

DEPARTMENT OF HEALTH AND SOCIAL SERVICES



7 AAC 10 - LICENSING, CERTIFICATION, AND APPROVALS
[Barrier Crimes, Criminal History Checks, and Centralized Registry]

With Changes Effective Through
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Title 7. Health and Social Services.
Part 1. Administration.
Chapter 10. Licensing, Certification, and Approvals.

Article 3. Barrier Crimes, Criminal History Checks, and Centralized Registry.

Section

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7 AAC 10.900. Purpose and applicability; exceptions. (a) The purpose of 7 AAC 10.900 - 7 AAC 10.990 is to establish standards, requirements, and procedures dealing with barrier crimes and conditions, criminal history checks, and the centralized registry, including

- (1) the identification of offenses and conditions that would bar an individual from
 - (A) licensure, certification, or approval by the department;
 - (B) a finding of eligibility to receive certain payments from the department; and
 - (C) association with an entity or individual service provider in a manner described in (b) of this section;
- (2) requirements for requesting a criminal history check and procedures to determine whether a barrier crime exists;

(3) requirements for maintaining compliance with AS 47.05.300 - 47.05.390, AS 47.32, and 7 AAC 10.900 - 7 AAC 10.990, including standards for association and requirements for continued monitoring and notification; and

(4) the establishment of a centralized registry as required by AS 47.05.330.

(b) The provisions of 7 AAC 10.900 - 7 AAC 10.990 apply to an entity or individual service provider seeking licensure, certification, approval, or a finding of eligibility to receive payments from the department. Each individual who is to be associated with the entity or provider in a manner described in this subsection must have a valid criminal history check conducted under 7 AAC 10.900 - 7 AAC 10.990 if that individual is 16 years of age or older and will be associated with the entity or provider as

(1) an administrator or operator;

(2) an individual service provider;

(3) an employee, an independent contractor, an unsupervised volunteer, or a board member if that individual has

(A) regular contact with recipients of services;

(B) access to personal or financial records maintained by the entity or provider regarding recipients of services; or

(C) control over or impact on the financial well-being of recipients of services, unless the only recipient whose financial well-being is affected is a

(i) relative of the individual who has authorized that individual to make financial decisions for that relative;

(ii) recipient who has executed a power of attorney for that individual to make financial decisions for that recipient; or

(iii) recipient for whom a court has authorized that individual to make financial decisions;

(4) an officer, director, partner, member, or principal of the business organization that owns an entity, if that individual has

(A) regular contact with recipients of services;

(B) access to personal or financial records maintained by the entity or provider regarding recipients of services; or

(C) control over or impact on the financial well-being of recipients of services, unless the only recipient whose financial well-being is affected is a

(i) relative of the individual who has authorized that individual to make financial decisions for that relative;

(ii) recipient who has executed a power of attorney for that individual to make financial decisions for that recipient; or

(iii) recipient for whom a court has authorized that individual to make financial decisions;

(5) except as provided in (c) and (d)(10) of this section, an individual who resides in a part of an entity, including a residence if services are provided in the residence, if the individual remains, or intends to remain, in the entity for 45 days or more, in total, in a 12-month period; or

(6) except as provided in (c) and (d) of this section, any other individual who is present in the entity and would have regular contact with recipients of services.

(c) A criminal history check under 7 AAC 10.900 - 7 AAC 10.990 is not required for a recipient of services, unless that individual is also associated with the entity or individual service provider in any manner described in (b)(1) - (4) of this section.

(d) A criminal history check under 7 AAC 10.900 - 7 AAC 10.990 is not required for the following individuals, if supervised access is provided in accordance with (e) of this section:

(1) a relative of a recipient of services, unless that relative is also associated with the entity or provider in any manner described in (b)(1) - (5) of this section;

(2) a visitor of a recipient of services, unless that visitor is also associated with the entity or provider in any manner described in (b)(1) - (4) of this section;

(3) an individual for whom the entity or provider submits evidence to the department of a fingerprint-based background check

(A) conducted and implemented under a process that meets or exceeds the standards of 7 AAC 10.900 - 7 AAC 10.990; and

(B) that is required

(i) as a condition for obtaining a professional license or certification under AS 08;

(ii) by federal law for an entity or individual service provider described in AS 47.05.300; or

(iii) as a condition of employment or association that is imposed by an entity or individual service provider described in AS 47.05.300;

(4) an employee, independent contractor, unsupervised volunteer, board member, officer, director, partner, member, or principal of the business organization that owns an entity if that individual is not associated with the entity or an individual service provider in any manner described in (b)(1) - (4) of this section;

(5) an approved relative provider under 7 AAC 41.200(e);

(6) a personal physician, an infant learning teacher, an attendant for a child with special needs as described in 7 AAC 57.940, a licenser, a fire marshal, a food services sponsor, or another similar individual who

(A) is not associated with the entity or provider under (b) of this section;

and

(B) provides support services to the entity or provider or to a recipient of services;

(7) an individual who is a vendor or an industry representative, or who provides delivery, installation, maintenance, or repair services;

(8) an individual who resides in any part of an entity, including a residence if services are provided in the residence, if the individual remains in the entity or residence for less than 45 days, in total, in a 12-month period;

(9) a parent's designee to drop off and pick up a child in care, unless the designee is also associated in a manner described in (b) of this section with the entity providing child care;

(10) a parent who receives money from the department for purposes of paying an approved in-home child care provider under 7 AAC 41.370, and any other individual who resides in that parent's household; however, the exemption in this paragraph does not apply to an approved in-home child care provider who resides in the household;

(11) an occasional guest of the administrator or operator of an entity or of a provider.

(e) An entity or individual service provider must provide supervised access for an individual exempted under (d) of this section if the individual is present in the entity during hours of operation. Supervised access is not required in a residence where in-home child care is provided under 7 AAC 41.370.

(f) For purposes of (b)(5) and (d)(8) of this section, "individual who resides in any part of an entity" means an individual who dwells continuously in, or legally occupies, the premises housing the entity or provider, as evidenced by

(1) the individual's address on the individual's permanent fund dividend received under AS 43.23, driver's license, fishing or hunting license, or other official record; or

(2) observation by another individual of the individual occupying the premises.
(Eff. 2/9/2007, Register 181)

Authority:	AS 47.05.300	AS 47.05.330	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030
	AS 47.05.320		

7 AAC 10.905. Barrier crimes. (a) A barrier crime is a criminal offense that is inconsistent with the standards for licensure, certification, approval, or eligibility to receive payments. The barrier crime standards and prohibitions in this section apply to an individual who

(1) seeks to be associated or to remain associated in a manner described in 7 AAC 10.900(b) with an entity or individual service provider that is subject to AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990; and

(2) has been charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a crime listed in this section or a crime with similar elements in another jurisdiction.

(b) Except as otherwise provided in this section, the following are permanent barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) an unclassified, a class A, or a class B felony under AS 11.41 (Offenses Against the Person);

(2) a crime involving domestic violence that is a felony under AS 11;

(3) a crime that is a felony and involves a victim who was a child under 18 years of age at the time of the conduct, including a crime involving a perpetrator who was a person responsible for the child's welfare; in this paragraph, "person responsible for the child's welfare" has the meaning given in AS 47.17.290;

(4) a crime under AS 11.41.220 (Assault in the Third Degree);

(5) a crime under AS 11.41.460 (Indecent Exposure in the Second Degree);

(6) a crime under AS 11.46.400 or 11.46.410 (Arson in the First or Second Degree);

(7) a crime under AS 11.51 (Offenses Against the Family and Vulnerable Adults) as follows:

(A) AS 11.51.100 (Endangering the Welfare of a Child in the First Degree);

(B) AS 11.51.200 (Endangering the Welfare of a Vulnerable Adult in the First Degree);

(C) AS 11.51.210 (Endangering the Welfare of a Vulnerable Adult in the Second Degree);

(8) a crime under AS 11.56 (Offenses Against Public Administration) as follows:

(A) AS 11.56.835 (Failure to Register as a Sex Offender or Child Kidnapper in the First Degree);

(B) AS 11.56.840 (Failure to Register as a Sex Offender or Child Kidnapper in the Second Degree);

(9) a crime under AS 11.61 (Offenses Against Public Order) as follows:

(A) AS 11.61.123 (Indecent Viewing or Photography);

(B) AS 11.61.125 (Distribution of Child Pornography);

(10) a crime under AS 11.66 (Offenses Against Public Health and Decency) as follows, if the person induced or caused to engage in prostitution was under 18 years of age at the time of the offense:

(A) AS 11.66.110 (Promoting Prostitution in the First Degree);

(B) AS 11.66.120 (Promoting Prostitution in the Second Degree);

(C) AS 11.66.130 (Promoting Prostitution in the Third Degree);

(11) any sex offense, as defined in AS 12.63.100, that is not already listed in this subsection;

(12) two or more class B felonies that are not included in this subsection.

