

# Health Facility Committee Meeting Minutes

FEBRUARY 15, 2023	9:00AM – 12:00PM	VIRTUAL MEETING	GOOGLE MEETS
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<b>MEMBERS PRESENT</b>	Abe Lindman, Brad Albrechtsen, Dr. David Sundwall, Douglas Banks, Jennifer Webb, Jeremy Bradshaw, Kris Carter & Steve Grant
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<b>MEMBERS NOT PRESENT</b>	Lou Jean Flint
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<b>STAFF PRESENT</b>	Simon Bolivar, Kimberlee Jessop, Kristi Grimes, Kelly Criddle, Carmen Richins, Daphne Lynch
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<b>SPECIAL GUESTS</b>	Alli Spangler, Linda Cole, Mark Brinton
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<b>WELCOME</b>	Douglas Banks.
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Effective December 2021, Governor Spencer J. Cox mandated every program/agency in the state review their rules and make sure they are written according to the rule making manual. The rules need to be understandable to those that use/follow them. All updated rules were supposed to be submitted by July 2022. However, due to the number of rules we have for health facilities, we were given an extension until the end of 2022. Unfortunately, we did not meet that deadline either but most of our rules are in the process of being finalized now and will be sent out for public comment. Most changes are grammatical, other changes are being made to make the rules more understandable. Some of the rules were no longer in effect.

Dr. Sundwall made a motion to make all rules complaint with the executive order. Abe Lindman Second the motion. All other members were in favor.

## GOVERNORS EXECUTIVE ORDER 2021-12

### GOVERNORS EXECUTIVE ORDER 2021-12

#### EXECUTIVE ORDER 2021-12

##### Establishing Effective Oversight Over State Agency Rulemaking

**WHEREAS**, the Legislature often mandates new administrative rules or changes to existing administrative rules;

**WHEREAS**, administrative rules have the effect of law;

**WHEREAS**, the public is best served by clear, cohesive, and concise administrative rules;

**WHEREAS**, rule writing standards will assist agencies in writing clear, cohesive, and concise administrative rules; and

**WHEREAS**, agencies' continual review of existing rules coupled with a process of careful consideration and assessment for new rules will improve state agencies' responsiveness

to the public;

**NOW, THEREFORE**, I, Spencer J. Cox, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the state of Utah, do hereby order that each department shall implement the following procedures for promulgating administrative rules in accordance with and in addition to Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

**1. Definitions.** As used in this Order:

- a. "Agency" means any of the following entities that have rulemaking authority:
  - i. a department; or
  - ii. a division, office, board, commission, or other entity, within a department.
- b. "Department" means a department of the Executive Branch and includes the State Tax Commission, National Guard, Board of Pardons and Parole, the Utah Board of Higher Education, and any public institution of higher education. "Department" does not include the Attorney General's Office, State Auditor's Office, State Treasurer's Office, the State Board of Education; or an independent entity as defined in Section 63E-1-102.
- c. "Office" means the Office of Administrative Rules.

**2. Office of Administrative Rules – duties.** The Office shall:

- a. develop and provide training to each administrative rules coordinator within 30 days of designation as administrative rules coordinator and at least annually thereafter;
- b. develop and provide annual training to each agency employee who writes administrative rules; and
- c. review each rule submitted for publication to ensure the drafting and formatting is consistent with the current edition of the Office of Administrative Rules' Rulewriting Manual for Utah.

