



National Capital Region
Medical Directorate
IMPLEMENTATION GUIDANCE



NUMBER 5210.02

AUG 28 2019

PERS

SUBJECT: Background Checks on National Capital Region (NCR) Personnel who have Regular Contact with Children under the Age of 18

References: See Enclosure 1

1. PURPOSE. This Implementation Guidance issues instructions and guidelines for screening and background check requirements for individuals whose primary duties require regular and recurring contact with children under the age of 18, in the execution and support of the Defense Health Agency (DHA) National Capital Region (NCR). The NCR must ensure the health, safety, and well-being of children under the age of 18 and reduce the risk for child abuse and neglect in all Military Treatment Facilities (MTFs) and Subordinate Clinics.

2. APPLICABILITY. This guidance applies to all personnel assigned, attached, or detailed to the NCR to include all Appropriated Fund and Non-Appropriated Fund employees, military members of the active and reserve components, foreign national employees overseas, contractors (including subcontractors), healthcare providers, and any other persons whose primary duties require regular and recurring contact with children under the age of 18.

3. POLICY. This Implementation Guidance delineates roles and responsibilities for ensuring that initial screening, assessment, and required background checks are conducted and properly adjudicated for all personnel identified in this guidance. MTF Directors are delegated the authority to make suitability and fitness adjudication determinations and take subsequent actions in cases involving applicants and appointees to covered positions as defined in Reference (h).

a. Military members are not subject to suitability adjudication under Volume 731 of Reference (i). Military members are subject to the background check requirements of DoD Manual 5200.02 (Reference (k)).

b. Military personnel with regular and recurring contact with children while serving in a volunteer position or other non-duty capacity must undergo an Installation Records Check (IRC).

c. Individuals who have received a favorable interim suitability or fitness determination

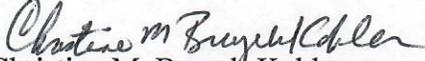
based on Federal Bureau of Investigation (FBI) criminal history background check are permitted to work under Line-Of-Sight Supervision (LOSS) pursuant to subsection (b)(3) of section 13041 of Reference (g).

d. All individuals whose primary duties require regular and recurring contact with children under 18 years of age in DHA sanctioned programs and activities and who also have a current or prior DHA affiliation must also undergo an IRC. Individuals whose background checks reveal derogatory information will be vetted through a disciplinary review process.

4. RESPONSIBILITIES. See Enclosure 2

5. RELEASABILITY. **Cleared for public release.** This Implementation Guidance is approved for public release and is available on the internet from the NCR Website at www.capmed.mil.

6. EFFECTIVE DATE. This Implementation Guidance is effective immediately.


Christine M. Bruzek-Kohler
Acting Director

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ENCLOSURE 1

REFERENCES

- (a) Department of Defense (DoD) Directive 5136.01, "Assistant Secretary of Defense for Health Affairs (ASD (HA))," dated September 30, 2013, Incorporating Change 1, dated August 10, 2017
- (b) DoD Directive 5136.13, "Defense Health Agency (DHA)," dated September 30, 2013
- (c) DHA Procedural Instruction 5025. 01, "Publication System," dated August 24, 2018
- (d) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD (P&R))," dated June 23, 2008
- (e) DoDI 1402.5, "Background Checks on Individuals in DoD Child Care Services Programs" dated, September 11, 2015, Incorporating Change 1, Effective July 14, 2016
- (f) Defense Health Agency "Personnel Security Program," dated, May 24, 2018
- (g) Title 34 U.S. Code § 20351, "Requirement for background checks" dated May 29 1991
- (h) Title 5, Code of Federal Regulations, dated January 1, 2012
- (i) DoDI 1400.25, Volume 731, "DoD Civilian Personnel Management System: Suitability and Fitness Adjudication for Civilian Employees," dated August 24, 2012
- (j) Deputy Assistant Secretary of Defense for Civilian Personnel and Policy Memorandum, "Responsibilities under the Department of Defense Suitability and Fitness Adjudications for Civilian Employees Programs," dated August 26, 2013
- (k) DoD Manual 5200.02, "Procedures for the DoD Personnel Security Program (PSP)," dated April 3, 2017
- (l) Chapter 47 of Title 10, United States Code, "Uniform Code of Military Justice," dated May 31, 1951, as amended
- (m) Code of Federal Regulations, Title 5, Part 731, dated December 9, 2011
- (n) Personnel Security Investigation Center of Excellence (PSIP) Requester Guide, dated July 12, 2017
- (o) DoD Manual 1402.05 " Background Checks on Individuals in Department of Defense Child Development and Youth Programs," dated January 24, 2017
- (p) DHA Administrative Instruction "Child Care Background Check Program," Insert Date Signed.

ENCLOSURE 2

RESPONSIBILITIES

1. DIRECTOR, DEFENSE HEALTH AGENCY (DHA). Under the authority, direction, and control of the Secretary of Defense for Personnel and Readiness (USD (P&R)), the Director of the Defense Health Agency will:

a. Ensure Component compliance with the requirements of applicable laws and guidance for civilian employees.

b. Ensure compliance with suitability and fitness determination policies, requirements, and procedures for individuals whose primary duties require regular and recurring contact with children under the age of 18 in DoD MTFs and Subordinate Clinics as defined in 42 U.S.C. 13041 (g) and DoD Instruction 1400.25 (i).

c. Ensure compliance with policies, requirements, and procedures for LOSS of individuals with a favorable interim suitability determination.

d. Provide support and resources as required to implement this guidance and any Component-specific policies, requirements, and procedures, as well as ensuring implementation.

e. Ensure funds are available for the background checks and the Child National Agency Check and Inquiries (CNACI) to the NCR.

f. Ensure a Program Review Board (PRB) is established to review cases with major derogatory information.

g. Ensure processes are established for appeals and adjudication.

