

**Department of Health, Office of Mental Health, and Office of Mental Retardation and Developmental Disabilities
Criminal History Background Checks for Applicants for Employment in Home Health Care**

	DOH	OMH	OMRDD
<i>Who is subject to a criminal background check?</i>	<p>Any person employed by a “covered entity,”* including a person employed by a temporary employment agency, who provides direct care or supervision to patients.** 10 NYCRR § 400.23(a)(2).</p> <p>*Residential health care facilities, Licensed home care agencies, Certified home health agencies, Long-term home health care programs, Personal care services agencies, AIDS home care programs</p> <p>**Individuals “providing direct care or supervision to patients” include, but are not limited to:</p> <ul style="list-style-type: none"> • Personal care aides • Home health aides • Housekeepers • Unlicensed staff providing direct service to patients or residents • Transporters • Therapeutic recreation staff • Unlicensed social service staff • Unlicensed staff employed 	<p>A prospective operator, employee or volunteer of a provider who contracts with or is otherwise approved by OMH to provide services who will have regular and substantial unsupervised or unrestricted physical contact with clients of such provider, or other person over the age of eighteen who is to reside in a family care home (excluding any person receiving family care services) who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider. 14 NYCRR 550.1(a).</p>	<p>Prospective employees, volunteers, and operators of a provider of services that contracts with, or is approved by OMRDD who will have regular substantial unsupervised or unrestricted physical contact with people receiving services. Emergency Regs § 633.22(d).</p> <p>Includes, but is not limited to:</p> <ul style="list-style-type: none"> • Party providing transportation services, whether driving or accompanying people while they are being transported.

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	<p align="center">through a temp agency Not Included:</p> <ul style="list-style-type: none"> • Security • Beautician 		
<i>Procedure for Criminal Background Check</i>	<p>The provider informs the prospective employee of the background check requirement; the provider obtains the applicants fingerprints on fingerprint cards supplied by DOH and submits the request to DOH via mail or fax. DOH will usually receive the criminal history record check within four to six weeks of the fingerprint cards submission to the FBI.</p> <p><i>See State of New York Department of Health Memorandum, "Criminal History Record Checks for Nursing Homes and Home Care Services Agencies," March 24, 2005.</i></p>	<p>Provider/employer interviews the prospective employee and informs him/her that they are required to obtain a criminal history record check; obtains the applicants informed consent for the background check. Provider uses OMH's web based system, Criminal History Information Tracking System (CHITS). The system allows the provider to track the application through each stage of the process. CHITS assign an ID number to each applicant, which serves as a fingerprint authorization code. OMH will inform the provider, who will in turn inform the applicant, of locations where the applicant can have LIVESCAN fingerprinting done. LIVESCAN is a method</p>	<p>Provider/employer has applicant complete Criminal History Record Check Consent form; provider submits the request to OMRDD in one of three ways: (1) expedited review requests can be made for individuals already in the OMRDD database and do not require fingerprints, (2) fingerprints can be taken by OMRDD using LIVESCAN, (3) fingerprints can be taken by "ink and roll" on a fingerprint card by the employer. Fingerprints and information for fingerprint submission are entered and fingerprints are submitted to DCJS. The Criminal Background Check Unit at OMRDD receives the results from DCJS. Results are</p>

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<i>Procedure (cont'd)</i>		<p>by which fingerprints are taken with a scanner and laptop, rather than ink and pad, permitting electronic transmission and increasing turn around time. Applicant goes to the site and has fingerprinting done. OMH staff will create fingerprint images using Card Scan technology and transmit the images to DCJS. OMH will usually receive results from DCJS within 48 hours of transmission.</p> <p><i>See "Criminal History Check Process" available at http://www.omh.state.ny.us/omhweb/policy/part550et2.htm</i></p>	<p>typically available electronically 2-3 days after the fingerprints are processed.</p> <p><i>See "Criminal History Record Check Process" available at http://www.omr.state.ny.us/cbc/hp_cbc_faqs_final.jsp</i></p>
<i>At what point can an application be withdrawn without prejudice?</i>	At any time prior to the operator's decision on employment. 10 NYCRR § 400.23(e)(1).	At any time before employment is offered or declined, regardless of whether the applicant or provider has reviewed the applicant's criminal history information. Executive Law § 845-b	At any point before employment is offered or declined, regardless of whether the applicant or provider has reviewed the summary of the criminal history record check. Executive Law § 845-b

