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**IDAPA 16
TITLE 05
CHAPTER 06**

16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS

000. LEGAL AUTHORITY.

The Idaho Legislature has authorized the Department of Health and Welfare to promulgate rules to conduct criminal history and background checks under Sections 56-202(b), 56-203(b), 56-204A, 56-1004(A), 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520 and 39-5604, Idaho Code. (3-26-08)

001. TITLE, SCOPE AND POLICY.

01. Title. The title of this chapter is IDAPA 16.05.06, "Criminal History and Background Checks." (3-26-08)

02. Scope. These rules assist the Department in the protection of children and vulnerable adults by providing requirements to conduct criminal history and background checks of individuals licensed or certified by the Department, or who provide care or services to vulnerable adults or children. Individuals requiring a criminal history check are identified in Department rules. (3-26-08)

03. Policy. It is the Department's policy to conduct fingerprint-based criminal history and background checks on individuals who have completed a criminal history application. The criminal history applicant is required to disclose any pertinent information of crimes or offenses that would disqualify the individual from providing care or services to vulnerable populations. The Department obtains information for these criminal history and background checks from the following sources: (3-26-08)

- a.** Federal Bureau of Investigation; (3-26-08)
- b.** National Crime Information Center; (3-26-08)
- c.** Idaho State Police Bureau of Criminal Identification; (3-26-08)
- d.** Idaho Child Protection Central Registry; (3-26-08)
- e.** Idaho Adult Protection Registry; (3-26-08)
- f.** Sexual Offender Registry; (3-26-08)
- g.** Office of Inspector General List of Excluded Individuals and Entities; (3-26-08)
- h.** Idaho Department of Transportation Driving Records; (3-26-08)
- i.** Nurse Aide Registry; (3-26-08)
- j.** Other states and jurisdiction records and findings. (3-26-08)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations associated with this chapter of rules. (3-26-08)

003. ADMINISTRATIVE APPEALS.

01. Appeals. Appeals and proceedings are governed by IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-26-08)

02. Appeal of FBI Records. If an individual believes that the records received through the FBI are incorrect, the individual has fifteen (15) days from the receipt of the denial to correct the FBI records according to 28 CFR Section 16.34 or other federal regulations. (3-26-08)

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter of rules. (3-26-08)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (3-26-08)

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (3-26-08)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (3-26-08)

04. Telephone. (208) 334-5500. (3-26-08)

05. Department Internet Website Address. Department Internet address is: <http://www.healthandwelfare.idaho.gov>. (3-26-08)

06. Criminal History Unit. The Criminal History Unit may be contacted as listed below: (3-26-08)

a. Address: 450 West State Street, 9th Floor, Boise, Idaho 83720-0036; (3-26-08)

b. Phone: (208) 332-7990, Toll Free: 1-800-340-1246, FAX: (208) 332-7991; (3-26-08)

c. Website: <https://chu.dhw.idaho.gov>. (3-26-08)

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." (3-26-08)

02. Federal Bureau of Investigation Records. Any information received from the FBI must comply with 28 CFR 50.12 or other federal regulations. (3-26-08)

03. Idaho State Police Records. Any information received from the Idaho State Police must comply with Section 67-3008, Idaho Code. (3-26-08)

04. Public Records Requests. The Department of Health and Welfare will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempt, as provided 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. (3-26-08)

007. -- 009. (RESERVED).

010. DEFINITIONS AND ABBREVIATIONS.

01. Application. An individual's request for a criminal history and background check in which the individual discloses any convictions, pending charges, or child or adult protection findings, and authorizes the Department to obtain information from available databases and sources relating to the individual. (3-26-08)

02. Clearance. A clearance issued by the Department once the criminal history and background check is completed and no disqualifying crimes or relevant records are found. (3-26-08)

03. Conviction. An individual is considered to have been convicted of a criminal offense as defined in

Subsections 010.03.a. through 010.03.d. of this rule: (3-26-08)

a. When a judgment of conviction, or an adjudication, has been entered against the individual by any federal, state, military, or local court; (3-26-08)

b. When there has been a finding of guilt against the individual by any federal, state, military, or local court; (3-26-08)

c. When a plea of guilty or nolo contendere by the individual has been accepted by any federal, state, military, or local court; (3-26-08)

d. When the individual has entered into or participated in first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld. This includes: (3-26-08)

i. When the individual has entered into participation in a drug court; or (3-26-08)

ii. When the individual has entered into participation in a mental health court. (3-26-08)

