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**IDAPA 16
TITLE 05
Chapter 06**

16.05.06 - RULES GOVERNING MANDATORY CRIMINAL HISTORY CHECKS

000. LEGAL AUTHORITY.

The Idaho Legislature has granted the Director of the Department of Health and Welfare the power and authority to conduct mandatory criminal history checks pursuant to Sections 56-202(b), 56-203(b), 56-204A, 39-1105, 39-1210(10), 39-1211(4), 39-1213, 39-3372, 39-3342, and 39-5604, Idaho Code. (3-15-02)

001. TITLE AND SCOPE.

01. Title. These rules are to be cited in full as Idaho Department of Health and Welfare Rules, IDAPA 16, Title 05, Chapter 06, "Rules Governing Mandatory Criminal History Checks". (3-15-02)

02. Scope. These rules are established to assist in the protection of children and vulnerable adults by requiring criminal history checks of individuals who provide care or services that are financially supported, licensed or certified by the Department of Health and Welfare. (3-15-02)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations associated with this chapter of rules. (3-15-02)

003. ADMINISTRATIVE APPEALS.

Appeals and proceedings shall be governed by the Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (3-15-02)

004. INCORPORATION BY REFERENCE.

IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks," incorporates by reference federal public law 103-209, federal public law 92-544, 28 CFR (Code of Federal Regulation) 16.34 and 28 CFR 50.12. (3-15-02)

005. IDAHO PUBLIC RECORD ACT.

The Department of Health and Welfare will comply with Sections 9-337 through 9-347, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempt, as set forth in Section 9-340, Idaho Code, and other state and federal laws and regulations, all public records in the custody of the Department of Health and Welfare are subject to disclosure. (3-15-02)

006. -- 009. (RESERVED).

010. DEFINITIONS AND ABBREVIATIONS.

01. Criminal History Check. The criminal history check is a fingerprint based check consisting of a self-declaration, fingerprints of the individual, information obtained from the Federal Bureau of Investigation, the National Criminal History Background Check System, Bureau of Criminal Identification, the statewide Child Abuse Registry, Adult Protection Registry, Sexual Offender Registry, and Medicaid S/URs exclusion list. (3-15-02)

02. BCI. The Idaho State Police Bureau of Criminal Identification. (3-15-02)

03. EMS. Emergency Medical Services. (3-15-02)

04. FBI. Federal Bureau of Investigation. (3-15-02)

05. Department. The Idaho Department of Health and Welfare. (3-15-02)

06. Good Cause. The conduct of a reasonably prudent person in the same or similar circumstances. (3-15-02)

07. S/UR's. Surveillance and Utilization Review Section. (3-15-02)

08. UOD. Unit Organizational Director. A director or administrator of a Division, Region, or Institution in the Department. (3-15-02)

011. -- 014. (RESERVED).

015. INDIVIDUALS SUBJECT TO MANDATORY CRIMINAL HISTORY CHECKS.

01. Department Individuals. A self-declaration and a criminal history check shall be required of Department employees, volunteers, student interns, and any other persons who have direct contact with children or vulnerable adults as defined in Section 39-5302(10), Idaho Code. (3-15-02)

02. Other Individuals. A self-declaration and a criminal history check shall be required of other individuals, including providers and contractors and their employees, volunteers, and student interns and any other persons, who provide Department funded direct care or services to children or vulnerable adults as defined in Section 39-5302(10), Idaho Code. These include but are not limited to: (3-15-02)

a. Providers of personal care, excluding employees of nursing homes and licensed residential and assisted living facilities; (3-15-02)

b. Adult family home care providers and all adults in the home or living on the property; (3-15-02)

c. Children's foster home care providers and other individual(s) age eighteen (18) or older residing in the foster care provider's home or property; (3-15-02)

d. Providers of adult day care and all adults in the home, if provided in a private residence; (3-15-02)

e. Providers of children's day care and all other individuals over twelve (12) years of age in the day care who have unsupervised contact with children; (3-15-02)

f. Adult residential care facility owners, operators, and administrators; (3-15-02)

g. Personnel of children's residential care facilities; (3-15-02)

h. Providers in adult day treatment facilities; (3-15-02)

i. Personnel of agencies with Medicaid Provider Agreements or Department contracts who have direct contact with children or vulnerable adults; (3-15-02)

j. All persons applying to the Department to be an adoptive parent except step-parents applying for adoption of a step-child; (3-15-02)

k. All persons petitioning the court for adoption of a child except in the case of a step-parent adoption or when waived by the Court; and (3-15-02)

l. Applicants for EMS certification and EMS communications specialists and managers. (3-15-02)

