R381-60-8: BACKGROUND CHECKS

The rules in this section explain the provider's and other covered individuals' responsibilities regarding background checks. The rules regulate how to obtain a background check, when it is required, and what criteria are used in determining if an individual passes or fails a background check.

Rationale / Explanation

In order to protect children from risk of abuse or neglect, background checks are required for individuals who are involved with child care. A failed background check may prohibit an individual from working in a child care program, and having rules about background checks may discourage a potentially abusive individual from seeking employment in child care. Performing background checks may also protect the child care facility against possible future legal challenges. *CFOC, 3rd ed. Standard 1.2.0.2 p. 10; Standards 10.3.3.1 - 10.3.3.2 pp. 400-401.*

Covered Individuals

Covered individuals are those who are involved with a child care program and are required to have a background check as explained below. An individual with a failed background check must not be involved with a child care program and will be required to leave if found at a facility during child care hours.

Owners and Members of the Governing Body

- An owner, whether a sole owner or if the child care center's legal structure is a corporation, a state or local government, or a private nonprofit agency, is considered an owner or member of the governing body if they perform one or more of the following functions.
  - They have unsupervised access to the children in care.
  - They are at the center during hours of operation.
  - They make decisions regarding the day-to-day operations of the child care center.
  - They participate in hiring or firing the child care program staff.
  - The child care program staff report to them and/or they conduct personnel evaluations of any of the child care program staff.
  - They are involved in writing the child care program's policies and procedures.

Directors

- These background check rules pertain to the director and director designee of a center. Refer to "Section 7: Personnel and Training Requirements" for other rules that apply to directors.

Caregivers and Other Staff

- Individuals who care for the children are required to pass background checks.
- Any individual who is hired to work for the child care center, including a substitute, is an employee who must have a current background check.
- Some child care centers are in buildings that also house other programs or activities such as a city or county recreation center, a community center, a church, or a school. These organizations may have employees who have no direct involvement with the children in care. These employees are not required to have background checks on condition that they never have unsupervised contact with any child in care including when in a bathroom. The child care provider must submit a written statement to CCL explaining how they prevent these other organizations' employees from having unsupervised contact with the children in care.

Volunteers, Guests, and Others Who May Have Access to Children

- There are several types of volunteers and guests including parents of enrolled children, individuals who are providing a service at the center, family members, student interns, and children age 13 years and older who help in a classroom. Refer to "Section 7: Personnel and Training Requirements" for the rules and information about background check requirements for these individuals.
- An individual who rents space in the center will be required to have a background check unless exempt under certain conditions. Refer to "Section 9: Facility" for more information.
- Any individual 12 years or older who resides or moves into a child care facility is considered a covered individual and is required to have a background check. This applies whether or not the individual directly participates in the child care program.

CCL Background Check Process

All prospective covered individuals must pass a CCL background check before becoming involved with a child care program. Background checks from other organizations do not meet the requirements of this rule.

