

DEPARTMENT OF HEALTH AND SOCIAL SERVICES



CHANGES TO REGULATIONS

7 AAC 10 – LICENSING, CERTIFICATION, AND APPROVALS
[Barrier Crimes, Criminal History Checks, and Centralized Registry]

With Related Changes To:

- 7 AAC 12 – Facilities and Local Units**
- 7 AAC 41 – Child Care Assistance Program**
- 7 AAC 43 – Public Assistance and Medical Assistance**
- 7 AAC 47 – General Relief**
- 7 AAC 50 – Community Care Facilities Licensing**
- 7 AAC 56 – Child Placement Agencies**
- 7 AAC 57 – Child Care Licensing**
- 7 AAC 75 – Assisted Living Homes**



FILED REGULATIONS

Incorporating Handwritten Changes Made by the Department of Law

Effective: February 9, 2007

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**Title 7. Health and Social Services.
Part 1. Administration.
Chapter 10. Licensing, Certification, and Approvals.**

Notes to reader:

1. Except as discussed in note 2, new text that amends an existing regulation is **bolded and underlined**.
2. If the lead-in line above the text of the regulations states that a new section, subsection, paragraph, or subparagraph is being added, or that an existing section, subsection, etc. is being repealed and readopted (replaced), the new or replaced text is not bolded or underlined.
3. [ALL-CAPS TEXT WITHIN BRACKETS] indicates text that is to be deleted.
4. When the word “including” is used, Alaska Statutes provide that it means “including, but not limited to.”

7 AAC 10.010 is amended to read:

7 AAC 10.010. Purpose of chapter. The purpose of this chapter is to establish certain licensing, **certification, approval,** and other requirements for entities **and individual service providers** referred to in 7 AAC 10.015, and to establish standards for the protection of public health, safety, and welfare. (Eff. 6/23/2006, Register 178; am 12/3/2006, Register 180; am 2/9/2007, Register 181)

Authority:	AS 18.05.010	<u>AS 47.05.310</u>	AS 47.32.020
	AS 18.05.040	<u>AS 47.05.330</u>	AS 47.32.030
	AS 44.29.020	AS 47.14.120	AS 47.33.005
	<u>AS 47.05.300</u>	AS 47.32.010	AS 47.33.010

7 AAC 10.015 is repealed and readopted to read:

7 AAC 10.015. Applicability of chapter. The provisions of

(1) 7 AAC 10.900 – 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry) apply to an entity or individual described in 7 AAC 10.900(b);

(2) 7 AAC 10.1000 – 7 AAC 10.1095 (Environmental Health and Safety) apply to an entity listed in 7 AAC 10.1000(b); and

(3) 7 AAC 10.9500 – 7 AAC 10.9535 (General Variance Procedures) and 7 AAC 10.9600 – 7 AAC 10.9620 (Inspections and Investigations) apply to an entity subject to AS 47.32 and

(A) this chapter; or

(B) 7 AAC 12. (Eff. 6/23/2006, Register 178; am 12/3/2006, Register 180; am 2/9/2007, Register 181)

Authority:	AS 18.05.010	<u>AS 47.05.310</u>	AS 47.32.020
	AS 18.05.040	<u>AS 47.05.330</u>	AS 47.32.030
	AS 44.29.020	AS 47.14.120	AS 47.33.005
	<u>AS 47.05.300</u>	AS 47.32.010	AS 47.33.010

7 AAC 10 is amended by adding new sections to read:

Article 3. Barrier Crimes, Criminal History Checks, and Centralized Registry.

Section

- 900. Purpose and applicability; exceptions
- 905. Barrier crimes
- 910. Request for criminal history check
- 915. Criminal history check
- 920. Provisional valid criminal history check
- 925. Monitoring and notification requirements
- 930. Request for a variance
- 935. Review of request for a variance
- 940. Posting of variance decision required
- 945. Revocation of valid criminal history check or variance
- 950. Request for reconsideration

- 955. Centralized registry
- 960. Termination of association
- 990. Definitions

7 AAC 10.900. Purpose and applicability; exceptions. (a) The purpose of 7 AAC 10.900 – 7 AAC 10.990 is to establish standards, requirements, and procedures dealing with barrier crimes and conditions, criminal history checks, and the centralized registry, including

- (1) the identification of offenses and conditions that would bar an individual from
 - (A) licensure, certification, or approval by the department;
 - (B) a finding of eligibility to receive certain payments from the department; and
 - (C) association with an entity or individual service provider in a manner described in (b) of this section;
- (2) requirements for requesting a criminal history check and procedures to determine whether a barrier crime exists;
- (3) requirements for maintaining compliance with AS 47.05.300 – 47.05.390, AS 47.32, and 7 AAC 10.900 – 7 AAC 10.990, including standards for association and requirements for continued monitoring and notification; and
- (4) the establishment of a centralized registry as required by AS 47.05.330.

(b) The provisions of 7 AAC 10.900 – 7 AAC 10.990 apply to an entity or individual service provider seeking licensure, certification, approval, or a finding of eligibility to receive payments from the department. Each individual who is to be associated with the entity or provider in a manner described in this subsection must have a valid criminal history check conducted under 7 AAC 10.900 – 7 AAC 10.990 if that individual is 16 years of age or older and will be associated with the entity or provider as

- (1) an administrator or operator;
- (2) an individual service provider;

(3) an employee, an independent contractor, an unsupervised volunteer, or a board member if that individual has

(A) regular contact with recipients of services;

(B) access to personal or financial records maintained by the entity or provider regarding recipients of services; or

(C) control over or impact on the financial well-being of recipients of services, unless the only recipient whose financial well-being is affected is a

(i) relative of the individual who has authorized that individual to make financial decisions for that relative;

(ii) recipient who has executed a power of attorney for that individual to make financial decisions for that recipient; or

(iii) recipient for whom a court has authorized that individual to make financial decisions;

(4) an officer, director, partner, member, or principal of the business organization that owns an entity, if that individual has

(A) regular contact with recipients of services;

(B) access to personal or financial records maintained by the entity or provider regarding recipients of services; or

(C) control over or impact on the financial well-being of recipients of services, unless the only recipient whose financial well-being is affected is a

(i) relative of the individual who has authorized that individual to make financial decisions for that relative;

(ii) recipient who has executed a power of attorney for that individual to make financial decisions for that recipient; or

(iii) recipient for whom a court has authorized that individual to make financial decisions;

(5) except as provided in (c) and (d)(10) of this section, an individual who resides in a part of an entity, including a residence if services are provided in the residence, if the individual remains, or intends to remain, in the entity for 45 days or more, in total, in a 12-month period; or

(6) except as provided in (c) and (d) of this section, any other individual who is present in the entity and would have regular contact with recipients of services.

(c) A criminal history check under 7 AAC 10.900 – 7 AAC 10.990 is not required for a recipient of services, unless that individual is also associated with the entity or individual service provider in any manner described in (b)(1) – (4) of this section.

(d) A criminal history check under 7 AAC 10.900 – 7 AAC 10.990 is not required for the following individuals, if supervised access is provided in accordance with (e) of this section:

(1) a relative of a recipient of services, unless that relative is also associated with the entity or provider in any manner described in (b)(1) – (5) of this section;

(2) a visitor of a recipient of services, unless that visitor is also associated with the entity or provider in any manner described in (b)(1) – (4) of this section;

(3) an individual for whom the entity or provider submits evidence to the department of a fingerprint-based background check

(A) conducted and implemented under a process that meets or exceeds the standards of 7 AAC 10.900 – 7 AAC 10.990; and

(B) that is required

(i) as a condition for obtaining a professional license or certification under AS 08;

(ii) by federal law for an entity or individual service provider described in AS 47.05.300; or

(iii) as a condition of employment or association that is imposed by an entity or individual service provider described in AS 47.05.300;

(4) an employee, independent contractor, unsupervised volunteer, board member, officer, director, partner, member, or principal of the business organization that owns an entity if that individual is not associated with the entity or an individual service provider in any manner described in (b)(1) – (4) of this section;

(5) an approved relative provider under 7 AAC 41.200(e);

(6) a personal physician, an infant learning teacher, an attendant for a child with special needs as described in 7 AAC 57.940, a licenser, a fire marshal, a food services sponsor, or another similar individual who

(A) is not associated with the entity or provider under (b) of this section;
and

(B) provides support services to the entity or provider or to a recipient of services;

(7) an individual who is a vendor or an industry representative, or who provides delivery, installation, maintenance, or repair services;

(8) an individual who resides in any part of an entity, including a residence if services are provided in the residence, if the individual remains in the entity or residence for less than 45 days, in total, in a 12-month period;

(9) a parent's designee to drop off and pick up a child in care, unless the designee is also associated in a manner described in (b) of this section with the entity providing child care;

(10) a parent who receives money from the department for purposes of paying an approved in-home child care provider under 7 AAC 41.370, and any other individual who resides in that parent's household; however, the exemption in this paragraph does not apply to an approved in-home child care provider who resides in the household;

(11) an occasional guest of the administrator or operator of an entity or of a provider.

(e) An entity or individual service provider must provide supervised access for an individual exempted under (d) of this section if the individual is present in the entity during hours of operation. Supervised access is not required in a residence where in-home child care is provided under 7 AAC 41.370.

(f) For purposes of (b)(5) and (d)(8) of this section, "individual who resides in any part of an entity" means an individual who dwells continuously in, or legally occupies, the premises housing the entity or provider, as evidenced by

(1) the individual's address on the individual's permanent fund dividend received under AS 43.23, driver's license, fishing or hunting license, or other official record; or

(2) observation by another individual of the individual occupying the premises.
(Eff. 2/9/2007, Register 181)

Authority:	AS 47.05.300	AS 47.05.330	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030
	AS 47.05.320		

7 AAC 10.905. Barrier crimes. (a) A barrier crime is a criminal offense that is inconsistent with the standards for licensure, certification, approval, or eligibility to receive payments. The barrier crime standards and prohibitions in this section apply to an individual who

(1) seeks to be associated or to remain associated in a manner described in 7 AAC 10.900(b) with an entity or individual service provider that is subject to AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990; and

(2) has been charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a crime listed in this section or a crime with similar elements in another jurisdiction.

(b) Except as otherwise provided in this section, the following are permanent barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) an unclassified, a class A, or a class B felony under AS 11.41 (Offenses Against the Person);

(2) a crime involving domestic violence that is a felony under AS 11;

(3) a crime that is a felony and involves a victim who was a child under 18 years of age at the time of the conduct, including a crime involving a perpetrator who was a person responsible for the child's welfare; in this paragraph, "person responsible for the child's welfare" has the meaning given in AS 47.17.290;

- (4) a crime under AS 11.41.220 (Assault in the Third Degree);
- (5) a crime under AS 11.41.460 (Indecent Exposure in the Second Degree);
- (6) a crime under AS 11.46.400 or 11.46.410 (Arson in the First or Second Degree);
- (7) a crime under AS 11.51 (Offenses Against the Family and Vulnerable Adults) as follows:
 - (A) AS 11.51.100 (Endangering the Welfare of a Child in the First Degree);
 - (B) AS 11.51.200 (Endangering the Welfare of a Vulnerable Adult in the First Degree);
 - (C) AS 11.51.210 (Endangering the Welfare of a Vulnerable Adult in the Second Degree);
- (8) a crime under AS 11.56 (Offenses Against Public Administration) as follows:
 - (A) AS 11.56.835 (Failure to Register as a Sex Offender or Child Kidnapper in the First Degree);
 - (B) AS 11.56.840 (Failure to Register as a Sex Offender or Child Kidnapper in the Second Degree);
- (9) a crime under AS 11.61 (Offenses Against Public Order) as follows:
 - (A) AS 11.61.123 (Indecent Viewing or Photography);
 - (B) AS 11.61.125 (Distribution of Child Pornography);
- (10) a crime under AS 11.66 (Offenses Against Public Health and Decency) as follows, if the person induced or caused to engage in prostitution was under 18 years of age at the time of the offense:
 - (A) AS 11.66.110 (Promoting Prostitution in the First Degree);
 - (B) AS 11.66.120 (Promoting Prostitution in the Second Degree);

(C) AS 11.66.130 (Promoting Prostitution in the Third Degree);

(11) any sex offense, as defined in AS 12.63.100, that is not already listed in this subsection;

(12) two or more class B felonies that are not included in this subsection.

(c) The following are 10-year barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) a crime under AS 11.41.260 (Stalking in the First Degree);

(2) a crime under AS 11.46 (Offenses Against Property) as follows:

(A) AS 11.46.120 (Theft in the First Degree);

(B) AS 11.46.280 (Issuing a Bad Check), if the crime is a class B felony;

(C) AS 11.46.285 (Fraudulent Use of an Access Device), if the crime is a class B felony;

(D) AS 11.46.300 (Burglary in the First Degree);

(E) AS 11.46.475 (Criminal Mischief in the First Degree);

(F) AS 11.46.480 (Criminal Mischief in the Second Degree);

(G) AS 11.46.500 (Forgery in the First Degree);

(H) AS 11.46.565 (Criminal Impersonation in the First Degree);

(I) AS 11.46.600 (Scheme to Defraud);

(J) AS 11.46.730 (Defrauding Creditors), if the crime is a class B felony;

(3) a crime under AS 11.56.807 (Terroristic Threatening in the First Degree), if it is a crime involving domestic violence;

(4) a crime under AS 11.61 (Offenses Against Public Order) as follows:

(A) AS 11.61.190 (Misconduct Involving Weapons in the First Degree);

(B) AS 11.61.195 (Misconduct Involving Weapons in the Second Degree);

(C) AS 11.61.240 (Criminal Possession of Explosives), if the crime is a class A or B felony;

(5) a crime under AS 11.66.110 (Promoting Prostitution in the First Degree), if the person who was induced or caused to engage in prostitution was 18 years of age or older at the time of the offense;

(6) a crime under AS 11.71.010 – 11.71.030 (Misconduct Involving a Controlled Substance in the First, Second, or Third Degree);

(7) a crime under AS 11.73.030 (Delivery of an Imitation Controlled Substance to a Minor);

(8) a class B felony under AS 21.36.360 (Fraudulent or Criminal Insurance Acts);

(9) a class C felony under AS 28.35.030(n) (Operating a Vehicle, Aircraft, or Watercraft While Under the Influence of an Alcoholic Beverage, Inhalant, or Controlled Substance), if the individual has had two or more convictions since January 1, 1996, and within the 10 years preceding the date of the present offense, for operating a vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance;

(10) a class C felony under AS 28.35.032(p) (Refusal to Submit to Chemical Test), if the individual has had two or more convictions since January 1, 1996, and within the 10 years preceding the date of the present offense, or if punishment under AS 28.35.030(n) or 28.35.032(p) was previously imposed within the last 10 years.

