and conditions; background checks** [BARRIER CRIMES, CRIMINAL HISTORY CHECKS, AND CENTRALIZED REGISTRY]), 7 AAC 41.205 (**child protection and background check requirements** [CHILD PROTECTION AND CRIMINAL HISTORY CHECK REQUIREMENTS]), or 7 AAC 57.315 (**child protection and background check requirements** [CHILD PROTECTION AND CRIMINAL HISTORY CHECK REQUIREMENTS]). (Eff. 6/23/2006, Register 178; am 12/3/2006, Register 180; am 2/9/2007, Register 181; am 6/29/2017, Register 222)

**Authority:** AS 18.05.010 AS 47.14.120 AS 47.32.030  
AS 18.05.040 AS 47.32.010 AS 47.32.130  
AS 44.29.020 AS 47.32.020 AS 47.32.140

7 AAC 12.541(b)(3) is amended to read:

(3) report to the appropriate licensing authority any knowledge it has of an action by a court or other government agency against an individual that would indicate unfitness for

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holding a professional or occupational license [, INCLUDING ANY REPORT REQUIRED UNDER 7 AAC 10.955(c) FOR THE CENTRALIZED REGISTRY ESTABLISHED UNDER 7 AAC 10.955];

(Eff. 9/6/96, Register 139; am 2/9/2007, Register 181; am 6/29/2017, Register 222)

<b>Authority:</b>	AS 18.05.040	AS 47.05.320	AS 47.32.010
	AS 47.05.300	AS 47.05.330	AS 47.32.030
	AS 47.05.310	AS 47.05.340	

7 AAC 12.605 is amended to read:

**7 AAC 12.605. Background [CRIMINAL HISTORY] check requirements.** An entity listed in AS 47.32.010(b) that is required to be licensed under AS 47.32 and this chapter must also comply with the applicable requirements of AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 (**barrier crimes and conditions; background checks** [BARRIER CRIMES, CRIMINAL HISTORY CHECKS, AND CENTRALIZED REGISTRY]). (Eff. 2/9/2007, Register 181; am 6/29/2017, Register 222)

<b>Authority:</b>	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 12.660(a)(5) is amended to read:

(5) evidence of compliance with the applicable requirements of AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 (**barrier crimes and conditions; background**



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checks [BARRIER CRIMES, CRIMINAL HISTORY CHECKS, AND CENTRALIZED REGISTRY]).

(Eff. 11/19/83, Register 88; am 5/28/92, Register 122; am 5/4/97, Register 142; am 12/3/2006, Register 180; am 2/9/2007, Register 181; am 5/24/2007, Register 182; am 6/29/2017, Register 222)

**Authority:** AS 18.05.040 AS 47.32.010 AS 47.32.030

The section heading of 7 AAC 41.205 is changed to read:

**7 AAC 41.205. Child protection and background [CRIMINAL HISTORY] check requirements.**

7 AAC 41.205(b) is amended to read:

(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 **and conditions; background** [, 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 **background** [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

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section. If the department determines under 7 AAC 10.915 that **a barrier crime or condition exists with respect to** the provider or other individual [DID NOT PASS THE CRIMINAL HISTORY CHECK], or if the provisional valid **background** [CRIMINAL HISTORY] check issued under 7 AAC 10.920 expires, the department will, or the designee shall, revoke the 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 6/29/2017.

7 AAC 41.205(d) is repealed:

(d) Repealed 6/29/2017.

7 AAC 41.205(e) is repealed:

(e) Repealed 6/29/2017. (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am 1/5/2017, Register 221; am 6/29/2017, Register 222)

<b>Authority:</b>	AS 47.05.300	AS 47.05.320	AS 47.05.340
	AS 47.05.310	AS 47.05.330	AS 47.25.001

The introductory language of 7 AAC 41.370(a) is amended to read:

(a) To participate in the child care assistance program under this chapter, an eligible family may hire an in-home child care caregiver to care for the family's children in the family's

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home only if the caregiver does not reside in the family home, has a valid **background** [CRIMINAL HISTORY] check under AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990, and is approved under (j) of this section. A parent will not be approved for participation in the program as an in-home caregiver for the care of the parent's own children. A family eligible to hire an in-home caregiver for the children of the family residing in the family's home must be participating in an eligible activity outside the family's home, except as described in 7 AAC 41.310(b)(4), and require care for

• • •

7 AAC 41.370(b)(1) is amended to read:

(1) the department office responsible for conducting **background** [CRIMINAL HISTORY] checks **under 7 AAC 10.900 - 7 AAC 10.990** all items required under 7 AAC 10.910(b) for the selected in-home child care caregiver; and

7 AAC 41.370(c) is amended to read:

(c) If the department determines under 7 AAC 10.915 that **a barrier crime or condition exists with respect to** the selected in-home child care caregiver [DID NOT PASS THE CRIMINAL HISTORY CHECK], or if the valid **provisional background** [CRIMINAL HISTORY] check issued under 7 AAC 10.920 expires, the department will, or the designee shall, revoke the approval, and the family shall terminate association with the selected caregiver, unless the family requests a variance under 7 AAC 10.930, and the department grants the request under 7 AAC 10.935.

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The introductory language of 7 AAC 41.370(d) is amended to read:

(d) If for the selected in-home child care caregiver the department determines [PASSED THE CRIMINAL HISTORY CHECK CONDUCTED] under 7 AAC 10.915 that a barrier crime or condition does not exist, the department will, or the designee shall, determine whether the caregiver has met the applicable requirements of this section and 7 AAC 41.205(a). If the department or designee determines that the caregiver

...

7 AAC 41.370(e) is amended to read:

(e) If the department determines under 7 AAC 10.915 that a barrier crime or condition exists with respect to the selected in-home child care caregiver [DID NOT PASS THE CRIMINAL HISTORY CHECK], the department office responsible for conducting background [CRIMINAL HISTORY] checks shall notify

(1) the caregiver of the right to request a redetermination [RECONSIDERATION] under 7 AAC 10.927 [7 AAC 10.950]; and

(2) the family of the right to request a variance under 7 AAC 10.930.

7 AAC 41.370(f) is amended to read:

(f) The department will not, and the designee may not, approve under this chapter a selected in-home child care caregiver for whom the department determines under 7 AAC 10.915 that a barrier crime or condition exists [WHO DID NOT PASS A BACKGROUND CHECK] unless

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(1) the selected caregiver makes a request for **a redetermination**

[RECONSIDERATION] under **7 AAC 10.927** [7 AAC 10.950 AND THE DEPARTMENT GRANTS THE REQUEST UNDER 7 AAC 10.950(b)]; or

(2) the family requests a variance under 7 AAC 10.930, and the department grants the request under 7 AAC 10.935.

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am 1/5/2017, Register 221; am 6/29/2017, Register 222)

<b>Authority:</b>	AS 47.05.010	AS 47.05.310	AS 47.25.001
	AS 47.05.300	<b><u>AS 47.05.330</u></b>	AS 47.25.051

7 AAC 50.030(b)(4) is amended to read:

(4) request a **background** [CRIMINAL HISTORY] check under 7 AAC 10.910 for each individual for whom a **background** [CRIMINAL HISTORY] check is required under AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990.

7 AAC 50.030(c)(6) is amended to read:

(6) the information and other items required to request a **background** [CRIMINAL HISTORY] check under 7 AAC 10.910 for each person for whom a **background** [CRIMINAL HISTORY] check is required under AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990;

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7 AAC 50.030(f) is amended to read:

(f) An application is not complete unless it provides all of the information required by this section, unless it is an application for renewal of a license. If the application is an application for renewal, only the attachments to the application for the license that require updating must be submitted with the application for renewal and any requests for **background** [CRIMINAL HISTORY] checks required under 7 AAC 10.910.

(Eff. 1/1/96, Register 136; am 3/1/98, Register 145; am 1/1/2001, Register 156; am 2/9/2007, Register 181; am 6/29/2017, Register 222)

Authority:	AS 44.29.020	<b><u>AS 47.05.330</u></b>	AS 47.32.030
	AS 47.05.300	AS 47.05.340	AS 47.32.040
	AS 47.05.310	AS 47.32.010	AS 47.32.060
	AS 47.05.320	AS 47.32.020	

7 AAC 50.210(c) is amended to read:

(c) An individual associated in a manner described in 7 AAC 10.900(b) with a facility where child care is provided is subject to the applicable requirements of AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 (**barrier crimes and conditions; background checks** [BARRIER CRIMES, CRIMINAL HISTORY CHECKS, AND CENTRALIZED REGISTRY]). In addition, an individual may not work, volunteer, or reside in any other part of the facility with direct access to the part of the facility where child care is provided if

(1) **under 7 AAC 10.915 (background check) the department determines that a barrier crime or condition described in 7 AAC 10.905 exists with respect to the**

**individual;**

**(2) the individual is out of compliance with the association requirements described in 7 AAC 10.915(g) and 7 AAC 10.935(m);**

**(3) a variance for the individual has been denied under 7 AAC 10.930 and 7 AAC 10.935;**

**(4) a variance for the individual has been revoked under 7 AAC 10.945** [THE INDIVIDUAL'S NAME APPEARS ON THE CENTRALIZED REGISTRY ESTABLISHED UNDER 7 AAC 10.955];

**(5)** [(2)] the individual has a physical health problem or behavioral health problem that poses a significant risk to the health, safety, or well-being of children in care; or

**(6)** [(3)] the individual was the subject of prior adverse licensing action of the kind described in AS 47.32.140(d)(5) - (7).

