



March 20, 2026

SUBJECT: Criminal History Record Check Requirements and Best Practices

Dear Administrator:

This letter is being issued to ensure providers are aware of New York State Department of Health (the "Department") *Criminal History Record Check* requirements and provide best practices for the processing of *Criminal History Record Check* requests. In particular, it is a clarification of the earlier instructions sent on February 15, 2020, with a focus on the need to maintain the confidentiality of criminal history record information.

To Whom Do *Criminal History Record Check* Laws and Regulations Apply?

New York State Executive Law Section 845-b and Public Health Law Article 28-E, and 10 NYCRR Part 402, apply to every provider of services to patients, residents, or clients that is: (a) a residential health care facility licensed under Article 28 of the Public Health Law; (b) a certified home health agency, licensed home care services agency, or long term home health care program certified, licensed, or authorized under Article 36 of the Public Health Law; (c) an adult home, enriched housing program, or residence for adults licensed under Article 7 of the Social Services Law; or (d) a hospice program licensed, certified, or authorized under Article 40 of the Public Health Law. (Executive Law Section 845-b, Public Health Law Section 2899, 10 NYCRR Part 402.2)

Authorized Persons

- New York State Executive Law Section 845-b and *Criminal History Record Check* regulations pursuant to 10 NYCRR Part 402, define an "authorized person" to mean each individual designated by a provider (who is subject to *Criminal History Record Check* law/regulations) who is authorized to request, receive and review criminal history information.
- Individual(s) within the "Administrator" role are responsible for maintaining *Criminal History Record Check* "Authorized Person" access. When entering the *Criminal History Record Check* application, select "Manage AP" in the toolbar or the "Manage Authorized Persons" quick link to add and/or remove a *Criminal History Record Check* "Authorized Person." Routine monitoring of *Criminal History Record Check* Authorized Person access should be completed by the individual(s) within the "Administrator" role for continued compliance.

- Any designated Authorized Person may be contacted by the Department regarding the status of an employee. While providers are highly encouraged to assign more than one Authorized Person for backup purposes, providers are discouraged from having more than five assigned Authorized Persons.
- Only individuals designated as a *Criminal History Record Check* “Authorized Person” may contact *Criminal History Record Check* for status updates, inquiries, results, etc.

Confidentiality Requirements

- New York State Executive Law 845-b (3) requires that a provider requesting a criminal history record check pursuant to regulations do so by completing and submitting a form developed and provided by the Department after consultation with the Division of Criminal Justice Services and transmission of two sets of fingerprints to the Department of Health. An authorized person, and only an authorized person, shall complete such form and shall submit the original with the authorized person’s signature. The provider must attest that they, their agents, and employees are aware of and will abide by the confidentiality requirements and all other provisions of Public Health Law Article 28-E and Executive Law section 845-b, as they may from time to time be amended.
- New York State Public Health Law Section 2899-A states that the Department shall allow all providers access to any determination made upon a prospective employee at such time as such prospective employee presents themselves to such provider for employment. If the prospective employee has a permanent record already on file with the department this information shall be promptly made available to the provider who intends to hire such prospective employee. Therefore, employment eligibility decisions made by the Department are available to providers, and providers only. A third-party contractor, while retained by a covered provider, is not the provider, and therefore would not lawfully be granted access to this information. An Authorized Person is solely responsible for maintaining access to and the confidentiality of criminal history information received by the provider and must ensure compliance with all applicable laws related to criminal history information of prospective employees/subject individuals. As such the Authorized Person must be employed by and within the control of the Administrator of the covered provider.
- Only those in the hiring/firing chain are permitted access to employment decisions and criminal history information. Disclosure of *Criminal History Record Check* information is appropriate to staff within the facility involved in the hiring decision or review of prospective employees. Therefore, criminal history information must be inaccessible to individuals who are not authorized to receive/view the information. Any legal information containing criminal history information must be stored separately, in an area accessed only by authorized individuals. ([DAL 20-04](#), 10 NYCRR 402.7)
- In accordance with *Dear Administrator Letter 20-04*, each Health Commerce System user shall have their own user identification and password. The user identification and password may not be shared with others. According to previous Information Technology Services guidance, the consequences of sharing a Health Commerce System account access are severe and can include revocation of the account. Multiple instances of violations that compromise the security of account usage may result in the inability of the organization to do business on the Health Commerce System. These consequences

should be addressed with Information Technology Services and, potentially, the Department of Criminal Justice Services. *Criminal History Record Check* information must remain strictly confidential and be kept in a separate area that only the Criminal History Record Check Authorized Person has access to. If a party willfully permits the release of any confidential criminal history information obtained from a criminal history record check not authorized to receive it in accordance with article 28-E of the Public Health Law, that party shall be guilty of a misdemeanor pursuant to section 845-b(3)(a) of the Executive Law and section 12-b of the Public Health Law.