**3. Administrative rules coordinator – designation and training – duties.**

- a. Each agency head shall:
  - i. designate one or more administrative rules coordinators and report those individuals' names to the Office as staff changes necessitate; and
  - ii. ensure that an administrative rules coordinator receives training from the Office within 30 days of designation as administrative rules coordinator and at least annually thereafter.
- b. Each administrative rules coordinator shall:
  - i. examine each administrative rulemaking action prepared by an agency within the administrative rules coordinator's scope of responsibility prior to the action's submission to the Office to determine that:
    1. the administrative rule has been drafted using logical, understandable, and concise language to facilitate compliance and enforcement;
    2. interested parties have been given opportunity to participate in the development of the administrative rule pursuant to Subsection 63G-3-301(3);
    3. standards reflect consistent and sound public regulatory policies; and
    4. the rule is consistent with the current edition of the Office of Administrative Rules' Rule Writing Manual for Utah;
  - ii. assess enacted legislation by June 1 of each year to ensure that new regulatory obligations are discovered and met in a timely manner by appropriate rulemaking action;
  - iii. provide training to each person within the administrative rules coordinator's scope of responsibility who writes administrative rules; and

iv. notify the Office staffing changes in agencies within the coordinator's scope of authority that affect who may file or authorize rules, and who the Office Administrative Rules and the Governor's Office may contact with questions.

**4. Governor's Office – duties.** To ensure rules are consistent with statute and policy, the Governor's Office shall:

- a. review administrative rules for legal authority and policy;
- b. assist state entities in their role of defining public regulatory policy;
- c. act as a liaison with members of the legislature on administrative rulemaking issues, and assist with the resolution of issues identified;
- d. coordinate strategies to resolve regulatory questions and provide consistency among agencies; and
- e. receive and review the rule analysis required by law.

**5. Departments and agencies – assistance from other offices – cooperation with other offices – administrative rule review timeline.**

- a. Each agency may obtain assistance as provided in statute and from:
  - i. the Governor's Office of Planning and Budget for assistance in applying methods and tools to determine and calculate fiscal and non-fiscal, direct and indirect impacts; and
  - ii. the Governor's Office for assistance with coordinating rule content and policy.
- b. Each agency director and department head shall cooperate with:
  - i. the Governor's Office as it conducts an executive review of rules; and
  - ii. the Office as it implements filing, publication, and hearing procedures pursuant to Title 63G, Chapter 3.
- c. Each agency head or designee shall review each administrative rule in their agency by January 1, 2022. During the review, the agency head or designee shall:
  - i. repeal rules that are no longer necessary;
  - ii. amend rules that create unnecessary burdens or regulations for any individual or entity; and
  - iii. amend rules that are inconsistent with the current edition of the Office of Administrative Rules' Rulewriting Manual for Utah.

**6. Effect on other laws.** This Order supersedes Executive Order 2017-1.

This order is effective immediately and shall remain in effect until otherwise modified, amended, rescinded, or superseded.

**IN WITNESS, WHEREOF,** I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 6<sup>th</sup> day of May, 2021.

Spencer J. Cox  
Governor

Deidre M. Henderson  
Lieutenant Governor

	<b>RULE R432</b>	<b>DAPHNE LYNCH</b>
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This rule has been modified to be compliant with the Governor's order. Unlined = New, Strike Out = Old

**R432. Health and Human Services, Family Health and Preparedness, Licensing-  
R432-35. Background Screening -- Health Facilities.**

### **R432-35-1. Authority.**

This rule is ~~[adopted pursuant to]~~ authorized by Title 26B Chapter 24-Part 2.

### **R432-35-2. Purpose.**

The purpose of this rule is ~~[T]~~to outline the process required for individuals to ~~[be cleared to have]~~ obtain a certification for direct patient access while employed by a covered provider, covered contractor, or covered employer.

### **R432-35-3. Definitions.**

Terms used in this rule are defined in Title 26B, Chapter 224 Part 238. In addition, this rule defines the following terms:

~~[In addition:]~~

(1) "Aged" means an individual who is 60 years of age or older.

(2) ~~["Clearance"]~~ "Certification for direct patient access" means ~~[approval]~~ a department approved background screening clearance ~~[by the department under Section 26-24-203]~~ for an individual to have direct patient or resident access whose engaged employment has not lapsed for a period of 180 days.

(3) "Covered body" means a covered provider, covered contractor, or covered employer.

