IDAPA 16 – IDAHO DEPARTMENT OF HEALTH AND WELFARE

Division of Management Services

16.05.06 – Criminal History and Background Checks

Who does this rule apply to?
Individuals who provide care or services to children or vulnerable adults and who require a criminal history and background check identified in Department rules. Agencies who employ such employees and provide the care for the vulnerable children and adults.

What is the purpose of this rule?
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 children or vulnerable adults. Individuals requiring a criminal history check are identified in Department rules.

What is the legal authority for the agency to promulgate this rule?
This rule implements the following statutes passed by the Idaho Legislature:

Public Assistance and Welfare -
Public Assistance Law:
- Section 56-202(b), Idaho Code – Duties of Director of State Dept. of Health and Welfare
- Section 56-203(2), Idaho Code – Powers of State Department
- Section 56-204A, Idaho Code – Services for Children

Department of Health and Welfare:
- Section 56-1004A, Idaho Code – Criminal History and Background Checks
- Section 56-1007, Idaho Code – Collection of Fees for Services

Health and Safety -
Basic Daycare License:
- Section 39-1105, Idaho Code – Criminal History Checks
- Section 39-1107, Idaho Code – Fees
- Section 39-1111, Idaho Code – Rules Authorized
- Section 39-1113, Idaho Code – Basic Day Care License
- Section 39-1114, Idaho Code – Limited Applications

Child Care Licensing Reform Act:
- Section 39-1210(10), Idaho Code – Standards for Children's Residential Care Facilities
- Section 39-1211(4), Idaho Code – Standards for Foster Homes

Idaho Certified Family Homes:
- Section 39-3520, Idaho Code – Application for Certification

Personal Assistance Services:
- Section 39-5604, Idaho Code – Health and Background Checks

State Charitable Institutions -
Treatment and Care of the Developmentally Disabled:
- Section 66-404(7), Idaho Code – Proceedings for Appointment of Guardians & Conservators

Uniform Probate Code - Protection of Persons Under Disability and Their Property -
Guardians of Incapacitated Persons:
- Section 15-5-308(4), Idaho Code – Visitor in Guardianship Proceeding
- Section 15-5-311(5), Idaho Code – Who May be Guardian
- Section 15-5-316(5), Idaho Code – Guardian Ad Litem - Rights and Powers

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Juvenile Proceedings -
Child Protective Act:
Section 16-1647, Idaho Code – Citizen Review Panels

Where can I find information on Administrative Appeals?
Administrative appeals and contested cases are governed by the provisions of IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." 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.

How do I request public records?
Unless exempted, all public records are subject to disclosure by the Department that will comply with Title 74, Chapter 1, Idaho Code, upon requests. Confidential information may be restricted by state or federal law, federal regulation, and IDAPA 16.05.01, "Use and Disclosure of Department Records."Any information received from the FBI must comply with 28 CFR 50.12 or other federal regulations. Any information received from the Idaho State Police must comply with Section 67-3008, Idaho Code.

Who do I contact for more information on this rule?

Idaho Department of Health and Welfare
Division of Management Services
Background Check Unit
1720 Westgate Drive, Suite B
Boise, Idaho 83704

Or,

Idaho Department of Health and Welfare
Attn: Background Check Unit
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 332-7990 or Toll-Free (800) 340-1246
Fax: (208) 332-7991
Email: BCU@dhw.idaho.gov
Webpage: https://healthandwelfare.idaho.gov/bcu

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000. LEGAL AUTHORITY.
Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), Idaho Code, authorize the Department to conduct criminal history and background checks. US Public Law 92-544, authorizes the Department to submit fingerprints and receive responses from the Federal Bureau of Investigations for the processing of background checks. IRS Publication 1075 requires the Department to submit fingerprints and establish a personnel screening program for its employees who have access to the Federal Tax Information File as part of their duties. 42 USC Section 9858f requires the Department to check specific records for federal child care programs. (3-28-23)

001. POLICY.
The Department will conduct a fingerprint-based criminal history and background check on individuals who complete a criminal history application. The criminal history applicant is required to disclose any pertinent information regarding crimes or findings that would disqualify the individual from providing care or services to children or vulnerable adults. The Department may obtain information for these criminal history and background checks from the following sources: (3-28-23)

01. Federal Bureau of Investigation. (3-28-23)

02. Idaho State Police Bureau of Criminal Identification. (3-28-23)

03. Any state or federal Child Protection Registry. (3-28-23)

04. Any state or federal Adult Protection Registry. (3-28-23)

05. Any state Sexual Offender Registry. (3-28-23)

06. Office of Inspector General List of Excluded Individuals and Entities. (3-28-23)

07. Idaho Department of Transportation Driving Records. (3-28-23)

08. Nurse Aide Registry. (3-28-23)

09. Other states and jurisdictions records and findings. (3-28-23)

002. -- 009. (RESERVED)

