

II. Piezometers shall be tested to ensure hydraulic responsiveness and the results of such testing shall be included in the report submitted pursuant to (d)7i(3) below;

(3) Following the Commission's review of the hydrogeologic test procedure, the applicant shall complete the test and submit a final hydrogeologic report prepared in accordance with the "Hydrogeological Report" section of TM 12-2, which shall describe the field procedures used, all data gathered, analysis of the data, and evaluation of the effect of the proposed diversion on the Kirkwood-Cohansey aquifer.

(4) Using the results of the hydrogeologic testing performed in accordance with (d)7i(3) above, the applicant shall calculate an estimated zone of influence created by the proposed diversion and submit a groundwater flow model using the modular hydrologic model of the United States Geological Survey, (MODFLOW) in use at the time of the application. The MODFLOW model shall calculate the zone of influence of the water table at: the nearest boundaries of the Preservation Area District, Forest Area, or Special Agricultural Production Area in the affected HUC-11 watershed; and the boundary of the wetland nearest to the proposed diversion in the same HUC-11 watershed.

8. An applicant for a proposed diversion shall provide written documentation of water conservation measures that have been implemented, or that are planned for implementation, for all areas to be served by the proposed diversion. Water conservation measures are measurable efforts by public and private water system operators and local agencies to reduce water demand by users and reduce losses in the water distribution system.

9. The following notice requirements shall apply to the proposed diversions:

i. For applications submitted pursuant to N.J.A.C. 7:50-4.31 through 4.50, the applicant shall provide notice of the application to the municipality and county in which the proposed diversion will be located, as well as all other municipalities and counties in the affected HUC-11 watershed. The notice shall state:

(1) The nature of the application submitted to the Pinelands Commission and a detailed description of the proposed diversion, including the source, location, quantity, and/or allocation of water to be diverted;

(2) The potential impact of the proposed diversion on the volume of water in the affected HUC-11 watershed that will be available for future diversions;

(3) That written comments on the application may be submitted to the Pinelands Commission;

(4) That the application is available for inspection at the office of the Pinelands Commission; and

(5) The address and phone number of the Pinelands Commission.

ii. For applications submitted pursuant to N.J.A.C. 7:50-4.51 through 4.60, the applicant shall provide notice of the application for public development pursuant to N.J.A.C. 7:50-4.53. In addition, the applicant shall provide notice of the application to all municipalities and counties in the affected HUC-11 watershed. The notice shall include the information required at N.J.A.C. 7:50-4.53(e), as well as the following:

(1) A detailed description of the proposed diversion, including the source, location, quantity and/or allocation of water to be diverted; and

(2) A statement of the potential impact of the proposed diversion on the volume of water in the affected HUC-11 watershed that will be available for future diversions.

iii. No application for which notice pursuant to (d)9i or ii above is required shall be deemed complete until proof that the requisite notice that has been given is received.

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Background Checks

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

Proposed Repeal and New Rule: N.J.A.C. 10:48A-3.7

Authorized By: Sarah Adelman, 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 requirements.

Proposal Number: PRN 2023-022.

Submit written comments by June 5, 2023, electronically to:

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

Carol Jones
Administrative Practice Officer
Division of Developmental Disabilities
PO Box 726
Trenton, NJ 08625-0726
Fax: (609) 341-2451

The agency proposal follows:

Summary

The Department of Human Services ("Department" or "DHS") proposes to readopt N.J.A.C. 10:48A, Background Checks, with amendments. Chapter 48A establishes the guidelines for obtaining criminal history background checks for employees of agencies under contract with the Division of Developmental Disabilities (Division).

