

State of Utah Health Department	Number: 08.21	Revision Date:
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POLICIES & PROCEDURES	Authorized By: Joseph K. Miner	
Section: HUMAN RESOURCES	Subject: Employee Background Check	
<p>POLICY: To provide guidelines for conducting background checks on employees, contracted employees and volunteers who:</p> <ul style="list-style-type: none"> • Have direct contact with patients, children, or vulnerable adults as defined in Utah Code Section 62A-2-120 ; • Have access to protected health information or personal identifying information or work in areas of privacy and data security; • Handle financial information, including receipt of funds, reviewing invoices, making payments, and other types of financial information; or perform audit functions, whether internal or external, on behalf of UDOH. 		

A. APPLICABLE STANDARDS

- Utah Code 26-1-17.1 Background checks for employees.
- Utah Code 62A-2-101 Licensure of Programs and Facilities
- Rule: R380-300 Employee Background Screening

B. DEFINITIONS

1. HR- Human Resources
2. OBPS - Office of Background Processing and Security
3. Patient- means a resident or person receiving care from a UDOH entity or a UDOH licensed or certified provider. Patient, client or resident terms are interchangeable meaning a person who is receiving needed services.
4. Rapback – OBPS will receive ongoing status notifications of any criminal history reported to the Utah Bureau of Criminal Identification and the FBI after the initial processing and retention of criminal or civil transactions.
5. UDOH - Utah Department of Health

C. PROCEDURE

1. Background checks shall be conducted for employees of UDOH.
 - a. Background checks shall be conducted on both career service and non-career service positions.
 - b. All background checks will be based on official Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files and federal criminal background databases available to the state.

- c. UDOH is responsible for all fees associated with the criminal background checks for employees whose positions require background checks.
- d. All employees who require screening must:
 - i. sign a criminal background screening authorization form;
 - ii. provide personal demographics required; and
 - iii. submit live scan fingerprints.
- e. Probationary employees and non-career service exempt employees who are dismissed for cause under this policy have no appeal rights.
- f. The Division Director may allow an employee who has been determined as not eligible to continue to work with conditions, during the reconsideration process if the work arrangement does not pose a threat to the department and the safety and health of Utah citizens.
- g. The OBPS will utilize this section, the criminal record information obtained through the initial or ongoing background screening (rapback) and the standards defined in sections C- 2, 3 and 4 of this policy and procedure, to determine if an employee is eligible for continued employment.
- h. OBPS shall classify a crime committed in another state according to the closest matching crime under Utah law, regardless of how the crime is classified in the state where the crime was committed.
- i. If an employee has a warrant for arrest or an arrest for any of the identified deniable offenses, the department may terminate employment based on:
 - i. the type of offense;
 - ii. the severity of offense; and
 - iii. potential risk to the department and the citizens of Utah.
- j. Results of background screening may be reviewed to determine under what circumstance, if any, the employee may continue to be employed. The following factors may be considered:
 - i. the type and number of offenses;
 - ii. the severity of the offenses;
 - iii. passage of time;
 - iv. surrounding circumstances;
 - v. intervening circumstances;
 - vi. steps taken to correct or improve; and
 - vii. potential risk to the department and the citizens of Utah.
- k. If the OBPS determines that an employee fails to meet the requirements for continued employment based upon the applicable standard outlined in Section 2, 3, or 4 of this policy, the OBPS shall send a notice of intended potential action to the employee and the employee's Division Director. The notice shall include the intended potential action, a description of the reconsideration process, and a statement that the information is confidential.
- l. If the OBPS determines that an employee fails to meet the applicable standard outlined in Section 2, 3, or 4 of this policy for employment based upon the criminal background screening and the employee disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the employee may challenge the information obtained from the background screening process through the appropriate agency.
- m. Current employees who apply for a different UDOH position should have their background check reviewed to determine whether or not they are eligible for that new position. If they are not eligible, they may not be considered for an interview and they should be advised to seek expungement, as appropriate.

