

Developmental Disabilities Background Check Policy FAQ

Purpose:

Background Check Requirements for DD Licensed Providers Licensed in Accordance with NDAC 75-04-01 ([PI 10-03](#)) was revised and went into effect June 1, 2024. This document addresses frequently asked questions DD has received about the revisions. Additional questions can be sent to hssddbgchecks@nd.gov.

- 1) What is the difference between a background check and a criminal history check?
 - a. A background check is not the same as a criminal history record check. When you apply for a job or an apartment, you may be told the company or landlord will conduct a “background check.” If you want to be a foster parent or a licensed professional, then you are required to obtain a “criminal history record check.”
 - b. Refer to the background policy for a complete list of required background and registry checks.
- 2) What is the difference between the ND Bureau of Criminal Investigation (BCI) check and the ND Court System check?
 - a. The ND Court System is a search of publicly available online records. It cross-references only by the person’s name, or name and date of birth. These public records may have data for more than one person with the same name or may be out of date
 - b. ND BCI is a search of confidential law enforcement databases, cross-referencing by the person’s name, date of birth, social security number and other specific identifiers (including fingerprints). The extensive cross-referencing ensures that the result relates only to that person, even if the person has used several names or there are other individuals with the same name. By law, only the ND BCI can supply a Criminal History Record Check.
- 3) Why are providers required to check both the ND registries and Federal/National registries?
 - a. Not all of ND registry information is sent to Federal/National databases. Completing both these checks ensures that providers receive the most accurate information.
- 4) Can providers use a third-party vendor to complete background checks?
 - a. Yes. However, the provider must ensure that the third-party vendor is checking all the required background and registry checks as stated in policy.
 - i. Providers should have verification from the third-party vendors of what databases and registries that have been completed, because for example, some third-party vendors state they are checking the National registries when they are only checking state-specific registries and will only check the counties that the person has lived in rather than the whole state.
 - ii. Verification of all required background and registry checks completed by a third-party vendor must be kept in the employee’s file at the provider.
- 5) Why must the providers that use a third-party vendor to complete the ND BCI check ensure that a BCI letter is received from the vendor and include it in the employee’s file?
 - a. By law, only the ND BCI can supply a Criminal History Record Check. Receiving the letter is verification that the third-party vendor completed this specific check.

DEVELOPMENTAL DISABILITIES

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- 6) If further review is needed from the DD Section to determine potential or continued employment, the following documentation is required to be send to hhsddbchecks@nd.gov:
- a. All components that make up a complete background check per background check policy.
 - b. The nature of the conviction
 - c. Jurisdiction of the court of records
 - d. When it occurred
 - e. Sentencing or disposition
 - f. Rehabilitation participation if any
 - g. Identity of the person's probation/parole officer (if applicable),
 - h. Job description
 - i. Supervision arrangements
 - j. Access to client medications or client funds
 - k. Explanation from the subject regarding the circumstances of the conviction, why the nature of the offense should not apply to the job functions, etc., if this is applicable.
 - l. Description of safeguards that the provider will take to ensure
- 7) What does a provider need to do when they become aware of an existing employee or volunteer that has committed an offense?
- a. If they have been convicted, the provider must immediately report the offense to the DD Section for further review. Any documentation specific to that offense must be sent for employment determination.
 - b. If they have not been convicted, a determination cannot be made for employment until the person has been convicted. The provider must ensure health, safety, and well-being of people receiving services until the court has determined the outcome.
- 8) If using a third-party vendor, how many years back should providers have the vendor complete background and registry checks?
- a. Any state that does not have restrictions due to Fair Credit Reporting Act (FCRA) should be unlimited. If the state restrictions due to FCRA, then it would be 7 years.
- 9) What if there is a delayed response for an out of state background check more than 45 days?
- a. For out of State background and registry checks only, if there is a delay in response due to out of state request the provider may have an additional 75 days for the conditional employment. This makes it 120 total days for conditional employment for out of state checks only.
- 10) Do 5-year background checks need to be completed 5 years to the date of the last check or is there a grace period?
- a. At minimum, providers must be able to provide documentation that a 5-year complete background check has been obtained. There will be a 45-day grace period from the 5-year due date. For example, if a staff's background check was completed 8/1/2019 then the 5-year due date would be 8/1/2024 and the provider would have until 9/15/2024 to have documentation of the complete background check.
- 11) How do I complete the ND Board of Nursing (BON) and UAP/Technician/MAIII registry checks?
- a. The 2 checks are combined on the ND BON site. If you do not choose a license type when searching for an individual, it will pull information on all license types. Additionally, ensure the box in front of 'Search on maiden or other names' is checked.
- 12) When I search the ND Board of Nursing (BON) and UAP/Technician/MAIII registry, I get multiple names that do not match and/or are affiliated with the staff.
- a. In order to get only the results for the person you are searching for, do not click the box in front of 'Search on maiden or other names.' You will need to complete a separate search for each name the person has used in the past 5 years leaving the box unchecked.
- 13) Who at the DD Licensed Provider are required to have an initial complete background check and 5-year recheck?
- a. Per background check policy:

'Employee means an individual who is employed by a licensed agency and has direct contact with or unsupervised access to clients receiving services, their personal property, personal information, or personal resources. This includes, but not limited to, direct support professionals who provide hands-on care and support to clients, supervisors, billing and clerical staff, case records, senior staff, president/CEO, executive director and mid management staff such as Qualified Developmental Disabilities Professionals (QDDPs), and others who meet the definition of employee.'

- 14) Can a provider hire a person who was convicted of an offense and had their record expunged?
- a. Even though the offense has subsequently been expunged from their record, it still meets the requirements of NDAC 75-04-01-06.1 (5). There is no exception for expungement in NDAC after the individual has been found guilty of, pled guilty, or pled no contest to that offense. If the offense is not direct bearing, providers must send the background check results to the DD Section for review.
- 15) If previous background check results were sent to the DD Section for review and the same offenses show up on the next background check, do we need to resubmit documentation to the DD Section for determination of continued employment?
- a. If there have been no changes to the records on the background check at the employee's 5-year background re-check, it must be documented in the employee's file that the provider has reviewed the state's laws to ensure that there have been no changes to the direct bearing offenses. Additionally, the provider must be able to provide the letter from the State showing the offenses on the employee's record had previously been reviewed by the state and the resulting determination.
- 16) Do I need to complete a background check on Board Members?
- a. Providers need to complete background checks for board members if they have 5% or more ownership in the provider or meet the definition of an employee per the background check policy.
- 17) Do staff that have visas, green cards, or recently became a citizen of the United States (US) need to have a complete background check upon hire since the visa, green card, and citizenship application/background checks are more in-depth?
- a. For potential employees who have provided documentation of a visa, green card, or citizenship, providers must perform a complete background check per policy and have staff fill out the Self-Disclosure of Previous Criminal History/Child Abuse Registry Form.
- 18) When do infractions need to be submitted for review?
- a. Per policy, Infractions do not need to be reported to the Department, but the licensed agency must determine whether the infraction is substantially related to or has a direct impact on the ability of the individual to perform the job functions for which they are being considered. For example, the provider may consider that recent and multiple speeding tickets may have an impact as to whether the person should be employed in a position that transports clients.
 - b. North Dakota categorizes some crimes as infractions. Infractions are violations of law, regulation, or ordinances. An infraction is less serious than a misdemeanor. Most infractions are settled administratively. A person who commits an infraction will usually get a ticket or citation and pay a fine. Penalties: Up to \$1,000 in fines. Infractions are considered the least serious type of crime and have no incarceration penalties associated with them, unless a person convicted of an infraction has a previous conviction for the same crime within the prior year.