On January 14, 2000, P.L. 1999, c. 358 was enacted. This statute, later amended at P.L. 2000, c. 97, requires employees of community agencies under contract with the Department to provide services to individuals who have developmental disabilities to submit to a criminal history background check. The statute was again amended at P.L. 2017, c. 328 to expand the scope of background check requirements to include community care residence applicants, alternates, and household members. This law also requires the Department to determine whether an individual is disqualified based on the background check, rather than a community agency board or community agency head. The proposed amendments to the rules reflect these statutory changes. The Division is also proposing additional technical amendments that reflect current operations.

The Department adopted N.J.A.C. 10:48A, Background Checks, as new rules effective June 2, 2003. The Department readopted Chapter 48A effective September 11, 2008, and again effective March 2, 2016. Chapter 48A was set to expire on March 2, 2023. As the Department has filed this notice of proposed readoption with amendments with the Office of Administrative Law on that date, the expiration date was extended 180 days to August 29, 2023, pursuant to N.J.S.A. 52:14B-5.1.(c)2.

The Division provides services and supports for eligible individuals with developmental disabilities. Services and supports may be provided in settings such as group homes, day programs, community care residences, or in an individual's home. The rules screen out persons unfit to provide services to Division clients due to a disqualifying criminal history and are, therefore, an important part of health and safety protections. The 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.

The Department is providing 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.

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 for employees of agencies under contract with the Division. The Division proposes to add community care residence applicants, alternates, and household members, as required pursuant to P.L. 2017, c. 328.

N.J.A.C. 10:48A-1.2 sets forth the scope of the rules and sets forth that background checks are required for employees who have direct contact with persons served by the agency. The Division proposes an amendment to reflect that background checks must be conducted for all community care residence applicants, licensees, alternates, or household members, as required at P.L. 2017, c. 328.

N.J.A.C. 10:48A-1.3 provides the definitions used in the chapter. The Division proposes a technical amendment to the term “archive request,” as the correct name for “CHRI” is “Criminal History Record Information,” rather than “Criminal History Record Inquiry.” The Division also proposes to amend the definitions for “community agency” and “community agency employee,” to be consistent with P.L. 2017, c. 328, and clarify that these terms include agencies licensed by the Department.

The Division proposes to add definitions for: “community care residence,” “community care residence applicant,” “community care residence alternate,” and “community care residence household member,” consistent with P.L. 2017, c. 328. The Division also proposes to add a definition for “community care residence licensee,” to make clear that once the initial community care residence license has been issued, the applicant becomes the licensee. This term is utilized within the chapter in provisions relating to ongoing procedures and administration once the license has been issued.

The Division also proposes to add a definition for “Department,” to make clear that this term applies to the Department of Human Services. The Division proposes to amend the definition of “DDD fingerprint liaison” to reflect current practice, in which the fingerprint liaison directs the agency to transmit electronic requests to the live scan vendor. Finally, the Division proposes to update the definition of “DHS Coordinator” to reflect the current organizational structure in the Department, in which this function is located within the Employment Controls and Compliance Unit.

Subchapter 2. Administration

N.J.A.C. 10:48A-2.1 sets forth general standards for conducting the background checks. The Division proposes to amend this section consistent with P.L. 2017, c. 328, to provide that a community agency under contract with, or licensed by, the Department shall not pay or contract for any employee or agency head unless it has first been determined that no criminal history record information exists that would disqualify the employee or agency head. Also, consistent with P.L. 2017, c. 328, the Division proposes an amendment setting forth that a community care residence shall not be qualified to house individuals unless it has been determined that no criminal history record information exists that would disqualify the community care residence applicant, alternate, or household member.