016. SELF-DECLARATION.

Individuals who are subject to a criminal history check shall complete a self-declaration form signed under penalty of perjury that contains the name, address, social security number and date of birth which appears on a valid identification document issued by a governmental entity. The self-declaration is the individual's request for the criminal history check to be done and authorizes the Department to obtain information and release it as required in accordance with applicable state and federal law. The individual shall disclose any conviction or pending indictment for crimes, and shall furnish a description of the crime and the particulars. The individual shall also disclose any notice by a state or local agency of valid child or substantiated vulnerable adult abuse, neglect, or abandonment complaint, and any other information as required. (3-15-02)

017. TIMEFRAME FOR SELF-DECLARATION AND FINGERPRINTING.

All individuals covered by these rules shall complete a self-declaration form and fingerprinting prior to providing unsupervised direct care or services to children or vulnerable adults. The Department shall report an individual's or agency's non-compliance to the applicable licensing or certification unit. (3-15-02)

018. FEES AND COSTS.

As of July 2001, the fees are twenty-eight dollars (\$28) for volunteers and forty-five dollars (\$45) for all other individuals. All fees are subject to change and are set by state and federal law. (1-1-02)T

019. UPDATING CRIMINAL HISTORY CHECKS.

01. New Criminal History Check. Any individual covered under these rules shall complete a criminal history check, including fingerprints, when he accepts employment with a new employer or agency providing Department funded direct care or services and his last criminal history check was completed more than one (1) year from the date of the new employment. (3-15-02)

02. Use Of Criminal History Check Within One Year Of Completion. Any employer, agency or Department unit may use a criminal history check obtained under these rules for a different employer, agency or Department unit, for a period of one (1) year from the date of completion of the check. An employer, agency, or Department unit is not required to use a prior criminal history check and may request a new criminal history check as defined by Subsection 019.03 of these rules. (3-15-02)

03. Department Discretion. The Department may, at its discretion or pursuant to individual program rules, require a criminal history check of any individual covered under these rules at any time during the individual's employment, internship or volunteer-ship. Any individual required to complete a criminal history check under Section 019 shall be fingerprinted within fifteen (15) calendar days from the date of notification from the Department. (3-15-02)

020. -- 029. (RESERVED).

030. DESIGNATED CRIMES RESULTING IN AN UNCONDITIONAL DENIAL.

Individuals shall not be permitted to provide direct care or services when their criminal history check reveals that they have pled guilty, been found guilty or have been adjudicated of one (1) of the designated crimes listed below, or their equivalent, under the laws of any other jurisdiction, regardless of whether the individual received a withheld judgment, a dismissal which resulted from a plea agreement where probation or restitution was required as defined by Section 19-2604, Idaho Code, or a sealed record. (3-15-02)

01. Unconditional Denial. An unconditional denial shall be issued within ten (10) working days of the completion of a criminal history check. (3-15-02)

02. Designated Crimes. An unconditional denial shall be issued for any of the following designated crimes: (3-15-02)

a. Abuse, neglect or exploitation of a vulnerable adult, as defined by Section 18-1505, Idaho Code; (3-15-02)

b. Aggravated, first degree and second-degree arson, as defined by Sections 18-801 through 18-805, Idaho Code; (3-15-02)

c. Crimes against nature, as defined by Section 18-6605, Idaho Code; (3-15-02)

d. Forcible sexual penetration by use of a foreign object, as defined by Section 18-6608, Idaho Code; (3-15-02)

e. Incest, as defined by Section 18-6602, Idaho Code; (3-15-02)

f. Injury to a child, felony or misdemeanor, as defined by Section 18-1501, Idaho Code; (3-15-02)

