

**Article 3**  
**Barrier Crimes and Conditions; Background Checks**

Section

- 900. Purpose and applicability; exceptions.
- 902. Request for a background check.
- 903. Limited disclosure of background check and variance review committee information.
- 905. Barrier crimes and conditions.
- 910. Request for background check.
- 915. Background check.
- 920. Provisional valid background check.
- 925. Monitoring and notification requirements.
- 927. Request for a redetermination.
- 930. Request for a variance.
- 935. Review of request for a variance.
- 940. Posting of variance decision required.
- 945. Revocation of valid background check or variance.
- 950. Request for reconsideration of a variance request decision or revocation.
- 955. (Repealed).
- 960. Termination of association.
- 990. Definitions.

**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 and with background checks, including

- (1) the identification of barrier crimes 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 a provider in a manner described in (b) of this section;
- (2) requirements for requesting a background check and procedures to determine whether a barrier crime or condition exists; and
- (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

(b) The provisions of 7 AAC 10.900 - 7 AAC 10.990 apply to a provider seeking approval from an oversight division to provide services or receive payments from the department. Each individual who is to be associated with a provider in a manner described in this subsection must have a valid background 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 provider as

- (1) an administrator or operator;
- (2) an individual service provider;

(3) an employee, an independent contractor, an apprentice, 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 provider regarding recipients of services, including access to

(i) personal identifying information, financial information, treatment information, or medical records; and

(ii) a recipient's money or other property in any manner that could result in misappropriation of that money or property; 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 for that recipient;

(4) an officer, a director, a partner, a member, or a 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 provider regarding recipients of services, including access to

(i) personal identifying information, financial information, treatment information, or medical records; and

(ii) a recipient's money or other property in any manner that could result in misappropriation of that money or property; 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 for that recipient;

(5) except as provided in (c) and (d)(9) 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 or residence 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

(A) is present in the entity, including in a residence if services are provided in the residence; and

(B) would have regular contact with recipients of services.

(c) A background check under 7 AAC [10.900](#) - 7 AAC [10.990](#) is not required for a recipient of services, unless that recipient is also associated with the provider in any manner described in (b)(1) - (4) of this section.

(d) A background 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 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 provider in any manner described in (b)(1) - (4) of this section;

(3) an individual for whom the provider submits evidence to the department of a fingerprint-based criminal history check conducted and implemented under a process that meets or exceeds the standards of 7 AAC [10.900](#) - 7 AAC [10.990](#);

(4) a person listed in (A) or (B) of this paragraph, as follows, if that person is not associated with the provider in any manner described in (b)(1) - (4) of this section;

(A) an employee, an independent contractor, an apprentice, or an unsupervised volunteer;

(B) a board member, an officer, a director, a partner, a member, or a principal of the business organization that owns an entity;

(5) 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 provider in any manner described in (b) of this section; and

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

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

(7) 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;

(8) 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 provider of child care;

(9) a parent who receives money from the department for purposes of paying an approved in-home child care caregiver 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 caregiver who resides in the household;

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

(e) A 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)(7) 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 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.

**History:** Eff. 2/9/2007, Register 181; am 6/29/2017, Register 222

**Authority:** [AS 47.05.300](#) [AS 47.05.310](#) [AS 47.05.320](#) [AS 47.05.330](#) [AS 47.05.340](#) [AS 47.32.010](#)  
[AS 47.32.030](#)

#### **7 AAC 10.902. Request for a background check**

An applicant may request a background check under 7 AAC [10.900](#) - 7 AAC [10.990](#) to comply with 7 AAC [10.900\(a\)](#) (1).

**History:** Eff. 6/29/2017, Register 222

**Authority:** [AS 47.05.300](#) [AS 47.05.310](#) [AS 47.05.320](#) [AS 47.05.330](#) [AS 47.05.340](#) [AS 47.32.010](#)  
[AS 47.32.030](#)

#### **7 AAC 10.903. Limited disclosure of background check and variance review committee information.**

(a) The department, including the variance review committee appointed under 7 AAC [10.935](#), will limit the use of information gathered during the background check process under 7 AAC [10.900](#) - 7 AAC [10.990](#) as stated in this section.

(b) The department will not disclose information obtained by a representative, agent, volunteer, or employee of the department in the course of discharging the background check process under 7 AAC [10.900](#) - 7 AAC [10.990](#), or in the course of discharging the responsibilities of the variance review committee, to anyone outside the department, except as authorized by state or federal law governing the program or program review or audit to which the information relates.

(c) Unless otherwise authorized by law, the department will not use or disclose protected health information except as required or permitted by 42 C.F.R. Part 2 (Confidentiality of Alcohol and Drug Abuse Patient Records), 45 C.F.R. Part 160, Subpart C (Compliance and Investigations), and 45 C.F.R. Part 164, Subpart E (Privacy of Individually Identifiable Health Information), each as revised as of October 1, 2016, and adopted by reference.

**History:** Eff. 6/29/2017, Register 222

**Authority:** [AS 47.05.300](#) [AS 47.05.310](#) [AS 47.05.320](#) [AS 47.05.330](#) [AS 47.05.340](#) [AS 47.32.010](#)  
[AS 47.32.030](#)

## **7 AAC 10.905. Barrier crimes and conditions**

(a) A barrier crime or condition is a criminal offense or civil finding that prohibits a provider or an applicant from being approved under 7 AAC [10.990](#). The standards and prohibitions in this section apply to an individual who seeks to be associated or to remain associated in a manner described in 7 AAC [10.900\(b\)](#) with a provider that is subject to [AS 47.05.300](#) - 47.05.390 and 7 AAC [10.900](#) - 7 AAC [10.990](#), and

(1) 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; or

(2) has been found by a court or agency of this state or of another jurisdiction to have been involved in a matter that the department determines would be inconsistent with the standards for protection of the health, safety, and welfare of recipients of care.