(c) The following are 10-year barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) a crime under AS 11.41.260 (Stalking in the First Degree);

(2) a crime under AS 11.46 (Offenses Against Property) as follows:

(A) AS 11.46.120 (Theft in the First Degree);

(B) AS 11.46.280 (Issuing a Bad Check), if the crime is a class B felony;

- (C) AS 11.46.285 (Fraudulent Use of an Access Device), if the crime is a class B felony;
 - (D) AS 11.46.300 (Burglary in the First Degree);
 - (E) AS 11.46.475 (Criminal Mischief in the First Degree);
 - (F) AS 11.46.480 (Criminal Mischief in the Second Degree);
 - (G) AS 11.46.500 (Forgery in the First Degree);
 - (H) AS 11.46.565 (Criminal Impersonation in the First Degree);
 - (I) AS 11.46.600 (Scheme to Defraud);
 - (J) AS 11.46.730 (Defrauding Creditors), if the crime is a class B felony;
- (3) a crime under AS 11.56.807 (Terroristic Threatening in the First Degree), if it is a crime involving domestic violence;
- (4) a crime under AS 11.61 (Offenses Against Public Order) as follows:
- (A) AS 11.61.190 (Misconduct Involving Weapons in the First Degree);
 - (B) AS 11.61.195 (Misconduct Involving Weapons in the Second Degree);
 - (C) AS 11.61.240 (Criminal Possession of Explosives), if the crime is a class A or B felony;
- (5) a crime under AS 11.66.110 (Promoting Prostitution in the First Degree), if the person who was induced or caused to engage in prostitution was 18 years of age or older at the time of the offense;
- (6) a crime under AS 11.71.010 - 11.71.030 (Misconduct Involving a Controlled Substance in the First, Second, or Third Degree);
- (7) a crime under AS 11.73.030 (Delivery of an Imitation Controlled Substance to a Minor);

(8) a class B felony under AS 21.36.360 (Fraudulent or Criminal Insurance Acts);

(9) a class C felony under AS 28.35.030(n) (Operating a Vehicle, Aircraft, or Watercraft While Under the Influence of an Alcoholic Beverage, Inhalant, or Controlled Substance), if the individual has had two or more convictions since January 1, 1996, and within the 10 years preceding the date of the present offense, for operating a vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance;

(10) a class C felony under AS 28.35.032(p) (Refusal to Submit to Chemical Test), if the individual has had two or more convictions since January 1, 1996, and within the 10 years preceding the date of the present offense, or if punishment under AS 28.35.030(n) or 28.35.032(p) was previously imposed within the last 10 years.

(d) The following are five-year barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) a crime under AS 11.41 (Offenses Against the Person) as follows:

(A) AS 11.41.230 (Assault in the Fourth Degree);

(B) AS 11.41.250 (Reckless Endangerment);

(C) AS 11.41.270 (Stalking in the Second Degree);

(D) AS 11.41.330 (Custodial Interference in the Second Degree);

(E) AS 11.41.530 (Coercion);

(2) a class C felony under AS 11.46 (Offenses Against Property);

(3) a crime under AS 11.51 (Offenses Against Family and Vulnerable Adults) as follows:

(A) AS 11.51.110 (Endangering the Welfare of a Child in the Second Degree);

(B) AS 11.51.120 (Criminal Nonsupport), if the crime is a class C felony;

- (C) AS 11.51.121 (Aiding the Nonpayment of Child Support in the First Degree);
- (D) AS 11.51.130 (Contributing to the Delinquency of a Minor);
- (4) a crime under AS 11.56 (Offenses Against Public Administration) as follows:
 - (A) AS 11.56.765 (Failure to Report a Violent Crime Committed Against a Child);
 - (B) AS 11.56.810 (Terroristic Threatening in the Second Degree), if it is a crime involving domestic violence;
 - (C) AS 11.56.815 (Tampering With Public Records in the First Degree);
- (5) a crime under AS 11.61 (Offenses Against Public Order) as follows:
 - (A) AS 11.61.130 (Misconduct Involving a Corpse);
 - (B) AS 11.61.140 (Cruelty to Animals);
 - (C) AS 11.61.145 (Promoting an Exhibition of Fighting Animals), if the crime is a class C felony;
 - (D) AS 11.61.200 (Misconduct Involving Weapons in the Third Degree);
 - (E) AS 11.61.240 (Criminal Possession of Explosives), if the crime is a class C felony;
 - (F) AS 11.61.250 (Unlawful Furnishing of Explosives);
- (6) a crime under AS 11.66.120 (Promoting Prostitution in the Second Degree), if the person who was induced or caused to engage in prostitution was 18 years of age or older at the time of the offense;
- (7) a crime under AS 11.71.040(a)(1), (2), (5), (6), (7), (8), or (10) (Misconduct Involving a Controlled Substance in the Fourth Degree);
- (8) a class C felony under AS 11.73 (Imitation Controlled Substances);

- (9) a serious offense as defined in AS 12.62.900, except for
 - (A) a serious offense included in (b) or (c) of this section; and
 - (B) an offense under AS 11.61.110 (Disorderly Conduct);
 - (10) a class C felony under AS 21.36.360 (Fraudulent or Criminal Insurance Acts);
 - (11) a felony under AS 47.30.815 (Bad Faith Initiation of an Involuntary Mental Commitment Proceeding).
- (e) The following are three-year barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:
- (1) a crime under AS 11.46 (Offenses Against Property) as follows:
 - (A) AS 11.46.140 (Theft in the Third Degree);
 - (B) AS 11.46.320 (Criminal Trespass in the First Degree), if it is a crime involving domestic violence;
 - (C) AS 11.46.430 (Criminally Negligent Burning), if it is a crime involving domestic violence;
 - (D) AS 11.46.484 (Criminal Mischief in the Fourth Degree), if it is a crime involving domestic violence;
 - (E) AS 11.46.510 (Forgery in the Third Degree);
 - (F) AS 11.46.710 (Deceptive Business Practices), if the crime is a class A misdemeanor;
 - (2) a crime under AS 11.51.120 (Criminal Nonsupport), if the crime is a class A misdemeanor;

(3) a crime under AS 11.56 (Offenses Against Public Administration) as follows:

(A) AS 11.56.740 (Violating a Protective Order), if it is a crime involving domestic violence;

(B) AS 11.56.745 (Interfering With a Report of a Crime Involving Domestic Violence);

(4) a crime under AS 11.61.240 (Criminal Possession of Explosives), if the crime is a class A misdemeanor.

(f) The following are one-year barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) a crime under AS 11.46.486 (Criminal Mischief in the Fifth Degree), if it is a crime involving domestic violence;

(2) a crime under AS 11.56.750 or 11.56.755 (Unlawful Contact in the First or Second Degree);

(3) a crime under AS 11.61.120 (Harassment), if it is a crime involving domestic violence.

(g) If an individual does not pass a criminal history check as a result of a barrier crime established in this section, the individual is prohibited from associating with an entity or provider in a manner described in 7 AAC 10.900(b), unless the department grants a variance under 7 AAC 10.935.

