

**State of Vermont
Division of Disability and Aging Services
TBI Program**

**BACKGROUND CHECK POLICY
Effective: April 1, 2006**

I. Introduction

Performing background checks on individuals who work with vulnerable people is a component of preventing abuse, neglect and exploitation. This policy describes when a background check is required, what the components of a background check are and what is done if a background check reveals a potential problem.

Background checks supplement but do not replace reference checks. Background checks should never be relied upon as a substitute for personal contact with former employers or others who are in a position to have personal knowledge about the worker's qualifications to work with vulnerable people.

II. Definitions

A. **"Background check"** includes all of the following:

1. A request for information about all substantiated findings of abuse, neglect, and exploitation directed to the Department for Children and Families (DCF) child abuse registry;
2. A request for information about all substantiated findings of abuse, neglect, and exploitation directed to the Department of Disabilities, Aging and Independent Living (DAIL), Division of Licensing and Protection adult abuse registry;
3. A request for information about all criminal convictions directed to the Vermont Crime Information Center (VCIC);
4. An on-line search of the Exclusions Database of the federal Department of Health and Human Services' Office of Inspector General as www.oig.hhs.gov.
5. For volunteers or workers who will be paid to transport a person by motor vehicle, a complete Motor Vehicle Driver Record from the Vermont Department of Motor Vehicles.

B. **"Person who receives services"** means an individual who receives support and/or services through a program administered by the

Department of Disabilities, Aging and Independent Living (DAIL), including, but not limited to personal services, community supports, adult day services, housing and home supports, case management, service planning and coordination, respite care, companion care, clinical or other mental health services; crisis services, supported employment services, transportation, nutrition, nursing, and other kinds of care for which a worker receives reimbursement. Specific services include, but are not limited to:

- Adult Day Services
- Attendant Services
- Children's Personal Care Services
- Choices for Care Waiver Services (home-based, nursing facility and enhanced residential care)
- Developmental Disability Services
- High Tech Services
- Homemaker Services
- Traumatic Brain Injury Services

The term includes individuals who self-, family- or surrogate-manage their services. The term does *not* include individuals who receive supports through the Flexible Family Funding program, the Dementia Respite Program, the National Family Caregiver Support Program, or Flex Funds.

- C. **“Agency or provider”** means an organization that operates programs/services administered by DAIL for any “person who receives services.”
- D. **“Worker”** means an individual who volunteers (including those paid a stipend or expense reimbursement) and an individual who is employed or contracted by an agency/provider (including contracted home providers, shared living providers, developmental home providers, foster care providers), surrogate, family member or person who receives services.

III. Requirements for Background Checks

- A. Background checks are **required** for all workers who are paid with funds administered by DAIL and who:
 1. Provide care to a person who receives services; or,
 2. Manage funds or services on behalf of a person who receives services.

- B. Background checks are **required** for any volunteers recruited and placed by an agency or provider who will work alone with a person who receives services.
- C. Background checks are **recommended** for respite workers hired by families through the Flexible Family Funding program, the Dementia Respite Program, the National Family Caregiver Support Program (NFCSP) or Flex Funds. Families may use an Intermediary Service Organization (ISO) to complete the background check for a nominal fee. Providers and agencies are required to notify families of this option.
- D. In addition to meeting the requirements of this policy, facilities or agencies that are state licensed and/or federally certified must follow abuse prevention protocols as specified in applicable state and federal regulations.

IV. Responsibility for Ensuring that Background Checks Are Completed

- A. Any agency or provider employing a worker or supervising a volunteer is responsible for ensuring that the required background checks are completed, or for arranging for the required checks to be completed by an Intermediary Service Organization (ISO).
- B. An Intermediary Services Organization (ISO) is responsible for ensuring that the required background checks are conducted for any workers who will be paid through the ISO. In addition to the required background checks, the ISO shall conduct any recommended background checks requested by an employer/contractor.
- C. Employers and contractors who will be paying workers through the ISO are responsible for obtaining the signed and completed forms necessary for the background checks to be completed.