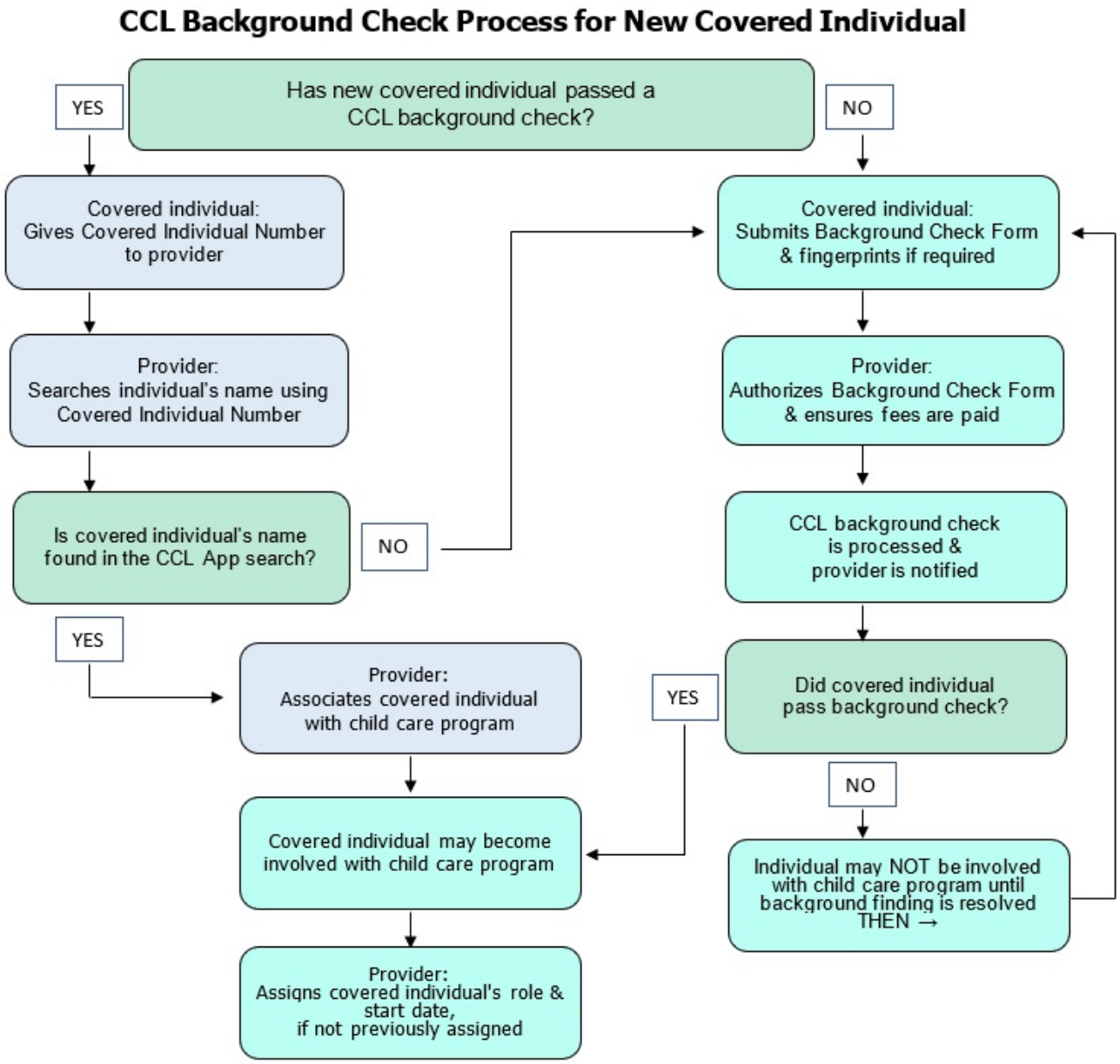
For Child Care Licensing, a background check includes examining a covered individual's background through the following eight sources which encompass three in-state checks, two national checks, and three interstate checks. CCL also checks the Utah sex offender registry for the names of any registered sex offenders who reside in the vicinity of the child care facility.

Utah	National	Interstate
1. Criminal registry or repository • Uses fingerprints • Includes juvenile records • Fingerprints not required for minors, except 16- or 17-year-old caregivers working for a DWS-approved facility	**4. FBI Next Generation Identification** • Uses fingerprints • Retains fingerprints for a real-time criminal report from FBI (Rap Back service) • For individuals 18 years old and older	**6. Criminal registry or repository** • In any other state where the individual has resided in the past 5 years • For individuals 18 years old and older
2. Sex offender registry or repository • For individuals 12 years old and older • Checks all facility addresses for names of registered sex offenders living in vicinity of child care facility	**5. National Crime Information Center (NCIC) National Sex Offender Registry (NSOR)** • For individuals 18 years old and older	**7. Sex offender registry or repository** • In any other state where the individual has resided in the past 5 years • For individuals 18 years old and older
3. Child abuse and neglect registry and database • For individuals 12 years old and older		**8. Child abuse and neglect registry and database** • In any other state where the individual has resided in the past 5 years • For individuals 18 years old and older

CCL participates in the FBI Next Generation Identification (NGI) system. The NGI process uses fingerprint identification to identify individuals arrested and prosecuted for crimes. With this system, authorized government agencies will receive an individual's criminal history record reported to the FBI and State.

It usually takes 3 full days for CCL to complete a background check after the request (including fingerprints if required) has been submitted, authorized, and paid for. However, the background check may take longer when the individual has resided outside of Utah within the past five years.

The diagram below summarizes the steps that the covered individual, the provider, and CCL must complete in the background check process. A detailed explanation of the process is described in the Compliance Guidelines sections below.



(1) Before a new covered individual becomes involved with child care in the program, the provider shall:
(a) have the individual submit an online background check form,
(b) authorize the individual's background check form,
(c) pay all required fees, and
(d) receive written notice from CCL that the individual passed the background check.

Proposed Rule Change

(1) Before a new covered individual becomes involved with child care in the program, the provider shall use the CCL provider portal search to:
(a) verify that the individual has a current CCL background check, and
(b) associate that individual with their facility.

