An Overview of Proposed CDASS Background Check Process and Policy Changes

Providing a more flexible, empowering, and equitable hiring framework for CDASS employees and employers

Summary - Voting on Background Check Changes

Many CDASS participants have expressed challenges recruiting attendants due to the background check process and its policies within an already difficult workforce climate. With feedback collected from stakeholders, the workgroup has identified key changes that it believes align with and support the needs of CDASS participants, particularly employers.

The workgroup, excluding participating Department staff, recommends and will request a Participant Directed Policy Collaborative stakeholder vote on June 22nd to enable CDASS employers to:
- Have the final decision to hire their attendants permanently or conditionally.
- Decide whether to run additional and more frequent background checks.
- Access more resources / education to better assess background check reports.

History of Background Check Workgroup and Process of Policy

From August 2020 to April, stakeholders assessed the CDASS attendant hiring process for improvements to background checks. It achieved updating the Barrier Crimes List effective February 2021. However, due to the lack of CDASS participant representation, the workgroup concluded its work early so more research could be collected, and better participation methods developed.

What Did This Background Check Workgroup Do?

The workgroup reconvened in March 2022 and was comprised of 27 participants from each stakeholder category. It reviewed all 148 responses of the 2022 CDASS Background Check Process and Policy Survey results sent to all program stakeholders in mid-April. It determined that the survey contained useful information but did not provide reliable enough information to make final decisions. Therefore, the workgroup compared the results against current policies and process, and its participants' experiences and expertise to identify areas of consensus for desired changes. After identifying these areas, the workgroup (excluding participating Department staff) determined that the appropriate next step was to submit the changes as a formal proposal for a PDPPC vote.

Why Is This Necessary

1. Process and policy inconsistencies can make hiring critically needed caregivers difficult when "Barrier Crimes" permanently disqualify interested individuals. Fundamentally, the workgroup decided to maintain the principals of Consumer-Direction by better incorporating member choice and autonomy when it comes to hiring. This will provide a more flexible, empowering, and equitable hiring process for CDASS and help bring more caregivers into the field.

2. The background check process especially impacts members and so it is important to continue seeking the largest amount of stakeholder involvement through use of the long-established Participant Directed Policy Collaborative stakeholder group.

CDASS Background Check Stakeholder Engagement Project

Project Timeline, Proposed Changes & Available Data

June 2022

HOW LONG HAS THIS PROJECT BEEN HAPPENING AND WHAT HAS BEEN ACCOMPLISHED SO FAR?

2020

August 20	Background Check Workgroup convened and discussed needed changes.

2021

December	"Barrier Crimes List Feedback Survey" created and sent to all stakeholders.
February 24	Barrier Crimes List updated based on survey responses and workgroup review.
April 15	Workgroup ended due to lack of program participant representation.

2022

January	Department received requests to revive efforts to change the background check process due to workforce challenges.
Jan. – Feb.	"2022 CDASS Background Check Process & Policy Survey" created, research conducted to create "Supplemental Information for 2022 CDASS Background Check Stakeholder Engagement" document, temporary exemption process developed.
March	2022 background check survey sent to all stakeholders.
Mar. 31 & Apr. 1	Workgroup reconvened, discussed survey results and determined next steps.

- Workgroup decided to:
    - Make the process and policies flexible, empowering, and equitable.
    - Use the survey results to **create proposed changes**.
    - Present proposed changes to the larger stakeholder group for approval (adjusting as determined by consensus).
    - Help develop background check resources for employers.

April	Mailed and emailed survey responses collected. Emailed feedback compiled. Survey responses incorporated into data and feedback shared with workgroup.
May 17	Workgroup met to determine approach to present to larger stakeholder group

- Workgroup decided to request a PDPPC Vote

May 25	PDPPC announcement of workgroup progress and plan to motion a vote

HOW MANY STAKEHOLDERS HAVE PARTICIPATED IN THIS PROJECT?

2020-2021 Background Check Workgroup
- o Workgroup: average of 15 stakeholders, 3 program participants
- o Survey: 24 responses, 10 program participants

2022 Background Check Workgroup
- o Workgroup: 27 stakeholders, 11 program participants
- o Survey: 148 responses, 75 program participants

WHAT ARE THE BACKGROUND CHECK WORKGROUP'S PROPOSED CHANGES?

1. **Key areas that the Department cannot allow to change:**
   - o A background check must be required.
   - o The check must include the Office of Inspector General (OIG) database and Board of Nursing license search.
   - o A failure from the OIG database and Board of Nursing check makes a prospective attendant ineligible, no exceptions.

2. **A CDASS employer will have the right to make the final decision about hiring an attendant with a safety check / plan in place.**
   - o This would allow an employer to hire an attendant outright or conditionally.
     - ▪ The Department has an established conditional hire process.
   - o Employers can request to hire an attendant by contacting the Department and providing a copy of the Acceptance of Responsibility form.
   - o Workgroup will develop educational resources and safety plan / check requirements.

3. **A CDASS employer can choose to run additional background database checks.**
   - o Employers are responsible for running and paying for the additional checks.
   - o The Department will research and provide information on payment options.
   - o Workgroup will develop list of background check options.