2. The OBPS will utilize the following standards to process the background clearance for employees who have direct contact with patients, children, or vulnerable adults as defined in Utah Code Section 62A-2-101;
 - a. An employee who has been convicted, charged, pleaded guilty or no contest, or is subject to a plea in abeyance or diversion agreement, for any of the following offenses, may be denied clearance for employment.
 - i. Any felony or class A misdemeanor under the following Utah Codes:
 - A. 76-4-4 Enticement of a Minor;
 - B. 76-5-109 Offenses Against the Person -Child abuse -Child abandonment
 - C. 76-5-110 Offenses Against the Person -Abuse or neglect of a child with a disability
 - D. 76-5-111 Offenses Against the Person -Abuse, neglect, or exploitation of a vulnerable adult
 - E. 76-5-200 Offenses Against the Person -Criminal homicide
 - F. 76-5-300 Offenses Against the Person -Kidnapping, Trafficking, and Smuggling
 - G. 76-5-400 Offenses Against the Person -Sexual Offenses
 - H. 76-5b-201 Sexual Exploitation Act – Sexual exploitation of a minor
 - I. 76-7-102 Offenses Against the Family- Incest
 - J. 76-9-702 Offenses Against Public Order and Decency- Lewdness
 - K. 76-9-702.1 Offenses Against Public Order and Decency -Sexual battery
 - L. 76-9-702.5 Offenses Against Public Order and Decency - Lewdness involving a child
 - M. 76-9-702.7 Offenses Against Public Order and Decency -Voyeurism offenses
 - b. Except as listed above in 2-a(i), an employee who has been convicted, charged, pleaded guilty or no contest, or is subject to a plea in abeyance or diversion agreement for any of the following offenses, may be denied clearance for employment.
 - i. Any felony or class A misdemeanor within the past 10 years under Utah Code.
 - ii. Any felony, class A or B misdemeanor within the past 10 years under Utah Code 76-6-106(2)(b)(i)(A) Criminal Mischief - Human Life;
 - iii. Any felony or class A or B misdemeanor within the past 10 years or class C misdemeanor within the past 5 years under the following Utah Codes:
 - A. 76-4-4 Enticement of a Minor;
 - B. 76-5 Offenses Against the Person;
 - C. 76-5b Sexual Exploitation Act;
 - D. 76-6-3 through 5 Offenses Against Property- Robbery, Theft, Fraud;
 - E. 76-6-10 through 12 Offenses Against Property- Mail Box Damage and Mail Theft, Identity Fraud Act, Utah Mortgage Fraud Act;
 - F. 76-6a Pyramid Scheme Act;
 - G. 76-7-101 through 102 Offenses Against the Family- Bigamy, and Incest
 - H. 76-7-202 through 203 Offenses Against the Family- Nonsupport and Sale of Children
 - I. 76-7-311 through 312 Offenses Against the Family- Abortion, Selling or buying unborn child, Intimidation to obtain abortion
 - J. 76-8 Offenses Against the Administration of Government;
 - K. 76-9-301.8, Bestiality;
 - L. 76-9-702 and 702.1 Offenses Against Public Order and Decency- Lewdness, Sexual Battery
 - M. 76-9-702.5 and 702.7 Offenses Against Public Order and Decency- Lewdness Involving Child, Voyeurism offenses;

- N. 76-10-509.5 through 509.7 Offenses Against Public Health-Providing weapons to a minor
 - O. 76-10-1201 through 1229.5 Offenses Against Public Health- Safety, Welfare, and Morals, Pornographic and Harmful Materials and Performances;
 - P. 76-10-13 Offenses Against Public Health-Prostitution; or
 - Q. 62A-3-305 failure to report suspected abuse, neglect, or exploitation of a vulnerable adult.
3. The OBPS will utilize the following standards to process the background clearance for employees who have access to protected health information or personal identifying information or work in areas of privacy and data security.
- a. An employee who has been convicted, charged, pleaded guilty or no contest, or is subject to a plea in abeyance or diversion agreement, within the past 20 years, for any of the following offenses, may be denied clearance for employment.
 - i. Any felony or class A misdemeanor under the following Utah Codes:
 - A. 76-4-4 Enticement of a Minor;
 - B. 76-5-109 Offenses Against the Person -Child abuse -Child abandonment;
 - C. 76-5-110 Offenses Against the Person -Abuse or neglect of a child with a disability;
 - D. 76-5-111 Offenses Against the Person -Abuse, neglect, or exploitation of a vulnerable adult;
 - E. 76-5-200 Offenses Against the Person -Criminal homicide;
 - F. 76-5-300 Offenses Against the Person -Kidnapping, Trafficking, and Smuggling;
 - G. 76-5-400 Offenses Against the Person -Sexual Offenses;
 - H. 76-9-702 Offenses Against Public Order and Decency- Lewdness;
 - I. 76-9-702.1 Offenses Against Public Order and Decency -Sexual battery;
 - J. 76-9-702.5 Offenses Against Public Order and Decency - Lewdness involving a child; or
 - K. 76-9-702.7 Offenses Against Public Order and Decency -Voyeurism offenses.
 - b. Except as listed above in 3-a(i), an employee who has been convicted, charged, pleaded guilty or no contest, or is subject to a plea in abeyance or diversion agreement for any of the following offenses, may be denied clearance for employment.
 - i. Any felony or class A misdemeanor within the past 10 years under Utah Code.
 - ii. Any felony, class A or B misdemeanor within the past 10 years under Utah Code 76-6-106(2)(b)(i)(A) Criminal Mischief - Human Life;
 - iii. Any felony or class A, B misdemeanor within the past 10 years or class C misdemeanor within the past five years under the following Utah Codes:
 - A. 76-4-4 Enticement of a Minor;
 - B. 76-5 Offenses Against the Person;
 - C. 76-5b Sexual Exploitation Act;
 - D. 76-6-2 through 6 Offenses Against Property- Burglary and Criminal Trespass, Robbery, Theft, Fraud, Retail Theft;
 - E. 76-6-7 Utah Computer Crimes Act;
 - F. 76-6-10 through 12 Offenses Against Property- Mail Box Damage and Mail Theft, Identity Fraud Act, Utah Mortgage Fraud Act;
 - G. 76-6a Pyramid Scheme Act;
 - H. 76-7-101 through 102 Offenses Against the Family- Bigamy, and Incest;

