

HB

162

<TARGET><BILL>HB 162</BILL><SUBJECT>HB
162</SUBJECT><COMM>HHSS30</COMM></TARGET>

STATE CAPITOL
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Governor Bill Walker
STATE OF ALASKA

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March 7, 2017

The Honorable Bryce Edgmon
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Edgmon:

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to the criminal history, civil history, and establishing a civil registry for certain individuals or entities that are licensed or certified by the Department of Health and Social Services.

There are hundreds of individuals and entities that provide medical assistance and other services to Alaskans in need through individual assistance or group living homes. Many of the people qualifying for assistance are ill, elderly, or disabled. We must make sure that those providing services to these individuals are qualified to do so; that qualification includes assurance that an individual's or entity's past background does not reveal behaviors inconsistent with the safe care of our vulnerable citizens. Recognizing this need, the Legislature enacted statutes (AS 47.05.310 - 47.05.390) in 2005 to centralize and formalize the process by which the Department of Health and Social Services (Department) conducts criminal background checks for entities and individuals who seek to be licensed providers or who are paid, in whole or in part, by the Department to provide services to individuals in the Department's care and custody. Additionally, the 2005 legislation authorized the Department to create a centralized registry (that my bill would rename the civil registry) so the State could rely on certain civil findings to bar persons from owning, operating, and being an administrator of certain licensed facilities. Over the ensuing years, certain gaps in the statutes have become apparent. This legislation is designed to clarify and amend current statutes to fix those gaps. The changes proposed by the bill ensure proper application and fairness under the system.

This bill would make amendments to the criminal background statute (AS 47.05.310), removing substantive references to the centralized civil registry under AS 47.05.330 to alleviate confusion, inconsistencies, and redundancy between the statutes. These amendments would further clarify that individuals as well as entities may request a criminal and civil history background check. These amendments would also remove language that the Department of Health and Social Services is a criminal justice agency as unnecessary to accomplish the background checks needed.

The bill would add a new section to AS 47.05, establishing a civil history check statute that mirrors the criminal background check statute, primarily to clarify that the same individuals would be subject to review and possible bar, depending on the results of their background check under the centralized civil registry. This statute would further clarify what type of civil findings would prohibit an individual or entity from obtaining a license and would establish procedures for an individual or entity to request an exception or variance, or to request that incorrect information in a registry be addressed in a written finding.

To simplify and more accurately set out the centralized civil registry, the bill would repeal and reenact AS 47.05.330, providing for the identification of a civil registry. The Department would identify by regulation each register the Department would review to identify the names and certain civil events that would preclude someone from being allowed to own, operate, be employed by, or be paid by the State to provide medical assistance services.

The bill would add an important new provision as AS 47.05.360, establishing that a person could seek a variance from being allowed to own, operate, be employed by, or be paid by the State to provide services due to a condition identified as part of a criminal or civil history background check. If the request for a variance was denied, a person could seek review in superior court.

This bill makes amendments to AS 47.17.040, clarifying that the confidential child protection registry would contain substantiated findings of abuse or neglect. The amendment would further clarify that this information can be used for licensing both in and out of this state and confirms the due process protections before placement on the central registry.

Another gap addressed is to AS 47.32.090, allowing the Department to investigate an employee, contractor, or volunteer of a licensed entity and, if conduct that did not comply with licensing standard is substantiated, place the employee, contractor, or volunteer on the civil registry. Currently State law only allows the Department to investigate and issue findings against an entity, not against individuals who work for the entity.

Additionally, changes were made to AS 47.32.150(b), allowing a person subject to a civil fine as an enforcement action to have the right to appeal the fine. The bill would allow the Department to share, on a confidential basis, licensing information with a law enforcement agency upon request, further strengthening protections for vulnerable citizens. The bill would also address limitations in current law that limit sharing and access to the Divisions of Public Health and Public Assistance by amending AS 47.32.190 to allow any division of the Department that is responsible for licensing to share and gather information in order to implement the protections of AS 47.32, centralized licensing. This change is needed because licensing is done by the Office of Children's Services, Division of Health Care Services, and Division of Public Assistance. This amendment simply allows those divisions who are responsible for licensing to share and access information to implement this chapter without reference to specific divisions. This provides the Department with flexibility to implement the chapter when they make organizational changes in the future.

The Honorable Bryce Edgmon
Transmittal Health Care Background Checks
March 7, 2017
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This bill will improve the background check process and protect our vulnerable citizens. Additionally, it will add the necessary safeguards to allow persons to challenge or request a variance from the provisions that would otherwise bar individuals from certain employment. In order to protect vulnerable Alaskans yet offer due process and confidentiality protections to individuals, I am transmitting this bill and urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in blue ink that reads "Bill Walker". The signature is written in a cursive style with a large initial "B".

Bill Walker
Governor

Enclosure

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version: HB 162
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB162-DHSS-RL-1-18-18
Title: DHSS CENT. REGISTRY;LICENSE;BCKGROUND
CHK
Sponsor: RLS BY REQUEST OF THE GOVERNOR
Requester: House HSS

Department: Department of Health and Social Services
Appropriation: Health Care Services
Allocation: Residential Licensing
OMB Component Number: 245

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019 Appropriation Requested	Included in Governor's FY2019 Request	Out-Year Cost Estimates					
			FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2018) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2019) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? no
If yes, by what date are the regulations to be adopted, amended or repealed? n/a

Why this fiscal note differs from previous version/comments:

Not applicable; initial version.