(d) The following are five-year barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) a crime under AS 11.41 (Offenses Against the Person) as follows:

(A) AS 11.41.230 (Assault in the Fourth Degree);

- (B) AS 11.41.250 (Reckless Endangerment);
 - (C) AS 11.41.270 (Stalking in the Second Degree);
 - (D) AS 11.41.330 (Custodial Interference in the Second Degree);
 - (E) AS 11.41.530 (Coercion);
- (2) a class C felony under AS 11.46 (Offenses Against Property);
- (3) a crime under AS 11.51 (Offenses Against Family and Vulnerable Adults) as follows:
- (A) AS 11.51.110 (Endangering the Welfare of a Child in the Second Degree);
 - (B) AS 11.51.120 (Criminal Nonsupport), if the crime is a class C felony;
 - (C) AS 11.51.121 (Aiding the Nonpayment of Child Support in the First Degree);
 - (D) AS 11.51.130 (Contributing to the Delinquency of a Minor);
- (4) a crime under AS 11.56 (Offenses Against Public Administration) as follows:
- (A) AS 11.56.765 (Failure to Report a Violent Crime Committed Against a Child);
 - (B) AS 11.56.810 (Terroristic Threatening in the Second Degree), if it is a crime involving domestic violence;
 - (C) AS 11.56.815 (Tampering With Public Records in the First Degree);
- (5) a crime under AS 11.61 (Offenses Against Public Order) as follows:
- (A) AS 11.61.130 (Misconduct Involving a Corpse);
 - (B) AS 11.61.140 (Cruelty to Animals);

- (C) AS 11.61.145 (Promoting an Exhibition of Fighting Animals), if the crime is a class C felony;
 - (D) AS 11.61.200 (Misconduct Involving Weapons in the Third Degree);
 - (E) AS 11.61.240 (Criminal Possession of Explosives), if the crime is a class C felony;
 - (F) AS 11.61.250 (Unlawful Furnishing of Explosives);
 - (6) a crime under AS 11.66.120 (Promoting Prostitution in the Second Degree), if the person who was induced or caused to engage in prostitution was 18 years of age or older at the time of the offense;
 - (7) a crime under AS 11.71.040(a)(1), (2), (5), (6), (7), (8), or (10) (Misconduct Involving a Controlled Substance in the Fourth Degree);
 - (8) a class C felony under AS 11.73 (Imitation Controlled Substances);
 - (9) a serious offense as defined in AS 12.62.900, except for
 - (A) a serious offense included in (b) or (c) of this section; and
 - (B) an offense under AS 11.61.110 (Disorderly Conduct);
 - (10) a class C felony under AS 21.36.360 (Fraudulent or Criminal Insurance Acts);
 - (11) a felony under AS 47.30.815 (Bad Faith Initiation of an Involuntary Mental Commitment Proceeding).
- (e) The following are three-year barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:
- (1) a crime under AS 11.46 (Offenses Against Property) as follows:
 - (A) AS 11.46.140 (Theft in the Third Degree);

(B) AS 11.46.320 (Criminal Trespass in the First Degree), if it is a crime involving domestic violence;

(C) AS 11.46.430 (Criminally Negligent Burning), if it is a crime involving domestic violence;

(D) AS 11.46.484 (Criminal Mischief in the Fourth Degree), if it is a crime involving domestic violence;

(E) AS 11.46.510 (Forgery in the Third Degree);

(F) AS 11.46.710 (Deceptive Business Practices), if the crime is a class A misdemeanor;

(2) a crime under AS 11.51.120 (Criminal Nonsupport), if the crime is a class A misdemeanor;

(3) a crime under AS 11.56 (Offenses Against Public Administration) as follows:

(A) AS 11.56.740 (Violating a Protective Order), if it is a crime involving domestic violence;

(B) AS 11.56.745 (Interfering With a Report of a Crime Involving Domestic Violence);

(4) a crime under AS 11.61.240 (Criminal Possession of Explosives), if the crime is a class A misdemeanor.

(f) The following are one-year barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) a crime under AS 11.46.486 (Criminal Mischief in the Fifth Degree), if it is a crime involving domestic violence;

(2) a crime under AS 11.56.750 or 11.56.755 (Unlawful Contact in the First or Second Degree);

(3) a crime under AS 11.61.120 (Harassment), if it is a crime involving domestic violence.

(g) If an individual does not pass a criminal history check as a result of a barrier crime established in this section, the individual is prohibited from associating with an entity or provider in a manner described in 7 AAC 10.900(b), unless the department grants a variance under 7 AAC 10.935.

(h) If an individual is charged with a barrier crime, that individual is barred from any contact with recipients of care during the pendency of the charge, unless the department grants a variance under 7 AAC 10.935. The crime charged ceases to be a barrier under this section on the date that the

- (1) individual is acquitted of that crime;
- (2) charge is dismissed; or
- (3) district attorney's office decides not to prosecute the charge.

(i) Except as otherwise provided in this section, the barrier times listed in this section begin to run from the date that an individual was charged with or convicted of the crime, whichever period ends at a later date. If the individual is subject to a judgment of a court related to sentencing, probation, or parole, the individual is barred as described in (a)(1) of this section for the barrier time listed in this section or until the individual has fully complied with the conditions of the sentencing, probation, or parole, whichever period is longer.

(j) If an individual is convicted of a lesser crime than was originally charged, the length of time an individual is barred will be based upon the crime for which the individual was convicted.

(k) If an entity or individual is also subject to federal criminal history check requirements, and the federal standards, including standards related to civil findings, are more stringent than those set out in this section, the federal standards apply.

(l) For the purpose of determining whether a person is convicted of a single offense or of multiple offenses, the provisions of AS 12.55.145(a)(1)(C) apply.

(m) In this section,

(1) "charged with" means a person

(A) has been indicted by information or presentment for an offense, or has been arrested and provided a uniform summons and complaint for an offense; and

(B) is awaiting adjudication or dismissal of the matter, or a decision by the district attorney's office not to prosecute;

(2) "convicted" or "conviction" means a judgment entered by a court of competent jurisdiction in this state or another jurisdiction, either upon the entry of a plea, or after a bench or jury trial; "convicted" or "conviction"

(A) includes a suspended imposition of sentence, even if the conviction is formally set aside under AS 12.55.085; and

(B) does not include an executive order of clemency, or a record that has been expunged by order of a court. (Eff. 2/9/2007, Register 181)

Authority:	AS 47.05.300	AS 47.05.320	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030

7 AAC 10.910. Request for criminal history check. (a) An entity or individual service provider that is subject to AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990 must request a criminal history check under this section, or provide proof of a valid fingerprint-based criminal history check, for each individual to be associated, or to remain associated, with the entity or provider in a manner described in 7 AAC 10.900(b). An entity or individual must request a criminal history check

(1) when the entity or provider submits an initial application for a license, certification, approval, or finding of eligibility to receive payments from the department;

(2) for a new owner, officer, director, partner, member, or principal of the business organization if there is a change in ownership of the business organization, or if an officer, director, partner, member, or principal of the business organization is replaced; the criminal history check must be completed before the individual begins association unless the department issues notice of a provisional valid criminal history check under 7 AAC 10.920;

(3) except as provided otherwise in this section, if the entity or provider wishes to hire or retain an employee, independent contractor, or unsupervised volunteer described in 7 AAC 10.900(b)(3); the criminal history check must be completed before hiring unless the department issues notice of a provisional valid criminal history check under 7 AAC 10.920;

(4) for an individual 16 years of age or older who is not a recipient of services, and who wishes to reside in the entity or to be present as described in 7 AAC 10.900(b)(5) or (6); the criminal history check must be completed before the individual begins association unless

(A) the department issues notice of a provisional valid criminal history check under 7 AAC 10.920; or

(B) the individual is residing in the entity before that individual's 16th birthday; for an individual described in this subparagraph, the entity or provider must submit the information required under (b) of this section within 30 days before the individual's 16th birthday;

(5) at any time requested by the department

(A) to show compliance with 7 AAC 10.900 – 7 AAC 10.990 during inspection, monitoring, or investigation; or

(B) for an individual if the department has good cause to believe that the individual's criminal history has changed; or

(6) on or before April 10, 2007, for each individual who is associated with an entity or provider operating under a current license, certification, approval, or finding of eligibility to receive payments, and who

(A) does not have a valid criminal history check; or

(B) passed a criminal history check conducted before February 9, 2007

that

(i) was not fingerprint-based; or

(ii) was fingerprint-based and conducted more than six years before February 9, 2007.

(b) The entity or provider must submit the following with each request for a criminal history check:

(1) a release of information authorization, on a form provided by the department, signed by the individual for whom the request is submitted;

(2) an authorization, on a form provided by the department and signed by the individual for whom the request is submitted, permitting the department to mark the individual's name in the Alaska Public Safety Information Network (APSIN) under 7 AAC 10.915(e);

(3) two sets of fingerprints for the individual for whom the request is submitted;

(4) a signed statement, on a form provided by the department, from the individual who took the fingerprints, attesting that at least one government-issued picture identification was used to verify the identity of the individual fingerprinted;

(5) the fees required by the Department of Public Safety under 13 AAC 68.900(a)(2)(B) and (5); if the legislature makes an appropriation for the department to pay those fees for unpaid volunteers,

(A) the department will not pay a fee for a volunteer who is a household member who resides in the entity as described in 7 AAC 10.900(b)(5); and

(B) an entity or provider must reimburse the fee to the department if an unpaid volunteer for whom the department paid a fee becomes a paid employee within 60 days after that fee was paid;

(6) an additional \$25 application fee; the department will waive this fee for an unpaid volunteer, unless that volunteer is a household member who resides in the entity as described in 7 AAC 10.900(b)(5); if an unpaid volunteer for whom the department waived an application fee becomes a paid employee within 60 days after that fee was waived, the entity or provider must pay the waived fee.

(c) Unless a more frequent fingerprint-based criminal history check is required under federal law, or for certain entities and providers under (f) of this section, a fingerprint-based criminal history check is valid for six years from the date the check became valid under (h) of this section for an individual who

(1) remains associated with an entity or provider in a manner described in 7 AAC 10.900(b), subject to verification under (d) of this section;

(2) becomes re-associated with the same entity or provider in a manner described in 7 AAC 10.900(b) within 100 days after terminating association with that entity or provider, subject to verification under (e) of this section; or

(3) becomes associated with another entity or provider in a manner described in 7 AAC 10.900(b) within 100 days after terminating association with a previous entity or provider, subject to verification under (e) of this section.

(d) Upon renewal of a license, certification, or approval, or when a finding is made for continued eligibility to receive payments, an entity or individual service provider must provide to the department proof that an individual described in (c)(1) of this section has a valid criminal history check. If the department determines that the criminal history check is not valid, the department will notify the entity or provider that a request for a new criminal history check must be submitted under this section.

(e) An individual described in (c)(2) or (c)(3) of this section must verify with the department that the current fingerprint-based criminal history check is still valid. The entity or provider shall submit to the department a \$25 fee for this verification. The department will waive the fee for an unpaid volunteer, unless that volunteer is a household member who resides in the entity as described in 7 AAC 10.900(b)(5). If an unpaid volunteer for whom the department waived a verification fee becomes a paid employee within 60 days after the department waived the fee, the entity or provider must pay the waived fee. If the department determines during the verification process that the criminal history check is not valid, the department will notify the entity or provider that a request for a new criminal history check must be submitted under this section, and that the department will consider the verification fee the department's application fee under (b)(6) of this section.

(f) Except as provided otherwise in this subsection, and unless the department granted a variance under 7 AAC 10.935, a new criminal history check is not required if a person associated with an entity or provider in a manner described in 7 AAC 10.900(b) is transferred from one site operated by the entity or provider to another site operated by that entity or provider, if all sites are identified in the request for a criminal history check. Before October 1, 2007, an entity or provider must submit the items required under (b) of this section for an individual described in the following list, each time that individual changes employment, regardless of what entities or providers were listed on the request for a criminal history check:

(1) an individual associated with

(A) a nursing facility;

(B) a hospital that provides swing-bed services or that is reimbursed under 7 AAC 43 for treatment described in the definition of "swing-bed day" set out in 7 AAC 43.709; for purposes of this subparagraph,

(i) "hospital that provides swing-bed services" has the meaning given "swing-bed hospital" in 42 C.F.R. 413.114(b); and

(ii) the definition of "swing-bed hospital" in 42 C.F.R. 413.114(b), as revised as of October 1, 2006, is adopted by reference;

(C) an intermediate care facility for the mentally retarded or persons with related conditions;

(D) an assisted living home;

(E) a hospice agency;

(F) a home and community-based services provider as defined in 7 AAC 43.1110;

(G) a home health agency; or

(H) a personal care agency enrolled under 7 AAC 43.786 or 7 AAC 43.787;

(2) an individual providing care coordination, case management, adult day services, or respite care services.

(g) A willful misrepresentation of an individual's criminal or civil history by an entity or provider, or by the individual, is cause for immediate denial of a request for a criminal history check, or revocation of a valid criminal history check.

(h) A valid criminal history check means that, within the applicable timeframes referred to in this section,

(1) the person submitted all items listed under (b) of this section;

(2) the department determined that a barrier crime or condition did not exist;

(3) the person’s name has been marked in APSIN on a continuous basis; and

(4) if applicable, any variance granted under 7 AAC 10.935 is still in effect and authorized by the department, and the individual who was the subject of the variance is associated with the same entity or provider.

(i) Nothing in this section precludes an entity or provider from requiring

(1) an individual who is subject to a criminal history check under 7 AAC 10.900 – 7 AAC 10.990 to pay a cost involved in the submittal of a request under this section; the provisions of this paragraph do not apply to a foster home; or

(2) a criminal history check for an individual who is not otherwise subject to 7 AAC 10.900 – 7 AAC 10.990. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.340 AS 47.32.030
AS 47.05.310 AS 47.32.010

Editor's note: Forms referred to in 7 AAC 10.910 may be obtained from the Department of Health and Social Services, Division of Public Health, Section of Certification and Licensing, 619 East Ship Creek Avenue, Suite 232, Anchorage, Alaska 99501, or are available at the department's website: <http://www.hss.state.ak.us/dph/CL/bgcheck>.

