



Alaska Background Check Variances

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Introductions



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Note

- ▶ This presentation is intended to be a summary of the DHSS background check and background check variance process. It is not a stand in for the actual statutes and regulations.



Program History



- ▶ Prior to a centralized background check program, the State of Alaska had 12 Statutes and 19 separate sets of regulations that governed background checks over DHSS providers and staff.
- ▶ In 2005 the State of Alaska began participating in the National Background Check Program pilot, overseen by CMS. These background check standards applied to Skill Nursing Facilities. The State of Alaska decided to apply these standards to all DHSS providers.



Program History



- ▶ The State of Alaska received a grant and built the Legacy Background Check System. As a part of the NBCP the State was required to identify eligibility standards (criminal and civil) and afford appeal rights to applicants.
- ▶ The State of Alaska consolidated all their DHSS background check statutes and regulations into one Statutes (47.05) and one regulations (7 AAC 10.900). These statutes and regulations were reviewed and approved by CMS.



Program History



- ▶ Statute were adopted in 2005/2006 and the program was running by 2007. In 2010 the State of Alaska was awarded a grant to update Legacy and in 2013 we implemented NABCS.
- ▶ NABCS was created to streamline and make more of our processes electronic. Updated regulations were implemented in 2017 that further streamlined processes, updated the variance process to help expedite the review process, and provided updates to the eligibility matrix. In 2018 the statute was changed to update the centralized registry and created civil history registries.



Background Check Program

- ▶ Background Check Program (BCU or BCP).
- ▶ New Alaska Background Check System (NABCS)
- ▶ 9 Staff – Manager and 8 Techs.

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Purpose of Background Checks

- ▶ Establish standards, requirements, and procedures dealing with barrier crimes and conditions, criminal history checks and the centralized registry.
- ▶ Identify offenses and conditions that would bar an individual from licensure, certification, or approval from DHSS.
- ▶ Ensure the health, safety, and welfare of vulnerable populations.

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Statutes and Regulations

- ▶ AS 47.05 – Statute
- ▶ 7 AAC 10.900- Regulation



AS 47.05

- ▶ Part of the legislative process
- ▶ Last updated in 2018



7 AAC 10.900

- Adopted through regulatory process
- Last updated in 2017
- Includes current list of barrier crimes and conditions.

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Applicability

- ▶ Any individual or entity that is required by statute or regulation to be licensed or certified by DHSS.
- ▶ Any individual or entity that is eligible to receive payments, in whole or in part from DHSS for the health, safety and welfare of persons served by programs administered by DHSS.



Background Checks Process

- ▶ Background Check Application includes fingerprints, online application, fees
- ▶ Named based registries are checked by BCP staff.
- ▶ Fingerprint based checks are done by DPS and the FBI.
- ▶ Rap Back with DPS.



Charges and Convictions

- ▶ These regulations apply to any individual who has been charged with, convicted of, found not guilty by reason of insanity or adjudicated as a delinquent.
- ▶ It also applies to anyone charged, convicted or found not guilty of a crime listed in the regulations or a crime with similar elements in another jurisdiction



Barrier Notification

- The BCU sends notification to the Facility/Provider and the Applicant.
- Provider is not provided with the list of barrier crimes or conditions.
- If a denial determination is made the facility or applicant can request a reconsideration or variance.



Reconsideration



- Reconsideration requests are sent to the BCP.
- The Applicant needs to provide additional information regarding their background check;
 - Lesser charge
 - Wrong person or identity
 - Charges were exonerate/ removed from record
- Reconsideration does not consider mitigating circumstances, training, rehab, or the applicants need for employment during a reconsideration.
- May be asked or required to submit additional records before the redetermination is made.

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Background Check Variance

Providers or applicants can request a background check variance.

Steps

- ▶ Applicant and Provider submit a complete application to their Oversight Division for review
 - ▶ Oversight agency reviews and makes a recommendation
 - ▶ Background Check Committee reviews and makes a recommendation (if applicable)
 - ▶ Division Director reviews and makes a recommendation (If permanent)
 - ▶ The Commissioner reviews the application and makes a final decision
- ▶ Note: New Background check regulations allow for some reviews to bypass the committee and go straight to the commissioner for decision.



Oversight Divisions



- Receive all applications for the providers/facilities they oversee
- Ensure applications are complete before forwarding to the Committee
- Provide follow up and request missing items from the applicant/provider
- Make a recommendation based on the content of the application
 - Approval
 - Approval with conditions
 - Denial
- Complete Oversight Agency Recommendation Form
- Forward to the Committee Chairperson
- Ensure application is processed in a timely manner



Complete Applications

- All Application must include the follow;
 - Completed Variance Request Application form.
 - A comprehensive rationale for granting a variance.
 - Summary of any mitigating circumstance regarding the barriers.
 - A demonstration of how the health, safety, and welfare of recipients of services will be adequately protected;.
 - Copies of all known and available information relevant to determining whether the health, safety, and welfare of recipients of services are adequately protected.



Complete Application Cont.

- ▶ A copy of that individual's record of, or if a record is inapplicable, a statement that the individual has no record of;
 - ▶ Any protective order issued or filed under AS 18.66 (Domestic Violence and Sexual Assault) or a substantially similar law or ordinance of another jurisdiction.
 - ▶ Conviction or judgement records.
 - ▶ Indictment or presentment or charging documents.
 - ▶ Regards regarding if the applicant has been charged with a crime, without subsequent conviction.
 - ▶ Regards regarding if the applicant has been charged with a crime that was reduced to a lesser charge.
 - ▶ Regards regarding if the applicant has been charged with a crime for which a suspended imposition of sentence was granted by the court.