2. PERSONNEL DIVISION, NATIONAL CAPITAL REGION. The Personnel Division, National Capital Region will:

a. Centralize Child Background Check with a coordinator to obtain and review the following reference checks: FBI-fingerprint check, IRC, National Background Investigation Bureau (NBIB) Investigations, and reports from the State Criminal History Repository (SCHR). The coordinator will maintain a list of points of contact to initiate, coordinate, and track background checks, and review results for derogatory information. The points of contact are agencies that provide required background check data for civilian and military personnel.

- b. Be responsible for implementing policies and programs within the NCR including facilitating and coordinating processes and procedures with subordinate organizations that are involved in the screening and background check process for all individuals.
- c. Forward reference checks revealing derogatory information to the MTF and Subordinate Clinic Directors for suitability consideration.
- d. Ensure every case submitted for review or adjudication by the DHA Director is sufficiently reviewed by the NCR General Counsel.
- e. Brief the leadership and the Union regarding the state of background checks and CNACI issues.
- f. Establish a Background Check Coordinator position within the Division to coordinate and monitor the status of CNACI with the MTFs and subordinate Clinics and communicate with the respective Personnel Offices to monitor the reference checks of the IRC.
- g. Develop guidance for each MTF and subordinate Clinics responsible for providing information to the Background Check Coordinator and specify the format and restrictions for checklists used to ensure the timely receipt of information and completion of the background checks.

3. DIRECTORS, MEDICAL TREATMENT FACILITIES AND SUBORDINATE CLINICS.

The Directors, Medical Treatment Facilities and subordinate Clinics will:

- a. Provide mandatory training to ensure compliance with this Implementation Guidance. Where responsibilities overlap between organizations, the Directors will develop memorandums of agreement to ensure compliance with this Implementation Guidance. The Walter Reed National Military Medical Center (WRNMMC) and Fort Belvoir Community Hospital (FBCH) MTFs and subordinate Clinics must initiate background checks not previously required on all current employees with an entrance on duty date of September 2011 to the present, within six (6) months of the publication of this guidance. If it is discovered that a CNACI or other required background checks were not completed for an individual, the Directors of the MTFs and subordinate Clinics must immediately initiate the background checks. Organizations will act judiciously and apply the criteria and processes in this guidance to ensure the well-being of children under the age of 18. The DHA Director will conduct necessary audits to validate compliance.
- b. Be responsible for ensuring individuals have the necessary skill sets for the position. Through a thorough review of the application and related forms, personal interviews, and reference checks, they will assess the individual's eligibility, qualifications, temperament, and suitability for working with children under the age of 18.
- c. Determine and maintain a list of other classes of positions subject to criminal history

background checks for personnel whose primary duties require regular and recurring contact with children under the age of 18. The required investigation must pertain to the whole class not a portion of the positions. This information will be shared with the NCR Personnel Division to conduct the reference checks.

d. Ensure procedures for reporting suspected unprofessional, questionable, and unsafe behaviors or allegations of misconduct of individuals who interact with children under the age of 18.

e. Establish mandatory initial and annual LOSS Awareness training.

f. Ensure that CNACI and background checks are initiated prior to personnel being detailed or reassigned to a new position.

g. Prioritize personnel requiring CNACI and background checks to ensure departments with personnel whose primary duties involve interaction with children under the age of 18 are initiated and LOSS badges are issued. For example, background checks will be initiated for Pediatrics and Behavioral Health supervisors first, then new and current employees within these departments.

4. HUMAN RESOURCES SERVICING CENTER (HRSC). The Director of the Human Resources Servicing Center will:

a. Identify possible position descriptions selected by management that may meet CNACI requirements. This process will typically occur during the Strategic Recruitment Discussion (SRD) or at the request of a position review or desk audit.

b. Standardize all job announcements for positions whose primary duties involve regular interaction with children under the age of 18, to include the condition of employment as related to CNACI, Line of Sight Supervision (LOSS) and/or Installation Record Checks, if necessary.

c. Identify and communicate CNACI requirements during initial Tier 3 (T3) clearance requests to the Personnel Security Offices (PSO) as needed.

d. Identify if CNACI is required for a position to the MTFs' or subordinate Clinics' PSO for selected candidates that will have regular contact with children under the age of 18 as their primary duty.

e. Obtain the signature of employee or candidate before seeking a background check. Thus, documenting that he or she has been notified of the employer's obligation to require record checks as a condition of employment, the individual's rights to obtain a copy of the criminal history made available to the NCR Personnel Division, and the rights to appeal.

f. Recommend and provide position descriptions and names of employees who are currently employed at the MTFs that may require a CNACI within 30 days of the publication of this guidance.

5. PERSONNEL SECURITY OFFICE & CONTRACTOR FACILITY SECURITY OFFICER.

The Personnel Security Office (PSO) or Contractor Facility Security Officer (FSO) will:

- a. Conduct the Pre-Employment Background Check and CNACI (when it is indicated as required), upon receipt of the selectee's full name, Date of Birth, and Social Security Number.
- b. Verify and validate background investigations by conducting a check in the Joint Personnel Adjudication System (JPAS), the system of record for Department of Defense.
- c. Update JPAS concerning the establishment of employees' favorable CNACI status
- d. Conduct five year reverification process for CNACI which includes all background checks specified under the IRC. Once the Office of Personnel Management (OPM) SCHR investigations are returned favorable and the IRCs are completed favorable, the employee will be granted the appropriate suitability determination.