(b) Except as otherwise provided in this section, the following are permanent barriers, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this state or of another jurisdiction if that law or ordinance has similar elements to one or more of the following crimes, except that the barrier time for an adjudication as a minor for crimes under this subsection is limited to 10 years from the date of the individual's majority:

(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 sex trafficking was under 18 years of age at the time of the offense:

(A) [AS 11.66.110](#) (Sex Trafficking in the First Degree);

(B) [AS 11.66.120](#) (Sex Trafficking in the Second Degree);

(C) [AS 11.66.130](#) (Sex Trafficking in the Third Degree);

(11) any sex offense, as defined in [AS 12.63.100](#) , that is not already listed 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.

(11) a crime under [AS 47.05.210](#) (Medical Assistance Fraud).

(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 11.61.118](#) (Harassment in the First Degree);

(B) [AS 11.61.130](#) (Misconduct Involving a Corpse);

(C) [AS 11.61.140](#) (Cruelty to Animals);

(D) [AS 11.61.145](#) (Promoting an Exhibition of Fighting Animals), if the crime is a class C felony;

(E) [AS 11.61.200](#) (Misconduct Involving Weapons in the Third Degree);

(F) [AS 11.61.240](#) (Criminal Possession of Explosives), if the crime is a class C felony;

(G) [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) Except as otherwise provided in this section, the following are conditions that are inconsistent with the standards for protection of public health, safety, and welfare and constitute a 10-year barrier:

(1) a criminal offense or civil finding for which one or more of the following federal laws prohibit certain approvals or restrict payment of benefits, during the most stringent barrier time set by the federal law for that crime or civil finding, regardless of whether the federal law is directly applicable to the applicant or provider:

(A) 42 U.S.C. 670 - 679c (secs. 470 - 479B of the Social Security Act), dealing with federal payments for foster care and adoption assistance, revised as of October 1, 2016, and adopted by reference;

(B) 42 U.S.C. 1320a-7(a) (sec. 1128(a) of the Social Security Act), dealing with exclusion of certain individuals and entities from participation in Medicare and state health care programs, revised as of October 1, 2016, and adopted by reference;

(C) 45 C.F.R. 1356.30 (Safety Requirements for Foster Care and Adoptive Home Providers), revised as of October 1, 2015, and adopted by reference;

(2) placement on one or more of the following lists or registries, except that any barrier time that results from placement and that is more stringent than the 10-year barrier under this subsection continues to apply, unless the individual requests removal from the list or registry from the agency that maintains it and the agency grants the request:

(A) the List of Excluded Individuals and Entities (LEIE) that the United States Department of Health and Human Services, Office of Inspector General maintains under 42 U.S.C. 1320a-7 and 1320c-5 (secs. 1128 and 1156 of the Social Security Act);

(B) the Alaska Medical Assistance Excluded Provider List maintained under [AS 47.05.240](#) or a list or registry maintained under a substantially similar law in another jurisdiction;

(C) the United States Department of Justice's Dru Sjodin National Sex Offender Public Website (NSOPW) maintained under 42 U.S.C. 16920, the Alaska Sex Offender/Child Kidnapper Registry that the Department of Public Safety maintains under [AS 18.65.087](#) , or a list or registry maintained under a substantially similar law in another jurisdiction;

(3) a barrier condition based upon a civil finding relating to abuse, neglect, or exploitation of a child or vulnerable adult under [AS 47.10](#), [AS 47.24](#), [AS 47.32](#), or [AS 47.62](#), for any case that did not result in the termination of parental rights; however, if parental rights were relinquished or terminated under [AS 47.10](#), the barrier is permanent;

(4) a finding under 7 AAC [10.915\(a\)](#) and (d).

(g) If an applicant does not pass a background check as a result of a barrier crime or condition established in this section, the applicant is prohibited from associating with a provider in any manner described in 7 AAC [10.900\(b\)](#) . If eligible under 7 AAC [10.930](#), an applicant may request 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, a barrier time listed in this section begins to run from

(1) the date that an individual was charged with or convicted of the crime, or the date of a final civil finding establishing a barrier condition, whichever period ends at a later date;

(2) if the individual is subject to a judgment of a court related to sentencing, probation, or parole, or to a final civil finding, the date for the barrier time listed in this section or until the individual has fully complied with the conditions of the sentencing, probation, parole, or final civil finding, whichever period is longer; or

(3) for a finding under [AS 47.05.240](#) , the date the person is unconditionally discharged from the federal Office of Inspector General list described in (f)(2)(A) of this section, unless the commissioner determines by clear and convincing evidence that a shorter time period is appropriate.

(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 applicant is also subject to federal background 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.

**History: Eff. 2/9/2007, Register 181; am 6/29/2017, Register 222**

**Authority: [AS 47.05.300](#) [AS 47.05.310](#) [AS 47.05.320](#) [AS 47.05.330](#) [AS 47.05.340](#) [AS 47.32.010](#) [AS 47.32.030](#)**

### **7 AAC 10.910. Request for background check**

(a) A provider must request a background check under this section, or provide proof of a valid fingerprint-based background check, for each individual to be associated with the provider in any manner described in 7 AAC [10.900\(b\)](#) . A provider must request a background check

(1) when the 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 background check must be completed before the individual begins association unless the department issues notice of a provisional valid background check under 7 AAC [10.920](#);

(3) except as provided otherwise in this section, if the provider wishes to appoint a board member or to hire or retain an employee, an independent contractor, an apprentice, or an unsupervised volunteer described in 7 AAC [10.900\(b\)](#) (3); the background check must be completed before appointment or hiring unless the department issues notice of a provisional valid background 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 background check must be completed before the individual begins association unless

(A) the department issues notice of a provisional valid background 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 provider must submit the information required under (b) of this section within 30 days after the individual's 16th birthday; or

(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 background has changed.

