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GAVIN NEWSOM
GOVERNOR

May 8, 2020

PIN 20-12-CCLD

TO: ALL ADULT AND SENIOR CARE PROGRAM LICENSEES
HOME CARE ORGANIZATION LICENSEES AND HOME CARE AIDES
ADULT AND SENIOR CARE CERTIFIED ADMINISTRATORS

FROM: *Original signed by Pamela Dickfoss*
PAMELA DICKFOSS
Deputy Director
Community Care Licensing Division

SUBJECT: **UPDATED STATEWIDE WAIVERS FOR BACKGROUND CHECK
REQUIREMENTS DUE TO CORONAVIRUS DISEASE 2019 (COVID-19)**

Provider Information Notice (PIN) Summary

PIN 20-12-CCLD provides updated guidance to Adult and Senior Care (ASC) Program licensees and administrators (conditionally certified and certified), Home Care Organization (HCO) licensees, and Home Care Aides (HCAs) regarding the statewide waivers for background checks, and supersedes the background check waivers issued in [PIN 20-09-CCLD](#) dated April 2, 2020.

In response to the rapidly evolving Coronavirus Disease 2019 (COVID-19) emergency in California, the California Department of Social Services (CDSS) is taking major and unprecedented actions to ensure that ASC providers have the resources needed to meet the needs of clients in care. This PIN provides a statewide waiver for certain background check requirements applicable to ASC Program licensees and administrators. In addition, this PIN rescinds the background check waiver issued in PIN 20-09-CCLD with respect to HCAs and HCO licensees.

All providers shall continue to follow guidance in all applicable [CDSS PINs](#) in addition to guidance or instructions from health care providers, the [Centers for Disease Control and Prevention \(CDC\)](#), the [California Department of Public Health \(CDPH\)](#), and [local health departments](#).

STATEWIDE WAIVERS OF LICENSING STANDARDS

Pursuant to the Governor's Proclamation as set forth in [PIN 20-04-CCLD](#) dated March 6, 2020, and [Executive Order N-52-20](#) dated April 16, 2020, CDSS is issuing statewide waivers for certain background check requirements. ASC providers may use the waivers without the need to make an individual waiver request. A provider using the waiver below *does not need prior approval* from CDSS. Use of the waivers is subject to the Waiver Terms and Conditions set forth in this PIN.

The Background Check Waivers in this PIN SUPERSEDE the Criminal Record Background Check Temporary Waivers in [PIN 20-09-CCLD](#) and [PIN 20-08-ASC](#).

Background Check Temporary Waiver (Administrators and Non-HCO Licensees)

This waiver is applicable to Adult and Senior Care licensees and administrators (both conditionally certified and certified). Conditionally certified administrators have **not** completed Live Scan requirements and therefore must follow the instructions below for new staff without an existing CDSS record clearance or exemption.

This waiver does **not** apply to HCO licensees, HCO personnel, or HCAs.

Adult and Senior Care licensees may comply with the following background check requirements to enable new staff to start working immediately if: 1) the licensee is experiencing a staff shortage, and 2) when Live Scan services are limited as a result of COVID-19.

In addition to complying with the below requirements, a licensee should give preference to hiring individuals with a verified background clearance from a school district, state or local government agency, or other agency that conditions employment or participation on a background clearance.

1. Transferring a Current CDSS Record Clearance or Exemption

Newly hired staff, not including a conditionally certified administrator, may start working immediately upon submission of a request to transfer a current CDSS criminal record clearance or exemption. The request to transfer shall be sent to the [local Adult and Senior Care Regional Office](#).

2. Background Check Process for New Hires Without Existing CDSS Record Clearance or Exemption

Newly hired staff must make every effort to complete the Live Scan requirement within 5 days of starting employment, in addition to any other background check requirements. The Department of Justice (DOJ) is providing a [location search](#) for providers to locate Live Scan fingerprinting services during the COVID-19 emergency. The DOJ has also implemented a new fingerprint capture method for Live Scan sites in order to reduce the amount of time and physical contact between the applicant and the Live Scan operator while continuing to provide

fingerprint-based background checks to California citizens in need of employment, licensing, certification or other approval.