7 AAC 10.915. Criminal history check. (a) The department will screen a request for a criminal history check through the

(1) centralized registry established under 7 AAC 10.955 to determine whether a barrier condition exists for the individual who is the subject of the criminal history check;

(2) registry of certified nurse aides under AS 08.68.333;

(3) central registry of sex offenders and child kidnappers under AS 18.65.087;

(4) United States Department of Health and Human Services, Office of the Inspector General database of individuals and entities excluded under 42 U.S.C. 1320a-7 and 1320c-5 (secs. 1128 and 1156 of the Social Security Act); and

(5) any other registry or database determined by the department to be relevant to the screening being conducted for an individual, including any registry or database maintained by another state where that individual has resided.

(b) In addition to its review under (a) of this section, the department will review the criminal justice information supplied by the Department of Public Safety, court or other applicable government agency records, and the national criminal history record check supplied by the Federal Bureau of Investigation, to determine whether a barrier crime exists for the individual who is the subject of the criminal history check.

(c) If, after reviewing all available information described in (a) and (b) of this section, the department determines that a barrier crime or condition does not exist, the department will notify the entity or provider that submitted the request, and the individual who was the subject of the criminal history check, that the individual passed the criminal history check. The department will include in the notification the following:

(1) the period during which the criminal history check is valid, unless revoked or rescinded under this section;

(2) a statement that the valid criminal history check is conditioned upon the individual continuing to meet the applicable standards of AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990;

(3) a statement that, if the individual ceases to be associated with the entity or provider in a manner described in 7 AAC 10.900(b),

(A) the individual's continued compliance with the applicable standards of AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990 must be verified by the department in accordance with 7 AAC 10.910(e) before that individual may become associated with another entity or provider, or re-associated with the same entity or provider; and

(B) a time period during which the individual is not associated with an entity or provider that is 100 days or longer is subject to (g) of this section.

(d) If, while conducting a criminal history check, the department determines that a barrier crime or condition exists, the department will notify the

(1) entity or provider that submitted the request under 7 AAC 10.910; the department will include in the notification the following statements:

(A) that the department has determined a barrier crime or condition exists; the department will not identify the crime or condition, but will identify the applicable barrier time under 7 AAC 10.905 or 7 AAC 10.955, as applicable;

(B) that the individual who was the subject of the criminal history check has been given an opportunity to challenge the department's determination under 7 AAC 10.950 if the individual believes the determination was based on erroneous information, or if the individual has additional information for the department to consider;

(C) that if the individual is willing to disclose the barrier crime or condition to the entity or provider, and if the entity or provider continues to desire a valid criminal history check for that individual, the entity or provider may request a variance, if allowed under 7 AAC 10.930; and

(2) individual who was the subject of the criminal history check; the department will include in the notification the following:

(A) the reason for the determination, including identification of the barrier crime or condition and the applicable barrier time under 7 AAC 10.905;

(B) a statement that if the individual wishes to disclose the barrier crime or condition to the entity or provider that submitted the request, the entity or provider may be able to obtain a variance, if allowed under 7 AAC 10.930;

(C) a statement that if the individual believes there is an error in the information relied upon by the department, or if the individual has additional information for the department to consider, the individual may submit a request for reconsideration under 7 AAC 10.950.

(e) For each request for a criminal history check processed under this section, the department will mark in APSIN the name of the individual who was the subject of the criminal history check. If the department receives notification under APSIN of law enforcement activity for an individual, the department will review the information. If the department determines that the activity creates a barrier under 7 AAC 10.905, the department will immediately notify the entity or provider and the individual. The department will include in the notification information advising the entity or provider and the individual that

(1) the department intends to revoke the valid criminal history check in accordance with 7 AAC 10.945; the department will not identify the barrier crime or condition in the notice to the entity or provider, but will identify the crime or condition in the notice to the individual;

(2) the individual may request reconsideration under 7 AAC 10.950 if the individual believes there was an error in the information relied upon by the department; and

(3) if the individual wishes to disclose the barrier crime or condition to the entity or provider, the entity or provider may request a variance, if allowed under 7 AAC 10.930.

(f) Except as provided otherwise in this subsection, an entity or provider must, within 24 hours after receiving notification under (d) or (e) of this section, terminate association with the individual in accordance with 7 AAC 10.960. If the entity or provider requests a variance under 7 AAC 10.930, or if the individual requests reconsideration under 7 AAC 10.950, the individual may remain associated with the entity or provider, pending a decision on the request, if

(1) the individual is removed from direct contact with recipients of services; and

(2) the entity or provider ensures that the individual is provided with direct supervision if the individual is present in any area where services are provided, during hours of operation.

(g) If an individual remains out of association with an entity or provider for 100 days or longer, the department will revoke a valid criminal history check without prior notice. A new criminal history check is required if the individual wishes to become associated with any entity or provider in a manner described in 7 AAC 10.900(b).

(h) If an individual with a valid criminal history check ceases to be associated with an entity or provider, and wishes to have the individual's name unmarked in APSIN, the individual shall submit a written request to the department that the valid criminal history check be rescinded. The department will send a written acknowledgment of the rescission to the individual and to the entity or provider with whom the individual was most recently associated. (Eff. 2/9/2007, Register 181)

Authority:	AS 47.05.300	AS 47.05.330	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030
	AS 47.05.320		

7 AAC 10.920. Provisional valid criminal history check. (a) The department may issue notification of a provisional valid criminal history check after screening the individual under 7 AAC 10.915(a) and reviewing the criminal justice information supplied by the Department of Public Safety, if a barrier crime or condition is not discovered in that screening and review and if

(1) the department determines that its further review time might unduly delay the process;

(2) an entity or provider has requested an expedited review and has

(A) included justification for the expedited review;

(B) submitted, at a minimum, the documents required under 7 AAC 10.910(b)(1) and (2); and

(C) agreed to submit within 30 days the fingerprints required under 7 AAC 10.910(b)(3) and any items required under 7 AAC 10.910(b)(4) – (6) that were not included with the request; or

(3) a request for a criminal history check does not include the required sets of fingerprints because fingerprinting acceptable to the Department of Public Safety is not available within 100 miles by road, and the entity or provider agrees to submit within 30 days the fingerprints required under 7 AAC 10.910(b)(3) and any items required under 7 AAC 10.910(b)(4) – (6) that were not included with the request.

(b) Notification of a provisional valid criminal history check issued under this section is valid until the results of a fingerprint-based criminal history check are processed under 7 AAC 10.915, unless revoked under this section. If the entity or provider fails to submit fingerprints and other required items within 30 days, or the individual does not pass the criminal history check, the provisional valid criminal history check is automatically revoked, and the entity or provider must terminate association with the individual in accordance with 7 AAC 10.960. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.320 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030

7 AAC 10.925. Monitoring and notification requirements. (a) An entity or provider shall monitor to ensure that all individuals associated with the entity or provider in a manner described in 7 AAC 10.900(b) continue to meet the applicable requirements of AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990. The entity or provider shall require each individual for whom a criminal history check is required to report to the entity or provider within 24 hours, or the next business day if the individual is

(1) charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a barrier crime listed in 7 AAC 10.905; or

(2) is the subject of a matter that must be reported under 7 AAC 10.955(c) for the centralized registry.

(b) In addition to the reporting requirements of 7 AAC 10.955(c) for the centralized registry, the entity or provider shall notify the department by telephone, by electronic mail, by facsimile, by letter, or in person within

(1) 24 hours, or the next business day, after the entity or provider has knowledge that an individual associated with the entity or provider has been

(A) arrested for, charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a barrier crime listed in 7 AAC 10.905; or

(B) is the subject of a matter that must be reported under 7 AAC 10.955(c) for the centralized registry; or

(2) 14 days after any change in association with the entity or provider for an individual who has a valid criminal history check or is the subject of a provisional valid criminal history check, including a change that involves an individual

(A) whose association described in 7 AAC 10.900(b) has been terminated; or

(B) who has not been associated with the entity or provider for 61 days or more, but becomes re-associated within 100 days.

(c) Failure to notify the department as required under this section may result in an enforcement action, including suspension or revocation of the license, certification, approval, or finding of eligibility to receive payments. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
 AS 47.05.310 AS 47.05.340 AS 47.32.030
 AS 47.05.320

7 AAC 10.930. Request for a variance. (a) Except for a crime or condition listed in (g) of this section, an entity or provider notified under 7 AAC 10.915(d) that a barrier crime or condition exists may request a variance under this subsection. The request must be submitted to the department office responsible for that entity's or provider's licensing, certification, approval, or finding of eligibility to receive payments. The request must be submitted no later than 30 days after the entity or provider receives notice under 7 AAC 10.915(d), or, if the individual who was the subject of the criminal history check submits a request for reconsideration as allowed under 7 AAC 10.915(d)(2)(C), no later than 30 days after the department issues its decision on reconsideration under 7 AAC 10.950(b)(3), whichever date is later. The request must be submitted on a form provided by the department, and must include the following:

- (1) a comprehensive rationale for granting a variance;
- (2) a demonstration of how the health, safety, and welfare of recipients of services will be adequately protected;
- (3) copies of all known information relevant to determining whether the health, safety, and welfare of recipients of services are adequately protected, including the following information regarding the individual for whom a variance is sought:
 - (A) a copy, as applicable, of that individual's record of
 - (i) protective orders issued or filed under AS 18.66 (Domestic Violence and Sexual Assault) or a substantially similar law or ordinance of another jurisdiction;
 - (ii) conviction;
 - (iii) indictment or presentment, or of charging by information or complaint;

(iv) having been charged with a crime, without subsequent conviction;

(v) having been charged with a crime that was reduced to a lesser charge;

(vi) having been charged with a crime for which a suspended imposition of sentence was granted by the court; and

(vii) any circumstance that led to a barrier condition under 7 AAC 10.955;

(B) if the individual was incarcerated,

(i) a copy of the order from the local, state, or federal jurisdiction that released the individual from incarceration;

(ii) the date of release from incarceration; and

(iii) any terms and conditions of parole;

(C) if the individual was sentenced and, as a part of that sentence, the individual was placed on supervised or unsupervised probation, a copy of the terms and conditions of probation;

(D) the extent, nature, and seriousness of the following:

(i) the individual's offense and past criminal record;

(ii) a behavioral health problem if it exists;

(iii) a domestic violence problem if it exists;

(iv) any circumstance that led to a barrier condition under 7 AAC 10.955;

(E) the age of the individual at the time of the offense, problem, or circumstance;

(F) the amount of time that has elapsed since the most recent offense, problem, or circumstance;

(G) evidence of rehabilitation, prevention, or treatment efforts;

(H) other evidence of the individual's present fitness, including at least two letters of recommendation from credible persons who are aware of the individual's criminal and civil history, behavioral health problem, or domestic violence problem, and who recommend that a variance be granted; any letters must be from persons who are unrelated to the individual for whom the variance is requested and who are not associated with the entity or provider that submitted the request for a variance; nothing in this subparagraph precludes the entity or provider from submitting additional letters of recommendation;

(I) if the individual is an employee or volunteer, or a potential employee or volunteer, information related to job responsibilities that would be performed, hours and days of service, whether the individual would be in contact with recipients of services, and plans for supervision, including whether the individual would be subject to direct supervision while on the premises during hours of operation.

(b) The department office responsible for the licensing, certification, approval, or finding of eligibility to receive payments for the entity or provider seeking a variance will review each request for a variance received by that office and will

(1) make a written recommendation to the variance committee appointed under 7 AAC 10.935 to grant or deny the request;

(2) include the reasons for the recommendation; and

(3) recommend any conditions that should be placed on any variance issued.

(c) If the individual was convicted of a lesser charge, in the department's review under (b) of this section, the department will consider information regarding the original charge in making its recommendation to the variance committee, including whether the original charge was a permanent barrier crime or condition for which a variance would be prohibited under (g) of this section.

(d) If the department granted a variance for an offense revealed in a fingerprint-based criminal history check conducted six or more years before February 9, 2007, and if the offense for which the variance was granted is not a permanent barrier under 7 AAC 10.905, the entity or provider must submit a new request for a variance, if allowed under this section, at the time of application for renewal of that entity's current license, certification, approval, or finding of eligibility to receive payments. Except as provided in (h) and (i) of this section, if the offense for which the department granted the variance is a permanent barrier under 7 AAC 10.905, the variance is void and the entity must terminate association with the individual in accordance with 7 AAC 10.960.

(e) If the department granted a variance for a barrier condition described in 7 AAC 10.955 six or more years before February 9, 2007, the entity or provider must submit a new request for a variance at the time of application for renewal of that entity's current license, certification, approval, or finding of eligibility to receive payments.

(f) The department will not grant a variance from the requirement in AS 47.05.310 for conducting a criminal history check for an individual who has regular contact with recipients of services. For any other individual subject to AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990, an entity or provider may request a variance from the requirement to conduct a criminal history check by submitting a written request to the department office responsible for that entity's or provider's licensing, certification, approval, or finding of eligibility to receive payments. The request must be submitted on a form provided by the department and must include a comprehensive rationale for the request and demonstrate that the health, safety, and welfare of recipients of services will be adequately protected.

(g) Except as provided in (h) - (j) of this section, the department will not grant a variance for a

(1) conviction for an offense that is a permanent barrier under 7 AAC 10.905; or

(2) crime or civil finding for which federal law prohibits certain approvals, or restricts payment of benefits, during the most stringent barrier period set by federal law for that crime or civil finding; for the purpose of this paragraph,

(A) "federal law" includes an offense described in

(i) 42 U.S.C. 670 – 679b (secs. 470 – 479A of the Social Security Act), revised as of August 21, 2006, and adopted by reference;

(ii) 42 U.S.C. 1320a-7(a) (sec. 1128(a) of the Social Security Act), revised as of August 21, 2006, and adopted by reference;

(iii) 45 C.F.R. 1356.30, revised as of October 1, 2005, and adopted by reference; and

(iv) another applicable federal statute or regulation; and

(B) the prohibition applies to all entities and providers subject to 7 AAC 10.900 – 7 AAC 10.990, regardless of whether the federal law is directly applicable to only one of those entities or providers.

(h) Notwithstanding the prohibition in (g)(1) of this section, the department may grant a variance for an individual convicted of a permanent barrier crime listed in (i) of this section, if

(1) a behavioral health problem was a factor in the commission of the crime; and

(2) the individual

(A) is associated in a manner described in 7 AAC 10.900(b) with an entity that provides a treatment program to individuals with a behavioral health problem;

(B) has completed any treatment required by a court; and

(C) has demonstrated a sustained self-directed program of recovery for at least five years, as determined through the assessment of a mental health professional clinician or a substance abuse counselor with at least three years of experience; for purposes of this subparagraph,

(i) "mental health professional clinician" has the meaning given in 7 AAC 43.1990;

(ii) "substance abuse counselor" means a counselor providing services for a substance abuse treatment facility or program certified under 7 AAC 29; and

(iii) "recovery" includes, as applicable, absence of symptoms, stabilization in life domains, compliance with any medical orders, and abstinence from substance use.