- I. 76-7-202 through 203 Offenses Against the Family- Nonsupport and Sale of Children;
 - J. 76-7-311 through 312 Offenses Against the Family- Abortion, Selling or buying unborn child, Intimidation to obtain abortion;
 - K. 76-8 Offenses Against the Administration of Government;
 - L. 76-9-301.8, Bestiality;
 - M. 76-9-4, Offenses Against Privacy;
 - N. 76-9-702 and 702.1 Offenses Against Public Order and Decency- Lewdness, Sexual Battery;
 - O. 76-9-702.5 and 702.7 Offenses Against Public Order and Decency- Lewdness Involving Child, Voyeurism offenses;
 - P. 76-10-509.5 through 509.7 Offenses Against Public Health-Providing weapons to a minor;
 - Q. 76-10-1201 through 1229.5 Offenses Against Public Health- Safety, Welfare, and Morals, Pornographic and Harmful Materials and Performances; or
 - R. 76-10-13 Offenses Against Public Health-Prostitution.
4. The OBPS will utilize the following standards to process the background clearance for employees who handle financial information, including receipt of funds, reviewing invoices, making payments, and other types of financial information; or perform audit functions, whether internal or external, on behalf of UDOH.
- a. An employee who has been convicted, charged, pleaded guilty or no contest, or is subject to a plea in abeyance or diversion agreement for any of the following offenses, within the past 10 years may be denied clearance for employment.
 - i. Any felony under the following Utah Codes:
 - A. 76-6-3 through 7 Offenses Against Property- Robbery, Theft, Fraud, Retail Theft, Utah Computer Crimes;
 - B. 76-6-11 Offenses Against Property- Identity Fraud;
 - C. 76-10-7 and 19 Offenses Against Public Health, Safety, Welfare, and Morals- Corporation Fraud - Money Laundering.
 - b. Except as listed above in 4-a(i) an employee who has been convicted, charged, pleaded guilty or no contest, or is subject to a plea in abeyance or diversion agreement for any of the following offenses, within the past 5 years may be denied clearance for employment.
 - i. Any felony under Utah Code.
 - ii. Any felony or class A misdemeanor under the following Utah Codes:
 - A. 76-5 Offenses Against the Person;
 - B. 76-6 Offenses Against Property;
 - C. 76-8 Offenses Against the Administration of Government;
 - iii. Any felony, class A or B misdemeanor under the following Utah Codes:
 - A. 76-6a Pyramid Scheme Act;
 - B. 76-10 Offenses Against Public Health- Safety, Welfare, and Morals;
 - iv. Any felony, class A, B or C misdemeanor under the following Utah Codes:
 - A. 76-6-3 through 7 Offenses Against Property- Robbery, Theft, Fraud, Retail Theft, Utah Computer Crimes;
 - B. 76-6-11 Offenses Against Property- Identity Fraud;
 - C. 76-10-7 and 19 Offenses Against Public Health, Safety, Welfare, and Morals- Corporation Fraud - Money Laundering.

