

HUMAN SERVICES

DIVISION OF DEVELOPMENTAL DISABILITIES

Background Checks

Proposed Readoption with Amendments: N.J.A.C. 10:48A

Authorized By: Elizabeth Connolly, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:6D-63 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2015-117.

Submit written comments by November 20, 2015, electronically to

DDD-CO.LAPO@dhs.state.nj.us, or by regular mail or facsimile to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 10:48A was scheduled to expire on September 11, 2015. As the Department of Human Services (Department) has filed this notice with the Office of Administrative Law prior to that date, pursuant to N.J.S.A. 52:14B-5.1.c(2), the

expiration date is extended 180 days to March 9, 2016. The Division of Developmental Disabilities (Division) has reviewed this chapter, and has found that with the proposed amendments, the rules are reasonable, necessary, and proper for the purpose for which they were originally promulgated. On January 14, 2000, P.L. 1999, c. 358 was enacted. This statute, later amended by P.L. 2000, c. 97, requires employees of community agencies under contract with the Division to provide services to Division clients to submit to a criminal background check. The Division adopted N.J.A.C. 10:48A, Background Checks, as new rules effective June 2, 2003. The Division readopted Chapter 48A effective September 11, 2008. The Division proposes to readopt the rules with amendments to define the term “under contract,” as discussed more fully below and to replace language regarding “contracts” with the newly defined term "under contract" at N.J.A.C. 10:48A-2.1(a) and 3.6(a).

The Division provides services and supports for eligible individuals with developmental disabilities. Direct care services and supports may be provided in settings such as group homes, day programs, or in an individual’s home. The rules screen out persons unfit to provide services to Division clients due to a criminal history, and are therefore an important part of health and safety protections. The proposed amendments ensure that all persons who receive Division funding to provide direct care to eligible individuals will undergo a criminal history background check.

A summary of the rules proposed for readoption with amendments follows.

Subchapter 1. General Provisions

N.J.A.C. 10:48A-1.1 sets forth the purpose of the rules, which is to establish guidelines for obtaining criminal history background checks of employees of agencies under contract with the Division.

N.J.A.C. 10:48A-1.2 sets forth the scope of the rules and explains that background checks are required for employees who have direct contact with persons served by the agency.

N.J.A.C. 10:48A-1.3 provides the definitions used in the rules. The Division proposes to add a definition for the term “under contract.” At the time that the chapter was originally adopted, the Division funded services for individuals through traditional contracts, or written agreements with providers. Since that time, the Division has also funded services for individuals being served by providers who have been approved by the Division to provide disability services, but do not have a traditional contractual relationship with the Division. The addition of the definition for “under contract” clarifies that employees of these providers must undergo criminal history background checks.

Subchapter 2. Administration

N.J.A.C. 10:48A-2.1 contains general standards for conducting the background checks, including the specific offenses for which an employee may be disqualified from employment.

Subchapter 3. Procedures

N.J.A.C. 10:48A-3.1 describes how fingerprints are taken and the process after fingerprint results are received. The community agency head or employee is to make an appointment within 10 working days of employment to have his or her fingerprints taken.

N.J.A.C. 10:48A-3.2 provides that the Department of Human Services' Coordinator in the Central Fingerprint Unit is to maintain the confidential results of criminal history background checks in a database, and that the community agency receiving information about an employee's background check is to keep the information confidential.

N.J.A.C. 10:48A-3.3 sets forth the requirement for new employees to be fingerprinted, and provides for a period of provisional employment pending completion of the background check if the employee attests that he or she has not been convicted of any of the offenses listed in Subchapter 2.

N.J.A.C. 10:48A-3.4 sets forth the ways in which evidence of rehabilitation can be established, such that the individual would not be disqualified from employment.

N.J.A.C. 10:48A-3.5 provides that employees are required to notify their employer of any applicable criminal offenses subsequent to the background check. In the case of the community agency head, he or she shall be responsible to notify the Assistant Commissioner and the community agency board of any subsequent offenses. This subsection also provides for notification to the Department when an individual who was subject to a background check is arrested or convicted of a crime or offense in New Jersey after the background check was completed, and for background checks to be completed once every two years through an electronic archive request.

N.J.A.C. 10:48A-3.6 sets forth monitoring requirements to facilitate agencies' full compliance with the statute governing criminal background checks.

N.J.A.C. 10:48A-3.7 sets forth the appeal process for individuals who have been disqualified from employment.

The chapter also contains N.J.A.C. 10:48A Appendix A, which is a form for permission for a background check and the release of information.

The Division has provided a 60-day comment period on this notice of proposal. Therefore, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments will have a positive social impact because they protect Division clients by disqualifying individuals who, have been convicted of certain delineated crimes and offenses and lack sufficient proof of rehabilitation, from working in a direct care role or being employed as a community agency head.

Economic Impact

The rules proposed for readoption with amendments will have minimal economic impact. Pursuant to statute, the Department of Human Services assumes the cost of all criminal history background checks.

Federal Standards Statement

The rules proposed for readoption with amendments are not subject to any Federal requirements or standards. Therefore, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for readoption with amendments will not generate jobs. The rules may cause jobs to be lost for individuals disqualified from employment as a result of a criminal background check. This, however is the central purpose of the statute authorizing the rules and is intended to provide for safety of clients served by the Division.

Agriculture Industry Impact

The rules proposed for readoption with amendments would have no impact on agriculture in the State of New Jersey.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments do impose some reporting and recordkeeping requirements on service providers, as discussed in the Summary above, some of which may be classified as small businesses. These requirements are currently in place and have not imposed a significant impact on the regulated community, nor are they expected to in the future. No professional services are required to comply with the rules proposed for readoption with amendments.

Housing Affordability Impact Analysis

Because the rules proposed for readoption with amendments concern criminal background checks for employees who provide services to Division clients, there is an extreme unlikelihood that the rule will evoke a change in the average costs associated with housing or with the affordability of housing.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments concern criminal background checks for employees who provide services to Division clients. Therefore, there is an extreme unlikelihood that the rule will evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The Division does not anticipate the rules proposed for readoption with amendments will have any impact upon the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:48A.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

10:48A-1.3 Definitions

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

...

“Under contract” means a provider under a written agreement with the Division or a provider approved by the Division to provide disability services to individuals that are eligible to receive services from the Division.

SUBCHAPTER 2. ADMINISTRATION

10:48A-2.1 General standards

(a) N.J.S.A. 30:6D-63 to 72 requires that the Department shall not **be under** contract with any community agency for the provision of services unless it has first been determined that no criminal history record information exists on file in the Federal Bureau of Investigation Identification Division, or in the State Bureau of Identification in the Division of State Police, which would disqualify the community agency head or the community agency employee from such employment.

(b) - (l) (No change.)

SUBCHAPTER 3. PROCEDURES

10:48A-3.6 Monitoring

(a) Annually, at the time of the contract renewal with the Division, all [contract] community agencies **under contract** shall certify in writing to the Assistant Commissioner that they are in full compliance with N.J.S.A. 30:6D-63 to 72 regarding background checks for community provider agencies.

(b) - (c) (No change.)