(i) For the purpose of (h) of this section, the department may grant a variance for the following permanent barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

- (1) AS 11.41.200 (Assault in the First Degree);
- (2) AS 11.41.210 (Assault in the Second Degree);
- (3) AS 11.41.220 (Assault in the Third Degree);
- (4) AS 11.41.320 (Custodial Interference in the First Degree);
- (5) AS 11.41.460 (Indecent Exposure in the Second Degree);
- (6) AS 11.41.500 (Robbery in the First Degree);
- (7) AS 11.41.510 (Robbery in the Second Degree);
- (8) AS 11.41.520 (Extortion);
- (9) AS 11.46.400 (Arson in the First Degree);
- (10) AS 11.46.410 (Arson in the Second Degree).

(j) Notwithstanding the prohibition in (g)(1) of this section, the department may grant a variance for an individual adjudicated as a delinquent for a permanent barrier crime under 7 AAC 10.905(b). (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030
AS 47.05.320

7 AAC 10.935. Review of request for a variance. (a) The commissioner will appoint three or more department employees to serve as a variance review committee to review requests for variances submitted under 7 AAC 10.930. The commissioner will include at least one employee from each department office responsible for licensing, certification, approval, or finding of eligibility to receive payments, but will not include an employee substantively involved in any recommendation to the committee made under 7 AAC 10.930(b).

(b) In its review of a request for a variance, the review committee shall determine whether a variance is prohibited under 7 AAC 10.930(f) or (g). If a variance is prohibited, the review committee shall deny the variance.

(c) In its review of a request for a variance, the review committee shall

(1) consider the recommendations made by the department office under 7 AAC 10.930(b);

(2) consider the information supplied with the request and any other relevant information available to the department;

(3) determine whether the individual charged with a crime was subsequently convicted;

(4) if the individual was convicted of a lesser charge, determine whether the original charge was a permanent barrier crime or condition for which a variance would be prohibited under 7 AAC 10.930(g);

(5) determine whether any suspended imposition of sentence is still in effect, and review the nature of any applicable conditions;

(6) verify, as applicable, that

(A) conditions of parole or probation were met;

(B) court-ordered restitution has been made, or payments are current; and

(C) treatment, if required by the court, has been completed;

(7) if the crime committed related to financial exploitation, including theft, fraud, and bribery, or involved another form of dishonesty, including perjury and official misconduct, verify that the individual's duties make it unlikely that exploitation or dishonesty could occur with regard to recipients of services;

(8) if the barrier condition related to the abuse, neglect, or exploitation of a child or vulnerable adult, verify that the individual's duties make it unlikely that abuse, neglect, or exploitation could occur with regard to recipients of services; and

(9) consider mitigating factors, including whether the individual has been employed by the entity or provider for a substantial period, has performed duties in a responsible and trustworthy manner, and has not been the subject of any complaint from a recipient of services or a representative of a recipient of services.

(d) The review committee may require the individual for whom a variance is sought to appear in person or by telephone for an interview.

(e) If the review committee, after its review of available information, determines that the health, safety, and welfare of recipients of services will be adequately protected, the review committee shall recommend that the commissioner grant the request for a variance. If the committee determines that the health, safety, and welfare of recipients of services will not be adequately protected, the review committee shall recommend that the commissioner deny the request for variance.

(f) The commissioner will consider the recommendation of the review committee and will issue a decision on a request for a variance within 30 days after receiving all information required under 7 AAC 10.930. The commissioner will deliver a copy of the decision to grant or deny the request for a variance to the requesting entity or provider by mail or facsimile. The commissioner will include in the decision to deny a request the reasons for the denial, and will advise the entity or provider of the right to request reconsideration of the decision under 7 AAC 10.950. A copy of the decision will be provided to the department office responsible for conducting criminal history checks, the department office responsible for maintaining the centralized registry established under 7 AAC 10.955, and the department office responsible for licensing, certification, approval, or a finding of eligibility to receive payments.

(g) In a variance granted under this section, the department will not identify the individual for whom the variance was requested, but will specify the barrier crime or condition for which the variance was granted, and will set out the terms and conditions of the variance, including an expiration date not to exceed the expiration date of the license, certification, approval, or finding of eligibility to receive payments applicable to the entity or provider that requested the variance.

(h) A variance may not be transferred to another entity or provider. If the individual for whom the department granted a variance under this section remains associated with the entity or provider that requested the variance, and the variance is not revoked under (i) of this section, the entity or provider need not submit a new variance request each time it submits its application for renewal of its license, certification, approval, or finding of eligibility to receive payments, but must request a new criminal history check for that individual with each application.

(i) The department office responsible for the licensing, certification, approval, or finding of eligibility to receive payments for an entity or provider will, in accordance with 7 AAC 10.945, immediately revoke a variance granted under this section if

(1) the department learns that it granted the variance based on false information provided by the individual to whom the variance applies or by the entity or provider that requested the variance; or

(2) the individual to whom the variance applies

(A) violates a term or condition of the variance;

(B) subsequently becomes subject to AS 47.05.310(c), or is charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a crime listed in 7 AAC 10.905, or a similar crime in another jurisdiction; or

(C) ceases to be associated with the entity or provider that requested the variance. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030
AS 47.05.320

7 AAC 10.940. Posting of variance decision required. If the department grants a variance under 7 AAC 10.935, the entity or individual service provider shall post a copy of the variance decision with the copy of the license, certification, approval, or finding of eligibility to receive payments that was issued by the department, in a conspicuous place where the copy of the variance can be readily viewed by persons interested in obtaining the services offered by the entity or provider. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030
AS 47.05.320

7 AAC 10.945. Revocation of valid criminal history check or variance. (a) Subject to AS 47.32, if the department decides to revoke a valid criminal history check issued under 7 AAC 10.900 – 7 AAC 10.990, the department will provide written notice of revocation to the entity or provider, and to the individual for whom the criminal history check was conducted. The notice will include the reasons for the department’s decision and will advise the individual of the right to request reconsideration under 7 AAC 10.950. A notice of revocation issued under this section is effective 30 days after it is received by the individual unless a request for reconsideration is submitted.

(b) Subject to AS 47.32, if the department decides to revoke a variance issued under 7 AAC 10.900 – 7 AAC 10.990, the department will provide written notice of revocation to the entity or provider to whom the variance was issued, and to the individual who was the subject of the variance. The notice will include the reasons for the department’s decision and will advise the entity or provider of the right to request reconsideration under 7 AAC 10.950. A notice of revocation issued under this section is effective 30 days after it is received by the entity or provider unless a request for reconsideration is submitted.

(c) Nothing in this section precludes the department from issuing a notice of immediate revocation if the department finds that the life, health, safety, or welfare of a recipient of services is threatened. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
 AS 47.05.310 AS 47.05.340 AS 47.32.030
 AS 47.05.320

7 AAC 10.950. Request for reconsideration. (a) A request for reconsideration of a department decision under 7 AAC 10.900 – 7 AAC 10.990 must be submitted within 30 days after the requestor receives the notice of the decision. The request for reconsideration must include

(1) the requestor's name, mailing address, telephone number, and, if available, electronic mail address and facsimile number;

(2) a clear description of the department's decision to be reviewed; and

(3) a clear and concise statement of the reason for the request, including

(A) a statement of the nature and scope of the requestor's interests, and an explanation of how and to what extent those interests would be directly and adversely affected by the decision;

(B) the contested terms and conditions of the department's decision, and any proposed alternatives; and

(C) copies of any documents or other information that would assist the department in its review.

(b) After reviewing a request for reconsideration of the

(1) commissioner's decision to deny a request for a variance under 7 AAC 10.935(f), the commissioner will notify the requestor of the commissioner's decision on reconsideration in writing within 30 days after receiving the request, and will state the reasons for that decision;

(2) department's decision to revoke a valid criminal history check under 7 AAC 10.910(g) or 7 AAC 10.915(e), or a variance under 7 AAC 10.935(i), the department office that made the decision to revoke will notify the requestor of that office's decision on reconsideration in writing within 30 days after receiving the request, and will state the reasons for that decision; or

(3) department's determination under 7 AAC 915(d) that a barrier crime or condition exists, the department office responsible for conducting criminal history checks will, within 30 days after receiving the request, notify in writing the

(A) requestor of that office's decision on reconsideration and state the reasons for that decision; and

(B) entity or provider that submitted the request for a criminal history check under 7 AAC 10.910 that, if the decision on reconsideration confirms the determination that a barrier crime or condition exists, and if the individual is willing to disclose the barrier crime or condition to the entity or provider, the entity or provider may request a variance, if allowed under 7 AAC 10.930, within 30 days after receiving notice under this subparagraph.

(c) A decision under (b)(1) and (b)(2) of this section is a final agency decision for purposes of seeking judicial review. A decision under (b)(3) of this section is a final agency decision unless the department grants a variance under 7 AAC 10.935.

(d) A copy of a decision on reconsideration under this section will be provided to the department office responsible for conducting criminal history checks, and to the department office responsible for licensing, certification, approval, or a finding of eligibility to receive payments. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
 AS 47.05.310 AS 47.05.340 AS 47.32.030
 AS 47.05.320

7 AAC 10.955. Centralized registry. (a) A centralized registry is established in the department to accomplish the purpose of AS 47.05.330 as that purpose relates to an individual

(1) who seeks to be or to remain associated with an entity or individual service provider in a manner described in 7 AAC 10.900(b); and

(2) whose name appears on the centralized registry because of a matter described in AS 47.05.330(b)(1)(A) involving the abuse, neglect, or exploitation of a child or vulnerable adult.

(b) An individual whose name appears on the centralized registry may not be associated with an entity or individual service provider in a manner described in 7 AAC 10.900(b) unless a variance is granted under 7 AAC 10.935.

(c) An entity or individual service provider that is subject to AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990 shall, using a form prescribed by the department, submit to the department reports as required or allowed under AS 47.05.330 for any matter described in (a)(2) of this section.

(d) Upon receipt of a report required under (c) of this section, the department will enter the information on the centralized registry as required by AS 47.05.330(b).

(e) Separately or in conjunction with an investigation or audit under AS 47.05.200, AS 47.10, AS 47.24, or AS 47.62, the department will investigate a report of abuse, neglect, or exploitation submitted under (c) of this section. If, after its investigation, the department makes a substantiated finding that an individual committed abuse, neglect, or exploitation, the department will notify any entity or individual service provider that made the report, and the individual who is the subject of the investigation, that the department has made a substantiated finding, and that it intends to place the finding in the centralized registry. In the notice, the department will

- (1) describe the nature of the substantiated finding;
- (2) identify each statute or regulation that supports the finding;
- (3) state the effective date for placement in the registry; and
- (4) advise that the individual who is the subject of the investigation may request a hearing under (f) of this section.

(f) An individual who is the subject of an investigation that results in a substantiated finding against the individual may request a hearing from the department within 30 days after receipt of the notice described in (e) of this section. A request under this subsection must be submitted to the department's office responsible for maintaining the centralized registry. The request must be in writing, must include the individual's reasons for believing the department's finding to be in error, and must be accompanied by any relevant documentation to support those reasons.

(g) If the department determines that questions of material fact, if any, raised in a request for hearing under (f) of this section and relevant to the department's substantiated finding, were previously decided in a civil or criminal court action, or in an administrative hearing conducted in accordance with AS 44.62.330 – 44.62.630 (Administrative Procedure Act), and that under the facts as previously decided, the individual committed abuse, neglect, or exploitation, the department will send the individual written notice that the department intends to issue a summary decision to dismiss the individual's claim. The individual may submit a written objection to the department's proposed dismissal, identifying any issue of material fact that the individual believes still to be in dispute, providing reasons why the individual disagrees with the department's proposed dismissal, and providing any relevant documentation to support those reasons. If the department does not receive a written objection within 30 days after the individual received notice of the department's proposed dismissal, or if the department rejects the individual's objection,

(1) the department's substantiated finding becomes a final department decision for purposes of judicial review, and the department will enter the information in the centralized registry; if the previous court action or hearing resulted in a decision, order, judgment, or adjudication that the individual committed abuse, neglect, or exploitation, the department will also enter the information in the centralized registry; and

- (2) the department will give notice as required in (k) of this section.

(h) If a hearing is requested under (f) of this section,

(1) the department will hold the hearing within 45 days after receiving the request; and

(2) the entity or provider may allow the individual to remain associated with the entity or provider, pending a decision on the request, if

(A) the individual is removed from direct contact with individuals receiving services; and

(B) the entity or provider ensures that the individual has supervised access if present in any area where services are provided, during hours of operation.

(i) If a hearing is requested under (f) of this section, the department will conduct the hearing in accordance with AS 44.62.330 – 44.62.630 (Administrative Procedure Act). The hearing officer shall issue a decision within 30 days after the hearing is concluded. The decision is a final department decision for purposes of judicial review. If the hearing officer finds by a preponderance of the evidence that the individual who is the subject of the hearing committed abuse, neglect, or exploitation, the hearing officer shall submit this information to the department office responsible for maintaining the centralized registry. The department will enter the information on the centralized registry and give notice as required in (k) of this section.

(j) If the individual who is the subject of the investigation does not request a hearing within 30 days after receipt of the notice described in (e) of this section, or waives the right to a hearing, the substantiated finding becomes a final department decision for purposes of judicial review, and the department will enter the information in the centralized registry. The department will give notice as required in (k) of this section.

(k) If a hearing or waiver of hearing under this section results in a finding that an individual committed abuse, neglect, or exploitation, the department will notify any entity or provider that made a report under (c) of this section, and the individual who is the subject of the hearing, of the hearing or waiver results and of the entry of the information on the centralized registry. The department will notify the individual of the right to request that the department delete or modify the information on the centralized registry to correct an inaccuracy in accordance with AS 47.05.330(j).

(l) If, after an investigation in accordance with AS 47.05.330(j) to determine whether there is an inaccuracy related to information on the centralized registry, the department determines that the information is correct, the department will notify the individual who made the request that the department has denied the individual's request to delete or modify the information.

(m) The department will remove from the centralized registry information regarding a finding that an individual has committed abuse, neglect, or exploitation if the department receives notice that the individual has died.

