

Article 3. Criminal History; Registry.

47.05.300. Applicability. (a) The provisions of AS 47.05.310 - 47.05.390 apply to any individual or entity that is required by statute or regulation to be licensed or certified by the department or that is eligible to receive payments, in whole or in part, from the department to provide for the health, safety, and welfare of persons who are served by the programs administered by the department.

(b) Those individual service providers subject to AS 47.05.310 - 47.05.390 under (a) of this section include

- (1) public home care providers described in AS 47.05.017;
- (2) providers of home and community-based waiver services financed under AS 47.07.030(c);

and

- (3) case managers to coordinate community mental health services under AS 47.30.530.

47.05.310. Criminal history; criminal history check; compliance. (a) If an individual has been charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a crime that is inconsistent with the standards for licensure or certification established by the department by regulation, that individual may not own an entity, or be an officer, director, partner, member, or principal of the business organization that owns an entity. In addition, an entity may not

- (1) allow that individual to operate the entity;
- (2) hire or retain that individual at the entity as an employee, independent contractor, or unsupervised volunteer of the entity;
- (3) allow that individual to reside in the entity if not a recipient of services; or
- (4) allow that individual to be present in the entity if the individual would have regular contact with individuals who receive services from the entity, unless that individual is a family member of or visitor of an individual who receives services from the entity.

(b) The department may not issue or renew a license or a certification for an entity that is in violation of (a) of this section or that would be in violation based on the information received as part of the application process.

(c) The department may not issue or renew a license or certification for an entity if an individual is applying for a license, license renewal, certification, or certification renewal for the entity and that

(1) individual has been found by a court or agency of this or another jurisdiction to have neglected, abused, or exploited a child or vulnerable adult under AS 47.10, AS 47.24, or AS 47.62 or a substantially similar provision in another jurisdiction, or to have committed medical assistance fraud under AS 47.05.210 or a substantially similar provision in another jurisdiction; or

(2) individual's name appears on the centralized registry established under AS 47.05.330 or a similar registry of this state or another jurisdiction.

(d) An entity shall provide to the department a release of information authorization for a criminal history check for an individual who is not a recipient of services from the entity and, after the entity has been issued a license, license renewal, certification, or certification renewal by the department,

- (1) who intends to become an owner of the entity, or an officer, director, partner, member, or principal of the business organization that owns the entity;
- (2) whom the entity intends to hire or retain as the operator of the entity's business;
- (3) whom the entity intends to hire or retain as an employee, independent contractor, or unsupervised volunteer of the entity; or

(4) who will be present in the entity or at the places of operation of entity, and would have regular contact with individuals who receive services from the entity, but who is not a family member or visitor of an individual who receives services from the entity.

(e) An individual for whom a release of information authorization has been provided to the department shall submit the individual's fingerprints to the department, with the fee established under AS 12.62.160, for a report of criminal justice information under AS 12.62 and for submission by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check. The Department of Public Safety shall provide the report of criminal justice information and the results of the national criminal history record check to the department for its use in considering an application for a license, license renewal, certification, or certification renewal, or in considering other approval or selection regarding an entity, for compliance with the standards established in this section. For purposes of obtaining access to criminal justice information maintained by the Department of Public Safety under AS 12.62, the department is a criminal justice agency conducting a criminal justice activity. The department may waive the requirement for fingerprint submission if an individual is unable to provide fingerprints due to a medical or physical condition that is documented by a licensed physician.

(f) The provisions of this section do not apply if the department grants an exception from a requirement of (a) - (e) of this section under a regulation adopted by the department.

(g) The department shall adopt regulations listing those criminal offenses that are inconsistent with the standards for licensure or certification by the department.

(h) An individual service provider is subject to the provisions of (a) - (g) of this section as if the individual service provider were an entity subject to those provisions.

(i) For purposes of (b) and (c) of this section, in place of nonissuance or nonrenewal of a license or certification, an entity or individual service provider that is not required to be licensed or certified by the department or a person wishing to become an entity or individual service provider that is not required to be licensed or certified by the department is instead ineligible to receive a payment, in whole or in part, from the department to provide for the health, safety, and welfare of persons who are served by the programs administered by the department if the entity, individual service provider, or person

(1) is in violation of (a) of this section or would be in violation based on information received by the department as part of an application, approval, or selection process;

(2) has been found by a court or agency of this or another jurisdiction to have neglected, abused, or exploited a child or vulnerable adult under AS 47.10, AS 47.24, or AS 47.62 or a substantially similar provision in another jurisdiction, or to have committed medical assistance fraud under AS 47.05.210 or a substantially similar provision in another jurisdiction; or

(3) appears on the centralized registry established under AS 47.05.330 or a similar registry of this state or another jurisdiction.