(Eff. 1/1/96, Register 136; am 3/1/98, Register 145; am 1/1/2001, Register 156; am 2/9/2007, Register 181; am 6/29/2017, Register 222)

<b>Authority:</b>	AS 44.29.020	AS 47.05.330	AS 47.32.030
	AS 47.05.300	AS 47.05.340	AS 47.32.040
	AS 47.05.310	AS 47.32.010	AS 47.32.060
	AS 47.05.320	AS 47.32.020	

7 AAC 53.226(4)(A)(i) is amended to read:

(i) under AS 47.32 and in compliance with the applicable standards and requirements of 7 AAC 50, including having a valid **background**

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[CRIMINAL HISTORY] check under AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990; or

(Eff. 4/13/2011, Register 198; am 8/1/2015, Register 215; am 6/29/2017, Register 222)

<b>Authority:</b>	AS 13.26.062	AS 25.23.210	AS 47.14.100
	AS 25.23.200	AS 25.23.230	AS 47.14.120

7 AAC 56.070(c)(6) is amended to read:

(6) the information and other items required to request a **background**

[CRIMINAL HISTORY] check under 7 AAC 10.910 for each person for whom a **background**

[CRIMINAL HISTORY] check is required under AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990;

(Eff. 1/1/2001, Register 156; am 2/9/2007, Register 181; am 6/29/2017, Register 222)

<b>Authority:</b>	AS 44.29.020	<b><u>AS 47.05.330</u></b>	AS 47.32.030
	AS 47.05.300	AS 47.05.340	AS 47.32.040
	AS 47.05.310	AS 47.32.010	AS 47.32.060
	AS 47.05.320	AS 47.32.020	

7 AAC 56.210(b) is amended to read:

(b) An individual associated with an agency in a manner described in 7 AAC 10.900(b) is subject to the applicable requirements of AS 47.05.300 - 47.05.390 and 7 AAC 10.990 - 7 AAC 10.990 (**barrier crimes and conditions; background checks** [BARRIER CRIMES, CRIMINAL HISTORY CHECKS, AND CENTRALIZED REGISTRY]). In addition, an



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individual may not work or volunteer in an agency if

(1) under 7 AAC 10.915 (background check) the department determines that a barrier crime or condition described in 7 AAC 10.905 exists with respect to the individual;

(2) the individual is out of compliance with the association requirements described in 7 AAC 10.915(g) and 7 AAC 10.935(m);

(3) a variance for the individual has been denied under 7 AAC 10.930 and 7 AAC 10.935;

(4) a variance for the individual has been revoked under 7 AAC 10.945 [THE INDIVIDUAL'S NAME APPEARS ON THE CENTRALIZED REGISTRY ESTABLISHED UNDER 7 AAC 10.955];

(5) [(2)] the individual has a physical health problem or behavioral health problem that poses a significant risk to the health, safety, or well-being of children or clients; or

(6) [(3)] the individual was the subject of prior adverse licensing action of the kind described in AS 47.32.140(d)(5) - (7).

7 AAC 56.210(e) is amended to read:

(e) In addition to the **background** [CRIMINAL HISTORY] check conducted under 7 AAC 10.900 - 7 AAC 10.990, the department will review its child protection records and previous licensing records with respect to the designated administrator.

(Eff. 1/1/2001, Register 156; am 2/9/2007, Register 181; am 6/29 2017, Register 222)

**Authority:** AS 44.29.020 AS 47.05.330 AS 47.32.030

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AS 47.05.300	AS 47.05.340	AS 47.32.040
AS 47.05.310	AS 47.32.010	AS 47.32.060
AS 47.05.320		

7 AAC 57.015(b) is amended to read:

(b) To be exempt from the licensure requirements of AS 47.32 and this chapter under (a)(11) of this section, a facility or program must implement and conduct a fingerprint-based **background** [CRIMINAL HISTORY] check that meets or exceeds the standards set in 7 AAC 10.900 - 7 AAC 10.990 for each employee and other individual associated with the facility in a manner described in 7 AAC 10.900(b). If the facility or program does not conduct fingerprint-based **background** [CRIMINAL HISTORY] checks as described in this subsection,

(1) except for the requirements of this chapter dealing with **background** [CRIMINAL HISTORY] checks, the department will accept the accreditation or certification standards of the facility or program in lieu of licensing requirements of this chapter; and

(2) the facility or program must meet the applicable requirements of AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 (**barrier crimes and conditions; background checks** [BARRIER CRIMES, CRIMINAL HISTORY CHECKS, AND CENTRALIZED REGISTRY]). (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am

6/29/2017, Register 222)

<b>Authority:</b>	AS 44.29.020	AS 47.32.010	AS 47.32.030
	AS 47.05.340	AS 47.32.020	

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7 AAC 57.025(a) is amended to read:

(a) For purposes of determining compliance with and achieving the purposes of AS 47.05.300 - 47.05.990, AS 47.32, 7 AAC 10.900 - 7 AAC 10.990 (barrier crimes **and conditions; background** [, CRIMINAL HISTORY] checks [, AND CENTRALIZED REGISTRY]), 7 AAC 10.1000 - 7 AAC 10.1095 (environmental health and safety), and this chapter, and for purposes of ongoing monitoring, the department may conduct inspections and investigations under AS 47.32.060 and 47.32.090 - 47.32.110, including announced or unannounced on-site inspections and investigations under 7 AAC 10.9600 - 7 AAC 10.9620. (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am 5/15/2016, Register 218; am 6/29/2017, Register 222)

Authority:	AS 44.29.020	AS 47.32.010	AS 47.32.090
	AS 47.05.310	AS 47.32.020	AS 47.32.100
	AS 47.05.320	AS 47.32.030	AS 47.32.110
	AS 47.05.330	AS 47.32.060	AS 47.32.200
	AS 47.05.340		

7 AAC 57.030(e)(3) is amended to read:

(3) is in compliance with AS 47.05.300 - 47.05.990 and 7 AAC 10.900 - 7 AAC 10.990 (**barrier crimes and conditions; background checks** [BARRIER CRIMES, CRIMINAL HISTORY CHECKS, AND CENTRALIZED REGISTRY]); and (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am 5/15/2016, Register 218; am 6/29/2017, Register 222)

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Authority:	AS 44.29.020	AS 47.05.340	AS 47.32.050
	AS 47.05.010	AS 47.32.020	AS 47.32.060
	AS 47.05.310	AS 47.32.030	AS 47.32.080
	AS 47.05.330	AS 47.32.040	

7 AAC 57.035(a)(2) is amended to read:

(2) the licensee, administrator, a member of the licensee's household, or other **individual** [PERSON] associated in a manner described in 7 AAC 10.900(b)

(A) **is one for whom the department determines** [DOES NOT PASS A CRIMINAL HISTORY CHECK CONDUCTED] under 7 AAC 10.900 - 7 AAC 10.990 **(barrier crimes and conditions; background checks) that a barrier crime or condition exists,** unless the department **grants a redetermination under 7 AAC 10.927** **or** grants a variance under **7 AAC 10.930 and** 7 AAC 10.935; or

(B) is charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for a crime or offense listed in 7 AAC 10.905, unless the department **grants a redetermination under 7 AAC 10.927 or** grants a variance under **7 AAC 10.930 and** 7 AAC 10.935;

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am 6/29/2017, Register 222)

Authority:	AS 44.29.020	AS 47.32.020	AS 47.32.080
	AS 47.05.010	AS 47.32.030	AS 47.32.120
	AS 47.05.310	AS 47.32.040	AS 47.32.130
	AS 47.05.330	AS 47.32.050	AS 47.32.140

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AS 47.05.340

AS 47.32.060

7 AAC 57.200(a)(1) is amended to read:

(1) determine policy for the operation and management of the facility that meets the applicable requirements of AS 47.05.300 - 47.05.990, AS 47.32, 7 AAC 10.900 - 7 AAC 10.990 (**barrier crimes and conditions; background checks** [BARRIER CRIMES, CRIMINAL HISTORY CHECKS, AND CENTRALIZED REGISTRY]), 7 AAC 10.1000 - 7 AAC 10.1095 (**environmental health and safety** [ENVIRONMENTAL HEALTH AND SAFETY]), and this chapter, and provide for implementation of that policy by an administrator; (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am 6/29/2017, Register 222)

**Authority:** AS 44.29.020 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 57.310(b) is amended to read:

(b) An individual associated with a child care facility in a manner described in 7 AAC 10.900(b) is subject to the applicable requirements of AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 (**barrier crimes and conditions; background checks** [BARRIER CRIMES, CRIMINAL HISTORY CHECKS, AND CENTRALIZED REGISTRY]). In addition, an individual may not work, with or without compensation, or reside in a child care facility or in any other part of the premises that house a child care facility, if the individual has the opportunity to gain access to the facility and

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(1) under 7 AAC 10.915 (background check) the department determines that a barrier crime or condition described in 7 AAC 10.905 exists with respect to the individual;

(2) the individual is out of compliance with the association requirements described in 7 AAC 10.915(g) and 7 AAC 10.935(m);

(3) a variance for the individual has been denied under 7 AAC 10.930 and 7 AAC 10.935;

(4) a variance for the individual has been revoked under 7 AAC 10.945 [THE INDIVIDUAL'S NAME APPEARS ON THE CENTRALIZED REGISTRY ESTABLISHED UNDER 7 AAC 10.955];

(5) [(2)] the individual has a physical health problem, behavioral health problem, or domestic violence problem that poses a significant risk to the health, safety, or welfare of children in care; or

(6) [(3)] the individual was the subject of a final adverse licensing action under AS 47.32.130 or 47.32.140(d)(5), (6), (7), or (9).

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am 5/15/2016, Register 218; am

6/29/2017, Register ~~222~~

Authority:	AS 44.29.020	AS 47.05.340	AS 47.32.030
	AS 47.05.310	AS 47.32.010	AS 47.32.130
	AS 47.05.320	AS 47.32.020	AS 47.32.140
	AS 47.05.330		

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7 AAC 57.315(a) is amended to read:

**7 AAC 57.315. Child protection and background [CRIMINAL HISTORY] check requirements.** (a) An individual associated with a child care facility in a manner described in 7 AAC 10.900(b) is subject to the applicable requirements of AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 (**barrier crimes and conditions; background checks** [BARRIER CRIMES, CRIMINAL HISTORY CHECKS, AND CENTRALIZED REGISTRY]).

The introductory language of 7 AAC 57.315(d) is amended to read:

(d) In addition to the **background** [CRIMINAL HISTORY] check required under 7 AAC 10.900 - 7 AAC 10.990, the department may review the following available records of each caregiver, employee, and other individual, age 16 or older, who is associated with a child care facility in a manner described in 7 AAC 10.900(b):

...