(n) For purposes of this section, "substantiated finding" means a determination made by the department after an investigation that, based on available information, it is more likely than not that abuse, neglect, or exploitation occurred. (Eff. 2/9/2007, Register 181)

Authority:	AS 47.05.300	AS 47.05.330	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030
	AS 47.05.320		

7 AAC 10.960. Termination of association. (a) Except as provided in (b) and (c) of this section, if an entity or provider is required to terminate association with an individual, the entity or provider shall

(1) notify the individual that the individual's employment, volunteer services, or other association with the entity or provider under 7 AAC 10.900(b) is ended, effective immediately, unless the entity or provider takes immediate action under (2) of this subsection; the entity or provider must notify the individual under this paragraph

(A) immediately, if the individual is present at the entity or premises where the provider is providing services; or

(B) before or upon the individual's next arrival at the entity; or

(2) if the entity or provider intends to request a variance under 7 AAC 10.930, immediately reassign the duties and responsibilities of that individual so that the individual

(A) does not have contact with recipients of services;

(B) cannot access personal or financial records maintained by the entity or provider regarding recipients of services;

(C) has no control over or impact on the financial well-being of a recipient of services, unless the only recipient whose financial well-being is affected is a

(i) relative of the individual who has authorized that individual to make financial decisions for that relative;

(ii) recipient who has executed a power of attorney for that individual to make financial decisions for that recipient; or

(iii) recipient for whom a court has authorized that individual to make financial decisions; and

(D) is provided with direct supervision if present in the entity or premises where the provider is providing services during hours of operation.

(b) If the entity or provider is required to terminate association with an individual who is subject to a union agreement or employment contract that requires more notice than allowed under (a) of this section, the entity or provider shall, within 24 hours after receiving notice to terminate association, deliver a copy of the relevant language of the agreement or contract to the department. The entity or provider shall cooperate with the department in developing an appropriate termination plan for the individual that includes the measures set out in (a)(2)(A) – (D) of this section during the notice period mandated by the agreement or contract.

(c) If the individual for whom termination of association is required is a relative of the operator, administrator, or provider, and resides in the entity or premises where services are provided, termination of association must occur within 24 hours, and the entity or provider shall ensure that the individual

(1) does not have contact with recipients of services; and

(2) is provided with direct supervision if, during that 24-hour period, the individual is present in the entity or premises where the provider is providing services during hours of operation. (Eff. 2/9/2007, Register 181)

Authority:	AS 47.05.300	AS 47.05.330	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030
	AS 47.05.320		

7 AAC 10.990. Definitions. (a) In 7 AAC 10.900 – 7 AAC 10.990, unless the context requires otherwise,

- (1) "APSIN" means the Alaska Public Safety Information Network;
- (2) "barrier time" means the length of time a barrier crime under 7 AAC 10.905 bars an individual from association with an entity or provider under 7 AAC 10.900(b);
- (3) "behavioral health problem" means a mental disorder, substance use disorder, or co-occurring disorder;
- (4) "centralized registry" means the centralized registry established in 7 AAC 10.955;
- (5) "certification" has the meaning given "certified" in (b) of this section;
- (6) "commissioner" means the commissioner of health and social services;
- (7) "condition" means a barrier to association under 7 AAC 10.900(b) that results from
 - (A) a matter described in AS 47.05.330(b)(1)(A) involving the abuse, neglect, or exploitation of a child or vulnerable adult; and
 - (B) the entry of that information in the centralized registry;
- (8) "co-occurring disorder" has the meaning given in 7 AAC 57.990;
- (9) "crime" means barrier crime under 7 AAC 10.905;
- (10) "crime involving domestic violence" has the meaning given in AS 18.66.990;
- (11) "criminal justice information" has the meaning given in AS 12.62.900;
- (12) "department" means the Department of Health and Social Services;

(13) "direct supervision" means that the administrator, or a care provider who is at least 18 years of age,

- (A) is within sight or sound of the individual being supervised;
- (B) has received the training required under applicable department regulations;
- (C) is present to observe the individual; and
- (D) is available to the individual for consultation or assistance;

(14) "domestic violence problem" means the individual

(A) has been charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for a crime involving domestic violence listed in AS 18.66.990(3); or

(B) is or has been subject to a protective order issued or filed under AS 18.66 or a substantially similar law or ordinance of another jurisdiction;

(15) "eligibility to receive payments" means eligibility to receive payments that are used for the direct provision of services for the health, safety, and welfare of persons who are served by programs administered by the department; "eligibility to receive payments" does not include payments used solely for administrative costs;

(16) "individual service provider" has the meaning given in AS 47.05.390;

(17) "provider" means an individual service provider;

(18) "relative" means an individual who is related to another by marriage, blood relationship, or court decree;

(19) "substance use disorder" has the meaning given in 7 AAC 57.990;

(20) "supervised access" means that the entity or provider maintains a prudent level of awareness of the whereabouts of an individual for whom supervised access is required, to ensure the protection of recipients of services;

(21) "terminate association" means to sever an individual's association under 7 AAC 10.900(b) with an entity or provider;

(22) "volunteer" means an individual who regularly or routinely provides services or care, without pay, on behalf of an entity or provider.

(b) Notwithstanding 7 AAC 10.9990, in 7 AAC 10.900 – 7 AAC 10.990, unless the context requires otherwise,

(1) "entity" has the meaning given in AS 47.05.390;

(2) "recipient of services" means an individual receiving services from an entity or provider.

(c) In AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990, unless the context requires otherwise, "regular contact" means direct interaction with a recipient of services that occurs daily, or less frequently but on a recurring basis.

(d) In AS 47.05.300(a),

(1) "certified" means certified under 7 AAC 43.1090;

(2) "eligible to receive payments" has the meaning given "eligibility to receive payments" under (a) of this section. (Eff. 2/9/2007, Register 181)

Authority:	AS 47.05.300	AS 47.05.330	AS 47.32.010
	AS 47.05.310	AS 47.05.340	AS 47.32.030
	AS 47.05.320		

Article 5. General Variance Procedures.

7 AAC 10.9500(b)(3) is amended to read:

(3) do not apply to a request for a variance from a provision of **7 AAC 10.900 – 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry), 7 AAC 41.205 (Child Protection and Criminal History Check Requirements), or [7 AAC 50.210,] 7 AAC 57.315 (Child Protection and Criminal History Check Requirements) [**, OR 7 AAC 75.215]. (Eff. 6/23/2006, Register 178; am 12/3/2006, Register 180; am 2/9/2007, Register 181)

Authority:	AS 18.05.010	AS 47.14.120	AS 47.32.030
	AS 18.05.040	AS 47.32.010	AS 47.32.130
	AS 44.29.020	AS 47.32.020	AS 47.32.140

Article 6. Inspections and Investigations.

7 AAC 10.9600 is amended to read:

7 AAC 10.9600. Inspections and investigations. The department will conduct announced and unannounced inspections and investigations of an entity **or individual service provider that is** subject to **AS 47.05.300 – 47.05.390, AS 47.32, or** this chapter

(1) for purposes of **AS 47.05.300 – 47.05.390 and** AS 47.32.110;

(2) to determine compliance with **AS 47.05.300 – 47.05.390**, AS 47.32, this chapter, and any other applicable statute or regulation; and

(3) to determine whether an enforcement action should be taken under **AS 47.05.300 – 47.05.390**, AS 47.32.130, or 47.32.140. (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority:	AS 18.05.010	AS 47.14.120	AS 47.32.110
	AS 18.05.040	AS 47.32.010	AS 47.32.130
	AS 44.29.020	AS 47.32.030	AS 47.32.140
	<u>AS 47.05.300</u>	AS 47.32.050	AS 47.33.005
	<u>AS 47.05.310</u>	AS 47.32.060	AS 47.33.010
	<u>AS 47.05.340</u>	AS 47.32.100	

Chapter 12. Facilities and Local Units.

Article 10. Home Health Agencies.

7 AAC 12.519(a) is amended to read:

(a) If a home health agency provides home health aide services, those services must be provided

(1) by a **home health aide who**

(A) is a nurse aide certified by the Board of Nursing under AS 08.68.331 – 08.68.336;

(B) does not appear in the registry of certified nurse aides under AS 08.68.333 as having committed abuse, neglect, or misappropriation of property in connection with employment as a nurse aide;

(C) has a valid criminal history check under AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990, unless a variance is granted under 7 AAC 10.935; and

(D) [BOARD OF NURSING, WHO] meets home health requirements and has completed the competency evaluation requirements in (f) of this section;

(2) [BY A HOME HEALTH AIDE WHO IS NOT ON THE ABUSE REGISTRY MAINTAINED BY THE DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT; (3)] in accordance with a plan of care; and

(3) [(4)] in accordance with written instructions prepared by a registered nurse, or appropriate therapist providing therapy under 7 AAC 12.521, that specify each task to be completed during a home visit.

(Eff. 9/6/96, Register 139; am 2/9/2007, Register 181)

Authority:	AS 18.05.040	<u>AS 47.05.320</u>	<u>AS 47.32.010</u>
	<u>AS 47.05.300</u>	<u>AS 47.05.330</u>	<u>AS 47.32.030</u>
	<u>AS 47.05.310</u>	<u>AS 47.05.340</u>	

7 AAC 12.541(b)(3) is amended to read:

(3) report to the appropriate licensing authority any knowledge it has of **an action** [ACTIONS] by a court **or other government agency** against an individual that would indicate unfitness for holding a professional or occupational license, **including any report required under 7 AAC 10.955(c) for the centralized registry established under 7 AAC 10.955**;

7 AAC 12.541(b)(4) is amended to read:

(4) report within 24 hours any suspected abuse, neglect, or mistreatment of a patient or misappropriation of a patient's property to state officials in accordance with AS 47.17.010, 47.17.020, and AS 47.24.010 and to the **department in its capacity as the** state survey agency;

(Eff. 9/6/96, Register 139; am 2/9/2007, Register 181)

Authority:	AS 18.05.040	<u>AS 47.05.320</u>	<u>AS 47.32.010</u>
	<u>AS 47.05.300</u>	<u>AS 47.05.330</u>	<u>AS 47.32.030</u>
	<u>AS 47.05.310</u>	<u>AS 47.05.340</u>	

7 AAC 12.600(a) is amended to read:

(a) Unless indicated otherwise in this chapter, a facility required to be licensed under AS 47.32 and this chapter must comply with the provisions of 7 AAC 10.9500 – 7 AAC 10.9535 (General Variance Procedures), 7 AAC 10.9600 – 7 AAC 10.9620 (Inspections and Investigations), 7 AAC 12.600, **7 AAC 12.605**, 7 AAC 12.610, 7 AAC 12.620, and 7 AAC 12.920, and with the applicable provisions of this section for each type of facility. A critical access hospital must also comply with 7 AAC 12.612.

(Eff. 11/19/83, Register 88; am 9/6/96, Register 139; am 9/1/2000, Register 155; am 6/23/2006, Register 179; am 12/3/2006, Register 180; am 2/9/2007, Register 181)

Authority:	<u>AS 18.05.040</u>	<u>AS 47.05.340</u>	AS 47.32.060
	AS 18.20.075	AS 47.32.010	<u>AS 47.32.070</u>
	AS 18.20.080	AS 47.32.020	<u>AS 47.32.080</u>
	AS 18.20.085	AS 47.32.030	<u>AS 47.32.120</u>
	<u>AS 47.05.300</u>	AS 47.32.040	<u>AS 47.32.130</u>
	<u>AS 47.05.310</u>	AS 47.32.050	<u>AS 47.32.140</u>

7 AAC 12 is amended by adding a new section to read:

7 AAC 12.605. Criminal history check requirements. An entity listed in AS 47.32.010(b) that is required to be licensed under AS 47.32 and this chapter must also comply with the applicable requirements of AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry). (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010
AS 47.05.310 AS 47.05.340 AS 47.32.030
AS 47.05.320

7 AAC 12.660(a) is amended by adding a new paragraph to read:

(5) evidence of compliance with the applicable requirements of AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry).

(Eff. 11/19/83, Register 88; am 5/28/92, Register 122; am 5/4/97, Register 142; am 12/3/2006, Register 180; am 2/9/2007, Register 181)

Authority: AS 18.05.040 AS 47.32.010 AS 47.32.030

**Part 3. Public Assistance and Medical Assistance.
Chapter 41. Child Care Assistance Program.**

7 AAC 41.015(b)(2) is repealed and readopted to read:

(2) in addition to (1) of this subsection

(A) for a nonrelative provider approved under 7 AAC 41.200(d), monitor providers for compliance with the applicable health and safety standards of this chapter; the provisions of this subparagraph do not apply to the requirement dealing with criminal history checks under 7 AAC 41.205(b); and

(B) for a relative provider approved under 7 AAC 41.200(e),

(i) obtain documents and review information related to background checks in accordance with 7 AAC 41.205(c) and (d);

(ii) as necessary, request the department to review information obtained under 7 AAC 41.205(c) and (d); and

(iii) monitor providers for compliance with the applicable health and safety standards of this chapter.

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority: AS 47.25.001

7 AAC 41.200(g)(2) is repealed and readopted to read:

(2) verification that the applicant is the only individual providing child care;

7 AAC 41.200(g)(6) is repealed and readopted to read:

(6) proof that the provider has met the requirements of 7 AAC 10.910(b) or 7 AAC 41.205(c), as applicable;

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.340 AS 47.25.001
AS 47.05.310

7 AAC 41.205 is repealed and readopted to read:

7 AAC 41.205. Child protection and criminal history check requirements. (a) An individual in a child care facility may not abuse a child or engage in any exploitive or sexual act with a child. The department or designee may require an individual who is subject to a background review under this section to provide an evaluation from a probation officer, health professional, or mental health professional affirming that the individual is free from problems that might pose a significant risk to the health, safety, or welfare of a child in care.

(b) Except as provided in (c) and (d) of this section, to participate in the child care assistance program, a child care provider identified in 7 AAC 41.200(a)(1) – (6) must meet the applicable requirements of AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry) for that provider and for each individual associated with that provider in a manner described in 7 AAC 10.900(b). If the provider requests and receives a provisional valid criminal history check under 7 AAC 10.920

for that provider or another individual, the department office responsible for approvals under this chapter will, or the designee shall, issue a provisional approval if the department or designee determines that the provider or other individual is otherwise eligible to provide care for children under this section. If the department determines under 7 AAC 10.915 that the provider or other individual did not pass the criminal history check, or if the provisional valid criminal history check issued under 7 AAC 10.920 expires, the department will, or the designee shall, revoke the provisional approval unless the provider requests a variance under 7 AAC 10.930, and the department grants that request under 7 AAC 10.935.