(4) "Corporation" means ~~[a corporation]~~ an entity that has business interest or connection to covered providers that employ individuals who provide consultative services ~~[which]that~~ may result in direct patient access.

(5) "Covered contractor" means a person or corporation that ~~[supplies]~~ provides covered individuals, by contract, to:

(a) a covered employer, or

(b) a covered provider for services within the scope of the health facility license.

(6) "Covered employer" means an individual who:

(a) engages a covered individual to provide services in a private residence to:

(i) an aged individual, as defined by department rule; or

(ii) a disabled individual, as defined by department rule;

(b) is not a covered provider; and

(c) is not a licensed health care facility within the state.

(7) "Covered individual":

(a) means an individual that:

(i) ~~[whom]~~ a covered body engages; and

(ii) ~~[who]~~ may have direct patient access;

(b) ~~[which]~~ a covered individual ~~[may]~~ includes:

(i) a nursing assistant;

(ii) a personal care aide;

(iii) an individual licensed to engage in the practice of nursing under Title 58, Chapter 31b, Nurse Practice Act;

(iv) a provider of medical, therapeutic, or social services, including a provider of laboratory and radiology services;

(v) an executive;

(vi) administrative staff, including a manager or other administrator;

(vii) dietary and food service staff;

(viii) housekeeping;

(ix) transportation staff;

(x) maintenance staff; and

(xi) volunteer as defined by department rule.

(c) a covered individual does not include a student directly supervised by a member of the staff of the covered body or the student's instructor.

(8) "Covered provider" means:

- (a) an end stage renal disease facility;
- (b) a long-term care hospital;
- (c) a nursing care facility;
- (d) a small health care facility;
- (e) an assisted living facility;
- (f) a hospice;
- (g) a home health agency; or
- (h) a personal care agency.

(9) "DACCS" means Direct Access Clearance System.

(10) "Direct patient access" means for an individual to be in a position where the individual could, in relation to a patient or resident of the covered body who engages the individual:

- (a) cause physical or mental harm;
- (b) commit theft; or
- (c) view medical or financial records.

(11) "Disabled individual" means an individual who has limitations with two or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and employment.

(12) "Engage" means to obtain ~~[one's]~~an individual's services:

- (a) by employment;
- (b) by contract;
- (c) as a volunteer; or
- (d) by other arrangement.

(13) "Long-term care hospital":

(a) means a hospital that is certified to provide long-term care services under ~~[the provisions of]~~ the Code of Federal Regulations, Title 42, [U.S.C. Sec.] Part 1395tt; and

(b) does not include a critical access hospital, designated under the Code of Federal Regulations, Title 42, [U.S.C. Sec.] Part 1395i[-], Section 4(c)(2).

(14) "Nursing Assistant" means an individual who performs duties under the supervision of a nurse, ~~[which]~~that may include a nurse aide, personal care aide or certified nurse aide.

(15) "Patient" means an individual who receives health care services from one of the following covered providers:

- (a) an end stage renal disease facility;
- (b) a long-term care hospital;
- (c) a hospice;
- (d) a home health agency; or
- (e) a personal care agency.

(16) "Resident" means an individual who receives health care services from one of the following covered providers:

- (a) a nursing care facility;
- (b) a small health care facility;
- (c) an assisted living facility; or
- (d) a hospice that provides living quarters as part of its services.

(17) "Residential setting" means a place provided by a covered provider:

(a) for residents to live as part of the services provided by the covered provider;  
and

(b) where an individual who is not a resident also lives.

(18) "Volunteer" means an individual who may have unsupervised direct patient access who is not directly compensated for providing services.