(2) Before a new covered individual who does not show in the CCL provider portal search becomes involved with child care in the program, the provider shall:
(a) have the individual submit an online background check form and, for individuals age 18 years old and older, fingerprints;
(b) authorize the individual's background check through the CCL provider's portal;
(c) pay all required fees; and
(d) receive written notice from CCL that the individual passed the background check.

(3) A covered individual without a current background check will not show in the CCL provider portal search. The Department may not consider a covered individual's background check current when the covered individual has:
(a) failed a CCL background check;
(b) moved outside of Utah; or
(c) not been associated with an active, CCL approved child care facility for the past 180 days.

Compliance Guidelines

- This rule applies to covered individuals who have never had a CCL background check, and individuals who have passed a CCL background check, but are new to a child care facility.
- This rule does not apply to children who reside in the facility and are turning 12 years old. For information about their background check requirements, refer to 60-8(2).

For a new covered individual who has never had a CCL background check

- The covered individual must submit a background check request form and fingerprints if required.
  - Instructions for requesting a CCL background check and the background check form are found at: https://childcarelicensing.utah.gov under “Background Checks.”
  - Instructions for submitting fingerprints, if required, are found at: https://childcarelicensing.utah.gov/BgsHowTo.html.
  - Fingerprints are not required for individuals younger than 18 years of age unless they are 16- or 17-year-old caregivers working for a child care facility approved by the Department of Workforce Services (DWS).
- The provider must authorize the form through their CCL portal and ensure that all fees are paid.
  - For instructions on paying fees, go to: https://childcarelicensing.utah.gov/Payments.html.

- CCL will begin checking the individual's background when:
  - The individual has submitted a complete background request form,
  - The provider has authorized the background check to be run,
  - Required fingerprints have been submitted, and
  - All fees have been paid.
- CCL will cancel the background check request if required fingerprints are not submitted and/or fees are not paid within 10 working days of the provider's authorization.
- If the covered individual passes the background check:
  - CCL will notify the provider and the individual of the background check results.
  - A background check card (with a Covered Individual Number) will be issued and sent to the individual.
  - CCL will associate the individual with the child care facility.
  - "Cleared," "Passed," or "Temporary Passed" will be displayed as the status on the CCL provider portal.
  - The individual may then be involved with the facility.
- As soon as a prospective employee has passed either the FBI or Utah criminal registry fingerprint check, CCL will allow the individual to become involved with the child care facility on a provisional basis.
  - This is allowed on condition that the individual never has unsupervised contact with any child. The individual must be supervised at all times by an adult who has passed the CCL background check.
  - The background status on the provider's CCL portal will display as "Temporary Passed."
  - The individual's involvement with the child care program is considered provisional until they pass the entire CCL background check from all sources.
- If the covered individual does not pass the background check:
  - They may not be involved with a child care facility.
  - "Denied" will be displayed as the status; and both the provider and the covered individual will be notified in writing as well.
  - Previously denied individuals who may now be eligible to pass a background check will be required to resubmit a background check request, including fingerprints and fees, in order to be associated with child care.

For a covered individual who has passed a CCL background check, but is new to the child care facility

- The covered individual must give their Covered Individual Number (on their background check card) to the provider. The card verifies that the individual has submitted a CCL background check and is in the CCL system, but is not proof that their background check is active. This card is portable and can be used at any child care facility in the state.
  - If the card or the number is unavailable, the provider or the covered individual may contact CCL to get the information.
  - The covered individual's full name and date of birth will be required in order for CCL to provide the Covered Individual Number.
- The provider must determine whether the covered individual's background check is active as required by rule.
  - On the provider's CCL portal, the provider can search the individual's background check status by using the Covered Individual Number.
  - If the individual's background check is active, their name will show up in the search.

- If the individual's background check is active and they have passed the FBI fingerprint check:
  - They are not required to submit a new background check and associated fee.
  - The provider is required to associate the individual with their child care facility.
  - The covered individual may then become involved with the child care facility.
- If the individual's background check is active, but they have not passed the FBI fingerprint check as required by rule, they must submit a new CCL background check request form, fingerprints, and all associated fees.
- If the individual's name does not show up in the search (indicating that they do not have an active CCL background check), they must submit a CCL background check request form, fingerprints (if required), and all associated fees.
- Individuals who have not been associated with any CCL facility in Utah for the past 180 days (6 months) will not show up in the search and will be required to resubmit a background check request, including fingerprints and fees, in order to be associated with child care again.

