



AGENCY OF HUMAN SERVICES  
DEPARTMENT OF DISABILITIES, AGING AND INDEPENDENT LIVING

## BACKGROUND CHECK POLICY

Department of Disabilities, Aging and Independent Living (DAIL)

*Effective: August 21, 2014*

### I. Introduction

Performing background checks on individuals who may work with vulnerable people is a component of preventing abuse, neglect and exploitation. This policy provides a consistent framework for background checks and describes when a background check is required, the elements 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 prospective worker's or volunteer's qualifications to work with vulnerable people.

### II. Definitions

A. **"Agency"** means an organization that operates programs/services administered by DAIL<sup>1</sup> for any "person who receives services."

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

1. **Child abuse registry** check: database maintained by the **Department for Children and Families** ("DCF") to provide information about people who have been substantiated for abuse, neglect and/or exploitation of children.

2. **Adult abuse registry** check: database maintained by the **Department of Disabilities, Aging and Independent Living** ("DAIL") to provide information about people who have been substantiated for the abuse, neglect and/or exploitation of a vulnerable adult(s).

3. **Criminal background** check: databases, which include the sex offender registry, maintained by **Vermont Crime Information Center** ("VCIC");

4. **Federal Exclusions Databases** check: databases maintained by the federal government to

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<sup>1</sup> This definition also means an organization that operates programs/services for the Vermont Department of Health's Children's Personal Care Services.

include **Department of Health and Human Services' Office of Inspector General [List of Excluded Individuals/Entities \(LEIE\)](#), [System for Award Management](#) or the **Department of Vermont Health Access**.**

5. **Motor Vehicle Driver Record** check: database maintained by the [Vermont Department of Motor Vehicles](#). (For volunteers or other workers who transport persons who receive services as an expected part of the regular job duties.)

C. **“Fiscal/ Employer Agent (F/EA)”** means an entity paid by the State to administer payroll services, including background checks, for individuals enrolled in self-directed services options. For example, ARIS Solutions is an F/EA.

D. **“Individual Employer”** means a contracted home provider (e.g. developmental home, shared living, adult foster care), surrogate, family member or person who receives services who employs or contracts with a worker.

E. **“Long-term care facility”** means a residential services setting that is licensed and regulated by the Division of Licensing and Protection. This includes nursing facilities, residential care homes, assisted living residences, therapeutic community residences, and intermediate care facilities for individuals with developmental disabilities (ICF/DD) and homes for the terminally ill.

F. **“Person who receives services”** means an individual who receives services through a program administered by DAIL<sup>2</sup>, including, but not limited to,

- Adult Day Services
- Attendant Services
- Choices for Care Home-Based Services
- Children’s Personal Care Services
- Developmental Disabilities Services
- High Tech Services
- Homemaker Services
- Older Americans Act Programs
- Traumatic Brain Injury Waiver Services
- Vocational Rehabilitation Services

G. **“Volunteer”** means an individual, who provides a service, as a result of a formal agreement with an agency, program or individual employer, but who is not paid (at all or more than just a stipend or expense reimbursement), and has the opportunity for unsupervised interaction with, or access to the financial resources of, a person who receives services.

H. **“Worker”** means an individual who is employed by or contracts with an agency or individual employer.

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<sup>2</sup> This definition also means an individual who receives Children’s Personal Care Services, a program administered by VDH.

### III. Background Check Requirements

A. Long-term care facilities are **required** to conduct background checks as set forth in the regulations that govern each facility, found at <http://www.dlp.vermont.gov/regs>, and are not subject to the DAIL Background Check Policy.

B. Background checks are **required** for all prospective workers who are paid with funds administered by DAIL.

C. Background checks are **required** for all prospective volunteers.

D. Motor vehicle driver background checks are **required** for prospective workers and volunteers who would be expected to transport persons who receive services as part of the regular job duties. It is at the discretion of the employer of record to determine whether to hire a worker, or engage a contractor or volunteer with a record of motor vehicle violations.

E. Background checks are **required** for respite workers hired by families through Flexible Family Funding, the Dementia Respite Program, the National Family Caregiver Support Program (NFCSP) or Flex Funds.

F. Background checks are **required** for all adults who reside<sup>3</sup> in a home, such as a developmental home or shared living home, when that home receives DAIL funding to provide residential support to a person who receives services.

G. The agency/ or F/EA shall:

- provide a copy of this background check policy to all prospective workers and volunteers before a background check is conducted; and
- conduct background checks required by this policy.

H. The agency or individual employer shall pay for background checks required by this policy; an F/EA is not responsible for paying these costs. A prospective worker or volunteer shall not be charged for the costs of background checks required by this policy.

### IV. Offer/Start Date of Employment/Contract/Volunteer Opportunity

A. An offer of employment, contract or volunteer opportunity may be made contingent upon satisfactory background checks.

B. No prospective worker or volunteer shall begin work until notified by the employer that the background checks are completed and found to be satisfactory.

C. **Medicaid funds shall not be used to pay for services provided before the background check is completed or when the background check is found to be unsatisfactory.**<sup>4</sup>

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<sup>3</sup> "Reside" means intend to remain in the home permanently or for an extended period of time.