(h) If an individual is charged with a barrier crime, that individual is barred from any contact with recipients of care during the pendency of the charge, unless the department grants a variance under 7 AAC 10.935. The crime charged ceases to be a barrier under this section on the date that the

(1) individual is acquitted of that crime;

(2) charge is dismissed; or

(3) district attorney's office decides not to prosecute the charge.

(i) Except as otherwise provided in this section, the barrier times listed in this section begin to run from the date that an individual was charged with or convicted of the crime, whichever period ends at a later date. If the individual is subject to a judgment of a court related to sentencing, probation, or parole, the individual is barred as described in (a)(1) of this section for the barrier time listed in this section or until the individual has fully complied with the conditions of the sentencing, probation, or parole, whichever period is longer.

(j) If an individual is convicted of a lesser crime than was originally charged, the length of time an individual is barred will be based upon the crime for which the individual was convicted.

(k) If an entity or individual is also subject to federal criminal history check requirements, and the federal standards, including standards related to civil findings, are more stringent than those set out in this section, the federal standards apply.

(l) For the purpose of determining whether a person is convicted of a single offense or of multiple offenses, the provisions of AS 12.55.145(a)(1)(C) apply.

(m) In this section,

(1) "charged with" means a person

(A) has been indicted by information or presentment for an offense, or has been arrested and provided a uniform summons and complaint for an offense; and

(B) is awaiting adjudication or dismissal of the matter, or a decision by the district attorney's office not to prosecute;

(2) "convicted" or "conviction" means a judgment entered by a court of competent jurisdiction in this state or another jurisdiction, either upon the entry of a plea, or after a bench or jury trial; "convicted" or "conviction"

(A) includes a suspended imposition of sentence, even if the conviction is formally set aside under AS 12.55.085; and

(B) does not include an executive order of clemency, or a record that has been expunged by order of a court. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.320 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030

7 AAC 10.910. Request for criminal history check. (a) An entity or individual service provider that is subject to AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 must request a criminal history check under this section, or provide proof of a valid fingerprint-based criminal history check, for each individual to be associated, or to remain associated, with the entity or provider in a manner described in 7 AAC 10.900(b). An entity or individual must request a criminal history check

(1) when the entity or provider submits an initial application for a license, certification, approval, or finding of eligibility to receive payments from the department;

(2) for a new owner, officer, director, partner, member, or principal of the business organization if there is a change in ownership of the business organization, or if an officer, director, partner, member, or principal of the business organization is replaced; the criminal history check must be completed before the individual begins association unless the department issues notice of a provisional valid criminal history check under 7 AAC 10.920;

(3) except as provided otherwise in this section, if the entity or provider wishes to hire or retain an employee, independent contractor, or unsupervised volunteer described in 7 AAC 10.900(b)(3); the criminal history check must be completed before hiring unless the department issues notice of a provisional valid criminal history check under 7 AAC 10.920;

(4) for an individual 16 years of age or older who is not a recipient of services, and who wishes to reside in the entity or to be present as described in 7 AAC 10.900(b)(5) or (6); the criminal history check must be completed before the individual begins association unless

(A) the department issues notice of a provisional valid criminal history check under 7 AAC 10.920; or

(B) the individual is residing in the entity before that individual's 16th birthday; for an individual described in this subparagraph, the entity or provider must submit the information required under (b) of this section within 30 days before the individual's 16th birthday;

(5) at any time requested by the department

(A) to show compliance with 7 AAC 10.900 - 7 AAC 10.990 during inspection, monitoring, or investigation; or

(B) for an individual if the department has good cause to believe that the individual's criminal history has changed; or

(6) on or before April 10, 2007, for each individual who is associated with an entity or provider operating under a current license, certification, approval, or finding of eligibility to receive payments, and who

(A) does not have a valid criminal history check; or

(B) passed a criminal history check conducted before February 9, 2007

that

(i) was not fingerprint-based; or

(ii) was fingerprint-based and conducted more than six years before February 9, 2007.

(b) The entity or provider must submit the following with each request for a criminal history check:

(1) a release of information authorization, on a form provided by the department, signed by the individual for whom the request is submitted;

(2) an authorization, on a form provided by the department and signed by the individual for whom the request is submitted, permitting the department to mark the individual's name in the Alaska Public Safety Information Network (APSIN) under 7 AAC 10.915(e);

(3) two sets of fingerprints for the individual for whom the request is submitted;

(4) a signed statement, on a form provided by the department, from the individual who took the fingerprints, attesting that at least one government-issued picture identification was used to verify the identity of the individual fingerprinted;

(5) the fees required by the Department of Public Safety under 13 AAC 68.900(a)(2)(B) and (5); if the legislature makes an appropriation for the department to pay those fees for unpaid volunteers,

(A) the department will not pay a fee for a volunteer who is a household member who resides in the entity as described in 7 AAC 10.900(b)(5); and

(B) an entity or provider must reimburse the fee to the department if an unpaid volunteer for whom the department paid a fee becomes a paid employee within 60 days after that fee was paid;

(6) an additional \$25 application fee; the department will waive this fee for an unpaid volunteer, unless that volunteer is a household member who resides in the entity as described in 7 AAC 10.900(b)(5); if an unpaid volunteer for whom the department waived an application fee becomes a paid employee within 60 days after that fee was waived, the entity or provider must pay the waived fee.

(c) Unless a more frequent fingerprint-based criminal history check is required under federal law, or for certain entities and providers under (f) of this section, a fingerprint-based criminal history check is valid for six years from the date the check became valid under (h) of this section for an individual who

(1) remains associated with an entity or provider in a manner described in 7 AAC 10.900(b), subject to verification under (d) of this section;

(2) becomes re-associated with the same entity or provider in a manner described in 7 AAC 10.900(b) within 100 days after terminating association with that entity or provider, subject to verification under (e) of this section; or

(3) becomes associated with another entity or provider in a manner described in 7 AAC 10.900(b) within 100 days after terminating association with a previous entity or provider, subject to verification under (e) of this section.

(d) Upon renewal of a license, certification, or approval, or when a finding is made for continued eligibility to receive payments, an entity or individual service provider must provide to the department proof that an individual described in (c)(1) of this section has a valid criminal history check. If the department determines that the criminal history check is not valid, the department will notify the entity or provider that a request for a new criminal history check must be submitted under this section.

(e) An individual described in (c)(2) or (c)(3) of this section must verify with the department that the current fingerprint-based criminal history check is still valid. The entity or provider shall submit to the department a \$25 fee for this verification. The department will waive the fee for an unpaid volunteer, unless that volunteer is a household member who resides in the entity as described in 7 AAC 10.900(b)(5). If an unpaid volunteer for whom the department waived a verification fee becomes a paid employee within 60 days after the department waived the fee, the entity or provider must pay the waived fee. If the department

determines during the verification process that the criminal history check is not valid, the department will notify the entity or provider that a request for a new criminal history check must be submitted under this section, and that the department will consider the verification fee the department's application fee under (b)(6) of this section.

(f) Except as provided otherwise in this subsection, and unless the department granted a variance under 7 AAC 10.935, a new criminal history check is not required if a person associated with an entity or provider in a manner described in 7 AAC 10.900(b) is transferred from one site operated by the entity or provider to another site operated by that entity or provider, if all sites are identified in the request for a criminal history check. Before October 1, 2007, an entity or provider must submit the items required under (b) of this section for an individual described in the following list, each time that individual changes employment, regardless of what entities or providers were listed on the request for a criminal history check:

(1) an individual associated with

(A) a nursing facility;

(B) a hospital that provides swing-bed services or that is reimbursed under 7 AAC 43 for treatment described in the definition of "swing-bed day" set out in 7 AAC 43.709; for purposes of this subparagraph,

(i) "hospital that provides swing-bed services" has the meaning given "swing-bed hospital" in 42 C.F.R. 413.114(b); and

(ii) the definition of "swing-bed hospital" in 42 C.F.R. 413.114(b), as revised as of October 1, 2006, is adopted by reference;

(C) an intermediate care facility for the mentally retarded or persons with related conditions;

(D) an assisted living home;

(E) a hospice agency;

(F) a home and community-based services provider as defined in 7 AAC 43.1110;

(G) a home health agency; or

(H) a personal care agency enrolled under 7 AAC 43.786 or 7 AAC 43.787;

(2) an individual providing care coordination, case management, adult day services, or respite care services.