Prepared By: Margaret Brodie, Director
Division: Health Care Services
Approved By: Shawnda O'Brien, Assistant Commissioner
Agency: Health and Social Services

Phone: (907)334-2520
Date: 03/06/2017
Date: 03/06/17

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2018 LEGISLATIVE SESSION

BILL NO. HB162

Analysis

This bill fixes gaps identified in the initial statutes (AS 47.05.310- AS 47.05.390), to centralize and formalize the process by which the Department of Health and Social Services conducts criminal background checks for entities and individuals seeking to be licensed or certified providers, individuals who are employed by licensed or certified providers, and individuals who are paid, in whole or in part, by DHSS to provide for the health, safety, and welfare of individuals receiving services from the department.

This legislation improves consistency in the application of barring conditions for all individuals in direct contact with vulnerable individuals. Currently, the statutes provide that only certain position types be barred for certain offenses; the same standards are not applied to all applicants. The department is finding that applicants are manipulating this loophole in the application process, and the statutes have exposed vulnerable Alaskans to individuals intended to be barred from contact.

The department will continue to use existing registries to meet the requirements of the various sections of this bill. There will not be any costs associated with the implementation of this legislation, therefore a zero fiscal note is submitted.

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version: HB 162
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB162-DPS-SWITS-01-19-18
Title: DHSS CENT. REGISTRY;LICENSE;BCKGROUND
CHK
Sponsor: RLS BY REQUEST OF THE GOVERNOR
Requester: House Health & Social Services

Department: Department of Public Safety
Appropriation: Statewide Support
Allocation: Statewide Information Technology Services
OMB Component Number: 3050

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2019 Request	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
OPERATING EXPENDITURES	FY 2019	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2018) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2019) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version/comments:

Updated for 2nd session to accurately reflect FY2019 and out year costs.

Prepared By: Kelly Howell, Administrative Services Director
Division: Administrative Services
Approved By: Walt Monegan, Commissioner
Agency: Department of Public Safety

Phone: (907)465-4336
Date: 01/19/2018
Date: 01/19/18

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2018 LEGISLATIVE SESSION

BILL NO. HB 162

Analysis

This bill clarifies and amends current statutes relating to civil and criminal background checks for entities and individuals who seek to be licensed providers or who are paid by the Department of Health & Social Services (DHSS) to provide services to individuals in DHSS' care and custody.

The Department of Public Safety (DPS) is responsible for the state's central repository of criminal history record information and for auditing the agencies that have access to the repository to ensure compliance with state and federal criminal justice information laws. This bill modifies statutes related to the registry maintained by DHSS for purposes of reviewing civil findings.

Passage of this bill is not anticipated to have a fiscal impact to DPS. Therefore, a zero fiscal note is being submitted.

HB 162/SB 81 Sectional

(DHSS centralized registry; license; background checks)

Created by: Department of Law

May 3, 2017

Section 1. This section would make conforming edits to rename the centralized registry to the civil registry to avoid confusion under the current law with the centralized registry (AS 47.05.330) and the central registry in AS 47.17.040 (see section 14).

Sections 2 and 3. These sections would amend AS 47.05.310(d) and 47.32.310(d) to clarify that barrier crimes apply to individuals as well as entities.

Section 4. This section would amend AS 47.53.310(e) to allow an individual to seek a background check; under the current law only entities can seek a background check. This section would also remove, at the request of the Department of Public Safety, the designation of the Department of Health and Social Services (DHSS) as a criminal justice agency for purpose of the background check program.

Section 5. This section would amend AS 47.05.310(f) to make it clear that the DHSS may, in addition to exceptions to the barrier crime provisions, approve a variance for a barrier crime.

Section 6. This section would amend AS 47.05.310(h) to address how a non-licensed provider, such as a relative who is receiving payment by the Office of Children's Services, is treated under the statute. This amendment would make it clear that such providers, while not being paid by DHSS, are still subject to background checks prior to placement.

Section 7. This section would make a conforming edit to AS 47.05.310(i) to rename the centralized registry to the civil registry (similar to section 1).

Section 8. This section would add a new section to AS 47.05.310 to address immunity from civil or criminal liability for reporting during the background check process.

Section 9. This section would provide a similar framework for the civil registry checks as background checks (see AS 47.05.310). This means that the same process applies to a person who is found to have a barring criminal conviction under AS 47.05.310 as well as a barring civil finding under AS 47.05.330.

Section 10. This section would be repealed and reenacted to outline how the department will review existing registries, rather than create yet another separate database. This

section would also identify what DHSS will be looking for in terms of civil findings that are inconsistent with licensure or payment (e.g., CINA findings, terminated from DHSS for assaultive/neglectful or exploitative behavior). Information contained or obtained via the registry would be confidential and not subject to a public records request.

Section 11. This would amend the current immunity section to reflect the change to civil registry from centralized registry.

Section 12. This would establish a new section to address the ability to seek a variance for any finding under this chapter and how to appeal a decision if you disagree with any decision made by DHSS.

Section 13. This section would amend AS 47.05.390(6) to expand the definition of entity to include an individual service provider.

Section 14. This section would rename the central registry maintained by the Office of Children's Services to the child protection registry to avoid confusion. It also clarifies what is maintained on this registry, including substantiated findings under AS 47.10 or AS 47.17.

Section 15. This new subsection would clarify that before a substantiated finding can be placed on the child protection registry the person must have been afforded notice of the finding and the opportunity to challenge the finding.

Section 16. This section would make a conforming edit to AS 47.32.010(c) replacing centralized registry with civil registry (similar to section 1).

