

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 Division of Healthcare Financing (Division), Home and Community-Based Services (HCBS) 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 access the various screenings.

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.

Before we begin, we want to remind you that 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.

The Importance of Background Screenings

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)

So Who is Subject to Background Screenings?

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
- ▶ Individuals 18 years or older who live in a provider home where services are provided - OIG screenings do not apply
- ▶ Employees hired through participant-direction - All screenings apply, but process differs (contact FMS)

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 support staff.
- 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 national criminal history record check, regardless of their relationship with the participant. These screenings will be described later in this training.
- Finally, employees hired through participant-direction. The process for participant-directed employee background screenings differs from the process discussed in the following slides. Participant-directed employees must work with the Employer of Record (EOR) and Financial Management Service (FMS) to ensure they meet all necessary background screening criteria. The FMS (currently, ACES\$) provides instructions to the Employer of Record (EOR) during program enrollment. For questions on screenings for participant-directed employees, please contact ACES\$ directly.

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)

What about Volunteers?

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.

So what does a background screening entail?

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 national criminal history record check based on name and social security number 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)

These include:

1. A Wyoming Department of Family Services Central Registry screening;
2. National Criminal History Screening based on Name and Social Security Number
3. A United States Department of Health and Human Services, Office of Inspector General’s Exclusion Database search.

In order to have what is considered a *successful* background check, each of these screenings must result in a clear record.

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.

First let's look at the Wyoming Department of Family Services (DFS) Central Registry Screening. The purpose of the DFS Central Registry is to screen for people who have been substantiated by the Wyoming Department of Family Services for abuse or neglect. DFS makes the determination by information gathered from complaints, investigations and other credible information available to the Department. All individuals listed on Slide 7 are subject to this screening, and must complete the screening every five years.

National Criminal History Screening based on Name & Social Security Number

- ▶ 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.
- ▶ Must be a *national* screening.

Secondly, let's consider the national criminal history screening. The purpose of the national criminal history 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 rescreening must occur every five years.

Providers may use any screening agency which uses a ***national*** name and social security based database.

Barrier Crimes

► **An Offense Against a Person:**

- 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.

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

► **An Offense Against Morals, Decency, and Family:**

- 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.

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

The specific crimes (known as barrier crimes) that will bar a provider or provider staff member from delivering and being paid for waiver services are specified in Chapter 45, Section 14(e).

If a criminal history check reveals that the individual has been convicted, plead guilty, no contest, or is currently under investigation in Wyoming or any other state for similar offenses, the individual does not meet the background screening requirements.

Specific barrier crimes are as follows

Offenses against a person (as specified in Wyoming Statute Title 6, Chapter 2) including:

- 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 (as specified in Wyoming Statute Title 6, Chapter 2) including:

- 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. Also keep in mind that laws and criminal offense definitions vary by state. Since participant safety is paramount, providers are encouraged to seek legal advice when interpreting screening results.

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 participant-direction.
- ▶ Any person with an ownership or control interest or who is an agent or managing employee must be re-screened **monthly**. Direct-support staff must be re-screened at least **annually**.

The third background screening step is the Office of Inspector General (OIG) Exclusions Database Search. The purpose of this search is to identify 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.

Please note that 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. Direct support staff must be screened at least annually. 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.

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 & in-process.
- ▶ All other requirements are met.
- ▶ Provisional services are not allowable if the applicant has been convicted of a barrier crime.

Chapter 45, Section 14(f)

Now that we've covered the three types of required screenings, let's talk timing. 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 be submitted and in-process as required. This means that the necessary forms have been sent to the appropriate parties for screening.
- The applicant must meet all other requirements as outlined in other Sections of Chapter 45, including those for participant-specific and other required trainings.
- 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.

If the provider staff or participant-directed employee fails the background screening, they must immediately stop providing services and 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 all individuals required to undergo the initial background screening.
- ▶ To avoid penalties, providers are required to **routinely** check the OIG database more frequently to ensure that new hires and current employees are not listed. (Monthly for owners, agents or managing employees; annually for direct support staff.)
- ▶ 42 CFR § 455.101 - Definitions (<https://www.law.cornell.edu/cfr/text/42/455.101>)
- ▶ No reminders; providers are responsible for tracking.