If Live Scan Services Are Available:

Any new staff hired by a facility without a CDSS clearance or exemption, including a conditionally certified administrator, may start working immediately upon submission to the licensee of the following:

- A completed Criminal Record Statement (LIC 508), signed under penalty of perjury, that does not include any disclosed criminal history.
- A completed [Request for Live Scan Service - Community Care Licensing \(LIC 9163\)](#).
- Administrators with a conditional administrator certificate shall also submit a copy of their certificate.

Within 5 business days of starting work, the new staff shall complete a Live Scan to associate to the licensee.

If Live Scan Services Are Not Available:

Any new staff without a CDSS clearance or exemption, including a conditionally certified administrator, may start working immediately upon submission to the licensee the following:

- A completed Criminal Record Statement (LIC 508), signed under penalty of perjury, that does not include any disclosed criminal history.
- A completed and signed DOJ Bureau of Criminal Information and Analysis ([BCIA 9010-COVID-19](#)) Name-Check Form to the licensee.
- Administrators with a conditional administrator certificate shall also submit a copy of their certificate.

If new staff are unable to complete a Live Scan within 5 business days of starting work due to closure of Live Scan facilities in the geographical area where the new staff resides, [Executive Order N-52-20](#) allows for a DOJ background search based on identifying information other than fingerprints, including name, address, date of birth, social security number, driver's license number, and other identifying information ("name-based search"). CDSS has a new background check system, *Guardian*, in order to facilitate a name-based search with DOJ pursuant to this executive order. Individuals completing a background check via the name-based search process in *Guardian* will be eligible to work under the temporary waiver authority provided in this PIN, provided there is compliance with all other requirements, including those listed below:

Accessing the Guardian System

The *Guardian* system is an online portal to allow licensees the ability to initiate a request for a name-based background check. To gain access to this portal, licensees must activate a user account. Instructions will be forthcoming via email to each licensee currently on file at CDSS. For those licensees without active or current email addresses on file, instructions for activating your account will be sent through the U.S. mail service. Licensees may submit an email to Guardian@dss.ca.gov for assistance with activating a user account.

If a licensee is unable to access this web-based portal, a completed and signed [LIC 508](#), and a completed and signed DOJ Bureau of Criminal Information and Analysis ([BCIA 9010-COVID-19](#)) Name-Check Form must be sent to Guardian@dss.ca.gov.

Initiating the Guardian Portal DOJ Criminal History Search

If Live Scan is unavailable, and once access to the *Guardian* portal is granted, the licensee shall submit any request for a name-based search of DOJ criminal history, if applicable, using the *Guardian* portal and attest to the following:

- The new hire appeared before the licensee with a completed BCIA 9010-COVID-19 form and that the new hire presented a valid photo identification;
- That the new hire represented to the licensee that he/she made a good faith effort to locate a Live Scan service, but none was available;
- That they are submitting a request to perform a name-based check of the California criminal history records; and
- New hires will be required to submit his/her fingerprints for a fingerprint-based background check, as prescribed in statute or regulation, as soon as Live Scan services are available.

Once the licensee submits the name of the new hire to the *Guardian* portal, an email is sent to the new hire to complete the following:

- Certification that the new hire is unable to locate Live Scan/fingerprinting services and therefore is unable to provide fingerprint impressions for this reason;
- An acknowledgment that the new hire is required to submit fingerprints for a fingerprint-based check of State and federal criminal history records, as prescribed in statute or regulation, as soon as Live Scan services are available.

- A disclosure of whether or not the new hire ever has been convicted of a crime in California;
- A disclosure of whether or not the new hire ever has been convicted of a crime in another state, federal court, military, or jurisdiction outside of the U.S; and
- A declaration under penalty of perjury under the laws of the State of California that the new hire has read and understands the information contained in the affidavit and that the responses and any accompanying attachments are true and correct.

The names of new hires submitted by licensees through the *Guardian* portal will be associated to the facility immediately following submission of request for name-based search.

Pursuant to Penal Code [section 11105.7](#), the DOJ will respond to CDSS name-based searches based upon available identifying characteristics of the applicant matched to those that appear in the criminal history information. In cases where the DOJ is not able to complete the name-based search because the new hire's application does not provide enough information, the results will be inconclusive and will not satisfy the background check requirements pursuant to this waiver. The timeframe for the DOJ to complete the name-based search will vary depending on each application. Neither the DOJ nor any of its employees nor any requesting agency or entity shall be liable to any applicant for misidentifications.