N.J.A.C. 10:48A-2.1 is proposed to be amended throughout to reflect the addition of community care residences, applicants, alternates, and household members to the background check requirements. Also, consistent with P.L. 2017, c. 328, the Division proposes an amendment to reflect that the Department, rather than the community agency head or community agency board, determines whether an individual has provided clear and convincing evidence of their rehabilitation. The Division proposes an additional amendment, consistent with P.L. 2017, c. 238, which provides that the Department shall have 60 days to determine if an individual has been rehabilitated in accordance with N.J.A.C. 10:48A-3.4. The Division also proposes an amendment to require the Department to submit archive requests for community care residences. Additionally, the Division proposes to remove the outdated website address and replace it with language that indicates to schedule fingerprinting for background checks with “the current approved vendor using the information on the unique fingerprint form provided by the employer or the Division” to avoid potential inaccuracies if the vendor should change in the future. The

Division also proposes to correct a typographical error that cross references N.J.A.C. 10:48-3.4, rather than N.J.A.C. 10:48A-3.4.

Subchapter 3. Procedures

N.J.A.C. 10:48A-3.1 describes how fingerprints are taken and the process after fingerprint results are received. Consistent with statutory law, the Division proposes an amendment to clarify that an agency head or employee shall make an appointment to have their fingerprints taken prior to employment, rather than within 10 working days of employment. The Division also proposes to add references to community care residences, applicants, licensees, alternates, and households throughout N.J.A.C. 10:48A-3.2 to reflect the expanded scope of the background check requirements at P.L. 2017, c. 328. The Division also proposes to amend the title of the consent form used to grant permission for the background checks and disclosure of information, so that the title will not be exclusive to agency heads and employees, as the form will now also apply to community care applicants, alternates, and household members.

N.J.A.C. 10:48A-3.1(c) describes the procedures after the fingerprint results are received. The Division proposes to delete a reference to a separate notification done by the DHS Coordinator for results received from the State Police and the Federal Bureau of Investigation, as this is no longer the process; only one notification is conducted. Consistent with P.L. 2017, c. 238, the Division proposes an amendment to reflect that the Department shall make the determination regarding the qualification or disqualification of the individual within 14 days of receipt of the results, and shall provide notice, in writing, which may be transmitted electronically, if the person has authorized electronic transmission. Also consistent with that law, an amendment is proposed to clarify that the Department’s determination of qualification shall not require a community agency to employ an individual, or a community care residence to use the individual as an alternate. However, further consistent with the law, a proposed amendment also sets forth that a community care residence shall not be qualified to house individuals if the Department determines that the applicant, licensee, alternate, or household member is disqualified.

Finally, the Division proposes an amendment to delete a provision requiring the board of directors to advise the community agency head of their continued employment or termination, as the law now requires the Department to make the determination of disqualification.

N.J.A.C. 10:48A-3.2 provides that the DHS Coordinator is to assign each community agency an identification number and maintain the confidential results of criminal history background checks in a database. The Division proposes to amend this section to provide that the coordinator will also assign an identification number to each community care residence.

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 at Subchapter 2. Consistent with the law, the Division proposes an amendment to clarify that the employee shall make an appointment to have their fingerprints taken prior to employment, rather than within 10 working days of employment. The Division also proposes an amendment consistent with P.L. 2017, c. 238, to provide that the Department, rather than the community agency head, makes the determination regarding rehabilitation of a new employee who indicates that they have been convicted of a disqualifying crime or offense.

N.J.A.C. 10:48A-3.4 sets forth the way in which evidence of rehabilitation can be established, such that the individual would not be disqualified from employment. The Division proposes to amend this provision to reflect the addition of community care residences, applicants, alternates, and household members at P.L. 2017, c. 238. Similarly, the Division proposes amendments to reflect that the Department, rather than the community agency head or community agency board, determines whether an individual has been rehabilitated. Also, consistent with the law, the Division proposes to amend this section to include: 1) that a person convicted of a crime or offense against children is permanently disqualified from working with children; 2) that a person has 14 days from receipt of the notice of disqualification to present evidence of rehabilitation to the Department; and 3) that the Department shall have no

longer than 60 days from the time of receipt of the evidence to make a determination about rehabilitation and provide the individual with notice, in writing, which may be electronic if the individual has authorized electronic communication.