ENCLOSURE 3

BACKGROUND CHECKS

1. CRIMINAL BACKGROUND CHECKS. The MTFs' PSO and the Human Resources Servicing Center are responsible for ensuring background checks are conducted on personnel identified for CNACI background investigations. At the request of the Human Resources Servicing Center, the PSO will initiate required background checks. The PSO will track requests and when completed, compile and review the results of the background checks to determine derogatory information contained is reported to the Human Resources Servicing Center and the Directors of the MTFs or subordinate Clinics.

2. REQUIREMENTS FOR CRIMINAL HISTORY BACKGROUND CHECKS. Military members, civilian employees and contractors filling any healthcare positions whose primary duties require regular and recurring contact with children under the age of 18 must have background checks, IRC (when applicable), FBI fingerprint checks, and CNACI.

a. All criminal history background checks by this guidance must be initiated, tracked, and overseen by properly trained and vetted individuals who have been determined to be responsible for personnel security pursuant to Reference (k) or human resource functions pursuant to Volume 731 of Reference (i). Program managers, supervisors, and others not routinely performing personnel security and human resource functions are prohibited from managing the criminal history background checks.

b. All employment applications completed by individuals subject to this guidance must comply with the requirements of section 13041 (d) of Reference (g).

c. The Directors will ensure only authorized investigative service providers are used.

d. The security requirement for NCR employment is to have a favorably adjudicated Tier 3 (T3) background investigation. The National Agency Check with Law and Credit (NACLC) and National Agency Check (NAC), do not suffice and do not meet employment requirements. If there is a lower level investigation in process, the Personnel Security Investigation Portal (PSIP) or the PSO may upgrade it to a T3 (non-critical sensitive) to comply with NCR requirements. If there is an ongoing investigation, the PSO may request the Archival copy of the employee's SF86 to review and grant interim access while the investigation is ongoing if the review is favorable.

3. INDIVIDUALS SUBJECT TO CRIMINAL HISTORY BACKGROUND CHECKS.

a. All personnel employed or performing duties in DHA sanctioned programs and activities which involve interaction with children under the age of 18.

b. All DHA personnel whose primary duties require regular and recurring contact with children under the age of 18. Examples of position types include, but are not limited to: general pediatricians, pediatric surgeons, pediatric dentists and hygienists, pediatric geneticists, pediatric nurses, neonatologists, child psychologists, child psychiatrists, clinical social workers, physical therapists, speech-language pathologists, play therapists, family physicians and clinical support staff (including residents).

c. Any other individuals reasonably expected to have regular contact with children in a DHA-sanctioned program, including specified volunteers and any person 18 years of age or older.

d. Individuals designated in non-specified volunteer positions MUST be properly vetted through direct LOSS.

4. TYPES OF BACKGROUND CHECKS. Procedures for conducting a background check on individuals in paragraph 3 (b) enclosure 3 differ based on the employment status of the individual. Military members are subject to the background check requirements of DoD Manual 5200.02 and this section. The FBI criminal history background checks for all categories of individuals must be fingerprint-based and must be captured using an FBI-approved system. SCHR checks may require hardcopy fingerprint submissions. State checks must include the state child abuse and neglect repository and the state sex offender registry. The MTFs or subordinate Clinics must request a check of the state child abuse and neglect repository and the State sex offender registry if they are not automatically checked as part of the standard SCHR check.

a. Criminal History Background Checks.

(1) FBI Advanced Fingerprint Check. Check will be conducted through the Fingerprint Transaction System Results of an advanced FBI Fingerprint Check must be provided before completion of the full CNACI to determine employment under LOSS.

(2) Individuals with a prior DoD affiliation must also complete an IRC, which includes an installation law enforcement check, drug, alcohol, and substance abuse records check, and a check of the Family Advocacy Program (FAP) records for a minimum of two years before the date of the application. Results of the IRC must be provided before completion of the full CNACI to determine employment under LOSS.

(3) SCHR checks through the State repositories of all States that an employee or prospective employee lists as current and former residences (dating five (5) years to present) on an employment application. The SCHR includes the State, local, and tribal criminal history

checks, the State child abuse and neglect repository and the State sex offender registry checks.

(4) CNACI or Report of investigation if completed within the last five (5) years. Tier 3 (T3) with Child Care Investigation for Non-Critical Sensitive positions for all new hires and Tier 1 (T1) if the T3 investigation was completed more than five (5) years from the date of the application.

b. Criminal History Background Checks for Others. In accordance with section 13041 of Reference (g), only an FBI advanced fingerprint check is required for criminal history background checks for volunteers and summer hires 18 years of age or older.

c. Timely Completion. To ensure timely completion, the PSO will establish procedures to initiate or request criminal history background check results, follow up to ensure checks have been completed, and address situations when there is a delay in receiving results. Subject to this guidance, no individual is presumed to have a favorable background check merely because there has been a delay in receiving the results of the requisite background check. If no response from the State(s) is received within 60 days, determination based upon CNACI report may be made. (Note: The 60 days wait period is NOT in addition to the T3 investigation period. However, the time is captured in the time it takes to complete a full investigation).