Supervision Pending Live Scan Clearance

Licensees must ensure all new facility staff without a completed Live Scan fingerprint background check are supervised by an onsite staff person with a Live Scan fingerprint background clearance or exemption who has regular in-person check-ins with the new facility staff when while the new staff is present at the facility.

Reporting

Licensees must provide monthly reports to the [local Adult and Senior Care Regional Office](#) identifying all individuals hired during that month who have not completed the Live Scan fingerprint background check and who are working pursuant to the terms and conditions of this waiver. The report shall include a copy of the new staff's completed [LIC 508](#), a copy of the completed LIC 9163 or [BCIA 9010-COVID-19](#), as applicable, a copy of the individual's Driver's License or government issued photo identification, job title, and start date for each new staff hired pursuant to this waiver. The first of such monthly reports must be submitted by May 31, 2020 and shall include any individuals hired pursuant to this waiver process during May 2020.

Compliance

Live scan fingerprint background check submissions shall be completed as soon as possible after Live Scan services are available in the geographic area where the new staff resides, and in any event no later than June 15, 2020, unless extended by CDSS.

Licenses shall notify the authorized representative of a person in care that an individual is working in the facility pursuant to this waiver and without a completed Live Scan fingerprint background check. (See Attachment A: Notice to Authorized Representative.)

This Background Check Temporary Waiver (Administrators and Non-HCO Licensees) applies to background check requirements under Health and Safety Code sections [1522](#), [1562.3](#), [1568.09](#), [1569.17](#), [1569.616](#); California Code of Regulations, Title 22, Division 6, sections [80019](#), [81019](#), [85064.2](#), [87406](#), [87355](#), and [87819](#).

Rescission of Prior Background Check Temporary Waiver as to Home Care Aides and Home Care Organizations and Waiver for Transfers of Existing Clearance or Exemption

The Background Check Temporary Waiver in [PIN 20-09-CCLD](#), dated April 2, 2020 as applicable to HCAs, HCO personnel, and HCO licensees, **is hereby rescinded**, and the statutory requirements of the Home Care Services Act (Health & Safety Code [section 1796.10 et. seq.](#)) shall apply, except as otherwise stated in this section.

1. Transferring a Current CDSS Record Clearance or Exemption

Newly hired HCO staff or an applicant for the HCA registry may start working immediately upon submission of a request to transfer a current CDSS fingerprint based criminal record clearance or exemption. The request to transfer shall be sent to the [Home Care Services Bureau](#).

2. Background Check Process for New Hires or HCAs Without Existing CDSS Record Clearance or Exemption

All individuals without a current CDSS fingerprint based criminal record clearance or exemption currently working under a waiver pursuant to [PIN 20-09-CCLD](#) must contact the [Home Care Services Bureau](#) to request an individual waiver pursuant to [PIN 20-04-CCLD](#), which will be reviewed on a case-by-case basis.

An individual applying for registration as an HCA and new HCO staff shall meet the background check requirements of the Home Care Services Consumer Protection Act, including receipt of a fingerprint based criminal record clearance or exemption. Pursuant to Health & Safety Code section 1796.43, affiliated HCAs without a current CDSS fingerprint based criminal record clearance or exemption must meet these requirements prior to starting work for an HCO or having contact with any person receiving home care services from an HCO.

The DOJ is providing a [location search](#) for licensees and individuals to locate Live Scan fingerprinting services during the COVID-19 emergency. If an applicant is having difficulty locating a Live Scan operator after utilizing the DOJ website, contact the [Home Care Services Bureau](#) to request an individual waiver pursuant to [PIN 20-04-CCLD](#), which will be reviewed on a case-by-case basis.

This rescission of prior background check temporary waiver for HCOs and HCAs and waiver for transfers of existing clearance or exemption apply to background check requirements under Health and Safety Code [section 1796.10 et seq.](#)

Terms and Conditions of All Waivers

Licensees may implement the waivers described in this PIN only on an as-needed basis, in a reasonable manner, and in accordance with any guidance or instructions from CDSS, health care providers, CDC, CDPH, and local health departments.

