

Draft Covered California Fingerprinting Implementation Regulations

5/20/2013

Adopt Article 4, General Provisions, Section 6456, Fingerprinting and Criminal Record Checks,

- (a) Definitions. For purposes of this section, the following terms shall have the following associated meanings:
 - (1) Federal Tax Information or FTI: return or return information as defined in 26 U.S.C. § 6103(b)(1)-(2).
 - (2) Personal Identifying Information or PII: information which can be used to distinguish or trace an individual's identity such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc., consistent with the definition in Office of Management and Budget Circular M-07-16.
 - (3) Personal Health Information or PHI: protected health information or individually identifiable health information as defined in 45 C.F.R. 160.103.

- (b) The California Health Benefit Exchange (Exchange or Covered California) shall require fingerprint images and associated criminal history information from individuals whose duties include or would include any of the following:
 - (1) Access to Federal Tax Information.
 - (2) Access to Personal Identifying Information.
 - (3) Access to Personal Health Information.
 - (4) Access to confidential or sensitive information provided by a member of the public including, but not limited to, a credit card account number or social security number.
 - (5) Access to cash, checks, or other forms of payment and accountable items.
 - (6) Responsibility for the development or maintenance of the CalHEERS system and other critical automated systems of the Exchange.
 - (7) Access to information technology systems of the Exchange.

- (c) Individuals whose duties require fingerprinting under paragraph (b) shall submit fingerprint images and all related information to the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state or federal convictions; information as to the existence and content of a record of state or federal arrests for which the Department of Justice established that the person is free on bail or on his or her own recognizance pending trial or appeal; and information from the Department of Justice subsequent notification service, as provided pursuant to Section 1105.2 of the Penal Code.

- (d) The Exchange shall review the criminal history of individuals whose duties require fingerprinting under paragraph (b) in order to make a determination of an individual's fitness to perform duties or functions that would include any of those specified in paragraph (b).
- (e) (1) If the state or federal level criminal records contain a conviction of a felony, misdemeanor, or pending criminal charge related to a crime of moral turpitude that is substantially related to the qualifications, functions, or duties of the specific employment sought by the applicant or employee, it shall be justification for denial to an individual to serve in an Exchange role that requires fingerprinting. A plea of guilty or no contest, a verdict resulting in a conviction, or the forfeiture of bail, shall be a conviction pursuant to Government Code Section 1043 irrespective of a subsequent order under Penal Code section 1203.4.

(2) When considering background information received pursuant to this section, the Exchange shall take under consideration the nature of the job held or sought, the age, nature and gravity of the offense, and any evidence of rehabilitation including evidence provided by the individual, including but not limited to participation in treatment programs.
- (f) The Exchange shall pay any costs for furnishing the fingerprints and conducting the searches of all employees and prospective employees.
- (g) This section does not apply to individuals identified in paragraph (b) whose appointment occurred prior to [OAL Effective Date].

Authority: Government Code 100504 Reference: Government Code 1043, Penal Code 11105