5. CRITERIA FOR DISQUALIFICATION BASED ON RESULTS OF CRIMINAL HISTORY BACKGROUND CHECKS. The ultimate decision to determine how to use the information obtained from the criminal history background checks in selection for positions involving the care, treatment, supervision or education of children must incorporate a common sense decision based upon all known facts.

a. Evaluation Authority. Adverse information is evaluated by the PSO who is qualified at the appropriate level for interpreting criminal history background checks.

(1) All information of records both favorable and unfavorable will be assessed in terms of its relevance, recentness, and seriousness. Likewise, positive mitigating factors should be considered. Final suitability decisions will be made by the MTFs' and subordinate Clinics' Director or designee.

(2) Criteria that will result in disqualification of an applicant require careful screening of the data. A disqualifying event may be the basis for a non-selection, withdrawal of a tentative offer of employment, ineligibility for facility access, removal from a contract, a suitability action under part 731 of Reference (g), a probationary termination, an adverse action or other appropriate actions.

b. Criteria for Disqualification under LOSS. If an investigation of an individual currently working under LOSS subsequently results in an unfavorable determination, the MTF and Clinic Directors must take immediate action to protect children by reassigning, removing the individual from employment, contract, volunteer status or placing the employee on administrative leave.

c. Disputes and Appeals. Appeal of unfavorable determinations for all categories of individuals with exception of new hires (civilians and contractors) in this guidance will be forward to the DHA Security Personnel for adjudication. The procedures for civilian personnel are subject to Volume 731 of Reference (i).

6. REVERIFICATION.

a. All civilian employees, military personnel, contractors, and any other individual whose primary duties involve regular and recurring contact with children in DHA MTFs and Subordinate Clinics, DHA program or as part of a military/DHA-sanctioned activity, including specified volunteers, or any person 18 years of age or older who continue to perform duties in the position for which their initial background check was conducted, must undergo a reverification every five years.

b. The reverification, conducted by the PSO and the Child Background Check Coordinator, for employees, military personnel, and contractors will include a Special Agreement Check (SAC) of the FBI fingerprint database and the SCHR that includes child abuse and neglect, sex offender registries for all States lived in the five years since the date of the last investigation or reverification, and an IRC of all affiliated installations for five years since the date of the last IRC.

c. If the reverification results in an unfavorable determination, the MTFs' and subordinate Clinics' Director will take actions to protect children by reassigning or removing the individual from employment, contract or volunteer status.

d. If derogatory information surfaces within the five years before the reverification, the MTFs and Clinics will take actions to protect children by reassigning or suspending any individual from having contact with children until the case is resolved.

7. SELF REPORTING.

a. Individuals whose primary duties involve regular and recurring contact with children under 18 years of age in DHA-sanctioned programs who have a completed background check are required to immediately report subsequent automatic disqualification criteria in this guidance and presumptive disqualification criteria as listed in this Implementation Guidance.

b. The Directors, MTFs and Clinics will establish procedures for:

(1) Informing individuals of the requirement to immediately report any incident or conviction that may invalidate their prior background check and make them ineligible to work or have contact with children.

(2) Responding to and evaluating reports made by such individuals and taking appropriate action until the case has been resolved or closed.

8. ANNUAL SELF-CERTIFICATIONS. Individuals in positions covered by this Implementation Guidance are required to annually self-certify that they have not been arrested, charged, or convicted by federal, state, local, or tribal authorities of any crime considered automatic or presumptive disqualifying criteria as listed in the DoD Manual 1402.05 (Reference (o)). These certifications must be signed by the individual and submitted to the National Capital Region Child Background Check coordinator within five (5) business days of the anniversary of their hiring date.

ENCLOSURE 4

ELIGIBILITIES

1. ELIGIBILITY TO PERFORM DUTIES UNDER LOSS. The MTFs and Clinics will establish specific procedures, policies, and requirements subject to the requirements of this guidance to permit applicants for whom a criminal history background check has been initiated but not yet completed and to perform duties under LOSS upon favorable findings of preliminary investigations.

a. No Presumption of Right. No individual will be permitted to perform duties under LOSS in a position subject to criminal history background check without authorizing policy or other written permission from the Directors, MTFs, and Clinics. This authorization will be in writing (see enclosure 5 and 6). Once signed, the Child Background Check Coordinator should receive a copy.

b. Preliminary Investigations Required. No individual will be permitted to perform duties under LOSS in a position subject to criminal history background check unless the following investigative elements have been reviewed and determined favorably:

(1) An IRC, including installation law enforcement records check, drug and alcohol records, and Family Advocacy Program records check for a minimum of two years before the date of the application if the individual has a pre-existing DHA affiliation.

(2) Initial results from the advanced FBI fingerprint check (not the full check).

c. Exception for Non-Specified Volunteers. Due to the controlled and limited duration of an activity for these individuals, an advanced FBI fingerprint check is not required. Non-specified volunteers will be permitted to perform duties and services under LOSS for the duration of the activity.

d. Permissible Performance of Duties without LOSS. Individuals otherwise require to perform duties only under LOSS may perform duties without LOSS if:

(1) Interaction with a child occurs in the presence of the child's parent or guardian.

(2) Interaction with children is in a medical facility subject to supervisory policies of the facility and in the presence of a mandated reporter of child abuse.

(3) Interaction is necessary to prevent death or serious harm to the child and supervision is impractical or unfeasible (e.g., response to a medical emergency, emergency evacuation of a child from a hazardous location).

e. **Individuals Assigned to LOSS Roles and Responsibilities.** An individual working under LOSS must be supervised during interaction with a child by being monitored constantly by an individual who:

(1) Has not previously exhibited wanton or reckless disregard for an obligation to supervise civilian employees, contractors, volunteers or military personnel.

