



## **CRIMINAL HISTORY CHECKS**

### **STATE STATUTE IC-16-27-2**

Dear Applicant or Agency:

This letter sets forth the requirements for criminal history checks that **employees** and **owners** of agencies must meet in order to participate as a licensed home health agency in the state of Indiana. Review the State Statute IC 16-27-2 to ensure that you are in compliance with the law.

To be in compliance to operate a home health agency all owners and employees must have a national criminal history background or expanded criminal history check. It is the responsibility of the agency to review the employment history and place of residence(s) of employees and owners. If the Department conducts a survey the Department will request information to verify that the agency is in compliance with State Statute IC 16-27-2. If the agency is using an entity other than the Indiana State Police for the search ensure search timeline is on the criminal history check.

Prior to submitting your initial application, change of ownership application or staff/officer/owner changes to the Department ensure that applicant agency will be in compliance with State Statute IC 16-27-2-3, IC 16-27-2-4, IC 16-27-2-5 Criminal History Checks on employees and officers/owners.

A national criminal history check or expanded criminal history check, as explained in IC 16-27-2, must be completed on the owners, officers, administrator, nursing supervisor, and alternates and included in the initial or change of ownership application. If there are any changes in owners, officers and administrative staff after receiving the initial license the agency must submit these changes to the Department on agency's letterhead along with applicable criminal history check.

#### **Owners Criminal History Checks**

The Indiana Code at 16-27-2-3 specifies that an owner or operator may not operate a home health agency if the person has been convicted of any of the following: rape, criminal deviate conduct, exploitation of an endangered adult, failure to report battery, neglect or exploitation of an endangered adult, or theft.

## **Employees Criminal Checks**

The Indiana Code at 16-27-2-5 specifies that a person who operates a home health agency under IC 16-27-1 may not employ a person to provide services in a patient's or client's temporary or permanent resident if that person's national criminal history check or expanded criminal history check indicates that the person has convicted of any of the following: rape, criminal deviate conduct, exploitation of an endangered adult, failure to report battery, neglect or exploitation of an endangered adult, or theft.

## **Indiana State Police National Criminal History Checks**

To receive information on how to request a criminal history check access the **Indiana State Police** website at [www.in.gov/isp](http://www.in.gov/isp) and click on inkless. If you have problems accessing the **Indiana State Police** website or cannot find the answer to your question in the FAQs call 317-234-2717 or 317-233-5037 for assistance.



## Review Criminal History State Statute IC 16-27-2

### Criminal History Checks Defined

- ✓ The agency shall submit current copies of national or expanded criminal history checks on the administrator, alternate administrator, nursing supervisor, alternate nursing supervisor, and officers/owners.
- ✓ Ensure that the agency conducts national criminal history or expanded criminal history checks on all employees. Review IC 16-27-2 on criminal history checks for the requirements to operate a home health agency in Indiana.
- ✓ The criminal history search must be a lifetime search not limited in years.
- ✓ The expanded criminal history check and national criminal history checks are defined below.
  - ❖ **IC 16-27-2-0.5 –Expanded Criminal History Check Defined**  
Sec.0.5. As used in this chapter, “expanded criminal history check” has the meaning set forth in IC 20-26-2-1.5
  - ❖ **IC 20-26-2-1.5**  
Sec. 1.5. “Expanded criminal history check” means a criminal history background check of an individual that includes:
    - (1) A background check by a consumer reporting agency regulated under 15 U.S.C. 1681 et seq. that does not include a written, oral, or other communication of information concerning the individual’s credit score, creditworthiness, credit standing, or credit capacity, but does include a:
      - (A) verification of the applicant’s identity;
      - (B) search of all names associated with the applicant;
      - (C) search of the records maintained by all counties in Indiana in which the individual who is the subject of the background check resided;
      - (D) search of the records maintained by all counties or similar governmental units in another state, if the individual who is the subject of the background check resided in another state;
      - (E) search of United States district court records from the districts in which the applicant resided;

- (F) check of sex offender registries in every state or the national sex offender registry maintained by the United States Department of Justice; and
- (G) multistate criminal data base search; or
- (2) a:
  - (A) national criminal history background check (as defined in IC 10-13-3-12); and
  - (B) check of:
    - (i) sex offender registries in all fifty (50) states; or
    - (ii) the national sex offender registry maintained by the United States Department of Justice.