(g) A willful misrepresentation of an individual's criminal or civil history by an entity or provider, or by the individual, is cause for immediate denial of a request for a criminal history check, or revocation of a valid criminal history check.

(h) A valid criminal history check means that, within the applicable timeframes referred to in this section,

(1) the person submitted all items listed under (b) of this section;

(2) the department determined that a barrier crime or condition did not exist;

(3) the person's name has been marked in APSIN on a continuous basis; and

(4) if applicable, any variance granted under 7 AAC 10.935 is still in effect and authorized by the department, and the individual who was the subject of the variance is associated with the same entity or provider.

(i) Nothing in this section precludes an entity or provider from requiring

(1) an individual who is subject to a criminal history check under 7 AAC 10.900 - 7 AAC 10.990 to pay a cost involved in the submittal of a request under this section; the provisions of this paragraph do not apply to a foster home; or

(2) a criminal history check for an individual who is not otherwise subject to 7 AAC 10.900 - 7 AAC 10.990. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.340 AS 47.32.030
AS 47.05.310 AS 47.32.010

Editor's note: Forms referred to in 7 AAC 10.910 may be obtained from the Department of Health and Social Services, Division of Public Health, Section of Certification and Licensing, 619 East Ship Creek Avenue, Suite 232, Anchorage, Alaska 99501, or are available at the department's website: <http://www.hss.state.ak.us/dph/CL/bgcheck>.

7 AAC 10.915. Criminal history check. (a) The department will screen a request for a criminal history check through the

(1) centralized registry established under 7 AAC 10.955 to determine whether a barrier condition exists for the individual who is the subject of the criminal history check;

(2) registry of certified nurse aides under AS 08.68.333;

(3) central registry of sex offenders and child kidnappers under AS 18.65.087;

(4) United States Department of Health and Human Services, Office of the Inspector General database of individuals and entities excluded under 42 U.S.C. 1320a-7 and 1320c-5 (secs. 1128 and 1156 of the Social Security Act); and

(5) any other registry or database determined by the department to be relevant to the screening being conducted for an individual, including any registry or database maintained by another state where that individual has resided.

(b) In addition to its review under (a) of this section, the department will review the criminal justice information supplied by the Department of Public Safety, court or other applicable government agency records, and the national criminal history record check supplied by the Federal Bureau of Investigation, to determine whether a barrier crime exists for the individual who is the subject of the criminal history check.

(c) If, after reviewing all available information described in (a) and (b) of this section, the department determines that a barrier crime or condition does not exist, the department will notify the entity or provider that submitted the request, and the individual who was the subject of the criminal history check, that the individual passed the criminal history check. The department will include in the notification the following:

(1) the period during which the criminal history check is valid, unless revoked or rescinded under this section;

(2) a statement that the valid criminal history check is conditioned upon the individual continuing to meet the applicable standards of AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990;

(3) a statement that, if the individual ceases to be associated with the entity or provider in a manner described in 7 AAC 10.900(b),

(A) the individual's continued compliance with the applicable standards of AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 must be verified by the department in accordance with 7 AAC 10.910(e) before that individual may become associated with another entity or provider, or re-associated with the same entity or provider; and

(B) a time period during which the individual is not associated with an entity or provider that is 100 days or longer is subject to (g) of this section.

(d) If, while conducting a criminal history check, the department determines that a barrier crime or condition exists, the department will notify the

(1) entity or provider that submitted the request under 7 AAC 10.910; the department will include in the notification the following statements:

(A) that the department has determined a barrier crime or condition exists; the department will not identify the crime or condition, but will identify the applicable barrier time under 7 AAC 10.905 or 7 AAC 10.955, as applicable;

(B) that the individual who was the subject of the criminal history check has been given an opportunity to challenge the department's determination under 7 AAC 10.950 if the individual believes the determination was based on erroneous information, or if the individual has additional information for the department to consider;

(C) that if the individual is willing to disclose the barrier crime or condition to the entity or provider, and if the entity or provider continues to desire a valid criminal history check for that individual, the entity or provider may request a variance, if allowed under 7 AAC 10.930; and

(2) individual who was the subject of the criminal history check; the department will include in the notification the following:

(A) the reason for the determination, including identification of the barrier crime or condition and the applicable barrier time under 7 AAC 10.905;

(B) a statement that if the individual wishes to disclose the barrier crime or condition to the entity or provider that submitted the request, the entity or provider may be able to obtain a variance, if allowed under 7 AAC 10.930;

(C) a statement that if the individual believes there is an error in the information relied upon by the department, or if the individual has additional information for the department to consider, the individual may submit a request for reconsideration under 7 AAC 10.950.

(e) For each request for a criminal history check processed under this section, the department will mark in APSIN the name of the individual who was the subject of the criminal history check. If the department receives notification under APSIN of law enforcement activity for an individual, the department will review the information. If the department determines that the activity creates a barrier under 7 AAC 10.905, the department will immediately notify the entity or provider and the individual. The department will include in the notification information advising the entity or provider and the individual that

(1) the department intends to revoke the valid criminal history check in accordance with 7 AAC 10.945; the department will not identify the barrier crime or condition in the notice to the entity or provider, but will identify the crime or condition in the notice to the individual;

(2) the individual may request reconsideration under 7 AAC 10.950 if the individual believes there was an error in the information relied upon by the department; and

(3) if the individual wishes to disclose the barrier crime or condition to the entity or provider, the entity or provider may request a variance, if allowed under 7 AAC 10.930.

(f) Except as provided otherwise in this subsection, an entity or provider must, within 24 hours after receiving notification under (d) or (e) of this section, terminate association with the individual in accordance with 7 AAC 10.960. If the entity or provider requests a variance under 7 AAC 10.930, or if the individual requests reconsideration under 7 AAC 10.950, the individual may remain associated with the entity or provider, pending a decision on the request, if

(1) the individual is removed from direct contact with recipients of services; and

(2) the entity or provider ensures that the individual is provided with direct supervision if the individual is present in any area where services are provided, during hours of operation.

(g) If an individual remains out of association with an entity or provider for 100 days or longer, the department will revoke a valid criminal history check without prior notice. A new criminal history check is required if the individual wishes to become associated with any entity or provider in a manner described in 7 AAC 10.900(b).

(h) If an individual with a valid criminal history check ceases to be associated with an entity or provider, and wishes to have the individual's name unmarked in APSIN, the individual shall submit a written request to the department that the valid criminal history check be rescinded. The department will send a written acknowledgment of the rescission to the individual and to the entity or provider with whom the individual was most recently associated. (Eff. 2/9/2007, Register 181)

Authority:	AS 47.05.300	AS 47.05.330	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030
	AS 47.05.320		

7 AAC 10.920. Provisional valid criminal history check. (a) The department may issue notification of a provisional valid criminal history check after screening the individual under 7 AAC 10.915(a) and reviewing the criminal justice information supplied by the Department of Public Safety, if a barrier crime or condition is not discovered in that screening and review and if

(1) the department determines that its further review time might unduly delay the process;

(2) an entity or provider has requested an expedited review and has

(A) included justification for the expedited review;

(B) submitted, at a minimum, the documents required under 7 AAC 10.910(b)(1) and (2); and

(C) agreed to submit within 30 days the fingerprints required under 7 AAC 10.910(b)(3) and any items required under 7 AAC 10.910(b)(4) - (6) that were not included with the request; or

(3) a request for a criminal history check does not include the required sets of fingerprints because fingerprinting acceptable to the Department of Public Safety is not available within 100 miles by road, and the entity or provider agrees to submit within 30 days the fingerprints required under 7 AAC 10.910(b)(3) and any items required under 7 AAC 10.910(b)(4) - (6) that were not included with the request.