(2) Volunteers and students may not serve as a LOSS supervisor.

f. **Individuals with assigned LOSS responsibilities must be responsive and aware of the child's reactions, as well as the verbal and non-verbal indications of distress (suspecting unprofessional and unsafe behavior).** If distress is indicated, the individual with assigned LOSS responsibilities must:

(1) Stop care and have a private conversation with the provider to discuss concerns;

(2) Protect the child by removing him/her to a safe environment; and

(3) Report the incident by following the respective MTF or subordinate Clinic's reporting procedures.

g. **Conspicuous Identification of Individuals Subject to LOSS.** Individuals permitted to perform duties solely under LOSS must be conspicuously marked by means of distinctive badges with apparent markings that are fully visible when viewed from all angles. The LOSS badges will be uniformed across all MTFs/associated Clinics and must always be worn during duty hours. The purpose of such markings must be communicated to staff, patients, parents, and guardians by conspicuous posting or printed information.

h. **Authorized Removal from LOSS.** Removal from LOSS may occur once a final favorable adjudication of remaining child care background checks have been made. At that time, the individual will receive notification of removal from LOSS from the Child Background Check Coordinator. In addition, the individual will also be provided instructions to receive a new badge marked with a "gray" color band identifying the individual has been cleared with a final favorable investigation for Child Background Check.

i. **Unfavorable Suitability Determination.** If unfavorable suitability determination is made by the MTF or subordinate Clinic's Director, appropriate action will be taken to reassign or remove the employee from their position due to their inability to meet the conditions of employment. See Enclosure 8 for additional guidance on criteria for making suitability and fitness adjudication determination.

ENCLOSURE 5

LOSS AUTHORIZATION TEMPLATE

(Request must be on MTF Letterhead)

MEMORANDUM FOR: Last Name, First Name MI, Position Title
XXXXXXXXXXXX, MTF or Subordinate Clinic Name

SUBJECT: Line of Sight Supervision (LOSS) Authorization

References:

- a. Department of Defense Instruction (DoDI) 1402.05 “Background Checks on Individuals in DoD Child Care Services Programs,” September 11, 2015, Incorporating Change 1, effective July 14, 2016
- b. DHA Administrative Instruction “Child Care Background Check Program,” Insert Date signed.
- c. NCR Implementation Guidance 5210.02, “Background Checks for Personnel who Have Regular Contact with Children under the Age of 18,” Insert Date signed.

1. The initial background checks conducted on the above individual, as required for their position, was returned and revealed the following information:

- Source:
- Date:
- Location:
- Offense:
- Disposition:

2. Based on the initial finding(s) and rebuttal, the XXXXXXX (name of MTF or Subordinate Director) has approved the decision to:

_____ CONCUR (APPROVE WORK UNDER LOSS SUBJECT TO FAVORABLE ADJUDICATION OF THE REMAINING BACKGROUND CHECKS)

_____ NON CONCUR

Signature block of MTF Director/Designee

ENCLOSURE 6

LOSS STATEMENT OF UNDERSTANDING

MEMORANDUM FOR RECORD

SUBJECT: Line of Sight Supervision (LOSS) Statement of Understanding (SOU)

References:

- (a) DoD Instruction 1402.05, "Background Checks on Individuals in DoD Child Care Services Programs," September 11, 2015, Incorporating Change 1, effective July 14, 2016
- (b) DHA Administrative Instruction "Child Care Background Check Program," Insert Date signed.
- (c) NCR Implementation Guidance 5210.02, "Background Checks for Personnel who Have Regular Contact with Children under the Age of 18," Insert Date signed.

1. This memorandum is to notify you that the Defense Health Agency has authorized you to work under Line of Sight Supervision pending the completion and favorable adjudication of your State Criminal History Repository checks and Child Care National Agency Check with Written Inquiries (CNACI) or a final favorable suitability adjudication has been made. While working under LOSS you will be required to follow the procedures outlined in paragraphs 2 through 3 below.

2. Personnel Working Under LOSS:

- a. Require continuous visual observation and supervision while engaged in child interactive duties or in the presence of children in DOD-sanctioned program or activity.
- b. Must be conspicuously marked by means of distinctive badges with apparent marking that are fully visible when viewed from all angles.
- c. Personnel authorized to work under LOSS will be identified with a badge marked with a "turquoise" color band. This badge must always be worn during duty hours.

3. Individuals required to perform duties under LOSS may only perform duties without LOSS if the interaction with a child:

- a. Occurs in the presence of the child's parent or guardian;
- b. Is in a medical facility, subject to the supervisory policies of the facility and in the

presence of a mandated reporter of child abuse. A “mandated reporter of child abuse” is any person listed in 42 USC §13031(b) or any person listed in NCR-Implementation Guidance; and

c. Interaction is necessary to prevent the death of or serious harm to the child and supervision is impractical or unfeasible (or example, medical emergency or emergency evacuation of a child from a hazardous location).

4. An individual working under LOSS must be supervised during interaction with a child by being monitored constantly by an individual who:

a. Is responsive and aware of the child’s reactions, as well as verbal and non-verbal indications of distress (suspecting unprofessional and unsafe behavior);

b. Has complied, as required, with the periodic re-verification requirement for a recurring criminal history background check; and

c. Has not previously exhibited wanton or reckless disregard for an obligation to supervise civilian employees, contractors, volunteers or military personnel. Volunteers or students may not serve as a LOSS supervisor.