Section 17. This section would amend AS 47.32 to provide authority for DHSS to consider prior adverse licensing findings in determining whether to grant or deny a license or whether to place a condition on a license

Section 18. This would add a new section to make it clear that when there is an allegation that an employee or individual affiliated with a licensed entity is alleged to have engaged in any behavior that would impact the safety or welfare of a resident, the department may investigate that individual and issue a report on the findings of that investigation. This section would further provide that if a finding of abuse or neglect is substantiated then that finding will be part of the civil registry process and may result in a person being prohibited from employment or licensure in the future. This section would also make it clear that before such a finding can be used, due process must be afforded.

Section 19. This is technical fix that would clarify when formal hearings are required when an enforcement action is taken after a licensing investigation.

Section 20. This would add a new section to clarify that that when law enforcement is investigating a crime that is also the subject of a licensing investigation, the material gathered by DHSS may be shared with the law enforcement as a matter of law.

Section 21. This section would clarify that all divisions who implement AS 47.32 may share information with each other for the purpose of administering the licensing programs at DHSS.

Section 22. This section would repeal reference to provisions of the current law that are no longer necessary or have been determined to be superfluous. Specifically, the section would repeal the reference to the civil registry when doing a background check, references to DHSS as criminal justice agency, and statutes stating an administrative hearing is not required when the enforcement action sought is a plan of correction.

Section 23. This is an applicability section for purposes of applying the criminal and civil background checks before, on or after the effective date of this act.

Section 24. This section would advise the revisor regarding title changes to reflect amendments in this act, including the change to include the civil history registry.

Section 25. This provides for an immediate effective date.

FREQUENTLY ASKED QUESTION:

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

Created by: Department of Law

May 3, 2017

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.

HB 162 (Centralized Registry; Background Checks)

Dated: January 22, 2018

Created by: Department of Law

**Proposed Background
Check process
AS 47.05.300 - .390**

**Criminal
History check**

**Civil History
Check**
(7 see AAC 10.905 and 915)

- Name based criminal history review:
 - APSIN
 - CourtView
 - JOMIS
- Fingerprint based criminal history review:
 - State
 - National/FBI

- Office of Inspector General List of Excluded Individuals and Entities (LEIE) (federal Medicaid/Medicare exclusion lists)
 - Alaska Medical Assistance Excluded Provider List maintained under AS 47.05.240 or a list or registry maintained under a substantially similar law in another jurisdiction;
 - state and federal sex offender databases;
 - ORCA/Prober
 - Child Care Licensing
 - Professional Licensing databases including the registry of certified nurse aides;
- (NOTE: this may also include similar databases or registries in other states as available).

FREQUENTLY ASKED QUESTION:

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

Created by: Department of Law

May 3, 2017

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.

HB 162/SB 81 Sectional

(DHSS centralized registry; license; background checks)

Created by: Department of Law

May 3, 2017

Section 1. This section would make conforming edits to rename the centralized registry to the civil registry to avoid confusion under the current law with the centralized registry (AS 47.05.330) and the central registry in AS 47.17.040 (see section 14).

Sections 2 and 3. These sections would amend AS 47.05.310(d) and 47.32.310(d) to clarify that barrier crimes apply to individuals as well as entities.

Section 4. This section would amend AS 47.53.310(e) to allow an individual to seek a background check; under the current law only entities can seek a background check. This section would also remove, at the request of the Department of Public Safety, the designation of the Department of Health and Social Services (DHSS) as a criminal justice agency for purpose of the background check program.

Section 5. This section would amend AS 47.05. 310(f) to make it clear that the DHSS may, in addition to exceptions to the barrier crime provisions, approve a variance for a barrier crime.

Section 6. This section would amend AS 47.05.310(h) to address how a non-licensed provider, such as a relative who is receiving payment by the Office of Children's Services, is treated under the statute. This amendment would make it clear that such providers, while not being paid by DHSS, are still subject to background checks prior to placement.

Section 7. This section would make a conforming edit to AS 47.05.310(i) to rename the centralized registry to the civil registry (similar to section 1).

Section 8. This section would add a new section to AS 47.05.310 to address immunity from civil or criminal liability for reporting during the background check process.

Section 9. This section would provide a similar framework for the civil registry checks as background checks (see AS 47.05.310). This means that the same process applies to a person who is found to have a barring criminal conviction under AS 47.05.310 as well as a barring civil finding under AS 47.05.330.

Section 10. This section would be repealed and reenacted to outline how the department will review existing registries, rather than create yet another separate database. This

section would also identify what DHSS will be looking for in terms of civil findings that are inconsistent with licensure or payment (e.g., CINA findings, terminated from DHSS for assaultive/neglectful or exploitative behavior). Information contained or obtained via the registry would be confidential and not subject to a public records request.

Section 11. This would amend the current immunity section to reflect the change to civil registry from centralized registry.

Section 12. This would establish a new section to address the ability to seek a variance for any finding under this chapter and how to appeal a decision if you disagree with any decision made by DHSS.

Section 13. This section would amend AS 47.05.390(6) to expand the definition of entity to include an individual service provider.

Section 14. This section would rename the central registry maintained by the Office of Children's Services to the child protection registry to avoid confusion. It also clarifies what is maintained on this registry, including substantiated findings under AS 47.10 or AS 47.17.

Section 15. This new subsection would clarify that before a substantiated finding can be placed on the child protection registry the person must have been afforded notice of the finding and the opportunity to challenge the finding.

Section 16. This section would make a conforming edit to AS 47.32.010(c) replacing centralized registry with civil registry (similar to section 1).

Section 17. This section would amend AS 47.32 to provide authority for DHSS to consider prior adverse licensing findings in determining whether to grant or deny a license or whether to place a condition on a license

Section 18. This would add a new section to make it clear that when there is an allegation that an employee or individual affiliated with a licensed entity is alleged to have engaged in any behavior that would impact the safety or welfare of a resident, the department may investigate that individual and issue a report on the findings of that investigation. This section would further provide that if a finding of abuse or neglect is substantiated then that finding will be part of the civil registry process and may result in a person being prohibited from employment or licensure in the future. This section would also make it clear that before such a finding can be used, due process must be afforded.