(c) To participate in the child care assistance program under this chapter, an individual seeking approval as a relative provider under 7 AAC 41.200(e) must submit to the department or designee, for that provider, and for each individual in contact with children in care who is

(1) 16 years of age or older, a signed release of information authorization to review criminal history information including

(A) criminal justice information;

(B) information regarding adjudication as a delinquent for each individual who is 16 to 20 years of age, in accordance with AS 47.12.310(e);

(C) protective records developed under AS 47.17; and

(D) child care licensing records; and

(2) 18 years of age or older, criminal justice information at the level available to an interested person under AS 12.62.160(b)(9); if the provider is in a community that does not have an Alaska State Trooper's office, and does not have another means of obtaining the report, the department will obtain the report, based on information supplied on each signed release submitted under (1) of this subsection.

(d) The department will not approve an individual seeking approval as a relative provider under 7 AAC 41.200(e) if the department or designee finds that the provider or any individual in contact with children in care for whom information was required to be submitted under (c) of this section

(1) is named on the centralized registry established under 7 AAC 10.955;

(2) was the subject of a prior adverse licensing action of the kind described in AS 47.32.140(d)(5) – (7); or

(3) was charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, an offense that is a barrier crime under 7 AAC 10.905.

(e) For purposes of (c) – (d) of this section, an individual in contact with children in care is an individual who has the opportunity to gain access to any area where child care is provided, a member of the provider's household, or an individual who resides in a part of the premises where child care is provided. However, an individual in contact with children in care does not include

(1) a parent of a child in care, unless the parent is a caregiver or a member of the provider's household;

(2) a parent's designee to drop off and pick up a child in care, unless the designee is a caregiver;

(3) a personal physician, an infant learning teacher, an attendant for a child with special needs as described in 7 AAC 57.940, a licenser, a fire marshal, a food services sponsor, or another similar individual who occasionally provides support services to the child care facility or to a child in care;

(4) an individual who is a vendor or an industry representative, or who provides delivery, installation, maintenance, or repair services, if the provider provides supervised access while that individual is present in the child care facility while children are in care;

(5) an occasional guest of the provider or of a child in care, if the provider provides supervised access while that guest is present in the child care facility;

(6) an individual who resides in a part of the premises that house a child care facility, if the

(A) individual is not a caregiver;

(B) individual remains or intends to remain in the child care facility for less than 45 days, in total, in any 12-month period; and

(C) provider provides supervised access if the individual is present in the child care facility while children are in care; or

(7) an individual coming into incidental contact with children during an outing away from the child care facility.

(f) For purposes of (e) of this section,

(1) an individual who resides in a part of the premises that house the child care facility is an individual who dwells continuously in, or legally occupies, the premises housing the child care facility as evidenced by

(A) the individual's address on the individual's permanent fund dividend received under AS 43.23, driver's license, fishing or hunting license, or other official record; or

(B) observation by another individual of the individual occupying the premises that house the child care facility; and

(2) an individual who has the opportunity to gain access to any area where child care is provided is an individual who has the ability, right, or permission to enter, exit, or make use of that area during the hours of operation.

(g) An individual described in (f) of this section who has direct access from the individual's residence to the premises that house the child care facility and remains or intends to remain in the residence for 45 days or more, in total, in any 12-month period, is a member of the provider's household.

(h) For the purpose of (e) of this section, "supervised access" means that the provider maintains a prudent level of awareness of the whereabouts of an individual for whom supervised access is required, to ensure the protection of children in care. (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.320 AS 47.05.340
AS 47.05.310 AS 47.05.330 AS 47.25.001

7 AAC 41.210(c)(8) is repealed and readopted to read:

(8) shall ensure that a substitute caregiver whose services are used by the provider, except during an unplanned, unexpected circumstance that must be addressed immediately,

(A) has a valid criminal history check as required under 7 AAC 41.205;

(B) has been determined by the department or designee to be otherwise eligible to provide care for children under the applicable standards of 7 AAC 41.205; and

(C) has signed a verification that the substitute caregiver has read and understands the provider's responsibilities under this chapter, and is capable of fulfilling those responsibilities in the provider's absence; and

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.310 AS 47.25.001

7 AAC 41.215(e)(5) is amended to read:

(5) directly provide care and supervision of children, except that a substitute caregiver **for whom the requirements of 7 AAC 41.210(c)(8) are met** [DETERMINED BY THE DEPARTMENT OR A DESIGNEE TO BE ELIGIBLE UNDER THE STANDARDS OF 7 AAC 41.205,] may provide care, subject to the limits set by 7 AAC 41.210(c)(9);

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.310 AS 47.25.001

7 AAC 41.370 is repealed and readopted to read:

7 AAC 41.370. Child care in the child's own home. (a) To participate in the child care assistance program, an eligible family choosing to hire an in-home child care provider to care for the family's children in the family's home may hire an in-home provider only if the provider has a valid criminal history check under AS 47.05.300 – 47.05-390 and 7 AAC 10.900 – 7 AAC 10.990, and is approved under (d) of this section. A parent will not be approved for participation in the program for the care of the parent's own child.

(b) The family shall submit to

(1) the department office responsible for conducting criminal history checks all items required under 7 AAC 10.910(b) for the selected provider; and

(2) the designee or to the department office responsible for approvals under this chapter,

(A) a copy of a government-issued picture identification of the selected provider;

(B) a verification signed by the selected provider, on a form prescribed by the department, that the selected provider

(i) is the same person pictured on the identification; and

(ii) is at least 18 years of age; and

(C) a verification signed by the family, on a form prescribed by the department, that the selected provider

(i) if approved under (c) or (d) of this section, will be employed by the family, and will care only for children who reside in the family's home; if fewer than five children are in the family, the provider may also care for the provider's children if the total number of all children in care does not exceed five; and

(ii) has been provided with a copy of the materials listed under (h)(2) and (4) of this section.

(c) If the department issues a notice of a provisional valid criminal history check for the selected provider under 7 AAC 10.920, the department office responsible for approvals under this chapter will, or the designee shall, issue a provisional approval for the selected provider if the department or designee determines that the provider has met the applicable requirements of this section and 7 AAC 41.205(a). If the department determines under 7 AAC 10.915 that the selected provider did not pass the criminal history check, or if the provisional valid criminal history check issued under 7 AAC 10.920 expires, the department will, or the designee shall, revoke the provisional approval, and the family shall terminate association with the selected provider, unless the family requests a variance under 7 AAC 10.930, and the department grants the request under 7 AAC 10.935.

(d) If the selected provider passed the criminal history check conducted under 7 AAC 10.915, the department will, or the designee shall, determine whether the provider has met the applicable requirements of this section and 7 AAC 41.205(a). If the department or designee determines that the provider

(1) has met the applicable requirements of this section and 7 AAC 41.205(a), the department will, or the designee shall, approve that provider in accordance with the applicable provisions of this chapter; or

(2) has not met the applicable requirements of this section and 7 AAC 41.205(a), the department will, or the designee shall, notify the provider and

(A) specify the reasons for that determination; and

(B) advise the provider of the right to request an administrative review under 7 AAC 41.435.

(e) If the selected provider did not pass the criminal history check, the department office responsible for conducting criminal history checks will notify

(1) the provider of the right to challenge the department's determination or to seek reconsideration under 7 AAC 10.950; and

(2) the family of the right to request a variance under 7 AAC 10.930.

(f) The department or designee will not approve under this chapter a selected provider who did not pass a background check unless

(1) the department's determination changes upon reconsideration requested by the selected provider; or

(2) the family requests a variance under 7 AAC 10.930, and the department grants the request under 7 AAC 10.935.

(g) The department will, or a designee shall, provide written notice of the family's obligation to pay the approved in-home child care provider at least the minimum wage established under AS 23.10.065 or the amount of the family's program benefits established under 7 AAC 41.345, whichever is more.

(h) The department will, or a designee shall, provide an in-home child care packet to a family choosing in-home child care. The packet must contain information specified by the department, including

(1) state and federal employment information;

(2) United States Internal Revenue Service Form W-2 and a wage and tax statement;

(3) a reminder that the parent is responsible for complying with applicable labor laws and tax requirements; and

(4) a checklist of suggested health and safety guidelines for in-home child care.

(i) Subject to the monthly maximum set in 7 AAC 41.025(g) and the amount of the family contribution under 7 AAC 41.330, the department will, or a designee shall, issue an authorization for in-home child care and program benefit payments to the family. A family shall submit billing statements, and any corrections to billing statements, to the department or designee, as determined by the department as follows:

(1) for the first 10 months of a state fiscal year, no later than the last day of the third month following the month in which the charges were incurred;

(2) for the last two months of a state fiscal year, no later than 31 days after the end of the fiscal year.

(j) The department will not pay program benefits billed on a billing statement or a correction to a billing statement submitted later than the applicable deadline set in (i) of this section.

(k) The family shall retain for at least three years all records related to attendance of children in care, billing under this chapter, and provider employment.

(l) The family and the approved in-home child care provider shall cooperate with the department or a designee for purposes of monitoring reviews or investigations to determine compliance with this section. In this subsection, "cooperate" includes providing access to

(1) the site where care is provided;

(2) records; and

(3) children for purposes of conducting interviews. (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority: AS 47.05.010 AS 47.05.310 AS 47.25.051
AS 47.05.300 AS 47.25.001

Chapter 43. Medical Assistance.
Article 1. Administrative Provisions.

7 AAC 43.065(b) is amended by adding a new paragraph to read:

(4) to comply with all requirements of AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry), if applicable to that provider type.

(Eff. 8/18/79, Register 71; am 5/5/93, Register 126; readopt 8/7/96, Register 139; am 11/29/97, Register 144; am 3/3/2001, Register 157; am 2/9/2007, Register 181)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040
AS 47.05.300

Article 19. Consumer-Directed and Agency-Based Personal Care Services.

7 AAC 43.770(a)(4) is amended to read:

(4) **must pass a criminal history check requested under (c)** [MAY NOT BE DISQUALIFIED FOR THE POSITION DUE TO A CRIMINAL CONVICTION OR A PENDING CHARGE FOR A CRIMINAL OFFENSE SET OUT IN (e)] of this section **unless the department grants a variance under 7 AAC 10.935;**

7 AAC 43.770(c) is amended to read:

(c) A personal care **agency is subject to the applicable requirements of AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry)** [ASSISTANT MUST PROVIDE THE EMPLOYING AGENCY ALL DOCUMENTATION, FINGERPRINT CARDS, AND FEES NECESSARY FOR REQUESTING THE PERSONAL CARE ASSISTANT’S CRIMINAL HISTORY RECORD INFORMATION UNDER AS 12.62.160]. The **personal care** agency shall submit **to the department** a request for **a criminal history check for each** [RECORD INFORMATION ON A] personal care assistant **as required under 7 AAC 10.910** [TO THE DEPARTMENT OF PUBLIC SAFETY NO LATER THAN 10 WORKING DAYS AFTER THE PERSONAL CARE ASSISTANT IS HIRED. THE AGENCY SHALL CONTACT THE DEPARTMENT WITHIN FIVE DAYS AFTER THE AGENCY RECEIVES THE DEPARTMENT OF PUBLIC SAFETY’S DETERMINATION. THE AGENCY MAY EMPLOY A PERSON AS A PERSONAL CARE ASSISTANT ON A CONDITIONAL BASIS PENDING COMPLETION OF REVIEW OF THE CRIMINAL HISTORY RECORD INFORMATION REQUESTED]. The department will not pay for services provided by a personal care assistant

(1) for whom a criminal history check [RECORD INFORMATION] was not [TIMELY] requested **as required under 7 AAC 10.900 – 7 AAC 10.990; or**

(2) who does not pass a criminal history check under 7 AAC 10.900 – 7 AAC 10.990; however, except as restricted by applicable federal law, the department will not withhold payment if it grants a provisional valid criminal history check under 7 AAC 10.920 or a variance under 7 AAC 10.935.

7 AAC 43.770(d) is repealed:

(d) Repealed 2/9/2007.

7 AAC 43.770(e) is repealed:

(e) Repealed 2/9/2007.

7 AAC 43.770(f) is repealed:

(f) Repealed 2/9/2007.

(Eff. 11/6/86, Register 100; am 6/27/92, Register 122; readopt 8/7/96, Register 139; am 10/21/98, Register 148; am 10/1/2001, Register 159; am 1/1/2002, Register 160; am 6/19/2004, Register 170; am 4/1/2006, Register 177; am 2/9/2007, Register 181)

Authority:	AS 47.05.010	<u>AS 47.05.310</u>	<u>AS 47.05.340</u>
	AS 47.05.017	<u>AS 47.05.320</u>	AS 47.07.030
	<u>AS 47.05.300</u>		

7 AAC 43.775(g) is repealed and readopted to read:

(g) A personal care assistant shall inform the personal care agency within

(1) 24 hours, or by close of business the next business day, whichever is sooner, if the personal care assistant is charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a barrier crime listed in 7 AAC 10.905; the personal care agency shall notify the department as required under 7 AAC 10.925(b); and

(2) 10 days after a change in the personal care assistant's

(A) name;

(B) license, certification, or registration status; or

(C) mailing address, physical address, or telephone number.

(Eff. 11/6/86, Register 100; am 6/27/92, Register 122; readopt 8/7/96, Register 139; am 10/1/2001, Register 159; am 1/1/2002, Register 160; am 4/1/2006, Register 177; am 2/9/2007, Register 181)

Authority:	AS 47.05.010	<u>AS 47.05.320</u>	AS 47.07.030
	<u>AS 47.05.310</u>	<u>AS 47.05.340</u>	

7 AAC 43.788(a) is amended to read:

(a) An agency or an employee of an agency in either the consumer-directed or agency-based program who has reasonable cause to believe that a recipient of any service rendered under 7 AAC 43.750 - 7 AAC 43.795 is subject to abuse or coercion of any kind, shall report that belief to the department immediately in accordance with AS 47.17.020 and AS 47.24.010. **An agency or employee is also subject to the reporting requirements of 7 AAC 10.955(c) for the centralized registry established under 7 AAC 10.955.**

(Eff. 6/27/92, Register 122; readopt 8/7/96, Register 139; am 10/1/2001, Register 159; am 1/1/2002, Register 160; am 6/19/2004, Register 170; am 4/1/2006, Register 177; am 2/9/2007, Register 181)

Authority: AS 47.05.010 AS 47.07.030 **AS 47.05.330**

7 AAC 43.794(a) is amended by adding a new paragraph to read:

(4) if a personal care assistant does not pass a criminal history check conducted under 7 AAC 10.900 – 7 AAC 10.990, and the personal care agency does not terminate association with the individual in accordance with 7 AAC 10.960, unless the department grants a variance under 7 AAC 10.935.

