

Provider Training Series

Chapter 45, Section 14

Background Check Requirements (Module #5)

Wyoming Department of Health
Division of Healthcare Financing
DD Waiver Provider Training Series



Welcome to the Wyoming Department of Health, Division of Healthcare Financing (Division), Developmental Disabilities Section Provider Training Series for Chapter 45 of the Department of Health's Medicaid Rules (Rules). These rules govern the home and community based Comprehensive and Supports Waivers, hereinafter referred to as the DD Waivers.

Chapter 45, Section 15(d) states that all persons qualified to provide waiver services shall complete training in specific areas prior to delivering services. Although some provider organizations may choose to develop their own training modules, individuals who complete all of the Series training modules and associated training summaries will be in compliance with this specific requirement. Please note that there are provider training requirements established throughout Chapter 45, and it is the responsibility of providers to ensure they meet **all** training requirements prior to delivering waiver services.

This module covers Section 14, which addresses background screening requirements for providers, self-directed employees, and individuals over age of 18 who live in a provider owned or operated setting.

Purpose of This Training



The purpose of this training is to familiarize providers with requirements related to background screenings, explain the types of background screenings that are required, and offer information on how and where to submit them.

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Training Agenda

- ▶ Why background screenings are important
- ▶ People who are subject to background screenings
- ▶ When and how often background screenings should occur
- ▶ Types of background screenings and identified barrier crimes
- ▶ Background screening resources

At the end of the module addressing background screening requirements, the following topics will have been introduced and explained.

- The importance of background screenings to promote the safety of waiver participants;
- Individuals who are subject to background screenings;
- When background screenings should occur, and how often subsequent background screenings should take place;
- The types of background screenings that are required and the specific crimes that will be a barrier to a person providing waiver services, if they are charged or convicted; and
- Background screening resources, including contact information and how to obtain necessary forms.

Please note that, for the purpose of these trainings, providers include provider staff and case managers, unless there is a specific need to make a distinction.

Choice



Participants have the right to choose their services and providers.

Home and community-based waiver services are based on the tenet that people have the freedom to make choices that impact their lives. Whether the choices are related to big decisions such as who provides their services, where they live, or what they want for their future, or small decisions such as with whom they spend time, what and when they eat, and how they spend their day, having choice is paramount to human dignity.

Sections throughout Chapter 45 refer to the participant's right to choose their services and who provides those services. As participants make these choices, it is important that, to the extent possible, safeguards are in place to ensure that the individual who ultimately provides the services has not been convicted of a crime against another person.

Although the focus of this training is background screenings, it is important to remember that background screenings are just one of the tools in the safety toolkit. Providers are required to take many other steps and meet other standards to ensure participant safety.

The Importance of Background Screenings



Background screenings are critical to mitigating risks that can arise when people work with vulnerable populations and have access to their medications, information, and property.

Congress introduced and passed the National Child Protection Act in 1993. This Act addressed concerns related to the qualifications of those who care for the members of our society most susceptible to abuse. The Violent Crime and Law Enforcement Act of 1994 amended the National Child Protection Act and directed the Attorney General to develop guidelines for appropriate safeguards to protect children, the elderly, and individuals with disabilities from abuse. Background screenings are a critical safeguard to mitigating risks that can arise when people work with vulnerable populations and have access to their medications, information, and property.

Who is Subject to Background Screenings?



All persons providing waiver services, and any other person who may have unsupervised access to participants shall complete and pass a background screening.

Chapter 45, Section 14(a)

As established in Chapter 45, Section 14(a), any person who provides waiver services or may have unsupervised access to waiver participants shall complete and pass a background screening.

Who is Subject to Background Screenings?

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- ▶ Managers - All screenings apply
- ▶ Supervisors - All screenings apply
- ▶ Direct care staff - All screenings apply
- ▶ Employees hired through self-direction - All screenings apply
- ▶ Individuals 18 years or older who live in a provider home where services are provided - OIG screenings do not apply

Chapter 45 establishes rules for providers of DD Waiver services, so this Section of Rule is specific to those individuals.