7 AAC 57.315(e) is amended to read:

(e) An individual seeking to be licensed or to remain licensed as the owner of a child care facility shall submit to the department the signed release of information authorization and other items required to request a **background** [CRIMINAL HISTORY] check under **7 AAC 10.900 - 7 AAC 10.990** [7 AAC 10.910] for each person for whom a **background** [CRIMINAL HISTORY] check is required under AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990. (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am 6/29/2017, Register 222)

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<b>Authority:</b>	AS 44.29.020	AS 47.05.320	AS 47.32.010
	AS 47.05.300	AS 47.05.330	AS 47.32.020
	AS 47.05.310	AS 47.05.340	AS 47.32.030

7 AAC 75.215 is amended to read:

**7 AAC 75.215. Barrier crimes and conditions; background [, CRIMINAL HISTORY[ checks [, AND CENTRALIZED REGISTRY]].** An assisted living home is subject to the applicable requirements of AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 (**barrier crimes and conditions; background checks** [BARRIER CRIMES, CRIMINAL HISTORY CHECKS, AND CENTRALIZED REGISTRY]). (Eff. 9/28/2001, Register 159; am 4/6/2002, Register 162; am 6/24/2004, Register 170; am 2/9/2007, Register 181; am 6/29/2017, Register 222)

<b>Authority:</b>	AS 47.05.300	AS 47.05.330	AS 47.32.030
	AS 47.05.310	AS 47.05.340	AS 47.33.005
	AS 47.05.320	AS 47.32.010	AS 47.33.010

The introductory text of 7 AAC 75.340(a) is amended to read:

(a) **An** [IN ADDITION TO MEETING THE REPORTING REQUIREMENTS OF 7 AAC 10.955(c) FOR THE CENTRALIZED REGISTRY ESTABLISHED UNDER 7 AAC 10.955, AN] assisted living home shall provide, on a form supplied by the department, written notice to the department, to each affected resident or that resident's representative, and to any service coordinator, as follows:



...

7 AAC 75.340(a)(1)(A) is amended to read:

(A) that an administrator, a care provider, or an individual who resides in the home, other than a resident receiving services,

(i) is subject to a department determination under 7 AAC 10.915 (background check) that a barrier crime or condition described in 7 AAC 10.905 exists with respect to the individual [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]; for purposes of notice under this sub-subparagraph [SUBPARAGRAPH], a resident is an affected resident if the resident was a victim of the barrier crime or of the act determined to be a barrier condition [OFFENSE COMMITTED], or if the barrier crime or the act determined to be a barrier condition [OFFENSE] was committed on the premises of the assisted living home;

(ii) the individual is out of compliance with the association requirements described in 7 AAC 10.915(g) and 7 AAC 10.935(m);

(iii) a variance for the individual has been denied under 7 AAC 10.930 and 7 AAC 10.935; for purposes of notice under this sub-subparagraph, a resident is an affected resident if the resident was a victim of the barrier crime for which the variance was granted or of the act

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determined to be a barrier condition for which the variance was granted, or  
if the barrier crime for which the variance was granted or the act determined  
to be a barrier condition for which the variance was granted was committed  
on the premises of the assisted living home; or

(iv) a variance for the individual has been revoked under  
7 AAC 10.945; for purposes of notice under this sub-subparagraph, a  
resident is an affected resident if the resident was a victim of a barrier crime  
that resulted in revocation or of an act determined to be a barrier condition  
that resulted in revocation, or if a barrier crime that resulted in revocation  
or the act determined to be a barrier condition that resulted in revocation  
was committed on the premises of the assisted living home;

(Eff. 4/6/2002, Register 162; am 6/24/2004, Register 170; am 2/9/2007, Register 181; am

6 /29 /2017, Register 222)

Authority:	AS 47.05.300	AS 47.05.340	AS 47.33.005
	AS 47.05.310	AS 47.32.010	AS 47.33.010
	AS 47.05.320	AS 47.32.030	AS 47.33.080
	AS 47.05.330		

7 AAC 75.405(b) is amended to read:

(b) Variance requests regarding barrier crimes, barrier conditions, and background  
[CRIMINAL HISTORY] checks under 7 AAC 10.900 - 7 AAC 10.990 [, AND THE  
CENTRALIZED REGISTRY] are subject to the provisions of 7 AAC 10.930 and 7 AAC

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**10.935** [7 AAC 10.930 - 7 AAC 10.935].

(Eff. 6/24/2004, Register 170; am 6/23/2006, Register 178; am 2/9/2007, Register 181; am

6/29/2017, Register 222)

**Authority:** AS 47.05.330 AS 47.32.010 AS 47.32.030  
AS 47.05.340

7 AAC 105.210(b)(6) is amended to read:

(6) must comply with the requirements of AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 (barrier crimes **and conditions; background** [, CRIMINAL HISTORY] checks [, AND CENTRALIZED REGISTRY]), if applicable to that provider type; and

(Eff. 2/1/2010, Register 193; am 10/1/2011, Register 199; am 6/29/2017, Register 222)

**Authority:** AS 47.05.010 AS 47.07.030 AS 47.07.040  
AS 47.05.300

7 AAC 105.400(30) is amended to read:

(30) failing to comply with the requirements of **AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 (barrier crimes and conditions; background checks)**

[AS 47.05.310 - 47.05.390];

(Eff. 2/1/2010, Register 193; am 6/1/2011, Register 198; am 6/29/2017, Register 222)

**Authority:** AS 47.05.010 AS 47.05.320 AS 47.07.030  
AS 47.05.300 AS 47.05.330 AS 47.07.040  
AS 47.05.310 AS 47.05.340

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7 AAC 125.080(a)(4) is amended to read:

(4) if **the department determines** [A PERSONAL CARE ASSISTANT DOES NOT PASS A CRIMINAL HISTORY CHECK CONDUCTED] under 7 AAC 10.900 - 7 AAC 10.990 **(barrier crimes and conditions; background checks) that a barrier crime or condition exists with respect to a personal care assistant,** and the personal care agency does not terminate association with the individual in accordance with 7 AAC 10.960, unless the department **grants a redetermination under 7 AAC 10.927 or** grants a variance under **7 AAC 10.930 and** 7 AAC 10.935.

(Eff. 2/1/2010, Register 193; am 8/25/2010, Register 195; am 6/29/2017, Register 222)

Authority:	AS 47.05.010	AS 47.05.320	AS 47.05.340
	AS 47.05.300	<b><u>AS 47.05.330</u></b>	AS 47.07.030
	AS 47.05.310		

7 AAC 125.090(c) is amended to read:

(c) A personal care agency is subject to the applicable requirements of AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 (barrier crimes **and conditions; background** [, CRIMINAL HISTORY] checks [, AND CENTRALIZED REGISTRY]). The personal care agency shall submit to the department a request for a **background** [CRIMINAL HISTORY] check for each personal care assistant as required under 7 AAC 10.910. The department will not pay for services provided by a personal care assistant

(1) for whom a **background** [CRIMINAL HISTORY] check was not requested as required under 7 AAC 10.900 - 7 AAC 10.990; or

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(2) for whom the department determines [WHO DOES NOT PASS A CRIMINAL HISTORY CHECK] under 7 AAC 10.900 - 7 AAC 10.990 (barrier crimes and conditions; background checks) that a barrier crime or condition exists; however, except as restricted by applicable federal law, the department will not withhold payment if it grants a provisional valid background [CRIMINAL HISTORY] check under 7 AAC 10.920, a redetermination under 7 AAC 10.927, or a variance under 7 AAC 10.930 and 7 AAC 10.935. (Eff. 2/1/2010, Register 193; am 10/1/2011, Register 199; am 6/29/2017, Register 222)

<b>Authority:</b>	AS 47.05.010	AS 47.05.310	AS 47.05.340
	AS 47.05.017	AS 47.05.320	AS 47.07.030
	AS 47.05.300	<u>AS 47.05.330</u>	

7 AAC 125.100(a) is amended to read:

(a) An agency or an employee of an agency in either the consumer-directed or agency-based program who has reasonable cause to believe that a recipient of any service rendered under 7 AAC 125.010 - 7 AAC 125.199 is subject to abuse or coercion of any kind, shall report that belief to the department immediately in accordance with AS 47.17.020 and AS 47.24.010. [AN AGENCY OR EMPLOYEE IS ALSO SUBJECT TO THE REPORTING REQUIREMENTS OF 7 AAC 10.955(c) FOR THE CENTRALIZED REGISTRY ESTABLISHED UNDER 7 AAC 10.955.]

(Eff. 2/1/2010, Register 193; am 6/29/2017, Register 222)

<b>Authority:</b>	AS 47.05.010	[AS 47.05.330]	AS 47.07.030
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Register 222, July 2017 HEALTH AND SOCIAL SERVICES

7 AAC 160.990(b)(10) is repealed:

(10) repealed 6/29/2017;

7 AAC 160.990(b) is amended by adding a new paragraph to read:

(107) "background check" means the processing of an individual's fingerprints, name, social security number, and other identifying information as described in 7 AAC 10.915. (Eff. 2/1/2010, Register 193; am 7/7/2010, Register 195; am 1/1/2011, Register 196; am 10/1/2011, Register 199; am 4/1/2012, Register 201; am 7/1/2013, Register 206; am 5/18/2014, Register 210; am 6/16/2016, Register 218; am 4/9/2017, Register 222; am 6/29/2017, Register 222)

**Authority:** AS 47.05.010 AS 47.07.040 AS 47.07.055

# MEMORANDUM

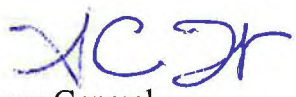
## State of Alaska Department of Law

To: Hon. Byron Mallott  
Lieutenant Governor

Date: May 30, 2017

File No.: JU2015200970

Tel. No.: 465-3600

From: Steven C. Weaver   
Sr. Assistant Attorney General  
and Assistant Regulations Attorney  
Legislation and Regulations Section

Re: Department of Health and Social Services regulations re: centralized facilities licensure, barrier crimes and conditions, and background checks for barrier crimes and conditions (7 AAC 10.010; 7 AAC 10.015(1); 7 AAC 10.900 - 7 AAC 10.990; 7 AAC 10.9500(b)(3); 7 AAC 12.541(b)(3); 7 AAC 12.605; 7 AAC 12.660(a)(5); 7 AAC 41.205; 7 AAC 41.370; 7 AAC 50.030; 7 AAC 50.210(c); 7 AAC 53.226(4)(A)(i); 7 AAC 56.070(c)(6); 7 AAC 56.210; 7 AAC 57; 7 AAC 75.215; 7 AAC 75.340(a); 7 AAC 75.405(b); 7 AAC 105.210(b)(6); 7 AAC 105.400(30); 7 AAC 125.080(a)(4); 7 AAC 125.090(c); 7 AAC 125.100(a); 7 AAC 160.990(b)(10), (107))

We have reviewed the attached regulations from the Department of Health and Social Services against the statutory standards of the Administrative Procedure Act. I have reviewed this project under a specific delegation dated May 30, 2017 from the Regulations Attorney. The regulations are an omnibus update to the umbrella regulations regarding centralized facilities licensure, barrier crimes and conditions, and background check requirements for barrier crimes and conditions--provisions primarily addressed in 7 AAC 10.900 - 7 AAC 10.990--and include conforming changes to provisions across 7 AAC that cross-reference provisions of 7 AAC 10.900 - 7 AAC 10.990 or their subject matter.