~~[The following groups or individuals are excluded as volunteers and are not required to complete the background clearance process as defined in R432-35:~~

- ~~— (a) Clergy;~~
- ~~— (b) Religious groups;~~
- ~~— (c) Entertainment groups;~~
- ~~— (d) Resident family members;~~
- ~~— (e) Patient family members; and~~
- ~~— (f) Individuals volunteering services for 20 hours per month or less.]~~

#### **R432-35-4. Covered Provider -- DACS Process.**

(1) ~~The [C]covered provider[s]~~ shall enter required information into DACS to initiate a certification for direct patient access clearance ~~of~~ for each covered individual ~~[prior to]~~before issuance of a provisional license, license renewal, or engagement as a covered individual.

(2) The covered provider ~~[must]~~shall ensure that the engaged covered individual:

(a) ~~[S]signs~~ a criminal background screening authorization form ~~[which must be]~~ that is available for review by the department; and

(b) ~~[S]submits~~ fingerprints within 15 working days of engagement.

(3) The covered provider ~~[must]~~ shall ensure that DACS reflects the current status of the covered individual within 5 working days of the engagement or termination.

(4) ~~[A]The~~ covered provider may provisionally engage a covered individual while certification for direct patient access ~~[clearance]~~ is pending.

(5) If the ~~[D]department~~ determines an individual is not eligible for direct patient access, based on information obtained through DACS and the sources listed in Section R432-35-7, the ~~[D]department~~ shall send a ~~[N]notice~~ of ~~[A]agency~~ [A]action, as outlined in Rule R432-30, to the covered provider and the individual explaining the action and the individual's right of appeal. ~~[as defined in Rule R432-30.]~~

(6) ~~[A]The~~ covered provider may not allow a covered individual who has been determined ~~[to be]~~ not eligible for direct patient access ~~[to be engaged]~~ to engage in a position with direct patient access.

(7) The ~~[D]department~~ may allow a covered individual to have direct patient access with conditions, during an appeal process, if the covered individual ~~[can]~~ demonstrates to the department, the work arrangement does not pose a threat to the safety and health of patients or residents.

(8) ~~[A]The~~ covered provider that provides services in a residential setting ~~[must]~~shall enter required information into DACS to initiate and obtain ~~[a clearance]~~certification for direct patient access for ~~[all]~~each individual[s] 12 years of age and older, who ~~[are]~~is not a resident[s], and resides in the residential setting. If the individual is not eligible for direct patient access and continues to reside in the setting, ~~[clearance as defined in Section R432-35-8,]~~ the ~~[D]department~~ may revoke an existing license or deny licensure for healthcare services in the residential setting.

(9) ~~The [C]covered provider[s]~~ ~~[requesting]~~seeking to renew a license as a health care facility ~~[must]~~shall utilize DACS to run a verification report and verify that each covered individual's information is correct, including:

- (a) employment status;
- (b) address;
- (c) email address; and
- (d) name.

(10) An individual or covered individual ~~requesting~~ seeking ~~to be licensed~~ licensure as a covered provider ~~must~~ shall submit required information to the ~~D~~ department to initiate and obtain a certification for direct patient access ~~clearance prior to~~ before the issuance of the provisional license. If the individual ~~s are~~ is not eligible for direct patient access, ~~clearance as defined in Section R432-35-8,~~ the ~~D~~ department may revoke an existing license or deny licensure as a health care facility.

#### **R432-35-5. Covered Contractor -- DACS Process.**

(1) ~~A~~ The covered contractor may enter required information into DACS to initiate certification for direct patient access ~~a clearance for~~ of each covered individual ~~prior to being supplied by contract to~~ before providing the individual by contract with a covered provider.

(2) ~~A~~ The covered contractor ~~must~~ shall ensure that the covered individual, being ~~supplied~~ provided by contract to a covered provider:

(a) ~~S~~ signs a criminal background screening authorization form ~~which must be~~ that is available for review by the department; and

(b) ~~S~~ submits fingerprints within 15 working days of placement with a covered provider.

(3) The covered contractor ~~must~~ shall ensure DACS reflects the current status of the covered individual within five working days of placement or termination.

(4) ~~A~~ The covered contractor may provisionally ~~supply~~ provide a covered individual ~~to~~ with a covered provider while certification for direct patient access ~~clearance~~ is pending.