All screenings described in Section 14 apply to:

- Managers of provider organizations. This would include the owner, executive director, or other managing employee. Sole proprietors, also referred to as independent providers, would fit into this category as well.
- Supervisors of direct support workers.
- Direct care staff.
- Self-directed employees. Self-directed employees must work with the Employer of Record and Financial Management Service to ensure they meet all necessary background screening criteria.

Additionally, individuals who are 18 or older and live in a home that is owned or operated by the provider, or plan to stay in that home for more than one month, are subject to the Department of Family Services Central Registry Screening and the fingerprinted criminal history record, regardless of their relationship with the participant. These screenings will be described later in this training.

Remember - self-directed employees are required to follow all background screening requirements, including those related to individuals over the age of 18 who live in their home, if

services are provided there.

What About Volunteers?

- ▶ Not subject to background screenings.
- ▶ Must be under the direct supervision of an adult who has passed a background screening.
- ▶ Individuals convicted of a sexual offense are not permitted to be volunteers.

Chapter 45, Section 14(k)

Volunteers and individuals under the age of 18 are not required to undergo background screenings. However, they must be under the direct supervision, meaning within line of sight, of an adult who has passed a background screening. If a volunteer is with a participant and doesn't have direct supervision at all times, they must pass a background screening prior to working with the participant.

Please note that individuals who have been convicted of a sexual offense cannot be volunteers.

What Does a Background Screening Entail?



Chapter 45, Section 14(e) describes the various background screening mechanisms utilized by the Division.

There are three specific background screenings that must be conducted, which are described in Section 14(e).

A Successful Background Screening

- ▶ Wyoming Department of Family Services Central Registry screening showing the individual is not listed.
- ▶ A state and national fingerprinted criminal history record check that shows no conviction, guilty or no contest plea, or pending prosecution for a barrier crime.
- ▶ A United States Department of Health and Human Services, Office of Inspector General's Exclusion Database search showing the individual is not excluded.

Chapter 45, Section 14(e)(i) - (iii)

In order to have what is considered a successful background screening, the following screenings must result in a clear record.

- A Wyoming Department of Family Services Central Registry screening;
- A Division of Criminal Investigation (DCI) and Federal Bureau of Investigation (FBI) fingerprinted criminal history record check; and
- A United States Department of Health and Human Services, Office of Inspector General's Exclusion Database search.

Providers may opt to conduct additional background screenings, such as a name based criminal history record check, in order to get quick screening results. This is the provider's prerogative, but the additional screenings do not meet the background screening standards and cannot be used in place of the required screenings.

Department of Family Services (DFS) Central Registry Screening

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- ▶ Screens for people who have been substantiated for abuse and/or neglect by the Wyoming Department of Family Services.
- ▶ Required of all identified individuals.
- ▶ Individuals must be re-screened every five years.

The purpose of the DFS Central Registry is to screen for people who have been substantiated by DFS for abuse or neglect. All individuals listed on Slide 7 are subject to this screening, and must complete the screening every five years.

State and National Fingerprinted Criminal History Record Check

- ▶ Screens for people who have been convicted, plead guilty or no contest to, have pending charges, or have a deferred prosecution for a barrier crime.
- ▶ Required of all identified individuals.
- ▶ Individuals must be re-screened every five years.

The purpose of the DCI and FBI fingerprinted criminal record check is to screen for individuals who have been convicted, plead guilty or no contest to, have pending charges, or have a deferred prosecution for a crime against a person or a crime against morals, decency, or family, as established in Title 6 of Wyoming Statute. All individuals listed on Slide 7 are subject to this screening, and must complete the screening every five years.

Barrier Crimes

- | | |
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| <ul style="list-style-type: none"> ▶ An Offense Against a Person, including: <ul style="list-style-type: none"> ▶ Homicide; ▶ Kidnapping; ▶ Sexual assault; ▶ Robbery and blackmail; ▶ Assault and battery; ▶ Human trafficking; and ▶ Similar laws of any state or the United States relating to these crimes. | <ul style="list-style-type: none"> ▶ An Offense Against Morals, Decency, and Family, including: <ul style="list-style-type: none"> ▶ Bigamy; ▶ Incest; ▶ Abandoning or endangering children; ▶ Violation of order of protection; ▶ Endangering children, controlled substances; and ▶ Similar laws of any other state or the United States relating to these crimes. |
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Chapter 45, Section 14(e)(iii)(A)

Chapter 45, Section 14(e)(iii)(B)

Chapter 45, Section 14(e) lists the specific crimes that, if found on the results of a fingerprinted criminal records check, will bar a provider or provider staff member from delivering and being paid for waiver services. These crimes are defined in Title 6 of Wyoming Statute, which is cited in this section of rule.