5. New Employees

- a. All job announcements for UDOH related positions that involve direct contact with vulnerable populations, and/or access to protected information, and/or handling financial information (as defined under POLICY) will be posted with information notifying candidates that a criminal background check will be part of the hiring process and that employment will be on a conditional basis pending the results of the background check process.
- b. All applicants who interview for UDOH related positions will again be informed by the hiring official that a background check will be conducted with the successful candidate and that employment will be on a conditional basis pending the results of the background check process.
- c. An offer or confirmation letter will be issued to a new employee by the Hiring Official or HR Representative indicating that employment is offered on a conditional basis pending the results of the background check.
- d. Prior to or within 5 days of hire, new employees who require screening must:
 - i. sign a criminal background screening authorization form;
 - ii. provide personal demographics required; and
 - iii. submit live scan fingerprints.
- e. Background checks on all new employees will be completed within 30 days of hire.
- f. If a new employee is found to have a background criminal finding that could potentially prevent their employment according to the guidelines for that position, the following steps must be taken:
 - i. The Division Director reviews the findings and applicable guideline, takes into consideration all the factors in the rule (type and number of offenses, passage of time, surrounding circumstances, intervening circumstances, steps taken to correct or improve) and decides to:
 - A. Allow the new employee to remain in their position and document the reason(s) for that decision.
 - B. Allow the new employee to remain in their position with some level of oversight/monitoring for a set amount of time and may discuss possible terms (counseling, rehab, drug testing, etc.)

Note: there is a state contract for drug testing that may be considered which would be paid for by the program/Bureau/Division/Department.

 1. New employee accepts terms – No further action required
 2. New employee does not accept terms – See sections C. and D., below
 - C. Modify the current position so that the employee would not be excluded based upon the background check and document the reason(s) for that decision, or,
 - D. Do not hire this applicant, or if already employed, terminate this employee.

6. Separation of Employment

- a. When a UDOH employee is separated from employment, OBPS will be immediately notified. The OBPS will notify Public Safety to remove fingerprint rapback on the employee.

7. Reconsideration Process

The reconsideration process may be utilized for a UDOH employee who has been determined as not eligible for their current position due to a background check according to the guidelines for their current position.

- a. The Division Director reviews the findings and applicable guideline, takes into consideration all the factors in the rule (type and number of offenses, passage of time, surrounding circumstances, intervening circumstances, steps taken to correct or improve) and decides to;

- i. Allow the employee to remain in the current position and document the reason(s) for that decision.
 - ii. Allow the employee to remain in the current position with some level of oversight/monitoring for a set amount of time and may discuss possible terms (counseling, rehab, drug testing, etc.) Note: there is a state contract for drug testing that may be considered which would be paid for by the program/Bureau/Division/Department.
 - A. Employee accepts terms – No further action required
 - B. Employee does not accept terms – See section b below
 - iii. Modify the current position so that the employee would not be excluded based upon the background check and document the reason(s) for that decision.
 - iv. Reassign into a different position for which the employee would not be excluded based upon the background check (must be at the same salary)
 - v. Terminate the employee. HR must be involved at this point as written notification is required and the employee will have 5 days to respond.
- b. Reconsideration of the recommendation/decision of the Division Director. To request this reconsideration, the UDOH employee must submit a written request, including the reason(s) for making this request.

(Note: during the period of reconsideration, the employee may be granted administrative leave based upon R477-7-7, 1), b), v).

Options may include:

- Option 1: Request a reconsideration through the UDOH Background Clearance Review Committee (see below)
- Option 2: Request a reconsideration with the UDOH Executive Director (see below)
- Option 3: File a Grievance with HR

(Note: the employee has the option of going directly to Option 2 and HR needs to be involved, as noted below.)

- Option 1: UDOH Background Clearance Review Committee Membership (3 voting members):
 - both Deputy Directors and the OFO Director.
 - The meeting will include three, non-voting staff:
 - the appropriate Division Director, the OBPS Program Manager and an HR representative.
 - Each meeting requires a minimum of 2 voting members.
 - All members (voting and non-voting) must have a background clearance to attend the meeting.
 - Terms: not limited, until replaced
 - Meeting Frequency: as needed
 - Determination requires a majority vote.
 - (In case of a 1:1 (tie) vote, the case will have to be heard when 3 voting members are present.)

The UDOH Background Clearance Review Committee can decide to:

1. support the decision of the Division Director (employee retains the option to go to Option II.)
2. recommend that this case go to the UDOH Executive Director.

Option 2: Reconsideration with the UDOH Executive Director:
Executive Director must have appropriate background clearance.
Executive Director is joined by legal counsel, the OBPS Program Manager and an HR representative.
The Executive Director has the option of including the involved Division Director.

The Executive Director can decide to:

1. Support the recommendation/decision of the committee, or,
2. Return to Division Director to request additional review based upon findings and recommendations from Executive Director.

Option 3: File a Grievance with HR

D. EXCEPTIONS

Exceptions to this policy require approval by the Executive Director.