- g.** Kidnapping, as defined by Sections 18-4501 through 18-4503, Idaho Code; (3-15-02)
 - h.** Lewd conduct with a minor, as defined by Section 18-1508, Idaho Code; (3-15-02)
 - i.** Mayhem, as defined by Section 18-5001, Idaho Code; (3-15-02)
 - j.** Murder in any degree, voluntary manslaughter, assault or battery with intent to commit a serious felony, as defined by Sections 18-4001, 18-4003, 18-4006, and 18-4015, Idaho Code; (3-15-02)
 - k.** Poisoning, as defined by Sections 18-4014 and 18-5501, Idaho Code; (3-15-02)
 - l.** Possession of sexually exploitative material, as defined by Section 18-1507A, Idaho Code; (3-15-02)
 - m.** Rape, as defined by Section 18-6101, Idaho Code; (3-15-02)
 - n.** Robbery, as defined by Section 18-6501, Idaho Code; (3-15-02)
 - o.** Felony stalking, as defined by Section 18-7905, Idaho Code; (3-15-02)
 - p.** Sale or barter of a child, as defined by Section 18-1511, Idaho Code; (3-15-02)
 - q.** Sexual abuse or exploitation of a child, as defined by Sections 18-1506 and 18-1507, Idaho Code; (3-15-02)
 - r.** Any felony punishable by death or life imprisonment; or (3-15-02)
 - s.** Attempt, conspiracy, or accessory after the fact as defined by Sections 18-306, 18-1701, and 18-205, Idaho Code, to commit any of the designated crimes. (3-15-02)
- 03. Designated Seven-Year Crimes.** For seven (7) years from the date of conviction, an unconditional denial shall be issued for the following crimes: (3-15-02)
- a.** Burglary as defined by Section 14-1401, Idaho Code; (3-15-02)
 - b.** Grand theft as defined by Section 18-2407(1), Idaho Code; (3-15-02)
 - c.** Theft as defined by Section 18-2403, Idaho Code; (3-15-02)
 - d.** Forgery of and fraudulent use of a financial transaction card as defined by Sections 18-3123 and 18-3124, Idaho Code; (3-15-02)
 - e.** Forgery and counterfeiting as defined by Section 18-3601 through 18-3620, Idaho Code; (3-15-02)
 - f.** Insurance fraud as defined by Sections 41-293 and 41-294, Idaho Code; and (3-15-02)
 - g.** Public assistance fraud as defined by Sections 56-227 and 56-227A, Idaho Code; or (3-15-02)
 - h.** A felony involving a controlled substance. (3-15-02)
- 031. MEDICAID EXCLUSION.**
Any individual subject to these rules, who has a current exclusion from S/URs or the Office of Inspector General, shall not provide services within the scope of these rules. At the expiration of the exclusion, the individual may reapply to the Department to provide services. (3-15-02)

032. CONDITIONAL DENIALS.

The Department may issue a conditional denial within fourteen (14) days of the completion of a criminal history check, when the criminal history check reveals a plea, finding or adjudication of guilt to any felony or misdemeanor, any crime other than a traffic violation which does not result in a suspension of the individual's driver's license, or a valid child protection complaint or a substantiated adult protection complaint. The Department may issue a conditional denial when the results of the criminal history check reveal that the individual has falsified or omitted information on the self-declaration form. A conditional denial shall become effective immediately. An individual may request an exemption review within fourteen (14) days of the date of the issuance of a conditional denial, unless good cause is shown for a delay. (3-15-02)

033. EXEMPTION REVIEWS.

The Department shall initiate an exemption review for crimes or actions not designated in Section 030 of these rules. As determined by the Department, the review may consist of a review of the documents and supplemental information provided by the individual, a telephonic interview with the individual, an in-person interview, or any other review before the Department designee(s) as appointed by the UOD. Exemption reviews shall be governed by and conducted as follows. (3-15-02)