Section 19. This is technical fix that would clarify when formal hearings are required when an enforcement action is taken after a licensing investigation.

Section 20. This would add a new section to clarify that that when law enforcement is investigating a crime that is also the subject of a licensing investigation, the material gathered by DHSS may be shared with the law enforcement as a matter of law.

Section 21. This section would clarify that all divisions who implement AS 47.32 may share information with each other for the purpose of administering the licensing programs at DHSS.

Section 22. This section would repeal reference to provisions of the current law that are no longer necessary or have been determined to be superfluous. Specifically, the section would repeal the reference to the civil registry when doing a background check, references to DHSS as criminal justice agency, and statutes stating an administrative hearing is not required when the enforcement action sought is a plan of correction.

Section 23. This is an applicability section for purposes of applying the criminal and civil background checks before, on or after the effective date of this act.

Section 24. This section would advise the revisor regarding title changes to reflect amendments in this act, including the change to include the civil history registry.

Section 25. This provides for an immediate effective date.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE SPOHNHOLZ

TO: HB 162

1 Page 1, line 1, following "**history**":

2 Insert "**record checks and**"

3

4 Page 1, following line 4:

5 Insert a new bill section to read:

6 **** Section 1.** AS 12.62.400(a) is amended by adding a new paragraph to read:

7 (19) licensure, license renewal, certification, certification renewal, or
8 payment from the Department of Health and Social Services of an individual and an
9 entity subject to the requirements for a criminal history check under AS 47.05.310,
10 including

11 (A) a public home care provider described in AS 47.05.017;

12 (B) a provider of home and community-based waiver services
13 financed under AS 47.07.030(c);

14 (C) a case manager to coordinate community mental health
15 services under AS 47.30.530;

16 (D) an entity listed in AS 47.32.010(b), including an owner,
17 officer, director, member, or partner of an entity; or

18 (E) an individual service provider or entity not described in (A)
19 - (D) of this paragraph that is required by statute or regulation to be licensed or
20 certified by the Department of Health and Social Services or that is eligible to
21 receive payments, in whole or in part, from the Department of Health and
22 Social Services to provide for the health, safety, and welfare of persons who
23 are served by the programs administered by the Department of Health and

- 1 **Social Services."**
- 2
- 3 **Page 1, line 5:**
- 4 Delete "**Section 1**"
- 5 Insert "**Sec. 2**"
- 6
- 7 **Renumber the following bill sections accordingly.**

30-GH1676J
Glover
2/15/18

CS FOR HOUSE BILL NO. 162()
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTIETH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to criminal and civil history record checks and requirements; relating**
2 **to licenses, certifications, appeals, and authorizations by the Department of Health and**
3 **Social Services; relating to child protection information; and providing for an effective**
4 **date."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 *** Section 1.** AS 12.62.400(a) is amended by adding a new paragraph to read:

7 (19) licensure, license renewal, certification, certification renewal, or
8 payment from the Department of Health and Social Services of an individual and an
9 entity subject to the requirements for a criminal history check under AS 47.05.310,
10 including

11 (A) a public home care provider described in AS 47.05.017;

12 (B) a provider of home and community-based waiver services
13 financed under AS 47.07.030(c);

14 (C) a case manager to coordinate community mental health

1 services under AS 47.30.530;

2 (D) an entity listed in AS 47.32.010(b), including an owner,
3 officer, director, member, partner, employee, volunteer, or contractor of an
4 entity; or

5 (E) an individual or entity not described in (A) - (D) of this
6 paragraph that is required by statute or regulation to be licensed or certified by
7 the Department of Health and Social Services or that is eligible to receive
8 payments, in whole or in part, from the Department of Health and Social
9 Services to provide for the health, safety, and welfare of persons who are
10 served by the programs administered by the Department of Health and Social
11 Services.

12 * **Sec. 2.** AS 44.62.330(a)(41) is amended to read:

13 (41) Department of Health and Social Services relating to the civil
14 history databases [CENTRALIZED REGISTRY] under AS 47.05.330 - 47.05.390;

15 * **Sec. 3.** AS 47.05.310(b) is amended to read:

16 (b) The department may not issue or renew a license or a certification for an
17 entity or an individual that is in violation of (a) of this section or that would be in
18 violation based on the information received as part of the application process.

19 * **Sec. 4.** AS 47.05.310(d) is amended to read:

20 (d) An entity or an individual shall provide to the department a release of
21 information authorization for a criminal history check under this section for each
22 [AN] individual who is not a recipient of services from the entity, who is not in the
23 custody of the department, and, after the entity applies for or has been issued a
24 license, license renewal, certification, or certification renewal by the department,

25 (1) who intends to become an owner of the entity, or an officer,
26 director, partner, member, or principal of the business organization that owns the
27 entity;

28 (2) whom the entity intends to hire or retain as the operator of the
29 entity's business;

30 (3) whom the entity intends to hire or retain as an employee,
31 independent contractor, or unsupervised volunteer of the entity; or

1 (4) who will be present in the entity or at the places of operation of the
 2 entity, and would have regular contact with individuals who receive services from the
 3 entity, but who is not a family member or visitor of an individual who receives
 4 services from the entity.

