



CDSS

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Date

ALL-COUNTY LETTER (ACL) NO. 10-XX

TO: ALL COUNTY WELFARE DIRECTORS  
ALL IHSS PROGRAM MANAGERS

SUBJECT: QUESTIONS AND ANSWERS REGARDING CRIMINAL  
BACKGROUND CHECKS FOR IN-HOME SUPPORTIVE SERVICES  
PROVIDERS

REFERENCE: ACL NO. 09-70, DATED OCTOBER 31, 2009; AND ACL NO. 09-78,  
DATED NOVEMBER 25, 2009

Reason For This Transmittal

- State Law Change
- Federal Law or Regulation Change
- Court Order or Settlement Agreement
- Clarification Requested by one or More Counties
- Initiated by CDSS

The above-referenced ACLs provided information and instructions for implementing criminal background checks for In-Home Supportive Services (IHSS) providers, as mandated by Assembly Bill, Fourth Extraordinary Legislative Session, 19 (Chapter 17, Statutes of 2009). This ACL, developed in consultation with the California Department of Justice (DOJ), provides answers to questions raised by counties, Public Authorities (PAs), and/or unions regarding the criminal background check process. Although the policies in this ACL may differ from those of earlier ACLs, the policies detailed herein should be considered the most current and valid.

**1. What criminal arrests, convictions or incarceration information will be released by DOJ?**

The statutes dealing with this question are rather complex. The information that will be released by DOJ is dependent on what crime an individual was arrested for, convicted of, or incarcerated for, and when the individual was convicted or incarcerated.

WI&C section 15660(a) requires that DOJ secure the criminal record of a person to determine whether the person has:

- *Ever* been convicted of: sexual battery (Penal Code (PC) section 243.4); a sex offense against a minor; or any felony that requires registration pursuant to the Sex Offender Registration Act (PC section 290); or
- *Within the past 10 years* has been convicted of or incarcerated for: abuse of a child (PC sections 273a and 273d); abuse of an elder or dependent adult (PC section 368, subdivision (a) or (b)); theft, robbery, burglary; or any felony.

PC section 11105(n)(2)(A) requires that DOJ disseminate the following information:

- Every conviction for a violation or attempted violation of any offense specified in W&IC section 15660(a); and
- Every arrest for a violation or attempted violation of an offense specified in W&IC 15660(a) for which the individual is presently awaiting trial, whether he/she is incarcerated or has been released on bail or on his/her own recognizance pending trial.
- Sentencing information is usually included in the CORI.

However, unless a conviction is for an offense for which registration is required pursuant to PC section 290, DOJ will only disseminate information if the conviction occurred within 10 years of the date of the agency's request for information or the conviction occurred over 10 years ago but the subject of the request was incarcerated within 10 years of the agency's request for information. Conviction information for offenses requiring registration as a sexual offender will be disseminated without regard to when the conviction or incarceration occurred.

Pursuant to the temporary restraining order issued by the Alameda County Superior Court in the Ellis v. Wagner court case, the crimes that would make an individual ineligible to be a provider in the IHSS program are limited to a conviction (or incarceration following a conviction) within the last 10 years for: 1) fraud against a governmental health or supportive services program; 2) abuse of a child; or 3) abuse of an elder or dependent adult.

A sample CORI showing a conviction for one of the disqualifying crimes (Attachment A) is included for your information.

## **2. What are counties/PAs supposed to do with subsequent arrest information?**

DOJ has informed the California Department of Social Services (CDSS) that subsequent arrest information will be provided. Counties do not have authority to take action to disqualify a provider based on arrest information only; however, they are advised to pursue the final disposition of any subsequent arrest for the three crimes identified in W&IC 12305.81. The final disposition can be obtained

through court documents and/or through the law enforcement agency that made the arrest. If the subsequent arrest ultimately results in a conviction for one of the disqualifying crimes, the appropriate notification must be sent to both the IHSS provider and IHSS recipient. The provider and recipient ineligibility notices, (including SOC 852 and SOC 855) are available on the CDSS forms website, <http://www.dss.cahwnet.gov/cdssweb/PG168.htm#soc>.

**3. Can counties/PAs proceed with the implementation of criminal background checks prior to securing authorization from DOJ to receive criminal offender record information (CORI)?**

No. Counties/PAs must obtain authorization from DOJ prior to processing criminal background checks for IHSS providers.

