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.

Definitions found in Section 26B-2-238 and Rule R380-600 apply to this rule. Additionally:

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

(2) "Certification for direct patient access" means an OBP-approved background clearance for an individual to have direct patient or resident access whose engaged employment has not lapsed for a period longer than 180 days.

(3) "Covered body" means a covered provider, covered contractor, or covered employer.

(4) "Corporation" means an entity that has business interest or connection to covered providers that employs individuals who provide consultative services that may result in direct patient access.

(5) "Covered contractor" means a person or corporation that provides covered individuals, by contract, to:

(a) a covered employer; or

(b) a covered provider for services within the scope of the health facility license.

(6) "Covered employer" means an individual who:

(a) engages a covered individual to provide services in a private residence to:

(i) a disabled individual, as defined by this rule; or

(ii) an aged individual, as defined by this rule;

(b) is not a covered provider; and

(c) is not a licensed health care facility within the state.

(7) "Covered individual":

(a) means an individual that:

(i) a covered body engages; and

(ii) may have direct patient access;

(b) a covered individual includes:

(i) a nursing assistant;

(ii) a personal care aide;

(iii) a provider of medical, therapeutic, or social services, including a provider of laboratory and radiology services;

(iv) an executive;

(v) an individual licensed to engage in the practice of nursing under Title 58, Chapter 31b, Nurse Practice Act;

(vi) any administrative staff, including a manager or other administrator;

(vii) any dietary and food service staff;

(viii) any housekeeping staff;

(ix) any maintenance staff;

(x) any transportation staff; and

(xi) any volunteer as defined by this rule;

(c) 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:

(a) a home health agency;

(b) a hospice agency;

(c) a long-term care hospital;

(d) a nursing care facility;

(e) a personal care agency;

(f) a small health care facility;

(g) an assisted living facility; or

(h) an end stage renal disease facility.

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

(10) "Direct patient access" means an individual in a position where the individual could, in relation to a patient or resident of the covered body:

(a) cause physical or mental harm;

(b) commit theft; or

(c) view medical or financial records.

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

(12) "Engage" means to obtain an individual's services:

(a) as a volunteer;

(b) by contract;

(c) by employment; or

(d) by other arrangement.

(13) "Long-term care hospital":

(a) means a hospital that is certified to provide long-term care services under 42 U.S.C. Sec. 1395tt; and

(b) does not include a critical access hospital, designated under 42 U.S.C. Sec 1395i-4(c)(2).

(14) "Nursing Assistant" means an individual who performs duties under the supervision of a nurse, that may include a nurse aide, personal care aide, or certified nurse aide.

(15) "OBP" means the Office of Background Processing in the Division of Licensing and Background Checks (DLBC) under the Department of Health and Human Services.

(16) "OL" means the Office of Licensing in the DLBC under the Department of Health and Human Services.

(17) "Patient" means an individual who receives health care services from one of the following covered providers:

(a) a home health agency;

(b) a hospice agency;

(c) a long-term care hospital;

(d) a personal care agency; or

(e) an end stage renal disease facility.

(18) "Rapback system" means the system that enables authorized entities to receive ongoing status notification of any criminal history reported on individuals who are registered in the system.

(19) "Resident" means an individual who receives health care services from one of the following covered providers:

(a) a hospice agency that provides living quarters as part of its services;

(b) a nursing care facility;

(c) a small health care facility;

(d) an assisted living facility;

(20) "Residential setting" means a place provided by a covered provider:

(a) for residents to live as part of the services provided by the covered provider; and

(b) where an individual who is not a resident also lives.

(21) "Volunteer" means an individual who may have unsupervised direct patient access who is not directly compensated for providing services.

R432-35-3. Covered Provider -- DACS Process.

(1) The covered provider shall enter required information into DACS to initiate a certification for direct patient access of each covered individual before issuance of a provisional license, license renewal, or engagement as a covered individual.

(2) The covered provider shall ensure the 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 the 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 patients or residents.

(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 or deny licensure.

(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) 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 the issuance of the provisional license. 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. Covered Contractor -- DACS Process.

(1) The 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 with a covered provider.

(2) The covered contractor shall ensure the covered individual, being 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 with 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 an individual is determined not eligible to have direct patient access, a covered contractor may not provide a 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 patients or residents.