010. DEFINITIONS.
For the purposes of this chapter of rules, the following terms apply: (3-28-23)

01. Agency. An administrative subdivision of government or an establishment engaged in doing business for another entity. This term is synonymous with the term "employer". (3-28-23)

02. Application. An individual's request for a 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. (3-28-23)

03. Background Check Unit. The Department's Unit responsible for processing fingerprint-based background checks, and issuing clearances or denials according to these rules. (3-28-23)

04. Clearance. A clearance is a document designated by the Department as the official result of a completed background check with no disqualifying crimes or relevant records found. (3-28-23)

05. Conviction. An individual is considered to have been convicted of a criminal offense when: (3-28-23)

a. A judgment of conviction, or an adjudication, has been entered against the individual by any federal, state, military, or local court; (3-28-23)

b. There is a finding of guilt against the individual by any federal, state, military, or local court; (3-28-23)

c. A plea of guilty or nolo contendere by the individual has been accepted by any federal, state, military, or local court; (3-28-23)

d. An individual has entered into or participated in first offender, deferred adjudication, or another arrangement or program where judgment of conviction has been withheld. This includes when: (3-28-23)

i. An individual participates in a drug court; or (3-28-23)

ii. An individual participates in a mental health court. (3-28-23)

06. 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. Also referred to as "background check". (3-28-23)

07. Denial. A denial of clearance is issued by the Department when an individual has a relevant record or disqualifying crime under Sections 200 and 210 of these rules. (3-28-23)

08. Department. The Idaho Department of Health and Welfare or its designee. (3-28-23)

09. Direct Patient Access Employee. Any individual who has access to a patient or resident of a long-term care provider or facility whether through employment or contract, and who has duties or performs tasks that involve (or may involve) one-on-one (1:1) contact with a patient or resident or has access to their personal belongings. Volunteers are not considered a Direct Patient Access employee of a long-term care provider or facility unless volunteers are required to undergo a background check under the rules applicable to that specific type of facility or provider. (3-28-23)

10. Disqualifying Crime. A disqualifying crime is a designated crime under Section 210 of these rules that results in the unconditional denial of an applicant. (3-28-23)

11. Employer. An entity that hires people to work in exchange for compensation. This term is synonymous with the term "agency". (3-28-23)

12. Enhanced Clearance. A clearance issued by the Department that includes a search of child protection registries in states or jurisdictions in which an applicant resided during the preceding five (5) years. (3-28-23)

13. Relevant Record. A record that is found in a search of criminal records or registries checked by the Department under Section 56-1004A, Idaho Code, and these rules. (3-28-23)

011. -- 049. (RESERVED)

050. FEES AND COSTS FOR BACKGROUND CHECKS.
The fee for a Department fingerprint-based background check is up to seventy dollars ($70) for an individual. The applicant is responsible for the cost of the background check. The Department may waive the fee for certain individuals. An applicant is responsible for any additional costs incurred by the Department paid to agencies, judicial, or law enforcement jurisdictions in other states. The Department will collect the additional funds to cover its costs. (3-28-23)

051. -- 059. (RESERVED)

060. AGENCY RESPONSIBILITIES.

01. Initial Registration. Agencies required to obtain Department background checks on individuals must register with the Department and receive an agency identification number before applications are processed or accessed. (3-28-23)

02. Change in Name or Ownership. An agency or facility must: (3-28-23)

a. If acquired by another entity, the new ownership will register as a new agency and provide contact information to obtain a new agency identification number and website access within thirty (30) calendar days of acquisition. New ownership occurs when the agency obtains a new federal Employer Identification Number with the Internal Revenue Service. (3-28-23)

b. The previous ownership will settle any background check debt with the Department prior to the completion of the acquisition. The Department reserves the right to not acknowledge the transfer to the new ownership if the previous ownership background check debt is not settled. (3-28-23)

c. If there is a change in name or location, the agency will update their profile on the Department website with their new name, location, and contact information within thirty (30) calendar days of the change. (3-28-23)

03. Applicant Screening. The agency must screen applicant background check disclosures that are submitted to the Department website to determine the suitability of the applicant for employment or program participation. 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 or program participation should be made during the initial application review. (3-28-23)

04. Time Frames For Compliance. The agency is responsible for ensuring 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. (3-28-23)

05. Review Background Check Results. The agency is responsible for reviewing the results of the background check even if a clearance that resulted in no disqualifying crimes or offenses found is issued by the Department. The agency must complete this review within fourteen (14) calendar days of the clearance being accessible on the Department's website. (3-28-23)

