

## **FREQUENTLY ASKED QUESTION:**

(background check/centralized registry checks and substantiations/central registry checks)

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# **Background and centralized registry checks**

## **1. What is a background check?**

A background check identifies criminal and civil events in a person's history that have been identified by statute and regulation to be inconsistent with ensuring the health, safety, and welfare of individuals receiving services from programs overseen by the Department of Health and Social Services (DHSS). A background check consists of a review of both state and FBI fingerprint-based criminal history and internal and external databases and registries in Alaska and other states in which the individual has resided.

## **2. Who can request a background check?**

Any individual or provider/entity that is licensed, or is seeking licensure, under AS 47.32 or certification and/or enrollment in the Medicaid program or any individual seeking to work, volunteer, or train in such an entity.

## **3. What is the Background Check Program ("BCP")?**

The Background Check Unit (BCP) is a unit in the Division of Health Care Services that is responsible for the processing of all background check determinations submitted under AS 47.05.300 et. seq.

## **4. How does the BCP gather the information it reports?**

Submission of a complete application authorizes the BCP to research and review an individual's background. The BCP accesses the State of Alaska criminal justice database (APSIN), departmental and other state's databases and registries, such as Online Resource for Children in Alaska (ORCA), Juvenile Offender Management Information System (JOMIS), and Certified Nurse Aid (CAN) registries and reviews State and Federal fingerprint-based results to make an eligibility determination. The BCP may also review court or administrative documents to assure the proper decision is being made.

## **5. What is the Centralized Registry?**

Although identified in both statutes and regulations, there is no stand-alone database named "the centralized registry." When SB 151 was passed in 2005, the *intent* was to develop and maintain an internal database for all individuals who had a civil finding related to the abuse, neglect, or

exploitation of a minor or a vulnerable adult; had a license revoked or suspended; or who had a Medicaid fraud finding. The idea was that an individual who had been provided notice of the adverse action and had been afforded due process would then be added to this database for future review. This was intended to identify/track individuals that were a danger to the vulnerable population but would not be found with just a criminal records search. However, this stand-alone database was never developed; rather, the BCP, in order to meet the intent of the statute, reviews a compilation of already existing external and internal databases/registries (such as ORCA, CNA registry) to identify any negative action.

6. **Who is on the Centralized Registry**

While the Centralized Registry itself was never developed, individuals who are listed on one of the database/registries reviewed that meets the criteria above would be found to have a barring condition.

7. **What is the difference between a “barring condition” and a “barring crime”?**

A barring condition is the result of a negative civil action that is identified through a review of the databases and registries available to the BCP. A barring crime is a criminal offense that is identified through APSIN or review of State and FBI fingerprint search results.

8. **How do you get on the Centralized Registry?**

Databases and registries reviewed by the BCP for negative civil actions are maintained by a variety of other agencies and/or divisions. Notice of the event that would have led to the placement on one or more of those databases or registries would have been provided by that agency or agencies, along with the opportunity to challenge the placement. For example, if an individual was found to have a CNA certification revocation on the CNA registry, the individual would have been contacted by the Board of Nursing regarding the details of the revocation and opportunity to contest the revocation.

9. **How can I find out if I’m on the Centralized Registry?**

Individuals can contact other agencies or divisions with which they have had association to request such information. In addition, if an individual has applied for a background check through the BCP, any identification on a registry that constitutes a barring condition is provided in writing to the individual.

10. **How do I get off the Centralized Registry?**

The individual would need to work with the court, administrative hearing, or originating agency to determine if the removal from the database or registry is possible.

**11. Can I file an appeal before my name is placed on the Centralized Registry?**

No, but that is because no one should be identified on a database or registry until they have been properly noticed and had an opportunity to challenge the finding. If such a notice and opportunity was not afforded, the original agency must afford due process before the BCP can rely upon the finding.

**12. Who has access to the Centralized Registry?**

Some databases, such as the CNA registry, are public registries and do not require special access. Other registries, such as JOMIS, are not. State employees who have been granted access to secure databases and registries are subject to strict confidentiality laws and cannot access or share information in these databases unless authorized by state law. Failure to follow those rules can result in disciplinary action, up to and including termination from state employment.

**13. How is the information gathered?**

BCP staff access each applicable database and registry. If information is identified during that review that constitutes a barring condition, the BCP notifies the individual, in writing, of the specific findings causing the barring condition. Notification to the individual includes information on how to submit an appeal or how to request a variance to the barring determination.

**14. What are the potential consequences of being on the Centralized Registry?**

The consequences of being identified on a database or registry would prohibit the individual, unless a variance approval is granted, from association with entities that are required to conduct background checks on individuals associated with their entity.

**15. How long do you stay on the Centralized Registry?**

Under current regulation, a bar under the Centralized Registry is permanent, unless specifically identified with a time-limited exclusion period. Any individual, who is barred under the Centralized Registry, unless federally prohibited, can request a variance from the Commissioner of DHSS.

**16. What is a variance and how do I request one?**

A variance is a process in which an individual who was barred for criminal and/or civil actions may apply to request approval to associate with an entity after showing rehabilitation has occurred and other actions have been taken or will be taken to reduce the potential risk to the health, safety, and welfare of the individuals they will serve. Information how to apply for a variance is included when

an individual is notified of a barring background check determination. Variance request information is reviewed by the Variance Review committee who makes a recommendation to the DHSS Commissioner. The Commissioner of DHSS makes the final decision on whether a variance is appropriate.