5. You will be removed from LOSS once a final favorable adjudication of your remaining Child Care Background Check has been made. At that time, you will receive notification of your removal from LOSS from the Child Background Check Coordinator and will receive instructions to receive a new badge marked with a “gray” color band identifying you as cleared with a final favorable investigation for the Child Care Background Check.

6. If an unfavorable suitability determination is made by the Director or designee, appropriate action will be taken to reassign or remove you from your position due to your inability to meet your conditions of employment.

7. The POC for this Statement of Understanding is [enter name], Background Check Coordinator, at [enter duty number] or [enter email address].

Child Care Background Check Coordinator
Signature Block
NCR, Personnel Division

ENCLOSURE 7

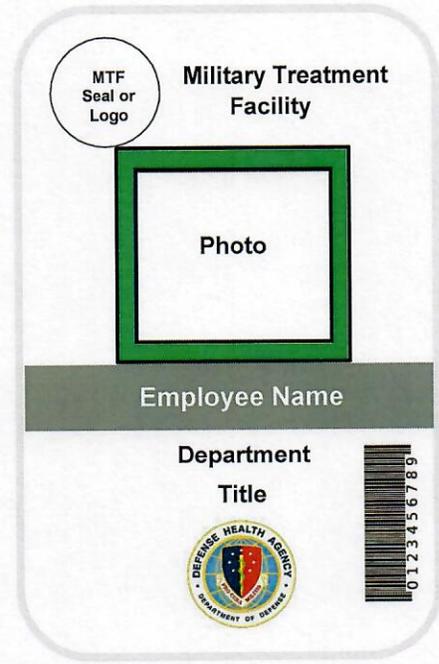
SAMPLE - LOSS BADGES

Turquoise Strip indicates individual with a pending Child Care Background Check while working under LOSS.

Grey Strip indicates individual with a favorably completed Child Care Background Check.



LOSS



CLEARED

ENCLOSURE 8

CRITERIA FOR MAKING SUITABILITY & FITNESS ADJUDICATION
DETERMINATIONS

1. SPECIFIC SUITABILITY FACTORS. A suitability action taken against an individual will protect the integrity and promote the efficiency of the service.

a. Suitability determinations must be based on the presence or absence of one or more specific factors (charges). Eight specific factors outlined below are considered a basis for finding a person unsuitable and taking a suitability action:

- (1) Misconduct or negligence in employment.
- (2) Criminal or dishonest conduct. Financial irresponsibility is included only if dishonesty is established.
- (3) Material intentional false statement, deception or fraud in examination or appointment. A “material” statement is one that is capable of influencing, affects or has a natural tendency to affect an official decision, even if DHA does not rely upon it.
- (4) Refusal to furnish testimony as required by Reference (h). Limited to testimony required by the Office of Personnel Management (OPM), Office of the Special Counsel, or Merit Systems Protection Board (MSPB). Note: Only OPM can cite this factor.
- (5) Alcohol abuse, without evidence of substantial rehabilitation, of a nature and duration that suggests that the individual would be prevented from performing the duties of the position in question or would constitute a direct threat to the property or safety to himself or herself or others.
- (6) Illegal use of narcotics, drugs or other controlled substances without evidence of substantial rehabilitation. Note: Neither factor (5) or (6) above applies if there is clear evidence of substantial rehabilitation (measurable efforts and noticeable results).
- (7) Knowing and willful engagement in acts or activities designed to overthrow the United States Government by force. Note: Membership in an organization, alone, is not disqualifying.
- (8) Any statute or regulation which prevents the lawful employment of the person involved in the position in question. Note: There must be a specific legal restriction to employment.

4. SUITABILITY ACTIONS. A suitability action defined in Reference (h) is an outcome taken by OPM or DHA under the procedures of Reference (h) such as cancellation of eligibility, removal, cancellation of reinstatement eligibility, and debarment. A non-selection alone is not a suitability action. Objections to eligible or pass-over of preference eligible decisions are made under Reference (h) and are not appealable to the MSPB.

5. NOTICE OF PROPOSED ACTION.

a. The NCR Personnel Division must notify the applicant or appointee (hereinafter, the “respondent”) in writing of the proposed action, the charges against the respondent, and the availability for review, upon request, of the materials relied upon. The notice must set forth the specific reasons for the proposed action and state that the respondent has the right to answer the notice in writing. The notice must further inform the respondent of the time limit for the answer as well as the address to which such answer must be delivered.

b. The notice must inform the respondent that he or she may be represented by a representative of the respondent's choice and that if the respondent wishes to have such a representative, the respondent must designate the representative in writing.

c. The agency must serve the notice of a proposed action upon the respondent by mail or hand delivery no less than 30 calendar days prior to the effective date of the proposed action to the respondent's last known residence or duty station.

d. If the respondent is employed in a position covered by this part on the date the notice is served, the respondent is entitled to be retained in a pay status during the notice period.

6. RESPONDENT ANSWER. A respondent may answer the charges in writing and furnish documentation and/or affidavits in support of the answer. To be timely, a written answer must be submitted no more than 30 calendar days after the date of the notice of proposed action.

7. DECISION. The decision regarding the final action must be in writing, be dated, and inform the respondent of the reasons for the decision and that an unfavorable decision may be appealed in accordance with subpart 8 (c). If the decision requires removal, the employing agency must remove the appointee from the rolls within five (5) business days of the agency's decision.