(b) The applicant or provider must submit the following with each request for a background check:

(1) confirmation that a current release of information authorization, on a form provided by the department and signed by the individual for whom the request is submitted, is on file with the provider;

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

(3) one set of fingerprints for the individual for whom the request is submitted;

(4) the fees required by the Department of Public Safety under 13 AAC [68.900\(a\)](#) (2)(B) and (5);

(5) an additional \$25 application fee; the department will waive this fee for an unpaid volunteer who provides services to a provider that is operated by the state or recognized by the United States Internal Revenue Service as a nonprofit entity under 26 U.S.C. 501(c)(3).

(c) Unless a more frequent fingerprint-based background check is required under federal law, a fingerprint-based background check is valid for five years from the date the check became valid under (h) of this section for an individual

(1) whose name has been marked in APSIN on a continuous basis;

(2) who has not had the background check revoked under 7 AAC [10.945](#), made invalid under 7 AAC [10.915\(g\)](#), or rescinded under 7 AAC [10.915\(h\)](#);

(3) who has not had a variance approval made invalid under 7 AAC [10.935\(m\)](#) or revoked under 7 AAC [10.935\(n\)](#); and

(4) who

(A) remains associated with a provider in a manner described in 7 AAC [10.900\(b\)](#), subject to verification under (d) of this section;

(B) becomes re-associated with the same provider in a manner described in 7 AAC [10.900\(b\)](#) within 100 days after terminating association with that provider, subject to verification under (d) of this section; or

(C) becomes associated with another provider in a manner described in 7 AAC [10.900\(b\)](#) within 100 days after terminating association with a previous provider, subject to verification under (d) of this section.

(d) At the time of association or re-association under (c) of this section, and annually after that date, each provider must verify that each applicant described in (c)(4)(A), (B), or (C) of this section, as applicable, has a valid background check. If the department determines that the background check is not valid, the department will notify the provider that a request for a new background check must be submitted under this section, subject to any

applicable fee. Each provider, and each applicant described in 7 AAC [10.902](#), is responsible for ensuring that a background check is renewed before it expires under (c) of this section for each applicant described in (c)(4)(A), (B), or (C) of this section.

(e) Repealed 6/29/2017;

(f) Repealed 6/29/2017;

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

(h) A valid background check means that, within any applicable period referred to in this section,

(1) the items listed under (b) of this section were submitted to the department;

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

(3) the applicant's name has been marked in APSIN on a continuous basis and the applicant has not had

(A) the background check revoked under 7 AAC [10.945](#), made invalid under 7 AAC [10.915\(g\)](#), or rescinded under 7 AAC [10.915\(h\)](#); or

(B) a variance approval made invalid under 7 AAC [10.935\(m\)](#) or revoked under 7 AAC [10.935\(n\)](#); and

(4) if applicable, any variance granted under 7 AAC [10.935](#) is still in effect and authorized by the department.

(i) Nothing in this section precludes a provider from requiring

(1) an individual who is subject to a background 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 background check for an individual who is not otherwise subject to 7 AAC [10.900](#) - 7 AAC [10.990](#).

(j) If a provider required to request or obtain a valid background check required under 7 AAC [10.900](#) - 7 AAC [10.990](#) does not request or obtain the required background check, that provider is disqualified, until the time a valid background check is obtained, from

(1) applying for licensure, certification, or approval to be a provider;

(2) receiving any payment from the department; or

(3) associating with another provider in any manner described in 7 AAC [10.900\(b\)](#).

(k) For purposes of this section, an individual's name is marked in APSIN on a continuous basis if an individual's APSIN record has been electronically associated with the department's background check program to ensure that any new criminal history is relayed to the department on a real-time basis.

**History:** Eff. 2/9/2007, Register 181; am 8/25/2010, Register 195; am 6/29/2017, Register 222

**Authority:** [AS 47.05.300](#) [AS 47.05.310](#) [AS 47.05.330](#) [AS 47.05.340](#) [AS 47.32.010](#) [AS 47.32.030](#)

## **7 AAC 10.915. Background check**

(a) To perform its functions under [AS 47.05.330](#) , the department will screen a request for a background check through

(1) the registry of certified nurse aides under [AS 08.68.333](#) ;

(2) the Alaska Sex Offender/Child Kidnapper Registry that the Department of Public Safety maintains under [AS 18.65.087](#) ;

(3) the List of Excluded Individuals and Entities (LEIE) that the United States Department of Health and Human Services, Office of Inspector General maintains under 42 U.S.C. 1320a-7 and 1320c-5 (secs. 1128 and 1156 of the Social Security Act); and

(4) any other registry or database determined by the department to be relevant to the screening being conducted under [AS 47.05.330](#) for an individual, including

(A) professional licensing registries; and

(B) any registry or database maintained by this state or by another state.

(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 or condition exists for the individual who is the subject of the background 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 requesting applicant or provider that the determination is available through the department's electronic database.

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

(1) issue a written notification to the applicant that explains

(A) that a barrier crime or condition exists;

(B) the applicable barrier time for the crime or condition;

(C) the right to request a variance, if allowed under 7 AAC [10.930](#); and

(D) the right to seek redetermination under 7 AAC [10.927](#); and

(2) provide notification to the provider that an applicant is not eligible for a valid background check, and that the provider may have the right to apply for a variance under 7 AAC [10.930](#); the department may provide notification electronically or in writing.

