**R432. Health and Human Services, Health Care Facility Licensing.**
**R432-35. Background Check-Health Care Facility Licensing.**
**R432-35-1. Authority and Purpose.**

(1) Section 26B-2-202 authorizes this rule.

(2) This rule outlines the process required for individuals to obtain a certification for direct patient access while employed by a covered provider, covered contractor, or covered employer.

**R432-35-2. Definitions.**

Terms used in this rule are defined in Rule R380-600. Additionally:

(1) "Aged individual" means an individual who is 60 years of age or older.

(2) "Certification for direct patient access" means the same as defined in Section 26B-2-238.

(3) "Corporation" means an entity that has a business interest or connection to covered providers and employs at least one individual who provides consultative services that may result in direct patient access.

(4) "Covered body" means the same as defined in Section 26B-2-238.

(5) "Covered contractor" means the same as defined in Section 26B-2-238.

(6) "Covered employer" means the same as defined in Section 26B-2-238.

(7) "Covered individual" means the same as defined in Section 26B-2-238.

(a) A covered individual includes:

(i) any transportation staff; and

(ii) any volunteer.

(b) A covered individual does not include a student directly supervised by a member of the staff of the covered body or the student's instructor.

(8) "Covered provider" means the same as defined in Section 26B-2-238.

(9) "DACS" means Direct Access Clearance System.

(10) "Department" means the Department of Health and Human Services.

(11) "Direct patient access" means the same as defined in Section 26B-2-238.

(12) "Disabled individual" means an individual who has limitations with two or more major life activities, including caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and employment.

(13) "Division" means the Division of Licensing and Background Checks under the department.

(14) "Engage" means the same as defined in Section 26B-2-238.

(15)(a) "Long-term care hospital" means the same as defined in Section 26B-2-238.

(16) "Nursing assistant" means an individual who performs duties under the supervision of a nurse, including a certified nurse aid, nurse aide, or personal care aide.

(17) "OBP" means the Office of Background Processing in the division under the department.

(18) "OL" means the Office of Licensing in the division under the department.

(19) "Patient" means the same as defined in Section 26B-2-238.

(20) "Rap back system" means the same as defined in Section 26B-2-238.

(21) "Resident" means the same as defined in Section 26B-2-238.

(22) "Residential setting" means the same as defined in Section 26B-2-238.

(23) "Volunteer" means the same as defined in Section 26B-2-238.

**R432-35-3. DACS Process for Covered Providers.**

(1) A covered provider shall enter required information into DACS to initiate a certification for direct patient access of each covered individual before:

(a) The OL issues a provisional license or license renewal; and

(b) the provider engages a covered individual.

(2) The covered provider shall ensure an engaged covered individual:

(a) signs a criminal background check authorization form that is available for review by the OBP; and

(b) submits fingerprints within 15 working days of engagement.

(3) The covered provider shall ensure DACS reflects the current status of a covered individual within five working days of the engagement or termination.

(4) The covered provider may provisionally engage a covered individual while certification for direct patient access is pending, as permitted in Section 26B-2-239.

(5) If the OBP determines an individual is not eligible for direct patient access, based on information obtained through DACS and the sources listed in Section R432-35-8, the OBP shall send a notice of agency action, as outlined in Section R497-100-5, to the covered provider and the individual.

(6) The covered provider may not arrange for a covered individual who has been determined not eligible for direct patient access to engage in a position with direct patient access.

(7) The OBP may allow a covered individual to have direct patient access with conditions, during an appeal process, if the covered individual demonstrates to the OBP the work arrangement does not pose a threat to the safety and health of any patient or resident.

(8) The covered provider that provides services in a residential setting shall enter required information into DACS to initiate and obtain certification for direct patient access for each individual 12 years of age and older, who is not a resident and resides in the residential setting. If the individual is not eligible for direct patient access and continues to reside in the setting, the OL may revoke an existing license of or deny licensure to a covered provider.

(9) The covered provider seeking to renew a license as a health care facility shall utilize DACS to run a verification report and verify each covered individual's information is correct, including:

(a) address;

(b) email address;

(c) employment status; and

(d) name.

(10)(a) An individual or covered individual seeking licensure as a covered provider shall submit required information to the OBP to initiate and obtain certification for direct patient access before OL issues a provisional license.

(b) If the individual is not eligible for direct patient access, the OL may revoke an existing license or deny licensure as a health care facility.

**R432-35-4. DACS Process for Covered Contractors.**

(1) A covered contractor may enter required information into DACS to initiate and obtain certification for direct patient access of each covered individual before providing the individual by contract to a covered provider.