**17. What information is shared with the variance committee?**

There is no limit on what can be submitted by the applicant or the oversight division to support a case for a variance. Variance requests must contain sufficient information to address each criminal and/or civil barrier identified on the notice to the applicant. The variance application does require certain specific information and is listed expressly in the variance application.

**18. What is “reconsideration” and how do I ask for it?**

There are two types of reconsiderations in the background check process.

- A. Barrier determination reconsideration. This is only used when an individual believes an error was made in the background check process where the applicant has new or different factual information than what was relied upon by the BCP when making a determination. For example, the applicant can provide new information showing a conviction for assault (a barrier crime) was pleaded down to a non-barrier crime of disorderly conduct. The reconsideration request would be reviewed and a new decision would be made on the individual’s eligibility.
- B. Variance Reconsideration. This is used when the Commissioner denies the variance request and the individual requests reconsideration of that decision. The individual would need to provide additional information showing why it should be approved.

## **SUBSTANTIATIONS AND CENTRAL REGISTRY CHECKS**

**1. What is the Central Registry?**

The Central Registry is separate and apart from the Centralized Registry. The Central Registry is the child protection database maintained by the Office of Children’s Services (OCS) and includes ORCA, JOMIS (and its predecessor database PROBER), the OCS statewide information systems. The central registry is required under AS 47.17.040.

**2. Who is on the Central Registry?**

Any individual who has been investigated by the OCS, which includes individuals who have applied for or who have been licensed as foster care providers, an unlicensed relative who provides care for children in OCS custody, or any individual who has been included in a protective services report or report of harm. This includes parents, guardians, or custodians who have had OCS take custody of their children under AS 47.10, including individuals whose parental rights have been terminated.

### **3. How do you get on the Central Registry?**

If an allegation of abuse or neglect made to OCS is investigated, a record of that investigation is maintained on the Central Registry. The outcome of that investigation is what is reported to agencies and individuals with child protection functions inside and outside the state. This includes foster care licensing agencies from out of state and other state child welfare agencies.

### **4. What is a “substantiation”?**

When child abuse or neglect under AS 47.10 or AS 47.17 is determined and the individual has been identified as the perpetrator.

### **5. How can I find out if I’m on the Central Registry?**

You will be notified via written correspondence from OCS that an allegation has been made and substantiated, thereby placing you on the Central Registry.

### **6. How do I get off the Central Registry?**

You don’t. However, being on the Central Registry does not necessarily equate to a barring condition. If an allegation was investigated and found to be unsubstantiated, then the individual is reported to have a clean record on the Central Registry, assuming no other allegations were ever substantiated.

### **7. Can I appeal before my name is placed on the Central Registry?**

Individuals are advised of their rights to appeal substantiation in the letter they receive from OCS informing them of the substantiation. If the individual doesn’t use that process or uses the process and is unsuccessful in having the substantiation overturned, their negative child abuse and neglect history will continue to be reportable to appropriate agencies.

### **8. When does a Central Registry finding become a barring condition?**

Any finding by a court that there is a fair probability or substantial chance that your child could be a child in need of aid or a finding that your child is, in fact, a child in need of aid, creates a barring condition for licensing purposes.

### **9. Who has access to the Central Registry?**

OCS staff has full access to ORCA. The Background Check Program, the Department of Law (Child Protection Section) and the Division of Juvenile Justice all have some limited access.

### **10. Who, other than OCS, has access to information from the Central Registry?**

- A. Out-of-state child protection agencies;
- B. Individuals applying for a private adoption in Alaska;
- C. Individuals contracting with OCS to complete home studies for placement/adoption;
- D. Private home study writers for placement/adoption;

E. Individuals applying to be licensed through Division of Public Assistance to provide child care, and individuals involved with tribal foster care or child care licensing;

F. Individuals applying to be licensed by department partners;

G. Child Placement Agencies;

H. Grantees; and

I. BCP.

**11. Are substantiations on the Centralized Registry?**

No.

**12. Are substantiations on the Central Registry?**

Yes, but they are not a barrier condition for a background check.

**13. What are the potential consequences of being on the Central Registry?**

Being on the Central Registry alone does not equate to a barrier. Only child in need of aid (CINA) findings are barriers under the Centralized Registry; however, if you are on the Central Registry and information is shared on that fact, it may result in some of the following:

**A. Will this prevent me from adopting a foster child?**

Not necessarily. It is a case-by-case determination as to what is in the best interests of a child. OCS will rely on the home study and assessment process to inform that decision.

**B. Will this prevent me from adopting my wife's children (step-parent adoption)?**

Through the home study and assessment process, OCS would review this information to make decisions about the best interests of the child.

**C. I am in the military and want to apply for a job that requires a top security clearance. Will a substantiation prevent me from getting a security clearance?**

The state has no control over how the agencies receiving this information use it. Our analysis stops with the determination of whether the requesting agency is entitled to receive the information or not.

**D. I volunteer as a wrestling coach at my kid's school. Will this substantiation prevent me from being a coach?**

Schools do not have automatic access to the Central Registry.

**E. If my son or daughter's children are removed from the home by OCS, will this substantiation prevent my grandchildren from being placed with me?**

Unless you have your own barrier crime or condition, it will not prevent you from being a caregiver. Through the home study and assessment process, OCS would review this information to make decisions about the best interests of the child.

F. **Will this substantiation prevent me from working at a daycare center?**

While substantiation on its own is not a barrier condition, child care agencies are given information on the background of their potential employees and are notified of substantiations. There is no state law that says this is a bar, but some facilities may have an internal policies not to hire someone with a substantiation.

G. **Will this substantiation prevent me from working at a nursing home?**

No.