(b) Notification of a provisional valid criminal history check issued under this section is valid until the results of a fingerprint-based criminal history check are processed under 7 AAC 10.915, unless revoked under this section. If the entity or provider fails to submit fingerprints and other required items within 30 days, or the individual does not pass the criminal history check, the provisional valid criminal history check is automatically revoked, and the entity or provider must terminate association with the individual in accordance with 7 AAC 10.960. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.320 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030

7 AAC 10.925. Monitoring and notification requirements. (a) An entity or provider shall monitor to ensure that all individuals associated with the entity or provider in a manner described in 7 AAC 10.900(b) continue to meet the applicable requirements of AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990. The entity or provider shall require each individual for whom a criminal history check is required to report to the entity or provider within 24 hours, or the next business day if the individual is

(1) charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a barrier crime listed in 7 AAC 10.905; or

(2) is the subject of a matter that must be reported under 7 AAC 10.955(c) for the centralized registry.

(b) In addition to the reporting requirements of 7 AAC 10.955(c) for the centralized registry, the entity or provider shall notify the department by telephone, by electronic mail, by facsimile, by letter, or in person within

(1) 24 hours, or the next business day, after the entity or provider has knowledge that an individual associated with the entity or provider has been

(A) arrested for, charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a barrier crime listed in 7 AAC 10.905; or

(B) is the subject of a matter that must be reported under 7 AAC 10.955(c) for the centralized registry; or

(2) 14 days after any change in association with the entity or provider for an individual who has a valid criminal history check or is the subject of a provisional valid criminal history check, including a change that involves an individual

(A) whose association described in 7 AAC 10.900(b) has been terminated; or

(B) who has not been associated with the entity or provider for 61 days or more, but becomes re-associated within 100 days.

(c) Failure to notify the department as required under this section may result in an enforcement action, including suspension or revocation of the license, certification, approval, or finding of eligibility to receive payments. (Eff. 2/9/2007, Register 181)

Authority:	AS 47.05.300	AS 47.05.330	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030
	AS 47.05.320		

7 AAC 10.930. Request for a variance. (a) Except for a crime or condition listed in (g) of this section, an entity or provider notified under 7 AAC 10.915(d) that a barrier crime or condition exists may request a variance under this subsection. The request must be submitted to the department office responsible for that entity's or provider's licensing, certification, approval, or finding of eligibility to receive payments. The request must be submitted no later than 30 days after the entity or provider receives notice under 7 AAC 10.915(d), or, if the individual who was the subject of the criminal history check submits a request for reconsideration as allowed under 7 AAC 10.915(d)(2)(C), no later than 30 days after the department issues its decision on reconsideration under 7 AAC 10.950(b)(3), whichever date is later. The request must be submitted on a form provided by the department, and must include the following:

(1) a comprehensive rationale for granting a variance;

(2) a demonstration of how the health, safety, and welfare of recipients of services will be adequately protected;

(3) copies of all known information relevant to determining whether the health, safety, and welfare of recipients of services are adequately protected, including the following information regarding the individual for whom a variance is sought:

(A) a copy, as applicable, of that individual's record of

(i) protective orders issued or filed under AS 18.66 (Domestic Violence and Sexual Assault) or a substantially similar law or ordinance of another jurisdiction;

(ii) conviction;

(iii) indictment or presentment, or of charging by information or complaint;

(iv) having been charged with a crime, without subsequent conviction;

(v) having been charged with a crime that was reduced to a lesser charge;

(vi) having been charged with a crime for which a suspended imposition of sentence was granted by the court; and

(vii) any circumstance that led to a barrier condition under 7 AAC 10.955;

(B) if the individual was incarcerated,

(i) a copy of the order from the local, state, or federal jurisdiction that released the individual from incarceration;

(ii) the date of release from incarceration; and

(iii) any terms and conditions of parole;

(C) if the individual was sentenced and, as a part of that sentence, the individual was placed on supervised or unsupervised probation, a copy of the terms and conditions of probation;

(D) the extent, nature, and seriousness of the following:

(i) the individual's offense and past criminal record;

(ii) a behavioral health problem if it exists;

(iii) a domestic violence problem if it exists;

(iv) any circumstance that led to a barrier condition under 7 AAC 10.955;

(E) the age of the individual at the time of the offense, problem, or circumstance;

(F) the amount of time that has elapsed since the most recent offense, problem, or circumstance;

(G) evidence of rehabilitation, prevention, or treatment efforts;

(H) other evidence of the individual's present fitness, including at least two letters of recommendation from credible persons who are aware of the individual's criminal and civil history, behavioral health problem, or domestic violence problem, and who recommend that a variance be granted; any letters must be from persons who are unrelated to the individual for whom the variance is requested and who are not associated with the entity or provider that submitted the request for a variance; nothing in this subparagraph precludes the entity or provider from submitting additional letters of recommendation;

(I) if the individual is an employee or volunteer, or a potential employee or volunteer, information related to job responsibilities that would be performed, hours and days of service, whether the individual would be in contact with recipients of services, and plans for supervision, including whether the individual would be subject to direct supervision while on the premises during hours of operation;

(4) for a request submitted under (k) of this section, in addition to the information and documentation required under (1) - (3) of this subsection, the request must include

(A) a detailed description of any mitigating circumstances that were involved at the time of the offense;

and (B) a description of the individual's educational and employment history;

(C) the following information, if applicable:

(i) evidence that the individual is licensed under AS 08, or became licensed after the individual was convicted of the offense or was listed on the centralized registry;

(ii) evidence that the individual passed a criminal history check conducted by the department before February 9, 2007, but after the individual was convicted of the offense;

(iii) evidence that the individual was issued a variance by the department before February 9, 2007, but after the individual was convicted of the offense for which the variance was issued.

(b) The department office responsible for the licensing, certification, approval, or finding of eligibility to receive payments for the entity or provider seeking a variance will review each request for a variance received by that office and will

(1) make a written recommendation to the variance committee appointed under 7 AAC 10.935 to grant or deny the request;

(2) include the reasons for the recommendation; and

(3) recommend any conditions that should be placed on any variance issued.

(c) If the individual was convicted of a lesser charge, in the department's review under (b) of this section, the department will consider information regarding the original charge in making its recommendation to the variance committee, including whether the original charge was a permanent barrier crime or condition for which a variance would be prohibited under (g) of this section.

(d) If the department granted a variance for an offense revealed in a fingerprint-based criminal history check conducted six or more years before February 9, 2007, and if the offense for which the variance was granted is not a permanent barrier under 7 AAC 10.905, the entity or provider must submit a new request for a variance, if allowed under this section, at the time of application for renewal of that entity's current license, certification, approval, or finding of eligibility to receive payments. Except as provided in (h) and (i) of this section, if the offense for

which the department granted the variance is a permanent barrier under 7 AAC 10.905, the variance is void and the entity must terminate association with the individual in accordance with 7 AAC 10.960.

(e) If the department granted a variance for a barrier condition described in 7 AAC 10.955 six or more years before February 9, 2007, the entity or provider must submit a new request for a variance at the time of application for renewal of that entity's current license, certification, approval, or finding of eligibility to receive payments.

(f) The department will not grant a variance from the requirement in AS 47.05.310 for conducting a criminal history check for an individual who has regular contact with recipients of services. For any other individual subject to AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990, an entity or provider may request a variance from the requirement to conduct a criminal history check by submitting a written request to the department office responsible for that entity's or provider's licensing, certification, approval, or finding of eligibility to receive payments. The request must be submitted on a form provided by the department and must include a comprehensive rationale for the request and demonstrate that the health, safety, and welfare of recipients of services will be adequately protected.