Chapter 45, Section 14(n)

Subsequent Screenings. We've already mentioned the requirements for rescreening, but let's review to clarify. A lot can happen over time, so it important to ensure that providers of waiver services continue to meet requirements. Subsequent background screenings are required every five years for all individuals who are required to undergo an initial background screening. The five years is calculated based on the date the last background check results were issued. This includes the DFS Central Registry screening and the national criminal history screening based on name and social security number. Providers are required to **routinely** check the OIG Exclusions Database and this search should be done more frequently to avoid penalties.

Specifically, for any person with an ownership or control interest or who is an agent or managing employee, a **monthly** search of the OIG Exclusions Database is required. Examples of positions that may fall into this category include:

- 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 do not meet the definition of a person with an ownership or control interest or who is an agent or managing employee of a provider. However, direct support staff should be rescreened at least

annually on the OIG Exclusions Database.

It's important to note that providers are responsible for tracking due dates for subsequent screenings. Providers must ensure that rescreenings occur as established Chapter 45. The Division will not provide reminders when providers, employees, or staff members are due 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)

What if a screening is failed?

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.

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.
- ▶ Any employee who has not passed a background screening may not have unsupervised access to any participant at any time while in the care of a provider.

Subsection (i), 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.

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, other important provisions of rule are also 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)

First, sanctions apply. If a provider or employer of record fails to follow the requirements related to background screenings, they may be subject to sanctions. Additional information about sanctions can be found in Section 30 of Chapter 45.

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)

Secondly, documentation is required. Providers and self-direction employees must be able to present current 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)

Next, 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 participant-directed 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)

Fourth, Federal requirements prohibit background screenings from being transferred for any reason. (For example, if you switch employers, the screenings must be repeated.)

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

Conducting the Screenings: National Criminal History Check

1. National Name & SSN Based Criminal History Records Check
 - a. Example Screening Agencies:
 - i. **Direct Screening** - <https://www.directscreening.com/>
 - ii. **Good Hire** - <https://www.goodhire.com/>
 - iii. **Sentry Link** - <https://www.sentrylink.com/>
 - b. Most screening agencies offer different types of screenings. Please remember that screenings **must be nationally based**. Any other screening type will not be accepted.

So, how are screenings actually conducted?

Background screenings are initiated by the provider and/or the provider's employer. First, for the criminal history records check, providers may use any screening agency which uses a name and social security based database. The Division does not support or recommend a specific screening agency, but some popular agencies include Direct Screening, Good Hire and Sentry Link. Links for these can be found on the HCBS website.

Please keep in mind that each of these screening agencies may offer different types of screenings. However, to meeting HCBS requirements, screenings must use a ***national*** database search. Any other screening type will not be accepted.

Conducting the Screenings: OIG Exclusions Check

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Search the Exclusions Database

Do not use your browser's back button while navigating through the LEIE search. Instead, below:

Search For An Individual

[Search For Multiple Individuals](#) | [Search For A Single Entity](#) | [Search For Multiple Entities](#)

Last Name

(and/or) First Name

Search

Clear

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](#)

Office of Inspector General (OIG)
Exclusions Database:
<https://exclusions.oig.hhs.gov/>

Retain Results

Secondly, for the OIG Exclusions List, providers must search the US Department Of Health and Human Services, Office of Inspector General, List of Excluded Individuals/Entities. A link to this database is included here and on the HCBS website.

To conduct this search, simply enter the last name and first name of the person for whom you are searching. If conducting a search for more than one person, click the Search for Multiple Individuals option. Select *Search*.

If the person or entity isn't listed on the database, the results will state that fact. Even in these cases, be sure to retain documentation to show who, when, and what results were generated.

Conducting the Screenings: DFS Central Registry Check

APPLICATION FOR CHILD & ADULT ABUSE/NEGLECT CENTRAL REGISTRY SCREEN

Volunteers, prospective employees, or an employee who has or may have unsupervised access to minors or vulnerable adults may be screened. Note: According to W.S. 14-3-236, "The applicant shall use the information received only for screening prospective employees and volunteers."



Note: Central Registry screens are specific to the State of Wyoming.