Offenses against a person include:

- Homicide;
- Kidnapping;
- Sexual assault;
- Robbery and blackmail;
- Assault and battery;
- Human trafficking; and
- Similar laws of any state or the United States relating to these crimes.

Offenses against morals, decency, and family include:

- Bigamy;
- Incest;
- Abandoning or endangering children;
- Violation of order of protection;
- Endangering children, controlled substances; and
- Similar laws of any other state or the United States relating to these crimes.

Please note that this is a minimum standard. Providers are able to determine background screening standards that are stricter than those established in Section 14.

Office of Inspector General (OIG) Exclusions Database Search

- ▶ Screens for individuals who have been excluded from federal health care programs due to committing a criminal offense or felony related to health care fraud, theft, or abuse or neglect.
- ▶ Required of all managers, supervisors, direct care staff, and employees hired through self-direction.
- ▶ Any person with an ownership or control interest or who is an agent or managing employee must be re-screened monthly.

The purpose of the OIG Exclusions Database is to search for individuals who have been convicted of a criminal offense or felony related to health care fraud, theft, or abuse or neglect, and are therefore prohibited from receiving federal dollars. Managers, supervisors, direct care workers, and self-directed employees are subject to this screening; however, adults who live in a provider owned or operated residence do not need to undergo this search.

Any person with an ownership or control interest in the business, or who is an agent or a managing employee of a business, must be screened each month.

Please note that, if a direct support staff member is listed on the OIG Database, the provider may be subject to penalties imposed by the Department of Justice. Although there is not a requirement that direct support staff be subject to monthly screenings, a best practice would be for providers to check the Database on a regular basis to ensure that direct support staff members are not listed.

Provisional Services Pending Background Screening Results

- ▶ At the discretion of the provider or employer of record.
- ▶ Staff member may provide unsupervised services to a participant who is 18 or older.
- ▶ Background screening must be submitted as required.
- ▶ Provisional services are not allowable if the applicant has been convicted of a barrier crime.

Chapter 45, Section 14(f)

The Division understands that it can take time to receive the results of background screenings. This delay can impede the services that a participant needs, and can make it difficult for providers to retain staff while waiting for the screening results. Section 14 establishes that providers and employers of record, at their discretion, may allow individual staff members to provide unsupervised services to participants on a provisional basis before the results of a background screening are received, on the following conditions:

- The participant must be 18 years or older. Providers who are working with participants under the age of 18 cannot work until they have received a successful background screening.
- The applicant must not have disqualifying crimes, which are the barrier crimes specifically listed in Section 14(e)(iii), or relevant criminal records disclosed on the application; and
- The background screening must have been submitted as required. This means that the necessary forms and fingerprint cards have been sent to the appropriate parties for screening.
- The staff member or employee must meet all other requirements as outlined in other Sections of Chapter 45, including participant specific and other required training.
- Providers and employers of record must be able to demonstrate that the screenings and other rule requirements were met prior to an individual delivering waiver services.

As mentioned earlier, providers may opt to conduct additional background screenings, such as a

name based criminal history record check, in order to get quick screening results. This is the providers prerogative, but the additional screenings do not meet the background screening standards and cannot be used in place of the required screenings.

If the provider staff or self-directed employee fails the background screening, the staff member or employee must immediately desist from providing services or having unsupervised access to the participant. The provider or employer of record will not be required to pay back the funds billed during the provisional time as long as all rule requirements related to the provisional service delivery were met.