8. APPEAL TO THE MERIT SYSTEMS PROTECTION BOARD.

a. Appeal to the Merit Systems Protection Board (MSPB). When DHA acting under delegated authority under this guidance takes a suitability action against a person, that person may appeal the action to the MSPB (hereinafter the “Board”).

b. Decisions by the Board.

2. ORIGINS OF SUITABILITY ISSUES.

- a. Application or appointment forms
- b. Interviews and examinations
- c. Pre-employment inquiries
- d. Investigative data forms
- e. Personal subject interview (PRSI)
- f. Investigation

3. ADDITIONAL CONSIDERATIONS. OPM and DHA must consider the listed additional considerations to the extent OPM or the relevant agency, in its sole discretion, deems any of them pertinent to the individual case:

a. Nature of the Position. The more authority, responsibility, sensitivity, and public trust associated with the position, the higher the risks involved and the more potential adverse impact there is.

b. Consider Core Duties. Continuing responsibility of particular importance to the relevant covered position or the achievement of an agency's mission. Examples of core duties are Law Enforcement positions such as sale of narcotics; Fiduciary positions such as embezzlement; Motor Vehicle Operator such as habitual traffic offender; Computer Security Manager such as using company computer to access pornography sites; Staffing Specialist such as prohibited personnel practices.

c. Nature and Seriousness of the Conduct. The more serious the conduct, the greater the potential for disqualification.

d. Circumstances Surrounding the Conduct. Full facts and circumstances are essential to ensure justice to the person and to protect the interests of the Government.

e. Recency of the Conduct. The more recent the conduct is, the greater the potential for disqualification.

f. Age of Person at the Time of Conduct. Offenses committed as a minor may be less serious than those committed as an adult. Not normally pertinent if conduct is a behavioral pattern or particularly heinous.

(1) If the Board finds that one or more of the charges brought by OPM or an agency against the person is supported by a preponderance of the evidence, regardless of whether all specifications are sustained, it must affirm the suitability determination. The Board must consider the record as a whole and make a finding on each charge and specification in making its decision.

(2) If the Board sustains fewer than all the charges, the Board must remand the case to the DHA to determine whether the suitability action taken is appropriate based on the sustained charge(s). However, DHA must hold in abeyance a decision on remand until the person has exhausted all rights to seek review of the Board's decision, including court review.

(3) Once review is final, DHA will determine whether the action taken is appropriate based on the sustained charges and this determination will be final without any further appeal to the Board.

c. **Appeal Procedures.** The procedures for filing an appeal with the Board are found at part 1201 of Reference (h).

9. **REPORTING.** DHA must report all actions taken as a result of an OPM suitability investigation and report to OPM when they believe a Government-wide debarment might be appropriate in a specific case. DHA must also provide information about the level and result of each background investigation, suitability determination, and suitability action taken to OPM.

10. **ESTABLISHING FITNESS CRITERIA.** The Director, DHA has the authority to:

a. Establish fitness criteria and make fitness determinations based on the criteria.

b. Have discretion to determine if their criteria is equivalent to suitability standards under Reference (h) and shall take into account OPM guidance when determining whether their criteria is equivalent.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

APF	Appropriated Fund
ANACI	Access National Agency Check with Written Inquiries and Credit Check
CJIS	Criminal Justice Information Services
CNACI	Child Care National Agency Check and Inquires
DHA	Defense Health Agency
DoB	Date of Birth
DoD	Department of Defense
DoDEA	Department of Defense Education Activity
FAP	Family Advocacy Program
FBCH	Fort Belvoir Community Hospital
FBI	Federal Bureau of Investigation
FSO	Facility Security Office
HR	Human Resources
IRC	Installations Records Check
JPAS	Joint Personnel Adjudication System
LOSS	Line-of-Sight Supervision
MSPB	Merit Systems Protection Board
MTFs	Military Treatment Facilities
NAC	National Agency Check
NACI	National Agency Check with Inquiries
NACLC	National Agency Check with Local Agency Check and Credit Checks

NBIB	National Background Investigation Bureau
NCR	National Capital Region
NCR CBC	National Capital Region Child Background Check Coordinator
OPM	Office of Personnel Management
PII	Personally Identifiable Information
PRSI	Personal Subject Interview
PSIP	Personnel Security Investigation Portal
PSO	Personnel Security Office
SCHR	State Criminal History Repository
SOP	Standard Operating Procedures
SSN	Social Security Number
USD (P&R)	Under Secretary of Defense for Personnel and Readiness
WRNMMC	Walter Reed National Military Medical Center

PART II. DEFINITIONS

Adjudication. The evaluation of pertinent data in a background investigation, as well as any other available information that is relevant and reliable, to determine whether an individual is suitable for work.

Adult. An individual 18 years of age or older regarded in the eyes of the law as being able to manage his or her own affairs.

Applicant. A person upon whom a criminal history background check is, will be, or has been conducted, including individuals who have been selected or are being considered for a position subject to a criminal history background check, and individuals undergoing a recurring criminal history background check. Includes current employees.

Child/Children. A person under 18 years of age.

Class. With regards to the designation of positions, a categorical descriptor identifying

employee, contractor, provider, or volunteer positions by group rather than by individual position or title (e.g., “doctors” or “individuals supervising children in a school”).