(5) If the ~~D~~ department determines an individual is not eligible for direct patient access, based on information obtained through DACS and the sources listed in Section R432-35-8, the ~~D~~ department shall send a ~~N~~ notice of ~~A~~ agency ~~A~~ action, as outlined in Rule R432-30, to the covered contractor and the individual explaining the action and the individual's right of appeal. ~~as defined in Rule R432-30.~~

(6) A covered contractor may not ~~supply to a covered provider~~ provide a covered individual with a covered provider, if the individual ~~who has been~~ is determined ~~to be~~ not eligible to have direct patient access.

(7) The ~~D~~ department may allow a covered individual direct patient access with conditions, during an appeal process, if the covered individual can demonstrate to the department that the work arrangement does not pose a threat to the safety and health of patients or residents.

#### **R432-35-6. Covered Employer – DACS Process.**

(1) ~~A~~ The covered employer may ~~be allowed to~~ ensure the ~~enter~~ required information is entered into DACS to initiate and obtain ~~a clearance~~ certification for direct patient access for a covered individual.

(2) If the ~~D~~ department determines an individual is not eligible for direct patient access, based on information obtained through DACS~~,~~ or the sources in Section R432-35-8, the ~~D~~ department shall send a ~~N~~ notice of ~~A~~ agency ~~A~~ action, as outlined in R432-30, to the covered employer and the individual explaining the action and the individual's right of appeal. ~~as defined in Rule R432-30.~~

### **R432-35-7. Volunteers**

The following individuals or groups of volunteers are not required to complete the certification for direct patient access process:

- (1) Clergy;
- (2) Religious groups;
- (3) Entertainment groups;
- (4) Resident family members;
- (5) Patient family members; and
- (6) Individuals volunteering services for 20 hours per month or less.

### **R432-35-8 Sources for Background Review.**

(1) As required in Section 26B-2-240 [~~26-21-204~~], the department may review relevant information obtained from the following sources:

(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;

(b) juvenile court arrest, adjudication, and disposition records, as allowed under Section 78A-6-209;

(c) federal criminal background databases available to the state;

(d) the [~~Department of Health and Human Services~~] Division of Child and Family Services' Licensing Information System described in Section [~~62A-4a-1006~~]80-2-1002;

(e) child abuse or neglect findings described in Section 80-3-40 [~~78A-6-323~~];

(f) the [~~Department of Health and Human Services~~] Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section [~~62A-3-311.1~~]26B-6-210;

(g) registries of nurse aids described in the Code of Federal Regulations, Title 42 [~~Code of Federal Regulations Section~~] Part 483.156;

(h) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions; and

(i) the List of Excluded Individuals and Entities (LEIE) database maintained by the United States Department of Health and Human Services' Office of Inspector General.

(2) If the [~~D~~]department determines an individual is not eligible for direct patient access, based upon the criminal background screening, and the individual disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the individual may challenge the information as provided by [~~law~~]Section 53-10-108.

(3) If the [~~D~~]department determines an individual is not eligible for direct patient access based upon the non-criminal background screening and the individual disagrees with the information provided, the individual may challenge the information through the appropriate agency.

### **R432-35-9[8]. Exclusion from Direct Patient Access.**

(1) The department shall review [~~G~~]convictions or [~~P~~]pending [~~G~~]charges as follows:

(a) [~~P~~]pursuant to Section 26B-2-240[~~26-21-204~~], any individual or covered individual who has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement, within the past 10 years, for any offense listed below,



shall not have direct patient access:

(i) any felony or class A misdemeanor under the following: [Utah Code:]

(A) Subsection 76-6-106(2)(b)(i)(A) Criminal Mischief - Human Life;

(B) Title 76, Chapter 4, Enticement of a Minor;

(C) Title 76, Chapter 5, Offenses Against the Person;

