

TITLE XII

PUBLIC SAFETY AND WELFARE

CHAPTER 170-E

CHILD DAY CARE, RESIDENTIAL CARE, AND CHILD-PLACING AGENCIES

Child Day Care Licensing

Section 170-E:7

170-E:7 State Registry and Criminal Records Check; Revocation of Registration and Withholding of State Funds. –

I. Child day care agencies and providers who are required to be licensed or registered according to the provisions of this chapter shall submit to the department the names, birth names, aliases, birth dates, and resident addresses during the preceding 5 years of all owners, household members, and directors prior to the issuance of a permit or license, and subsequent to licensure, for all individuals as required by the department in rules adopted under RSA 541-A.

I-a. The persons described in paragraph I shall complete a Federal Bureau of Investigation fingerprint check using the biometric identification system through a qualified law enforcement agency or an authorized employee of the division of state police, department of safety and authorize the release of the person's criminal records, if any, to the department. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints shall be necessary to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

II. (a) For every name submitted on an application, in the registration process, and for each individual for whom information is required to be submitted pursuant to paragraph I, the department shall search for such persons against the New Hampshire sex offender and abuse and neglect registries, and the sex offender registries of each state where the individual resided in the past 5 years. The individual shall submit all forms and any required payments to the department to request from each state a check of the criminal history repository and abuse and neglect registry offices where the individual resided in the past 5 years.

(b) Under the authority of the Child Care and Development Block Grant Act of 2014, the division of state police shall conduct the criminal history records check pursuant to paragraph I-a, through its records and through the Federal Bureau of Investigation, to include a check of the National Sex Offender Registry file in the National Crime Information Center records. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department and shall indicate whether the individual is registered on the National Sex Offender Registry file in the National Crime Information Center records. The department shall maintain the confidentiality of all criminal history records information received.

(c) The costs of criminal history record and abuse and neglect registry checks shall be borne by the child day care agency or provider; provided, that the child day care agency or provider may require an applicant to pay the actual costs of the criminal history check and abuse and neglect registry checks of the employee.

(d) Any individual who refuses to consent to the criminal background check or knowingly makes a materially false statement in connection with such criminal background checks shall be ineligible for employment.

II-a. An individual shall not be required to submit a request under paragraph I-a if:

(a) In the previous 5 years, the individual submitted a state criminal records release form and fingerprints and completed a criminal records check under this section;

(b) The individual is currently employed by a child care provider within the state, or has been separated from employment from a child care provider within the state for a period of not more than 180 consecutive days; and

(c) The department made a determination that when the individual completed the criminal records check within the previous 5 years as described in this section, the individual was eligible for employment as provided in paragraphs III and IV.

III. The department shall make a determination regarding the individual's eligibility for employment no later than 45 days from submission of all required information as described in paragraphs I and I-a. If any individual whose name has been submitted for a check under this section is registered or required to be registered on a state sex offender registry or repository, or the National Sex Offender Registry, or has been convicted of a felony consisting of murder, child abuse or neglect, an offense involving child sexual abuse images, trafficking, spousal abuse, a crime involving rape or sexual assault, kidnapping, arson, physical assault or battery, or a drug-related offense committed during the previous 5 years, or any other violent or sexually-related misdemeanor against a child, including child abuse, child endangerment, sexual assault, or a misdemeanor involving child sexual abuse images, or of a crime which shows that the person might be reasonably expected to pose a threat to a child, such as a violent crime or a sexually-related crime against an adult, the department shall:

(a) If the individual is the applicant or owner, revoke or deny the license or permit, or withhold state funds if the child day care provider is not required to be licensed.

(b) For any other individual, inform the child day care agency or registered provider that the individual is ineligible for employment and give the agency or registered provider an opportunity to take immediate corrective action to remove the individual from the agency, and, in conjunction with the department, to develop a corrective action plan, approved by the department, which shall ensure that the individual will not be on the premises of the child day care program and shall have no contact with children enrolled in the child day care program.

(c) Suspend, deny, or revoke the license or permit, and withhold state funding, if the child day care program refuses to take corrective action as indicated in subparagraph (b), or subsequently fails to comply with the corrective action plan approved by the department.

(d) Upon a finding of criminal activity as described in this paragraph, withhold state funding to registered child day care providers that are exempt from the licensing requirements of RSA 170-E:4 if the provider refuses to take corrective action as indicated in subparagraph (b), or fails to comply with the corrective action plan approved by the department.

IV. If any individual whose name has been submitted for this check has been convicted of a felony offense deemed directly or indirectly harmful to children in child day care, crimes against minors or adults, except crimes as provided in paragraph III, or is the subject of a founded complaint of child abuse or neglect, the department may deny, revoke, or suspend a license, permit, or registration pending the development and implementation of a corrective action plan approved by the department. In addition, the department may, upon a finding of criminal activity or a founded complaint of child abuse or neglect as described in this paragraph, withhold state funding to registered child day care providers that are exempt from the licensing requirements of RSA 170-E:4 pending the development and implementation of a corrective action plan approved by the department. The department shall conduct an investigation in accordance with rules adopted under this subdivision to determine whether the individual poses a present threat to the safety of children. The investigation shall include an opportunity for the individual to present evidence on his or her behalf to show that the individual does not pose a threat to the safety of children.

IV-a. After the department has made a determination that an individual required to complete a criminal record check under paragraph I does not pose a present threat to the safety of children, the department may issue a child care employment eligibility card, which shall be valid for 5 years provided that no disqualifying convictions are subsequently submitted, and the individual remains eligible as described in subparagraph II-a(b). The department may require additional background checks to be completed based upon reliable information that the individual received one or more additional convictions subsequent to the previous criminal record check submission. If the department receives confirmation from a law enforcement agency that an individual has been charged with a crime as described in paragraph III or IV, the department shall suspend the individual's child care employment eligibility card and inform the child day care agency or registered provider that the individual is ineligible for employment and give the agency or registered provider an opportunity to take immediate corrective action to remove the individual from the agency, and, in conjunction with the department, to develop a corrective action plan, approved by the department, which shall ensure that the individual shall not be on the premises of the child day care program and shall have no contact with children enrolled in the child day care program while charges are pending.

IV-b. Child day care providers who are required to be licensed or registered according to the provisions of this chapter shall, for every individual submitted for a check under paragraph I who is not required to complete the criminal background check pursuant to paragraph II-a, have on file a signed statement from the individual stating since the day the individual's background check was completed, that he or she:

(a) Has not been convicted of any crimes; and

(b) Has not had a finding by the department or any administrative agency in this or any other state for abuse, neglect, or exploitation.

IV-c. Child day care agencies or providers, whether registered or licensed, and individuals as described in paragraph I, shall complete the background check process described in this section no later than 5 years from the previous background check submission.

IV-d. The fee for a child care employment eligibility card issued under paragraph IV-a shall be \$50 and the card shall be valid for 5 years from the date of issuance, or a prorated amount of \$10 per year from the most recently completed criminal background check. A replacement card may be requested for a \$15 fee.

V. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the confidentiality of information collected under this section and to the release, if any, of such information.

Source. 1990, 257:8. 1994, 212:2. 1995, 310:134. 1998, 147:2, 3; 256:2; 390:1. 1999, 326:2. 2000, 157:1. 2006, 289:8. 2009, 144:255. 2011, 100:1, eff. July 26, 2011. 2016, 158:1-5, eff. Oct. 1, 2016. 2017, 91:3, eff. Aug. 6, 2017. 2018, 318:9, 10, eff. Aug. 24, 2018. 2019, 313:1, eff. July 1, 2019.