N.J.A.C. 10:48A-3.5 provides that employees are required to notify their employers of any applicable criminal offenses subsequent to the background check. The Division proposes to amend this section to include community care residence alternates, household members, and licensees. This section also provides that a background check is to be completed once every two years through an electronic archive request. As required pursuant to P.L. 2017, c. 238, the Division proposes amendments to include community care residences in this requirement. An amendment is proposed to provide that the Department shall submit archive requests for community care residences.

N.J.A.C. 10:48A-3.6 sets forth monitoring requirements to facilitate agencies' full compliance with the statute governing criminal background checks. The Division proposes to delete an outdated reference to contract renewal, as the Division has transitioned from a contract-based funding mechanism to a fee-for-service model. Consistent with P.L. 2017, c. 238, the Division also proposes to delete the requirement that agency policies regarding background checks include a process for appeals of agency decisions about employment, and to require that community care residences, as well as community agencies, have any records regarding criminal history background checks available for review by Department and Division staff.

N.J.A.C. 10:48A-3.7 sets forth an appeal process to the community agency head or community agency board for employees. Pursuant to P.L. 2017, c. 238, these entities are no longer making determinations regarding disqualification. Therefore, the Division proposes to repeal the current appeal process provision and replace it with the provisions set forth at P.L. 2017, c. 238, that an individual may petition for a hearing on the accuracy of the criminal history record information with the appropriate State or Federal agency or court.

The chapter also contains an Appendix, which is a form for permission for a background check and the release of information. The Division proposes an amendment to the title of the form so that it does not apply solely to community agency employees and agency heads, and to the body of the form to include community care residences.

Social Impact

The rules proposed for readoption with amendments, a repeal, and new rule will have a positive social impact because they protect Division clients by disqualifying individuals who have been convicted of certain delineated crimes and offenses from being employed as a community agency head or working in a direct care role, and because they expand these protections to community care residences.

Economic Impact

The rules proposed for readoption with amendments, a repeal, and new rule will have minimal economic impact. Pursuant to statute, the Department of Human Services assumes the cost of all criminal history background checks. Community agencies may incur minimal administrative costs, and individual employees or community care residence licensees may be adversely economically affected if they are disqualified from employment or from housing individuals with developmental disabilities. However, the protection afforded to clients served by the Division outweighs the potential impact.

Federal Standards Statement

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

Jobs Impact Statement

The rules proposed for readoption with amendments, a repeal, and new rule will not generate jobs. The rules may cause jobs to be lost for individuals disqualified from employment or from housing individuals with developmental disabilities 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 the safety of clients served by the Division.

Agriculture Industry Impact

The rules proposed for readoption with amendments, a repeal, and new rule will have no impact on agriculture in the State of New Jersey.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments, a repeal, and new rule do impose reporting, recordkeeping, and compliance requirements on service providers, some of which may be classified as small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These requirements are currently in place, and are not being changed, 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, a repeal, and new rule, and as explained in the Economic Impact above, the costs are covered by the Department.

Housing Affordability Impact Analysis

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

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments, a repeal, and new rule concern criminal background checks for individuals who provide services to Division clients. Therefore, there is an extreme unlikelihood that the rules proposed for readoption with amendments, a repeal, and new 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, a repeal, and new rule will have any impact upon the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Division evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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, a repeal, and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

10:48A-1.1 Purpose

The purpose of this subchapter is to establish guidelines for obtaining criminal history background checks of employees of agencies under contract with the Division of Developmental Disabilities **and community care residence applicants, community care residence licensees, community care residence alternates, and community care residence household members.**

10:48A-1.2 Scope

Background checks shall be conducted for those employees of agencies under contract with the Division, working in such contracted programs, who have direct contact with the persons served by the agency. Such employees include, but are not limited to, consultants, interns, and seasonal employees. **Background checks shall also be conducted for all community care residence applicants, community care residence licensees, community care residence alternates, and community care residence household members.**

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.

