

Department of Health and Human Services  
Developmental Disabilities Section

Policy Issuance

Revised PI 20-24

**To:** Regional DD Program Administrators  
Fiscal Agent

**From:** Tina Bay, Director, Developmental Disabilities Section

**Re:** Background Check requirements for Self-directed In-Home Support  
Services **and Respite** through the Fiscal Agent.

**Effective Date:** June 1, 2024

\*This policy replaces former Policy PI-20-24, effective April 24, 2020

## Purpose

The purpose of this policy is to ensure that background checks are conducted on all staff hired to provide Self-directed In-Home Support (IHS) **and Respite**. The state of ND has contracted with a fiscal agent to conduct the background check on behalf of the common law employer.

Performing background checks on individuals who may have contact with vulnerable people is a component of preventing abuse, neglect, and exploitation. This provides a framework for background checks and describes when a background check is required, the components of a background check and what is done if a background check reveals a potential problem.

Background checks supplement but do not replace reference checks or substitute for proof of education, specific training, certification, or professional licenses required for a position or job functions.

## Authority

North Dakota Traditional HCBS IID/DD Waiver

## Definitions

1. "Background check" means the process of researching and compiling information regarding criminal and other appropriate records.

2. "Bureau of Criminal Investigation" BCI is the state's central repository for criminal history information, a system that compiles records of arrests and prosecutions of individual offenders for use by law enforcement, the courts, and the public. The criminal history information is submitted by local law enforcement agencies, state's attorneys, the courts, parole and probation, etc. to the BCI. A ND BCI check only provides information on ND records.
3. "Client" means an individual found eligible as determined through the application of NDAC chapter 75-04-06 for services coordinated through intellectual disabilities-developmental disabilities program management, on whose behalf services are provided or purchased.
4. "Common Law Employer" is the individual or legal decision maker, who is responsible for hiring workers and are liable for the performance for employment related tasks in self-directed services.
5. "Department" means the North Dakota Department of Health and Human Services (DHHS).
6. "Developmental Disabilities Section" (DD Section) means the section within the North Dakota Department of Health and Human Services responsible for licensing of services pursuant to NDCC chapter 25-16 and NDAC 75-04-01.
7. "Direct Bearing offense" includes an offense described in NDCC chapters as follows:
  - Section A.
    - 12.1-16 homicide
    - 12.1-17-01 simple assault
    - 12.1-17-01.1 assault
    - 12.1-17-01.2 Domestic violence
    - 12.1-17-02 aggravated assault
    - 12.1-17-03 reckless endangerment
    - 12.1-17-04 terrorizing
    - 12.1-17-06 criminal coercion
    - 12.1-17-07.1 stalking
    - 12.1-17-12 assault or homicide while fleeing a police officer
    - 12.1-18 kidnapping
    - 12.1-20-03 gross sexual imposition
    - 12.1-20-03.1 continuous sexual abuse of a child,
    - 12.1-20-04 sexual imposition
    - 12.1-20-05 corruption or solicitation of minors
    - 12.1-20-05.1 luring minors by computer or other electronic means
    - 12.1-20-06 sexual abuse of wards
    - 12.1-20-07 sexual assault
    - 12.1-21-01 arson
    - 12.1-22-01 robbery

- 12.1-22-02 burglary if a class B felony under subdivision b of subsection 2 of that section
  - 12.1-27.2 sexual performances by children
  - 12.1-29-01 promoting prostitution
  - 12.1-29-02 facilitating prostitution
  - 12.1.-31-05 child procurement
  - 12.1-41 Uniform Act on Prevention of a Remedies for Human Trafficking
  - 14-09-22 abuse of child
  - 14-09-22.1 neglect of child
  - An offense under the laws of another jurisdiction which requires proof of substantially similar elements required for conviction under any of the enumerated North Dakota statues listed above, or
- Section B.
- An offense other than an offense identified above if DHS determines the person has not been sufficiently rehabilitated.