- All access by an Authorized Person must be by an individual, separate User Identification and password. Passwords cannot be shared; this is against security protocol for the Health Commerce System. If it is discovered such user identifications are being shared, the account will be shut down, and a referral is made to Accounts Management. The Health Commerce System is a “role-based” application. Meaning, each User ID created is associated with a specific provider and assigned “roles” or views. The individual(s) within the “Administrator” role are responsible for the maintenance (meaning adding and removing) Criminal History Record Check “Authorized Persons”. The Provider should have a procedure in place where this is reviewed on a routine basis for appropriateness, as this is confidential data. Authorized Person are the only individuals who may contact (via e-mail or phone) *Criminal History Record Check* Program/Legal for a status update. They may also be contacted by *Criminal History Record Check* Program staff for information such as requests for identification documents. Therefore, these individuals are expected to be knowledgeable about the *Criminal History Record Check* application and able to assist, whenever needed. Additionally, only Authorized Persons are able to access *Criminal History Record Check* determination letters on the Health Commerce System document viewer. These letters may contain criminal histories (convictions and open charges) that are strictly confidential, along with the employment eligibility determination. ([DAL 20-04](#), 10 NYCRR 402.7)
- By law, regulation, and *Dear Administrator Letter 20-04*, Authorized Persons chosen, employed by and supervised by Administrators of *Criminal History Record Check* providers should be in house, not a third-party contractor, to ensure compliance with surveillance and confidentiality requirements.

Submissions

- The name submitted within the *Criminal History Record Check* application must be the exact same name/spelling as on the valid photo identification. Entering incorrect information may result in a delay or the individual being turned away for fingerprinting.
- Do not resubmit active employees. If an error in the submission is discovered, contact *Criminal History Record Check* intake/program for resolution by calling 518.402.5549.

Timeframes

- A provider must immediately, but no later than 30 calendar days after the event, notify the Department when an individual is subject to *Criminal History Record Check* via 103 submission and when an individual is no longer subject to *Criminal History Record Check* via 105 termination. Terminations include when an employee is no longer subject

to *Criminal History Record Check*; is no longer employed by the provider; has died; or when a prospective employee is no longer being considered by the provider.

- Upon receipt of the request for fingerprint (LiveScan), an appointment must be scheduled for the employee to be fingerprinted, along with an indication of the method of payment. The appointment may be scheduled through the web site or by telephone. Appointment scheduling should take 5-10 minutes and can be done by anyone working for the provider. It does not have to be done by the *Criminal History Record Check* "Authorized Person."
- No provider shall seek, directly or indirectly, to obtain compensation in any form from a prospective employee, temporary employee, or regular employee for fees or any provider or facility costs associated with obtaining the criminal history record check.

Mandated Forms

- The Department of Health *Criminal History Record Check* form "[102: Acknowledgement and Consent for Fingerprinting and Disclosure of Criminal History Record Information](#)" must be signed by the prospective employee prior to submission. The completed and signed form shall be retained in the employee's file. This signature must be an original "wet" signature to ensure an applicant's consent to release of confidential criminal history information.
- Submittals into the *Criminal History Record Check* application are completed electronically via the "Submit" button in the *Criminal History Record Check* application. Upon submittal, the Criminal History Record Check "Authorized Person" will receive notification of the successful 103 submission; this confirmation must be printed and retained in the employee's file.
- Terminations into the Criminal History Record Check application are completed electronically via the "Terminate" button in the Criminal History Record Check application. Upon termination, the Criminal History Record Check "Authorized Person" will receive notification of the successful 105 termination; this confirmation must be printed and retained in the employee's file.
- All Criminal History Record Check documents, including, but not limited to the Department of Health *Criminal History Record Check* forms 102, 103 submission, and 105 termination, must be available for inspection purposes.

Results

- Individuals must be supervised while awaiting *Criminal History Record Check* clearance. Supervision requirements are specific to each licensure group and may be found at the following locations:
 - o Residential Health Care Facilities: 10 NYCRR 402.4(b)(2)(i).
 - o Certified Home Health Agencies, Licensed Home Care Services Agencies, and Long-Term Home Health Care Programs: 10 NYCRR 402.4(b)(2)(ii).
 - o Adult Homes, Enriched Housing Programs, and Residences for Adults: 10 NYCRR 402.4(b)(iv).
 - o Hospice: 10 NYCRR 402.4(b)(v).

- o Health Homes: Section 2899-a(10) of Public Health Law Article 28-E.
- Favorable *Criminal History Record Check* legal determinations allow the individual to work without supervision. Individuals who receive a negative determination letter must be immediately removed from providing direct care.
 - o Hold in Abeyance – Indicates the individual has open charges that are likely to result in a *Criminal History Record Check* denial if there is a conviction. The individual must be immediately removed from providing direct care. The individual is responsible for contacting *Criminal History Record Check* when the charges are resolved, at which time *Criminal History Record Check* will revisit the case and make a final determination regarding employment eligibility.
 - o Pending Denial – Indicates the individual has criminal convictions that may result in a *Criminal History Record Check* denial of employment eligibility. The individual must be immediately removed from providing direct care. The individual has thirty days to submit rehabilitation information to assist Criminal History Record Check in making a final employment eligibility by Criminal History Record Check.
 - o Final Denial – Indicates a final determination that the individual has been denied employment eligibility by *Criminal History Record Check*.
- A subsequent arrest notification is provided for any previously checked employee who is arrested in New York State. The Criminal History Record Check Authorized Person must conduct a risk assessment pursuant to all relevant law to determine whether the provider wishes to continue to employ the individual. To the extent that the *Criminal History Record Check* Authorized Person has questions concerning this risk assessment, they may wish to seek the advice of an attorney.

Thank you for your continued cooperation.

Sincerely,

Susan Montoya

Susan Montoya, Director
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