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Complete Application Cont.

- ▶ If the individual was incarcerated,
 - ▶ a copy of the order from the local, state, or federal jurisdiction that released the individual from incarceration.
 - ▶ the date of release from incarceration.
 - ▶ any terms and conditions of parole.
- ▶ If the individual was sentenced and, as a part of that sentence, the individual was placed on supervised or unsupervised probation, a copy of the terms and conditions of probation (including the current status).

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Complete Application Cont.

- ▶ The extent, nature, and seriousness of the following:
 - ▶ The individual's offense and past criminal record.
 - ▶ A behavioral health problem if it exists.
 - ▶ A domestic violence problem if it exists.



Complete Application Cont.

- ▶ The age of the individual at the time of the offense, problem, or circumstance.
- ▶ The amount of time that has elapsed since the most recent offense, problem, or circumstance.
- ▶ Any evidence of rehabilitation, prevention, or treatment efforts.
- ▶ 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 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 provider who submitted the request for a variance; nothing in this subparagraph precludes the provider or an applicant from submitting additional letters of recommendation.



Complete Application Cont.

- ▶ Information related to job 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.
- ▶ 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 must also include
 - ▶ A detailed description of any mitigating circumstances that were involved at the time of the offense;
 - ▶ A description of the individual's educational and employment history; and
 - ▶ 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.

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Complete Application Cont.

- ▶ Note, if all information requested is not provided, the applicant *MUST* include an explanation why an attachment is missing, including documentation of attempts to obtain any missing court information.



Note on References



- References must be aware of the barrier condition.
- The reference is not an employment reference
- Reference cannot be related by blood or marriage and not associated with facility.
- The reference cannot be a recipient of services.
- When assessing a reference look for someone who is credible, who is aware of the crime, who attests to the individual's character, and recommend them for the position.



Individuals Statement



- What occurred?
- Why did it occur?
- How have they changed?
- What would they have done differently?
- Are they remorseful?
- Is there a pattern?
- Why should they get a variance?

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Rehabilitation and Training

People should collect the best evidence of rehabilitation available and be able to:

Explain how they have been rehabilitated

Any other steps taken to reduce risk of reoffending and improving their life.



Employment and Education



- Resume with list of duties and skills
- Certifications
- Licenses
- Awards
- GED/Diploma
- Degrees
- Employment References



Incomplete Applications

- ▶ OSDs' with notify the provider and or applicants are notified if the application is incomplete.
 - ▶ If items are not turned in timely the applicant can be denied by the OSD.
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Note on Child In Need of Aid (CINA) Cases and TPRs

- ▶ Unlike criminal indictments, CINA/TPR records cannot be released to the Oversight Divisions.
- ▶ After completing your review and recommendation, forward the case to your committee seat.
- ▶ The committee seat sends CINA information to the chair.
- ▶ Chair requests CINA information from OCS for committee review.
- ▶ CINA records are confidential and cannot be released to applicant or oversight division.



Committee



- ▶ Committee is made up of representatives from DPA, OCS, DBH, SDS, and HCS.
- ▶ The representatives are appointed by the commissioner.
- ▶ Each Division also has an alternate.
- ▶ Chairman oversees all functions of the committee, tracks applications, consults with the commissioner's office, and collects stats.



Review



- ▶ The committee meets every weekly barring state holidays, etc.
- ▶ We only meet when there are applications to review.
- ▶ We must have a quorum to meet.



Review Cont.

- ▶ The Committee reviews all the application material, oversight agency recommendations, and any other applicable Division records prior to making a recommendation
- ▶ A majority of the Committee must support on the recommendation for it to pass.
- ▶ Dissenting opinions are also documented on the application
- ▶ If additional information is needed it could be kicked back to the Oversight Agency

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Director's and Commissioner's Review

- If the barrier is a permanent barrier, it will also be reviewed by a Division Director, who makes their own recommendation
- After that it is forwarded to the Commissioners Office for final decision.
- Commissioner has delegated a decision maker.
- The recommendation's do not have to agree.
- All recommendations are considered by the delegated decision maker and the decision maker can make a different decision than what is recommended.
- The goal is to assess/vet the application and provide the delegated decision maker with all the information needed to make a decision.



Final Decision



- After a final decision is made the provider and/or the applicant is notified by mail of the decision.
- The final decision is sent to the committee chair who forwards the decision to the BCU and the oversight division.
- The notice will provide the applicant and provider direction on expirations, renewals, and appeals.
- Oversight agencies are required to follow up on and ensure compliance with any conditions.

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Federal Prohibitions

Federal law prohibits variance for certain barriers.

This will be noted on the variance as a reason for denial.



Conditions



- ▶ Variance can have conditions placed on them.
- ▶ Providers must follow these conditions, or the variance will be rescinded.

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Request for Reconsideration

- ▶ If an application is denied a reconsideration request can be made by the provider or applicant
- ▶ Requests go to the Commissioner for decision
- ▶ Applicants should provide any additional information they feel is relevant
- ▶ If you receive a request for reconsideration, forward it to your Division's committee member who will forward to the chairman



Superior Court Appeal

- ▶ If denied on reconsideration they can request and appeal through superior court and Dept. of Law steps in.



Transfers



- ▶ Applicants can request that their variance be transferred to another agency if the duties are substantially similar.

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Continuations/Extension

- ▶ Older variances expired when a provider's license or certification renewed.
- ▶ Now variances are follow the individuals background check not the providers license or certification.
- ▶ Instead of making them reapply there is a process for them to ask for an extension.



Questions?