**Ensure is an “expanded criminal history” check is conducted that the search is not limited in years. If an individual has been convicted of rape, criminal deviate conduct, exploitation of an endangered adult or failure to report battery, neglect, or exploitation or endangered adult the individual MAY NOT operate a home health agency or employ a person to provide services in a patient’s temporary or permanent residence. Refer to IC 16-27-2-3 and IC 16-27-2-5.**

❖ **IC 16-27-2-2.1 –National Criminal History Background Check Defined**

Sec.2.1. National Criminal History Background Check means the determination provided by the State Police Department under IC 10-13-3-39(i).

❖ **IC 10-13-3-39(i)**

This subsection applies to a qualified entity that is a:

- (1) home health agency licensed under IC16-27-1; or
- (2) personal services agency licensed under IC 16-27-4.

After receiving the results of a national criminal history background check from the Federal Bureau of Investigation, the department shall make a determination whether the applicant has been convicted of an offense described in IC 16-27-2-5(a) and convey the determination to the requesting qualified entity.

**Owners Criminal History Checks – IC-27-2-3**

**Operation of home health agency or personal services agency; prohibition; criminal conviction**

Sec.3. (a) A person may not operate a home health agency or personal service agency if the person has been convicted of any of the following:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal Deviate conduct (IC 53-42-4-2).
- (3) Exploitation of an endangered adult (IC 35-46-1-12).

- (4) Failure to report battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).
  - (5) Theft (IC 35-43-4), if the person's conviction for theft occurred less than ten (10) years before the date of submission by the person of an application for licensure as a home health agency under IC 16-27-1 or as a personal services agency under IC 16-27-4.
- (b) A person who knowingly or intentionally violates this section commits a Class A misdemeanor.

### **Employees Criminal History Checks – IC-16-27-2-4**

#### **Employees; criminal history**

Sec.4. (a) A person who operates a home health agency under IC 16-27-1 or a personal services agency under IC 16-27-4 shall apply, not more than three (3) business days after the date that an employee begins to provide services in a patient's temporary or permanent residence, for a copy of the employee's national criminal history background check or expanded criminal history check.

(b) A home health agency or personal services agency may not employ a person to provide services in a patient's or client's temporary or permanent residence for more than three (3) business days without applying for a national criminal history background check or an expanded criminal history check.

(c) A person's expanded criminal history check may not include:

- (1) a person's information when the person was less than eighteen (18) years of age; or
- (2) information that is restricted by a state where the person previously resided.

### **Employees Criminal Conviction – IC-16-27-2-5**

#### **Employees; prohibition; criminal conviction**

Sec.5. (a) Except as provided in subsection (b), a person who operates a home health agency under IC 16-27-1 or a personal services agency under IC 16-27-4 may not employ a person to provide services in a patient's or client's temporary or permanent residence if that person's national criminal history background check or expanded criminal history check indicates that the person has been convicted of any of the following:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal Deviate conduct (IC 53-42-4-2).
- (3) Exploitation of an endangered adult (IC 35-46-1-12).
- (4) Failure to report battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).
- (5) Theft (IC 35-43-4), if the conviction for theft occurred less than ten (10) years before the person's employment application date.

(b) A home health agency or personal services agency may not employ a person to provide services in a patient's or client's temporary or permanent residence for more than twenty-one (21) calendar days without receipt of that person's national criminal history background check or expanded criminal history check, required by section 4 of this chapter, unless the state police department, the Federal Bureau of Investigation under IC 10-13-3-39, or the private agency providing the expanded criminal history check is responsible for failing to provide the person's national criminal history background check or expanded criminal history check to the home health agency or personal services agency within the time required under the subsection.