High Risk Rule Violation
Corrective Action for 1st Instance
Citation and CMP Warning when:
- A new covered individual was involved with the child care program without passing a CCL background check.

Moderate Risk Rule Violation
Corrective Action for 1st Instance
Citation Warning when:
- A temporarily cleared individual (one who passed only part of the CCL background check) had unsupervised contact with the children.
- A new covered individual with an active background check was not associated with the child care facility before being involved with the program.

(2) The provider shall ensure that an online background check form is submitted and authorized, and that background check fees are paid within 10 working days from when a child who resides in the facility turns 12 years old.

Proposed Rule Change
(2) Within 10 working days from when a child who resides in the facility turns 12 years old, the provider shall:
(a) ensure that an online background check form is submitted,
(b) authorize the child's background check through the CCL provider's portal, and
(c) pay all required fees.

Compliance Guidelines
- When a child who resides in the facility turns 12 years old, they are considered a new covered individual.
- The child's parent has 10 working days from their child's 12th birthday to submit a background check request form. CCL will not accept background check requests for individuals younger than 12 years old.
- The provider must ensure that all associated fees are paid and authorize the background check through their CCL portal. The submission of fingerprints is not required.

- CCL will begin checking the child's background when:
  - A complete background request form has been submitted,
  - The provider has authorized the background check to be run, and
  - All fees have been paid.
- CCL will cancel the background check request if fees are not paid within 10 working days of the provider's authorization.

Moderate Risk Rule Violation
Corrective Action for 1st Instance
Citation Warning

(3) The provider shall ensure that a CCL background check for each individual age 18 years or older includes fingerprints and fingerprints fees.

Proposed Rule Change

~~(3) The provider shall ensure that a CCL background check for each individual age 18 years or older includes fingerprints and fingerprints fees~~.

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(4) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.

(5) If fingerprints are submitted through Live Scan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.

(6) Fingerprints are not required if the covered individual has:
(a) previously submitted fingerprints to CCL for a Next Generation, national criminal history check;
(b) resided in Utah continuously since the fingerprints were submitted; and
(c) kept their CCL background check current.

Proposed Rule Change

~~(6) Fingerprints are not required if the covered individual has:~~
~~(a) previously submitted fingerprints to CCL for a Next Generation, national criminal history check;~~
~~(b) resided in Utah continuously since the fingerprints were submitted; and~~
~~(c) kept their CCL background check current.~~

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(7) Background checks are valid for 1 year and shall be renewed before the last day of the month listed on the covered individual's background check card.

Proposed Rule Change

~~(7) Background checks are valid for 1 year and shall be renewed before the last day of the month listed on the covered individual's background check card~~.

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(8) At least 2 weeks before the end of the renewal month that is written on a covered individual's background check card, the provider shall:
- **(a) have the individual submit an online CCL background check form and fingerprints if not previously submitted,**
- **(b) authorize the individual's background check form through the provider portal, and**
- **(c) pay all required fees.**

Proposed Rule Change

~~(8) At least 2 weeks before the end of the renewal month that is written on a covered individual's background check card, the provider shall:~~
- ~~(a) have the individual submit an online CCL background check form and fingerprints if not previously submitted,~~
- ~~(b) authorize the individual's background check form through the provider portal, and~~
- ~~(c) pay all required fees.~~

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(9) The following background findings may deny a covered individual from being involved with child care:
- **(a) LIS supported findings,**
- **(b) the individual's name appears on the Utah or national sex offender registry,**
- **(c) any felony convictions,**
- **(d) any Misdemeanor A convictions, or**
- **(e) Misdemeanor B and C convictions for the reasons listed in R381-60-8(10).**

Proposed Rule Change

(9) The following background findings may deny a covered individual from being involved with child care:
- (a) LIS supported findings,
- (b) the individual's name appears on the Utah or national sex offender registry,
- (c) any felony convictions, or
- ~~(d) any Misdemeanor A convictions, or~~
- ~~(e) Misdemeanor B and C convictions~~ for any of the reasons listed ~~in~~ under R381-60-8(10).

