

BACKGROUND CHECK POLICY

Effective: July 1, 2009

I. Introduction

Performing background checks on individuals who work with vulnerable people is a component of preventing abuse, neglect and exploitation. This policy describes when a background check is required, the components of a background check, and what is done if a background check reveals a potential problem.

Background checks supplement but do not replace reference checks. Background checks should never be relied upon as a substitute for personal contact with former employers or others who are in a position to have personal knowledge about the employee's qualifications to work with vulnerable people.

This policy does not pertain to licensed long-term care facilities (nursing homes, residential care homes, assisted living residences, therapeutic community residences and homes for the terminally ill).

II. Definitions

A. "**Background check**" includes all of the following:

1. A request for information about all substantiated findings of abuse, neglect, and exploitation directed to the Department for Children and Families (DCF) **child abuse registry**;
2. A request for information about all substantiated findings of abuse, neglect, and exploitation directed to the Department of Disabilities, Aging and Independent Living (DAIL), Division of Licensing and Protection **adult abuse registry**;
3. A request for information about all criminal convictions directed to the **Vermont Crime Information Center (VCIC)**;
4. An on-line search of the Exclusions Database of the federal Department of Health and Human Services' Office of Inspector General as www.oig.hhs.gov;
5. For volunteers or employees who will be paid to transport a person by motor vehicle, a complete **Motor Vehicle Driver Record** from the Vermont Department of Motor Vehicles.

B. "**Person who receives services**" means an individual who receives support and/or services through a program administered by the Department of Disabilities, Aging and Independent Living (DAIL), including, but not limited to,

- Adult Day Services
- Attendant Services
- Children’s Personal Care Services
- Choices for Care Medicaid Waiver home-based services
- Developmental Disability Services
- High Tech Services
- Homemaker Services
- Traumatic Brain Injury Waiver Services

C. **“Agency or provider”** means an organization that operates programs/services administered by DAIL for any “person who receives services”.

D. **“Employee”** means an individual who is employed or contracted by or volunteers for an agency/provider (including contracted home providers, shared living providers, developmental home providers, adult foster care providers), surrogate, family member or person who receives services.

E. **“Volunteer”** means an individual who is not paid (at all or more than just a stipend or expense reimbursement) but who has the potential for unsupervised interaction with a vulnerable adult or child.

III. Requirements for Background Checks

A. Background Checks by Long-term Care Facilities

1. Long-term care facilities are **required** to conduct background checks as set forth in the regulations that govern each facility.
2. Requests for waivers from those regulations shall be directed to and handled by the Division of Licensing and Protection.

B. Background Checks by Agencies and/or Providers

1. Background checks are **required** for all employees who are paid with funds administered by DAIL who:
 - a. Provide care to a person who receives services; or
 - b. Manage funds or services on behalf of a person who receives services.
2. Background checks are **required** for any volunteers recruited and placed by an agency or provider who have the potential for unsupervised interaction with a vulnerable child or adult.
3. Background checks are **recommended** for respite employees hired by families through Flexible Family Funding, the Dementia Respite Program, the National Family Caregiver Support Program (NFCSP) or Flex Funds.
4. Background checks are **recommended** for all adults who reside in a home (such as a developmental home or shared living home) when that home receives DAIL funding to provide residential supports to an individual.

5. Any agency or provider employing an individual or supervising a volunteer is responsible for ensuring that the required background checks are completed.
6. If a background check reveals a conviction or a motor vehicle violation, the agency/provider must use its discretion about whether to hire or contract with the individual.

C. Background Checks by Intermediary Services Organizations

1. An Intermediary Services Organization (ISO) is responsible for ensuring that the required background checks are conducted for any individuals who will be paid through the ISO.