(D) Title 76, Chapter 5b, Sexual Exploitation Act;

(E) Sections 76-3-203.9 through 203.10, Violent Offenses Committed in Presence of a Child;

(F) Section 76-9-301.8, Bestiality;

(G) Sections 76-9-702 through 702.1 Lewdness - Sexual Battery;

(H) Sections 76-9-702.5 and 76-9-702.7 Lewdness Involving Child and Voyeurism offenses;

(I) Sections 76-10-1201 through 76-10-1228, Pornographic and Harmful Materials and Performances;

(J) Sections 76-10-1301 through 1314, Prostitution; or

(K) Title 78B, Chapter 7, Protective Order and Stalking Injunctions; or

(L) Section 26B-6-205 [62A-3-305], Failure to Report Suspected Abuse, Neglect, or Exploitation of a Vulnerable Adult;

(b) except as listed above in Section R432-35-9(1)(a), if an individual or covered individual has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement, for the following offenses, the department may consider granting approval for certification for direct patient access:

(i) any felony or class A misdemeanor under the Utah Code;

(ii) any felony, class A or B misdemeanor under Subsection 76-6-106(2)(b)(i)(A), Criminal Mischief - Human Life;

(iii) any felony or class A, B or C misdemeanor under the following: [Utah Code:]

(A) Title 76, Chapter 4, Enticement of a Minor;

(B) Title 76, Chapter 5, Offenses Against the Person;

(C) Title 76, Chapter 5b, Sexual Exploitation Act;

(D) Sections 76-3-203.9 through 203.10, Violent Offenses Committed in Presence of a Child;

(E) Section 76-9-301.8, Bestiality;

(F) Section 76-9-702 through 702.1 Lewdness - Sexual Battery

(G) Section 76-9-702.5 and 76-9-702.7 Lewdness Involving Child - Voyeurism offenses;

(H) Section 76-10-1201 through 76-10-1228, Pornographic and Harmful Materials and Performances;

(I) Section 76-10-1301 through 1314, Prostitution; and

(J) Title 78B, Chapter 7, Protective Order and Stalking Injunctions; and

(K) Section 26B-6-205 [62A-3-305], Failure to Report Suspected Abuse, Neglect, or Exploitation of a Vulnerable Adult;

(c) any individual or covered individual who has a warrant for arrest or an arrest for any of the identified offenses in Subsection R432-35-8(1)(a) or (b), may deny clearance direct patient access based on:

(i) the type of offense;

(ii) the severity of offense; and

(iii) potential risk to patients or residents.

(2) The department shall review juvenile records as follows:

(a) as required by Section 26B-2-240 [Subsection 26-21-204(4)](a)(ii)(E),

juvenile court records shall be reviewed if an individual or covered individual is:

(i) under the age of 28; or  
(ii) over the age of 28 and has convictions or pending charges identified in Subsection R432-35-8(1)(a) or (b)[.];

(b) ~~[A]adjudication[s]~~ by a juvenile court shall ~~[may]~~ exclude the individual from direct patient access if the adjudication[s] refers to an act that, if committed by an adult, would be a felony or a misdemeanor as identified in Subsection R432-35-9(1)(a); and

(c) adjudication by a juvenile court may exclude the individual from direct patient access, if the adjudication refers to an act that if committed as an adult, would be a felony or misdemeanor as identified in Subsection R432-35-9(1)(b).

(3) ~~[Non-Criminal Records:]~~

~~[(a) as authorized by Subsection 26-21-204(3),]~~ ~~[t]~~The ~~[D]~~department may review non-criminal findings from the following sources to determine whether an individual or covered individual should be granted or retain certification for direct patient access:

~~(a) [the Department of Health and Human Services']~~ Division of Child and Family Services Licensing Information System described in Section ~~[62A-4a-1006]~~80-2-1002;

~~(b)ii~~ child abuse or neglect findings described in Section 78A-6-323;

~~(c)iii~~ ~~[the Department of Health and Human Services']~~ Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210 ~~[62A-3-311.1]~~;

~~(d)iv~~ registries of nurse aids described in the Code of Federal Regulations, Title 42, [Code of Federal Regulations] Section 483.156;

~~(e)v~~ licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions; and

~~(f)vi~~ the ~~[List of Excluded Individuals and Entities](LEIE)~~ database maintained by the United States Department of Health and Human Services' Office of Inspector General.