(2) The covered contractor shall ensure that any covered individual who is provided by contract to a covered provider:

(a) signs a criminal background check authorization form that is available for review by the OBP; and

(b) submits fingerprints within 15 working days of placement with a covered provider.

(3) The covered contractor shall ensure DACS reflects the current status of the covered individual within five working days of placement or termination.

(4) The covered contractor may provisionally provide a covered individual to a covered provider while certification for direct patient access is pending, as permitted in Section 26B-2-239.

(5) If the OBP determines an individual is not eligible for direct patient access, based on information obtained through DACS and the sources listed in Section R432-35-8, the OBP shall send a notice of agency action, as outlined in Section R497-100-5, to the covered contractor and the individual.

(6) If the OBP determines an individual is not eligible to have direct patient access, a covered contractor may not provide that covered individual to a covered provider.

(7) The OBP may allow a covered individual direct patient access with conditions, during an appeal process, if the covered individual can demonstrate to the OBP that the work arrangement does not pose a threat to the safety and health of any patient or resident.

**R432-35-5. DACS Process for Covered Employers.**

(1) A covered employer may ensure the required information is entered into DACS to initiate and obtain certification for direct patient access for a covered individual.

(2) If the OBP determines an individual is not eligible for direct patient access, based on information obtained through DACS or the sources listed in Section R432-35-8, the OBP shall send a notice of agency action, as outlined in Section R497-100-5, to the covered employer and the individual.

**R432-35-6. Volunteers.**

A volunteer or group of volunteers is not required to complete the certification for direct patient access process if that volunteer or group is:

(1) a clergy member;

(2) a patient's family member;

(3) a religious group;

(4) a resident's family member;

(5) an entertainment group; or

(6) an individual volunteering services who is directly supervised by a covered individual.

**R432-35-7. Sources for Background Review.**

(1) For a finding of certification for direct patient access, the OBP shall include:

(a) a fingerprint-based criminal history background check in the databases described in Section 26B-2-240; and

(b) the inclusion of the individual's fingerprints in the rap back system.

(2) As required in Section 26B-2-240, the OBP may review relevant information obtained from:

(a) child abuse or neglect findings described in Section 80-3-404;

(b) federal criminal background databases available to the state;

(c) juvenile court arrest, adjudication, and disposition records, as allowed under Section 78A-6-209;

(d) licensing and certification records of an individual licensed or certified by the Division of Professional Licensing under Title 58, Occupations and Professions;

(e) registries of nurse aides described in 42 CFR 483.156 (2025);

(f) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;

(g) the Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;

(h) the Division of Child and Family Services Licensing Information System described in Section 80-2-1002; and

(i) the List of Excluded Individuals and Entities (LEIE) database maintained by the US Department of Health and Human Services' Office of Inspector General.

(3) If the OBP determines an individual is not eligible for direct patient access, based on the criminal background check, and that individual disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the individual may challenge the information as provided by Section 53-10-108.

(4) If the OBP determines an individual is not eligible for direct patient access, based on the non-criminal background check, and the individual disagrees with the information provided, the individual may challenge the information through the appropriate agency.

**R432-35-8. Exclusion from Direct Patient Access.**

(1) The OBP shall review convictions or pending charges as described in Subsections (1)(a) through (1)(c).

(a) Pursuant to Section 26B-2-240, any individual or covered individual who has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement, within the past 10 years, for any felony or class A misdemeanor offense listed in this subsection may not have direct patient access. An offense that prevents an individual or covered individual from having direct patient access is any felony or class A misdemeanor under:

(i) Section 26B-2-707, which describes criminal penalties for operating a facility or program in violation of statute;

(ii) Section 26B-6-205, which describes abuse, neglect, and exploitation of a vulnerable adult;

(iii) Sections 76-3-203.9 through 76-3-203.10, which describe violent offenses committed in the presence of a child;

(iv) Title 76, Chapter 4, Inchoate Offenses;

(v) Title 76, Chapter 5, Offenses Against the Individual;

(vi) Title 76, Chapter 5b, Sexual Exploitation Act;

(vii) Title 76, Chapter 5c, Pornographic and Harmful Materials and Performances;

(viii) Title 76, Chapter 5d, Prostitution;

(ix) Subsection 76-6-106(2)(a), which describes criminal mischief that endangers human health or safety;

(x) Sections 76-12-306 through 76-12-308, which describe offenses involving voyeurism;

(xi) Sections 76-13-103 through 76-13-104, 76-13-211, and 76-13-213, which describe offenses involving cruelty to animals;

(xii) Section 77-36-2.4, which describes violation of a protective order; or

(xiii) Title 78B, Chapter 7, Protective Order and Civil Stalking Injunctions.