06. Employment Determination. The Department does not make the final fitness determination for employment or program participation for the applicant. The agency will determine the ability or risk of the individual to provide care or services to children or vulnerable adults after reviewing the applicant's background check results. (3-28-23)

07. Discovery of Criminal Convictions or Disqualifying Records After Clearance is Issued. After a clearance is issued, if the agency discovers that the applicant may no longer be eligible to hold a Department clearance due to the existence of either a conviction for a disqualifying offense, or a relevant record listed in these rules, the agency is required to report their discovery to the Background Check Unit. The Department may compel the applicant to be processed for a new background check under Subsection 195.04 of these rules if it deems it appropriate to do so. (3-28-23)

08. Retention of Records. The agency will retain all applicant background check documentation as provided in Subsection 300.02 of these rules. (3-28-23)

061. -- 069. (RESERVED)

070. NONCOMPLIANCE WITH THESE RULES.
The Department will report an agency's noncompliance with these rules to the applicable licensing or certification unit or appropriate program integrity unit. (3-28-23)

071. -- 099. (RESERVED)

100. INDIVIDUALS SUBJECT TO A BACKGROUND CHECK.
The following are persons or classes of individuals who are required by statute, or Department rules, to complete a background check. (3-28-23)

Required Classes	Idaho Code and IDAPA Chapter(s)
01. Adoptive Parent Applicants	IDAPA 16.04.18, "Children's Agencies and Residential Licensing" IDAPA 16.06.01, "Child and Family Services" IDAPA 16.06.02, "Child Care and Foster Care Licensing"
02. Certified Family Homes	Section 39-3520, Idaho Code IDAPA 16.03.19, "Certified Family Homes" IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"
03. Children's Agency Facility Staff	IDAPA 16.04.18, "Children's Agencies and Residential Licensing"
04. Children's Residential Care Facilities	Section 39-1210, Idaho Code IDAPA 16.04.18, "Children's Agencies and Residential Licensing"
05. Children's Therapeutic Outdoor Programs	Section 39-1208, Idaho Code IDAPA 16.04.18, "Children's Agencies and Residential Licensing"
06. Citizen Review Panel Members	Public health district volunteers who must comply with Section 16-1647, Idaho Code, "Citizen Review Panels - Child Protection Legislative Review Panel"
07. Contracted Non-Emergency Medical Transportation Providers	IDAPA 16.03.09, "Medicaid Basic Plan Benefits"
08. Court Appointed Guardians and Conservators	Title 15, Chapter 5, Idaho Code, & Title 66, Chapter 4, Idaho Code. Court required guardian and conservator background checks are not provided Department clearances under Subsection 180.01 of these rules
09. Designated Examiners and Dispositioners	IDAPA 16.07.39, "Designated Examiners and Dispositioners"
10. Developmental Disabilities Agencies	IDAPA 16.03.21, "Developmental Disabilities Agencies" (DDA) IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"
11. Emergency Medical Services (EMS)	IDAPA 16.01.05, "Emergency Medical Services (EMS) -- Education, Instructor, and Examination Requirements" IDAPA 16.01.07, "Emergency Medical Services (EMS) -- Personnel Licensing Requirements"
12. High Risk Providers of Medicaid	IDAPA 16.03.09, "Medicaid Basic Plan Benefits" The Medicaid Provider Handbook
13. Home and Community-Based Services (HCBS)	IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits" IDAPA 16.04.17, "Residential Habilitation Agencies"
14. Home Health Agencies	IDAPA 16.03.07, "Home Health Agencies"
15. Idaho Behavioral Health Plan (IBHP)	IDAPA 16.03.09, "Medicaid Basic Plan Benefits"
16. Idaho Child Care Program (ICCP)	IDAPA 16.06.12, "Idaho Child Care Program" (ICCP)
17. Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)	IDAPA 16.03.11, "Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)"
18. Licensed Foster Care	Section 39-1211, Idaho Code IDAPA 16.06.02, "Child Care and Foster Care Licensing"
19. Licensed Day Care	Sections 39-1105, 39-1113, and 39-1114, Idaho Code IDAPA 16.06.02, "Child Care and Foster Care Licensing"

Required Classes	Idaho Code and IDAPA Chapter(s)
20. Mental Health Services	IDAPA 16.07.33, "Adult Mental Health Services" IDAPA 16.07.37, "Children's Mental Health Services"
21. Personal Assistance Agencies	IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"
22. Personal Care Service Providers	Section 39-5604, Idaho Code IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"
23. Residential Assisted Living Facilities	IDAPA 16.03.22, "Residential Assisted Living Facilities"
24. Service Coordinators and Paraprofessional Providers	IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"
25. Skilled Nursing Facilities	IDAPA 16.03.02, "Skilled Nursing Facilities"
26. Substance Use Disorders Services	IDAPA 16.07.17, "Substance Use Disorders Services"
27. Support Brokers and Community Support Workers	IDAPA 16.03.13, "Consumer-Directed Services"