8. “Employee” means an individual who is hired for Self-directed In-Home Supports **and Respite** and has direct contact with or unsupervised access to clients receiving services, their personal property, personal information, or personal resources.
9. “Fiscal Agent” is an agent of a client enrolled in self-directed services under the Traditional IID/DD HCBS waiver. The Fiscal Agent conducts background checks for Self-Directed In-Home Support (IHS) **and Respite** staff hired by common law employer, performs payroll related duties, such as withholding and filing taxes, processing worker timesheets, calculating and processing employee benefits, issuing payroll checks, etc. The Fiscal Agent is not licensed under NDAC 75-04-01 but is contracted by the state of North Dakota to perform these functions and must adhere to this policy when conducting background checks for Self- Directed In-Home Support **and Respite** staff.

### **Background checks are required for Employees of Self-Directed In-Home Supports **and Respite****

The Fiscal Agent must conduct a background check for prospective employees, regardless of their age, when offered a position.

A copy must be obtained and placed in the employee personnel file. If the background check has any crimes or negative actions that required review by the Department, supporting correspondence from the Department showing a hiring decision must also be included in the personnel file.

### **Fees for background check**

Fees for obtaining background checks are **billed to the State by the fiscal agent.**

## Offer/Start date of employment or engagement with the client

Employees who have been offered a position in Self-directed IHS and Respite by the common law employer **must submit a background check application to the fiscal agent but will be allowed to start providing service before receiving the results of the background check.** Reimbursement with public funds will not be made until the **completed background check application is received by Fiscal Agent** and a letter of approval is received **by the employee.**

- In the event there is a direct bearing offense on the employee's background check, the results will go to the employer of record and that employee must stop working immediately as reimbursement with public funds can no longer be used.

## A complete Background Check consists of the following:

1. **For prospective employees who are a ND Resident all the following sources must be included in the check regardless of the position the person is being considered for.**
  - a. **Criminal history background check** conducted by a reputable entity chosen by the fiscal agent.

In North Dakota **the criminal check must be completed through the** Bureau of Criminal Investigation (BCI). The requirements for requesting ND Criminal History Records can be found at the following link.

<https://attorneygeneral.nd.gov/public-safety/criminal-history-records/requesting-a-criminal-history-record-check/>

- b. **Certified Nurse Aide registry**

North Dakota: <https://services.ndhhs.gov/nurseaide/verify/>

- c. **Child Abuse and Neglect Central Registry**

North Dakota: <https://www.nd.gov/eforms/Doc/sfn00433.pdf>.

- d. **State and Federal exclusions databases Office of Inspector General (OIG)**

North Dakota:

<https://www.hhs.nd.gov/healthcare/medicaid/provider/compliance/fraud-and-abuse>

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

**e. State Board of Nursing**

There are two verifications that need to be completed for The North Dakota Board of Nursing site.

- ND Board of Nursing License/Permit Verification  
[https://www.ndbon.org/verify\\_renew/verify\\_nurse.asp](https://www.ndbon.org/verify_renew/verify_nurse.asp)
- UAP/Technician/MAIII Registration Verification  
[https://www.ndbon.org/verify\\_renew/verify\\_uap.asp](https://www.ndbon.org/verify_renew/verify_uap.asp)

**2. In addition to the items identified in number one (1) above, the following need to be completed for those state(s) of residency for the past 5 years. All of the following sources must be included in the check regardless of the position the person is being considered for.**

**a. Criminal history background check** conducted by a reputable entity chosen by the fiscal agent.

The ND Bureau of Criminal Investigation maintains a list of some agency contacts in other states that will be provided upon request.

**b. Child Abuse and Neglect Central Registry**

National resource:

<https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/juvenile/adam-walsh-state-contacts-child-abuse-registries.pdf> or  
<https://www.chfs.ky.gov/agencies/dcbs/Pages/walsh.aspx>

**\*\*Only if a state law prohibits disclosure of records or the prospective employee has lived out of the country with in the past 5 years, the provider can have staff complete the Self-Disclosure of Previous Criminal History/Child Abuse Registry Form ([SFN 1792](#)).** The Department will not hear challenges to the accuracy of background checks. If an employee wishes to challenge the accuracy of any report, it must be done in the jurisdiction involved with the charge or conviction.

**Disposition of Background Check Results**

Upon receiving the results of the background check from **all** sources, Fiscal Agent will determine whether further review is required by the Developmental Disabilities Section. If no further review is needed, the Fiscal Agent will send the background check and a letter of approval or denial to the common law employer.

**No Additional Review Required by DD Section**

✓ **No record**

All sources indicate no crimes or negative actions for the individual were found.