(b) Except as listed in Subsection (1)(a), the OBP may consider granting certification for direct patient access if an individual or covered individual has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement for:

(i) any felony or class A misdemeanor;

(ii) any class B misdemeanor under Subsection 76-6-106(2)(a);

(iii) any class B or C misdemeanor under:

(A) Section 26B-2-707, which describes criminal penalties for operating a facility or program in violation of statute;

(B) Section 26B-6-205, which describes abuse, neglect, and exploitation of a vulnerable adult;

(C) Sections 76-3-203.9 through 76-3-203.10, which describes violent offenses committed in the presence of a child;

(D) Title 76, Chapter 4, Inchoate Offenses;

(E) Title 76 Chapter 5, Offenses Against the Individual;

(F) Title 76, Chapter 5b, Sexual Exploitation Act;

(G) Title 76, Chapter 5c, Pornographic and Harmful Materials and Performances;

(H) Title 75, Chapter 5d, Prostitution;

(I) Sections 76-12-306 through 76-12-308, which describe offenses involving voyeurism;

(J) Sections 76-13-103 through 76-13-104, 76-13-202 through 76-13-211, and 76-13-213, which describe offenses involving cruelty to animals;

(K) Section 77-36-2.4, which describes violation of a protective order; or

(L) Title 78B, Chapter 7, Protective Order and Civil Stalking Injunctions.

(c) The OBP may deny direct patient access for any individual or covered individual who has a warrant for arrest or an arrest for any of the identified offenses in Subsection (1)(a) or (1)(b) based on:

(i) the type of offense;

(ii) the severity of offense; and

(iii) potential risk to any patient or resident.

(2) The OBP shall review juvenile records as described in Subsections (2)(a) through (2)(c).

(a) As authorized by Subsection 26B-2-240(3)(b), the OBP shall review juvenile court records if an individual or covered individual is:

(i) under the age of 28; or

(ii) over the age of 28 and has convictions or pending charges identified in Subsection (1)(a) or (1)(b);

(b) Adjudication by a juvenile court shall exclude the individual from direct patient access if the adjudication refers to an act that, if committed by an adult, would be a felony or a misdemeanor, as identified in Subsection (1)(a); and

(c) Adjudication by a juvenile court may exclude the individual from direct patient access, if the adjudication refers to an act that if committed as an adult, would be a felony or misdemeanor as identified in Subsection (1)(b).

(3) To determine whether an individual or covered individual should be granted or keep certification for direct patient access, the OBP may review non-criminal findings from:

(a) the Division of Child and Family Services Licensing Information System described in Section 80-2-1002;

(b) any child abuse or neglect finding described in Section 80-3-404;

(c) the Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;

(d) registries of nurse aides described in 42 CFR 483.156;

(e) licensing and certification records of individuals licensed or certified by the Division of Professional Licensing under Title 58, Occupations and Professions; or

(f) the LEIE database maintained by the US Department of Health and Human Services' Office of Inspector General.

(4) To determine under what circumstance, if any, the covered individual may be granted or keep certification for direct patient access, the OBP may review relevant background information from sources listed in this section and may consider, regarding any offense or finding listed in this section:

(a) the type and number of offenses or findings;

(b) the passage of time since any offense or finding;

(c) the surrounding circumstances of any offense or finding;

(d) any intervening circumstances regarding any offense or finding; and

(e) any steps taken to correct or improve.

(5) The OBP shall rely on relevant information from the sources identified in this section as conclusive evidence and may deny direct patient access based on that information.

(6) A denied application may be re-submitted to the OBP:

(a) beginning two years after the date of separation or completion of an administrative hearing, whichever is later; or

(b) upon substantial change to the covered individual's circumstances.

**R432-35-9. Covered Individuals with Arrests or Pending Criminal Charges.**

(1) If the OBP determines credible evidence exists that a covered individual has been arrested or charged with a felony or a misdemeanor that would exclude that individual from direct patient access under Section R432-35-8, the OBP or OL may take action to protect the health and safety of any patient or resident with a covered provider.

(2) The OBP may allow a covered individual direct patient access with conditions until any arrest or criminal charges are resolved if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of any patient or resident.

(3) If the OBP denies or revokes a license or denies direct patient access based upon any arrest or criminal charges, the OBP shall send a notice of agency action, as outlined in Section R497-100-5, to the covered provider and the covered individual.

**R432-35-10. Penalties.**

Any person who violates this rule may be subject to the penalties in Rule R380-600 and Title 26B, Chapter 2, Part 7, Penalties and Investigations.

**KEY: health care facilities, background screening, background check**
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