V. Payment for Background Checks

Applicants for employment shall not be charged for the costs of background checks. The costs of background checks are considered part of the administrative costs for an agency or provider, and are part of the contract for services of an ISO.

VI. Employment Pending Completion of Background Checks

- A. An offer of employment or contract may be made contingent upon a satisfactory background check.

- B. A worker, contractor or volunteer may, at the discretion of the employer or contracting entity, provide services to a person pending receipt of the results of the background check, but under no circumstances may a worker or contractor be paid for longer than sixty (60) days without receipt of a completed background check.

VII. Periodic Updating of Background Checks

Subsequent to the initial background check, an agency or provider shall have a policy for conducting periodic random checks of workers and volunteers covered above.

VIII. Restriction Upon Paying Persons with a History of Substantiated Abuse, Neglect, or Exploitation, or History of Certain Crimes

Funds administered by DAAL may not be used to employ, place or contract with a person who has:

- A. A substantiated record of abuse, neglect, or exploitation of a child or a vulnerable adult;
- B. Been excluded from participation in Medicaid or Medicare services, programs, or facilities by the federal Department of Health and Human Services' Office of the Inspector General; and/or,
- C. A criminal conviction for an offense involving bodily injury, abuse of a vulnerable person, a felony drug offense, or a property/money crime involving violation of a position of trust, including, but not limited to:

Aggravated assault	Hate motivated crime
Aggravated stalking	Kidnapping
Aggravated sexual assault	Lewd and lascivious conduct
Assault and robbery	Simple assault
Manslaughter	Sexual assault
Assault upon law enforcement	Murder
Cruelty to children	Domestic assault
Arson	Stalking
Extortion	Embezzlement
Abuse, neglect, or exploitation of a vulnerable adult or child	Recklessly endangering another person while driving

IX. Questionable Background Check Results

If a background check reveals a non-restricted conviction or motor vehicle violation, the employer may at his/her discretion hire or contract with the worker.

X. Variances

Variances of this policy may be granted only under exceptional circumstances. The agency or provider employing or contracting with a worker or supervising a volunteer is responsible for the decision to grant a variance under this policy. For individuals who are employed or contracted by a home provider (e.g., developmental home, shared living, foster care) surrogate, family member or person who receives services, a request for variance, including a copy of the information under question, must be made in writing to:

Deputy Commissioner
Division of Disability and Aging Services
Department of Disabilities, Aging and Independent Living
Weeks Building, 103 South Main Street
Waterbury, VT 05671-1601

The following factors must be considered in the decision to grant or deny any variance:

- A. Age of the individual at the time of the crime or substantiation;
- B. Nature and seriousness of the crime (e.g., were there circumstantial reasons; was it related to a specific relationship, etc.);
- C. The person's involvement with the criminal justice system and/or child or adult abuse, neglect or exploitation systems since the occurrence;
- D. The amount of time that has passed since the substantiation or conviction;
- E. Willingness of the individual to pursue expungement of any child or adult abuse substantiation;
- F. Disclosure to the person receiving services, their surrogate, and legal guardian (if there is one).

Written documentation of the decision to grant a waiver must be made stating the rationale and any conditions.

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MANDATED REPORTER PROTOCOL

The following protocols are specific to adults, age 18 and above:

Who needs to report:

Most public and private service related employees or providers are mandated reporters. Everyone, whether mandated or not, is encouraged to make reports to APS if a vulnerable adult is being abused, neglected or exploited (see definitions below).

When do I need to report:

Mandated reporters must make an initial report to APS within 48 hours when they have a reason to suspect that a vulnerable adult has been abused, neglected or exploited (see definitions below).

Who is a vulnerable adult?

Anyone 18 years old or older that is a resident of a licensed residential facility or psychiatric unit, or someone who has received personal care services in their home for a least one month. A vulnerable adult may also be an adult with a physical, mental or developmental disability (including infirmities of aging), that interferes with their ability to provide for their care without assistance or that impairs their ability to protect themselves from abuse, neglect or exploitation.