(3-28-23)

101. DEPARTMENT INDIVIDUALS SUBJECT TO A BACKGROUND CHECK.
The following Department employees, contractors, and volunteers are subject to background checks. (3-28-23)

01. Employees, Contractors, and Volunteers. Employees, contractors, and volunteers providing direct care services or who have access to children or vulnerable adults under Section 39-5302(10), Idaho Code. (3-28-23)

02. Employees of Bureau of Compliance. (3-28-23)

a. Fraud Investigators; (3-28-23)

b. Utilization Review Analysts; and (3-28-23)

c. Background Check Unit staff. (3-28-23)

03. Employees at State Institutions. All employees of the following state-funded institutions; (3-28-23)

a. Southwest Idaho Treatment Center, Nampa, Idaho; (3-28-23)

b. State Hospital North, Orofino, Idaho; (3-28-23)

c. State Hospital South, Blackfoot, Idaho; and (3-28-23)

d. State Hospital West, Nampa, Idaho. (3-28-23)

04. Emergency Medical Services (EMS) Employees. EMS communication specialists and managers. (3-28-23)

05. Other Employees. Other Department employees as determined by the Director. (3-28-23)

102. -- 119. (RESERVED)

120. APPLICATION FOR A BACKGROUND CHECK.
Individuals who are subject to a background check must submit their application on the Department website. (3-28-23)

01. Application Form. To request a background check, the applicant must apply on the Department website and provide all the information requested in the Department-provided forms. The individual's application authorizes the Department to obtain information and release it under applicable state and federal law. (3-28-23)

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. (3-28-23)

03. Failure to Disclose Information. (3-28-23)

a. An applicant who falsifies or fails to disclose information on the application, may be subject to prosecution under Sections 18-3203, 18-5401, and 56-227A, Idaho Code. (3-28-23)

b. An applicant required to obtain a background check under Section 126 of these rules that knowingly makes a materially false statement in connection to their background check will receive an unconditional denial as provided in Section 200 of these rules. (3-28-23)

121. -- 124. (RESERVED)

125. IDAHO CHILD PROTECTION CENTRAL REGISTRY CHECKS.
The Department will provide the results of a check of the Idaho Child Protection Central Registry to any agency that requires it to comply with applicable federal, state, or local law. The Department will process those requests under this rule. (3-28-23)

01. Request for an Idaho Child Protection Central Registry Check. A request for an Idaho Child Protection Central Registry check must be submitted on the Department form by mail, facsimile transmission, or e-mail attachment. (3-28-23)

02. Fee Amount. The fee for an Idaho Child Protection Central Registry check is twenty dollars ($20) for each subject checked. (3-28-23)

03. Department Response. A response will be returned to the agency initiating the request for the check within fourteen (14) days of receipt of the request. The Department's response will be limited to confirmation whether the subject is listed in the Registry. The requestor may contact the Department's Division of Family and Community Services if additional information is needed. (3-28-23)

126. APPLICANTS RECEIVING A DEPARTMENT ENHANCED CLEARANCE.
The following classes of individuals are required to provide their previous residence information for the preceding five (5) years in their application for a background check. If the applicant's previous background check included checks of out-of-state Central Child Protection Registries within the previous six (6) months, the applicant is not required to complete them again. (3-28-23)

01. Adoptive Parent Applicants. (3-28-23)

02. Behavioral Health Programs. (3-28-23)

03. Certified Family Homes. (3-28-23)

04. Children's Agency Facility Staff. (3-28-23)

05. Children's Residential Care Facilities. (3-28-23)

06. Children's Therapeutic Outdoor Programs. (3-28-23)

07. Citizen Review Panel Members. (3-28-23)

08. Idaho Child Care Program (ICCP). (3-28-23)

09. Licensed Foster Care. (3-28-23)

10. Licensed Day Care. (3-28-23)

11. Mental Health Services. (3-28-23)

12. Substance Use Disorders Services. (3-28-23)

127. -- 139. (RESERVED)

140. SUBMISSION OF FINGERPRINTS.
Ten (10) rolled fingerprints must be collected from the individual and submitted to the Department under Section 150 of these rules to process a background check request. (3-28-23)

01. Department Fingerprinting Locations. The Department will collect the individual's fingerprints at designated locations listed on the Department's website. The applicant may contact the Background Check Unit for additional guidance. (3-28-23)

02. Submitting Fingerprints by Mail. Individuals who elect to have fingerprints collected by a local law enforcement agency or by the applicant's agency must use a federal FD-258 Applicant fingerprint card. The fingerprint card must be completed using the instructions provided, signed, and mailed along with the applicable fee to the address indicated on the Department's website. The applicant fingerprints and fees must be received by the Department in the time frame required in Section 150 of these rules. (3-28-23)