## **Further Review by the DD Section Required**

### ✓ **Infractions only**

The only crimes or negative actions found were those classified as infractions.

*North Dakota categorizes some crimes as infractions. Infractions are violations of law, regulation, or ordinances. An infraction is less serious than a misdemeanor. Most infractions are settled administratively. Defendants do not have a right to a jury trial and although an individual charged with an infraction can hire an attorney the government doesn't have a constitutional duty to provide one. A person who commits an infraction will usually get a ticket or citation and pay a fine. Penalties: Up to \$1,000 in fines. Infractions are considered the least serious type of crime and have no incarceration penalties associated with them, unless a person convicted of an infraction has a previous conviction for the same crime within the prior year. In such circumstances, prosecutors charge the infraction as a Class B misdemeanor up to 30 days' imprisonment and a maximum of \$1,500 in fines. Some examples of Infractions include but are not limited to: Sale of tobacco to minors; Gambling on private premises where the total amount involved exceeds \$2,500 per person; Speeding; Parking fines; Littering; Noise disturbances; Violations of building codes etc.*

Infractions do not need to be reported to the Department, but the common law employer hiring for Self-direct In-home Supports **and Respite** must determine whether the infraction is substantially related to or has a direct impact on the ability of the individual to perform the job functions for which they are being considered. Consider whether there are patterns of infractions, the time that has elapsed since the infraction, age of the individual at the time of the infraction.

### ✓ **Direct bearing**

If the records indicate the potential employee has been found guilty of, pled guilty to, or pled no contest to a direct bearing offense(s) the common law employer may not employ that person.

An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:

- a. Common knowledge in the community; or
- b. Acknowledged by the individual; or
- c. Reported to the facility as the result of an employee background check.

### ✓ **Non-direct bearing offenses are crimes or negative actions that do not automatically disqualify the individual. However, the decision on offering employment or engagement with the common law employer is pending until it has been determined by the Department:**

- If the nature of the offense or underlying conduct is substantially related to the service(s) provided to the client and has direct relevance to the job or position the person is seeking.
- If the person has been sufficiently rehabilitated under section 12.1-33-02.1.
- ✓ Per NDAC 75-04-01-06.1(4), in the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the Department may determine the individual has been sufficiently rehabilitated, if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.

### ✓ **Registry Checks**

If the records indicate the potential employee is listed on the Child Abuse/Neglect Information Index, CNA Registry, or Board of Nursing Registry, the provider may furnish information satisfactory to the Department, from which the Department can determine the potential employee's ability to provide care that is free of abuse and neglect.

### ✓ **Records required for determination**

- The following records must be submitted with the background check to the DD Section for review [at hhsddbqchecks@nd.gov](mailto:hhsddbqchecks@nd.gov):
  1. The nature of the conviction
  2. Jurisdiction of the court of records
  3. When it occurred
  4. Sentencing or disposition
  5. Rehabilitation participation if any
  6. Identity of the person's probation/parole officer (if applicable),
  7. If applicable, an explanation from the subject regarding the circumstances of the conviction, why the nature of the offense should not apply to the job functions, etc.
- If the records submitted do not include the above information, the DD Section will be unable to make a determination and the request will be returned.

### **DD Section Notification**

Once the DD Section receives all applicable records a review and determination will be completed within 10 business days. The DD Section will notify the Fiscal Agent of the determination in writing. The Fiscal Agent is responsible to notify the individual or common law employer hiring for Self-directed In-home Supports **and Respite**.

## **Additional Requirements**

If a common law employer becomes aware that an existing employee is convicted of an offense subject to the review of the Department, they must immediately report the offense to the Developmental Disabilities Program Manager (DDPM) or the DD Section for further review to determine if continued employment or engagement is appropriate.

Fiscal Agent shall retain the most recent background checks in the employee personnel file and shall be available for review by Department staff to assure compliance with this procedure.

## **Noncompliance**

If the common law employer continues to employ a person found to have a 'direct bearing' offense or to be insufficiently rehabilitated, they will be in violation of this policy and the Traditional IID/DD HCBS Waiver. Reimbursement with public funds for these employees will be terminated and may be required to pay back any funds that were reimbursed. The common law employer may be involuntarily terminated from self-directed services.

**Any questions regarding background checks can be submitted to [hhsddbqchecks@nd.gov](mailto:hhsddbqchecks@nd.gov)**