(g) Except as provided in (h) - (k) of this section, the department will not grant a variance for a

(1) conviction for an offense that is a permanent barrier under 7 AAC 10.905; or

(2) crime or civil finding for which federal law prohibits certain approvals, or restricts payment of benefits, during the most stringent barrier period set by federal law for that crime or civil finding; for the purpose of this paragraph,

(A) "federal law" includes an offense described in

(i) 42 U.S.C. 670 - 679b (secs. 470 - 479A of the Social Security Act), revised as of August 21, 2006, and adopted by reference;

(ii) 42 U.S.C. 1320a-7(a) (sec. 1128(a) of the Social Security Act), revised as of August 21, 2006, and adopted by reference;

(iii) 45 C.F.R. 1356.30, revised as of October 1, 2005, and adopted by reference; and

(iv) another applicable federal statute or regulation; and

(B) the prohibition applies to all entities and providers subject to 7 AAC 10.900 - 7 AAC 10.990, regardless of whether the federal law is directly applicable to only one of those entities or providers.

(h) Notwithstanding the prohibition in (g)(1) of this section, the department may grant a variance for an individual convicted of a permanent barrier crime listed in (i) of this section, if

(1) a behavioral health problem was a factor in the commission of the crime; and

(2) the individual

(A) is associated in a manner described in 7 AAC 10.900(b) with an entity that provides a treatment program to individuals with a behavioral health problem;

(B) has completed any treatment required by a court; and

(C) has demonstrated a sustained self-directed program of recovery for at least five years, as determined through the assessment of a mental health professional clinician or a substance abuse counselor with at least three years of experience; for purposes of this subparagraph,

(i) "mental health professional clinician" has the meaning given in 7 AAC 43.1990;

(ii) "substance abuse counselor" means a counselor providing services for a substance abuse treatment facility or program certified under 7 AAC 29; and

(iii) "recovery" includes, as applicable, absence of symptoms, stabilization in life domains, compliance with any medical orders, and abstinence from substance use.

(i) For the purpose of (h) of this section, the department may grant a variance for the following permanent barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) AS 11.41.200 (Assault in the First Degree);

(2) AS 11.41.210 (Assault in the Second Degree);

- (3) AS 11.41.220 (Assault in the Third Degree);
- (4) AS 11.41.320 (Custodial Interference in the First Degree);
- (5) AS 11.41.460 (Indecent Exposure in the Second Degree);
- (6) AS 11.41.500 (Robbery in the First Degree);
- (7) AS 11.41.510 (Robbery in the Second Degree);
- (8) AS 11.41.520 (Extortion);
- (9) AS 11.46.400 (Arson in the First Degree);
- (10) AS 11.46.410 (Arson in the Second Degree).

(j) Notwithstanding the prohibition in (g)(1) of this section, the department may grant a variance for an individual adjudicated as a delinquent for a permanent barrier crime under 7 AAC 10.905(b).

(k) Notwithstanding the prohibition in (g)(1) of this section, the department may grant a variance for an individual convicted of a permanent barrier crime listed under 7 AAC 10.905. A request under this subsection is subject to the review criteria set out in 7 AAC 10.935(c)(10) and additional consideration under 7 AAC 10.935(e) by the director of the department office responsible for the licensing of, certification of, approval for, or finding of eligibility to receive payments for the entity or provider seeking the variance. (Eff. 2/9/2007, Register 181; am 10/17/2007, Register 184; am 2/13/2008, Register 185)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030
AS 47.05.320

7 AAC 10.935. Review of request for a variance. (a) The commissioner will appoint three or more department employees to serve as a variance review committee to review requests for variances submitted under 7 AAC 10.930. The commissioner will include at least one employee from each department office responsible for licensing, certification, approval, or finding of eligibility to receive payments, but will not include an employee substantively involved in any recommendation to the committee made under 7 AAC 10.930(b).

(b) In its review of a request for a variance, the review committee shall determine whether a variance is prohibited under 7 AAC 10.930(f) or (g). If a variance is prohibited, the review committee shall clearly indicate the prohibition in its recommendation under (e) of this section.

(c) In its review of a request for a variance, the review committee shall

(1) consider the recommendations made by the department office under 7 AAC 10.930(b);

(2) consider the information supplied with the request and any other relevant information available to the department;

(3) determine whether the individual charged with a crime was subsequently convicted;

(4) if the individual was convicted of a lesser charge, determine whether the original charge was a permanent barrier crime or condition for which a variance would be prohibited under 7 AAC 10.930(g);

(5) determine whether any suspended imposition of sentence is still in effect, and review the nature of any applicable conditions;

(6) verify, as applicable, that

(A) conditions of parole or probation were met;

(B) court-ordered restitution has been made, or payments are current; and

(C) treatment, if required by the court, has been completed;

(7) if the crime committed related to financial exploitation, including theft, fraud, and bribery, or involved another form of dishonesty, including perjury and official misconduct, verify that the individual's duties make it unlikely that exploitation or dishonesty could occur with regard to recipients of services;

(8) if the barrier condition related to the abuse, neglect, or exploitation of a child or vulnerable adult, verify that the individual's duties make it unlikely that abuse, neglect, or exploitation could occur with regard to recipients of services;

(9) consider mitigating factors, including whether the individual has been employed by the entity or provider for a substantial period, has performed duties in a responsible and trustworthy manner, and has not been the subject of any complaint from a recipient of services or a representative of a recipient of services; and

(10) for a request for a variance submitted under 7 AAC 10.930(k), in addition to the matters described in (1) - (9) of this subsection, the review committee shall consider

- (A) whether there were mitigating circumstances involved at the time of the offense;
- (B) the individual's educational and employment history;
- (C) any current letters of recommendation from employers or other individuals submitted in addition to the minimum required under 7 AAC 10.930(a)(3)(H);
- (D) whether the individual is licensed under AS 08, or became licensed after the individual was convicted of the offense or listed on the centralized registry;
- (E) whether the individual passed a criminal history check conducted by the department before February 9, 2007, but after the individual was convicted of the offense; and
- (F) whether the individual was issued a variance by the department before February 9, 2007, but after the individual was convicted of the offense for which the variance was issued.

(d) The review committee may require the individual for whom a variance is sought to appear in person or by telephone for an interview.

(e) If the review committee, after its review of available information and documentation, determines that the health, safety, and welfare of recipients of services will be adequately protected, the review committee shall recommend that the commissioner grant the request for a variance. If the review committee determines that the health, safety, and welfare of recipients of services will not be adequately protected, the review committee shall recommend that the commissioner deny the request for a variance. For a request for a variance submitted under 7 AAC 10.930(k), the review committee shall submit its recommendation to the director of the department office responsible for the licensing of, certification of, approval for, or finding of eligibility to receive payments for the entity or provider seeking the variance. The director shall

consider the review committee's recommendation and make a written recommendation that the commissioner grant or deny the request.

(f) The commissioner will consider a recommendation made under (e) of this section and will issue a decision on a request for a variance within 30 days after receiving all information required under 7 AAC 10.930. The commissioner will deliver a copy of the decision to grant or deny the request for a variance to the requesting entity or provider by mail or facsimile. The commissioner will include in the decision to deny a request the reasons for the denial, and will advise the entity or provider of the right to request reconsideration of the decision under 7 AAC 10.950. A copy of the decision will be provided to the department office responsible for conducting criminal history checks, the department office responsible for maintaining the centralized registry established under 7 AAC 10.955, and the department office responsible for licensing, certification, approval, or a finding of eligibility to receive payments.

(g) In a variance granted under this section, the department will not identify the individual for whom the variance was requested, but will specify the barrier crime or condition for which the variance was granted, and will set out the terms and conditions of the variance, including an expiration date not to exceed the expiration date of the license, certification, approval, or finding of eligibility to receive payments applicable to the entity or provider that requested the variance.

(h) A variance may not be transferred to another entity or provider. If the individual for whom the department granted a variance under this section remains associated with the entity or provider that requested the variance, and the variance is not revoked under (i) of this section, the entity or provider need not submit a new variance request each time it submits its application for renewal of its license, certification, approval, or finding of eligibility to receive payments, but must request a new criminal history check for that individual with each application.