**4. How can counties learn more about the DOJ processes and requirements?**

The CDSS worked with DOJ to arrange online seminars (webinars) for county/PA staff to be trained in the interpretation, handling, storage, dissemination and destruction of CORI. The webinars took place on January 6<sup>th</sup>, 7<sup>th</sup> and 12<sup>th</sup>. Additional webinars will be scheduled as necessary.

**5. Can counties/PAs customize the Request for Live Scan (Form BCII 8016)?**

Yes. Once counties/PAs have received the DOJ-assigned Originating Agency Identifier (ORI) and Mail Code, CDSS strongly encourages them to customize the Contributing Agency Information section of the BCII 8016 with county-specific information to avoid delays in processing and to ensure that information is routed to the right agency.

**6. Is the Trustline clearance required for providers caring for children?**

No. Trustline clearance is a separate process used by the Community Care Licensing Division to provide a California registry of child care providers who have passed a background screening.

The statutes which apply to IHSS providers, W&IC Sections 12301.6 and 12305.86, provide that all individuals who are seeking to provide supportive services in the IHSS program are required to undergo fingerprinting and a criminal background check conducted by DOJ.

**7. How can an individual who has been denied enrollment as a provider based on a disqualifying criminal conviction obtain a copy of his/her CORI? Can he/she dispute the information on the CORI?**

An official DOJ policy dating from 2006, which will now supersede all past/current CORI policies, allows an applicant agency to provide an individual a copy of his/her

own criminal background check. Therefore, if requested by the provider/applicant, the county/PA must provide a disqualified individual with a copy of his/her own DOJ applicant response. However, the individual should be advised that the copy of the response he/she receives cannot be used to furnish to another person or agency for immigration, visa, employment, licensing, or certification purposes since the CORI contained in the response was ONLY authorized for the county/PA. In addition, the individual should be advised that the copy he/she receives from the county/PA cannot be used to dispute information contained within the criminal history record which the individual believes is incorrect.

If an individual believes that information contained in his/her CORI on the DOJ applicant response is inaccurate or incomplete, he/she can dispute it; however, he/she must first obtain a copy of the record from DOJ via the record review process. To receive a copy of his/her own criminal history, an individual must submit fingerprint images, pay a \$25 processing fee to DOJ, and follow the instructions which can be found on the DOJ web site at: <http://ag.ca.gov/fingerprints/security.php>. (For information regarding the record review fee waiver, please see response to Question #8 below.)

Once an individual has received his/her record review response, if he/she wants to challenge the contents of his/her criminal record, he/she must complete the Claim of Alleged Inaccuracy or Incompleteness (Form BCII 8706), which will be included along with the response if there is criminal information on the individual's record. The completed form, along with a copy of his/her criminal history record, should be mailed to the DOJ address indicated on the form. The challenge must specifically state the basis for the claim of inaccuracy or incompleteness and include any available proof or corroboration to substantiate the claim. The challenge will be reviewed by DOJ and a written response will be provided, along with an amended copy of the criminal history record, if deemed appropriate.

In cases in which the criminal history record is amended, the applicant agency (county/PA) will automatically receive a corrected copy of the applicant's record if the correction was completed by the DOJ within 90 days of the original submission. After 90 days, the subject of the record must request the DOJ to provide a corrected copy to the applicant agency (county/PA). The individual may contact the DOJ record review unit as provided on the DOJ website, <http://ag.ca.gov/fingerprints/security.php> to make this request.

**8. How can providers apply for a Record Review fee waiver based on indigence?**

The DOJ record review process (outlined in Question #7 above) does allow for an applicant to declare indigence and request a waiver of the \$25 processing fee in writing. A fee waiver may be obtained if a claim, signed under penalty of perjury, and proof of indigence is submitted, pursuant to Penal Code section 11123. The claim is comprised of a letter from the applicant that specifies the circumstances

under which he/she is unable to pay the standard processing fee. The claim must be accompanied by written proof from a government agency indicating that the individual is receiving benefits, such as unemployment insurance, public assistance, etc. The DOJ's Record Review Unit evaluates requests on a case-by-case basis and determines approval or denial. The applicant must first receive DOJ's approval. DOJ will provide information to the applicant that he/she will need to provide to the Live Scan agency for the fee waiver. The approval/denial response from DOJ usually takes seven business days.