(e) For each request for a background check processed under this section, the department will mark in APSIN the name of the applicant who was the subject of the background check. If the department receives notification under APSIN of law enforcement activity for an applicant, or receives new notification of a civil action, the department will review the information. If the department determines that the activity creates a barrier crime or condition under

7 AAC [10.905](#), the department will immediately notify the provider and the applicant of the change in the department's determination. The department will notify the applicant that

(1) the department intends to immediately revoke the valid background check in accordance with 7 AAC [10.945](#); the department will identify the barrier crime or condition in the notice;

(2) the applicant may request a redetermination under 7 AAC [10.927](#) if the applicant believes that the department's determination was made in error or that there was an error in the information that the department relied on, or if the applicant has new or additional factual information that could change the department's determination; and

(3) if the applicant for whom the request was submitted by the provider wishes to disclose the barrier crime or condition to the provider, the provider may request a variance, if allowed under 7 AAC [10.930](#); if the request was submitted by an applicant under 7 AAC [10.902](#), the department will notify that applicant of the right to request a variance, if allowed under 7 AAC [10.930](#).

(f) Except as provided otherwise in this subsection, a provider shall, within 24 hours after receiving notification under (d) or (e) of this section, terminate association with the applicant in accordance with 7 AAC [10.960](#). If the provider or the applicant requests a variance under 7 AAC [10.930](#), or if the applicant requests a redetermination under 7 AAC [10.927](#), the applicant may remain associated with the provider, pending a decision on the request, if

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

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

(g) If an applicant remains out of association with a provider for 100 days or longer, or if an applicant described in 7 AAC [10.902](#) fails to become associated with a provider within 100 days after the department's notification under (c) of this section, the background check becomes immediately invalid without prior notice. A new background check must be requested if the applicant wishes to become associated with any provider in any manner described in 7 AAC [10.900\(b\)](#).

(h) If an applicant with a valid background check ceases to be, or fails to become, associated with a provider, and wishes to have the applicant's name unmarked in APSIN, the applicant must submit a written request to the department that the valid background check be rescinded.

**History:** Eff. 2/9/2007, Register 181; am 6/29/2017, Register 222

**Authority:** [AS 47.05.300](#) [AS 47.05.310](#) [AS 47.05.320](#) [AS 47.05.330](#) [AS 47.05.340](#) [AS 47.32.010](#) [AS 47.32.030](#)

### **7 AAC 10.920. Provisional valid background check**

(a) Subject to (b) and (c) of this section, the department may issue notification of a provisional valid background check after screening an applicant 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 further review time by the department might unduly delay the process;

(2) the 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 the fees required under 7 AAC [10.910\(b\)](#) (4) and (5); 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) and (5) that were not included with the request; or

(3) a request for a background check does not include the required fingerprints because fingerprinting acceptable to the Department of Public Safety is not available within 100 miles by road, and the 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) and (5) that were not included with the request.

(b) Except as provided in (c) of this section, a provisional valid background check issued under this section is valid for 90 days, pending completion of the background check or during the pendency of any request for a redetermination, a variance, or a reconsideration of a variance request. A provider shall ensure that if an applicant requests a redetermination under 7 AAC [10.927](#), a variance under 7 AAC [10.930](#) and 7 AAC [10.935](#), or reconsideration under 7 AAC [10.950](#) of a variance request, the applicant has direct onsite supervision. The department may extend the 90-day limit if any delay occurs that was not caused by any failure of the applicant or provider.

(c) If the provider fails to submit fingerprints and other required items within 30 days, or if the department determines that a barrier crime or condition exists with respect to the applicant, the provisional valid background check is automatically revoked, and the provider must terminate association with the applicant in accordance with 7 AAC [10.960](#).

**History:** Eff. 2/9/2007, Register 181; am 6/29/2017, Register 222

**Authority:** [AS 47.05.300](#) [AS 47.05.310](#) [AS 47.05.320](#) [AS 47.05.330](#) [AS 47.05.340](#) [AS 47.32.010](#) [AS 47.32.030](#)

### **7 AAC 10.925. Monitoring and notification requirements**

(a) A provider shall monitor to ensure that all applicants associated with the provider in any 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 provider shall require each applicant for whom a background check is required to report to the provider within 24 hours or the next business day if the applicant is 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](#).

(b) The 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 provider has knowledge that an applicant associated with the provider has been 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](#);

(2) 14 days after any change in association with the provider for an applicant who has a valid background check or is the subject of a provisional valid background check, including a change that involves an applicant whose association described in 7 AAC [10.900\(b\)](#) has been terminated; notification under this paragraph may be provided through a change in the department's electronic database.

(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.

**History:** Eff. 2/9/2007, Register 181; am 6/29/2017, Register 222

**Authority:** [AS 47.05.300](#) [AS 47.05.310](#) [AS 47.05.320](#) [AS 47.05.330](#) [AS 47.05.340](#) [AS 47.32.010](#) [AS 47.32.030](#)

### **7 AAC 10.927. Request for a redetermination**

(a) If the department makes a determination under 7 AAC [10.915\(d\)](#) or (e) that a barrier crime or condition exists, or if the department revokes an applicant's background check under 7 AAC [10.945\(a\)](#), the applicant who was the subject of the background check may submit a request for a redetermination under this section if the applicant

- (1) believes that the department's determination was made in error;
- (2) believes there was an error in the information that the department relied on; or
- (3) has new or additional factual information that could change the department's determination.

(b) A request for a redetermination must be submitted within 90 days after the department issues its determination. The request for a redetermination must include

- (1) the requester's name, mailing address, telephone number, and, if available, electronic mail address and facsimile number;
- (2) a clear description of the department's determination to be reviewed; and
- (3) a clear and concise statement of the reason for the request, including copies of any documents or other information that would assist the department in its review.

