

CHAPTER 48A
BACKGROUND CHECKS

Authority

N.J.S.A. 30:6D-63 et seq.

Source and Effective Date

R.2008 d.296, effective September 11, 2008.
See: 40 N.J.R. 2645(a), 40 N.J.R. 5807(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 48A, Background Checks, expires on September 11, 2015. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 48A, Background Checks, was adopted as new rules by R.2003 d.222, effective June 2, 2003. See: 34 N.J.R. 2644(a), 35 N.J.R. 2479(b).

Chapter 48A, Background Checks, was readopted as R.2008 d.296, effective September 11, 2008. See: Source and Effective Date. See, also, section annotations.

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APPENDIX A

SUBCHAPTER 1. GENERAL PROVISIONS

10:48A-1.1 Purpose

The purpose of this subchapter is to establish guidelines for obtaining criminal history background checks of employees of agencies under contract with the Division of Developmental Disabilities.

10:48A-1.2 Scope

Background checks shall be conducted for those employees of agencies under contract with the Division, working in such contracted programs, who have direct contact with the per-

sons served by the agency. Such employees include, but are not limited to, consultants, interns and seasonal employees.

10:48A-1.3 Definitions

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

“Archive request” means an excel spreadsheet submitted electronically for a two-year Criminal History Record Inquiry (CHRI).

“Assistant Commissioner” means the Assistant Commissioner of the Division of Developmental Disabilities.

“Community agency” means a public or private agency under contract with the Department to provide services to Department individuals who have developmental disabilities.

“Community agency board” means the board of directors of a community agency.

“Community agency employee” means any individual, age 18 and older, who is employed by a public or private agency under contract with the Department to provide services to Department individuals who have developmental disabilities, and includes all personnel who may come into direct contact with individuals who have developmental disabilities.

“Community agency head” means the person responsible for the overall operation of the agency under contract with the Department.

“DDD fingerprint liaison” means the staff person in the Division of Developmental Disabilities (DDD) who transmits electronic requests to the live scan vendor.

“DHS Coordinator” means the staff member in the Department of Human Services Central Fingerprint Unit (CFU) who advises the agency of the results of the criminal history background checks.

“Division” means the Division of Developmental Disabilities.

Amended by R.2008 d.296, effective October 6, 2008.
See: 40 N.J.R. 2645(a), 40 N.J.R. 5807(a).

Added definitions “Archive request”, “Assistant Commissioner” and “DDD fingerprint liaison”.

SUBCHAPTER 2. ADMINISTRATION

10:48A-2.1 General standards

(a) N.J.S.A. 30:6D-63 to 72 requires that the Department shall not contract with any community agency for the provision of services unless it has first been determined that no criminal history record information exists on file in the

Federal Bureau of Investigation Identification Division, or in the State Bureau of Identification in the Division of State Police, which would disqualify the community agency head or the community agency employee from such employment.

(b) Fingerprints shall be taken electronically through a "live scan" process. The agency staff shall be responsible to schedule an appointment to have fingerprints taken by calling a toll free number (877-503-5981) or accessing the website at (www.bioapplicant.com/nj). The State Bureau of Identification will check its own records and forward an inquiry to the Federal Bureau of Investigation.

(c) It shall be the responsibility of the community agency head to assure compliance with this chapter.

(d) If the criminal history record indicates a conviction for certain criminal or disorderly persons offenses, the employee shall be terminated from employment unless he or she affirmatively demonstrates to the community agency head or the community agency board, if the individual is the community agency head, clear and convincing evidence of his or her rehabilitation.

(e) If a prospective employee refuses to consent to or cooperate in securing a background check, the person shall not be considered for employment.

(f) If a current employee refuses to consent to or cooperate in securing fingerprints for the purpose of a background check, the person shall be immediately removed from his or her position and the person's employment shall be terminated.

(g) A background check shall be conducted at least once every two years through the electronic submission of an archive request. An archive request shall be submitted by the community agency electronically to the DDD fingerprint liaison to be forwarded to the live scan vendor. The CHRI result will be forwarded to the DHS Coordinator for distribution to the requesting community agency.

(h) The community agency head and all employees who may come in contact with persons served by the agency, shall submit their fingerprints upon employment to the Department of Human Services office as directed by the Division.

(i) If the background check of the community agency head reveals a criminal record as identified below, the community agency board shall determine within 15 working days, if the community agency head has been rehabilitated in accordance with N.J.A.C. 10:48-3.4.

(j) The community agency head shall ensure that each employee who may come in contact with persons served by the agency shall be fingerprinted in accordance with the procedures contained in this chapter.

(k) All employees shall sign a written consent to the criminal background check (refer to chapter Appendix A, incorporated herein by reference) prior to the time the fingerprints are taken. This consent shall remain on file in the agency.

(l) Individuals shall be disqualified for employment for any of the following crimes or disorderly persons offenses in New Jersey:

1. Any crime or disorderly person offense involving danger to the person as set forth in N.J.S.A. 2C:11-1 et seq. through 2C:15-1 et seq., including the following:

- i. Murder;
- ii. Manslaughter;
- iii. Death by auto;
- iv. Simple assault;
- v. Aggravated assault;
- vi. Recklessly endangering another person;
- vii. Terroristic threats;
- viii. Kidnapping;
- ix. Interference with custody of children;
- x. Sexual assault;
- xi. Criminal sexual contact;
- xii. Lewdness; or
- xiii. Robbery;

2. Any crime against children or incompetents as set forth in N.J.S.A. 2C:24-1 et seq., including the following:

- i. Endangering the welfare of a child; or
- ii. Endangering the welfare of an incompetent person;

3. A crime or offense involving the manufacture, transportation, sale, possession or habitual use of a controlled dangerous substance as defined in N.J.S.A. 24:21-1 et seq.; or

4. In any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in (l)1 through 3 above.

Amended by R.2008 d.296, effective October 6, 2008.

See: 40 N.J.R. 2645(a), 40 N.J.R. 5807(a).

In (b), deleted "to call a toll free number" following "responsible", and inserted "by calling a toll free number (877-503-5981) or accessing the website at (www.bioapplicant.com/nj)"; and in (g), inserted "through the electronic submission of an archive request" and inserted the last two sentences.