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<i>Provisional employment available?</i>	Yes. The applicant can be given provisional employment for 60 days from the date of the background check request to DOH. If the background check report has not been provided due to documented inability of DOH or the FBI, then the operator can extend the period of provisional employment for an additional sixty days. A provisional employee may not have unsupervised contact with clients. <i>See</i> 10 NYCRR 400.23(e)(1)	Yes. A provider may temporarily approve a prospective employee or volunteer while the results of the record check are pending, but not allow such person to have unsupervised physical contact with clients during such time. <i>See</i> 14 NYCRR 550.5(f)	Yes. A provider may temporarily approve a prospective employee or volunteer while the results of the record check are pending, but not allow such person to have unsupervised physical contact with clients during such time. An employee with temporary approval shall not be permitted to work the night shift. <i>See</i> Emergency Regs 633.22(f)
<i>Bars to Employment</i>	<ul style="list-style-type: none"> • Any Class A felony defined in the Penal Law • Any Class B or C felony occurring within ten years proceeding the date of the background check • Any Class D or E felony listed within 	<ul style="list-style-type: none"> • Felony conviction for a sex offense • Felony conviction within past ten years involving violence • Conviction for endangering the welfare of an incompetent or physically disabled 	<p>“Presumptive disqualifying crimes” include:</p> <ul style="list-style-type: none"> • Felony conviction for a sex offense. • Felony conviction within past ten years involving violence • Endangering the welfare of an

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	<p>Penal Law article 120 (assault), 130 (sex offenses), 155 (larceny), 160 (robbery), 178 (criminal diversion of prescription medications) or 220 (controlled substance offenses) within the ten years preceding</p> <ul style="list-style-type: none"> • Endangering the welfare of a vulnerable elderly person in the first or second degree. • Any comparable offense in another jurisdiction <p><i>See 10 NYCRR 400.23(g)(1)(i)</i></p>	<p>person pursuant to section 260.25 of the Penal Law.</p> <p>Executive Law 845-b(5)(a)</p>	<p>incompetent or physically disabled person</p> <ul style="list-style-type: none"> • Certain crimes become presumptive disqualifying crimes when identified by DCJS as hate crimes. <p><i>See Emergency Regs 633.98</i></p>
<i>Who determines whether applicant is barred?</i>	<p>Provider/employer. DOH forwards the criminal history check to <i>the provider who shall not hire the applicant if the applicant has a conviction for certain offenses.</i> If the</p>	<p>Agency. OMH uses a web based system to process the records checks. If no criminal history is found, the provider will be immediately notified through the system and can</p>	<p>Agency. <i>Under the Emergency Regs, OMRDD will make the determination in each case of whether to issue a denial (or direct the provider to issue a denial).</i> OMRDD</p>

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	applicant is not barred, the provider can make a hiring decision in accordance with 23A of the Corrections Law. 10 NYCRR 400.23(f).	consider the applicant for employment. If a criminal record is found, OMH will review the information to determine whether the applicant's criminal history bars employment. <i>OMH will then advise the applicant in writing of a possible bar to employment. See 14 NYCRR 550.6.</i>	will not forward a summary of the criminal history record information to approved providers if it is not issuing a denial or directing the provider to issue a denial. <i>See Emergency Regs 622.33(h).</i>
<i>Is denial discretionary?</i>	Mandatory. Where an applicant's criminal background check reveals a conviction for one of the crimes that bars employment, the employer <i>shall not</i> hire the applicant. Where the background check reveals a conviction for any other criminal offense, the employer must determine the suitability of the applicant pursuant to section 23A of the Correction Law. 10 NYCRR 400.23(g)(1)	Discretionary. Where an applicant's criminal background check reveals a conviction for one of the crimes that bar employment, the agency <i>shall deny</i> the application, unless the agency determines, in its discretion, that approval of the application for renewal of operating certificate, or employment will not in any way jeopardize the health, safety or welfare of the beneficiaries of such services. Where the background check reveals a conviction for any	Discretionary. OMRDD shall issue a denial, or direct the agency, to issue a denial, if the criminal history record information includes a conviction for one or more disqualifying offense. However, OMRDD may determine, "in its discretion, that it will not issue a denial" or direct the agency to issue a denial if such a determination will not in any way jeopardize the health, safety or welfare of the people receiving services. Emergency Regs 633.22(i)(1)