2. Funds administered by DAIL may not be used to employ, place or contract with a person who has:

- a. A substantiated record of abuse, neglect, or exploitation of a child or a vulnerable adult;
- b. Been excluded from participation in Medicaid or Medicare services, programs, or facilities by the federal Department of Health and Human Services' Office of the Inspector General; and/or,
- c. A criminal conviction for an offense involving bodily injury, abuse of a vulnerable person, a felony drug offense, or a property/money crime involving violation of a position of trust, including, but not limited to:

- | | |
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| Aggravated assault | Hate motivated crime |
| Aggravated stalking | Kidnapping |
| Aggravated sexual assault | Lewd and lascivious conduct |
| Assault and robbery | Simple assault |
| Manslaughter | Sexual assault |
| Assault upon law enforcement | Murder |
| Cruelty to children | Domestic assault |
| Arson | Stalking |
| Extortion | Embezzlement |
| Abuse, neglect, or exploitation
of a vulnerable adult or child | Recklessly endangering another
person while driving |
| Cruelty to Animals | |

IV. Payment for Background Checks

Applicants for employment shall not be charged for the costs of background checks covered by this policy. The costs of background checks are considered part of the administrative costs for an agency or provider, and are part of the contract for services of an ISO.

V. Employment Pending Completion of Background Checks

A. An offer of employment or contract may be made contingent upon a satisfactory background check.

B. An employee, contractor or volunteer may, at the discretion of the employer or contracting entity, provide services to a person pending receipt of the results of the background check, but

under no circumstances may an employee or contractor be paid for longer than sixty (60) days without receipt of a completed background check.

VI. Periodic Updating of Background Checks

Subsequent to the initial background check, an agency, provider or ISO shall have a policy for conducting periodic random checks of employees and volunteers in its employ.

VII. Restriction Upon Paying Persons with a History of Substantiated Abuse, Neglect, or Exploitation, or History of Certain Crimes

Funds administered by DAIL may not be used to employ, place or contract with a person who has:

- A. A substantiated record of abuse, neglect, or exploitation of a child or a vulnerable adult; and/or
- B. Been excluded from participation in Medicaid or Medicare services, programs, or facilities by the federal Department of Health and Human Services' Office of the Inspector General.

VIII. Waivers

Waivers from this policy may be granted only under exceptional circumstances.

A. Agency or Provider

1. The agency or provider employing or contracting with an employee or supervising a volunteer is responsible for the decision to grant a waiver under this policy.
2. The following factors must be considered in the decision to grant or deny any waiver:
 - a. Age of the individual at the time of the crime or substantiation;
 - b. Nature and seriousness of the crime (e.g., were there circumstantial reasons; was it related to a specific relationship, etc.);
 - c. The person's involvement with the criminal justice system and/or child or adult abuse, neglect or exploitation systems since the occurrence;
 - d. The amount of time that has passed since the substantiation or conviction;
 - e. Disclosure to the person receiving services, the surrogate, and the legal guardian (if there is one).
3. Written documentation of the decision to grant a waiver must be made stating the rationale for granting the waiver, with reference to each of the factors above, and listing any conditions. A copy of the written documentation shall be kept by the agency/provider and made available to quality reviewers.

B. Individual Employers

1. A home provider (e.g., developmental home, shared living, adult foster care) surrogate, family member or person who receives services who seeks a waiver to employ or contract with an individual with a record must provide a copy of the information in question. The request must be made in writing to:

Division of Disability and Aging Services
Department of Disabilities, Aging and Independent Living
Weeks Building, 103 South Main Street
Waterbury, VT 05671-1601

2. The following factors may be considered in the decision to grant or deny any waiver:

- a. Age of the individual at the time of the crime or substantiation;
- b. Nature and seriousness of the crime (e.g., were there circumstantial reasons; was it related to a specific relationship, etc.);
- c. The person's involvement with the criminal justice system and/or child or adult abuse, neglect or exploitation systems since the occurrence;
- d. The amount of time that has passed since the substantiation or conviction;
- e. Disclosure to the person receiving services, the surrogate, and the legal guardian (if there is one).

3. A copy of the decision regarding the waiver request and any supporting documentation (including the factors considered) shall be kept in the Department's files.