47.05.320. Criminal history use standards. The department shall by regulation establish standards for the consideration and use by the department, an entity, or an individual service provider of the criminal history of an individual obtained under AS 47.05.310.

47.05.330. Centralized registry. (a) The department shall by regulation provide for a centralized registry to facilitate the licensing or certification of entities and individual service providers, the authorization of payments to entities or individual service providers by the department, and the employment of individuals by entities and individual service providers.

(b) Except for the name of each victim being redacted before the information is placed on the registry, the registry shall consist of the following information for an entity or individual service provider, an applicant on behalf of an entity or individual service provider, or an employee or unsupervised volunteer of an entity or individual service provider:

(1) decisions, orders, judgments, and adjudications finding that the applicant, employee, or unsupervised volunteer committed

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

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

(2) orders under a state statute or a substantially similar provision in another jurisdiction that a license or certification of the entity or individual service provider to provide services related to the health, safety, and welfare of persons was denied, suspended, revoked, or conditioned.

(c) As a condition for applying for licensure or certification of an entity or individual service provider, or for payment to an entity or individual service provider by the department, an applicant must agree to submit timely to the registry the information required under this section relating to the entity, any individual, the applicant, employees, and unsupervised volunteers of the entity or individual service provider.

(d) Within 24 hours of a court decision, order, judgment, or adjudication that an entity, individual service provider, or employee or unsupervised volunteer of an entity or individual service provider committed an act listed under (b) of this section, the entity, individual service provider, or employee or unsupervised volunteer of an entity or individual service provider shall report the court action to the department.

(e) Within 24 hours of receiving notice of an allegation that an employee, unsupervised volunteer, or former employee or unsupervised volunteer of an entity or individual service provider committed an act listed under (b) of this section within the past 10 years, the entity or individual service provider shall report the allegation to the department.

(f) The department shall prescribe by regulation the form or format by which an applicant shall submit required information to the registry.

(g) Notwithstanding any contrary provision of law, the department may also submit information described in this section to the registry. An entity or individual that is exempt from department licensure

or certification and that does not receive money from the department for its services may voluntarily submit information described in this section to the department for placement in the registry.

(h) Information contained in the registry is confidential and is not subject to public inspection and copying under AS 40.25.110 - 40.25.125. However, information contained in the registry may be released to entities, individual service providers, and governmental agencies authorized and in a manner provided under this section and regulations adopted under this section.

(i) A person is presumed to be acting in good faith and is immune from civil and criminal liability if the person

- (1) makes a report of medical assistance fraud, abuse, neglect, or exploitation;
- (2) submits information to the registry; or
- (3) fails to hire or retain an employee or unsupervised volunteer because the employee

or unsupervised volunteer is included in the registry.

(j) A person about whom information is placed in the registry shall be notified of the placement by the department and may request the department to delete or modify the information to correct inaccuracies. The department shall investigate the request and make necessary deletions or modifications if the department finds no relationship between the information placed in the registry and the risk of harm to the entity's clientele.

47.05.340. Regulations. The department shall adopt regulations to implement AS 47.05.300 - 47.05.390.

47.05.350. Use of information; immunity. An entity or individual service provider that obtains information about an employee under a criminal history check under AS 47.05.310 may use that information only as provided for in regulations adopted by the department under AS 47.05.320. However, if an entity or individual service provider reasonably relies on the information provided under the regulations adopted by the department to deny employment to an individual who was selected for hire as an employee, including during a period of provisional employment, the entity or individual service provider is not liable in an action brought by the individual based on the employment determination resulting from the information.

47.05.390. Definitions. In AS 47.05.300 - 47.05.390, unless the context otherwise requires,

- (1) "criminal history records" has the meaning given in AS 12.64.010;
- (2) "criminal justice activity" has the meaning given in AS 12.62.900;
- (3) "criminal justice agency" has the meaning given in AS 12.62.900;
- (4) "criminal justice information" has the meaning given in AS 12.62.900;
- (5) "department" means the Department of Health and Social Services;
- (6) "entity" means an entity listed in AS 47.32.010(b) and includes an owner, officer, director, member, or partner of the entity;
- (7) "individual service provider" means an individual described in AS 47.05.300(a), and includes those listed in AS 47.05.300(b);
- (8) "license" includes a provisional license;
- (9) "unsupervised" means that an individual who is licensed under AS 47.32, after submitting a criminal history background check, is not physically present to observe the volunteer at the entity.