5 * **Sec. 5.** AS 47.05.310(e) is amended to read:

6 (e) An individual for whom a release of information authorization has been
 7 provided to the department shall submit the individual's fingerprints to the department,
 8 with the fee established under AS 12.62.160, for a report of criminal justice
 9 information under AS 12.62 and for submission by the Department of Public Safety to
 10 the Federal Bureau of Investigation for a national criminal history record check. The
 11 Department of Public Safety shall provide the report of criminal justice information
 12 and the results of the national criminal history record check to the department for its
 13 use in considering an application for a license, license renewal, certification, or
 14 certification renewal, or in considering other approval or selection regarding an entity
 15 or individual, for compliance with the standards established in this section. [FOR
 16 PURPOSES OF OBTAINING ACCESS TO CRIMINAL JUSTICE INFORMATION
 17 MAINTAINED BY THE DEPARTMENT OF PUBLIC SAFETY UNDER AS 12.62,
 18 THE DEPARTMENT IS A CRIMINAL JUSTICE AGENCY CONDUCTING A
 19 CRIMINAL JUSTICE ACTIVITY.] The department may waive the requirement for
 20 fingerprint submission if an individual is unable to provide fingerprints due to a
 21 medical or physical condition that is documented by a licensed physician.

22 * **Sec. 6.** AS 47.05.310(f) is amended to read:

23 (f) The provisions of this section do not apply if the department grants an
 24 exception from a requirement of (a) - (e) of this section under a regulation adopted by
 25 the department or if the department grants a variance under AS 47.05.360.

26 * **Sec. 7.** AS 47.05.310(h) is repealed and reenacted to read:

27 (h) For purposes of this section, in place of nonissuance or nonrenewal of a
 28 license or certification, an entity or individual that is not required to be licensed or
 29 certified by the department or a person wishing to become an entity or individual that
 30 is not required to be licensed or certified by the department is ineligible to receive a
 31 payment, in whole or in part, from the department to provide for the health, safety, and

1 welfare of persons who are served by the programs administered by the department if
2 the entity or individual is in violation of this section or would be in violation of this
3 section based on information received by the department as part of an application,
4 approval, or selection process.

5 * **Sec. 8.** AS 47.05.310 is amended by adding a new subsection to read:

6 (I) A person is presumed to be acting in good faith and is immune from civil
7 or criminal liability if the person

8 (1) makes a report of medical assistance fraud, abuse, neglect, or
9 exploitation;

10 (2) submits information to a civil history database identified under
11 AS 47.05.330; or

12 (3) fails to hire or retain an employee or unsupervised volunteer
13 because the employee or unsupervised volunteer is included in a civil history database
14 identified under AS 47.05.330.

15 * **Sec. 9.** AS 47.05 is amended by adding a new section to read:

16 **Sec. 47.05.325. Civil history; civil history check; compliance.** (a) The
17 department shall establish by regulation civil history standards for denial of issuance
18 or renewal of a license or certification for an individual or for an entity if the
19 individual who is applying for a license, license renewal, certification, or certification
20 renewal is

21 (1) a biological or adoptive parent, guardian, custodian, or Indian
22 custodian of a child who is or was the subject of a child-in-need-of-aid petition under
23 AS 47.10 and if the individual had custody of the child at the time the child was the
24 subject of a petition; or

25 (2) the subject of a finding or circumstance described in
26 AS 47.05.330(a).

27 (b) If an individual is the subject of a petition or finding or circumstance
28 described in (a) of this section, or a substantially similar provision in another
29 jurisdiction, the individual may not own an entity or be an officer, director, partner,
30 member, employee, or principal of the business organization that owns an entity. In
31 addition, an entity may not

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- (1) allow that individual to operate the entity;
- (2) hire or retain that individual at the entity as an employee, independent contractor, or unsupervised volunteer of the entity;
- (3) allow that individual to reside in the entity, unless that individual receives services from the entity or is in the custody of the state; or
- (4) allow that individual to be present in the entity if the individual would have regular contact with individuals who receive services from the entity, unless that individual is a family member of or visitor of an individual who receives services from the entity.

(c) An entity or an individual shall provide to the department a release of information authorization for a civil history check under this section for each individual who is not a recipient of services from the entity, who is not in the custody of the department, and, after the entity applies for or has been issued a license, license renewal, certification, or certification renewal by the department,

- (1) who intends to become an owner of the entity, or an officer, director, partner, member, or principal of the business organization that owns the entity;
- (2) whom the entity intends to hire or retain as the operator of the entity's business;
- (3) whom the entity intends to hire or retain as an employee, independent contractor, or unsupervised volunteer of the entity; or
- (4) who will be present in the entity or at the places of operation of the entity, and would have regular contact with individuals who receive services from the entity, but who is not a family member or visitor of an individual who receives services from the entity.

(d) For purposes of this section, in place of nonissuance or nonrenewal of a license or certification, an entity or individual that is not required to be licensed or certified by the department or a person wishing to become an entity or individual that is not required to be licensed or certified by the department is instead ineligible to receive a payment, in whole or in part, from the department to provide for the health, safety, and welfare of persons who are served by the programs administered by the

1 department if the entity or individual is in violation of this section or would be in
2 violation of this section based on information received by the department as part of an
3 application, approval, or selection process.

4 (e) The department shall by regulation identify other governmental agencies or
5 political subdivisions of the state that can request information that is required under
6 this section for a similar purpose.

7 (f) The provisions of this section do not apply if the department grants an
8 exception from the requirements of (a) or (b) of this section under a regulation adopted
9 by the department or if the department grants a variance under AS 47.05.360.

10 (g) A person is presumed to be acting in good faith and is immune from civil
11 and criminal liability if the person

12 (1) makes a report of medical assistance fraud, abuse, neglect, or
13 exploitation;

14 (2) submits information to a civil history database identified under
15 AS 47.05.330; or

16 (3) fails to hire or retain an employee or unsupervised volunteer
17 because the employee or unsupervised volunteer is included in a civil history database
18 identified under AS 47.05.330.

