

HUMAN SERVICES

DIVISION OF DEVELOPMENTAL DISABILITIES

Background Checks

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

Proposed: September 21, 2015, at 47 N.J.R. 2336(a).

Adopted: January 21, 2016, by Elizabeth Connolly, Acting Commissioner, Department of Human Services.

Filed: March 2, 2016, as R.2016 d.028, **without change**.

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

Effective Dates: March 2, 2016, Readoption.

April 4, 2016, Amendments.

Expiration Date: March 2, 2023.

Summary of Public Comments and Agency Responses:

The following is a summary of the comments received from the public and the Division's responses. Each commenter is identified at the end of the comment by a number that corresponds to the following list:

1. Daniel J. Keating, Ph.D., Executive Director, The Alliance for the betterment of Citizens with Disabilities
2. Senior Leadership Team, Devereux New Jersey
3. Mary Kraemer
4. Laura Kelly
5. Sarah Matthews, Interim Director of Operations, The Arc of Cape May County, Inc.

COMMENT: A commenter noted that it did not have any objection to the revised definition of “under contract” and is comfortable with the continued requirements of the regulation. (1)

RESPONSE: The Division appreciates the commenter’s support.

COMMENT: Three commenters expressed concern that the rules permit a new employee to be provisionally employed for a period of up to six months pending the completion of a criminal history background check, if the employee attests that he or she has not been convicted of any disqualifying offenses. (2, 3, and 4)

RESPONSE: The Division shares the commenters’ concern for the safety of the individuals served. The referenced six-month provisional period is established in the enabling legislation and cannot be changed through the rulemaking process. Importantly, as a practical matter, the results of background checks are received within two to four weeks, substantially less than six months. In addition, the law and rule provide that a person being provisionally employed pending receipt of the background check shall perform his or her duties under the supervision of a superior where possible. The Division believes that these factors address any safety concerns raised by the provisional employment period.

COMMENT: A commenter did not support the rehabilitation exception for a disqualifying criminal charge contained in N.J.A.C. 10:48A-3.4. (2)

RESPONSE: The enabling legislation and rule provide that an individual shall not be disqualified from employment on the basis of a criminal conviction if the individual can affirmatively demonstrate clear and convincing evidence of rehabilitation. Since the ability to

demonstrate rehabilitation is provided for in the enabling statute, it cannot be removed through a rule.

COMMENT: A commenter recommended specific offenses for which an employee may not be disqualified from employment be made a part of the standards. (3)

RESPONSE: The Division believes that including within the rules specific offenses for which an employee may not be disqualified is unnecessary and could be potentially confusing. For purposes of clarity, the approach of the enabling legislation and rule to list disqualifying crimes is preferable.

COMMENT: In response to N.J.A.C. 10:48A-3.2, which requires that the Department of Human Services and the community agency maintain the confidential results of a background check, a commenter suggested that the employee should sign a release of information so that the parent or guardian of the person served could review the results. (3)

RESPONSE: While the Division shares the commenter's concern for the safety of individuals served, it believes that the provisions of the law and rule ensure that people convicted of certain crimes will not be able to provide services to Division clients, without the need to require an employee to release information that is otherwise confidential.

COMMENT: A commenter expressed concerns with a requirement of N.J.A.C. 10:48A-3.5, that background checks shall be completed once every two years through an electronic archive request. The commenter believes that background checks should be conducted every six months. (3)

RESPONSE: As the commenter notes, in addition to the requirement that a background check be completed at least every two years, the rule requires the State Police to notify the Department of Human Services if a person is arrested or convicted of a crime in New Jersey after the background check is completed. The rule also provides that employees are responsible to notify their employers about criminal charges. The Division believes that, on balance, these provisions address the issue of offenses committed by an employee subsequent to a background check without requiring a check every six months, which would entail additional costs and administrative burdens.

COMMENT: A commenter requested that consideration be given to a universal fingerprint requirement for employees of agencies that service clients of both the Division and the Department of Children and Families (DCF). (5)

RESPONSE: The Division appreciates the commenter's suggestion. While this comment is beyond the scope of this readoption, the Division advises that the Department of Human Services and DCF are reviewing this issue.

Federal Standards Statement

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

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 10:48A.

Full text of the adopted amendments follows:

TEXT