We find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations.

Hon. Byron Mallott, Lieutenant Governor  
Our file: JU2015200970

May 30, 2017  
Page 2

The January 16, 2016 public notice, the February 11, 2016 supplemental public notice, and the May 24, 2017 adoption order all state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

SCW

cc w/enc: (via email)

Hon. Valerie "Nurr'araaluk" Davidson, Commissioner  
Department of Health and Social Services

Triptaa Surve, Regulations Contact  
Department of Health and Social Services

Jon Sherwood, Deputy Commissioner  
Department of Health and Social Services

Margaret Brodie, Director  
Division of Health Care Services  
Department of Health and Social Services

Karen Benson  
Division of Health Care Services  
Department of Health and Social Services

Stacie L. Kraly, Chief Assistant Attorney General  
Human Services Section

Kelly E. Henriksen, Assistant Attorney General  
Human Services Section



# MEMORANDUM

## State of Alaska Department of Law

TO: Hon. Byron Mallott  
Lieutenant Governor

DATE: May 30, 2017

FILE NO.: JU2015200970

TELEPHONE NO.: (907) 465-3600

FROM: Susan R. Pollard *SRP*  
Chief Assistant Attorney General  
and Regulations Attorney  
Legislation/Regulations Section

SUBJECT: Specific delegation of authority regarding regulations review on Department of Health and Social Services regulations re: centralized facilities licensure, barrier crimes and conditions, and background checks for barrier crimes and conditions (7 AAC 10.010; 7 AAC 10.015(1); 7 AAC 10.900 - 7 AAC 10.990; 7 AAC 10.9500(b)(3); 7 AAC 12.541(b)(3); 7 AAC 12.605; 7 AAC 12.660(a)(5); 7 AAC 41.205; 7 AAC 41.370; 7 AAC 50.030; 7 AAC 50.210(c); 7 AAC 53.226(4)(A)(i); 7 AAC 56.070(c)(6); 7 AAC 56.210; 7 AAC 57; 7 AAC 75.215; 7 AAC 75.340(a); 7 AAC 75.405(b); 7 AAC 105.210(b)(6); 7 AAC 105.400(30); 7 AAC 125.080(a)(4); 7 AAC 125.090(c); 7 AAC 125.100(a); 7 AAC 160.990(b)(10), (107))

By this memorandum, I am delegating my authority as Regulations Attorney under AS 44.62 to Assistant Attorney General Steven C. Weaver for the above-referenced regulations project. Under this delegation of authority, Steven Weaver has my full authority under AS 44.62 to conduct the legal review under AS 44.62 and take necessary actions on this regulations project.

May 30, 2017  
Page 2

SRP

cc w/enc: Scott C. Meriwether, AAC Coordinator  
Office of the Lieutenant Governor

Steven C. Weaver  
Sr. Assistant Attorney General and  
Assistant Regulations Attorney  
Legislation/Regulations Section—Juneau

## SUPPLEMENTAL NOTICE OF PROPOSED CHANGES ON BARRIER CRIMES, CRIMINAL HISTORY CHECKS, & FIREARMS IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

The Department of Health & Social Services proposes to adopt regulation changes in Title 7 of the Alaska Administrative Code, dealing with barrier crimes, criminal history checks, and the prohibition of firearms and ammunition in certain facilities, including the following:

(1) Add facilities that will be prohibited from having firearms and ammunition on the premises, including all assisted living homes and residential psychiatric treatment centers. This prohibition already applies to assisted living homes licensed for more than five residents, and to child care centers, residential child care facilities, and maternity homes. With the proposed change, there will no longer be an exception for assisted living homes licensed for five or fewer residents.

(2) Repeal the exemption from requiring a criminal history check for relative care providers seeking to participate in the child care assistance program under 7 AAC 41. With the proposed change, those providers will be required to have a valid criminal history check as a condition for approval to participate in the program. [See 7 AAC 10.900(d)(5) and the proposed revisions to and repeals of corresponding provisions in 7 AAC 41]

(3) Other proposed changes to the regulations include but are not limited to:

- amend 7 AAC 10.010 (Purpose of chapter) to clarify that individuals are subject to applicable requirements
- amend 7 AAC 10.015 (Applicability of chapter) to clarify the scope of the chapter and to clarify that certain civil findings affect a criminal history check
- amend 7 AAC 10.900 to
  - clarify that certain civil findings affect a criminal history check;
  - clarify that regular contact with a recipient of services includes interaction with or access to a recipient's property, personal identifying information, financial information, treatment information, or medical records;
  - include apprentices in the list of individuals required to have a valid criminal history check;
  - repeal the exemption for approved relative providers under the child care assistance program;
- add a new section at 7 AAC 10.902 allowing an individual to request a criminal history check on their own behalf
- add a new section at 7 AAC 10.903 limiting disclosure by DHSS of criminal history check and variance review committee information
- amend 7 AAC 10.905 (Barrier crimes and conditions) to
  - address civil findings; address standards for protecting the health, safety, and welfare of recipients of services; update applicable offenses, including sex trafficking;
  - add provisions that include prohibitions set out in various federal laws, including Medicaid fraud as a permanent barrier;
  - add provisions for offenses related to neglect, abuse, or exploitation of a child or vulnerable adult;
  - add a provision that makes harassment in the first degree as a five-year barrier;
- repeal 7 AAC 10.905(f) to remove as barriers certain crimes that provide for a one-year barrier
- amend 7 AAC 10.910 (Request for a criminal history check) to
  - include appointment of a board member as a requirement to obtain a valid criminal history check [(a)(3)];
  - repeal outdated references [(a)(6)];
  - clarify who must apply [(b)];
  - change fingerprint submittal requirements from two sets to one [(b)(3)];
  - limit waiver of fees for volunteers to recognized nonprofits [(b)(6)];

- provide that a valid criminal history check remains valid for five years instead of six years, under certain conditions and subject to annual verification to the department [(c)];
- require renewal of an applicable criminal history check at least every five years [(d)];
- repeal the requirement to reimburse the department for any waived application fee and the requirement to pay a verification fee [(e)];
- clarify requirements for individuals who transfer between sites operated by same entity or provider [(f)];
- clarify what constitutes a valid criminal history check [(h)];
- add a provision barring association, licensure, certification, approval, or a finding of eligibility for anyone who fails to obtain a required criminal history check [(j)];
- amend 7 AAC 10.915 (Criminal history check) to
  - clarify applicability; add professional licensing registries [(a)(5)];
  - clarify that certain civil findings apply [(b)];
  - allow the notification of department decisions through electronic mail, regular mail, facsimile, and through the department's electronic database [(c)];
  - add provisions for seeking a redetermination of a department decision [(d)(2)(C)];
  - add provisions dealing with department notification after determining a barrier exists [(e)];
  - clarify what determines that a criminal history check becomes immediately invalid [(g)];
  - clarify provisions related to requests to rescind a criminal history check [(h)];
- amend 7 AAC 10.920 to set a 60-day validity limit for a provisional criminal history check;
- amend 7 AAC 10.925 to add monitoring and notification requirements regarding placement on a registry or database and to allow notification of termination of association through the DHSS database;
- add a new section at 7 AAC 10.927 to provide a mechanism for seeking reconsideration of a department decision, including what information must accompany a request for and how the request will be reviewed;
- amend 7 AAC 10.930 (Request for a variance) to
  - clarify requirements and to add a requirement for anyone requesting a variance for a barrier condition to submit a statement describing actions the person has taken to reduce the risk of reoffending, including proof of active participation or completion of any treatment program required by a court [(a)(4)];
  - add and revise provisions dealing with the department's review of variance requests [(b) & (b)(1)];
  - repeal outdated references [(d), (e)];
  - repeal reference to a permanent barrier for which a variance will not be granted [(g)(1)];
  - clarify provisions related to permanent barrier crimes and requests for a variance [(h), (i), (j), (k)];
- repeal and readopt 7 AAC 10.10.935 (Review of request for a variance) to create a comprehensive revision intended to clarify, streamline, and simplify the review process, including but not limited to the following:
  - clarify that any variance granted must be addressed each time a license, certification, approval, or finding of eligibility is renewed [(j)];
  - remove the requirement to request a new criminal history check each time a license, certification, approval, or finding of eligibility is renewed;
- amend 7 AAC 10.940 to clarify the language regarding the posting of a variance decision;
- amend 7 AAC 10.945 (Revocation of a valid criminal history check or variance) to clarify procedures and to add a requirement, as applicable, to make revocation of a criminal history check or variance effective immediately;
- repeal and readopt 7 AAC 10.950 (Request for reconsideration of a variance request decision) to clarify and simplify the process
- amend 7 AAC 10.960 (Termination of association) to clarify department intent
- amend 7 AAC 10.990 (Definitions) to revise and add definitions
- amend 7 AAC 10.1080 (Firearms and ammunition) to expand applicability of this section to all assisted living homes and to residential psychiatric treatment centers in addition to those facilities already subject to these requirements.
- amend, repeal, and add provisions in 7 AAC 41.015 (Responsibilities of designees), 7 AAC 41.200 (Provider eligibility; application requirements), 7 AAC 41.205 (Child protection and criminal history check

requirements) to require relative providers to have a valid criminal history check as a condition of being approved under the child care assistance program.

(4) DHSS also proposes to make additional miscellaneous changes that include:

- update references to federal and other requirements adopted by reference to require entities to be in compliance with the most current standards;
- clarify department intent;
- make technical and conforming amendments, including ensuring consistency in terminology, using plain English, updating authority lines, and correcting, updating, and adding editor's notes.