03. Submission of Reprints. If an individual's submitted fingerprints are deemed unreadable by the Department, Idaho State Police, or the FBI, the applicant must comply with a request for reprints from the Department within fifteen (15) calendar days from the date of the notice. Failure to comply with the request will result in the applicant being unavailable to provide services. (3-28-23)

141. -- 149. (RESERVED)

150. TIME FRAME FOR SUBMITTING FINGERPRINTS.

01. Time Frame. The applicant fingerprints must be received by the Department within twenty-one (21) days from the date of the application submission in the Department background check system whether the fingerprints are sent by mail or collected at a Department fingerprinting location. If the Department does not receive the applicant fingerprints within sixty (60) calendar days from the background check submission date on the Department website, the applicant must complete a new application. (3-28-23)

02. No Extension of Time Frame. The Department will not extend the twenty-one (21) day time frame, unless the agency provides just cause. If the Department does not extend the time frame, the applicant must be removed from any situation where they can have direct access to a vulnerable person or their belongings. (3-28-23)

151. -- 159. (RESERVED)

160. WITHDRAWAL OF APPLICATION.
An individual may withdraw their application for a background check at any time. An individual who withdraws their application cannot provide services, or receive licensure or certification. Fees paid for the cost of the background check are non-refundable once the fingerprints have been submitted by the Department to the Idaho State Police. (3-28-23)

161. -- 169. (RESERVED)

170. AVAILABILITY TO PROVIDE SERVICES PENDING COMPLETION OF THE BACKGROUND CHECK.
An individual is available to provide services on the day the application is submitted on the Department website, has been reviewed by the agency, and while pending completion of the background check under this rule. The individual must have submitted their application and fingerprints in the time frame required in Section 150 of these rules to provide services. (3-28-23)

01. Employees of Providers, Contractors, Bureau of Emergency Medical Services (EMS), or the Department. An individual is available to provide services on a provisional basis at the discretion of the agency or EMS Bureau if no disqualifying crimes or relevant records are disclosed on the application. The agency must review the application for any disqualifying crimes under Section 210 of these rules or other relevant records under Section 200 of these rules. The agency 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. (3-28-23)

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 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: (3-28-23)

a. Adoption or foster care applicants and adults in the home; (3-28-23)

b. Certification or licensure applicants; (3-28-23)

i. Certified family homes; (3-28-23)

ii. Licensed Emergency Medical Services applicants; and (3-28-23)

iii. Department-licensed child care providers. (3-28-23)

171. -- 179. (RESERVED)

180. BACKGROUND CHECK RESULTS.
The Department will issue a clearance or denial once the background check is completed. (3-28-23)

01. Results of Background Checks. The results can be accessed on the Department's website. (3-28-23)

02. Findings for Court-Required Criminal History and Background Checks. Under Section 56-1004A(2)(b), Idaho Code, the Department will provide findings of a court-ordered background check to individuals appointed by the court under Title 15, Chapter 5, or Title 66, Chapter 4, Idaho Code. (3-28-23)

03. Department Employees That Have Access to the Internal Revenue Service Federal Tax Information File. Employees assigned to the Self-Reliance Division that access the Internal Revenue Service Federal Tax Information file as part of their duties will be processed for a background check by the Background Check Unit. The Self-Reliance Division will make a fitness determination based on its own policies. (3-28-23)

181. APPLICATION STATUS.
An individual and their agency may check on the background check status and the individual's availability to work on the Department website. (3-28-23)

182. -- 189. (RESERVED)

190. BACKGROUND CHECK CLEARANCE.

01. Clearance. A 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 is available for printing to the individual and their agency. (3-28-23)

02. Clearance Types. An applicant required to pass a background check must receive a clearance as provided below: (3-28-23)

a. An enhanced clearance is required for each of the classes listed in Section 126 of these rules and requires searches from states and jurisdictions where the applicant has resided in the previous five (5) years. A relevant record on any child protection registry will result in a denial under Subsection 200.01 of these rules. An applicant who applies to work in any of these classes must receive or have an enhanced clearance. (3-28-23)

b. An applicant not listed in Section 126 of these rules will receive a clearance provided they do not disclose or have a relevant record under Subsections 200.01.a., 200.01.c., 200.01.d., 200.01.e., 200.01.f., or 200.01.g., or a disqualifying crime under Subsections 210.01, 210.02, or 210.03 of these rules. (3-28-23)

