

Title of Proposed Rule: Revisions to the Trails Check Requirement for Pre-Employment Screening

CDHS Tracking #: 18-07-27-01

Office, Division, & Program:
O BH, CBH

Rule Author:
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STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.

Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule.

Office of Behavioral Health (OBH) rule requires all agencies licensed or designated by OBH to complete a pre-employment background investigation which includes a child abuse registry (Trails) check. Section 19-1-307(2)(k), C.R.S. authorizes Trails checks for licensed child care operators for the purpose of screening an applicant for employment, but not Trails checks requested by other CDHS licensees. Because § 19-1-307(2), C.R.S., does not authorize the pre-employment Trails checks required in OBH rules 21.160.2 and 21.200.53, those rules are void under state law. This rule change removes the requirement that OBH-licensed and designated agencies must complete a Trails check when completing a pre-employment background investigation.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

- to comply with state/federal law and/or
 to preserve public health, safety and welfare

Justification for emergency:

Section 19-1-307(2), C.R.S., does not authorize the pre-employment Trails checks required in OBH rules 21.160.2 and 21.200.53, those rules are void under state law.

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2017)	State Board to promulgate rules
26-1-109, C.R.S. (2017)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2017)	State department to promulgate rules for public assistance and welfare activities.

Program Authority for Rule: *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
19-1-307(2), C.R.S. (2017)	Authorizes Trails checks for licensed child care operators for the purpose of screening an applicant for employment.
27-65-105, 107, 109, C.R.S. (2017)	In order to provide care and treatment for individuals with mental health disorders, a facility must be designated or approved by CDHS.
27-65-128, C.R.S. (2017)	CDHS shall make rules to consistently enforce the provisions of Title 27, Article 65.
27-66-104, C.R.S. (2017)	A facility must be approved by CDHS in order for CDHS to purchase mental health services from the facility.
27-80-108, C.R.S. (2017)	CDHS to promulgate rules governing the provisions of Title 27, Article 80.
27-81-106, C.R.S. (2017)	OBH to establish standards for approved treatment agencies.
27-82-103, C.R.S. (2017)	OBH to establish standards for approved treatment agencies.

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Does the rule incorporate material by reference?
Does this rule repeat language found in statute?

Yes
 Yes

No
 No

If yes, please explain.

Type of Rule: (complete a and b, below)

- a. Board Executive Director
b. Regular Emergency

REGULATORY ANALYSIS

1. List of groups impacted by this rule.

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

Agencies licensed or designated by the Office of Behavioral Health will no longer be required to run a pre-employment Trails check when screening an applicant for employment.
The Department of Human Services may see a decrease in Trails check requests.

2. Describe the qualitative and quantitative impact.

How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

The Office of Behavioral Health licenses or designates approximately 450 agencies. These 450 agencies are currently required to run a pre-employment Trails check when screening an applicant for employment.

3. Fiscal Impact

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just "no impact" answer should include "no impact because..."***

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

The Department of Human Services, Office of Early Childhood Background Investigation Unit may see a decrease in requests for Trails checks.

County Fiscal Impact

No federal fiscal impact is expected with this rule change because the Office of Behavioral Health does not regulate county agencies or facilities.

Federal Fiscal Impact

No federal fiscal impact is expected with this rule change because the Office of Behavioral Health does not regulate federal agencies or facilities.

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Other Fiscal Impact (such as providers, local governments, etc.)

Office of Behavioral Health licensed and designated agencies will no longer be required to submit pre-employment Trails check requests as part of their background investigation of applicants for employment.

4. Data Description

List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

The Department of Human Services, Office of Early Childhood Background Investigation Unit Supervisor identified the issue of unauthorized agencies requesting Trails checks.

5. Alternatives to this Rule-making

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. Answer should NEVER be just “no alternative” answer should include “no alternative because...”

An alternative to rule-making was sending Office of Behavioral Health licensed and designated agencies a letter explaining that the 2 CCR 502-1 rule sections requiring pre-employment Trails checks conflict with statute and are therefore void. In order for OBH rules to not conflict with statute rule-making was advised.