Contractor. Any individual, firm, corporation, partnership, association, or other legal non-Federal entity that enters into a contract directly with DoD or a DoD Component to furnish supplies, services, or both including construction. Foreign governments or representatives of foreign governments that are engaged in selling to DoD or a DoD Component are defense contractors when acting in that context. A subcontractor is any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

Covered Position. Defined in Volume 731 of Reference (i).

Criminal History Background Checks. A review of records, investigative reports, and other investigative elements to generate criminal history background findings to be used to make fitness or suitability determinations.

Derogatory Information. Information that may reasonably justify an unfavorable personnel suitability or fitness determination because of the nexus between the issue or conduct and the core duties of the position.

DHA Affiliation. A prior or current association, relationship, or involvement with the DHA or any elements of DHA, including the Military Departments.

DHA Sanctioned programs. Any program, facility, or service operated by the DHA, a Military Department or Service, or any agency, unit, or subdivision.

Duties. Those activities performed as an employee, contractor, provider, or volunteer that involve interaction with children at a MTF or clinic

Employee. An individual, paid from funds appropriated by the Congress of the United States, or an individual employed by a NAF instrumentality as defined in accordance with section 105(c) of Reference (l). Includes foreign nationals in accordance with Volume 1231 of Reference (h), Military Service members working during their off-duty hours, and non-status, non-continuing temporary positions with specified employment periods not to exceed 1 year such as summer hires, student interns, and seasonal hires.

FBI Criminal History Background Check. An FBI identification record – often referred to as a criminal history record or a “rap sheet” – is a listing of certain information taken from fingerprint submissions retained by the FBI in connection with arrests and, in some instances, federal employment, naturalization, or military service. The process of responding to an identification record request is generally known as a criminal history background check.

Fitness. The reference to a person’s level of character and conduct determined necessary for an individual to perform work for, or on behalf of, a federal agency as an employee in the excepted service (other than in a position subject to suitability) or as a contractor employee.

Fitness Determination. A decision, based on review of criminal history background check findings, that an individual is fit to perform duties in a position subject to criminal history background check. Fitness determinations will be “favorable,” meaning that the individual is fit to perform the duties, or “unfavorable,” meaning that the individual is not.

Healthcare Personnel. Military, civilian, or contract staff involved in the delivery of healthcare services.

Host-Government Check. A criminal history background check conducted on foreign nationals in accordance with U.S. and host country treaties or agreements.

Interim Suitability or Fitness Determination. Part of the pre-screening process in the identification and resolution of suitability or fitness issues, which occurs prior to the initiation of the required investigation. It involves the review of applications and other employment related documents.

Favorable Interim Suitability or Fitness Determination. Is a status granted on a temporary basis, which permits individuals to work under LOSS after the return of the advance FBI fingerprint check; pending completion of full investigative requirements and a final suitability determination.

Investigative Elements. The records, reports, or other individual elements that comprise the whole of information collected during a criminal history background check and used to make a fitness or suitability determination.

Installation Records Check. A query of records maintained on an individual by programs and entities at the military installation where the individual lives, is assigned, or works, including military law enforcement and installation security records, drug and alcohol records, and FAP records for a minimum of two (2) years before the date of the application.

Investigative Service Provider. The company or agency authorized to perform background investigations on personnel on behalf of the agency.

Line-Of-Sight Supervision. Continuous visual observation and supervision of an individual whose background check has not yet cleared, and has a favorable interim suitability or fitness determination, while engaged in child interactive duties, or in the presence of children in a DoD-sanctioned program or activity. The person providing supervision must have undergone a background check and received a final favorable suitability or fitness determination and be current on all periodic reinvestigations as required by this guidance.

Mandated Reporter of Child Abuse. Any person listed in 42 USC §13031(b).

Met Criteria. Reported incident of alleged maltreatment found to meet DoD incident determination criteria for child abuse or domestic abuse and entry into the Service FAP central registry of child abuse and domestic abuse reports.

Non-Specified Volunteers. Individuals who provide services that are shorter in duration than is required to perform a criminal history background check (e.g., one-day class trip, class party). Because non-specified volunteers do not receive the same level of background checks as specified volunteers, non-specified volunteers must always be in line of sight of a staff member with a complete background check.

Position. An employee, contractor, provider, or volunteer role or function.

Preliminary Investigations. Those investigative elements of a criminal history background check, including those specified in Enclosure 4 of this guidance, which must be favorably completed and reviewed before an individual may be permitted to perform duties under LOSS.

Providers. Individuals who have regular contact with children or may be alone with children in the performance of their duties.

Regular and Recurring Contact with Children. Reasonably expected repeated and ongoing interaction with a minor under the age of 18 in the performance of the individual's primary duties. Activities and events with repeated scheduled interactions would constitute regular and recurring contact.

State Criminal History Repository. A repository of criminal information that lists past state convictions, current offender information, and criminal identification information (fingerprints, photographs, and other information or descriptions) that identify a person as having been the subject of a criminal arrest or prosecution. Checks of the SCHR may include the State child abuse and neglect repository and the State sex offender registry.

Specified Volunteers. Individuals who could have extensive or frequent contact with children over a period of time. They include, but are not limited to, positions involving extensive interaction alone, extended travel, or overnight activities with children or youth. Coaches and long-term instructors are among those who fall in this category. Specified volunteers are designated by the DoD Component head. Background checks are required in accordance with paragraph 2d of Enclosure 3.

Suitability. Refers to a person's identifiable character traits and conduct sufficient to decide whether employment or continued employment would or would not protect the integrity or promote the efficiency of the service.

Suitability Determination. A decision that a person is or is not suitable for a covered position within the DoD.