(i) The department office responsible for the licensing, certification, approval, or finding of eligibility to receive payments for an entity or provider will, in accordance with 7 AAC 10.945, immediately revoke a variance granted under this section if

(1) the department learns that it granted the variance based on false information provided by the individual to whom the variance applies or by the entity or provider that requested the variance; or

(2) the individual to whom the variance applies

(A) violates a term or condition of the variance;

(B) subsequently becomes subject to AS 47.05.310(c), or is charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a crime listed in 7 AAC 10.905, or a similar crime in another jurisdiction; or

(C) ceases to be associated with the entity or provider that requested the variance. (Eff. 2/9/2007, Register 181; am 10/17/2007, Register 184; am 2/13/2008, Register 185)

Authority:	AS 47.05.300	AS 47.05.330	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030
	AS 47.05.320		

7 AAC 10.940. Posting of variance decision required. If the department grants a variance under 7 AAC 10.935, the entity or individual service provider shall post a copy of the variance decision with the copy of the license, certification, approval, or finding of eligibility to receive payments that was issued by the department, in a conspicuous place where the copy of the variance can be readily viewed by persons interested in obtaining the services offered by the entity or provider. (Eff. 2/9/2007, Register 181)

Authority:	AS 47.05.300	AS 47.05.330	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030
	AS 47.05.320		

7 AAC 10.945. Revocation of valid criminal history check or variance. (a) Subject to AS 47.32, if the department decides to revoke a valid criminal history check issued under 7 AAC 10.900 - 7 AAC 10.990, the department will provide written notice of revocation to the entity or provider, and to the individual for whom the criminal history check was conducted. The notice will include the reasons for the department’s decision and will advise the individual of the right to request reconsideration under 7 AAC 10.950. A notice of revocation issued under this section is effective 30 days after it is received by the individual unless a request for reconsideration is submitted.

(b) Subject to AS 47.32, if the department decides to revoke a variance issued under 7 AAC 10.900 - 7 AAC 10.990, the department will provide written notice of revocation to the entity or provider to whom the variance was issued, and to the individual who was the subject of the variance. The notice will include the reasons for the department’s decision and will advise the entity or provider of the right to request reconsideration under 7 AAC 10.950. A notice of revocation issued under this section is effective 30 days after it is received by the entity or provider unless a request for reconsideration is submitted.

(c) Nothing in this section precludes the department from issuing a notice of immediate revocation if the department finds that the life, health, safety, or welfare of a recipient of services is threatened. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030
AS 47.05.320

7 AAC 10.950. Request for reconsideration. (a) A request for reconsideration of a department decision under 7 AAC 10.900 - 7 AAC 10.990 must be submitted within 30 days after the requestor receives the notice of the decision. The request for reconsideration must include

(1) the requestor's name, mailing address, telephone number, and, if available, electronic mail address and facsimile number;

(2) a clear description of the department's decision to be reviewed; and

(3) a clear and concise statement of the reason for the request, including

(A) a statement of the nature and scope of the requestor's interests, and an explanation of how and to what extent those interests would be directly and adversely affected by the decision;

(B) the contested terms and conditions of the department's decision, and any proposed alternatives; and

(C) copies of any documents or other information that would assist the department in its review.

(b) After reviewing a request for reconsideration of the

(1) commissioner's decision to deny a request for a variance under 7 AAC 10.935(f), the commissioner will notify the requestor of the commissioner's decision on reconsideration in writing within 30 days after receiving the request, and will state the reasons for that decision;

(2) department's decision to revoke a valid criminal history check under 7 AAC 10.910(g) or 7 AAC 10.915(e), or a variance under 7 AAC 10.935(i), the department office that made the decision to revoke will notify the requestor of that office's decision on reconsideration in writing within 30 days after receiving the request, and will state the reasons for that decision; or

(3) department's determination under 7 AAC 915(d) that a barrier crime or condition exists, the department office responsible for conducting criminal history checks will, within 30 days after receiving the request, notify in writing the

(A) requestor of that office's decision on reconsideration and state the reasons for that decision; and

(B) entity or provider that submitted the request for a criminal history check under 7 AAC 10.910 that, if the decision on reconsideration confirms the determination that a barrier crime or condition exists, and if the individual is willing to disclose the barrier crime or condition to the entity or provider, the entity or provider may request a variance, if allowed under 7 AAC 10.930, within 30 days after receiving notice under this subparagraph.

(c) A decision under (b)(1) and (b)(2) of this section is a final agency decision for purposes of seeking judicial review. A decision under (b)(3) of this section is a final agency decision unless the department grants a variance under 7 AAC 10.935.

(d) A copy of a decision on reconsideration under this section will be provided to the department office responsible for conducting criminal history checks, and to the department office responsible for licensing, certification, approval, or a finding of eligibility to receive payments. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030
AS 47.05.320

7 AAC 10.955. Centralized registry. (a) A centralized registry is established in the department to accomplish the purpose of AS 47.05.330 as that purpose relates to an individual

(1) who seeks to be or to remain associated with an entity or individual service provider in a manner described in 7 AAC 10.900(b);

(2) whose name appears on the centralized registry because of a matter described in AS 47.05.330(b)(1)(A) involving the abuse, neglect, or exploitation of a child or vulnerable adult; and

(3) whose name appears on the centralized registry because of a matter described in AS 47.05.330(b)(1)(B) involving medical assistance fraud.

(b) An individual whose name appears on the centralized registry may not be associated with an entity or individual service provider in a manner described in 7 AAC 10.900(b) unless a variance is granted under 7 AAC 10.935.

(c) An entity or individual service provider that is subject to AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 shall, using a form prescribed by the department, submit to the department reports as required or allowed under AS 47.05.330 for any matter described in (a)(2) or (3) of this section.

(d) Upon receipt of a report required under (c) of this section, the department will enter the information on the centralized registry as required by AS 47.05.330(b).

(e) Separately or in conjunction with an investigation or audit under AS 47.05.200, AS 47.10, AS 47.24, or AS 47.62, the department will investigate a report of abuse, neglect, or exploitation submitted under (c) of this section. If, after its investigation, the department makes a substantiated finding that an individual committed abuse, neglect, or exploitation, the department will notify any entity or individual service provider that made the report, and the individual who is the subject of the investigation, that the department has made a substantiated finding, and that it intends to place the finding in the centralized registry. In the notice, the department will

- (1) describe the nature of the substantiated finding;
- (2) identify each statute or regulation that supports the finding;
- (3) state the effective date for placement in the registry; and

(4) advise that the individual who is the subject of the investigation may request a hearing under (f) of this section.

(f) An individual who is the subject of an investigation that results in a substantiated finding against the individual may request a hearing from the department within 30 days after receipt of the notice described in (e) of this section. A request under this subsection must be submitted to the department's office responsible for maintaining the centralized registry. The request must be in writing, must include the individual's reasons for believing the department's finding to be in error, and must be accompanied by any relevant documentation to support those reasons.

(g) If the department determines that questions of material fact, if any, raised in a request for hearing under (f) of this section and relevant to the department's substantiated finding, were previously decided in a civil or criminal court action, or in an administrative hearing conducted in accordance with AS 44.62.330 - 44.62.630 (Administrative Procedure Act), and that under the facts as previously decided, the individual committed abuse, neglect, or exploitation, the department will send the individual written notice that the department intends to issue a summary decision to dismiss the individual's claim. The individual may submit a written objection to the department's proposed dismissal, identifying any issue of material fact that the individual believes still to be in dispute, providing reasons why the individual disagrees with the department's proposed dismissal, and providing any relevant documentation to support those reasons. If the department does not receive a written objection within 30 days after the individual received notice of the department's proposed dismissal, or if the department rejects the individual's objection,

(1) the department's substantiated finding becomes a final department decision for purposes of judicial review, and the department will enter the information in the centralized registry; if the previous court action or hearing resulted in a decision, order, judgment, or adjudication that the individual committed abuse, neglect, or exploitation, the department will also enter the information in the centralized registry; and

(2) the department will give notice as required in (k) of this section.