**9. How will the provider enrollment process be handled for existing providers who move from one county to another?**

The DOJ has informed CDSS that a DOJ applicant response cannot be shared between counties when a provider who is an enrolled provider in one county subsequently moves to another county and wishes to provide services. There is an existing fee-based process for other CDSS applicant types that allows for subsequent arrest information to be transferred from one county to another; however, it is a long and cumbersome manual process that has been found to be counterproductive and prone to delay. Because this process would likely result in a significant delay in authorization of payment for services provided to the recipient, it has been determined that it would not be appropriate to utilize this process for IHSS applicant types.

After discussions with DOJ and counties, and careful consideration, CDSS has determined that in cases in which a provider moves from one county to another, or when an individual provides services in more than one county, the individual will be required to undergo another criminal background check in the county where he/she will be providing services.

**10. Do counties/PAs have legal authority to release information from an individual applicant's CORI to the Provider Enrollment Appeals Unit (PEAU) solely for the purpose of adjudicating an appeal?**

Yes. Based upon an official DOJ policy dating from 2006, which will supersede all past/current CORI policy, counties/PAs are allowed to provide specific information to the PEAU. The specific information that counties/PA's must provide to the PEAU is limited to the date of the disqualifying conviction and the code section of the violation. A form that counties may use to transmit this information to the PEAU is currently under development.

**11. Are providers under age 18 subject to background checks?**

Yes. W&IC sections 12301.6 and 12305.86 require all existing and prospective providers submit to fingerprint imaging and undergo a criminal background check by the DOJ, as a condition of IHSS enrollment, and that they are performed at the provider's expense.

No exceptions exist for providers who are under age 18. DOJ has confirmed that the criminal information will be provided for individuals between ages 14 through 17, just as any other applicant who submits to Live Scan fingerprinting for the IHSS program. Although DOJ does not specifically require parental consent, it advises Live Scan agencies to obtain a copy of a birth certificate and an affidavit signed by the parent allowing the minor to undergo fingerprint imaging. Counties should advise the applicant providers to contact the Live Scan agency prior to obtaining fingerprints for a minor to inquire about any necessary parental consent forms.

**12. Are counties/PAs required to confidentially destroy the CORIs? When are they required to do so?**

Applicant agencies must destroy criminal history record information once the organization's business need is fulfilled, DOJ Information Bulletin, 02-17-BCII (Attachment B). The county/PA business need for this information is to complete the hiring or certification process. For provider applicants who are cleared, CDSS advises all counties/PAs to destroy the criminal history record information immediately following determination. For provider applicants who are disqualified based on the criminal record, CDSS advises all counties/PAs to retain the criminal history record information for a period of one year following the determination for purposes of any legal appeal the provider may file.

The process for subsequent arrest information would be the same. If the provider retains eligibility upon review of subsequent arrest, the documents should be destroyed. If the subsequent arrest information could result in provider termination if disposition of the arrest is conviction, the subsequent arrest document should be retained until disposition. If the provider is terminated based on the disposition of the subsequent arrest, documents used as evidence of the conviction should be retained for a period of one year following the termination for purposes of any legal appeal the provider may file. It would not be necessary to retain subsequent arrest information for a terminated provider unless the provider was terminated based on the subsequent arrest information.

In addition, since there is current litigation regarding disqualifying crimes, CDSS recommends that counties/PAs retain the criminal history records and subsequent arrest notifications of all provider applicants until this litigation is resolved.

**13. When are counties required to send a "No Longer Interested" form to DOJ?**

DOJ has indicated that for employment purposes, an employer must submit a "No Longer Interested" form (BCII 8302) form once the organization's business need is fulfilled. For IHSS program purposes, when an enrolled provider is no longer employed by an IHSS recipient and has been terminated from providing services for a period longer than one year, the county/PA can indicate that it has no business need to receive subsequent arrest information. The county/PA would therefore submit the "No Longer Interested" form (BCII 8302) to the DOJ. The BCII

8302 can be accessed on the DOJ's web site at:  
<http://ag.ca.gov/fingerprints/forms/nil.pdf>.

Please review the attached DOJ Information Bulletin for additional information regarding retention.

Any additional questions or requests for clarification should be directed to your assigned analyst in the Operations and Technical Assistance Unit.

Sincerely,

EVA L. LOPEZ  
Deputy Director  
Adult Programs Division

Attachments

c: CWDA

DRAFT

bc: ACL APB File MS 19-96  
All APB Chiefs MS 19-96  
All APB Managers MS 19-96  
Spvr.: C. Miguelino MS 19-96  
Orig.: B. Elftmann MS 19-96

Control Number: #XX-XXXX

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