This is a SUPPLEMENTAL NOTICE adding to the NOTICE OF PROPOSED CHANGES that was issued on January 14, 2016, concerning these proposed regulation revisions contained in the Department of Law file number JU2015200970. This SUPPLEMENTAL NOTICE is being issued because the Department of Health & Social Services has decided to extend the deadline for public comments by 45 days.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Karen Benson, Alaska Department of Health & Social Services, 4601 Business Park Blvd., Building K, Anchorage, Alaska 99503. Additionally, the Department of Health & Social Services will accept comments by facsimile at (907) 269-3488 [intra-state toll free at (888) 364-3488] and by electronic mail at [karen.benson@alaska.gov](mailto:karen.benson@alaska.gov). The comments must be received not later than 5 p.m. on April 25, 2016.

Oral or written comments also may be submitted at a hearing to be held on February 12, 2016, at McKinley Conference Room, 4601 Business Park Blvd., Anchorage, AK 99503. You may also join the oral hearing by teleconference by calling 1-800-315-6338 (pin number: 45261#). The hearing will be held from 10 a.m. to 12 noon and might be extended to accommodate those present before 11 a.m. who did not have an opportunity to comment.

You may submit written questions relevant to the proposed action to Karen Benson by e-mail at [karen.benson@alaska.gov](mailto:karen.benson@alaska.gov) or at Alaska Department of Health & Social Services, 4601 Business Park Blvd., Building K, Anchorage, Alaska 99503. The questions must be received at least 10 days before the end of the public comment period. The Department of Health & Social Services will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System at <https://aws.state.ak.us/OnlinePublicNotices/default.aspx> and at the agency's website at <http://dhss.alaska.gov/daph/Pages/default.aspx>.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Karen Benson at [karen.benson@alaska.gov](mailto:karen.benson@alaska.gov) or at (907) 269-5258 not later than April 5, 2016, to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System at <https://aws.state.ak.us/OnlinePublicNotices/default.aspx> and by contacting Karen Benson at [karen.benson@alaska.gov](mailto:karen.benson@alaska.gov) or at (907) 269-5258.

A copy of material proposed for adoption by reference may be viewed at the agency's office at Alaska Department of Health & Social Services, 4601 Business Park Blvd., Building K, Anchorage, Alaska 99503.

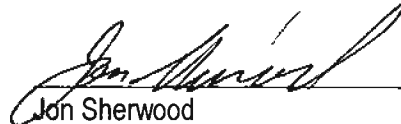
After the public comment period ends, the Department of Health & Social Services will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. **You should comment during the time allowed if your interests could be affected.**

**Statutory authority:** AS 18.05.010; AS 18.05.040; AS 44.29.020; AS 47.05.300; AS 47.05.310; AS 47.05.320; AS 47.05.330; AS 47.05.340; AS 47.14.120; AS 47.25.001; AS 47.32.010; AS 47.32.020; AS 47.32.030; AS 47.33.005; AS 47.33.010.

**Statutes being implemented, interpreted, or made specific:** AS 18.05.010; AS 18.05.040; AS 44.29.020; AS 47.05.300; AS 47.05.310; AS 47.05.320; AS 47.05.330; AS 47.05.340; AS 47.14.120; AS 47.25.001; AS 47.32.010; AS 47.32.020; AS 47.32.030; AS 47.33.005; AS 47.33.010.

**Fiscal information:** The proposed regulation changes are not expected to require an increased appropriation.

DATE: 2-10-16

  
Jon Sherwood  
Deputy Commissioner  
Department of Health & Social Services

SUPPLEMENTAL NOTICE OF PROPOSED CHANGES ON BARRIER CRIMES, CRIMINAL HISTORY CHECKS, &  
FIREARMS IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

BRIEF DESCRIPTION

The Department of Health & Social Services proposes to change regulations on barrier crimes, criminal history checks, and the prohibition of firearms and ammunition in certain facilities. The proposed changes affect (1) individuals, facilities, entities, and individual service providers that are required to be licensed, certified, or approved by DHSS – or that are seeking a finding of eligibility to receive payments from DHSS; (2) persons who will be associated with such individuals, facilities, entities, and individual service providers in a manner that requires a criminal history check under applicable statutes and regulations; and (3) relative care providers seeking to participate in the child care assistance program. These and other changes are summarized below.

The Department of Health & Social Services proposes to adopt regulation changes in Title 7 of the Alaska Administrative Code, dealing with barrier crimes, criminal history checks, and the prohibition of firearms and ammunition in certain facilities, including the following:

(1) Add facilities that will be prohibited from having firearms and ammunition on the premises, including all assisted living homes and residential psychiatric treatment centers. This prohibition already applies to assisted living homes licensed for more than five residents, and to child care centers, residential child care facilities, and maternity homes. With the proposed change, there will no longer be an exception for assisted living homes licensed for five or fewer residents.

(2) Repeal the exemption from requiring a criminal history check for relative care providers seeking to participate in the child care assistance program under 7 AAC 41. With the proposed change, those providers will be required to have a valid criminal history check as a condition for approval to participate in the program. [See 7 AAC 10.900(d)(5) and the proposed revisions to and repeals of corresponding provisions in 7 AAC 41]

(3) Other proposed changes to the regulations include but are not limited to:

- amend 7 AAC 10.010 (Purpose of chapter) to clarify that individuals are subject to applicable requirements
- amend 7 AAC 10.015 (Applicability of chapter) to clarify the scope of the chapter and to clarify that certain civil findings affect a criminal history check
- amend 7 AAC 10.900 to
  - clarify that certain civil findings affect a criminal history check;
  - clarify that regular contact with a recipient of services includes interaction with or access to a recipient's property, personal identifying information, financial information, treatment information, or medical records;
  - include apprentices in the list of individuals required to have a valid criminal history check;
  - repeal the exemption for approved relative providers under the child care assistance program;
- add a new section at 7 AAC 10.902 allowing an individual to request a criminal history check on their own behalf
- add a new section at 7 AAC 10.903 limiting disclosure by DHSS of criminal history check and variance review committee information
- amend 7 AAC 10.905 (Barrier crimes and conditions) to

- address civil findings; address standards for protecting the health, safety, and welfare of recipients of services; update applicable offenses, including sex trafficking;
- add provisions that include prohibitions set out in various federal laws, including Medicaid fraud as a permanent barrier;
- add provisions for offenses related to neglect, abuse, or exploitation of a child or vulnerable adult;
- add a provision that makes harassment in the first degree as a five-year barrier;
- repeal 7 AAC 10.905(f) to remove as barriers certain crimes that provide for a one-year barrier
- amend 7 AAC 10.910 (Request for a criminal history check) to
  - include appointment of a board member as a requirement to obtain a valid criminal history check [(a)(3)];
  - repeal outdated references [(a)(6)];
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  - limit waiver of fees for volunteers to recognized nonprofits [(b)(6)];
  - provide that a valid criminal history check remains valid for five years instead of six years, under certain conditions and subject to annual verification to the department [(c)];
  - require renewal of an applicable criminal history check at least every five years [(d)];
  - repeal the requirement to reimburse the department for any waived application fee and the requirement to pay a verification fee [(e)];
  - clarify requirements for individuals who transfer between sites operated by same entity or provider [(f)];
  - clarify what constitutes a valid criminal history check [(h)];
  - add a provision barring association, licensure, certification, approval, or a finding of eligibility for anyone who fails to obtain a required criminal history check [(j)];
- amend 7 AAC 10.915 (Criminal history check) to
  - clarify applicability; add professional licensing registries [(a)(5)];
  - clarify that certain civil findings apply [(b)];
  - allow the notification of department decisions through electronic mail, regular mail, facsimile, and through the department's electronic database [(c)];
  - add provisions for seeking a redetermination of a department decision [(d)(2)(C)];
  - add provisions dealing with department notification after determining a barrier exists [(e)];
  - clarify what determines that a criminal history check becomes immediately invalid [(g)];
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- amend 7 AAC 10.920 to set a 60-day validity limit for a provisional criminal history check;
- amend 7 AAC 10.925 to add monitoring and notification requirements regarding placement on a registry or database and to allow notification of termination of association through the DHSS database;
- add a new section at 7 AAC 10.927 to provide a mechanism for seeking reconsideration of a department decision, including what information must accompany a request for and how the request will be reviewed;
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  - add and revise provisions dealing with the department's review of variance requests [(b) & (b)(1)];
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- amend 7 AAC 10.960 (Termination of association) to clarify department intent
- amend 7 AAC 10.990 (Definitions) to revise and add definitions
- amend 7 AAC 10.1080 (Firearms and ammunition) to expand applicability of this section to all assisted living homes and to residential psychiatric treatment centers in addition to those facilities already subject to these requirements.
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- update references to federal and other requirements adopted by reference to require entities to be in compliance with the most current standards;
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A copy of the proposed regulation changes is available on the Alaska Online Public Notice System at <https://aws.state.ak.us/OnlinePublicNotices/default.aspx> and by contacting Karen Benson at [karen.benson@alaska.gov](mailto:karen.benson@alaska.gov) or at (907) 269-5258.

A copy of material proposed for adoption by reference may be viewed at the agency's office at Alaska Department of Health & Social Services, 4601 Business Park Blvd., Building K, Anchorage, Alaska 99503.

After the public comment period ends, the Department of Health & Social Services will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. **You should comment during the time allowed if your interests could be affected.**

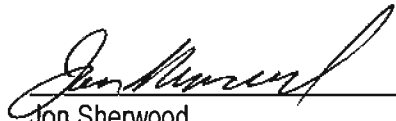
**Statutory authority:** AS 18.05.010; AS 18.05.040; AS 44.29.020; AS 47.05.300; AS 47.05.310; AS 47.05.320; AS 47.05.330; AS 47.05.340; AS 47.14.120; AS 47.25.001; AS 47.32.010; AS 47.32.020; AS 47.32.030; AS 47.33.005; AS 47.33.010.

**Statutes being implemented, interpreted, or made specific:** AS 18.05.010; AS 18.05.040; AS 44.29.020; AS 47.05.300; AS 47.05.310; AS 47.05.320; AS 47.05.330; AS 47.05.340; AS 47.14.120; AS 47.25.001; AS 47.32.010; AS 47.32.020; AS 47.32.030; AS 47.33.005; AS 47.33.010.