04. Criminal History and Background Check. A criminal history and background check is a fingerprint-based check of an individual's criminal record and other relevant records to determine the suitability of the individual to provide care or services to vulnerable adults or children. (3-26-08)

05. Criminal History Unit. The Department's Unit responsible for processing fingerprint-based criminal history and background checks, conducting exemption reviews, and issuing clearances or denials according to these rules. (3-26-08)

06. Denial. A denial is issued by the Department when an individual has a relevant record or disqualifying crime. There are two (2) types of denials: (3-26-08)

a. Conditional Denial. A denial of an applicant because of a relevant record found in Section 230 of these rules. (3-26-08)

b. Unconditional Denial. A denial of an applicant because of a conviction for a disqualifying crime found in Section 210 of these rules. (3-26-08)

07. Department. The Idaho Department of Health and Welfare or its designee. (3-26-08)

08. Disqualifying Crime. A disqualifying crime is a designated crime listed in Section 210 of these rules that results in the unconditional denial of an applicant. (3-26-08)

09. Exemption Review. A review by the Department at the request of the applicant when a conditional denial has been issued. (3-26-08)

10. Federal Bureau of Investigation (FBI). The federal agency where fingerprint-based criminal history and background checks are processed. (3-26-08)

11. Good Cause. The facts and circumstances that would compel a reasonably prudent person to act in the same or similar manner under the same or similar circumstances. (3-26-08)

12. Idaho State Police Bureau of Criminal Identification. The state agency where fingerprint-based criminal history and background checks are processed. (3-26-08)

13. Relevant Record. A relevant record is a record that is from criminal records or from registries checked by the Department as provided in Section 56-1004A, Idaho Code, that may result in a conditional denial. (3-26-08)

011. -- 049. (RESERVED).

050. FEES AND COSTS FOR CRIMINAL HISTORY AND BACKGROUND CHECKS.

The fee for a Department fingerprint-based criminal history and background check is fifty-five dollars (\$55) for an individual. The applicant is responsible for the cost of the criminal history and background check except where otherwise provided by Department rules. (3-26-08)

051. -- 059. (RESERVED).

060. EMPLOYER REGISTRATION.

Employers required to have Department criminal history and background checks on their employees, contractors, or staff must register with the Department and receive an employer identification number before criminal history and background check applications can be processed. (3-26-08)

061. EMPLOYER RESPONSIBILITIES.

The criminal history and background check clearance is not a determination of suitability for employment. The Department's criminal history and background check clearance means that an individual was found to have no disqualifying crime or relevant record. Employers are responsible for determining the individual's suitability for employment as described in Subsections 061.01 through 061.03 of these rules. (3-26-08)

01. Screen Applicants. The employer should screen applicants prior to initiating a criminal history and background check in determining the suitability of the applicant for employment. If an applicant discloses a disqualifying crime or offense, or discloses other information that would indicate a risk to the health and safety of children and vulnerable adults, a determination of suitability for employment should be made during the initial application screening. (3-26-08)

02. Ensure Time Frames Are Met. The employer is responsible to ensure that the required time frames are met for completion and submission of the application and fingerprints to the Department as required in Section 150 of these rules. (3-26-08)

03. Employment Determination. The employer is responsible for reviewing the results of the criminal history and background check if a clearance that resulted in no disqualifying crimes or offenses found is issued by the Department. The employer must then make a determination as to the ability or risk of the individual to provide care or services to children or vulnerable adults. (3-26-08)

062. -- 069. (RESERVED).

070. NON-COMPLIANCE WITH THESE RULES.

The Department will report an individual's or an employer's non-compliance with these rules to the applicable licensing or certification unit. (3-26-08)

071. -- 099. (RESERVED).

100. INDIVIDUALS SUBJECT TO A CRIMINAL HISTORY AND BACKGROUND CHECK.

Individuals subject to a Department criminal history and background check are those persons or classes of individuals who are required by statute, or program rules to complete a criminal history and background check. (3-26-08)

01. Adoptive Parent Applicants. All persons applying to the Department or petitioning the court to be an adoptive parent and all adults in the home, except stepparents applying for adoption of a stepchild, as described in IDAPA 16.06.01 "Rules Governing Family and Children's Services and IDAPA 16.06.02, "Standards for Child Care Licensing." (3-26-08)

02. Alcohol or Drug Abuse Prevention and Treatment Programs Serving Children. Staff who have contact with adolescents in any alcohol/drug abuse treatment program which provides treatment for persons under the age of eighteen (18) as required by IDAPA 16.06.03, "Rules and Minimum Standards Governing Alcohol/Drug Abuse Prevention and Treatment Programs," Section 020. (3-26-08)