(c) Within 30 days after receiving a request for a redetermination, the department will review the request and issue a decision regarding whether to grant or deny a redetermination. If the department denies a redetermination, the department will inform the requester in the notice of decision that a barrier crime or condition exists and that

- (1) if the applicant for whom a barrier crime or condition exists is willing to disclose the barrier crime or condition to the provider, the provider may, if allowed under 7 AAC [10.930](#), request a variance under 7 AAC [10.935](#), within 90 days after the notice of decision is issued under this subsection; or
- (2) if the notice of decision under this subsection is issued to an applicant described in 7 AAC [10.902](#), the applicant may, if allowed under 7 AAC [10.930](#), request a variance under 7 AAC [10.935](#) within 90 days after the notice of decision is issued under this subsection.

(d) Unless the department grants a variance under 7 AAC [10.935](#), the decision issued under (c) of this section is a final agency decision and may be appealed to the superior court under the Alaska Rules of Appellate Procedure.

**History:** Eff. 2/9/2007, Register 181; am 6/29/2017, Register 222

**Authority:** [AS 47.05.300](#) [AS 47.05.310](#) [AS 47.05.320](#) [AS 47.05.330](#) [AS 47.05.340](#) [AS 47.32.010](#) [AS 47.32.030](#)

### **7 AAC 10.930. Request for a variance**

(a) Except for a crime or condition listed in (g) of this section, if a provider or an applicant is notified under 7 AAC [10.915\(d\)](#) or 7 AAC [10.927\(c\)](#) that a barrier crime or condition exists under 7 AAC [10.900](#) - 7 AAC [10.990](#), the provider or the applicant may request a variance under this section. The request must be submitted to the

provider's oversight division. The request must be submitted no later than 90 days after the department issues notification under 7 AAC [10.915\(d\)](#) that a barrier crime or condition exists or the department issues a notice of decision under 7 AAC [10.927\(c\)](#) denying a request for a redetermination, 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 and available 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 of that individual's record of, or if a record is inapplicable, a statement that the individual has no record of

(i) any protective order 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 [10.915](#);

(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 [10.915](#);

(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) any 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 background history, behavioral health problem, or domestic violence problem, and who would, despite that knowledge, 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 a provider who submitted the request for a variance; nothing in this subparagraph precludes the provider or an applicant from submitting additional letters of recommendation;

(I) 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) a statement from the individual requesting a variance that describes all actions that the individual has taken to reduce the risk of reoffending, including proof of active participation in or completion of any treatment program required by a court; the statement must also include

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

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

(C) evidence that the individual is licensed under [AS 08](#), or became licensed after the individual was convicted of the offense or after the department under 7 AAC [10.915](#) determined a barrier condition to exist.

(b) The oversight division shall review each request for a variance and shall, within 30 days after receipt of the variance request, determine if the variance request is complete. If the variance request is incomplete, the department will notify the provider or applicant and identify the material needed to complete the variance request. In the notification the department will include a statement of the material that is missing and that the missing material must be submitted to the department within 30 days after the date of the notification, or the variance request will be denied. If after the deadline for submittal of the missing material the variance request remains incomplete, the oversight division shall deny the variance request and advise the provider or applicant of the right to reapply for a variance. If the oversight division determines that the variance request is complete, the oversight division shall

(1) make a written recommendation to the variance review 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 may consider information regarding the original charge in making its recommendation to the variance

review 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) Repealed 6/29/2017.

(e) Repealed 6/29/2017.

(f) The department may grant a variance under [AS 47.05.310](#) (f) from all or part of the requirements for conducting a background check under 7 AAC [10.900](#) - 7 AAC [10.990](#) if a provider submits a request for a variance to the oversight division on a form provided by the department, includes a comprehensive rationale for the request, and demonstrates that the health, safety, and welfare of recipients of services will be adequately protected. A variance issued under this subsection may not be transferred to another provider.

(g) The department will not grant a variance for a crime or civil finding for which federal law prohibits certain approvals, or restricts payment of benefits, during the most stringent barrier time set by federal law for that crime or civil finding. For purposes of this subsection,

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

(A) 42 U.S.C. 670 - 679c (secs. 470 - 479B of the Social Security Act), adopted by reference in 7 AAC [10.905\(f\)](#) ;

(B) 42 U.S.C. 1320a-7(a) (sec. 1128(a) of the Social Security Act), adopted by reference in 7 AAC [10.905\(f\)](#) ;

(C) 45 C.F.R. 1356.30, adopted by reference in 7 AAC [10.905\(f\)](#) ; and

(D) another applicable federal statute or regulation;

(2) the prohibition applies to all providers subject to 7 AAC [10.900](#) - 7 AAC [10.990](#), regardless of whether the federal law is directly applicable to only one of the providers; and

(3) for an applicant who has requested a variance under 7 AAC [10.900](#) - 7 AAC [10.990](#), the prohibition applies regardless of whether the federal law is directly applicable to the provider with which the applicant seeks to become associated.

(h) Repealed 6/29/2017.

(i) Repealed 6/29/2017.

(j) Repealed 6/29/2017.

(k) Repealed 6/29/2017.

**History:** Eff. 2/9/2007, Register 181; am 10/17/2007, Register 184; am 2/13/2008, Register 222

**Authority:** [AS 47.05.300](#) [AS 47.05.310](#) [AS 47.05.320](#) [AS 47.05.330](#) [AS 47.05.340](#) [AS 47.32.010](#) [AS 47.32.030](#)

### **7 AAC 10.935. Review of request for a variance**

(a) The commissioner will appoint three or more department employees, including a chair, to serve as a variance review committee whose primary responsibility is to evaluate variance requests submitted under 7 AAC [10.900](#) - 7

AAC 10.990. The commissioner will include at least one employee from each oversight division. An employee who is substantively involved in any recommendation made under 7 AAC 10.930(b) to the variance review committee shall recuse oneself from participation in committee's review of the variance request for which the employee made the recommendation. A director making a recommendation under (h) of this section shall recuse oneself from participation in the committee's review of the variance request for which the director makes the recommendation.