(Eff. 4/1/2006, Register 177; am 2/9/2007, Register 181)

Authority: AS 47.05.010 **AS 47.05.310** **AS 47.05.340**
AS 47.05.300 **AS 47.05.320** AS 47.07.030

Chapter 47. General Relief.

Article 2. General Relief Assisted Living Home Care.

7 AAC 47.525 is amended to read:

7 AAC 47.525. Waiver of requirement of 7 AAC 47.300 – 7 AAC 47.510. The department may waive a requirement of 7 AAC 47.300 – 7 AAC 47.510 if necessary for the protection of an individual placed in an assisted living home under 7 AAC 47.400, unless the requirement is one imposed under AS 47.05, AS 47.24, AS 47.25, AS 47.32, AS 47.33, 7 AAC 10.1000 – 7 AAC 10.1095, or 7 AAC 75, and the home has not been granted a variance under **7 AAC 10.935**, 7 AAC 10.9500 – 7 AAC 10.9535, **or** [AND] 7 AAC 75.405 – 7 AAC 75.415.

(Eff. 6/28/2002, Register 162; am 6/24/2004, Register 170; am 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority:	AS 47.05.010	AS 47.24.017	AS 47.32.010
	<u>AS 47.05.340</u>	AS 47.25.120	AS 47.32.030
	AS 47.24.011		

Part 4. Children's Services and Juvenile Justice.

Chapter 50. Community Care Licensing.

7 AAC 50.030(b)(4) is repealed and readopted to read:

(4) request a criminal history check under 7 AAC 10.910 for each individual for whom a criminal history check is required under AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990.

7 AAC 50.030(c)(6) is repealed and readopted to read:

(6) the information and other items required to request a criminal history check under 7 AAC 10.910 for each person for whom a criminal history check is required under AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990;

7 AAC 50.030(c)(14) is repealed and readopted to read:

(14) other information required by the **department** [DIVISION] on the application to enable the **department** [DIVISION] to determine if the applicant meets the **applicable** requirements of **AS 47.05.300 – 47.05.390, AS 47.32, 7 AAC 10.900 – 7 AAC 10.990,** [AS 47.35] and this chapter.

7 AAC 50.030(d) is repealed:

(d) Repealed am 2/9/2007.

7 AAC 50.030(f) is amended to read:

(f) An application is not complete unless it provides all of the information required by [AS 47.35.017(b) AND] this section, unless it is an application for [BIENNIAL] renewal of a license. If the application is an application for [BIENNIAL] renewal [OF A LICENSE], only the attachments to the application for the license that require updating must be submitted with the application for renewal **and any requests for criminal history checks required under 7 AAC 10.910.**

(Eff. 1/1/96, Register 136; am 3/1/98, Register 145; am 1/1/2001, Register 156; am 2/9/2007, Register 181)

Authority:	AS 44.29.020	<u>AS 47.05.340</u>	<u>AS 47.32.040</u>
	<u>AS 47.05.300</u>	<u>AS 47.32.010</u>	<u>AS 47.32.060</u>
	<u>AS 47.05.310</u>	<u>AS 47.32.020</u>	[AS 47.35.010]
	<u>AS 47.05.320</u>	<u>AS 47.32.030</u>	[AS 47.35.017]

7 AAC 50.210(c) is repealed and readopted to read:

(c) An individual associated in a manner described in 7 AAC 10.900(b) with a facility where child care is provided is subject to the applicable requirements of AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry). In addition, an individual may not work, volunteer, or reside in any other part of the facility with direct access to the part of the facility where child care is provided if

(1) the individual's name appears on the centralized registry established under 7 AAC 10.955;

(2) the individual has a physical health problem or behavioral health problem that poses a significant risk to the health, safety, or well-being of children in care; or

(3) the individual was the subject of prior adverse licensing action of the kind described in AS 47.32.140(d)(5) – (7).

7 AAC 50.210(d) is amended to read:

(d) A facility **or the department** may [AND THE DIVISION WILL, IN ITS DISCRETION,] require that an individual having regular contact with children in a facility provide an evaluation from a probation **officer**, health **professional**, or mental health professional affirming that the individual is free from problems that **might pose a significant risk** [ARE LIKELY DETRIMENTAL] to the health, safety, or well-being of a child in the facility.

7 AAC 50.210(f) is amended to read:

(f) **In addition to its review under 7 AAC 10.915, the department** [THE DIVISION] will review its child protection records and previous licensing records [AND CRIMINAL JUSTICE INFORMATION] with respect to the designated administrator or foster parent [, ALL ADULT MEMBERS OF THE LICENSEE'S HOUSEHOLD,] and any **individual 16 years of age or older, including members of the licensee's household,** [ADULT] residing in any part of the facility, if that **individual** [ADULT] has direct access from the adult's residence to the part of the facility where child care is provided. **The provisions of this subsection do not apply to an individual who is**

(1) 18 or 19 years of age and is in the custody of the state;

(2) a runaway sheltered in a facility licensed by the department; or

(3) an adult client of a maternity home.

7 AAC 50.210(g) is repealed:

(g) Repealed 2/9/2007.

7 AAC 50.210(l) is repealed and readopted to read:

(l) In this section,

(1) "behavioral health problem" has the meaning given in 7 AAC 10.990;

(2) "regular contact" has the meaning given in 7 AAC 10.990. (Eff. 1/1/96, Register 136; am 3/1/98, Register 145; am 1/1/2001, Register 156; am 2/9/2007, Register 181)

Authority:	AS 44.29.020	<u>AS 47.05.330</u>	<u>AS 47.32.030</u>
	<u>AS 47.05.300</u>	<u>AS 47.05.340</u>	<u>AS 47.32.040</u>
	<u>AS 47.05.310</u>	<u>AS 47.32.010</u>	<u>AS 47.32.060</u>
	<u>AS 47.05.320</u>	<u>AS 47.32.020</u>	[AS 47.35.010]

**Chapter 56. Child Placement Agencies.
Article 1. Licensing Process.**

7 AAC 56.070(c)(6) is repealed and readopted to read:

(6) the information and other items required to request a criminal history check under 7 AAC 10.910 for each person for whom a criminal history check is required under AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990;

7 AAC 56.070(c)(12) is amended to read:

(12) other information required by the **department** [DIVISION] on the application to enable the **department** [DIVISION] to determine if the applicant meets the **applicable** requirements of AS 47.05.300 – 47.05.390, AS 47.32, 7 AAC 10.900 – 7 AAC 10.990, [AS 47.35] and this chapter.

(Eff. 1/1/2001, Register 156; am 2/9/2007, Register 181)

Authority:	AS 44.29.020	<u>AS 47.05.340</u>	<u>AS 47.32.040</u>
	<u>AS 47.05.300</u>	<u>AS 47.32.010</u>	<u>AS 47.32.060</u>
	<u>AS 47.05.310</u>	<u>AS 47.32.020</u>	[AS 47.35.010]
	<u>AS 47.05.320</u>	<u>AS 47.32.030</u>	[AS 47.35.017]

Article 3. Personnel.

7 AAC 56.210 is repealed and readopted to read:

7 AAC 56.210. Qualifications and responsibilities of individuals having regular contact with children and clients in an agency. (a) An individual having regular contact with children and clients in an agency must be a responsible individual of reputable character who exercises sound judgment.

(b) An individual associated with an agency in a manner described in 7 AAC 10.900(b) is subject to the applicable requirements of AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry). In addition, an individual may not work or volunteer in an agency if

(1) the individual's name appears on the centralized registry established under 7 AAC 10.955;

(2) the individual has a physical health problem or behavioral health problem that poses a significant risk to the health, safety, or well-being of children or clients; or

(3) the individual was the subject of prior adverse licensing action of the kind described in AS 47.32.140(d)(5) – (7).

(c) An agency or the department may require that an individual having regular contact with children and clients in an agency provide an evaluation from a probation officer, health professional, or mental health professional affirming that the individual is free from any problem that is likely to be detrimental to the health, safety, or well-being of a child or a client of the agency.

(d) An adult having regular contact with children in an agency may not have a romantic relationship with a child and may not abuse a child or engage in any exploitive or sexual act with a child.

(e) In addition to the criminal history check conducted under 7 AAC 10.900 – 7 AAC 10.990, the department will review its child protection records and previous licensing records with respect to the designated administrator.

(f) In this section,

(1) "behavioral health problem" has the meaning given in 7 AAC 10.990;

(2) "regular contact" has the meaning given in 7 AAC 10.990. (Eff. 1/1/2001, Register 156; am 2/9/2007, Register 181)

Authority:	AS 44.29.020	<u>AS 47.05.330</u>	<u>AS 47.32.030</u>
	<u>AS 47.05.300</u>	<u>AS 47.05.340</u>	<u>AS 47.32.040</u>
	<u>AS 47.05.310</u>	<u>AS 47.32.010</u>	<u>AS 47.32.060</u>
	<u>AS 47.05.320</u>	<u>AS 47.32.020</u>	[AS 47.35.010]

Chapter 57. Child Care Facilities Licensing.

The lead-in language of 7 AAC 57.015(a)(11) is amended to read:

(11) **subject to (b) of this section,** a day camp or similar facility or program that

7 AAC 57.015 is amended by adding a new subsection to read:

(b) To be exempt from the licensure requirements of AS 47.32 and this chapter under (a)(11) of this section, a facility or program must implement and conduct a fingerprint-based criminal history check that meets or exceeds the standards set in 7 AAC 10.900 – 7 AAC 10.990 for each employee and other individual associated with the facility in a manner described in 7 AAC 10.900(b). If the facility or program does not conduct fingerprint-based criminal history checks as described in this subsection,

(1) except for the requirements of this chapter dealing with criminal history checks, the department will accept the accreditation or certification standards of the facility or program in lieu of licensing requirements of this chapter; and

(2) the facility or program must meet the applicable requirements of AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry). (Eff. 6/23/2006, Register 178; am2/9/2007, Register 181)

Authority:	AS 44.29.020	AS 47.32.010	AS 47.32.030
	<u>AS 47.05.340</u>	AS 47.32.020	

7 AAC 57.025(a) is amended to read:

7 AAC 57.025. Compliance and other reviews. (a) For purposes of determining compliance with and achieving the purposes of AS 47.05.300 – 47.05.990, AS 47.32, 7 AAC 10.900 – 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry), 7 AAC 10.1000 – 7 AAC 10.1095 (Environmental Health and Safety), and this chapter, for purposes of ongoing monitoring, or to assist the department in its review of an annual self-monitoring report submitted under 7 AAC 57.050, the department may conduct inspections and investigations under AS 47.32.060 and 47.32.090 – 47.32.110, including announced or unannounced onsite inspections and investigations under 7 AAC 10.9600 – 7 AAC 10.9620.

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority:	AS 44.29.020	AS 47.32.010	AS 47.32.090
	<u>AS 47.05.310</u>	AS 47.32.020	AS 47.32.100
	<u>AS 47.05.320</u>	AS 47.32.030	AS 47.32.110
	<u>AS 47.05.330</u>	AS 47.32.060	AS 47.32.200
	<u>AS 47.05.340</u>		

7 AAC 57.030(c)(5) is amended to read:

(5) [FOR] the [ADMINISTRATOR AND FOR EACH ADDITIONAL INDIVIDUAL, AGE 16 OR OLDER, IN CONTACT WITH CHILDREN IN CARE, A] signed release of information authorization **and other items required under 7 AAC 10.910(b) to request** [FOR] a criminal history check for each individual **associated with the child care facility in a manner described in 7 AAC 10.900(b)** [LISTED UNDER AS 47.05.310(d), AND FINGERPRINTS FOR EACH INDIVIDUAL AS REQUIRED UNDER AS 47.05.310(e) AND 7 AAC 57.315(g)];

7 AAC 57.030(e) is repealed and readopted to read:

(e) Except for a biennial renewal application under AS 47.32.060, an application is not complete unless it provides all of the information required by this section. If the application is a biennial renewal application, only attachments that include updated information must be submitted with the application, and any requests for criminal history checks required under 7 AAC 10.910. Subject to 7 AAC 57.035, the department will renew a biennial license if the department finds that the facility

- (1) has maintained the facility in good repair;

(2) is in compliance with state fire safety code requirements in 13 AAC 50.025 and 13 AAC 55;

(3) is in compliance with AS 47.05.300 – 47.05.990 and 7 AAC 10.900 – 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry); and

(4) is in

(A) full compliance with AS 47.32, 7 AAC 10.1000 – 7 AAC 10.1095 (Environmental Health and Safety), and this chapter; or

(B) substantial compliance with AS 47.32, 7 AAC 10.1000 – 7 AAC 10.1095, and this chapter, and has implemented a plan of correction, approved by the department, designed to bring the facility or agency into full compliance with AS 47.32, 7 AAC 10.1000 – 7 AAC 10.1095, and this chapter.