03. Certified Family Homes. Certified family home providers, all adults in the home, and substitute

caregivers as required in Section 39-3520, Idaho Code, and IDAPA 16.03.19, "Rules Governing Certified Family Homes," Sections 009, 101 and 300, and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 009. (3-26-08)

04. Children's Residential Care Facilities. Owners, operators, and employees of all children's residential care facilities as required in Section 39-1210, Idaho Code. (3-26-08)

05. Children's Therapeutic Outdoor Programs. Staff, volunteers, and interns working in Children's Therapeutic Outdoor Programs as defined in IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," Section 810. (3-26-08)

06. Commercial Non-Emergency Transportation Providers. Staff of commercial non-emergency transportation providers who have contact with participants as required in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 009. (3-26-08)

07. Developmental Disabilities Agencies. Employees, subcontractors, agents, and volunteers of developmental disabilities agencies as required in IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies," Section 009, and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 009. (3-26-08)

08. Emergency Medical Services (EMS). Applicants for EMS certification as required in IDAPA 16.02.03, "Rules Governing Emergency Medical Services," Section 501. (3-26-08)

09. Home and Community-Based Services (HCBS). Providers, employees, and contractors for home and community-based services as required in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 009. (3-26-08)

10. Home Health Agencies. Employees and contractors of home health agencies as required in IDAPA 16.03.07, "Home Health Agencies," Section 009. (3-26-08)

11. Intermediate Care Facilities for the Mentally Retarded (ICF/MR). Employees and contractors of intermediate care facilities for the mentally retarded as required in IDAPA 16.03.11, "Intermediate Care Facilities for the Mentally Retarded (ICF/MR)," Section 009. (3-26-08)

12. Licensed Foster Care. All foster care applicants and other adult members of the household as required in Section 39-1211, Idaho Code, and IDAPA 16.06.02, "Standards for Child Care Licensing," Section 404. (3-26-08)

13. Licensed Child Care. Applicants, owners, operators, employees, volunteers, and those over twelve (12) years of age who have unsupervised direct contact with the children of day care centers, group day care facilities and family day care homes as required in Section 39-1105, Idaho Code, and IDAPA 16.06.02, "Standards for Child Care Licensing," Section 300. (3-26-08)

14. Mental Health Clinics. Mental health clinic's direct care staff as required in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 009 and IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 009 and 714. (3-26-08)

15. Personal Assistance Agencies. Staff of personal assistance agencies acting as fiscal intermediaries as required in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 009. (3-26-08)

16. Personal Care Service Providers. Providers of personal care services as required in Section 39-5604, Idaho Code, and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 009. (3-26-08)

17. Psychosocial Rehabilitation Providers. Individuals providing psychosocial rehabilitation services as required in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 009 and 130. (3-26-08)

18. Residential Care or Assisted Living Facilities in Idaho. Employees and contractors of residential care or assisted living facilities as required in IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in

Idaho,” Section 009. (3-26-08)

19. Semi-Independent Group Residential Care Facilities for the Developmentally Disabled or Mentally Ill. Employees and contractors of semi-independent group residential care facilities for the developmentally disabled or mentally ill as required in IDAPA 16.03.15, “Semi-Independent Group Residential Care Facilities for the Developmentally Disabled or Mentally Ill,” Section 009. (3-26-08)

20. Service Coordinators and Paraprofessional Providers. Service coordinators and paraprofessionals working for an agency as required in IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits,” Section 009. (3-26-08)

21. Skilled Nursing and Intermediate Care Facilities. Employees and contractors of skilled nursing and intermediate care facilities as required in IDAPA 16.03.02, “Skilled Nursing and Intermediate Care Facilities,” Section 009. (3-26-08)

22. Support Brokers and Community Support Workers. Support brokers and community support workers, as required in IDAPA 16.03.13, “Consumer-Directed Services,” Section 009. (3-26-08)

101. DEPARTMENT INDIVIDUALS SUBJECT TO A CRIMINAL HISTORY AND BACKGROUND CHECK.

The following Department employees and contractors are subject to criminal history and background checks. (3-26-08)

01. Employees and Contractors. Employees and contractors providing direct care services or who have access to children or vulnerable adults as defined in Section 39-5302(10), Idaho Code. (3-26-08)

02. Employees of Bureau of Audits and Investigations. (3-26-08)

a. Fraud Investigators; (3-26-08)

b. Utilization Review Analysts; and (3-26-08)

c. Criminal History Staff. (3-26-08)

03. Employees at State Institutions. All employees of the following state funded institutions; (3-26-08)

a. Idaho State School and Hospital, Nampa, Idaho; (3-26-08)

b. State Hospital North, Orofino, Idaho; and (3-26-08)

c. State Hospital South, Blackfoot, Idaho. (3-26-08)

04. Emergency Medical Services (EMS) Employees. EMS communication specialists and managers. (3-26-08)

05. Other Employees. Other Department employees as determined by the Director. (3-26-08)

102. -- 119. (RESERVED).