“Archive request” means an excel spreadsheet submitted electronically for a two-year Criminal History Record [Inquiry] **Information report** (CHRI).

...
 “Community agency” means a public or private agency under contract with, **or licensed by**, the Department to provide services to Department individuals who have developmental disabilities.

...
 “Community agency employee” means any individual, age 18 and older, who is employed by a public or private agency under contract with, **or licensed by**, the Department to provide services to Department individuals who have developmental disabilities, and includes all personnel who may come into direct contact with individuals who have developmental disabilities.

...
 “Community care residence” means a private house or apartment in which a person 18 years or older is under contract with, **or licensed by**, the Department to provide individuals with developmental disabilities or persons with brain injury, with care and a level of training and supervision that is based upon the documented needs of the individuals.

“Community care residence alternate” means a person 18 years of age or older who has been selected by the applicant to provide care and supervision for individuals who require supervision at the community care residence.

“Community care residence applicant” means a person age 18 or older who satisfactorily initiates and completes the application process in order to obtain a license to operate a community care residence.

“Community care residence household member” means a person 18 years of age or older who resides in a community care residence, but does not include the individual who is receiving services from the Department.

“Community care residence licensee” means a person who has applied for and obtained a license to operate a community care residence.

“DDD fingerprint liaison” means the staff person in the Division of Developmental Disabilities (DDD) who **directs the community agency** to transmit[s] electronic requests to the live scan vendor.

“Department” means the Department of Human Services.

“DHS Coordinator” means the staff member in the Department of Human Services [Central Fingerprint Unit (CFU)] **Employment Controls and Compliance Unit (ECCU)** who advises the agency of the results of the criminal history background checks.

...

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 **under contract with, or licensed by, the Department shall not pay or contract for any employee or agency head** 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. **N.J.S.A. 30:6D-63 through 72 also requires that a community care residence shall not be qualified to house individuals 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 care residence applicant, community care residence licensee, community care residence alternate, or community care residence household member.**

(b) Fingerprints shall be taken electronically through a “live scan” process. The agency staff, **community care residence applicant, community care residence licensee, community care residence alternate, or community care residence household member** shall be

responsible to schedule an appointment to have fingerprints taken by [calling a toll free number (877-503-5981) or accessing the website at (www.bioapplicant.com/nj)] **the current approved vendor using the information on the unique fingerprint form provided by the employer or the Division.** The State Bureau of Identification will check its own records and forward an inquiry to the Federal Bureau of Investigation.

(c) It shall be the responsibility of the community agency head, **community care residence applicant, or community care residence licensee** to [assure] **ensure** compliance with this chapter.

(d) If the criminal history record indicates a conviction for certain criminal or disorderly persons offenses, the employee shall be terminated from employment, **or the community care residence shall not be qualified to house individuals** unless [he or she] **the employee, the community care residence applicant, community care residence licensee, community care residence alternate, or community care residence household member** affirmatively demonstrates to the [community agency head or the community agency board, if the individual is the community agency head] **Department**, clear and convincing evidence of his or her rehabilitation.

(e) If a prospective employee, **community care residence applicant, prospective community care residence alternate, or prospective community care residence household member** refuses to consent to or cooperate in securing a background check, the person shall not be considered for employment, **or the community care residence shall not be qualified to house individuals.**

(f) If a current employee refuses to consent to or cooperate in securing fingerprints for the purpose of a background check, the person shall be immediately removed from his or her position and the person’s employment shall be terminated. **If a community care residence licensee, community care residence alternate, or community care residence household member refuses to consent to or cooperate in securing fingerprints for the purpose of a background check, the community care residence shall not be qualified to house individuals.**

(g) A background check shall be conducted at least once every two years through the electronic submission of an archive request. An archive request shall be submitted by the community agency electronically to the DDD fingerprint liaison to be forwarded to the live scan vendor. **The Department shall submit the archive request for a community care residence.** The CHRI result will be forwarded to the DHS Coordinator for distribution to the requesting community agency **or to the community care residence.**