19 (h) The department shall by regulation establish standards for the
20 consideration and use by the department, an entity, or an individual of the civil history
21 of an individual obtained under this section.

22 * **Sec. 10.** AS 47.05.330 is repealed and reenacted to read:

23 **Sec. 47.05.330. Identification of civil history databases for a civil history**
24 **check; confidentiality.** (a) The department shall by regulation identify each database
25 the department will review when conducting a civil history check under AS 47.05.325
26 to identify each individual

27 (1) whom a court or the department has found

28 (A) to have committed abuse, neglect, undue influence, or
29 exploitation of a vulnerable adult;

30 (B) under AS 47.32 or regulations adopted under AS 47.32, to
31 have significantly adversely affected the health, safety, or welfare of an

1 individual who is receiving a service from an entity licensed under AS 47.32; a
2 finding described in this subparagraph includes a decision to revoke, suspend,
3 or deny a license or license renewal, or the relinquishment of a license as part
4 of a settlement agreement;

5 (2) who has been subject to criminal or civil penalties for a violation of
6 AS 09.58, AS 47.05, AS 47.07, AS 47.08, or regulations adopted under AS 09.58,
7 AS 47.05, AS 47.07, or AS 47.08;

8 (3) about whom the department or a court has made a substantiated
9 finding of child abuse or neglect under AS 47.10 or AS 47.14;

10 (4) who was a biological or adoptive parent, guardian, custodian, or
11 Indian custodian of a child at the time the child was the subject of a child-in-need-of-
12 aid petition under AS 47.10;

13 (5) who, in the course of employment with the state, has been
14 terminated from employment or has had an allegation of assaultive, abusive,
15 neglectful, or exploitive behavior or actions substantiated;

16 (6) who, in this state or another jurisdiction, for reasons related to
17 abuse, neglect, undue influence, exploitation, or other reasons that are inconsistent
18 with standards for the protection of public health, safety, or welfare, has had a
19 professional license, certification, or similar professional designation revoked,
20 suspended, or denied, or has had a request for renewal of a professional license,
21 certification, or similar professional designation denied;

22 (7) whom another state or jurisdiction has identified on a civil registry
23 or database substantially similar to the databases identified under this section for
24 reasons substantially similar to the reasons identified in (1) - (6) of this subsection.

25 (b) The information gathered under this section is not a public record under
26 AS 40.25.110 and is not subject to public inspection or copying under AS 40.25.110 -
27 40.25.125. However, information gathered under this section may be released to an
28 entity, an individual who is included in a database, a governmental agency, and a
29 political subdivision of the state in a manner provided under this section and
30 regulations adopted under this chapter.

31 * **Sec. 11.** AS 47.05.350 is amended to read:

1 **Sec. 47.05.350. Use of information; immunity.** An entity [OR INDIVIDUAL
2 SERVICE PROVIDER] that obtains information about an employee under a criminal
3 history check under AS 47.05.310 **or a civil history check under AS 47.05.325** may
4 use that information only as provided for in regulations adopted by the department
5 under **this chapter** [AS 47.05.320]. However, if an entity [OR INDIVIDUAL
6 SERVICE PROVIDER] reasonably relies on the information provided under the
7 regulations adopted by the department to deny employment to an individual who was
8 selected for hire as an employee, including during a period of provisional
9 employment, the entity [OR INDIVIDUAL SERVICE PROVIDER] is not liable in an
10 action brought by the individual based on the employment determination resulting
11 from the information.

12 * **Sec. 12.** AS 47.05 is amended by adding a new section to read:

13 **Sec. 47.05.360. Variance request; final decision.** (a) An individual or entity
14 subject to the provisions of AS 47.05.310 or 47.05.325 may request a variance from
15 the provisions of AS 47.05.310 or 47.05.325 under procedures established by the
16 department by regulation. The procedures must include the establishment of a variance
17 committee to consider requests for variances. A request for a variance may include a
18 request that the department issue a written explanation of incorrect information
19 contained in the civil history databases identified under AS 45.05.330.

20 (b) An individual or entity that is dissatisfied with a decision by a variance
21 committee may, not more than 30 days after the committee issues the decision, apply
22 to the commissioner for reconsideration of the decision. A determination by the
23 commissioner is a final agency decision for purposes of appeal to the superior court.

24 (c) The department shall disclose information and records pertaining to a child
25 subject to AS 47.10 or AS 47.17 to a variance committee as provided under
26 AS 47.10.093(b).

27 * **Sec. 13.** AS 47.05.390(6) is amended to read:

28 (6) "entity" means an entity listed in AS 47.32.010(b) **or an individual**
29 **service provider as described in AS 47.05.300** and includes an owner, officer,
30 director, member, or partner of the entity;

31 * **Sec. 14.** AS 47.10.093(b) is amended to read:

1 (b) A state or municipal agency or employee shall disclose appropriate
2 confidential information regarding a case to

3 (1) a guardian ad litem appointed by the court;

4 (2) a person or an agency requested by the department or the child's
5 legal custodian to provide consultation or services for a child who is subject to the
6 jurisdiction of the court under AS 47.10.010 as necessary to enable the provision of
7 the consultation or services;

8 (3) an out-of-home care provider as necessary to enable the out-of-
9 home care provider to provide appropriate care to the child, to protect the safety of the
10 child, and to protect the safety and property of family members and visitors of the out-
11 of-home care provider;

12 (4) a school official as necessary to enable the school to provide
13 appropriate counseling and support services to a child who is the subject of the case, to
14 protect the safety of the child, and to protect the safety of school students and staff;