4. **A CDASS employer can choose to rerun background checks after an attendant has already been hired.**
   - o Employers are responsible for running and paying for the additional checks.

5. **The Acceptance of Responsibility (AOR) form is sufficient to establish acceptance of risk if an employer chooses to hire an attendant who is initially ineligible.**
   - o The Department will conduct a legal review the AOR form and update as needed.

6. **The "Barrier Crimes List" will remain in place but be renamed.**
   - o New name is "Background Check Crimes of High Risk: CDASS Employer Hiring Guide"

7. **The following changes will be made to the Background Check Crimes of High Risk: CDASS Employer Hiring Guide:**

COLORADO
Department of Health Care
Policy & Financing

~~Colorado Consumer Directed Attendant Support Services (CDASS)
Criminal Barrier Crimes List~~
Background Check Crimes of High Risk: CDASS Employer Hiring Guide

Updated ~~February 2021~~ TBD

~~Attendants shall not be approved or utilized for employment if ever convicted of the following crimes within any time frame:~~

Unless otherwise determined by a CDASS employer, attendants shall not be approved for employment if ever convicted of the following crimes within the specified time frames:

Within the last five (5) years:
- Hate crimes.

Within the last ten (10) years:
- Felony arson.
- Felony fraud ~~Fraud~~ (including but not limited to identity theft, forgery, financial fraud, or healthcare fraud).

Within any time frame:
- Abduction.
- Any violent felony crime (including but not limited to rape, sexual assault, homicide, felonious physical assault or felonious battery).
- Child/adult abuse or neglect.
- Crimes that involve the exploitation of a child or an incapacitated adult.
- Felony involving an act of domestic violence.
- Felony or misdemeanor crime against a child or incapacitated adult that causes harm.
- ~~Felony theft.~~
- Kidnapping.
- Murder/homicide.
- Neglect or abuse by a caregiver.
- Pornography crimes involving children or incapacitated adults, including, but not limited to, use of minors in filming sexually explicit conduct, distribution and exhibition of material depicting minors in sexually explicit conduct or

Commented [CJ1]: Crime reduced to a 5-year time frame. Change may make more people eligible for hire.

Commented [CJ2]: Crime reduced to a 10-year time frame. Change may make more people eligible for hire.

Commented [CJ3]: Crime reduced to a 10-year time frame and limited to felony level only. Change may make more people eligible for hire.

Commented [CJ4]: Crime removed entirely. Change will make more people eligible for hire.

sending, distributing, exhibiting, possessing, displaying or transporting material by a parent, guardian or custodian, depicting a child engaged in sexually explicit conduct.

- Purchase or sale of a child.
- Sexual offenses (including but not limited to incest, sexual abuse, or indecent exposure).

Attendants shall not be approved or utilized for employment if convicted of the following crimes within the specified time frames:

- Felony drug related offenses (within the last 5 years).
- Felony DUI (within the last 5 years).

These are referred to as the Criminal Barrier Crimes. If a prospective attendant has any of these convictions, they are not eligible for hire. CDASS FMS and Training and Operations vendors can provide more information on the background check requirements and process.

[Concluding paragraph with information about exception process and employer resources to be developed].

> **Commented [CJ5]:** Crime removed entirely. Change will make more people eligible for hire.

> **Commented [CJ6]:** Crime removed entirely. Change will make more people eligible for hire.

Colorado CDASS Criminal Barrier Crimes List (updated 02/2021)

WHAT DATA IS AVAILABLE TO BETTER UNDERSTAND THE IMAPACT OF MAKING CHANGES?

CDASS Data

From April 2021 to March 2022 the background check process resulted in:
- 2,690 attendant background checks completed by the FMS vendors (Palco and PPL).
- 131 applicants (5%) failed due to having a "Barrier Crime" on their criminal background check report.
- 8 applicants (0.03%) failed due to having a denied, suspended or revoked nursing license or nurse aide certification on their Board of Nursing check.
- 2,287 attendants were hired for 1,094 unique members.
- The average age of applicants was 41 years old.

A review of 10 Colorado Bureau of Investigation criminal background check reports found:
- 5 applicants were not eligible for hire due to being found guilty of a "Barrier Crime".
- Arrest date was always present for the charges.
- Offense date was **not** always present for the charges.
- On average, "Barrier Crime" charges with an offense date were 14 years old.

AARP Public Policy Institute Report: "Safe at Home? Developing Effective Criminal Background Checks and Other Screening Policies for Home Care Workers." Sept. 2012.

KEY FINDINGS
- Medicaid policies defer to states—and state laws and practices vary widely.
- Criminal background data sources are not integrated and may have gaps and errors.
- Efficacy of background checks in reducing risk is unproven.
- Complementary tool (reference checks, interviews, etc.) can reduce risks of abuse.
- Self-directed programs allow more employer choice and risk taking.

RECOMMENDATIONS
- Avoid unnecessary disqualifications to increase fairness and reduce unintended effects on the workforce.
- Use multiple tools (reference checks, interviews, training and supervision, etc.) to enhance the safety of the home care workforce.
- Empower consumers and employers through education and other resources.
- Recognize that self-directed programs can allow more flexibility and choice.
- Conduct additional research on workforce key issues.