120. APPLICATION FOR A CRIMINAL HISTORY AND BACKGROUND CHECK.

Individuals who are subject to a criminal history and background check must complete an application and have it notarized. The application must include disclosure of any disqualifying crimes, offenses, or relevant records. (3-26-08)

01. Application Form. The applicant must request a criminal history and background check by completing the Department’s application form and submitting it on-line or by mail. The individual's application

authorizes the Department to obtain information and release it as required in accordance with applicable state and federal law. The following information is required to complete the application: (3-26-08)

- a. Name, current and former names, or aliases; (3-26-08)
- b. Address; (3-26-08)
- c. Date of birth, that appears on a valid identification document issued by a governmental entity, (3-26-08)
- d. State and country of birth; and (3-26-08)
- e. Driver's license number, if licensed, state where licensed, and whether a license has ever been revoked or suspended. (3-26-08)
- f. Other identifying information, including gender, race, height, weight, eye color, and hair color; (3-26-08)
- g. Employer information; (3-26-08)
- h. Any criminal record or criminal offense information; (3-26-08)
- i. Any pending charges or outstanding warrants; (3-26-08)
- j. Any child or adult protection involvement; (3-26-08)
- k. Any Medicare or Medicaid Provider Exclusion; and (3-26-08)
- l. Any other information requested on the application. (3-26-08)

02. Disclosures. The individual must disclose any conviction, pending charges or indictment for crimes, and furnish a description of the crime and the particulars on the application. The individual must also disclose any notice by a state or local agency of substantiated child or substantiated vulnerable adult abuse, neglect, exploitation, or abandonment complaint, and any other information as required. (3-26-08)

03. Failure to Disclose Information. An applicant who falsifies or fails to disclose information on the application, may be subject to a conditional denial under Section 230.01 and prosecution under Sections 18-3203, 18-5401, and 56-227A, Idaho Code. (3-26-08)

121. -- 129. (RESERVED).

130. SUBMISSION OF APPLICATION.

An application must be submitted and received by the Department before a criminal history and background check can be initiated. Once the Department has received the notarized application and signed fingerprint card, the application is pending until the Department issues a clearance or denial, or the individual withdraws the application. An application must be submitted and received by the Department within twenty-one (21) days of it being completed and notarized. (3-26-08)

01. Submitting an Application On-Line. An application may be submitted through the Criminal History Unit's website at <https://chu.dhw.idaho.gov>. Individuals who submit their application through the website may schedule a fingerprinting appointment at a Department location. At the fingerprinting appointment, the Department will print the application and notarize the individual's signature. (3-26-08)

02. Submitting an Application by Mail. An individual may complete the application provided on the Department's website, print the application, have it notarized, and mail it to the Criminal History Unit with the signed fingerprint card and applicable fee. The application must be mailed to the nearest fingerprint location as found on the Department's website or contact the Criminal History Unit as described in Section 005 of these rules. (3-26-08)

131. -- 139. (RESERVED).

140. SUBMISSION OF FINGERPRINTS.

The Department's criminal history and background check is a fingerprint-based check. Ten (10) rolled fingerprints must be collected from the individual and submitted to the Department within the time frame for submitting applications as provided in Section 150 of these rules in order for a criminal history and background check request to be processed. (3-26-08)

01. Department Fingerprinting Locations. A fingerprint appointment may be scheduled at designated Department locations where the Department will collect the individual's fingerprints. The locations are listed on the Department's website, or you may contact the Criminal History Unit as described in Section 005 of these rules. (3-26-08)

02. Submitting Fingerprints by Mail. An individual may elect to have fingerprints collected by a local law enforcement agency or by the applicant's employer. The fingerprint card must be signed and mailed with the completed notarized application and applicable fee to the nearest fingerprinting location. (3-26-08)

141. -- 149. (RESERVED).