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority:	AS 44.29.020	AS 47.05.340	AS 47.32.050
	AS 47.05.010	AS 47.32.020	<u>AS 47.32.060</u>
	AS 47.05.310	AS 47.32.030	AS 47.32.080
	<u>AS 47.05.330</u>	AS 47.32.040	

7 AAC 57.035(a)(2) is amended to read:

(2) the licensee, administrator, a member of the licensee's household, or other person **associated in a manner described in 7 AAC 10.900(b)**

(A) does not pass a criminal history check conducted under 7 AAC 10.900 – 7 AAC 10.990, unless the department grants a variance under 7 AAC 10.935; or [IN CONTACT WITH CHILDREN IN CARE OR LISTED IN AS 47.05.310(d)]

(B) is charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for a crime or offense listed in **7 AAC 10.905, unless the department grants a variance under 7 AAC 10.935** [AS 47.05.310(c) OR 7 AAC 57.315];

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority:	AS 44.29.020	AS 47.32.020	AS 47.32.080
	AS 47.05.010	AS 47.32.030	AS 47.32.120
	AS 47.05.310	AS 47.32.040	AS 47.32.130
	<u>AS 47.05.330</u>	AS 47.32.050	AS 47.32.140
	AS 47.05.340	<u>AS 47.32.060</u>	

7 AAC 57.060 is amended to read:

7 AAC 57.060. Request for general variance. A [EXCEPT FOR A VARIANCE REQUEST SUBJECT TO 7 AAC 57.315(i), A] child care facility may request a general variance from a requirement of AS 47.32, 7 AAC 10.1000 – 7 AAC 10.1095, or this chapter in accordance with 7 AAC 10.9500 – 7 AAC 10.9535. (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority:	AS 44.29.020	<u>AS 47.05.320</u>	AS 47.32.010
	<u>AS 47.05.310</u>	<u>AS 47.05.340</u>	AS 47.32.030

7 AAC 57.200(a)(1) is amended to read:

(1) determine policy for the operation and management of the facility that meets the applicable requirements of **AS 47.05.300 – 47.05.990**, AS 47.32, **7 AAC 10.900 – 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry)**, 7 AAC 10.1000 – 7 AAC 10.1095 (**Environmental Health and Safety**), and this chapter, and provide for implementation of that policy by an administrator;

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority:	AS 44.29.020	<u>AS 47.05.330</u>	AS 47.32.010
	<u>AS 47.05.310</u>	<u>AS 47.05.340</u>	AS 47.32.030
	<u>AS 47.05.320</u>		

The lead-in language of 7 AAC 57.220(a) is amended to read:

(a) A child care facility with one or more employees [OR INDIVIDUALS IN CONTACT WITH CHILDREN IN CARE] shall provide personnel policies to those employees [AND INDIVIDUALS] when they start **employment** [CARING FOR OR OTHERWISE HAVING CONTACT WITH CHILDREN] at the facility. [THE REQUIREMENTS OF THIS SUBSECTION DO NOT APPLY IF ALL EMPLOYEES AND INDIVIDUALS IN CONTACT WITH CHILDREN IN CARE ARE RELATIVES OF THE ADMINISTRATOR.] The personnel policies must include, as applicable,

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7 AAC 57.220(a)(2) is amended to read:

(2) the job description applicable to each employee [OR INDIVIDUAL]; and

7 AAC 57.220(b)(3) is amended to read:

(3) **ensure that each individual associated with the facility in a manner described in 7 AAC 10.900(b) has a valid criminal history check under 7 AAC 10.910(h)** [OBTAIN A CRIMINAL JUSTICE REPORT ON EACH EMPLOYEE OR INDIVIDUAL IN CONTACT WITH CHILDREN IN CARE] before employment or other service **unless the department has granted a provisional valid criminal history check under 7 AAC 10.920 or a variance under 7 AAC 10.935;** [THE REPORT MUST CONTAIN CRIMINAL JUSTICE INFORMATION AT THE LEVEL AVAILABLE TO AN INTERESTED PERSON UNDER AS 12.62.160(b)(9);]

The lead-in language of 7 AAC 57.220(b)(4) is amended to read:

(4) remove an employee or **other caregiver** [INDIVIDUAL] from contact with children when the administrator has reason to believe that the **employee or other caregiver** [PERSON]

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7 AAC 57.220(b)(5) is amended to read:

(5) ensure that the ability of an employee or **other caregiver** [INDIVIDUAL IN CONTACT WITH CHILDREN IN CARE] to perform assigned duties is not impaired by alcohol or a controlled substance while that person is in contact with children or is performing other job responsibilities.

7 AAC 57.220(c) is repealed and readopted to read:

(c) Subject to the applicable provisions of 7 AAC 10.900 – 7 AAC 10.990, if the department directs a child care facility to take action under (b)(4) of this section, the department will inform the individual of the grounds for removal and provide the individual with an opportunity to bring to the department's attention any facts the individual believes are pertinent. The department will excuse or delay notification to the individual if the department determines that notification may put children at risk of harm. The department will not provide the individual with any information that is confidential under law or that may put children at risk of harm. If termination of association is required under 7 AAC 10.900 – 7 AAC 10.990, the provisions of 7 AAC 10.960 apply.

7 AAC 57.220(d) is amended to read:

(d) A child care facility shall adopt and compile facility policies, procedures, program descriptions, and forms, as applicable, into a policies and procedures manual. The child care facility shall make the manual available to employees and **other** individuals **associated with the facility in a manner described in 7 AAC 10.900(b)** [IN CONTACT WITH CHILDREN IN CARE], and to the department upon request.

7 AAC 57.220(e) is amended to read:

(e) A child care facility's practices, and the practices of the facility's employees or other individuals **associated with the facility in a manner described in 7 AAC 10.900(b)** [IN CONTACT WITH CHILDREN IN CARE], must conform to applicable statutes, 7 AAC 10.1000 – 7 AAC 10.1095, this chapter, and the facility's policies and procedures manual. (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority:	AS 44.29.020	<u>AS 47.05.330</u>	AS 47.32.010
	<u>AS 47.05.310</u>	<u>AS 47.05.340</u>	AS 47.32.030
	<u>AS 47.05.320</u>		

7 AAC 57.230(d) is amended to read:

(d) A child care facility shall maintain personnel records for employees and **caregivers** [INDIVIDUALS IN CONTACT WITH CHILDREN IN CARE]. For employees, these records must include starting and ending dates of employment, application materials, annual and interim performance evaluations, orientation and training documentation, and personnel action memoranda of commendation or reprimand. For **other caregivers** [INDIVIDUALS IN CONTACT WITH CHILDREN IN CARE], records may be limited to starting and ending dates of service, application materials, and an evaluation notation. (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority: AS 44.29.020 AS 47.32.030 AS 47.32.180
AS 47.32.010

The lead-in language of 7 AAC 57.240(a) is amended to read:

(a) In addition to the notice of changes required by AS 47.32.200, **and the notification requirements of 7 AAC 10.925**, a child care facility shall report to the department

...

7 AAC 57.240(a)(3) is amended to read:

(3) the permanent departure of an individual, age 16 or older, **associated with** [HAVING CONTACT WITH CHILDREN IN] a child care facility **in a manner described in 7 AAC 10.900(b)**; and

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority: AS 44.29.020 **AS 47.05.330** AS 47.32.030
AS 47.05.310 AS 47.32.010 AS 47.32.200

7 AAC 57.305 is repealed:

7 AAC 57.305. Individual in contact with children in care. Repealed.
(Eff. 6/23/2006, Register 178; repealed 2/9/2007, Register 181)

The section heading for 7 AAC 57.310 is changed to read:

7 AAC 57.310. Qualifications and responsibilities of employees and other individuals [IN CONTACT WITH CHILDREN] in a child care facility.

7 AAC 57.310(a) is amended to read:

(a) An individual associated with [WHO IS IN CONTACT WITH CHILDREN IN] a child care facility in a manner described in 7 AAC 10.900(b) must be a responsible individual of reputable character who exercises sound judgment.

7 AAC 57.310(b) is repealed and readopted to read:

(b) An individual associated with a child care facility in a manner described in 7 AAC 10.900(b) is subject to the applicable requirements of AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry). In addition, an individual may not work, with or without compensation, or reside in a child care facility or in any other part of the premises that house a child care facility, if the individual has the opportunity to gain access to the facility and

(1) the individual's name appears on the centralized registry established under 7 AAC 10.955;

(2) the individual has a physical health problem, behavioral health problem, or domestic violence problem that poses a significant risk to the health, safety, or welfare of children in care; or

(3) the individual was the subject of a final adverse licensing action under AS 47.32.130 or 47.32.140(d)(5), (6), (7), or (9).

The lead-in language of 7 AAC 57.310(d) is amended to read:

(d) A child care facility with one or more employees or other caregivers [INDIVIDUALS IN CONTACT WITH CHILDREN IN CARE] shall obtain a completed application for employment or other work from each prospective employee or caregiver before allowing the applicant to have [INDIVIDUAL HIRED AS AN EMPLOYEE OR ACCEPTED AS AN INDIVIDUAL IN] contact with children in care. The completed application must provide the information necessary to determine whether the applicant has the qualifications required under this section. In addition, the facility shall obtain at least three written references

on a prospective employee, at least two of which are from individuals unrelated to the applicant, and at least one reference on **any other caregiver, from someone unrelated to the caregiver** [A PROSPECTIVE INDIVIDUAL IN CONTACT WITH CHILDREN IN CARE BEFORE ALLOWING CONTACT WITH CHILDREN IN CARE. A PERSON EXCLUDED UNDER 7 AAC 57.305(a)(1) – (9) IS EXEMPT FROM THE APPLICATION AND REFERENCE REQUIREMENTS OF THIS SUBSECTION]. A reference must

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7 AAC 57.310(e) is amended to read;

(e) For purposes of this section, the department will not consider an individual [HAVING CONTACT WITH CHILDREN] in a child care facility to lack contact **with children in the facility** merely because the facility supervises or agrees to supervise that individual.

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority:	AS 44.29.020	<u>AS 47.05.340</u>	AS 47.32.030
	<u>AS 47.05.310</u>	AS 47.32.010	AS 47.32.130
	<u>AS 47.05.320</u>	AS 47.32.020	AS 47.32.140
	AS 47.05.330		

7 AAC 57.315 is repealed and readopted to read:

7 AAC 57.315. Child protection and criminal history check requirements. (a) An individual associated with a child care facility in a manner described in 7 AAC 10.900(b) is subject to the applicable requirements of AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry).

(b) A child care facility and the department may require that an individual associated with a child care facility in a manner described in 7 AAC 10.900(b) provide an evaluation from a probation officer, health professional, or mental health professional affirming that the individual is free from problems that might pose a significant risk to the health, safety, or welfare of a child in the facility.

(c) A child care facility shall ensure that individuals in the facility do not abuse or neglect a child in its care or engage in an exploitive or sexual act with a child in its care.

(d) In addition to the criminal history check required under 7 AAC 10.900 – 7 AAC 10.990, the department may review the following available records of each caregiver, employee, and other individual, age 16 or older, who is associated with a child care facility in a manner described in 7 AAC 10.900(b):

- (1) child protection records;
- (2) an evaluation, if requested under (b) of this section;
- (3) child care licensing records.

(e) An individual seeking to be licensed or to remain licensed as the owner of a child care facility shall submit to the department the signed release of information authorization and other items required to request a criminal history check under 7 AAC 10.910 for each person for whom a criminal history check is required under AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990. (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority:	AS 44.29.020	AS 47.05.320	AS 47.32.010
	AS 47.05.300	<u>AS 47.05.330</u>	AS 47.32.020
	AS 47.05.310	<u>AS 47.05.340</u>	AS 47.32.030

7 AAC 57.990(a)(2) is amended to read:

(2) "caregiver" includes an administrator, child care associate, employee, student intern, substitute, or other individual in a child care facility whose duties include care and supervision of children, with or without compensation;

7 AAC 57.990(a)(19) is repealed:

- (19) repealed 2/9/2007;

7 AAC 57.990(a)(32) is amended to read:

- (32) "toddler" means a child age 19 months to [THROUGH] age 36 months;

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority:	AS 44.29.020	AS 47.32.030
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Part 5. Services for Mental Health Clients, Seniors, and Persons with a Disability.

Chapter 75. Assisted Living Homes.

Article 2. Operation of Assisted Living Homes.

7 AAC 75.215 is repealed and readopted to read:

7 AAC 75.215. Barrier crimes, criminal history checks, and centralized registry.

An assisted living home is subject to the applicable requirements of AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry). (Eff. 9/28/2001, Register 159; am 4/6/2002, Register 162; am 6/24/2004, Register 170; am 2/9/2007, Register 181)

Authority:	<u>AS 47.05.300</u>	<u>AS 47.32.010</u>	[AS 47.33.100]
	<u>AS 47.05.310</u>	<u>AS 47.32.030</u>	[AS 47.33.410]
	<u>AS 47.05.320</u>	<u>AS 47.33.005</u>	[AS 47.33.920]
	<u>AS 47.05.330</u>	<u>AS 47.33.010</u>	[Sec. 4, ch. 35, SLA 1996]
	<u>AS 47.05.340</u>		

7 AAC 75.220(b) is repealed and readopted to read:

(b) A person seeking to be associated with an assisted living home in a manner described in 7 AAC 10.900(b) shall provide

- (1) the names, addresses, and telephone numbers of at least three character references who are unrelated to the person seeking association with the assisted living home;
- (2) at least two employment references; an employment reference may also serve as a character reference required under (1) of this subsection; and
- (3) the signed release of information authorization and other items required to request a criminal history check under 7 AAC 10.910.

(Eff. 7/1/95, Register 134; am 9/28/2001, Register 159; am 4/6/2002, Register 162; am 6/24/2004, Register 170; am 2/9/2007, Register 181)

Authority:	<u>AS 47.05.300</u>	<u>AS 47.05.340</u>	<u>AS 47.33.010</u>
	<u>AS 47.05.310</u>	<u>AS 47.32.010</u>	[AS 47.33.100]
	<u>AS 47.05.320</u>	<u>AS 47.32.030</u>	[AS 47.33.410]
	<u>AS 47.05.330</u>	<u>AS 47.33.005</u>	[AS 47.33.920]

The lead-in language of 7 AAC 75.340(a) is amended to read:

(a) **In addition to meeting the reporting requirements of 7 AAC 10.955(c) for the centralized registry established under 7 AAC 10.955, an** [AN] assisted living home shall provide, on a form supplied by the department, written notice to the department, to each affected resident or that resident's representative, and to any service coordinator, as follows:

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7 AAC 75.340(a)(1)(A) is amended to read:

(A) an administrator, a care provider, or an individual who resides in the home, other than a resident receiving services, is **charged with, [ARRESTED OR] convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a barrier crime** [AN OFFENSE] listed in **7 AAC 10.905** [7 AAC 75.215]; for purposes of notice under this subparagraph, a resident is an affected resident if the resident was a victim of the offense committed, or if the offense was committed on the premises of the assisted living home;

(Eff. 4/6/2002, Register 162; am 6/24/2004, Register 170; am 2/9/2007, Register 181)

Authority:	<u>AS 47.05.300</u>	<u>AS 47.05.340</u>	<u>AS 47.33.010</u>
	<u>AS 47.05.310</u>	<u>AS 47.32.010</u>	AS 47.33.080
	<u>AS 47.05.320</u>	<u>AS 47.32.030</u>	[AS 47.33.410]
	<u>AS 47.05.330</u>	<u>AS 47.33.005</u>	[AS 47.33.920]

Article 3. Variances.

7 AAC 75.405(b) is repealed and readopted to read:

(b) Variance requests regarding barrier crimes, criminal history checks, and the centralized registry are subject to the provisions of 7 AAC 10.930 – 7 AAC 10.935.

(Eff. 6/24/2004, Register 170; am 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority:	<u>AS 47.05.330</u>	AS 47.32.010	AS 47.32.030
	<u>AS 47.05.340</u>		