(h) The community agency head and all employees who may come in contact with persons served by the agency, shall submit their fingerprints [upon] **prior** to employment to the Department of Human Services office, as directed by the Division. **A community care residence applicant, community care residence licensee, community care residence alternate, or community care residence household member shall submit their fingerprints to the Department, as directed by the Division.**

(i) If the background check of the community agency head, **community care residence applicant, or community care residence licensee** reveals a criminal record as identified below, the [community agency board] **Department** shall determine within [15 working] **60** days, if the community agency head, **community care residence applicant, or community care residence licensee** has been rehabilitated in accordance with N.J.A.C. [10:48]10:48A-3.4.

(j) The community agency head shall ensure that each employee who may come in contact with persons served by the agency shall be fingerprinted in accordance with the procedures [contained] in this chapter. **The community care residence applicant or community care residence licensee shall ensure that each community care residence alternate or community care residence household member shall be fingerprinted in accordance with the procedures set forth in this chapter.**

(k) All employees, **community care residence applicants, community care residence licensees, community care residence alternates, and community care residence household members** shall sign a written consent to the criminal background check (refer to the chapter Appendix [A], incorporated herein by reference) prior to the time

the fingerprints are taken. This consent shall remain on file in the agency **or community care residence.**

(l) Individuals shall be disqualified for employment [for] **and community care residences shall be disqualified from housing individuals if any employee, any community care residence applicant, community care residence licensee, community care residence alternate, or community care residence household member has been convicted of any of the following crimes or disorderly persons offenses in New Jersey:**

- 1.-4. (No change.)

SUBCHAPTER 3. PROCEDURES

10:48A-3.1 Fingerprints

(a) [The] **Prior to employment, the** community agency head or employee shall make an appointment [within 10 working days of employment] to have his or her fingerprints taken through the live scan process with an agent designated by the Department of Human Services.

(b) At the time the fingerprints are taken, the employee, **community care residence applicant, community care residence licensee, community care residence alternate, or community care residence household member** is required to:

1. Complete the [Community Agency Head and Employee] Certification[,] **and** Permission for Background Check and Release of Information (see N.J.A.C. 10:48A Appendix [A]), which will be witnessed by a representative of the community agency, **in the case of an agency head or employee.** The community agency **or community care residence** shall retain the consent with the employee's personnel information **or in the community care residence, as applicable.** The Division shall retain the agency head consent;

2. (No change.)

3. Return the receipt to the community agency head, or designee, **or the community care residence applicant or community care residence licensee;** and

4. If the prints are rejected by the State Police or FBI as unclassifiable, make an appointment to be reprinted within 10 days of notification that the prints are rejected[;].

- (c) After the fingerprint results are received:

1. The DHS Coordinator shall review the results and determine what may be released to the agency **or community care residence** [The DHS Coordinator shall do a separate notification for the results received from the State Police and Federal Bureau of Investigation];

2. [In the case of an agency employee, the Department shall convey in writing the results of the review to the community agency head. The community agency head shall notify the individual in writing of his or her qualification or disqualification. The] **No later than 14 days from receipt of the results, the Department shall make a determination regarding the qualification or disqualification of the individual and shall notify the individual and the community agency or the community care residence in writing. If the individual is disqualified, the** conviction(s), which constitutes the basis for the disqualification, shall be identified in the written notice[;]. **The written notice may be transmitted electronically, if the individual authorized the Department to transmit the information electronically;**

3. **The Department's determination of qualification shall not require the community agency to employ the individual, or the community care residence to utilize the individual as a community care residence alternate. The Department's determination of disqualification shall require the community agency to terminate or not offer employment to the individual. The community care residence shall not be qualified to house individuals if the Department has determined that the community care residence applicant, community care residence licensee, community care residence alternate, or community care residence household member is disqualified;**