03. Revocation of Clearance. A clearance may be revoked for the following: (3-28-23)

a. The individual fails to comply with the Department's request to submit to a new background check under Subsection 195.04 of these rules. (3-28-23)

b. The individual completes a new background check and is found to have a criminal or relevant record that results in an inability to proceed action or in a denial under Sections 200 or 270 of these rules. (3-28-23)

c. The applicant withdraws their application from the background check process under Section 160 of these rules. (3-28-23)

d. The background check fees are not paid, or are insufficient to cover the costs of the background check. (3-28-23)

191. -- 194. (RESERVED)

195. USE OF PREVIOUSLY COMPLETED BACKGROUND CHECKS.
The agency is responsible for confirming that the applicant has received a clearance under Section 190 of these rules. Once a clearance is issued by the Department, verifiable continuous employment of the applicant with the same agency eliminates the requirement for a new background check. (3-28-23)

01. New Background Check. Any individual required to have a background check under these rules must complete a new application, including fingerprints when: (3-28-23)

a. An applicant is accepting employment with a new agency, and their last Department background check was completed more than three (3) years prior to their employment date; or (3-28-23)

b. An applicant is applying for licensure or certification with the Department. and their last Department background check was completed more than three (3) years prior to their employment date or licensure application date; or (3-28-23)

c. An applicant's affiliation ends, is later re-affiliated to the same agency, and the applicant background check is older than three (3) years at the time of the re-affiliation. (3-28-23)

02. Use of Background Check Within Three Years of Completion. Any agency may use a Department background check clearance obtained under these rules if: (3-28-23)

a. The individual has received a Department's background check clearance within three (3) years from the date of employment; (3-28-23)

b. Prior to allowing the individual to provide services, the agency must affiliate itself to the individual's clearance through the Department's website by having the agency's identification number added to the individual's background check; and (3-28-23)

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c. The agency completes a state-only background check of the individual through the Idaho State Police Bureau of Criminal Identification, and no disqualifying crimes are found. (3-28-23)

i. The action must be initiated by the agency within thirty (30) calendar days of obtaining access to the individual's background check clearance issued by the Department; and (3-28-23)

ii. The agency must be able to provide proof of this action by maintaining a copy of the records required in Subsections 195.02.a and 195.02.c of these rules. (3-28-23)

d. An applicant's affiliation ends, is later re-affiliated to the same agency, and the applicant background check was completed less than three (3) years from the time of the re-affiliation, the provisions of Subsections 195.02.b and 195.02.c of these rules apply. (3-28-23)

e. An agency not listed in Section 126 of these rules may use an individual's Department clearance or enhanced clearance that was obtained within three (3) years from date of employment. (3-28-23)

f. An individual with a current clearance that is not Enhanced but is completed within three (3) years from date of employment, who seeks to affiliate themselves to a new agency identified in Section 126 of these rules, must apply for a new background check to obtain an Enhanced clearance. An agency or employer identified in Subsections 126.08 and 126.10 of these rules may not hire an employee with a clearance obtained prior to January 1, 2020, unless the Enhanced clearance complies with the requirements found in 42 USC Section 9858. (3-28-23)

03. Agency Discretion. Any agency or employer, at its discretion, may require an individual to complete a Department background check at any time, even if the individual has received a background check clearance within three (3) years. (3-28-23)

04. Department Discretion. The Department may require a background check of any individual covered under these rules at any time. Any individual required to complete a background check under these rules must be fingerprinted within fourteen (14) days from the date of notification by the Department. (3-28-23)

196. -- 199. (RESERVED)

200. UNCONDITIONAL DENIAL.
An individual who receives an unconditional denial is not available to provide services, have access, or be licensed or certified by the Department. (3-28-23)

01. Reasons for an Unconditional Denial. Unconditional denials are issued for: (3-28-23)

a. Disqualifying crimes under Section 210 of these rules; (3-28-23)

b. A relevant record on any Child Protection Registry for the classes of individuals under Section 126 of these rules; (3-28-23)

c. A relevant record on the Idaho Child Protection Central Registry with a Level one (1) or Level two (2) designation for all other applicants covered by these rules; (3-28-23)

d. A relevant record on the Nurse Aide Registry; (3-28-23)

e. A relevant record on either the state or federal sex offender registries; (3-28-23)

f. A relevant record on the U. S. Health and Human Services, Office of the Inspector General List of Excluded Individuals and Entities (LEIE); (3-28-23)

g. A relevant record on the state Medicaid Exclusion List: or (3-28-23)

h. A materially false statement made knowingly in connection to the Department's background check application for the classes of individuals under Section 126 of these rules will result in a five-year disqualification

period for the applicant. (3-28-23)

02. Issuance of an Unconditional Denial. The Department will issue an unconditional denial within fourteen (14) days of completion of a background check. (3-28-23)

03. Challenge of Department's Unconditional Denial. An individual has twenty-eight (28) 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 Background Check Unit. (3-28-23)