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		other criminal offense, the employer must determine the suitability of the applicant pursuant to section 23A of the Correction Law. Executive Law 845-b(5)(a)	
<i>Effect of pending criminal charge</i>	While the regulations do not state the effect of a pending criminal charge, DOH guidelines state that if the criminal history record check report reveals the applicant is charged with a crime that is a “disqualifying offense,” but not yet convicted or acquitted of that crime, the operator should ask the applicant to disclose the ultimate outcome of the charge.	Where the criminal history information concerning a subject individual reveals a charge for a felony, the authorized agency <i>shall</i> , and for any misdemeanor, the authorized agency may hold the application, renewal of operating certificate or employment in abeyance until the charge is finally resolved. Executive Law 845-b(5)(c).	If the criminal history record information includes a pending charge for a felony or for endangering the welfare of an incompetent or physically disables person OMRDD <i>will</i> , and for other crimes <i>may</i> , notify the agency, sponsoring agency or provider of services that is holding the application, renewal of operating certificate or employment in abeyance until the charge is finally resolved. The provider must then revoke any temporary approval for employment. Emergency Regs 633.22 (g)(6).
<i>Appeals process</i>	10 NYCRR § 400.23 (h)(i) simply states that the operator	The applicant has ten days from the date the notification	Before issuing a denial, OMRDD will send a

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	<p>“shall provide the prospective employee with an opportunity to explain any criminal history record information contained in the record check” and set forth in writing the basis for not hiring the applicant.</p> <p>No DOH appeals process exists for applicants. Disagreements on employment decisions are between the employer and the applicant. See “<i>NYS DOH Criminal History Record Checks (CHRC) Program: FAQs</i>” available at http://www.health.state.ny.us/professionals/nursing_home_administrator/2005-06-15_chrc</p>	<p>of a possible bar was mailed to provide the agency with additional information/ reason that application should not be denied. OMH will revisit the case and issue its final decision to the provider. 14 NYCRR 550.6(b).</p>	<p>notification to the applicant. OMRDD will direct the agency to issue a denial unless the applicant submits a response within 30 calendar days from the date the notification was mailed. In order to be reconsidered, the response to OMRDD must include a written explanation and/or documentation of a request to DCJS. Emergency Regs 622.33(g)(7).</p>
<i>Effect of Certification of Good Conduct, or Certification of Relief from Disabilities.</i>	<p>In making determinations on eligibility for employment, the provider/employer shall give consideration to a certificate of relief from disabilities or certificate of good conduct.</p>	<p>OMH regulations do not specify the effect of a certificate on the decision of whether to issue a denial. The appeals process gives the applicant a ten day window in</p>	<p>OMRDD regulations do not specify the effect of a certificate. However, once notified that OMRDD intends to issue a denial, the applicant has 30 days to provide</p>

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	Where such a certificate is produced, determination of suitability for employment shall be made in accordance with article 23A of the Correction Law. 10 NYCRR § 400.23(g)(2)	which to present “additional information.”	explanation and documentation of why a denial should not be issued.
<i>If denied, will a new records check be conducted on reapplication?</i>	The regulations do not provide for a different process where the applicant re-applies for employment.	The regulations do not provide for a different process where the applicant re-applies for employment.	The emergency regulations provide that once a person has a criminal background check with OMRDD or OMH, providers can use an expedited review process. If the applicant meets the requirements for expedited review, OMRDD may review its criminal history record check file as opposed to requesting a criminal history check from DCJS. Emergency Regs 622.33(g).