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(10) The following convictions, regardless of severity, may result in a background check denial:
- **(a) unlawful sale or furnishing alcohol to minors;**
- **(b) sexual enticing of a minor;**
- **(c) cruelty to animals, including dogfighting;**
- **(d) bestiality;**
- **(e) lewdness, including lewdness involving a child;**
- **(f) voyeurism;**
- **(g) providing dangerous weapons to a minor;**
- **(h) a parent providing a firearm to a violent minor;**
- **(i) a parent knowing of a minor's possession of a dangerous weapon;**
- **(j) sales of firearms to juveniles;**
- **(k) pornographic material or performance;**
- **(l) sexual solicitation;**
- **(m) prostitution and related crimes;**
- **(n) contributing to the delinquency of a minor;**
- **(o) any crime against a person;**
- **(p) a sexual exploitation act;**

(q) leaving a child unattended in a vehicle; and
(r) driving under the influence (DUI) while a child is present in the vehicle.

(11) A covered individual with a Class A misdemeanor background finding not listed in R381-60-8(10) may be involved with child care when:
(a) 10 or more years have passed since the Class A misdemeanor offense, and
(b) there is no other conviction for the individual in the past 10 years.

Proposed Rule Change

~~(11) A covered individual with a Class A misdemeanor background finding not listed in R381-60-8(10) may be involved with child care when:~~
~~(a) 10 or more years have passed since the Class A misdemeanor offense, and~~
~~(b) there is no other conviction for the individual in the past 10 years.~~

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(12) A covered individual with a Class A misdemeanor background finding not listed in R381-60-8(10) may be involved with child care for up to 6 months if:
(a) 5 to 9 years have passed since the offense,
(b) there is no other conviction since the Class A misdemeanor offense,
(c) the individual provides to the Department documentation of an active petition for expungement, and
(d) the provider ensures that the individual does not have unsupervised contact with any child in care.

Proposed Rule Change

~~(12) A covered individual with a Class A misdemeanor background finding not listed in R381-60-8(10) may be involved with child care for up to 6 months if:~~
~~(a) 5 to 9 years have passed since the offense,~~
~~(b) there is no other conviction since the Class A misdemeanor offense,~~
~~(c) the individual provides to the Department documentation of an active petition for expungement, and~~
~~(d) the provider ensures that the individual does not have unsupervised contact with any child in care.~~

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(13) If a petition for expungement is denied, the covered individual shall no longer be involved with child care.

Proposed Rule Change

~~(13) If a petition for expungement is denied, the covered individual shall no longer be involved with child care~~.

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(14) A covered individual shall not be denied if the only background finding is a conviction or plea of no contest to a nonviolent drug offense that occurred 10 or more years before the CCL background check was conducted.

(15) The Department may rely on the criminal background check findings as conclusive evidence of the arrest warrant, arrest, charge, or conviction; and the Department may revoke, or deny a license or employment based on that evidence.

Compliance Guidelines

To suspend a license means that the license is temporarily revoked.

(16) If the provider has a background check denial, the Department may suspend or deny their license until the reason for the denial is resolved.

(17) If a covered individual fails to pass a CCL background check, including that the individual has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, the provider shall prohibit that individual from being employed by the child care program or residing at the facility until the reason for the denial is resolved.

Compliance Guidelines

- It is a rule violation if a covered individual who failed the background check is involved with a child care facility, and consequently, the individual must leave the facility.

High Risk Rule Violation
Corrective Action for 1st Instance

Citation and CMP Warning

(18) If a covered individual is denied a license or employment based upon the criminal background check and disagrees with the information provided by the Department of Public Safety, the covered individual may appeal the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

(19) If a covered individual disagrees with a supported finding on the Department of Human Services Licensing Information System (LIS):
(a) the individual cannot appeal the supported finding to the Department of Health, and
(b) the covered individual may appeal the finding to the Department of Human Services and follow the process established by the Department of Human Services.

(20) Within 48 hours of becoming aware of a covered individual's arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding, the provider and the covered individual shall notify the Department. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license.

Compliance Guidelines

- It is important that both the covered individual and the provider each report to CCL within 48 hours of having knowledge of any of the situations described above.
- An arrest does not automatically disqualify a covered individual from being involved with child care. CCL will use this information to verify if the nature of the arrest or charges will result in a denial.
- If an individual receives a ticket for a driving offense or other infraction of the law, it is not required to report the ticket to CCL unless it becomes an arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding.

Moderate Risk Rule Violation
Corrective Action for 1st Instance

Citation Warning

(21) The Executive Director of the Department of Health may overturn a background check

denial when the Executive Director determines that the nature of the background finding or mitigating circumstances do not pose a risk to children.

Compliance Guidelines

Any request to the Executive Director for a decision on a background check denial must be made through the CCL program appeal process. Please refer to “Section 5: Rule Violations and Penalties” for information about the appeal process.