(b) In reviewing a request for a variance, the chair of the variance review committee shall determine whether a variance is prohibited under 7 AAC 10.930. If a variance is prohibited, the chair of the variance review committee, without involving the full variance review committee, shall immediately send the commissioner a recommendation under (g) of this section and clearly indicate the prohibition in the recommendation.

(c) The chair of the variance review committee shall initially evaluate a variance request within 10 days after the oversight division determines a variance request to be complete under 7 AAC 10.930(b) . The initial evaluation must include an initial assessment of the basis for the variance request and a determination, using the standards that the full variance review committee would use under (d) and (e) of this section, of how the variance if granted would impact the health, safety, or welfare of any recipient of services authorized or services paid in full or in part by the department. At the end of the evaluation, the chair may

(1) without involving the full variance review committee immediately send the commissioner a recommendation under (g) of this section to grant the variance request; or

(2) refer the matter to the full variance review committee to evaluate the variance request as provided in this section.

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

(1) consider the recommendations that the oversight division made under 7 AAC 10.930(b) ;

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

(3) verify, if applicable, that

(A) any conditions of parole or probation were met;

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

(C) the individual is in compliance with any treatment required by the court, or that any required treatment has been successfully completed;

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

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

(4) consider any mitigating factors, including the amount of time that has elapsed since the barrier crime or condition occurred and whether the individual has been employed by a 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.

(e) For a request for a variance for a permanent barrier crime or condition, in addition to the matters described in (d)(1) - (4) of this section the variance review committee shall consider

(1) whether mitigating circumstances were involved at the time that the barrier crime or condition occurred;

(2) the individual's educational and employment history;

(3) any current letters of recommendation from employers or others submitted in addition to the minimum required under 7 AAC [10.930\(a\)](#) (3)(H); and

(4) whether the individual was previously issued a variance by the department after the occurrence of the barrier crime or condition for which the variance was issued.

(f) Before issuing a decision, the commissioner or the variance review committee may require the individual for whom a variance is sought to appear in person or by telephone for an interview.

(g) Except as provided in (h) of this section, and within 30 days after the oversight division determines a variance request to be complete under 7 AAC [10.930\(b\)](#) , the variance review committee shall recommend to the commissioner that it has determined that the health, safety, and welfare of recipients

(1) will be adequately protected, and the variance review committee shall recommend that the commissioner grant the variance request; or

(2) will not be adequately protected, and the variance review committee shall recommend that the commissioner deny the variance request.

(h) For a variance request submitted for a permanent barrier crime or condition under 7 AAC [10.900](#) - 7 AAC [10.990](#), and within 20 days after the oversight division determines a variance request to be complete under 7 AAC [10.930\(b\)](#) , the variance review committee shall submit to the director of the oversight division the recommendation to grant or deny the variance request under (g)(1) or (2) of this section with respect to the health, safety, and welfare of recipients. Within 30 days after the oversight division determines a variance request to be complete under 7 AAC [10.930\(b\)](#) , the director shall consider the committee's recommendation and make a written recommendation that the commissioner grant or deny the variance request.

(i) The commissioner will consider a recommendation made under (b), (c), (g), or (h) of this section and will issue a decision on the variance request within 30 days after receiving the recommendation. If the commissioner determines that the variance request does not provide enough information for the commissioner to make a determination, the commissioner may refer the matter back for a review by the full variance review committee. During any point in the process, the commissioner may seek additional information from the variance review committee or from the provider or applicant who requested the variance.

(j) The commissioner will inform the provider or applicant in writing of the commissioner's decision to grant or deny, with or without terms and conditions, a variance request. In the decision the commissioner will include the specific reasons for the denial and will advise that if the provider or applicant believes that the decision was made in error or that there was an error in the information the department relied on, or if the provider or applicant has new or additional factual information that could change the decision, the provider or applicant may request reconsideration of the variance decision under 7 AAC [10.950](#). A copy of the commissioner's decision to grant or deny the request for a variance will be provided to the department office responsible for conducting background checks and to the oversight division.

(k) 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. The department will set out the terms and conditions of the variance, and will include in the notification an expiration date, as applicable. For an applicant, the department will include in the notification a reference to the provisions of (m) of this section.

(l) Unless the variance is a nontransferable variance issued under 7 AAC [10.930\(f\)](#) , a variance may be transferred with the approval of the department to another provider, except that a variance issued for employment or volunteering in a behavioral health services provider to which 7 AAC [70.010\(a\)](#) applies may be transferred with the approval of the department only to another behavioral health services provider to which 7 AAC [70.010\(a\)](#) applies. The new provider shall ensure that any conditions of the variance are followed.

(m) A variance becomes immediately invalid without prior notice if the individual for whom the variance was granted

(1) ceases to be associated with a provider that requested the variance; or

(2) fails to become associated with a provider within 100 days after ceasing to be associated with a provider or receiving the notification under (j) and (k) of this section if the individual is an applicant described in 7 AAC [10.902](#).

(n) The oversight division shall, in accordance with 7 AAC [10.945](#), immediately revoke a variance granted under this section if

(1) the oversight division determines that the variance was granted based on false information provided by the individual to whom the variance applies or by a provider that requested the variance; or

(2) the individual to whom the variance applies

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

(B) subsequently becomes subject to [AS 47.05.310](#) (c), 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 is issued a civil finding governing a barrier condition.