(4) ~~[Review of]~~ The department may review [R]relevant background [t]information[.] from sources listed in Section R432-35-8

~~[(a) relevant background information from sources listed in Section R432-35-7, shall be reviewed]~~ to determine under what circumstance, if any, the covered individual may be granted or retain certification for direct patient access[.]and ~~[-T]~~ the following factors may be considered:

(ai) types and number;

(b)ii) passage of time;

(c)iii) surrounding circumstances;

(d)vi) intervening circumstances; and

(e)v) steps taken to correct or improve.

(5b) The department shall rely on relevant information from sources identified in Rule R432-35-[7]8 as conclusive evidence and may deny direct patient access [clearance] based on that information.

(6) A denied application may be re-submitted to the department no sooner than 2 years from the date of separation or upon substantial change to circumstances.

### **R432-35-[9]10. Covered Individuals with Arrests or Pending Criminal Charges.**

(1) If the ~~[D]~~department determines ~~[there exists]~~ credible evidence exists [that] a covered individual has been arrested or charged with a felony or a misdemeanor that would be excluded under Subsection R432-35-8(1), the ~~[D]~~department may take action [act] to protect the health and safety of patients or residents in covered providers.

(2) The [D]department may allow a covered individual direct patient access with conditions, until the arrest or criminal charges are resolved, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(3) If the [D]department denies or revokes a license, or denies direct patient access based upon arrest or criminal charges, the [D]department shall send a [N]notice of [A]agency [A]action, as outline in Rule R432-30, to the covered provider and the covered individual notifying them of the right to appeal [in accordance with Rule R432-30].

**R432-35-11. Penalties.**

(1)The department may impose civil monetary penalties in accordance with Title 26B, Title 1 Chapter 224[3], Utah Health Code Criminal and civil penalties and liability for violations [Enforcement Provisions and Penalties], if there has been a failure to comply with Title 26B Chapter 2 Section 2[Section 26-21-2], or Rule R435-35, as follows:

(a4) any association, corporation, or an officer of an association or a corporation, who violates any provision of this title or rules adopted under this title by the department may be assessed, in an administrative action in accordance with Title 63G, Chapter 4, Administrative Procedures Act, a penalty not to exceed the sum of \$5,000 per violation [if significant problems exist that are likely to lead to the harm of an individual resident, the department may impose a civil penalty of \$50 to \$1,000 per day; and]

(b2) an individual who violates any provisions of this title or lawful orders of the department or a local health department, or rules adopted under this title by the department may be assessed, in an administrative action in accordance with Title 63G, Chapter 4, Administrative Procedures Act, a penalty not to exceed the sum of \$150 per violation. [if significant problems exist that result in actual harm to a resident, the department may impose a civil penalty of \$1,050 to \$10,000 per day.]

(c) a penalty described in subsection (1) or (2) may only be assessed against the same individual, association, or corporation one time in a calendar week.

**KEY: health care facilities, background screening**

**Date of Last Change: March 1, 2020**

**Notice of Continuation: January 23, 2023**

**Authorizing, and Implemented or Interpreted Law: 26-21-9.5**

Health Facility Committee members would like to discuss R432-35-6 Volunteers - language at our next meeting in May. Daphne will do some research on this as well. Abe Lindman motioned to submit changes to R432-35 with the correction Doug Banks pointed out. Dr. Sundwall second the motion. All other members were in favor.

**2023 UPCOMING MEETINGS**

May 10, 2023  
September 13, 2023  
November 8, 2023