



Health Facilities Licensing and Certification

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To: Oregon In-home care (IHC) agencies

From: Health Facilities Licensing and Certification (HFLC)
IHC agency program

RE: **IHC agency Criminal Background Check Inquiries**

Purpose: The purpose of this memo is to provide clarification related to the IHC criminal records check rules (OAR 333-536-0090).

Criminal Record Checks conducted by the Background Check Unit (BCU)

If the agency is using the Department of Human Services (DHS) Background Check Unit (BCU) for criminal record checks, OAR 333-536-0093(7) require that an agency to complete a separate nationwide check through a qualified vendor. The agency will also need documentation of an LEIE check. The BCU does not include a nationwide check as part of their process, unless the SI has submitted fingerprints. The BCU also do not conduct an LEIE check.

Criminal Record Checks conducted before hiring an SI (for employment or as a volunteer), and every three years thereafter

The IHC OARs (333-536-0093(2)) require that an agency to conduct a criminal records check before hiring an SI. "Before hiring" means that the check must be conducted before the employee is hired and/or orientation or training is provided to the SI.

OAR 333-536-0093(13) requires an agency to conduct a criminal records check every three years from the date of the date of the SI's last criminal records check.

NPDB requirement

The National Practitioner's Data Bank (NPDB) has very specific eligibility requirements to conduct a query on an individual. These eligibility requirements will exclude most In-Home Care Agencies from being able to register with the NPDB to conduct queries.

As such, the Division will not enforce the requirement at OAR 333-536-0093(9), as it relates to the NPDB. Agencies will still be required to query the List of Excluded Individuals and Entities (<http://exclusions.oig.hhs.gov/>).

Required check topics

OAR 333-536-0093(8) & (9) requires the criminal records check to include the following:

IHC Background Check Memo (updated 01/2018)

- Name and address history trace;
- Verification that the SI's records have been correctly identified, via date of birth check and Social Security number trace;
- A local criminal records check, including city and county records for SI's places of residence for the last seven years;
- A nationwide multijurisdictional criminal database search, including state and federal records;
- A nationwide sex offender registry search;
- The name and contact information of the vendor who completed the records check;
- Arrest, warrant and conviction data, including but not limited to:
 - Charge(s);
 - Jurisdiction; and
 - Date.
- Source(s) for data included in the report.
- An agency shall perform and document a query of an SI with the List of Excluded Individuals and Entities (LEIE).

LEIE check and other required documentation

The IHC Oregon Administrative Rules (OARs) (333-536-0093(9)) require that an agency perform and document a query of a subject individual (SI) with the LEIE. An agency may conduct those checks on the Office of Inspector General's (OIG) website: <http://exclusions.oig.hhs.gov/> or through their qualified vendor.

Some vendors that perform criminal records checks (CRCs) may perform the LEIE check as part of the CRC package(s). However, those vendors may not always provide the agency with documentation of the check and the result for each individual. Regardless of if the LEIE check is done by the agency or done by a CRC vendor, the LEIE check and result must be documented specifically for each individual and maintained in that employee's personnel file. HFLC will not accept a letter from the company as documentation.

The same is true of the list of required checks in OAR 333-536-0093(8)(a-g) (including the National Sex Offender Registry: <http://www.nsopw.gov>). The results of each category must be documented on the record check report. Please contact your vendor to include the required information on the record check report.

Qualified Vendor documentation

OAR 333-536-0093 (6)(b) requires an agency to show proof that the vendor is qualified by:

1. Accreditation by the National Association of Professional Background Screeners (NAPBS)
Please note, membership is not accredited. If the vendor is a member of NAPBS but not accredited, then the vendor qualification requirement has not been met.

OR

2. Being in business for at least two years; Having a current business license and private investigator license, if required in the company's home state; **and** Maintaining an errors and omissions insurance policy in an amount not less than \$1 million.

Accreditation proof can be obtained through the NAPBS for option 1 above. Contact your vendor for copies of the proof needed for option 2 above. Proof must be maintained in your agency files.

Disqualifying conviction crimes

OAR 333-536-0093(3) requires that an SI who has or will have direct contact with a recipient of in-home care services may not be employed or volunteer with an agency in any capacity if the criminal records check conducted reveals the SI has been convicted of a crime as described in ORS 443.004(3).

These are described as "disqualifying conviction" crimes, because you cannot employ anyone who has been convicted of one of these crimes. A list of "disqualifying conviction" crimes are available online and should be incorporated into agency policy and procedures.

Please note, DHS has a list of "disqualifying conviction" crimes that is different than those for IHC. An agency must make sure they are using the correct list when conducting criminal records checks.