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, "Contested Case Proceedings and Declaratory Rulings," Section 152. (3-28-23)

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, "Contested Case Proceedings and Declaratory Rulings," Section 152. (3-28-23)

04. Appeal of an Unconditional Denial. Following a challenge of the Department's unconditional denial, an individual may appeal the Department's decision under IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." The request to appeal an unconditional denial does not stay the action of the Department. (3-28-23)

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 background check reveals a conviction for a disqualifying crime on their record under this rule. (3-28-23)

01. Disqualifying Crimes. The disqualifying crimes under this rule, or any substantially conforming foreign criminal violation, will result in an unconditional denial being issued. (3-28-23)

a. Crimes against vulnerable adults: (3-28-23)

i. Abuse, neglect, or exploitation of a vulnerable adult, as defined in Section 18-1505, Idaho Code; (3-28-23)

ii. Abandoning a vulnerable adult, as defined in Section 18-1505A, Idaho Code; (3-28-23)

iii. Sexual abuse and exploitation of a vulnerable adult, as defined in Section 18-1505B, Idaho Code. (3-28-23)

b. Aggravated, first-degree and second-degree arson, as defined in Sections 18-801 through 18-803, and 18-805, Idaho Code; (3-28-23)

c. Forcible sexual penetration by use of a foreign object, as defined in Section 18-6604, Idaho Code; (3-28-23)

d. Hiring, employing, or using a minor to engage in certain acts, as defined in Section 18-1517A, Idaho Code; (3-28-23)

e. Human trafficking, as defined in Sections 18-8602 and 18-8603, Idaho Code; (3-28-23)

f. Incest, as defined in Section 18-6601, Idaho Code; (3-28-23)

g. Injury to a child, felony or misdemeanor, as defined in Section 18-1501, Idaho Code; (3-28-23)

h. Kidnapping, as defined in Sections 18-4501 through 18-4503, Idaho Code; (3-28-23)

i. Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; (3-28-23)

j. Mayhem, as defined in Section 18-5001, Idaho Code; (3-28-23)

k. Manslaughter: (3-28-23)

i. Voluntary manslaughter, as defined in Section 18-4006(1) Idaho Code; (3-28-23)

ii. Involuntary manslaughter, as defined in Section 18-4006(2), Idaho Code; (3-28-23)

iii. Felony vehicular manslaughter, as defined in Section 18-4006(3)(a) and (b), Idaho Code; (3-28-23)

l. Murder in any degree or assault with intent to commit murder, as defined in Sections 18-4001, 18-4003, and 18-4015, Idaho Code; (3-28-23)

m. Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code; (3-28-23)

n. Rape, as defined in Section 18-6101, Idaho Code; (3-28-23)

o. Robbery, as defined in Section 18-6501, Idaho Code; (3-28-23)

p. Felony stalking, as defined in Section 18-7905, Idaho Code; (3-28-23)

q. Sale or barter of a child, as defined in Section 18-1511, Idaho Code; (3-28-23)

r. Ritualized abuse of a child, as defined in Section 18-1506A, Idaho Code; (3-28-23)

s. Female Genital Mutilation, as defined in Section 18-1506B, Idaho Code; (3-28-23)

t. Sexual abuse or exploitation of a child, as defined in Sections 18-1506, Idaho Code; (3-28-23)

u. Felony sexual exploitation of a child, as defined in Section 18-1507, Idaho Code; (3-28-23)

v. Sexual battery of a minor child under sixteen (16) or seventeen (17) years of age, as defined in Section 18-1508A, Idaho Code; (3-28-23)

w. Video voyeurism, as defined in Section 18-6605, Idaho Code; (3-28-23)

x. Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; (3-28-23)

y. 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; (3-28-23)

z. Any felony punishable by death or life imprisonment; (3-28-23)

aa. Attempted strangulation, as defined in Section 18-923, Idaho Code; (3-28-23)

bb. Felony domestic violence, as defined in Section 18-918, Idaho Code; (3-28-23)

cc. Battery with intent to commit a serious felony, as defined in Section 18-911, Idaho Code; (3-28-23)

dd. Assault with intent to commit a serious felony, as defined in Section 18-909, Idaho Code; or (3-28-23)

ee. Aggravated sexual battery, as defined in Section 18-925, Idaho Code; (3-28-23)

ff. Sexual abuse of an animal, as defined in Section 18-6602, Idaho Code; (3-28-23)

gg. Sexual abuse of human remains, as defined in Section 18-6603, Idaho Code; or (3-28-23)

hh. Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-304, 18-305, 18-306, 18-307, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. (3-28-23)

