

Frequently Asked Questions – Background Investigations for DHHS Contract Vendor Workforce Members effective July 1, 2016

1. When is the policy effective?

It is effective **July 1, 2016** for all new procurements regardless of the source selection process whether an RFP, sole source, grant designated, etc.

If your current contract contains the following or similar language below, the policy pertains to the current contract:

- a. Some contracts currently contain language that includes such as “The contractor’s staff must submit to a background and criminal check in accordance with State law, including Code of Maryland Regulations (COMAR) 12.15.02 and all relevant provisions of Title 5, Subtitle 5, Part VI of the Family Law Article, Annotated Code of Maryland (“Criminal Background Investigations for Employees of Facilities and Other Individuals that Care for or Supervise Children”. In this case, the provider must follow the COMAR provisions.
- b. Other contract language maybe inserted in the contract such as “The Contractor must comply with DHHS Background Clearance Policy requirements for Staff. Any and all staff and volunteers having contact with children must be appropriately screened for safety precautions, including background checks and must successfully pass criminal background checks, prior to providing services under the Contract”.

Providers will have until **Jan. 1, 2017** to have a background check policy in place and background checks completed for affected staff. Starting **Jan. 1, 2017**, contract monitors will begin requesting the provider’s background check policy and inspecting records to see if the background checks have been performed.

2. Who does the policy affect in the provider’s organization?

Background checks or investigations are mandatory for each covered staff who is a Workforce Member or applicant that performs work in a Vulnerable Population Program or has a Sensitive or a Special Trust Position. See Sections 3.16 and 3.17 for definitions.

3. What are the responsibilities of the contract monitor as it relates to the policy?

During the routine, provider site visit, the contract monitor should request the provider’s background check policy. Then, randomly, contract monitor should select a sample of Workforce members (employees, volunteers or other types of staff) and review the staff or volunteer files which contain the background check information to determine if the provider has conducted the proper background and CPS checks if applicable. The

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Covered Staff is a Workforce Member who works with a Vulnerable Population Program or occupies a Sensitive Position or Special Trust Position. See policy for Sensitive Position definition (Section 3.16) and a Special Trust position definitions (Section 3.17).

The contract monitor should only review the summary page that indicates that the background check was conducted by the employer. The background check details should not be viewed by the contract monitor. The contract monitor should note in their monitoring report the employee's name for the background check reviewed and document that required background checks **were or were not** conducted by the provider. If a background check **has not been conducted** on the workforce member by the provider, the contract monitor should observe during the site visit if the staff or volunteer is **supervised by another employee** who possess a background check on file during the time the individual is in contact with a vulnerable population as defined in Section 3.21 of the policy.

As indicated in question#1, some contracts already contain provisions for the required background checks and contract monitors may currently perform the reviews at the provider's site. It is not necessary for the contract monitor to review **the details of the background checks** nor to review all the workforce background checks unless other regulations such as COMAR dictate otherwise.

4. What are the responsibilities of the providers for background checks?

Providers are to establish a background check policy that covers Workforce members, Sensitive Position and Special Trust Position for their organization. Providers are to conduct the background checks at the time of hire. If there are issues with the background checks, the provider or hiring authority must decide if the issues will affect employment or volunteer status, and to have the summary background check information available to the contract monitor at the time of an **announced or unannounced** site visits.

Providers are considered the hiring authority for their staff and volunteers and are responsible for their organization's hiring decisions. If a background check contains some negative information, it is the responsibility of the **provider (hiring authority)** to determine if the information will affect the employment or volunteer status required to perform services for the County contract. The hiring authority should have personnel policies that govern their hiring decision-making process.

5. Does this policy apply to the provider's subcontractors?

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Yes, this policy applies to subcontractors in the same manner as the prime contractor or provider.

- 6. The provider is legally classified as a sole proprietorship and is required to obtain a background check. Background checks are normally only provided to employers or other interested third parties. In a sole proprietorship, the employee and provider are the same. How would the background check process work be handled for such entities since the sole proprietor would be prohibited from receiving the background check information?**

Sole Proprietorships would have the DHHS Policy and Risk Manager receive the background checks from the company performing the review. Sole Proprietor would be required by DHHS to sign a release form authorizing DHHS to receive the form. The DHHS Policy and Risk Manager will notify contract monitor or the DHHS Quality and Selection Committee if the background check is acceptable or unacceptable.