Weighing test requirements

OAR 333-536-0093(4) requires that an agency shall have a policy that includes weighing test actions should the records check screening indicate that an SI has been convicted for any crimes against an individual or property (other than those identified in ORS 443.004(3)). The weighing test must include at least the following:

- ❖ The agency shall consider circumstances regarding the nature of potentially disqualifying convictions and conditions including but not limited to:
 - The details of incidents leading to the charges of potentially disqualifying convictions or resulting in potentially disqualifying conditions;
 - The age of the SI at the time of the potentially disqualifying convictions or conditions;
 - Facts that support the convictions or potentially disqualifying conditions; and
 - Passage of time since commission of the potentially disqualifying convictions or conditions.
- ❖ Other factors that should be considered when available include but are not limited to:
 - Other information related to criminal activity including charges, arrests, pending indictments and convictions. Other behavior involving contact with law enforcement may also be reviewed if information is relevant to other criminal records or shows a pattern relevant to criminal history;
 - Periods of incarceration;
 - Status of and compliance with parole, post-prison supervision or probation;
 - Evidence of alcohol or drug issues directly related to criminal activity or potentially disqualifying conditions;
 - Evidence of other treatment or rehabilitation related to criminal activity or potentially disqualifying conditions;

- Likelihood of repetition of criminal behavior or behaviors leading to potentially disqualifying conditions, including but not limited to patterns of criminal activity or behavior;
 - Changes in circumstances subsequent to the criminal activity or disqualifying conditions including but not limited to:
 - History of high school, college or other education related accomplishments;
 - Work history (employee or volunteer);
 - History regarding licensure, certification or training for licensure or certification; or
 - Written recommendations from current or past employers;
 - Indication of the SI's cooperation, honesty or the making of a false statement during the criminal records check process, including acknowledgment and acceptance of responsibility of criminal activity and potentially disqualifying conditions.
- ❖ An agency shall consider the relevancy of an SI's criminal activity or potentially disqualifying conditions to the paid or volunteer position, or to the environment in which the SI will work, especially, but not exclusively:
- Access to medication;
 - Access to clients' personal information;
 - Access to vulnerable populations.
- ❖ An agency shall document the weighing test and place in the employee's file.

Criminal Record Checks for Agency Administrators and Owners with direct client contact

Regarding criminal record checks for administrators and owners (OAR 333-536-0093(14)) -

The owner/administrator background check form is on the HFLC website

www.healthoregon.org/hflc. **The Background Check Request form found on the HCRQI website is the ONLY form that will be accepted and must be submitted with the agency yearly renewal.**

Please ensure that you fill out all sections, include all required information, sign and date the form. We do not accept copies of other background checks run by other vendors (including Department of Human Services (DHS) checks).

During your agency's licensure renewal time make sure you send in a background check request form for every owner and administrator that has direct contact with clients. These requests need to accompany all applications, even if you have turned in a request in the past. Unless specifically requested by this office, an agency only needs to turn in the Background Check Request for the administrator and owner with the relicensure application or change in administrator/owner.

In-Home Care Criminal Record Check (CRC) Quick Guide

Requirement	Rule	Summary
CRC conducted before hiring an SI and every three years thereafter	OAR 333-536-0093(2) & 333-536-0093(13)	CRC must be conducted before hiring an SI (for employment or as a volunteer), and every three years thereafter from the date of the original SI CRC.
National Practitioner Data Bank (NPDB) requirement	OAR 333-536-0093(9)	Not enforced by HFLC at this time, disregard
Required check topics	OAR 333-536-0093(8)&(9)	All check types (except the NPDB) are required as listed, including nationwide/federal check, national sex offender, and List of Excluded Individuals and Entities (LEIE)
LEIE check and other required documentation	OAR 333-536-0093(8)(a-g) & OAR 333-536-0093(9)	The results of each category must be documented on the record check report. Please contact your vendor to include the required information on the record check report.
Qualified Vendor documentation	OAR 333-536-0093(6)(b)	CRC vendor must be qualified according to rule, documentation of the qualification is required.
Disqualifying conviction crimes	OAR 333-536-0093(3) & ORS 443.004(3) [list online: www.healthoregon.org/hflc]	An SI who has or will have direct contact with a recipient of in-home care services may not be employed or volunteer with an agency in any capacity if the criminal records check conducted reveals the SI has been convicted of a crime as described in Oregon Revised Statute 443.004(3).

Weighing test requirements	OAR 333-536-0093(4)&(5)	An agency shall have a policy that includes weighing test actions should the records check screening indicate that an SI has been convicted for any crimes against an individual or property (other than those identified in ORS 443.004(3)). The weighing test must include all requirements set forth in 333-536-0093(4)&(5).
CRC for Agency Administrators and Owners with direct client contact	OAR 333-536-0093(14)	All agency administrators and owners that have direct client contact must submit a criminal records check form with all initial and renewal applications.

If you need this material in an alternate format, please contact our office at 971-673-0540 or TTY 711