02. Disqualifying Five-Year Crimes. The Department will issue an unconditional denial for an individual who has been convicted of the following described crimes for five (5) years from the date of the conviction for the crimes listed in this rule, or any substantially conforming foreign criminal violation: (3-28-23)

a. Any felony not described in Subsection 210.01, or 210.03 of this rule; (3-28-23)

b. Misdemeanor domestic violence, as defined in Section 18-918, Idaho Code; (3-28-23)

c. Failure to report abuse, abandonment or neglect of a child, as defined in Section 16-1605, Idaho Code; (3-28-23)

d. Misdemeanor forgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 through 18-3128, Idaho Code; (3-28-23)

e. Misdemeanor forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; (3-28-23)

f. Misdemeanor identity theft, as defined in Section 18-3126, Idaho Code; (3-28-23)

g. Misdemeanor insurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; (3-28-23)

h. Public assistance fraud, as defined in Sections 56-227, 56-227A, 56-227D, 56-227E and 56-227F, Idaho Code; (3-28-23)

i. Sexual exploitation of a child by electronic means, felony or misdemeanor, as defined in Section 18-1507A, Idaho Code; (3-28-23)

j. Stalking in the second degree, as defined in Section 18-7906, Idaho Code; (3-28-23)

k. Misdemeanor vehicular manslaughter, as defined in Section 18-4006(3)(c), Idaho Code; (3-28-23)

l. Sexual exploitation by a medical care provider, as defined in Section 18-919, Idaho Code; (3-28-23)

m. Sexual Battery, as defined in Section 18-924, Idaho Code; (3-28-23)

n. Operating a certified family home without certification, as defined in Section 39-3528, Idaho Code; or (3-28-23)

o. Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-204, 18-205, 18-304, 18-306, 18-307, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying five (5) year crimes. (3-28-23)

03. Disqualifying Three-Year Crimes. The Department will issue an unconditional denial for an individual who has been convicted of the following described crimes for three (3) years from the date of the conviction for the crimes listed in this rule, or any substantially conforming foreign criminal violation: (3-28-23)

a. A controlled substance manufacture, delivery, or possession with intent to deliver or manufacture offense, as defined in Section 37-2732, Idaho Code, felony; (3-28-23)

b. A controlled substance paraphernalia offense, as defined in Section 37-2734B, Idaho Code, felony; or (3-28-23)

c. Operating a motor vehicle under the influence of alcohol, drugs, or any other intoxicating substance offense, as defined in Section 18-8004, Idaho Code, felony. (3-28-23)

04. 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: (3-28-23)

a. A withheld judgment; (3-28-23)

b. A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; (3-28-23)

c. An order under Section 19-2604, Idaho Code, or other equivalent state law; or (3-28-23)

d. A sealed record. (3-28-23)

211. -- 269. (RESERVED)

270. CRIMINAL OR RELEVANT RECORD - ACTION PENDING.

01. Notice of Inability to Proceed. When the applicant is identified as having a pending criminal action for a crime or relevant record that may disqualify them from receiving a clearance for the background check, the Department may issue a notice of inability to proceed. (3-28-23)

02. Availability to Provide Services. The applicant is not available to provide service when a notice of inability to proceed or denial is issued by the Department. Any previous clearance issued by the Department will be revoked as described in Section 190 of these rules. (3-28-23)

03. Reconsideration of Action Pending. In the case of an inability to proceed status, the applicant can submit documentation that the matter has been resolved to the Department for reconsideration within one hundred and twenty (120) calendar days from the date of notice. When the Department receives this documentation, the Department will notify the applicant of the reconsideration and issue a clearance or denial. When the Department's reconsideration results in a clearance after review, any previously revoked clearance will be restored as described in Section 190 of these rules. (3-28-23)

271. -- 299. (RESERVED)

300. BACKGROUND CHECK RECORDS.
Background checks done under this chapter become the property of the Department and are held confidential. (3-28-23)

01. Release of Background Check Records. A copy of the background check as defined in Section 010 of these rules will be released: (3-28-23)

a. To the individual who has requested the background check and upon receipt of a written request to the Department, provided the individual releases the state from all liability; (3-28-23)

b. In response to a subpoena issued by a court of competent jurisdiction; or (3-28-23)

c. As otherwise required by law. (3-28-23)

02. Department Retention of Records. The Department will preserve all applicant background check records for six (6) years. (3-28-23)

03. Use and Dissemination Restrictions for FBI Criminal Identification Records. According to 28 CFR 50.12, the Department will: (3-28-23)

a. Notify the individual fingerprinted that the fingerprints will be used to check the criminal history records of the FBI; (3-28-23)

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; (3-28-23)

c. Notify the individual that they have fifteen (15) days to correct or complete the FBI identification record or to decline to do so; and (3-28-23)

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. (3-28-23)

301. -- 999. (RESERVED)

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