

Background Checks & Subsequent Arrest Notification

- **Where can providers find HHSA’s requirements related to background checks and subsequent arrest notification (SAN)?**

Background check and SAN requirements are typically included in the contract template, section 10.11.

- **What does a ‘criminal background check’ entail?**

A criminal background check searches for previous criminal activity of an individual. Since criminal records are jurisdictional and different agencies search different databases, providers should be mindful of the agency they select to run the check. Criminal background checks are a key component in determining an applicant’s suitability for employment. Criminal background checks facilitate timely identification of any criminal history that is incompatible with the activities and interactions required by the job, especially those that involve children or vulnerable adults.

- **What does ‘subsequent arrest notification’ entail?**

Subsequent arrest notification (SAN) means that the responsive agency will proactively reach out to the employer if an individual is ever arrested. SAN is not provided by most criminal background check agencies. SAN differs from most other criminal background checks, which only provide conviction information.

- **Who provides SAN?**

The California Department of Justice (DOJ) provides SAN. DOJ requires employers to apply for a DOJ background check and SAN account. When an employer submits a background check request to DOJ, the employer can also request that the DOJ notify the employer if the individual is subsequently arrested within its jurisdiction. Many people refer to the DOJ background check process as “Livescan.”

- **What if a provider can’t get a DOJ account and thus cannot obtain SAN?**

DOJ has certain criteria that must be met in order for an employer to be approved for a SAN account. Providers who cannot get a DOJ SAN account should reach out to their COR. Often, providers will be asked to complete annual background checks in lieu of SAN.

- **On whom should providers perform criminal background checks and SAN?**

Criminal background checks and SAN should be performed on any and all workforce members, i.e., individuals who work on the contract in any capacity, including paid staff, unpaid workers, and/or subcontractors or consultants. Workforce members include individuals with contract-budgeted and those paid via indirect funds or overhead. Workforce members include individuals with access to identifying information on HHSA clients, even if the individual isn’t paid through the contract.

Background Checks & Subsequent Arrest Notification

- **How do providers address these requirements for subcontractors or consultants?**

Criminal background check and SAN requirements must flow down to all subcontractors or consultants. Providers should check with their counsel as to the best way to ensure subcontractors and consultants have met criminal background check and SAN requirements.

- **If a workforce member has criminal activity, then what happens next?**

A workforce member whose background check includes criminal activity is not automatically excluded from working on HHS contracts, nor are they automatically excluded from working with HHS clients. Instead, providers should develop their own consistent process for reviewing any results and determining whether the results demonstrate behavior that creates increased risk to the provider or the population served; looking at factors such as the nature and gravity of the offense or conduct, the time that has passed since the offense or conduct and/or completion of the sentence, and the nature of the job sought or held.

- **Does HHS suggest any third parties to perform the checks? Does HHS offer any training on how to run the checks or review the results?**

HHS uses the DOJ to run its checks. The DOJ provides instruction on how to request an account and how to complete background check requests. More information about the process can be found [here](#).

The Equal Employment Opportunity Commission provides guidance on the review of criminal records, found [here](#).

- **What kind of documentation will likely satisfy an HHS audit related to background checks and SAN?**

The type of documentation required by HHS during an audit may vary. For most routine background check/SAN audits, COR teams will ask for the provider's background check/SAN process and/or verification that checks were performed for a random sampling of individuals. Documentation would generally include a written policy of the process and verification documents detailing: the date the background check and/or SAN request was made and by whom, whether the check produced any criminal results, the date the results were reviewed and by whom, and the provider's decision as to whether the criminal results may impact the individual's job functions. COR teams sometimes ask providers for a formal attestation that criminal background checks were completed. Non-routine audits may require more or different documentation.

COR teams will never ask to see 'rap sheets' or any other actual criminal background check results during a background check audit. HHS also does not require providers to maintain 'face sheets' or other background check request forms used to request criminal background checks. However, if the face sheet or request form is the document that a provider uses to document their background check, then that is the document a COR will likely need to see.

Don't see your question answered above? Have additional questions? Your COR team is your primary resource for any questions related to your HHS contract. For questions related to this FAQ, please contact HHS Business Assurance and Compliance (BAC) by email at Compliance.HHS@SDCounty.ca.gov or by phone (619) 237-8571.