Subsequent Background Screenings

- ▶ All screenings must be conducted every five years for individuals required to undergo the initial background screening.
- ▶ Monthly OIG screenings are required for any person with an ownership or control interest or who is an agent or managing employee.
- ▶ 42 CFR § 455.101 - Definitions (<https://www.law.cornell.edu/cfr/text/42/455.101>)
- ▶ Providers are responsible for tracking.

Chapter 45, Section 14(n)

We all know that a lot can happen over time, so it is important to ensure that providers of waiver services continue to meet background screening requirements. As mentioned in earlier slides, a subsequent background screening is required every five years for all individuals who are required to undergo an initial background screening. The background screening includes the DFS Central Registry screening, the DCI/FBI fingerprinted criminal history record check, and the OIG Exclusions Database search. The five years is calculated based on the date the last background check results were issued.

Additionally, a monthly OIG Exclusions Database search is required of any person with an ownership or control interest or who is an agent or managing employee. Although not inclusive, the following list is an example of positions that may be required to undergo the monthly OIG search:

- Individual providers;
- Sole proprietors;
- Chief Executive and Chief Financial Officers;
- Employees responsible for submitting claims; and
- Direct support supervisors.

Direct support staff are not required to undergo monthly OIG screenings as long as they don't meet the definition of a person with an ownership or control interest or who is an agent or managing employee of a provider. For definitions of these positions, please refer to the web

link listed on the slide.

Providers are responsible for tracking dates for subsequent background screenings, and must ensure that they occur as established in this Section. The Division will not provide reminders that providers, employees, or staff members need to be rescreened.

What Happens if I Fail a Background Screening?



...Persons who do not successfully pass a background screening shall not supervise, provide, or bill for waiver services, or otherwise have unsupervised access to participants on behalf of the provider.

Section 45, Section 14(a)

Although background screenings are typically successful, there are occasions when a provider or employee fails a background screening. As established in Chapter 45, Section 14(a), people who do not successfully pass a background screening shall not supervise, provide, or bill for waiver services, or otherwise have unsupervised access to participants on behalf of the provider.

Section 14 Rules Prohibiting the Delivery of Waiver Services

- ▶ (b) - Entities that do not successfully pass OIG screenings shall be denied certification or terminated.
- ▶ (g) - Persons who do not successfully pass the criminal history screenings shall not be left unsupervised in the vicinity of any participant.
- ▶ (j) - If a criminal history screening does not include a disposition of a charge...they shall not have unsupervised access or provide billable services until there is proof of a current successful background check.

This prohibition is established in several subsections of Section 14.

Subsection (b) establishes that entities that do not successfully pass OIG screenings shall be denied certification or terminated. Subsection (g) establishes that people who do not successfully pass the criminal history screenings shall not be left unsupervised in the vicinity of any participant. Subsection (j) states that, if a criminal history screening does not include a disposition of a charge listed as a barrier crime, they shall not have unsupervised access or provide billable services until there is proof of a current successful background check.

Section 14 Rules Prohibiting the Delivery of Waiver Services

- ▶ (i)(ii) - Providers shall not employ or permit registered sex offenders to stay in the home.
- ▶ (n) - ...Any person who fails a subsequent background screening shall not supervise, provide, or bill for waiver services.

Subsection (i)(ii), which relates to individuals who are 18 or older living in a providers home, establishes that providers shall not employ or permit a registered sex offender to stay in the home. This provision of rule does not apply to a waiver participant who may have been convicted of a sexual offense, although special care should be taken to ensure the safety of everyone in the home.

Finally, subsection (n) requires that any person who fails a subsequent background screening shall not supervise, provide, or bill for waiver services.

The Division is not responsible for determining who a provider hires for positions that don't deliver waiver services, such as custodians. However, the provider must still ensure that, if an employee has not passed a background screening, they do not have unsupervised access to the participant at any time while in the care of the provider.

Appealing Background Screening Results

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Refer to the background screening website at
<https://health.wyo.gov/admin/background-screening/background-screening-faqs/>

Individuals are able to appeal the Department of Health's background screening decision. Please refer to the background screening webpage for more information.

What Else Do I Need to Know?



Section 14 contains other provisions that are important for providers to understand.

Although we have presented the essential components of background screenings, there are other important provisions of rule that are important to know.