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OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
21.160.2	Trails check requirement conflicts with state statute	A. Pre-employment background investigations: 1. Shall be required for all staff, interns and volunteers who have direct contact with individuals receiving services. 2. Take place at submission of an initial Office of Behavioral Health license or designation application or take place at pre-employment. 3. Consist of at least the following: a. A criminal background check performed by the Colorado Bureau of Investigation; and b. A name search with Trails if direct contact with individuals under the age of eighteen.	A. Pre-employment background investigations: 1. Shall be required for all staff, interns and volunteers who have direct contact with individuals receiving services. 2. Take place at submission of an initial Office of Behavioral Health license or designation application or take place at pre-employment. 3. Consist of at least a criminal background check performed by the Colorado Bureau of Investigation.	OBH designated and licensed facilities are not authorized to request a Trails check for pre-employment screening.	No
21.200.53	Trails check requirement conflicts with state statute	K. Family advocacy programs will have policies and procedures concerning the work of family advocates and family systems navigators that address: 1. Experience and hiring requirements, including a name search through the Colorado Bureau of Investigation, and a check of child abuse and neglect records and reports in the Trails database maintained by the Colorado Department of Human Services;	K. Family advocacy programs will have policies and procedures concerning the work of family advocates and family systems navigators that address: 1. Experience and hiring requirements, including a name search through the Colorado Bureau of Investigation;	OBH designated and licensed facilities are not authorized to request a Trails check for pre-employment screening.	No

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STAKEHOLDER COMMENT SUMMARY

Development

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

The Department of Human Services, Office of Early Childhood Background Investigation Unit Supervisor identified the issue of unauthorized agencies requesting Trails checks. Upon notice from the Department of Human Services, the Office of Behavioral Health proposed emergency rule-making to remove the requirement that Office of Behavioral Health licensed and designated agencies must complete a Trails check when completing a pre-employment background investigation when screening an applicant for employment.

This Rule-Making Package

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:

No stakeholders have been informed about this emergency rule-making proposal. The Department of Human Services will be sending Office of Behavioral Health licensed and designated agencies a letter explaining that the 2 CCR 502-1 rule sections requiring pre-employment Trails checks conflict with statute and are therefore void. Behavioral Health stakeholders will be notified of this emergency rule-making proposal between emergency adoption and permanent adoption. Behavioral Health stakeholders include: Colorado Behavioral Health Care Council; Colorado Hospital Association; Mental Health Colorado; Behavioral Health Transformation Council; Mental Health Disorders in the Criminal Justice System Task Force; Department of Public Health and Environment; Department of Regulatory Agencies; Department of Health Care Policy and Financing; Department of Public Safety; Disability Law Colorado; community mental health centers; community mental health clinics; hospitals; patient advocacy agencies; individuals and families with lived experience; and, law enforcement.

Other State Agencies

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

Yes No

If yes, who was contacted and what was their input?

Sub-PAC

Have these rules been reviewed by the appropriate Sub-PAC Committee?

Yes No

Name of Sub-PAC	Not applicable		
Date presented	Not applicable		
What issues were raised?	Not applicable		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	n/a	n/a	n/a
If not presented, explain why.	There is not a Behavioral Health Sub-PAC Committee.		

PAC

Have these rules been approved by PAC?

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Yes No

Date presented	Not applicable		
What issues were raised?	Not applicable		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	n/a	n/a	n/a
If not presented, explain why.	Emergency Rule-making.		

Other Comments

Comments were received from stakeholders on the proposed rules:

Yes No

If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

(2 CCR 502-1)

21.160.2 BACKGROUND CHECKS AND EMPLOYEE VERIFICATION

- A. Pre-employment background investigations:
1. Shall be required for all staff, interns and volunteers who have direct contact with individuals receiving services.
 2. Take place at submission of an initial Office of Behavioral Health license or designation application or take place at pre-employment.
 3. Consist of at least ~~the following:~~
 - a. ~~—A criminal background check performed by the Colorado Bureau of Investigation; and~~
 - b. ~~—A name search with Trails if direct contact with individuals under the age of eighteen.~~

21.200.53 Program Standards

- K. Family advocacy programs will have policies and procedures concerning the work of family advocates and family systems navigators that address:
1. Experience and hiring requirements, including a name search through the Colorado Bureau of Investigation, ~~and a check of child abuse and neglect records and reports in the Trails database maintained by the Colorado Department of Human Services;~~