150. TIME FRAME FOR SUBMITTING APPLICATION AND FINGERPRINTS.

The completed notarized application and fingerprints must be submitted and received by the Department within twenty-one (21) days. The applicant is not available to provide services or be licensed or certified when the notarized application is not received or the fingerprints have not been rolled for an on-line application within this time frame. The criminal history and background check is incomplete and will not be processed by the Department if this time frame is not met. (3-26-08)

151. -- 159. (RESERVED).

160. WITHDRAWAL OF APPLICATION.

An individual may withdraw his application for a criminal history and background check at any time. An individual who withdraws his application cannot provide services, or receive licensure or certification. Fees paid for the cost of the criminal history and background check are non-refundable once the fingerprints have been submitted by the Department to the Idaho State Police. (3-26-08)

161. -- 169. (RESERVED).

170. AVAILABILITY TO PROVIDE SERVICES PENDING COMPLETION OF THE CRIMINAL HISTORY AND BACKGROUND CHECK.

An individual is available to provide services pending completion of the criminal history and background check as described in Subsections 170.01 and 170.02 of this rule. The application and fingerprinting must be completed in the time frame described in Section 150 of these rules. (3-26-08)

01. Employees of Providers, Contractors, Emergency Medical Services (EMS), or the Department. An individual is available to provide services on a provisional basis at the discretion of the employer or EMS Bureau as long as no disqualifying crimes or relevant records are disclosed on the application. The employer must review the application for any disqualifying crimes listed in Section 210 of these rules or other relevant records listed in Section 230 of these rules. The employer then determines whether the applicant poses a health or safety risk to vulnerable clients before allowing the individual to provide services until a clearance or denial is issued by the Department. (3-26-08)

02. Individuals Licensed or Certified by the Department. Individuals applying for licensure or certification by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is complete and a clearance is issued by the Department. The following are individuals required to have a clearance prior to providing services: (3-26-08)

- a.** Adoption or foster care applicants and adults in the home; (3-26-08)

- b. Certification or licensure applicants; (3-26-08)
- i. Certified family homes; (3-26-08)
- ii. Licensed child care providers; (3-26-08)

171. -- 179. (RESERVED).

180. CRIMINAL HISTORY AND BACKGROUND CHECK RESULTS.

The Department will issue a clearance or denial once the criminal history and background check is completed. The results may be accessed by the individual on the Department's website. The employer may access the information that is provided by the applicant and information obtained from the state, county, or through registries. (3-26-08)

181. APPLICATION STATUS.

An individual and his employer may check on the criminal history and background check status and the individual's availability to work on the Department website: <https://chu.dhw.idaho.gov>. (3-26-08)

182. -- 189. (RESERVED).

190. CRIMINAL HISTORY AND BACKGROUND CHECK CLEARANCE.

A criminal history and background check clearance is issued by the Department once all relevant records and findings have been reviewed and the Department has cleared the applicant. The clearance will be published on the Department's website and the individual or his employer may print copies of the clearance. (3-26-08)

191. -- 199. (RESERVED).

200. UNCONDITIONAL DENIAL.

An individual who receives an unconditional denial is not available to provide services, have access, or to be licensed or certified by the Department. (3-26-08)

01. Reasons for an Unconditional Denial Issuance. Unconditional denials are issued for disqualifying crimes described in Section 210 of these rules. (3-26-08)

02. Issuance of an Unconditional Denial. The Department will issue an unconditional denial within fourteen (14) days of completion of a criminal history and background check. (3-26-08)

03. Challenge of Department's Unconditional Denial. An individual has thirty (30) days from the date the unconditional denial is issued to challenge the Department's unconditional denial. The individual must submit the challenge in writing and provide court records or other information which demonstrates the Department's unconditional denial is incorrect. These documents must be filed with: The Criminal History Unit, 3268 Elder Street, Boise, ID 83705. (3-26-08)

a. If the individual challenges the Department's unconditional denial, the Department will review the court records, documents and other information filed by the individual. The Department will issue a decision within thirty (30) days of the receipt of the challenge. The Department's decision will be a final order under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

b. If the individual does not challenge the Department's unconditional denial within thirty (30) days, it becomes a final order of the Department under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

04. No Exemption Review. No exemption review, as described in Section 250 of these rules, is allowed for an unconditional denial. (3-26-08)

05. Final Order. The Department's final order under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152, may be appealed in District Court. (3-26-08)

201. -- 209. (RESERVED).