Licensees, administrators (conditionally certified and certified), HCOs, and HCAs shall continue to comply with standards that have not been waived in this PIN's statewide waivers or pursuant to a different individual waiver or exception granted by CDSS. Any approved and pending waiver requests for any of the waiver provisions above shall continue to be in force, but shall be replaced by, this PIN. Licensees may continue to request individual waivers for standards not included in the statewide waiver in accordance with [PIN 20-04-CCLD](#).

Requirements for Ongoing Compliance with Background Check Waiver; Rescission or Modification

Continued use of this waiver is based on each licensee's compliance with the following terms and conditions:

1. Licensees shall post this waiver in a public location.
2. In accordance with the reporting instructions in this PIN, the licensee shall notify the [local Adult and Senior Care Regional Office](#) by monthly report for each new staff hired and employed pursuant to the background check waiver in this PIN.
3. Licensee and HCO policies shall be consistent with the guidance in this PIN, be readily available for the public's review, and a copy shall be provided to the local Adult and Senior Care Regional Office or Home Care Services Bureau, as applicable. The policy must include the justification for the waiver.

Note: In the event that there is a conflict between the guidance issued in this PIN and the guidance issued by CDC, CDPH or a local health department, the guidance that is more stringent shall apply.

4. A licensee must inform the authorized representative of a person in care of any policy revised to be consistent with this waiver.

5. The licensee shall comply with directives of a local health department.
6. The licensee shall not restrict CDSS, CDPH, local health department officials, and healthcare providers, Ombudsman, and essential government authorities from entering or conducting investigations.
7. Licensees should accommodate the use of video conferencing, teleconferencing, or other technology to support oversight that is conducted remotely.
8. Licensees shall notify the authorized representative of a person in care that an individual is working in the facility pursuant to this waiver and without a completed Live Scan fingerprint background check (See Attachment A: Notice to Authorized Representative).

CDSS may rescind this temporary waiver for an individual licensee at any time if CDSS receives DOJ notification a conviction requiring a criminal record exemption, an arrest for a crime listed at Health and Safety Code [section 1522\(e\)](#), or other conduct indicating a risk or threat to the health and safety of a person in care or the people of the state of California.

Effective Dates of Statewide Waivers

The statewide waivers in this PIN shall expire on June 15, 2020, or earlier upon written notice from the CDSS. Once these waivers have expired, all licensing requirements shall be reinstated.

Additional Resources

- [California Coronavirus \(COVID-19\) Response](#)
- [California Department of Social Services](#)
- [California Department of Public Health](#)
- [Centers for Disease Control and Prevention](#)
- [Local County Health Departments](#)

If you have questions regarding this PIN, please contact your [local Adult and Senior Care Regional Office](#) or the [Home Care Services Bureau](#), as applicable.

**ATTACHMENT A:
IMPORTANT NOTICE TO AUTHORIZED REPRESENTATIVE
Regarding California Department of Social Services
Caregiver Background Check COVID-19 Waiver**

Dear Authorized Representative:

You are receiving this notice because you are the authorized representative of a person in care in a facility identified below that is licensed by the California Department of Social Services (CDSS).

The Proclamation of a State of Emergency in response to a rising number of cases of Coronavirus Disease 2019 (COVID-19) in California permits the CDSS to address the needs of care facilities within its jurisdiction by waiving certain licensing requirements.

The highest priority of CDSS is to protect the health and safety of persons in our care facilities. In order to ensure that licensed care facilities have sufficient caregiving staff for persons in care during the time that the California Department of Public Health requires the use of physical distancing, CDSS has implemented statewide temporary waivers for certain licensing requirements, including certain background check requirements. Attached to this notice is background check waiver information related to this notice.

Licensed care facilities are required to strictly comply with numerous terms and conditions in order to use the temporary background check waivers, including using them only as needed, in a reasonable manner, and in accordance with any guidance or instructions from the CDSS.

The facility below has hired at least one person under the background check waiver who has not completed the Live Scan fingerprint background check, and instead completed a name-check based process, through the California Department of Justice. Note that all new staff in this facility have completed a self-attestation under penalty of perjury that they do not have a criminal background and their identifying information has been submitted to the Department of Justice for a non-fingerprint-based background check. Please note new staff will not be allowed to work in the facility if they have any known California criminal history, without a criminal record exemption.