01. Scheduling An Exemption Review. Upon receipt of a request for an exemption review, the Department shall determine the type of review and, conduct such review within thirty (30) calendar days from the date of the request. Where an in-person review is appropriate, the Department shall provide the individual at least seven (7) days notice of the review date unless the time is waived by the individual. (3-15-02)

02. Factors To Be Considered. During the review, the Department shall consider factors or evidence including, but not limited to, the following: (3-15-02)

- a.** The severity or nature of the crime or other findings; (3-15-02)
- b.** The period of time since the incident(s) under current review; (3-15-02)
- c.** The number and pattern of incident(s); (3-15-02)
- d.** Circumstances surrounding the incident(s) that would help determine the risk of repetition; (3-15-02)
- e.** Relationship of the incident(s) to the care of children or vulnerable adults; (3-15-02)
- f.** Activities since the incident(s) such as continuous employment, education, participation in treatment, payment of restitution, or any other factors which may be evidence of rehabilitation; (3-15-02)
- g.** Granting of a pardon by the Governor or the President; and (3-15-02)
- h.** The falsification or omission of information on the self-declaration form and other supplemental forms submitted. (3-15-02)

03. Disqualification After Review. The Department designee, as appointed by the UOD, shall make either a decision or a recommendation to the UOD as to suitability based upon the above factors. The Department shall issue a notice of decision within fifteen (15) business days of the close of the review. (3-15-02)

04. Appeal. Reviews conducted under this section may be appealed under IDAPA 16.05.03, "Rules Governing Contested Cases Proceedings and Declaratory Rulings". The filing of a notice of appeal shall not stay the action of the Department. The individual who files an appeal must establish that the Department's denial was arbitrary and capricious. (3-15-02)

034. PREVIOUS DENIALS.

The Department shall automatically deny the current request for a criminal history check when there has been a denial from an exemption review within the last three (3) years for any Department program. The individual shall not be entitled an exemption review on the current application. (3-15-02)

035. – 039. (RESERVED).

040. CRIMINAL HISTORY RECORDS.

Criminal history checks done pursuant to this chapter become the property of the Department and shall be held confidential. (3-15-02)

01. Release Of Criminal History Checks. A physical copy of the criminal history check as defined by Subsection 010.01 of these rules shall be released: (3-15-02)

a. To the individual named in the criminal history upon receipt of a written request to the Department, provided the individual also releases the state from all liability; (3-15-02)

b. In response to a subpoena issued by a court of competent jurisdiction; or (3-15-02)

c. As otherwise required by law. (3-15-02)

02. Retention Of Records. If an exemption is granted, the criminal history record, supplemental documentation received, notes from the review, and the decision shall be retained by the Department for a period of not less than five (5) years after the criminal background check is completed. If an exemption is denied, the Department shall retain all records and electronic recordings pertaining to the review for five (5) years after the criminal background check is completed. (3-15-02)

03. Use And Dissemination Restrictions For FBI Criminal Identification Records. According to the provisions set for in 28 CFR 50.12, the Department shall: (3-15-02)

a. Notify the individual fingerprinted that the fingerprints will be used to check the criminal history records of the FBI; (3-15-02)

b. In determining the suitability for licensing or employment, provide the individual the opportunity to complete or challenge the accuracy of the information contained in the FBI identification record; (3-15-02)

c. Afford the individual fifteen (15) days to correct or complete the FBI identification record or to decline to do so; and (3-15-02)

d. Advise the individual who wishes to correct the FBI identification record that procedures for changing, correcting, or updating are set forth in 28 CFR 16.34. (3-15-02)

041. CONFIDENTIALITY.

Before any information about an individual covered by these rules and contained in departmental records may be released to the person who is the subject of the record, to another departmental unit, to another governmental agency, or to a private individual or organization, the unit of the Department with custody of the record must comply with Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Rules Governing Protection and Disclosure of Department Records," and federal Public Law 103-209 and 92-544. (3-15-02)

042. -- 999. (RESERVED).

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