<sup>4</sup> When the "individual employer" changes for a worker who already provides, and is expected to continue to provide,

## V. Exclusions

Funds administered by DAIL **shall not be used**, to employ or contract with a worker who has:

- A. A substantiated record of abuse, neglect, or exploitation of a child as determined by DCF;
- B. A substantiated record of abuse, neglect, or exploitation of a vulnerable adult as determined by DAIL;
- C. Been excluded from participation in Medicaid or Medicare services or programs, or from facilities, as reflected in exclusion databases referenced in II B. 4 above.;
- D. A criminal conviction, unless a variance has been granted as set forth in Section VI below, which meets the criteria, “job-related” and “business necessity”<sup>5</sup> including the following:
  - abuse, neglect or exploitation of a child or vulnerable adult
  - lewd and lascivious conduct
  - assaults
  - unlawful restraint
  - recklessly endangering another
  - frauds, including forgery
  - larceny, including thefts and robbery
  - burglary
  - embezzlement
  - extortion
  - homicide, including murder or manslaughter
  - stalking
  - cruelty to children or animals
  - kidnapping
  - possession of child pornography
  - arson
  - drug-related
  - DUI

If a prospective worker or volunteer has a criminal conviction(s), which could result in exclusion from employment, he/she must be informed that he/she may apply for a variance as explained below in Section VI. Decisions regarding exclusions from employment or requests for a variance shall be made on a case-by-case basis.

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services to the same “person who receives services,” a new background check is required. Under those circumstances, the worker will not be paid with funds administered by DAIL while another background check is completed, but will be paid retroactively if the background check is satisfactory.

<sup>5</sup> The Equal Employment Opportunity Commission (“EEOC”) defines “job-related” and “business necessity.” See [www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm). Based on the job requirements and functions, the criminal conviction(s) must present an unacceptable level of risk for the vulnerable person or employer.

## VI. Variances

- A. **Variances for starting work before a background check is completed will not be considered.**
- B. The determination whether to grant a variance must be based on a review and consideration of all of the following factors:
- nature of the position
  - nature and seriousness of the offense(s)
  - time elapsed since the offense(s)
  - number or repeated offenses
  - age at the time of the offense(s)
  - involvement, since the date of the criminal offense, with the criminal justice system and/or child or adult protective services
  - disclosure of the criminal conviction(s) by the prospective worker or volunteer to the person receiving services, the surrogate, and the legal guardian, if any
  - prospective worker's unique caregiving relationship with the person receiving services
  - unavailability of other workers or volunteers who could reasonably be expected to perform the care required
- C. Process for requesting a variance
1. Agency-Managed
    - a. When a prospective worker requests a variance, the agency is responsible for the decision to grant or deny a variance under this policy. For exclusions see section V above.
    - b. The agency shall issue the decision regarding the variance within 15 business days of receipt of the request for a variance.
    - c. The agency shall follow the standards set forth in this policy when granting or denying variances.
    - d. The agency shall maintain written documentation of the decision to grant or deny a variance, including the rationale, listing any conditions. A copy of the written documentation shall be kept by the agency and made available to quality reviewers from the State.
  2. Individual Employers
    - a. A contracted home provider (e.g., developmental home, shared living, adult foster care), surrogate, family member or, person who receives services, who employs a worker with the use of an F/EA, must submit a variance request in writing. ***In addition to the information provided pursuant to Section VI above,*** the request must include the following:
      - i. A variance request letter from the employer, explaining the circumstances and the reason why it is important that the prospective worker be a paid caregiver for the person who receives services.
      - ii. A letter from the prospective worker explaining the conviction(s) and why he/she should be allowed to be the paid caregiver for the person

who receives services.

- b. With the consent of the prospective employee, the request may include a letter from the case manager of the person receiving services, explaining why he/she does or does not support the variance.
- c. Variance requests submitted by individual employers for Choices for Care or the Attendant Services Program must be submitted to:

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

Variance requests submitted by individual employers for Developmental Disabilities Services and Traumatic Brain Injury (TBI) Services must be submitted to:

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

Variance requests submitted by individual employers for Children's Personal Care Services must be submitted to:

Vermont Department of Health  
Children with Special Health Needs Unit  
Children's Personal Care Services  
108 Cherry Street, Box 70  
Burlington, VT 05401

- d. The Department shall follow the standards set forth in this policy.
- e. The Department retains the right to request additional information to assist in making a decision regarding a requested variance.
- f. The Department shall provide a written decision, within 15 business days of receipt of the variance request, to the individual employer that includes the rationale for granting or denying a variance request, any conditions associated with granting or denying the variance, and appeal rights, if applicable. The Department shall notify the F/EA, for purposes of accepting timesheets for processing, only that a variance request has been granted or denied.
- g. A copy of the decision regarding the variance request and any supporting documentation (including the factors considered) shall be kept in the Department's records.

#### D. Appeals

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If the employer disagrees with the variance decision, he or she may appeal to the Commissioner of the Department or to the Human Services Board.

To appeal to the Commissioner of the Department of Disabilities, Aging and Independent Living, if applicable, the employer must contact DAIL within 30 days of receipt of the decision by calling 802-871-3345 or by writing:

Commissioner's Office  
Department of Disabilities, Aging and Independent Living  
Weeks Building, 103 South Main Street  
Waterbury, VT 05671-1601

To appeal to the Commissioner of the Vermont Department of Health, if applicable, the employer must contact VDH within 30 days of receipt of the decision by calling 802-865-1395 or by writing:

Children's Personal Care Services Administrator  
Commissioner's Office  
Vermont Department of Health  
108 Cherry Street, Box 70  
Burlington VT 05401

To appeal to the Human Services Board, the employer must submit his or her request for a hearing within 90 days of receipt of the original decision or 30 days from the receipt of the Commissioner's decision, if the employer appealed the decision to the Commissioner, whichever is longer. To appeal to the Human Services Board, the employer must contact:

Human Services Board  
14-16 Baldwin Street  
2<sup>nd</sup> Floor  
Montpelier, VT 05633-4302.

Authorizing Signature:

Date:



August 21, 2014

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Susan Wehry, M.D.  
Commissioner