

# Data System Check for Employees Serving At-risk Adults



## Background

In an effort to strengthen protections for vulnerable Coloradans, the Colorado General Assembly enacted HB 17-1284, which seeks to minimize the potential for employment of individuals with a history of mistreatment of at-risk adults in positions that would allow them unsupervised access to this vulnerable population. Beginning Jan. 1, 2019, all licensed health care facilities pursuant to section 25-1.5-103, as employers, are required to request a check of the Colorado Adult Protective Services (CAPS) data system to determine whether an applicant for direct care employment has been substantiated of physical abuse, sexual abuse, caretaker neglect or exploitation of an at-risk adult. Employers may request a CAPS check for current employees but are not required to do so. The Colorado Department of Human Services (CDHS) maintains CAPS and has created the CAPS Check Unit (CCU) to conduct and oversee processes surrounding CAPS checks.

## What You Need to Know

HB 17-1284 will take effect on Jan. 1, 2019. To ensure hospitals and health systems are in full compliance with the new law, all impacted facilities are encouraged to review the CCU website and the following CHA guidance:

### Registration Process

- All health care facility employers must register online before requesting a CAPS check to confirm their statutory authority to request a CAPS check. CCU will provide each approved employer with a unique CAPS Check Employer ID number that must be provided whenever a CAPS check is requested.
- If an organization is a parent company with multiple locations and/or use different Human Resources (HR) departments, that organization may want to register each location separately so that CAPS checks can be requested separately. For employers who contract with a vendor to conduct employment background checks, the employer will provide the vendor's information when registering.
- The employer, or person/entity conducting the CAPS check on behalf of the employer, is responsible for ensuring the registration information is up to date.

### CAPS Check Request

- An employer must request a CAPS check prior to hiring a new employee who will provide direct care to an at-risk adult. Employers may request a CAPS check for current employees but are not required to do so.
- Under this law, an "employee" includes any person – other than a volunteer – who is employed by, or contracted with, an employer, and includes prospective employees.
- All processes surrounding CAPS checks can be done electronically or via U.S. Postal Service First Class Mail, though incomplete and/or illegible forms mailed to CCU will be returned to the employer without processing and will delay processes.

*This guidance does not constitute legal advice to CHA members or others. Each hospital should consult with legal counsel on these matters and have legal counsel review any policies proposed as a result of this guidance.*



## CAPS Check Request Continued

- Prospective employees or contractors must provide detailed demographic and contact information on a state-developed Employee Authorization form to authorize CAPS checks. Employers are responsible for retaining these forms; CCU will not ask for these forms.
- Employers, or the person/entity conducting the CAPS check on behalf of the employer, shall obtain written authorization and any required identifying information from the new or existing employee or contractor prior to requesting a CAPS check. Required identifying information necessary to request the CAPS check includes information such as name, date of birth, email address, etc.
- Employers must keep a record of the CAPS check for each new employee or contractor hired.

## Fees and Processing Information

- Payment for the CAPS check must be made at the time of the request via the online payments system before the employer will be allowed to submit their request.
- The fee for each check starts at \$15.50 per individual plus a payment fee but differs based on payment method. Employers may submit one request and payment for CAPS checks for multiple prospective employees.
- The current CAPS check fee amount shall be posted to the CAPS check website. The fee may be adjusted with 30 days' notice, provided via the CAPS check website.
- The employer has the option of absorbing the cost of the fee or may request reimbursement of the fee from the employee or the contractor.

## Timing and Results

- CCU will complete CAPS checks as soon as possible, but no later than five business days.
- Results will be auto-provided via email. To ensure timely results, it is recommended that employers establish a common email for receiving CCU communications that will not change as HR staff change.
- CAPS check results will include:
  - Whether there is or is not a substantiated finding for the applicant or employee or contractor; and
  - For CAPS checks in which there is a substantiated finding, the CAPS check results will include the date of the report, county department(s) that completed the investigation(s), and the type(s) and severity level(s) of the mistreatment.
- Notification of any substantiated mistreatment finding made after the initial CAPS check will be provided to employers at the time a new finding is completed in CAPS.
- CAPS check results will not include findings prior to July 1, 2018, because due process for substantiated perpetrators did not begin until that date.

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## Hiring Decisions

- Employers may hire or contract with a new employee or contractor prior to receiving the results of the CAPS check.
- If the CAPS check identifies an employee or contractor as having mistreated an at-risk adult, the employer may use the information received from the CAPS check in making a hiring decision. **The law does not prohibit the employer from hiring the employee.**
- Employers making a hiring decision based on information received from the CAPS records check are immune from civil liability (State law), unless the information in the CAPS system is false and the employer knows it to be false.
- All information from CAPS checks is confidential.

## Internal Policy Development

- An employer may develop an internal policy identifying which prospective employees provide direct care.
- The policy must be consistent with the statute's definition of direct care, meaning "services and supports, including case management services, protective services, physical care, mental health services, or any other service necessary for the at-risk adult's health, safety, or welfare."
- CHA strongly encourages all hospitals to develop an internal policy as soon as possible. The Association developed [this model policy](#), which a hospital may modify as appropriate for their facility. CHA recommends reviewing this policy in the context of other policies specific to the facility and develop procedures to address how the policy will be operationalized. **All hospitals should consult with their legal counsel in advance of finalizing a policy.**

## Penalties and Compliance

- Employers are prohibited from requesting a CAPS check on someone who is not a current employee or applicant and prohibits the release of information obtained in a CAPS records check to anyone who is not involved in the hiring process, with certain limited exceptions. A person who is found to have improperly requested a CAPS records check or shared information from a records check can be charged with a Class 1 misdemeanor.
- The Colorado Department of Public Health and Environment (CDPHE) will verify that licensed health facilities are in compliance with the CAPS check requirements through its fitness review and survey processes. Specifically, while reviewing a personnel file of a direct care employee or contractor (as defined by a facility's internal policy) hired on or after Jan. 1, 2019, CDPHE will review the employee's or contractor's file to confirm that a CAPS check was conducted.

## Additional Resources

- CCU website: <https://www.colorado.gov/pacific/ccu>
- HB 17-1284: [Final Bill](#) and [Fiscal Note](#)
- [APS Rules and Regulation](#)
- You may contact CCU at [cdhs\\_ccu@state.co.us](mailto:cdhs_ccu@state.co.us). CCU notes that email is checked once weekly, so responses may take several days.

For questions or more information, contact Amber Burkhart,  
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