210. DISQUALIFYING CRIMES RESULTING IN AN UNCONDITIONAL DENIAL.

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a conviction for a disqualifying crime on his record as described in Subsections 210.01 and 210.02 of this rule. (3-26-08)

01. Disqualifying Crimes. The disqualifying crimes described in Subsections 210.01.a through 210.01.v. of these rules will result in an unconditional denial being issued. (3-26-08)

- a.** Abuse, neglect, or exploitation of a vulnerable adult, as defined in Section 18-1505, Idaho Code; (3-26-08)
- b.** Aggravated, first-degree and second-degree arson, as defined in Sections 18-801 through 18-803, and 18-805, Idaho Code; (3-26-08)
- c.** Crimes against nature, as defined in Section 18-6605, Idaho Code; (3-26-08)
- d.** Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code; (3-26-08)
- e.** Incest, as defined in Section 18-6602, Idaho Code; (3-26-08)
- f.** Injury to a child, felony or misdemeanor, as defined in Section 18-1501, Idaho Code; (3-26-08)
- g.** Kidnapping, as defined in Sections 18-4501 through 18-4503, Idaho Code; (3-26-08)
- h.** Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; (3-26-08)
- i.** Mayhem, as defined in Section 18-5001, Idaho Code; (3-26-08)
- j.** Murder in any degree, voluntary manslaughter, assault, or battery with intent to commit a serious felony, as defined in Sections 18-4001, 18-4003, 18-4006, and 18-4015, Idaho Code; (3-26-08)
- k.** Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code; (3-26-08)
- l.** Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code; (3-26-08)
- m.** Rape, as defined in Section 18-6101, Idaho Code; (3-26-08)
- n.** Robbery, as defined in Section 18-6501, Idaho Code; (3-26-08)
- o.** Felony stalking, as defined in Section 18-7905, Idaho Code; (3-26-08)
- p.** Sale or barter of a child, as defined in Section 18-1511, Idaho Code; (3-26-08)
- q.** Sexual abuse or exploitation of a child, as defined in Sections 18-1506 and 18-1507, Idaho Code; (3-26-08)
- r.** Video voyeurism, as defined in Section 18-6609, Idaho Code; (3-26-08)
- s.** Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; (3-26-08)
- t.** Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code; (3-26-08)

- u.** Any felony punishable by death or life imprisonment; or (3-26-08)
- v.** Attempt, conspiracy, or accessory after the fact, as defined in Sections 18-205, 18-306, and 18-1701, Idaho Code, to commit any of the disqualifying designated crimes. (3-26-08)

02. Disqualifying Five-Year Crimes. The Department will issue an unconditional denial for an individual who has been convicted of the following crimes for five (5) years from the date of the conviction for the crimes listed in Subsections 210.02.a. through 210.02.n. of this rule: (4-9-09)

- a.** Aggravated assault, as defined in Section 18-905, Idaho Code; (3-26-08)
- b.** Aggravated battery, as defined in Section 18-907(1), Idaho Code; (3-26-08)
- c.** Arson in the third degree, as defined in Section 18-804, Idaho Code; (3-26-08)
- d.** Burglary, as defined in Section 18-1401, Idaho Code; (3-26-08)
- e.** A felony involving a controlled substance; (3-26-08)
- f.** Felony theft, as defined in Section 18-2403, Idaho Code; (3-26-08)
- g.** Forgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 and 18-3124, Idaho Code; (3-26-08)
- h.** Forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; (3-26-08)
- i.** Grand theft, as defined in Section 18-2407(1), Idaho Code; (3-26-08)
- j.** Identity theft, as defined in Section 18-3126, Idaho Code; (4-9-09)
- k.** Insurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; (3-26-08)
- l.** Public assistance fraud, as defined in Sections 56-227 and 56-227A, Idaho Code; (4-9-09)
- m.** Attempted strangulation, as defined in Section 18-923, Idaho Code; or (4-9-09)
- n.** Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, and 18-1701, Idaho Code, to commit any of the disqualifying five (5) year crimes. (3-26-08)

03. Underlying Facts and Circumstances. The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following: (3-26-08)

- a.** A withheld judgment; (3-26-08)
- b.** A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; (3-26-08)
- c.** An order according to Section 19-2604, Idaho Code, or other equivalent state law; or (3-26-08)
- d.** A sealed record. (3-26-08)

211. -- 219. (RESERVED).