15 (5) a governmental agency as necessary to obtain that agency's
16 assistance for the department in its investigation or to obtain physical custody of a
17 child;

18 (6) a law enforcement agency of this state or another jurisdiction as
19 necessary for the protection of any child or for actions by that agency to protect the
20 public safety;

21 (7) a member of a multidisciplinary child protection team created
22 under AS 47.14.300 as necessary for the performance of the member's duties;

23 (8) the state medical examiner under AS 12.65 as necessary for the
24 performance of the duties of the state medical examiner;

25 (9) a person who has made a report of harm as required by
26 AS 47.17.020 to inform the person that the investigation was completed and of action
27 taken to protect the child who was the subject of the report;

28 (10) the child support services agency established in AS 25.27.010 as
29 necessary to establish and collect child support for a child who is a child in need of aid
30 under this chapter;

31 (11) a parent, guardian, or caregiver of a child or an entity responsible

1 for ensuring the safety of children as necessary to protect the safety of a child;

2 (12) a review panel, **including a variance committee established**
3 **under AS 47.05.360**, established by the department for the purpose of reviewing the
4 actions taken by the department in a specific case;

5 (13) the University of Alaska under the Alaska higher education
6 savings program for children established under AS 47.14.400, but only to the extent
7 that the information is necessary to support the program and only if the information
8 released is maintained as a confidential record by the University of Alaska;

9 (14) a child placement agency licensed under AS 47.32 as necessary to
10 provide services for a child who is the subject of the case; and

11 (15) a state or municipal agency of this state or another jurisdiction
12 that is responsible for delinquent minors, as may be necessary for the administration of
13 services, protection, rehabilitation, or supervision of a child or for actions by the
14 agency to protect the public safety; however, a court may review an objection made to
15 a disclosure under this paragraph; the person objecting to the disclosure bears the
16 burden of establishing by a preponderance of the evidence that disclosure is not in the
17 child's best interest.

18 * **Sec. 15.** AS 47.17.040 is amended to read:

19 **Sec. 47.17.040. Child protection [CENTRAL] registry; confidentiality.** (a)
20 The department shall maintain a **child protection** [CENTRAL] registry of all
21 investigation reports, **including substantiated findings under AS 47.10 or AS 47.17**
22 **[BUT NOT OF THE REPORTS OF HARM].**

23 (b) Investigation reports and reports of harm filed under this chapter are
24 considered confidential and are not subject to public inspection and copying under
25 AS 40.25.110 and 40.25.120. However, in accordance with department regulations,
26 investigation reports, **including substantiated findings under AS 47.10 or AS 47.17**,
27 may be used by appropriate governmental agencies with child-protection functions,
28 inside and outside the state, in connection with investigations or judicial proceedings
29 involving child abuse, neglect, or custody **and in conjunction with licensing action**
30 **under AS 47.32 or a similar statute in another state**. A person [,] not acting in
31 accordance with department regulations [,] who, with criminal negligence, makes

1 public information contained in confidential reports is guilty of a class B
2 misdemeanor.

3 * **Sec. 16.** AS 47.17.040 is amended by adding new subsections to read:

4 (c) Before a substantiated finding may be placed on the child protection
5 registry and provided as part of a civil history check under AS 47.05.325, the
6 department shall provide the applicant notice of the finding and an opportunity to
7 appeal the finding. The department shall adopt regulations to implement this section.

8 (d) In this section, "governmental agency" includes a tribe or tribal
9 organization conducting child protection functions and a school district;

10 * **Sec. 17.** AS 47.32.010(c) is amended to read:

11 (c) The provisions of AS 47.05.300 - 47.05.390, regarding criminal history,
12 criminal history checks, criminal history use standards, and civil history databases [A
13 CENTRALIZED REGISTRY], apply to entities listed in (b) of this section, as
14 provided in AS 47.05.300.

15 * **Sec. 18.** AS 47.32.070 is amended by adding a new subsection to read:

16 (c) In considering whether to deny an application for or place a condition on a
17 license, the department shall consider the licensing history of the applicant, including
18 any enforcement action under this chapter.

19 * **Sec. 19.** AS 47.32.090 is amended by adding a new subsection to read:

20 (d) The department may investigate an employee, contractor, or volunteer of a
21 licensed entity and may substantiate that the individual engaged in conduct that would
22 significantly affect the health, safety, or welfare of an individual who is receiving a
23 service from the entity. If the conduct is substantiated against an employee, contractor,
24 or volunteer, the department shall issue a notice of the finding to the person and
25 include the person in the appropriate civil history database identified under
26 AS 47.05.330. Before a substantiated finding against an employee, contractor, or
27 volunteer may be included in a civil history database and provided as part of a check
28 under AS 47.05.325, the department shall provide the applicant notice of the finding
29 and an opportunity to appeal the finding. The department shall adopt regulations to
30 implement this subsection. For the purposes of this subsection, "volunteer" includes an
31 individual placed in a facility for training, educational, or internship purposes.