[3.] **4. If the fingerprints are rejected twice, the State Police shall check the name, date of birth, and Social Security number and forward the results to the DHS Coordinator. The Department of Human Services will, at the same time, request a similar search by the FBI on all prints rejected twice; and**

[4.] **5. In the case of a community agency head, the DHS Coordinator shall convey, in writing, the results of the review to the Assistant Commissioner of the Division of Developmental Disabilities. The Assistant Commissioner will advise the board president in writing. [If there is a record of conviction involving one of the offenses listed in N.J.A.C. 10:48A-2.1(l), the board of directors shall advise the community agency head in writing of his or her continued employment or termination. The Assistant Commissioner shall be provided a copy of the letter from the board of directors.]**

10:48A-3.2 Background checks

(a) The DHS Coordinator shall assign each community agency **or community care residence** an identification number.

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

10:48A-3.3 New employees

(a) [The] **Prior to employment, the** employee shall be responsible to make an appointment to have his or her fingerprints taken [within 10 working days of employment].

- (b) (No change.)

(c) If the new employee indicates that he or she has been convicted of a crime or disorderly person offense(s) as described in this chapter, he or she may not be employed unless the [community agency head] **Department** determines that the applicant has affirmatively demonstrated clear and convincing evidence of his or her rehabilitation in accordance with N.J.A.C. 10:48A-3.4.

- (d) (No change.)

10:48A-3.4 Rehabilitation

(a) No individual shall be disqualified from employment, **and no community care residence shall be disqualified from housing individuals,** on the basis of any conviction if the individual, **community care residence applicant, community care residence licensee, community care residence alternate, or community care residence household member** has affirmatively demonstrated to the [community agency head, or the community agency board, if the individual is the community agency head] **Department,** clear and convincing evidence of his or her rehabilitation.

- (b) (No change.)

[(c) The community agency head shall make a determination regarding the employment of the individual. That determination shall be kept on file at the agency.

(d) The community agency board, in the case of the community agency head, shall make a determination regarding the employment of the community agency head. That determination shall be kept on file at the community agency and a copy shall be sent to the Assistant Commissioner.]

(c) **A conviction of a crime or disorderly persons offense against children, as set forth at N.J.S.A. 2C:24-4, permanently disqualifies an individual from employment at a community agency that involves or would involve working directly with a person under 18 years of age, and from being a community care resident applicant, community care licensee, community care alternate, or community care household member.**

(d) **The individual shall have no longer than 14 days from the date of the written notice of disqualification sent pursuant to N.J.A.C. 10:48A-3.1(c) to provide evidence of rehabilitation to the Department.**

(e) **The Department shall have no longer than 60 days from the date of receipt of evidence of the individual's rehabilitation to make a determination on the individual's qualification. The Department shall notify the individual and the community agency or community care residence, in writing, of the determination no longer than 60 days from the date of receipt of the evidence. The written notice may be transmitted electronically, if the individual authorizes the Department to transmit the information electronically.**

10:48A-3.5 Subsequent offenses

(a) All employees, **community care residence alternates, and community care residence household members** shall be advised, in writing, that they are responsible to notify the community agency head **or community care residence licensee** of any criminal charges related to the offenses listed in this chapter subsequent to the background check.

(b) In the case of the community agency head or community care residence licensee, he or she shall be responsible to notify the Assistant Commissioner and the community agency board, if applicable, in writing, of any criminal charges subsequent to the background check.

(c) The State Police will notify the Department in the event an individual who was the subject of a criminal history background check is arrested or convicted of a crime or offense in New Jersey after the date that the criminal history background check was performed.

(d) A background check shall be conducted at least once every two years through the electronic submission of an archive request. An archive request shall be submitted by the community agency electronically to the DDD fingerprint liaison to be forwarded to the live scan vendor. The Department shall submit archive requests for community care residences. The CHRI result will be forwarded to the DHS Coordinator for distribution to the requesting community agency or to the community care residence. The Department may determine an alternative means to identify an individual who has been convicted of an offense covered in this procedure.