220. CONDITIONAL DENIAL.

The Department may issue a conditional denial within fourteen (14) days of the completion of a criminal history and background check. An individual who receives a conditional denial is not available to provide services or be licensed or certified by the Department. (3-26-08)

01. Reasons for a Conditional Denial Issuance. A conditional denial is issued when the criminal history and background check reveals a relevant record as described in Section 230 of these rules. (3-26-08)

02. Effective Date of a Conditional Denial. A conditional denial is effective immediately. An applicant may not reapply for a criminal history and background check for three (3) years from the date of the conditional denial. (3-26-08)

03. Request an Exemption Review. An individual may request an exemption review as described in Section 250 of these rules when a conditional denial has been issued. (3-26-08)

221. -- 229. (RESERVED).

230. RELEVANT RECORDS RESULTING IN A CONDITIONAL DENIAL.

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a relevant record on his record as described Subsections 230.01 and 230.02 of this rule. (3-26-08)

01. Individuals Licensed or Certified by the Department or a Department Employee. A conditional denial may be issued when an individual who is licensed or certified by the Department, or who is a Department employee discloses, or the criminal history and background check reveals, a relevant record as defined in Subsections 230.01.a. through 230.01.f. of this rule: (3-26-08)

a. A plea, finding, or adjudication of guilt to any felony or misdemeanor, or any crime other than a traffic violation, that does not result in a suspension of the individual's driver's license; (3-26-08)

b. A substantiated child protection complaint or a substantiated adult protection complaint; (3-26-08)

c. The Department determines there is a potential health and safety risk to vulnerable adults or children; (3-26-08)

d. The individual has falsified or omitted information on the application form; (3-26-08)

e. The individual is listed with a finding on the Nurse Aide Registry; or (3-26-08)

f. The Department determines additional information is required. (3-26-08)

02. Employees of Providers or Contractors. A conditional denial may be issued when an individual who is employed by a provider or contractor discloses, or the criminal history and background check reveals, a relevant record as defined in Subsections 230.02.a. through 230.01.c. of this rule. (3-26-08)

a. A substantiated child protection complaint or a substantiated adult protection complaint; (3-26-08)

b. The individual is listed with a finding on the Nurse Aide Registry; or (3-26-08)

c. The Department determines additional information is required. (3-26-08)

03. Underlying Facts and Circumstances. The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following: (3-26-08)

a. A withheld judgment; (3-26-08)

b. A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution

was or was not required; (3-26-08)

c. An order according to Section 19-2604, Idaho Code, or other equivalent state law; or (3-26-08)

d. A sealed record. (3-26-08)

231. -- 239. (RESERVED).

240. MEDICAID EXCLUSION.

Individuals subject to these rules, who are excluded by the Office of Inspector General, cannot provide Department funded services within the scope of these rules. At the expiration of the exclusion, the individual may reapply for a criminal history and background check. (3-26-08)

241. -- 249. (RESERVED).

250. EXEMPTION REVIEWS.

An individual cannot request an exemption review for an unconditional denial. An individual may request an exemption review within fourteen (14) days from the date of the issuance of a conditional denial by the Department, unless good cause is shown for a delay. Once the Department receives the request for an exemption review, the Department will initiate a review for crimes or actions not designated in Section 210 of these rules. The review may consist of examining documents and supplemental information provided by the individual, a telephone interview, an in-person interview, or any other review the Department determines is necessary. Exemption reviews are governed and conducted as provided in Subsections 250.01 through 250.05 of this rule. (3-26-08)

01. Scheduling an Exemption Review. Upon receipt of a request for an exemption review, the Department will determine the type of review and conduct the review within thirty (30) days from the date of the request. Where an in-person review is appropriate, the Department will provide the individual at least seven (7) days notice of the review date unless the time is waived by the individual. When an in-person review is scheduled, the individual is notified by the Department that he is able to bring witnesses and present evidence during the review. (3-26-08)

02. Factors Considered at the Exemption Review. The Department will consider the following factors or evidence during the exemption review: (3-26-08)

a. The severity or nature of the crime or other findings; (3-26-08)

b. The period of time since the incident under review occurred; (3-26-08)

c. The number and pattern of incidents; (3-26-08)

d. Circumstances surrounding the incident that would help determine the risk of repetition; (3-26-08)

e. Relationship of the incident to the care of children or vulnerable adults; (3-26-08)

f. Activities since the incident, such as continuous employment, education, participation in treatment, payment of restitution, or any other factors that may be evidence of rehabilitation; (3-26-08)

g. Granting of a pardon by the Governor or the President; and (3-26-08)

h. The falsification or omission of information on the application form and other supplemental forms submitted. (3-26-08)

03. Exemption Review Determination. The Department determines the individual's suitability based upon the information provided during the exemption review. The Department will issue a notice of decision within fifteen (15) business days of the close of the review. (3-26-08)

04. Exemption Review Decision Effective Dates. The Department's exemption review decision is

effective for three (3) years from the date of the notice of decision. (3-26-08)

05. Exemption Review Appeal. Exemption reviews conducted under this section of rule may be appealed under IDAPA 16.05.03, "Rules Governing Contested Cases Proceedings and Declaratory Rulings." The filing of a notice of appeal does not stay the action of the Department. The individual who files an appeal must establish that the Department's denial was arbitrary and capricious. (3-26-08)

251. -- 259. (RESERVED).