**Fiscal information:** The proposed regulation changes are not expected to require an increased appropriation.

DATE: \_\_\_\_\_

2-10-16

  
\_\_\_\_\_  
Jon Sherwood  
Deputy Commissioner  
Department of Health & Social Services

NOTICE OF PROPOSED CHANGES ON BARRIER CRIMES, CRIMINAL HISTORY CHECKS, &  
FIREARMS IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

BRIEF DESCRIPTION

The Department of Health & Social Services proposes to change regulations on barrier crimes, criminal history checks, and the prohibition of firearms and ammunition in certain facilities. The proposed changes affect (1) individuals, facilities, entities, and individual service providers that are required to be licensed, certified, or approved by DHSS – or that are seeking a finding of eligibility to receive payments from DHSS; (2) persons who will be associated with such individuals, facilities, entities, and individual service providers in a manner that requires a criminal history check under applicable statutes and regulations; and (3) relative care providers seeking to participate in the child care assistance program. These and other changes are summarized below.

The Department of Health & Social Services proposes to adopt regulation changes in Title 7 of the Alaska Administrative Code, dealing with barrier crimes, criminal history checks, and the prohibition of firearms and ammunition in certain facilities, including the following:

(1) Add facilities that will be prohibited from having firearms and ammunition on the premises, including all assisted living homes and residential psychiatric treatment centers. This prohibition already applies to assisted living homes licensed for more than five residents, and to child care centers, residential child care facilities, and maternity homes. With the proposed change, there will no longer be an exception for assisted living homes licensed for five or fewer residents.

(2) Repeal the exemption from requiring a criminal history check for relative care providers seeking to participate in the child care assistance program under 7 AAC 41. With the proposed change, those providers will be required to have a valid criminal history check as a condition for approval to participate in the program. [See 7 AAC 10.900(d)(5) and the proposed revisions to and repeals of corresponding provisions in 7 AAC 41]

(3) Other proposed changes to the regulations include but are not limited to:

- amend 7 AAC 10.010 (Purpose of chapter) to clarify that individuals are subject to applicable requirements
- amend 7 AAC 10.015 (Applicability of chapter) to clarify the scope of the chapter and to clarify that certain civil findings affect a criminal history check
- amend 7 AAC 10.900 to
  - clarify that certain civil findings affect a criminal history check;
  - clarify that regular contact with a recipient of services includes interaction with or access to a recipient's property, personal identifying information, financial information, treatment information, or medical records;
  - include apprentices in the list of individuals required to have a valid criminal history check;
  - repeal the exemption for approved relative providers under the child care assistance program;
- add a new section at 7 AAC 10.902 allowing an individual to request a criminal history check on their own behalf
- add a new section at 7 AAC 10.903 limiting disclosure by DHSS of criminal history check and variance review committee information
- amend 7 AAC 10.905 (Barrier crimes and conditions) to

- address civil findings; address standards for protecting the health, safety, and welfare of recipients of services; update applicable offenses, including sex trafficking;
- add provisions that include prohibitions set out in various federal laws, including Medicaid fraud as a permanent barrier;
- add provisions for offenses related to neglect, abuse, or exploitation of a child or vulnerable adult;
- add a provision that makes harassment in the first degree as a five-year barrier;
- repeal 7 AAC 10.905(f) to remove as barriers certain crimes that provide for a one-year barrier
- amend 7 AAC 10.910 (Request for a criminal history check) to
  - include appointment of a board member as a requirement to obtain a valid criminal history check [(a)(3)];
  - repeal outdated references [(a)(6)];
  - clarify who must apply [(b)];
  - change fingerprint submittal requirements from two sets to one [(b)(3)];
  - limit waiver of fees for volunteers to recognized nonprofits [(b)(6)];
  - provide that a valid criminal history check remains valid for five years instead of six years, under certain conditions and subject to annual verification to the department [(c)];
  - require renewal of an applicable criminal history check at least every five years [(d)];
  - repeal the requirement to reimburse the department for any waived application fee and the requirement to pay a verification fee [(e)];
  - clarify requirements for individuals who transfer between sites operated by same entity or provider [(f)];
  - clarify what constitutes a valid criminal history check [(h)];
  - add a provision barring association, licensure, certification, approval, or a finding of eligibility for anyone who fails to obtain a required criminal history check [(j)];
- amend 7 AAC 10.915 (Criminal history check) to
  - clarify applicability; add professional licensing registries [(a)(5)];
  - clarify that certain civil findings apply [(b)];
  - allow the notification of department decisions through electronic mail, regular mail, facsimile, and through the department's electronic database [(c)];
  - add provisions for seeking a redetermination of a department decision [(d)(2)(C)];
  - add provisions dealing with department notification after determining a barrier exists [(e)];
  - clarify what determines that a criminal history check becomes immediately invalid [(g)];
  - clarify provisions related to requests to rescind a criminal history check [(h)];
- amend 7 AAC 10.920 to set a 60-day validity limit for a provisional criminal history check;
- amend 7 AAC 10.925 to add monitoring and notification requirements regarding placement on a registry or database and to allow notification of termination of association through the DHSS database;
- add a new section at 7 AAC 10.927 to provide a mechanism for seeking reconsideration of a department decision, including what information must accompany a request for and how the request will be reviewed;
- amend 7 AAC 10.930 (Request for a variance) to
  - clarify requirements and to add a requirement for anyone requesting a variance for a barrier condition to submit a statement describing actions the person has taken to reduce the risk of reoffending, including proof of active participation or completion of any treatment program required by a court [(a)(4)];
  - add and revise provisions dealing with the department's review of variance requests [(b) & (b)(1)];
  - repeal outdated references [(d), (e)];
  - repeal reference to a permanent barrier for which a variance will not be granted [(g)(1)];
  - clarify provisions related to permanent barrier crimes and requests for a variance [(h), (i), (j), (k)];
- repeal and readopt 7 AAC 10.10.935 (Review of request for a variance) to create a comprehensive revision intended to clarify, streamline, and simplify the review process, including but not limited to the following:
  - clarify that any variance granted must be addressed each time a license, certification, approval, or finding of eligibility is renewed [(j)];

- remove the requirement to request a new criminal history check each time a license, certification, approval, or finding of eligibility is renewed;
- amend 7 AAC 10.940 to clarify the language regarding the posting of a variance decision;
- amend 7 AAC 10.945 (Revocation of a valid criminal history check or variance) to clarify procedures and to add a requirement, as applicable, to make revocation of a criminal history check or variance effective immediately;
- repeal and readopt 7 AAC 10.950 (Request for reconsideration of a variance request decision) to clarify and simplify the process
- amend 7 AAC 10.960 (Termination of association) to clarify department intent
- amend 7 AAC 10.990 (Definitions) to revise and add definitions
- amend 7 AAC 10.1080 (Firearms and ammunition) to expand applicability of this section to all assisted living homes and to residential psychiatric treatment centers in addition to those facilities already subject to these requirements.
- amend, repeal, and add provisions in 7 AAC 41.015 (Responsibilities of designees), 7 AAC 41.200 (Provider eligibility; application requirements), 7 AAC 41.205 (Child protection and criminal history check requirements) to require relative providers to have a valid criminal history check as a condition of being approved under the child care assistance program.

(4) DHSS also proposes to make additional miscellaneous changes that include:

- update references to federal and other requirements adopted by reference to require entities to be in compliance with the most current standards;
- clarify department intent;
- make technical and conforming amendments, including ensuring consistency in terminology, using plain English, updating authority lines, and correcting, updating, and adding editor's notes.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Karen Benson, Alaska Department of Health & Social Services, 4601 Business Park Blvd., Building K, Anchorage, Alaska 99503. Additionally, the Department of Health & Social Services will accept comments by facsimile at (907) 269-3488 [intra-state toll free at (888) 364-3488] and by electronic mail at [karen.benson@alaska.gov](mailto:karen.benson@alaska.gov). The comments must be received not later than 5 p.m. on February 29, 2016.

Oral or written comments also may be submitted at a hearing to be held on February 12, 2016, at McKinley Conference Room, 4601 Business Park Blvd., Anchorage, AK 99503. You may also join the oral hearing by teleconference by calling 1-800-315-6338 (pin number: 45261#). The hearing will be held from 10 a.m. to 12 noon and might be extended to accommodate those present before 11 a.m. who did not have an opportunity to comment.

You may submit written questions relevant to the proposed action to Karen Benson by e-mail at [karen.benson@alaska.gov](mailto:karen.benson@alaska.gov) or at Alaska Department of Health & Social Services, 4601 Business Park Blvd., Building K, Anchorage, Alaska 99503. The questions must be received at least 10 days before the end of the public comment period. The Department of Health & Social Services will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System at <https://aws.state.ak.us/OnlinePublicNotices/default.aspx> and at the agency's website at <http://dhss.alaska.gov/daph/Pages/default.aspx>.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Karen Benson at [karen.benson@alaska.gov](mailto:karen.benson@alaska.gov) or at (907) 269-5258 not later than February 1, 2016, to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System at

<https://aws.state.ak.us/OnlinePublicNotices/default.aspx> and by contacting Karen Benson at [karen.benson@alaska.gov](mailto:karen.benson@alaska.gov) or at (907) 269-5258.

A copy of material proposed for adoption by reference may be viewed at the agency's office at Alaska Department of Health & Social Services, 4601 Business Park Blvd., Building K, Anchorage, Alaska 99503.

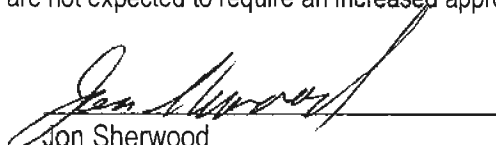
After the public comment period ends, the Department of Health & Social Services will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. **You should comment during the time allowed if your interests could be affected.**

**Statutory authority:** AS 18.05.010; AS 18.05.040; AS 44.29.020; AS 47.05.300; AS 47.05.310; AS 47.05.320; AS 47.05.330; AS 47.05.340; AS 47.14.120; AS 47.25.001; AS 47.32.010; AS 47.32.020; AS 47.32.030; AS 47.33.005; AS 47.33.010.

**Statutes being implemented, interpreted, or made specific:** AS 18.05.010; AS 18.05.040; AS 44.29.020; AS 47.05.300; AS 47.05.310; AS 47.05.320; AS 47.05.330; AS 47.05.340; AS 47.14.120; AS 47.25.001; AS 47.32.010; AS 47.32.020; AS 47.32.030; AS 47.33.005; AS 47.33.010.