(o) A variance granted under this section remains valid unless made invalid under (m) of this section or revoked under (n) of this section.

(p) A variance granted under this section does not exempt the applicant from 7 AAC [10.910\(c\)](#) .

(q) In this section, "commissioner" means the commissioner or the commissioner's designee substantively uninvolved in a recommendation made under 7 AAC [10.930\(b\)](#) or this section.

**History:** Eff. 2/9/2007, Register 181; am 10/17/2007, Register 184; am 2/13/2008, Register 185; am 6/29/2017, Register 222

**Authority:** [AS 47.05.300](#) [AS 47.05.310](#) [AS 47.05.320](#) [AS 47.05.330](#) [AS 47.05.340](#) [AS 47.32.010](#) [AS 47.32.030](#)

#### **7 AAC 10.940. Posting of variance decision required**

(a) Except as provided in (b) and (c) of this section, if the department grants a variance under 7 AAC [10.935](#), the provider shall post a copy of the variance decision with the copy of the license, certification, approval, or finding of

eligibility to receive payments. The posting must be in a conspicuous place where the copy of the variance can be readily viewed by persons interested in obtaining the services offered by the provider.

(b) The requirements of (a) of this section do not apply to a variance granted to an applicant unless that applicant becomes associated with a provider in any manner described in 7 AAC [10.900\(b\)](#) .

(c) The requirements of (a) of this section do not apply to a facility licensed for foster care or to an approval for an adoption subsidy issued by the departmental office that oversees children's services.

**History:** Eff. 2/9/2007, Register 181; am 6/29/2017, Register 222

**Authority:** [AS 47.05.300](#) [AS 47.05.310](#) [AS 47.05.320](#) [AS 47.05.330](#) [AS 47.05.340](#) [AS 47.32.010](#) [AS 47.32.030](#)

### **7 AAC 10.945. Revocation of valid background check or variance**

(a) Subject to [AS 47.32](#), if the department decides to revoke a valid background check issued under 7 AAC [10.900](#) - 7 AAC [10.990](#), the department will provide electronic notice of the change in determination to the provider for whom the background check was conducted. The department will provide written notice of revocation to the applicant for whom the background check was conducted. In the notice to the applicant, the department will include the reasons for the department's decision and will advise an applicant of the right to request a redetermination under 7 AAC [10.927](#) if the applicant believes that the department's determination was made in error or believes that there was an error in the information that the department relied on, or if the applicant has new or additional factual information that could change the department's decision. Nothing in this section precludes the submission of a request for a variance under 7 AAC [10.930](#).

(b) If the oversight division decides to revoke a variance issued under 7 AAC [10.900](#) - 7 AAC [10.990](#), the oversight division shall provide written notice of revocation to the provider to whom the variance was issued and to any applicant who was the subject of the variance. In the notice to the applicant, the oversight division shall include the reasons for the oversight division's decision and will advise the applicant of the right to request reconsideration under 7 AAC [10.950](#) if the applicant believes that the oversight division's determination was made in error or believes that there was an error in the information that the oversight division relied on, or if the applicant has new or additional factual information that could change the oversight division's decision. Nothing in this section precludes the resubmission of a request for variance under 7 AAC [10.930](#).

(c) A notice of revocation issued under this section is effective immediately after the department issues the notice, unless a delay is granted under (d) of this section.

(d) At the request of the provider or applicant, the department may delay the effective date of a revocation under this section for not more than 30 days after its issuance if the department determines that closer supervision and revised work conditions under which the applicant must operate will not threaten the health, safety, and welfare of a recipient of services.

**History:** Eff. 2/9/2007, Register 181; am 6/29/2017, Register 222

**Authority:** [AS 47.05.300](#) [AS 47.05.310](#) [AS 47.05.320](#) [AS 47.05.330](#) [AS 47.05.340](#) [AS 47.32.010](#) [AS 47.32.030](#)

### **7 AAC 10.950. Request for reconsideration of a variance request decision or revocation**

(a) If a variance request is denied or made subject to terms or conditions under 7 AAC [10.935\(j\)](#) and (k) or if the oversight division revokes a variance under 7 AAC [10.945\(b\)](#) , the provider or applicant may submit a request for reconsideration under this section if the provider or applicant

(1) believes that the department's determination was made in error;

(2) believes there was an error in the information that the department relied on; or

(3) has new or additional factual information that could change the department's determination.

(b) A request for reconsideration be submitted within 30 days after the variance decision or the notice of revocation is issued. The request for reconsideration must include

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

(c) Within 30 days after receiving a request for reconsideration, the commissioner will review the request and will issue a decision in writing regarding whether to grant or deny reconsideration. If granting reconsideration, the commissioner will state in the decision that a barrier crime or condition does not exist or that the variance is granted, with or without terms and conditions. If denying reconsideration, the commissioner will state in the decision that

(1) a barrier crime or condition still exists or the variance remains denied or subject to the same terms and conditions; and

(2) the decision is a final agency decision subject to appeal to the superior court under the Alaska Rules of Appellate Procedure.

(d) A copy of a decision on reconsideration under this section will be provided to the department office responsible for conducting background checks and to the oversight division.

**History:** Eff. 2/9/2007, Register 181; am 6/29/2017, Register 222

**Authority:** [AS 47.05.300](#) [AS 47.05.310](#) [AS 47.05.320](#) [AS 47.05.330](#) [AS 47.05.340](#) [AS 47.32.010](#) [AS 47.32.030](#)

**Editor's note:** As of Register 204 (January 2013), and under [AS 44.62.125](#) (b)(6), the regulations attorney made technical corrections to 7 AAC [10.950](#).

### **7 AAC 10.955. Centralized registry**

Repealed.