Sanctions Apply

Any provider or participant who employs an individual or entity to supervise, provide or bill for waiver services who has not completed all required background checks may be subject to sanctions under these rules.

Chapter 45, Section 14(c)

Sanctions apply. If a provider or employer of record fails to follow the requirements related to background screenings, they may be subject to sanctions.

Documentation is Required

Providers and self-direction employees shall show evidence of current background screenings for all required persons as part of the provider or employee's certification renewal.

Chapter 45, Section 14(d)

Documentation is required. Providers and employers of record must be able to present evidence that shows background screening requirements have been met.

Age Matters

Staff shall not provide any services to participants ages seventeen (17) or younger until all successful background screenings have come back with no findings.

Chapter 45, Section 14(h)

Age matters. In no circumstance should a provider or staff member deliver services to a participant who is 17 or younger unless all background screenings have been returned with successful results. Providers and self-direct employees are not allowed to provide provisional services while waiting for background screening results if the participant is under the age of 18.

Transfers and Alterations are Prohibited

Background screenings shall not be transferred from one provider entity to another.

Chapter 45, Section 14(l)

The background screening notification shall not be altered in any manner, including the crossing out of names or use of whiteout.

Chapter 45, Section 14(m)

Federal requirements prohibit background screenings from being transferred for any reason.

Once background screenings are received, they cannot be altered in any way. No crossouts, no whiteout, no alterations of any kind.

How Do I Submit A Background Screening?



Submit

HELPFUL LINKS

[Background Screenings](#)

[Office of Inspector General
\(OIG\) Exclusions Database](#)

[EMWS](#)

[IMPROV Provider Portal](#)

[Wyoming Medicaid Provider
Portal](#)

Necessary links for submitting a background screening can be found on the [Providers and Case Managers](#) page of the Division website, under *Helpful Links*. The Developmental Disabilities Section does not manage the background screening process, so questions regarding the submission of background screenings should be addressed with the Department of Health's Background/Systems Specialist.

Provider Background Screening Webpage

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<https://health.wyo.gov/admin/background-screening/>



Pre-Employment and HCBS Waiver Provider Background Screening

WDH endeavors to ensure a quality workforce by completing background screenings on its direct care programs, the Home and Community Based Settings (HCBS) Waiver programs, Public Health Nursing and WIC programs and guardians of vital records.

Contact Info:
Anissa French
Background/Systems Specialist
(307) 777-7276
2300 Capitol Ave, 4th Floor
Cheyenne, WY 82002
[Email Us](#)

The Pre-Employment and HCBS Waiver Provider Background Screening webpage contains all of the information that you need to submit the DFS Central Registry Screening and DCI/FBI criminal history record checks.

Cost of DFS/FBI/DCI Background Screenings

- ▶ \$49 for Central Registry and Fingerprint Check
 - ▶ State and National Fingerprint Check - \$39
 - ▶ DFS Central Registry- \$10 for screening
- ▶ Pay with a check or money order
- ▶ Submit payment with all necessary paperwork

Individuals are responsible for the cost of their background screenings. Some provider organizations will incur the cost of the screenings for applicants and employees, but they are not required to do so. The Division does not pay for background screenings.

The cost of a background screening is \$49, which should be submitted by check or money order. The check should be submitted together with all necessary forms and fingerprint cards.

Submitting DFS/FBI/DCI Background Screenings

Documentation for background screenings includes:

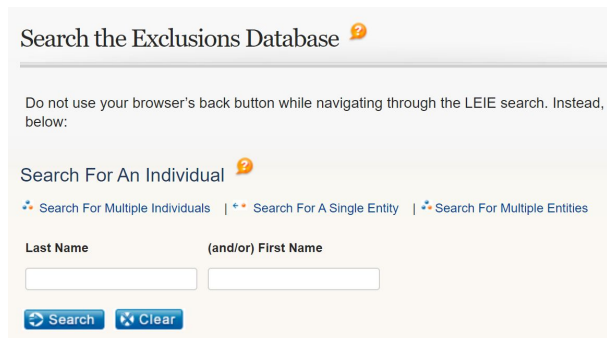
- ▶ Fingerprint cards for FBI and DCI
- ▶ Central Registry screening request (SS-26)

The background screening submission must include two completed fingerprint cards - one for the DCI check and one for the FBI check. Applicants can arrange for fingerprinting at a local law enforcement agency or at the Wyoming Division of Criminal Investigation.