**Fiscal information:** The proposed regulation changes are not expected to require an increased appropriation.

DATE: 1/14/16

  
Jon Sherwood  
Deputy Commissioner  
Department of Health & Social Services

## NOTICE OF PROPOSED CHANGES ON BARRIER CRIMES, CRIMINAL HISTORY CHECKS, & FIREARMS IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

The Department of Health & Social Services proposes to adopt regulation changes in Title 7 of the Alaska Administrative Code, dealing with barrier crimes, criminal history checks, and the prohibition of firearms and ammunition in certain facilities, including the following:

(1) Add facilities that will be prohibited from having firearms and ammunition on the premises, including all assisted living homes and residential psychiatric treatment centers. This prohibition already applies to assisted living homes licensed for more than five residents, and to child care centers, residential child care facilities, and maternity homes. With the proposed change, there will no longer be an exception for assisted living homes licensed for five or fewer residents.

(2) Repeal the exemption from requiring a criminal history check for relative care providers seeking to participate in the child care assistance program under 7 AAC 41. With the proposed change, those providers will be required to have a valid criminal history check as a condition for approval to participate in the program. [See 7 AAC 10.900(d)(5) and the proposed revisions to and repeals of corresponding provisions in 7 AAC 41]

(3) Other proposed changes to the regulations include but are not limited to:

- amend 7 AAC 10.010 (Purpose of chapter) to clarify that individuals are subject to applicable requirements
- amend 7 AAC 10.015 (Applicability of chapter) to clarify the scope of the chapter and to clarify that certain civil findings affect a criminal history check
- amend 7 AAC 10.900 to
  - clarify that certain civil findings affect a criminal history check;
  - clarify that regular contact with a recipient of services includes interaction with or access to a recipient's property, personal identifying information, financial information, treatment information, or medical records;
  - include apprentices in the list of individuals required to have a valid criminal history check;
  - repeal the exemption for approved relative providers under the child care assistance program;
- add a new section at 7 AAC 10.902 allowing an individual to request a criminal history check on their own behalf
- add a new section at 7 AAC 10.903 limiting disclosure by DHSS of criminal history check and variance review committee information
- amend 7 AAC 10.905 (Barrier crimes and conditions) to
  - address civil findings; address standards for protecting the health, safety, and welfare of recipients of services; update applicable offenses, including sex trafficking;
  - add provisions that include prohibitions set out in various federal laws, including Medicaid fraud as a permanent barrier;
  - add provisions for offenses related to neglect, abuse, or exploitation of a child or vulnerable adult;
  - add a provision that makes harassment in the first degree as a five-year barrier;
- repeal 7 AAC 10.905(f) to remove as barriers certain crimes that provide for a one-year barrier
- amend 7 AAC 10.910 (Request for a criminal history check) to
  - include appointment of a board member as a requirement to obtain a valid criminal history check [(a)(3)];
  - repeal outdated references [(a)(6)];
  - clarify who must apply [(b)];
  - change fingerprint submittal requirements from two sets to one [(b)(3)];
  - limit waiver of fees for volunteers to recognized nonprofits [(b)(6)];

- provide that a valid criminal history check remains valid for five years instead of six years, under certain conditions and subject to annual verification to the department [(c)];
- require renewal of an applicable criminal history check at least every five years [(d)];
- repeal the requirement to reimburse the department for any waived application fee and the requirement to pay a verification fee [(e)];
- clarify requirements for individuals who transfer between sites operated by same entity or provider [(f)];
- clarify what constitutes a valid criminal history check [(h)];
- add a provision barring association, licensure, certification, approval, or a finding of eligibility for anyone who fails to obtain a required criminal history check [(j)];
- amend 7 AAC 10.915 (Criminal history check) to
  - clarify applicability; add professional licensing registries [(a)(5)];
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  - allow the notification of department decisions through electronic mail, regular mail, facsimile, and through the department's electronic database [(c)];
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  - add provisions dealing with department notification after determining a barrier exists [(e)];
  - clarify what determines that a criminal history check becomes immediately invalid [(g)];
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- amend 7 AAC 10.920 to set a 60-day validity limit for a provisional criminal history check;
- amend 7 AAC 10.925 to add monitoring and notification requirements regarding placement on a registry or database and to allow notification of termination of association through the DHSS database;
- add a new section at 7 AAC 10.927 to provide a mechanism for seeking reconsideration of a department decision, including what information must accompany a request for and how the request will be reviewed;
- amend 7 AAC 10.930 (Request for a variance) to
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  - add and revise provisions dealing with the department's review of variance requests [(b) & (b)(1)];
  - repeal outdated references [(d), (e)];
  - repeal reference to a permanent barrier for which a variance will not be granted [(g)(1)];
  - clarify provisions related to permanent barrier crimes and requests for a variance [(h), (i), (j), (k)];
- repeal and readopt 7 AAC 10.10.935 (Review of request for a variance) to create a comprehensive revision intended to clarify, streamline, and simplify the review process, including but not limited to the following:
  - clarify that any variance granted must be addressed each time a license, certification, approval, or finding of eligibility is renewed [(j)];
  - remove the requirement to request a new criminal history check each time a license, certification, approval, or finding of eligibility is renewed;
- amend 7 AAC 10.940 to clarify the language regarding the posting of a variance decision;
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(4) DHSS also proposes to make additional miscellaneous changes that include:

- update references to federal and other requirements adopted by reference to require entities to be in compliance with the most current standards;
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Oral or written comments also may be submitted at a hearing to be held on February 12, 2016, at McKinley Conference Room, 4601 Business Park Blvd., Anchorage, AK 99503. You may also join the oral hearing by teleconference by calling 1-800-315-6338 (pin number: 45261#). The hearing will be held from 10 a.m. to 12 noon and might be extended to accommodate those present before 11 a.m. who did not have an opportunity to comment.

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**Statutory authority:** AS 18.05.010; AS 18.05.040; AS 44.29.020; AS 47.05.300; AS 47.05.310; AS 47.05.320; AS 47.05.330; AS 47.05.340; AS 47.14.120; AS 47.25.001; AS 47.32.010; AS 47.32.020; AS 47.32.030; AS 47.33.005; AS 47.33.010.

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**Fiscal information:** The proposed regulation changes are not expected to require an increased appropriation.

DATE: 1/14/16

  
\_\_\_\_\_  
Jon Sherwood  
Deputy Commissioner  
Department of Health & Social Services

ADDITIONAL REGULATION NOTICE INFORMATION  
(AS 44.62.190(d))<sup>1</sup>

1. Adopting agency: Department of Health and Social Services
2. General subject of regulation: Revisions to barrier crimes and criminal history checks, and to the prohibition of firearms and ammunition in certain facilities.
3. Citation of regulation (may be grouped): Title 7, Chapter 10, of the Alaska Administrative Code (7 AAC 10, Licensing, Certification, and Approvals), and in Title 7, Chapter 41 (7 AAC 41, Child Care Assistance Program)
4. Department of Law file number, if any: JU2015200970
5. Reason for the proposed action:  
  
☐ Compliance with federal law or action (identify): \_\_\_\_\_  
☐ Compliance with new or changed state statute  
☐ Compliance with federal or state court decision (identify): \_\_\_\_\_  
☒ Development of program standards: \_\_\_\_\_  
☐ Other (identify): \_\_\_\_\_
6. Appropriation/Allocation: Health Care Services/Residential Licensing
7. Estimated annual cost to comply with the proposed action to:  
  
A private person: There are no fiscal increases but there is a change in the number of years to renew a background check, from original six years to a proposed five years. A renewal will require the same amount of a new background check of \$74.75.  
Another state agency: For those agencies that pay for a portion of the background check for their providers, the only change will be the referenced change of a renewal timeframe.  
A municipality: None
8. Cost of implementation to the state agency and available funding (in thousands of dollars): There is no fiscal impact

	Initial Year FY _____	Subsequent Years
Operating Cost	\$ _____	\$ _____
Capital Cost	\$ _____	\$ _____
1002 Federal receipts	\$ _____	\$ _____
1003 General fund match	\$ _____	\$ _____
1004 General fund	\$ _____	\$ _____

1005 General fund/

program

\$ \_\_\_\_\_ \$ \_\_\_\_\_

Other (identify)

\$ \_\_\_\_\_ \$ \_\_\_\_\_

9. The name of the contact person for the regulation:

Name: Jane Urbanovsky

Title: Certification & Licensing Administrator

Address: 4601 Business Park Blvd. Bldg K Anch. AK 99503

Telephone: 907-269-4526

E-mail address: jane.urbanovsky@alaska.gov

10. The origin of the proposed action:

X Staff of state agency

\_\_\_\_\_ Federal government

\_\_\_\_\_ General public

\_\_\_\_\_ Petition for regulation change

\_\_\_\_\_ Other (identify): \_\_\_\_\_

11. Date: Dec. 31, 2015

Prepared by:

Jane Urbanovsky

[signature]

Name (printed):

Jane Urbanovsky

Title (printed):

Certification & Licensing Administrator

Telephone:

907-269-4526

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION  
AND FURNISHING OF ADDITIONAL INFORMATION

I, Triptaa Surve, Project Coordinator, of Department of Health & Social Services, being sworn, state the following:

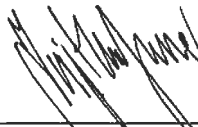
As required by AS 44.62.190, notice of the proposed adoption of changes to 7 AAC 10 & 41, and dealing Barrier Crimes, Criminal History Checks, Firearms; Criminal History Checks for Providers, has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulation;
- (5) furnished electronically to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Division of Legal and Research Services;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulation, to the Legislative Affairs Agency, the chair of the Health & Social Services and Finance Committees of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date:

January 24, 2017.



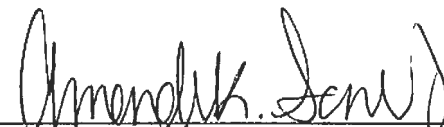
Triptaa Surve, Project Coordinator

Subscribed and sworn to before me at

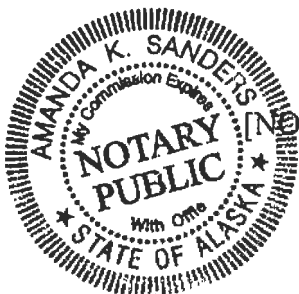
DHSS Commissioners office on

1/24/2017

(date)



Notary Public in and for the State of Alaska



[NOTARY SEAL]

AFFIDAVIT OF ORAL HEARING

I, Karen Benson, Social Services Program Officer of the Department of Health & Social Services, being sworn, state the following:

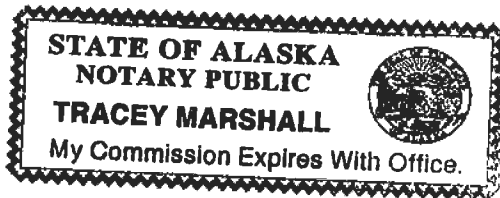
On February 12, 2016, at 10:00 a.m. in the McKinley Conference room, 4601 Business Park Blvd., Bldg. K, Anchorage, AK, 99503, I presided over a public hearing held under AS 44.62.210 for the purpose of taking testimony in connection with the adoption of changes to 7 AAC 10 – Licensing, Certification, and Approvals, including Barrier Crimes, Criminal History Checks, and Firearms and 7 AAC 41 – Child Care Assistance Program including criminal history checks for relative providers.