260. PREVIOUS EXEMPTION REVIEW DENIALS.

The individual's current request for a criminal history and background check for any Department program when there has been a denial from an exemption review within the last three (3) years will automatically be denied. (3-26-08)

261. -- 269. (RESERVED).

270. CRIMINAL ACTION PENDING.

When the applicant is identified as having a pending criminal action for a crime that may disqualify him from receiving a clearance for the criminal history and background check, the Department may issue a notice of inability to proceed. The applicant is not available to provide service when a notice of inability to proceed is issued by the Department. The applicant can submit documentation that the matter has been resolved to the Department for reconsideration. When the Department receives this documentation, the Department will notify the applicant of the reconsideration and issue a clearance or denial. (3-26-08)

271. -- 299. (RESERVED).

300. UPDATING CRIMINAL HISTORY AND BACKGROUND CHECKS.

The employer is responsible for confirming that the applicant has completed a criminal history and background check. (3-26-08)

01. New Criminal History and Background Check. Any individual required to have a criminal history and background check under these rules must complete a new application, including fingerprints when: (3-26-08)

- a.** Accepting employment with a new employer; or (3-26-08)
- b.** Applying for licensure or certification with the Department; and (3-26-08)
- c.** His last Department criminal history and background check was completed more than three (3) years prior to his employment date or licensure application date. (3-26-08)

02. Use of Criminal History Check Within Three Years of Completion. Any employer may use a Department criminal history and background check clearance obtained under these rules if: (3-26-08)

- a.** The individual has received a Department's criminal history and background check clearance within three (3) years from the date of employment; and (3-26-08)
- b.** The employer completes a state-only background check of the individual through the Idaho State Police Bureau of Criminal identification, and no disqualifying crimes are found. (3-26-08)

03. Employer Discretion. The new employer, at its discretion, may require an individual to complete a Department criminal history and background check at any time, even if the individual has received a criminal history and background check clearance within three (3) years. (3-26-08)

04. Department Discretion. The Department may, at its discretion or as provided in program rules, require a criminal history and background check of any individual covered under these rules at any time during the individual's employment, internship, or while volunteering. Any individual required to complete a criminal history and background check under Sections 100 and 101 of these rules, must be fingerprinted within fourteen (14) days

from the date of notification by the Department that a new criminal history and background check is required. (3-26-08)

301. -- 349. (RESERVED).

350. CRIMINAL HISTORY AND BACKGROUND CHECK RECORDS.

Criminal history and background checks done under this chapter become the property of the Department and are held confidential. (3-26-08)

01. Release of Criminal History and Background Check Records. A copy of the criminal history and background check as defined in Section 010 of these rules will be released: (3-26-08)

a. To the individual who has requested the criminal history and background check and upon receipt of a written request to the Department, provided the individual releases the state from all liability; (3-26-08)

b. In response to a subpoena issued by a court of competent jurisdiction; or (3-26-08)

c. As otherwise required by law. (3-26-08)

02. Retention of Records. (3-26-08)

a. If an exemption is granted, the criminal history and background record, supplemental documentation received, notes from the review, and the decision will be retained by the Department for a period of at least five (5) years after the criminal history and background check is completed. (3-26-08)

b. If an exemption is denied, the Department retains all records and electronic recordings pertaining to the review for five (5) years after the criminal history and background check is completed. (3-26-08)

03. Use and Dissemination Restrictions for FBI Criminal Identification Records. According to the provisions under 28 CFR 50.12, the Department will: (3-26-08)

a. Notify the individual fingerprinted that the fingerprints will be used to check the criminal history records of the FBI; (3-26-08)

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; (3-26-08)

c. Notify the individual that he has fifteen (15) days to correct or complete the FBI identification record or to decline to do so; and (3-26-08)

d. Advise the individual who wishes to correct the FBI identification record that procedures for changing, correcting, or updating are provided in 28 CFR 16.34. (3-26-08)

351. -- 999. (RESERVED).

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