In addition to the fingerprint cards, the submission must include the Central Registry screening request (SS-26 Agent). This form is available on the Background Screening webpage.

OIG Exclusions Database

<https://exclusions.oig.hhs.gov/>



The screenshot shows the 'Search the Exclusions Database' page. It includes a header with the title and a help icon. Below the header is a warning: 'Do not use your browser's back button while navigating through the LEIE search. Instead, use the links below:'. The main section is titled 'Search For An Individual' with a help icon. It contains three search options: 'Search For Multiple Individuals', 'Search For A Single Entity', and 'Search For Multiple Entities'. Below these options are two input fields labeled 'Last Name' and '(and/or) First Name'. At the bottom are 'Search' and 'Clear' buttons.

The OIG Exclusions Database check will need to be conducted by the provider. The link to this website is available on the [Providers and Case Managers](#) page of the Division website, under *Helpful Links*.

To conduct this search, simply enter the last name and first name of the person for whom you are searching. If you are conducting the search for more than one person, you can select a search for multiple individuals. Select *Search*.

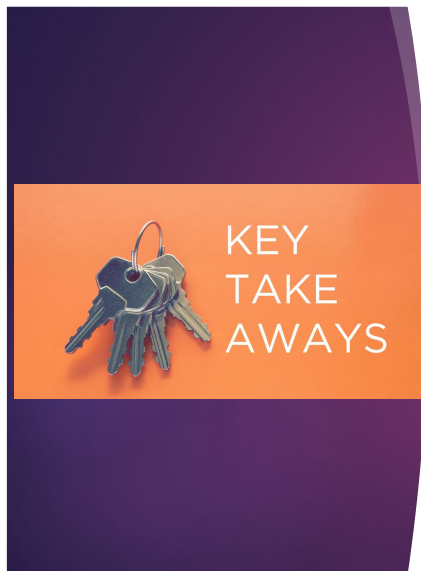
OIG Exclusions Database Results

ⓘ If no results are found, this individual or entity (if it is an entity search) is not currently excluded. Print this Web page for your documentation

[Search Again](#)

- ▶ Maintain documentation of the required screenings.

If the person or entity isn't listed on the database, the results will state that fact. Maintain documentation of the required screenings, including the results.



1. Successful background screenings are required for people who supervise, provide, or bill for waiver services.
2. Individuals who fail a background screening cannot provide waiver services or have unsupervised access to participants.
3. Individuals are responsible for submitting paperwork and paying for screenings.
4. Subsequent screenings are required.

Before you complete this training, we'd like to review some of the key takeaways:

1. Successful background screenings are required for people who supervise, provide, or bill for waiver services. A successful background screening means that the DFS Central Registry screening, the OIG Exclusions Database search, and the DCI/FBI fingerprinted criminal history records check come back with no findings.
2. Individuals who fail a background screening cannot provide waiver services or have unsupervised access to participants.
3. Individuals are responsible for submitting paperwork and paying for screenings. Providers may choose to assist their employees through this process. Self-directed employees will need to work with the Fiscal Management Service to ensure they meet background screening requirements.
4. Subsequent screenings are required. Providers are responsible for tracking when re-screenings need to take place, and making sure the screenings are completed.

It is important to remember that background screenings are just one of the tools in the safety toolkit. Providers are required to take many other steps and meet other standards to ensure participant safety.

Questions???

Contact your Provider or Participant Support Specialist

<https://health.wyo.gov/healthcarefin/dd/contacts-and-important-links/>

Thank you for your participation in the training on background check requirements conducted by the Developmental Disabilities Section. If you have questions related to the information in this training, please contact your Provider Support Specialist. Contact information can be found by clicking on the link provided in the slide.

Please be sure to complete a summary of this training so that you can demonstrate that you received training on background screening requirements.