The DHHS Policy and Risk Manager would maintain the confidential background check documents in a location that has restricted access and is secure. DHHS is an HIPAA protected entity and must follow all precautions related to securing client information so there is no departure from regular business practices already in place.

A more defined process will be developed in the next several weeks.

- 7. Does DHHS recommend any companies to conduct background checks?**

DHHS does not recommend any vendors to perform background checks. Non-Profit Montgomery is putting together a list of companies that providers may use to perform their background checks and will distribute the list to its members.

- 8. Can a provider include the cost of background checks in their contract budget?**

Yes, a provider may include the cost of the background check for an employee or volunteer in their contract budget. However, the cost should be equivalent to the FTE of their contract. In other words, if the employee works 100% on the DHHS contract, then, 100% of the background check cost can be absorbed by the contract. If the individual

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works 50% on the contract, then, only 50% of the cost of the background check costs can be absorbed by the contract.

9. How often must providers conduct background checks?

Providers must conduct the background checks **every five (5) years** on their workforce member. If there is a break in employment of greater than **120 days**, the entire background check must be performed again by the provider.

10. For what period of time must the provider conduct the background checks?

The provider must go back **seven (7) years** when conducting the background checks.

11. Which background check policy does the provider follow if located in a MCPS school?

Those providers located in MCPS will need to follow the MCPS policy for contractors and volunteers.

12. Where can I find the DHHS background check policy on the internet?

See link below.

<http://www.montgomerycountymd.gov/HHS/DoingBuswDHHS.html>

13. What type of background check should a provider conduct?

Providers should consult with their attorneys or human resource staff and develop a background check policy that are for Workforce members, Sensitive Positions and Special Trust Positions. See Sections 3.3, 3.16 and 3.17 for definitions for each type of classification.

Below is a sample which illustrates position classification and the type of background checks that a provider may conduct for their workforce members and other types of positions. **See Table I.**

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Also, in Table II below are Background Check Requirements required by State law or regulation.

Table I

Position Category	Type of Background Checks	Position Name
Workforce Member	<ul style="list-style-type: none"> • Criminal History- FBI & CJIS Checks • Validation of licenses if appropriate • SSN Trace • CPS Checks 	<ul style="list-style-type: none"> • Case Mgr. • Executive Director • Driver • Teacher • Assistant Teacher • Volunteer • Accountant • Certified Nursing Assistant • IT Specialist • Contractor
Sensitive Position	<ul style="list-style-type: none"> • Criminal History FBI & CJIS Checks • Credit Check • SSN Trace • CPS Checks if access to children 	
Special Trust Position	<ul style="list-style-type: none"> • Criminal History FBI & CJIS Checks • Credit Check • SSN Trace 	

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Table II

Background Check Requirements Mandated by State Law or Regulation

Position	Type(s) of Background Check Required	Does law establish any employment “disqualifiers”.	State Law / Regulation
Positions that care for or supervise children	Criminal records	No	<ul style="list-style-type: none"> • Family Law Article, 5-6-0-5-568 • COMAR, 12.15.02
Noncertified school personnel	Criminal records	Yes	<ul style="list-style-type: none"> • Education Article, 6-113
Certified school personnel	Criminal records	Yes	<ul style="list-style-type: none"> • COMAR, 13A.12.01
School vehicle driver	Criminal record, driving records, drug test	Yes	<ul style="list-style-type: none"> • COMAR, 13A.06.07
School vehicle attendant	Criminal records	Yes	<ul style="list-style-type: none"> • COMAR, 13A.06.07
Positions that care for or supervise dependent adults	Criminal records	No	<ul style="list-style-type: none"> • Health-General Article, 19-1901-19-1912 • COMAR, 12.15.03
Law enforcement offices	Criminal records, credit history, drug test, military service verifications, reference checks	Yes	<ul style="list-style-type: none"> • COMAR, 12.04.01
Correctional officers	Criminal records, credit history, drug test, military service verifications, reference checks	Yes	<ul style="list-style-type: none"> • COMAR, 12.10.01
Firefighters, Rescue squad members, Paramedics	Criminal records	Yes (for paramedics)	<ul style="list-style-type: none"> • Article 38A Fires and Investigations, 7A • COMAR, 30.02.04
Drug and alcohol treatment program employees	Criminal records	Yes	<ul style="list-style-type: none"> • COMAR, 10.47.01