- ▶ https://dfsgovcloud.my.site.com/_wydfs/s/
- ▶ Select either **Employer or Individual requesting a Central Registry screen** from the dropdown under *Please select a screen request type*.
- ▶ Note: these options **do not apply for participant-direction screenings**. Instead, follow instructions from the FMS (ACES\$).

For the Wyoming Department of Family Services Central Registry Check, navigate to the *Application for Child & Adult Abuse/Neglect Central Registry Screen*. The link is listed here and is also available on the HCBS website.

Once on the page, choose either "Employer requesting a Central Registry screen" or "Individual requesting a Central Registry screen" from the *Screen Request Type* dropdown menu on the right side of the page.

Complete and submit the electronic form to initiate the Central Registry Check process. Pursuant to state statute and agency rules, all results reporting that an employee **is listed** on the Central Registry will be sent by hard copy through postal service mail.

As mentioned earlier, please note that these directions do **NOT** apply to participant-directed employers (EORs) & their employees. For the participant-direction program, follow the instructions in the participant-direction employer enrollment packet to ensure that ACES\$, our FMS, can correctly process the screening and the associated costs.

Background Screenings Costs

- ▶ Individuals are responsible for the cost.
- ▶ Some provider organizations cover screening costs for employees, but they are not required to do so.
- ▶ Total cost depends on the screening entity chosen by the provider.
- ▶ Participant-directed employee screenings must be processed through the FMS (ACES\$) in order for costs to be covered by the Division.

With the exception of participant-direction, individual applicants are responsible for the cost of their background screenings. Provider organizations are not required to cover these expenses, however some provider organizations may choose to pay for the screenings on behalf of their employees and/or applicants. Screening costs vary depending on the specific entity chosen by the provider for the national criminal history screening.

For the participant-direction program, employee screenings must be processed through the FMS (ACES\$) in order for costs to be covered by the Division.

How Do I Submit A Background Screening?

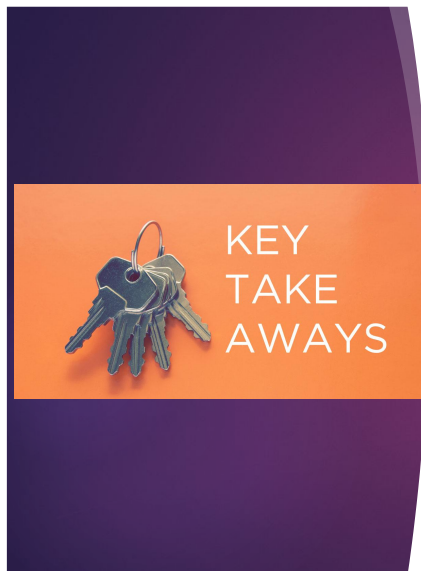


Submit

- Retain Results
- Upload to the WHP portal
(rename file using the file naming convention)
- Contact your Area
Credentialing Specialist:
wdh-hcbs-credentialing@wyo.gov

Results are in. Now What?

Results from all three screenings must be retained in the employee's file and uploaded to the Wyoming Health Provider (WHP) portal using the appropriate file naming convention. For links, visit the background screening information posted on the HCBS website. For questions about submitting results, contact your area credentialing specialist.



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: Criminal History & Central Registry Checks are required every 5 years; The OIG check is required at least annually.

To conclude, let's review some 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 national criminal history based on name and social security 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. Provider may choose to assist their employees through this process.
Participant-directed employees and their employers will need to follow a separate process and work with the Financial Management Service (FMS/ACES\$) to ensure they meet background screening requirements.
4. Criminal history and DFS Central Registry screenings are required every 5 years. The OIG Exclusions List should be checked at least annually for direct support staff and monthly for anyone with an ownership or control interest in the business, or who is an agent or managing employee of a business. Providers are responsible for tracking when re-screenings need to occur, and must ensure that all screenings are completed as required.

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 the HCBS
Credentialing Specialists by emailing:
wdh-hcbs-credentialing@wyo.gov

Thank you for participating in this training. If you have questions related to the information in this training, please contact the HCBS Credentialing Specialists by emailing:

wdh-hcbs-credentialing@wyo.gov

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