The facility must ensure all new facility staff without a completed Live Scan fingerprint background check are supervised by an onsite staff person with a Live Scan fingerprint background clearance or exemption, who will regularly check in with the employee throughout their shift. *(Facility to enter the following information and mail notice to authorized representative.)*

Name of Facility: _____

Facility Number: _____

Facility Address: _____

Facility Phone: _____

If you have questions or concerns regarding the information in this notice, please contact the facility listed above. If you would like to contact the Community Care Licensing Division (CCLD), you may visit the [CCLD home page](#) to access the contact information for your local Adult and Senior Care Regional Office.

Background Check Temporary Waiver

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This waiver does **not** apply to HCO licensees, HCO personnel, or HCAs.

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Newly hired staff, not including a conditionally certified administrator, may start working immediately upon submission of a request to transfer a current CDSS criminal record clearance or exemption. The request to transfer shall be sent to the [local Adult and Senior Care Regional Office](#).

2. Background Check Process for New Hires Without Existing CDSS Record Clearance or Exemption

Newly hired staff must make every effort to complete the Live Scan requirement within 5 days of starting employment, in addition to any other background check requirements. The Department of Justice (DOJ) is providing a [location search](#) for providers to locate Live Scan fingerprinting services during the COVID-19 emergency. The DOJ has also implemented a new fingerprint capture method for Live Scan sites in order to reduce the amount of time and physical contact between the applicant and the Live Scan operator while continuing to provide fingerprint-based background checks to California citizens in need of employment, licensing, certification or other approval.

If Live Scan Services Are Available:

Any new staff hired by a facility without a CDSS clearance or exemption, including a conditionally certified administrator, may start working immediately upon submission to the licensee of the following:

- A completed [Criminal Record Statement \(LIC 508\)](#), signed under penalty of perjury, that does not include any disclosed criminal history.

- A completed [Request for Live Scan Service - Community Care Licensing \(LIC 9163\)](#).
- Administrators with a conditional administrator certificate shall also submit a copy of their certificate.

Within 5 business days of starting work, the new staff shall complete a Live Scan to associate to the licensee.

If Live Scan Services Are Not Available:

If new staff are unable to complete a Live Scan within 5 business days of starting work due to closure of Live Scan facilities in their geographic area, [Executive Order N-52-20](#) allows for a Department of Justice (DOJ) background search based on identifying information other than fingerprints, including name, address, date of birth, social security number, driver's license number, and other identifying information ("name-based search"). CDSS has a new background check system, *Guardian*, in order to facilitate a name-based search with DOJ pursuant to this order. Individuals completing a background check via the name-based search process in *Guardian* will be eligible to work under this temporary waiver authority, provided there is compliance with all other requirements.

Supervision Pending Live Scan Clearance

Licensees must ensure all new facility staff without a completed Live Scan fingerprint background check are supervised by an onsite staff person with a Live Scan fingerprint background clearance or exemption who has regular in-person contact check-ins with such the new staff when while the new staff is present at the facility.

Reporting

Licensees must provide monthly reports to the [local Adult and Senior Care Regional Office](#) identifying all individuals hired during that month who have not completed the Live Scan fingerprint background check and who are working pursuant to the terms and conditions of this waiver. The report shall include a copy of the new staff's completed [LIC 508](#), a copy of the completed LIC 9163 or [BCIA 9010-COVID-19](#), as applicable, a copy of the individual's Driver's License or government issued photo identification, job title, and start date for each new staff hired pursuant to this waiver. The first of such monthly reports must be submitted by May 31, 2020 and shall include any individuals hired pursuant to this waiver process during May 2020.

Compliance

Live scan fingerprint background check submissions shall be completed as soon as possible after Live Scan services are available in the geographic area where

the new staff resides, and in any event no later than June 15, 2020, unless extended by CDSS.

Licensees shall notify the authorized representative of a person in care that an individual is working in the facility pursuant to this waiver and without a completed Live Scan fingerprint background check. (See Attachment A: Notice to Authorized Representative.)

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