How do I make a report:

Call 1-800-564-1612 or Fax the report to: 802-241-2358. The report can be found in the Appendix C. Click on the following link to fill out an online report form:

<http://www.dad.state.vt.us/lp/New%20APS%20Pages/reportingform.htm>.

What information will APS need:

As much information as possible including a description of the event, names, addresses, phone numbers of the alleged victim, perpetrator, witnesses, service providers and any other individuals that may have additional information. DO NOT DELAY reporting because you are missing some of the above information, you can always call again with more details.

What is Abuse:

Abuse can be any action (including unnecessary restraint or confinement) that threatens a vulnerable adults' physical or emotional health or welfare. Any sexual activity between a vulnerable adult and a volunteer or paid caregiver employed by a facility of program is also abuse. Providing or threatening to provide a drug or other potentially harmful substance to a vulnerable adult for other than lawful and legitimate medical or therapeutic treatment is abuse.

What is Neglect:

Neglect is the purposeful or reckless failure by a caregiver to provide adequate care (the goods, services and plans needed to maintain reasonable health and safety) to a vulnerable adult. Neglect is also the failure of a caregiver to report significant changes in the health of a vulnerable adult or the failure to make a reasonable effort to protect a vulnerable adult from abuse, neglect or exploitation by others.

What is Exploitation:

Exploitation is the willful unauthorized transfer or use of a vulnerable adult's property and includes interest in or control of assets or gained through undue influence or fraud. It is exploitation to force or compel a vulnerable adult to perform services for the profit or advantage of another. Exploitation also covers any non-consensual sexual activity with a vulnerable adult.

The following protocols are specific to children, under the age of age 18:

Who needs to report:

Most public and private service related employees or providers are mandated reporters, specifically: Chiropractor, dentist, licensed practical nurse, medical examiner, mental health professional, osteopath, physician, physician's assistant, psychologist, registered nurse, surgeon, or any other health care professional; Hospital administrator, intern, or resident physician in any hospital in the state; School guidance counselor, librarian, principal, superintendent, or teacher; childcare worker; police officer or probation worker; social worker; member of the clergy; or residential and non-residential camp administrator, counselor, or owner. Everyone, whether mandated or not, is encouraged to make reports to if a child is being abused or neglected.

What is child abuse and neglect:

Vermont's child protection law defines an abused or neglected child as one whose physical health, psychological growth and development, or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. It also means a child who is sexually abused or at substantial risk of sexual abuse by any person (including another child).

Harm can occur by: abandonment of the child; emotional maltreatment, physical injury, or sexual abuse; failure to supply a child with adequate food, clothing, shelter, or health care. A child means an individual under age 18. Emotional maltreatment means a pattern of malicious behavior that results in impaired psychological growth and development. Physical injury means death, permanent or temporary disfigurement, or impairment of any bodily organ or function other than by accidental means. Sexual abuse consists of any act or acts by any person involving sexual molestation or exploitation of a child including, but not limited to, incest, rape, prostitution, sodomy, child pornography, or any lewd and

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lascivious conduct involving a child. Risk of harm means a significant danger that a child will suffer serious harm other than by accidental means.

How do I make a report:

Call or visit your local Family Services Office during regular business hours: Monday through Friday, from 7:45 a.m. to 4:30 p.m. Please do not leave a message on someone's voice mail (keep in mind that we must *receive* your report within 24 hours).

After-hours, on weekends, or on state holidays, you can make a report by calling our Emergency Services Program at 1-800-649-5285. Try to have as much information on hand as possible, including the names of the child's parents/caretakers; the child's name, date of birth, and school or childcare facility; and the nature and extent of the injuries or allegations of abuse. A social worker will question you about the child's situation, record the information you provide, ask you to complete a written report, and, in some cases, ask you to gather more information.

Local Family Services Offices numbers can be found online at: <http://www.dcf.state.vt.us/fsd/districtoffices.html>