Date: January 25, 2017

Karen Benson

Karen Benson, Social Services Program Officer

Subscribed and sworn to before me at 4601 Business Park Blvd., Bldg. K, Anchorage, AK 99503 on January 25, 2017.



Tracey Marshall

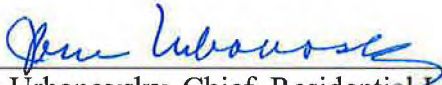
Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Jane Urbanovsky, Certification & Licensing Administrator for Health Care Services, Residential Licensing & Background Check Programs, being duly sworn, state the following:

In compliance with AS 44.62.215, the Background Check Program has kept a record of its use or rejection of factual or other substantive information that was submitted in writing and orally as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Health & Social Services regulation on 7 AAC 10 – Licensing, Certification, and Approvals, including Barrier Crimes, Criminal History Checks, and Firearms and 7 AAC 41 – Child Care Assistance Program including criminal history checks for relative providers. The Background Check Program did receive factual or other substantive information that was submitted in writing or orally as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department's regulation on Background Check Regulations.

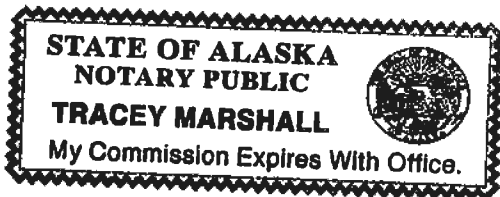
Date: 1-25-17

  
Jane Urbanovsky, Chief, Residential Licensing and  
Background Check Program

Subscribed and sworn to before me at 4601 Business Park Blvd., Bldg. K, Anchorage, AK 99503 on January 25, 2017.

Date: 1.25.17

  
Notary Public in and for the State of Alaska





270229  
0001380182  
\$1,259.96

# AFFIDAVIT OF PUBLICATION

STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

Emma Dunlap  
being first duly sworn on oath deposes and  
says that he/she is a representative of the  
Alaska Dispatch News, a daily newspaper.  
That said newspaper has been approved  
by the Third Judicial Court, Anchorage,  
Alaska, and it now and has been published  
in the English language continually as a  
daily newspaper in Anchorage, Alaska, and  
it is now and during all said time was  
printed in an office maintained at the  
aforesaid place of publication of said  
newspaper. That the annexed is a copy of  
an advertisement as it was published in  
regular issues (and not in supplemental  
form) of said newspaper on

February 11, 2016

and that such newspaper was regularly  
distributed to its subscribers during all of  
said period. That the full amount of the fee  
charged for the foregoing publication is not  
in excess of the rate charged private  
individuals.

Signed

*Emma Dunlap*

Subscribed and sworn to before me  
this 11th day of February, 2016

*Britney Thompson*

Notary Public in and for  
The State of Alaska.  
Third Division  
Anchorage, Alaska

MY COMMISSION EXPIRES

Notary Public  
BRITNEY L. THOMPSON  
State of Alaska  
My Commission Expires 02/23/2019

## SUPPLEMENTAL NOTICE OF PROPOSED CHANGES FIREARMS IN THE REGULATIONS OF THE D

The Department of Health & Social Services proposes to adopt regulation  
crimes, criminal history checks, and the prohibition of firearms and amm

(1) Add facilities that will be prohibited from having firearms and amm  
psychiatric treatment centers. This prohibition already applies to assiste  
centers, residential child care facilities, and maternity homes. With the  
homes licensed for five or fewer residents.

(2) Repeal the exemption from requiring a criminal history check for re  
program under 7 AAC 41. With the proposed change, those providers w  
approval to participate in the program. [See 7 AAC 10.900(d)(5) and the pro

(3) Other proposed changes to the regulations include but are not limited to

- amend 7 AAC 10.010 (Purpose of chapter) to clarify that individual
- amend 7 AAC 10.015 (Applicability of chapter) to clarify the scope
- amend 7 AAC 10.900 to
- clarify that certain civil findings affect a criminal history
- clarify that regular contact with a recipient of services i
- include apprentices in the list of individuals required to
- repeal the exemption for approved relative providers un
- add a new section at 7 AAC 10.902 allowing an individual to requ
- add a new section at 7 AAC 10.903 limiting disclosure by DHSS of
- amend 7 AAC 10.905 (Barrier crimes and conditions) to
- address civil findings; address standards for protecting
- applicable offenses, including sex trafficking;
- add provisions that include prohibitions set out in variou
- add provisions for offenses related to neglect, abuse, or
- add a provision that makes harassment in the first degre
- repeal 7 AAC 10.905(f) to remove as barriers certain crimes that pr
- amend 7 AAC 10.910 (Request for a criminal history check) to
- include appointment of a board member as a requireme
- repeal outdated references ((a)(6));
- clarify who must apply ((b));
- change fingerprint submittal requirements from two sets
- limit waiver of fees for volunteers to recognized nonprof
- provide that a valid criminal history check remains valid
- to annual verification to the department ((c));
- require renewal of an applicable criminal history check a
- repeal the requirement to reimburse the department for
- fee ((e));
- clarify requirements for

## ADVERTISE YOUR LEGAL NOTICE

Published: February 11, 18 & 25  
2016

MANLEY & BRAUTIGAM, P.C.  
Counsel for Shaun Kimberley Lane,  
Successor Trustee of the George C.  
Wilmouth Revocable Trust dated  
November 6, 2003  
/s/ Peter B. Brautigan  
Alaska Bar No. #841110

DATED in Anchorage, Alaska,  
this 9th day of February, 2016  
Notice is hereby given that George  
C. Wilmouth, Settlor/Grantor of the  
George C. Wilmouth Revocable Trust  
dated November 6, 2003 (the  
"Trust"), died on December 13,  
2015. Shaun Kimberley Lane is  
Successor Trustee of the Trust.  
Pursuant to AS 13.36.368, all  
persons having claims against the  
said deceased or the Trust are  
required to present their claims to  
the Successor Trustee, c/o Peter B.  
Brautigan, Esq., Manley &  
Brautigan, P.C., 845 K Street,  
Anchorage, AK 99501 within four (4)  
months after the date of first  
publication of this notice or said  
claims will be forever barred.

## NOTICE TO CREDITORS

IN THE MATTER OF THE ESTATE OF  
GEORGE C. WILMOUTH REVOCABLE  
TRUST DATED NOVEMBER 6, 2003,  
DECEASED.  
THIRD JUDICIAL DISTRICT  
AT ANCHORAGE

Published: February 5 - 11, 15 - 17 &  
22 - 24, 2016

Interested parties may obtain a  
copy of the Request for Proposals  
by contacting Tom John, Tribal  
Administrator, Newtok Village  
Council at  
WWW.NINC@yaho.com or by  
telephone at (907)  
237-2202. Proposals are due by 4:00  
pm, February 26, 2016.

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soliciting proposals from qualified  
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Support Tribal Roads Program  
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Published: Jan 12 - Feb 14, 2016  
www.healthymatsun.org.  
Interested parties must submit a completed  
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# AFFIDAVIT OF PUBLICATION

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THIRD JUDICIAL DISTRICT

Emma Dunlap  
being first duly sworn on oath deposes and  
says that he/she is a representative of the  
Alaska Dispatch News, a daily newspaper.  
That said newspaper has been approved  
by the Third Judicial Court, Anchorage,  
Alaska, and it now and has been published  
in the English language continually as a  
daily newspaper in Anchorage, Alaska, and  
it is now and during all said time was  
printed in an office maintained at the  
aforesaid place of publication of said  
newspaper. That the annexed is a copy of  
an advertisement as it was published in  
regular issues (and not in supplemental  
form) of said newspaper on

January 16, 2016

and that such newspaper was regularly  
distributed to its subscribers during all of  
said period. That the full amount of the fee  
charged for the foregoing publication is not  
in excess of the rate charged private  
individuals.

Signed

*Emma Dunlap*

Subscribed and sworn to before me  
this 19th day of January, 2016

*Britney Thompson*

Notary Public in and for  
The State of Alaska.

Third Division

Anchorage, Alaska

MY COMMISSION EXPIRES

2/23/2019  
Notary Public  
BRITNEY L. THOMPSON

State of Alaska

My Commission Expires Feb 23, 2019

## NOTICE OF PROPOSED CHANGES ON BARRIER CRIMES, CRIMINAL HISTORY CHECKS, & FIREARMS IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

The Department of Health & Social Services proposes to adopt regulation changes in Title 7 of the Alaska Administrative Code, dealing with barrier crimes, criminal history checks, and the prohibition of firearms and ammunition in certain facilities, including the following:

(1) Add facilities that will be prohibited from having firearms and ammunition on the premises, including all assisted living homes and residential psychiatric treatment centers. This prohibition already applies to assisted living homes licensed for more than five residents, and to child care centers, residential child care facilities, and maternity homes. With the proposed change, there will no longer be an exception for assisted living homes licensed for five or fewer residents.

(2) Repeal the exemption from requiring a criminal history check for relative care providers seeking to participate in the child care assistance program under 7 AAC 41. With the proposed change, those providers will be required to have a valid criminal history check as a condition for approval to participate in the program. [See 7 AAC 10.900(d)(5) and the proposed revisions to and repeals of corresponding provisions in 7 AAC 41]

(3) Other proposed changes to the regulations include but are not limited to:

- amend 7 AAC 10.010 (Purpose of chapter) to clarify that individuals are subject to applicable requirements
- amend 7 AAC 10.015 (Applicability of chapter) to clarify the scope of the chapter and to clarify that certain civil findings affect a criminal history check
- amend 7 AAC 10.900 to

○ clarify that certain civil findings affect a criminal history check;  
○ clarify that regular contact with a recipient of services includes interaction with or access to a

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