10:48A-3.6 Monitoring

(a) Annually, [at the time of the contract renewal with the Division,] all 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] through 72 regarding background checks for community provider agencies.

(b) The community agency shall develop written policies regarding background checks [that shall include a process whereby the employee may appeal the community agency’s decision regarding employment].

(c) All community agency or community care residence licensee’s records regarding criminal history background checks shall be available for review by Department and Division staff to [assure] ensure compliance with this procedure.

[10:48A-3.7 Appeals

(a) If the employee is disqualified, the community agency head shall advise him or her of the right to appeal. The employee shall have 30 days from receipt of the notice of disqualification for employment to request an appeal.

(b) The appeal shall be to the community agency head, who shall make a determination based upon a review of the information on record including any information regarding rehabilitation. The community agency head shall advise the employee that any appeal of his or her determination shall be made to New Jersey Superior Court.

(c) If the community agency head is disqualified and files an appeal, the community agency board shall review the record including any information regarding rehabilitation and make the determination. The community agency board shall advise the community agency head in writing that any appeal of its determination shall be made to New Jersey Superior Court.]

10:48A-3.7 Appeals

An individual may petition for a hearing on the accuracy of the criminal history record information with the appropriate State or Federal agency or court.

APPENDIX [A]

[COMMUNITY AGENCY HEAD AND EMPLOYEE] CERTIFICATION[,] AND PERMISSION FOR BACKGROUND CHECK AND RELEASE OF INFORMATION

I hereby authorize the Department of Human Services to conduct a criminal history background check and I agree to be fingerprinted in order to complete the State and Federal background check process. I further authorize the release of all information regarding the results of my background check to the Department of Human Services. Check one of the options listed below.

Option 1 ____ I hereby certify under penalties of perjury, that I have not been convicted of any of the offenses listed below and no such record exists in the State Bureau of Identification in the Division of State Police or in the Federal Bureau of Investigation, Identification Division.

Option 2 ____ I hereby affirm that I have been convicted of the following offense listed below _____ on _____

(date)

If I have checked Option 2 or the criminal history background check reveals any conviction(s) for the offenses listed below, I understand that I may be subject to termination from employment, or if I am associated with a community care residence, the residence will not be qualified to house individuals.

FOR PROVISIONAL EMPLOYEES ONLY: As a provisional employee, I further understand that I may be employed by the agency for a period not to exceed six months during which time a background check will be completed. I understand that I will work under the supervision of a superior where possible.

Offenses covered under P.L. 1999, c.358:

In New Jersey, any crime or disorderly person offense:

—involving danger to the person as set forth in N.J.S.A. 2C:11-1 et seq. through 2C:15-1 et seq. including the following:

- i. Murder
ii. Manslaughter
iii. Death by auto
iv. Simple assault
v. Aggravated assault
vi. Recklessly endangering another person
vii. Terroristic threats
viii. Kidnapping
ix. Interference with custody of children
x. Sexual assault
xi. Criminal sexual contact
xii. Lewdness
xiii. Robbery

—against the children or incompetents as set forth in N.J.S.A. 2C:24-1 et seq. including the following:

- i. Endangering the welfare of a child
ii. Endangering the welfare of an incompetent person
—a crime or offense involving the manufacture, transportation, sale, possession or habitual use of a controlled dangerous substance as defined in N.J.S.A. 2C:24-1 et seq.

—in any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described above.

FOR COMMUNITY AGENCY HEAD: I understand the results of this background check will be reported to the President of the Board of my agency.

PLEASE LIST THE NAME AND HOME OR BUSINESS ADDRESS OF THE BOARD PRESIDENT.

[Employee] Name (please print) [Employee] Signature Date

Witnessed by (please print) Witness Signature Date