R432-35-5. Covered Employer -- DACS Process.

(1) The 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 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.

The following individuals or groups of volunteers are not required to complete the certification for direct patient access process:

(1) clergy members;

(2) entertainment groups;

(3) individuals volunteering services as long as they are directly supervised by a covered individual;

(4) patient family members;

(5) religious groups; and

(6) resident family members.

R432-35-7. Sources for Background Review.

(1) For a finding of certification for direct patient access, the OBP shall include a fingerprint-based criminal history background check in the databases described in Subsection 26B-2-241(4) and inclusion of the individual's fingerprints in the rapback 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 individuals licensed or certified by the Division of Professional Licensing under Title 58, Occupations and Professions;

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

(f) the 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 United States 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 upon the criminal background check, and the 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 upon 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 follows:

(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 offense listed in this section, may not have direct patient access:

(i) any felony or class A misdemeanor under:

(A) Section 26B-2-113;

(B) Section 26B-6-205;

(C) Sections 76-3-203.9 through 76-3-203.10;

(D) Title 76, Chapter 4, Enticement of a Minor;

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

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

(G) Subsection 76-6-106(2)(b)(i)(A) Criminal Mischief - Human Life;

(H) Sections 76-9-301 through 76-9-301.8, and 306 through 307;

(I) Sections 76-9-702 through 76-9-702.1;

(J) Sections 76-9-702.5 and 76-9-702.7;

(K) Sections 76-10-1201 through 76-10-1228;

(L) Sections 76-10-1301 through 76-10-1314;

(M) Section 77-36-2.4; or

(N) Title 78B, Chapter 7, Protective Order and Civil Stalking Injunctions;

(b) except as listed in Subsection R432-35-9(1)(a), 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 the following offenses, the OBP may consider granting certification for direct patient access:

(i) any felony or class A misdemeanor;

(ii) any felony, class A, or class B misdemeanor under Subsection 76-6-106(2)(b)(i)(A), Criminal Mischief - Human Life;

(iii) any felony or class A, B, or C misdemeanor under:

(A) Section 26B-2-113;

(B) Section 26B-6-205;

(C) Sections 76-3-203.9 through 76-3-203.10;

(D) Title 76, Chapter 4, Enticement of a Minor;

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

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

(G) Sections 76-9-301 through 76-9-301.8, and 76-9-306 through 76-9-307;

(H) Sections 76-9-702 through 76-9-702.1;

(I) Sections 76-9-702.5 and 76-9-702.7;

(J) Sections 76-10-1201 through 76-10-1228;

(K) Sections 76-10-1301 through 76-10-1314;

(L) Section 77-36-2.4; and

(M) Title 78B, Chapter 7, Protective Order and Civil Stalking Injunctions;

(c) any individual or covered individual who has a warrant for arrest or an arrest for any of the identified offenses in Subsection R432-35-8(1)(a) or (b), may deny direct patient access based on:

(i) the type of offense;

(ii) the severity of offense; and

(iii) potential risk to patients or residents.

(2) The OBP shall review juvenile records as follows:

(a) as required by Subsection 26B-2-240(4)(a)(ii)(E), juvenile court records shall be reviewed 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 R432-35-8(1)(c) or (f);

(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 R432-35-9(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 R432-35-9(1)(b).

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

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

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

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

(d) registries of nurse aids described in 42 CFR 483.156, (2024);

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

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

(4) The OBP may review relevant background information from sources listed in Section R432-35-8 to determine under what circumstance, if any, the covered individual may be granted or keep certification for direct patient access and the following factors may be considered:

(a) types and number of offenses or findings;

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

(c) surrounding circumstances of the offense or finding;

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

(e) steps taken to correct or improve.

(5) The OBP shall rely on relevant information from sources identified in Section R432-35-8 as conclusive evidence and may deny direct patient access based on that information.

(6) A denied application may be re-submitted to the OBP no sooner than two years from the date of separation or 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 be excluded under Subsection R432-35-8(2), the the OBP and OL may take action to protect the health and safety of patients or residents with covered providers.

(2) The OBP may allow a covered individual direct patient access with conditions, until the 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 patients or residents.

(3) If the OBP denies or revokes a license, or denies direct patient access based upon 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.

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