1 * **Sec. 20.** AS 47.32.140(d) is amended to read:

2 (d) The department may take one or more of the following enforcement
3 actions under this section:

4 (1) delivery of a warning notice to the licensed entity and to any
5 additional person who was the subject of the investigation or inspection;

6 (2) modification of the term or scope of the entity's existing license,
7 including changing a biennial license to a provisional license or adding a condition to
8 the license;

9 (3) suspension of the entity's operations for a period of time set by the
10 department;

11 (4) suspension of or a ban on the entity's provision of services to
12 individuals not already receiving services from the entity for a period of time set by
13 the department;

14 (5) nonrenewal of the entity's license;

15 (6) revocation of the entity's license or, if the entity is not licensed
16 under this chapter, revocation of the entity's ability to become licensed under this
17 chapter;

18 (7) issuance of an order requiring closure, immediate or otherwise, of
19 the entity regardless of whether the entity is licensed or unlicensed;

20 (8) denial of payments under AS 47.07 for the entity's provision of
21 services to an individual not already receiving services from the entity;

22 (9) assumption of either temporary or permanent management of the
23 entity or pursuit of a court-ordered receiver for the entity;

24 (10) reduction of the number of individuals receiving services from the
25 entity under the license;

26 (11) imposition of a penalty authorized under law;

27 (12) inclusion in a civil history database identified [THE
28 REGISTRY ESTABLISHED] under AS 47.05.330 [;

29 (13) REQUIREMENT THAT THE ENTITY PREPARE AND
30 SUBMIT A PLAN OF CORRECTION].

31 * **Sec. 21.** AS 47.32.150(b) is amended to read:

1 (b) Upon receipt of a timely request for a hearing by an entity regarding an
2 enforcement action under AS 47.05.310, AS 47.32.070, or 47.32.140(d)(1), (2), (4),
3 (8), (10), (11), (12), or (f) [(13)], the department shall conduct a hearing in front of an
4 officer appointed by the commissioner. A hearing under this subsection may be
5 conducted on the record, in an informal manner, and may not be conducted under
6 AS 44.62 or AS 44.64. The appointed hearing officer may be a state employee.

7 * **Sec. 22.** AS 47.32.180 is amended by adding a new subsection to read:

8 (c) Notwithstanding any other provision of law, the department may, upon
9 request, share information with a law enforcement agency that is investigating a crime
10 that is also the subject of a licensing investigation obtained during a current
11 investigation.

12 * **Sec. 23.** AS 47.32.190 is amended to read:

13 **Sec. 47.32.190. Access to information.** Notwithstanding any contrary
14 provision of law, the divisions of the department assigned to implement this chapter
15 [PUBLIC HEALTH AND PUBLIC ASSISTANCE FUNCTIONS] shall have access
16 to any information compiled or retained by other divisions of [WITHIN] the
17 department, regardless of the nature of the information or whether the information is
18 considered confidential, in order to assist in administering the provisions of this
19 chapter.

20 * **Sec. 24.** AS 47.05.310(c), 47.05.310(i), 47.05.390(1), 47.05.390(2), and 47.05.390(3) are
21 repealed.

22 * **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 APPLICABILITY. This Act applies to an application or request for licensure, license
25 renewal, certification, certification renewal, or payment submitted to the Department of
26 Health and Social Services by an entity or individual subject to AS 47.05.300 - 47.05.390, as
27 amended by secs. 3 - 10 of this Act, on or after the effective date of this Act.

28 * **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 REVISOR'S INSTRUCTION. The revisor of statutes is requested to change the

31 (1) heading of art. 3 of AS 47.05 from "Criminal History; Registry" to

- 1 "Criminal and Civil History"; and
- 2 (2) catch line of AS 47.32.140 from "Enforcement actions" to "Notice of
- 3 violation; compliance, and enforcement proceedings."
- 4 * **Sec. 27.** This Act takes effect immediately under AS 01.10.070(c).

Summary of Changes in CS HB 162 ver. J

House Health and Social Services

February 20, 2018

By Department of Law

Section 1 contains the amendment requested by the Department of Public Safety to ensure compliance with federal laws relating to the sharing of criminal history information with the Department of Health and Social Services.

Section 2 contains a technical fix that removes the word “registry” and instead refers to databases to avoid the concern raised by the Ombudsman regarding confusion over the term “registry.”

Old Section 7 was deleted as it was determined in consultation with legislative legal the section was redundant. It was determined that keeping what is now section 7 in the CS was sufficient to require relative placement to have background checks.

Section 10 is re-written to address the concerns raised by the Ombudsman’s office. Specifically, the rewrite:

- Removes the confusion caused by using the word “registry.” Similar to Sections 2, 8, 18, and 21, the change redefines registry to “databases”;
- Clarifies that we are looking to evaluate health, safety, and welfare issues when reviewing databases related to licensed entities, not technical violations that may lead to a nonrenewal, suspension or revocation of a license;
- Clarifies that we are looking to identify persons whose children are subjects of a child in need of aid petition;
- Clarifies that we are looking to evaluate health, safety, and welfare issues when reviewing databases related to licensed providers (occupational licensing under AS 08), not unrelated technical violations;
- Adds that a person who works for the state – not just the Department of Health and Social Services – is subject to a barring condition if they are terminated from employment for a substantiated allegation of assaultive, neglectful, or exploitive behavior.

Section 12 is amended as requested by the Ombudsman’s Office to clarify persons who are seeking variances have access to information they need to pursue a variance.

Section 14 adds a new section to effectuate the access of information under AS 47.10 for variance committees.

Section 17 (former Section 16) contains a technical fix that remove the word “registry” that refer to databases to avoid confusion as articulated by the Ombudsman.

Section 19 (former Section 18) removes the qualifier of “unsupervised” before “volunteer” as to persons who can be investigated. The Department wants to be able to investigate any volunteer – unsupervised or otherwise – who has engaged in abusive, neglectful, or exploitative behavior against a child or adult in care.

Sections 20 is added to this CS to amend AS 47.32.140(d) to remove the word “registry” and instead refer to databases to avoid the concern raised by the Ombudsman regarding confusion over the term “registry.”.

Section 22 (former Section 20) is amended to add a new subsection to clarify that information can be shared with law enforcement if that information is from a concurrent investigation.

FREQUENTLY ASKED QUESTION:

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

Created by: Department of Law

May 3, 2017

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.