**History:** Eff. 2/9/2007, Register 181; am 2/13/2008, Register 185; repealed 6/29/2017, Register 222 185; am 6/29/2017, Register 222

### **7 AAC 10.960. Termination of association**

(a) Except as provided in (b) and (c) of this section, if a provider is required to terminate association with an applicant, the provider shall

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

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

(B) before or upon the applicant's next arrival at those premises; or

(2) if the provider intends to request a variance under 7 AAC [10.930](#), immediately reassign the duties and responsibilities of that applicant so that the applicant

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

(B) cannot access personal or financial records maintained by the 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 applicant, and has authorized that applicant to make financial decisions for that relative;

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

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

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

(b) If the provider is required to terminate association with an applicant who is subject to a union agreement or employment contract that requires more notice than allowed under (a) of this section, the 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 provider shall cooperate with the department in developing an appropriate termination plan for the applicant 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 applicant for whom termination of association is required is a relative of the operator, administrator, or provider, and resides at the premises where services are provided, termination of association must occur within 24 hours, and the provider shall ensure that the applicant

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

(2) is provided with direct supervision if, during that 24-hour period, the applicant is present at the premises where the provider is providing services during hours of operation.

**History:** Eff. 2/9/2007, Register 181; am 6/29/2017, Register 222

**Authority:** [AS 47.05.300](#) [AS 47.05.310](#) [AS 47.05.320](#) [AS 47.05.330](#) [AS 47.05.340](#) [AS 47.32.010](#) [AS 47.32.030](#)

### **7 AAC 10.990. Definitions**

(a) In 7 AAC [10.900](#) - 7 AAC [10.990](#), unless the context requires otherwise,

(1) "applicant"

(A) means an individual who requests a background check or a variance as required under 7 AAC [10.900](#) or under 7 AAC [10.930](#) and 7 AAC [10.935](#) for association with a provider, or for whom a provider requests a background check or a variance;

(B) includes an individual not currently associated with a provider as set out in 7 AAC [10.900](#);

(2) "apprentice" means an individual who is not an individual service provider, and who is in training or is completing a course of study or an internship through a structured and supervised educational program to provide care or services for one or more recipients of services;

(3) "APSIN" means the Alaska Public Safety Information Network;

(4) "association" means an association described in 7 AAC [10.900\(b\)](#) between an individual and a provider;

(5) "background check" means the screening and review that the department conducts under 7 AAC [10.915](#) for a barrier crime or condition;

(6) "barrier condition" means a barrier to association under 7 AAC [10.900\(b\)](#) that results from civil finding described in 7 AAC [10.905\(a\)](#) and (f);

(7) "barrier crime" means a criminal offense described in 7 AAC [10.905\(a\)](#) - (e);

(8) "barrier time" means the length of time a barrier crime or condition under 7 AAC [10.905](#) bars an individual from association with a provider under 7 AAC [10.900\(b\)](#) ;

(9) "behavioral health problem" means a mental disorder, substance use disorder, or co-occurring disorder;

(10) "certification" has the meaning given "certified" in (b) of this section;

(11) "civil finding" means

(A) a decision, order, judgment, or adjudication, including an administrative order, that a provider or applicant committed

(i) abuse, neglect, or exploitation under [AS 47.10](#), [AS 47.24](#), [AS 47.62](#), or a substantially similar provision in another jurisdiction; or

(ii) medical assistance fraud under [AS 47.05.210](#) or a substantially similar provision in another jurisdiction; or

(B) an order, including an administrative order, under a state statute or a substantially similar provision in another jurisdiction that a license or certification of the provider or applicant to provide services related to the health, safety, and welfare of persons was denied, suspended, revoked, or conditioned;

(12) "commissioner" means the commissioner of health and social services;

(13) "co-occurring disorder" has the meaning given in 7 AAC [57.990](#);

- (14) "crime" means barrier crime
- (15) "crime involving domestic violence" has the meaning given in [AS 18.66.990](#) ;
- (16) "criminal justice information" has the meaning given in [AS 12.62.900](#) ;
- (17) "department" means the Department of Health and Social Services;
- (18) "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;
- (19) "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;
- (20) "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; in this paragraph, "payments" does not include payments used solely for administrative costs;
- (21) "individual service provider" has the meaning given in [AS 47.05.390](#) ;
- (22) "overnight division" means any division or office in the department that is responsible for licensing, approving, or certifying a provider or who is responsible for determining whether a person is eligible to receive payments from the department;
- (23) "provider" means an individual, an entity defined under [AS 47.05.390](#) , or an individual service provider as identified in [AS 47.05.300](#) ;
- (24) "relative" means an individual who is related to another by marriage, blood relationship, or court decree;
- (25) "substance use disorder" has the meaning given in 7 AAC [57.990](#);
- (26) "supervised access" means that the 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;
- (27) "terminate association" means to sever an applicant's association under 7 AAC [10.900\(b\)](#) with a provider;

(28) "volunteer" means an individual who regularly or routinely provides services or care, without pay, on behalf of a 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 a 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

(A) 7 AAC [125.060](#) (Medicaid Coverage; Personal Care Services and Home Health Care Services; Personal Care Provider Certification and Enrollment); or

(B) 7 AAC [130.220](#) (Medicaid Coverage; Home and Community-Based Waiver Services; Provider Certification);

(2) "eligible to receive payments" has the meaning given "eligibility to receive payments" under (a) of this section.

**History:** Eff. 2/9/2007, Register 181; am 6/29/2017, Register 222

**Authority:** [AS 47.05.300](#) [AS 47.05.310](#) [AS 47.05.320](#) [AS 47.05.330](#) [AS 47.05.340](#) [AS 47.32.010](#) [AS 47.32.030](#)