(h) If a hearing is requested under (f) of this section,

(1) the department will hold the hearing within 45 days after receiving the request; and

(2) the entity or provider may allow the individual to remain associated with the entity or provider, pending a decision on the request, if

(A) the individual is removed from direct contact with individuals receiving services; and

(B) the entity or provider ensures that the individual has supervised access if present in any area where services are provided, during hours of operation.

(i) If a hearing is requested under (f) of this section, the department will conduct the hearing in accordance with AS 44.62.330 - 44.62.630 (Administrative Procedure Act). The hearing officer shall issue a decision within 30 days after the hearing is concluded. The decision is a final department decision for purposes of judicial review. If the hearing officer finds by a preponderance of the evidence that the individual who is the subject of the hearing committed abuse, neglect, or exploitation, the hearing officer shall submit this information to the department office responsible for maintaining the centralized registry. The department will enter the information on the centralized registry and give notice as required in (k) of this section.

(j) If the individual who is the subject of the investigation does not request a hearing within 30 days after receipt of the notice described in (e) of this section, or waives the right to a hearing, the substantiated finding becomes a final department decision for purposes of judicial review, and the department will enter the information in the centralized registry. The department will give notice as required in (k) of this section.

(k) If a hearing or waiver of hearing under this section results in a finding that an individual committed abuse, neglect, or exploitation, the department will notify any entity or provider that made a report under (c) of this section, and the individual who is the subject of the hearing, of the hearing or waiver results and of the entry of the information on the centralized registry. The department will notify the individual of the right to request that the department delete or modify the information on the centralized registry to correct an inaccuracy in accordance with AS 47.05.330(j).

(l) If, after an investigation in accordance with AS 47.05.330(j) to determine whether there is an inaccuracy related to information on the centralized registry, the department determines that the information is correct, the department will notify the individual who made the request that the department has denied the individual's request to delete or modify the information.

(m) The department will remove from the centralized registry information regarding a finding that an individual has committed abuse, neglect, or exploitation if the department receives notice that the individual has died.

(n) For purposes of this section, "substantiated finding" means a determination made by the department after an investigation that, based on available information, it is more likely than not that abuse, neglect, or exploitation occurred. (Eff. 2/9/2007, Register 181; am 2/13/2008, Register 185)

Authority:	AS 47.05.300	AS 47.05.330	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030
	AS 47.05.320		

7 AAC 10.960. Termination of association. (a) Except as provided in (b) and (c) of this section, if an entity or provider is required to terminate association with an individual, the entity or provider shall

(1) notify the individual that the individual's employment, volunteer services, or other association with the entity or provider under 7 AAC 10.900(b) is ended, effective immediately, unless the entity or provider takes immediate action under (2) of this subsection; the entity or provider must notify the individual under this paragraph

(A) immediately, if the individual is present at the entity or premises where the provider is providing services; or

(B) before or upon the individual's next arrival at the entity; or

(2) if the entity or provider intends to request a variance under 7 AAC 10.930, immediately reassign the duties and responsibilities of that individual so that the individual

(A) does not have contact with recipients of services;

(B) cannot access personal or financial records maintained by the entity or provider regarding recipients of services;

(C) has no control over or impact on the financial well-being of a recipient of services, unless the only recipient whose financial well-being is affected is a

(i) relative of the individual who has authorized that individual to make financial decisions for that relative;

(ii) recipient who has executed a power of attorney for that individual to make financial decisions for that recipient; or

(iii) recipient for whom a court has authorized that individual to make financial decisions; and

(D) is provided with direct supervision if present in the entity or premises where the provider is providing services during hours of operation.

(b) If the entity or provider is required to terminate association with an individual who is subject to a union agreement or employment contract that requires more notice than allowed under (a) of this section, the entity or provider shall, within 24 hours after receiving notice to terminate association, deliver a copy of the relevant language of the agreement or contract to the department. The entity or provider shall cooperate with the department in developing an appropriate termination plan for the individual that includes the measures set out in (a)(2)(A) - (D) of this section during the notice period mandated by the agreement or contract.

(c) If the individual for whom termination of association is required is a relative of the operator, administrator, or provider, and resides in the entity or premises where services are provided, termination of association must occur within 24 hours, and the entity or provider shall ensure that the individual

(1) does not have contact with recipients of services; and

(2) is provided with direct supervision if, during that 24-hour period, the individual is present in the entity or premises where the provider is providing services during hours of operation. (Eff. 2/9/2007, Register 181)

Authority:	AS 47.05.300	AS 47.05.330	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030
	AS 47.05.320		

7 AAC 10.990. Definitions. (a) In 7 AAC 10.900 - 7 AAC 10.990, unless the context requires otherwise,

- (1) "APSIN" means the Alaska Public Safety Information Network;
- (2) "barrier time" means the length of time a barrier crime under 7 AAC 10.905 bars an individual from association with an entity or provider under 7 AAC 10.900(b);
- (3) "behavioral health problem" means a mental disorder, substance use disorder, or co-occurring disorder;
- (4) "centralized registry" means the centralized registry established in 7 AAC 10.955;
- (5) "certification" has the meaning given "certified" in (b) of this section;
- (6) "commissioner" means the commissioner of health and social services;
- (7) "condition" means a barrier to association under 7 AAC 10.900(b) that results from
 - (A) a matter described in AS 47.05.330(b)(1)(A) involving the abuse, neglect, or exploitation of a child or vulnerable adult; and
 - (B) the entry of that information in the centralized registry;
- (8) "co-occurring disorder" has the meaning given in 7 AAC 57.990;
- (9) "crime" means barrier crime under 7 AAC 10.905;
- (10) "crime involving domestic violence" has the meaning given in AS 18.66.990;
- (11) "criminal justice information" has the meaning given in AS 12.62.900;
- (12) "department" means the Department of Health and Social Services;

(13) "direct supervision" means that the administrator, or a care provider who is at least 18 years of age,

- (A) is within sight or sound of the individual being supervised;
- (B) has received the training required under applicable department regulations;
- (C) is present to observe the individual; and
- (D) is available to the individual for consultation or assistance;

(14) "domestic violence problem" means the individual

(A) has been charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for a crime involving domestic violence listed in AS 18.66.990(3); or

(B) is or has been subject to a protective order issued or filed under AS 18.66 or a substantially similar law or ordinance of another jurisdiction;

(15) "eligibility to receive payments" means eligibility to receive payments that are used for the direct provision of services for the health, safety, and welfare of persons who are served by programs administered by the department; "eligibility to receive payments" does not include payments used solely for administrative costs;

(16) "individual service provider" has the meaning given in AS 47.05.390;

(17) "provider" means an individual service provider;

(18) "relative" means an individual who is related to another by marriage, blood relationship, or court decree;

(19) "substance use disorder" has the meaning given in 7 AAC 57.990;

(20) "supervised access" means that the entity or provider maintains a prudent level of awareness of the whereabouts of an individual for whom supervised access is required, to ensure the protection of recipients of services;

(21) "terminate association" means to sever an individual's association under 7 AAC 10.900(b) with an entity or provider;

(22) "volunteer" means an individual who regularly or routinely provides services or care, without pay, on behalf of an entity or provider.

(b) Notwithstanding 7 AAC 10.9990, in 7 AAC 10.900 - 7 AAC 10.990, unless the context requires otherwise,

(1) "entity" has the meaning given in AS 47.05.390;

(2) "recipient of services" means an individual receiving services from an entity or provider.

(c) In AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990, unless the context requires otherwise, "regular contact" means direct interaction with a recipient of services that occurs daily, or less frequently but on a recurring basis.

(d) In AS 47.05.300(a),

(1) "certified" means certified under 7 AAC 43.1090;

(2) "eligible to receive payments" has the meaning given "eligibility to receive payments" under (a) of this section. (Eff. 2/9/2007, Register 181)

Authority:	AS 47.05.300	AS 47.05.330	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030
	AS 47.05.320		