

PROCEDURES FOR CONDUCTING A STATE AND FEDERAL CRIMINAL BACKGROUND CHECK

Before initiating a criminal background check on an individual, read and become familiar with Article 23, "Criminal Record Checks of Direct Care Staff" (Enclosure 3). Once you have done that, proceed to step 2. These procedures are intended as a guide only and do not supercede applicable state regulations/laws or federal regulations/laws relevant to employee eligibility.

The procedures do not address or exempt facilities from federal regulations applicable to facilities that participate in the Medicare/Medicaid reimbursement program through the Centers for Medicare and Medicaid Services (CMS). Further information related to federal regulations is located on the following Websites:

CMS Manual System <http://www.cms.hhs.gov/manuals>

Code of Federal Regulations <http://www.gpoaccess.gov/cfr/retrieve.html>

Questions related to federal regulations should be addressed to DHEC's Bureau of Certification by e-mail at grangess@dhec.sc.gov or by telephone at (803) 545-4288.

1. DIRECT CAREGIVER DEFINITION

A direct caregiver is anyone who is paid by or who has a written contract with the direct care entity to provide "hands-on" care to a resident, patient, or client as defined in Article 23, is considered to be a direct care giver and must have a criminal background check. This includes employees furnished by an employment agency or an employee who works in multiple direct care settings. Visitors, Volunteers and family members are usually not considered direct caregivers or caregivers under the definition of Article 23. However, if any volunteer, visitor or family member habitually provides or performs any services or care to a patient, resident, or client (other than a relative) as described in Article 23, Section 44-7-2910, Paragraph (B)(2)(c) of the definition of a direct caregiver, then he/she will be required to have a criminal background check. Minors are not considered to be direct caregivers. However, minors must be under the supervision of an adult who has had a criminal background check if the minor is providing "hands-on" care to a resident, patient or client (other than a relative). A Faculty member or student enrolled in an educational program, including clinical study in a direct care entity, are excluded from the definition of a direct caregiver and are therefore not required to have a criminal background check.

2. REQUIREMENTS OF THE LAW

As stated in the law, a nursing home, day care facility for adults, home health agency, or community residential care facility employing or contracting with a direct caregiver shall conduct a state criminal record check as provided in Section §44-7-2910 prior to employing or contracting with the direct caregiver. For a direct caregiver who has not lived in South Carolina for twelve months or longer, a background check conducted by another state is acceptable if the direct care entity can establish that the direct caregiver was a resident of that state for the past

twelve months prior to applying for employment in South Carolina. A state criminal background check must be conducted before the direct caregiver can begin working in a direct care setting.

If a direct care entity is unable to verify South Carolina residency or residency in another state for a direct caregiver for the preceding twelve months, then a South Carolina criminal background check and a federal criminal background check using fingerprint cards shall be conducted. Once the state criminal background check has been completed, the direct caregiver may begin work in the direct care setting. The federal fingerprint card criminal check may be initiated either before or after employment.

The law also states that a direct care entity may consider all information revealed by a criminal background check as a factor in evaluating a direct caregiver's application to be employed by or contract with the entity. The decision to employ a direct caregiver based on the results of a criminal background check shall be determined by the direct care entity's policy and procedures with the following exceptions:

Exception 1: Community residential care facilities must comply with Regulation 61-84, Standards for Licensing Community Residential Care Facilities, Section 501.B. which states: "Staff members/direct care volunteers of the facility shall not have a prior conviction or pled no contest (nolo contendere) for child or adult abuse, neglect, or mistreatment. The facility shall coordinate with applicable registries should licensed/certified individuals be considered as employees of the facility. For those staff members/volunteers who are licensed/certified, a copy shall be available for review."

Exception 2: Home health agencies must comply with Regulation 61-77, Standards for Licensing Home Health Agencies, Section 1001.A., which states: "Direct care staff/volunteers shall not have prior conviction(s) of child or patient or elder abuse, neglect or mistreatment."

Exception 3: Nursing homes must comply with Regulation 61-17, Standards for Licensing Nursing Homes, Section 601.B., which states: "Staff members of the facility shall not have a prior conviction or pled no contest (nolo contendere) for child or adult abuse, neglect, or mistreatment, or any other felony. The facility shall coordinate with appropriate abuse-related registries prior to the employment of staff."

Exception 4: For employees of community residential care facilities, day care facilities for adults, and for all four types of direct care entities that use volunteers, Health Licensing is not permitted by law (P.L. 92-544) to forward or disclose the results of the **Federal background check**. We can only inform the direct care entity that the individual has or does not have a criminal conviction or has pled no contest (nolo contendere). The decision to employ a direct caregiver is left to the discretion of the direct care entity.

3. TYPES OF CRIMINAL BACKGROUND CHECKS

State criminal record check is the first check required and is mandatory for all facilities as defined in Article 23. The SC State Law Enforcement Division (SLED) conducts this type of check. The hiring entity submits an application for the background check directly to SLED. SLED will return the results directly to the facility. Background checks can also be done by a

private business, organization, or association that conducts background checks if that entity utilizes current criminal records obtained from SLED to determine any criminal record.

Federal criminal record check is the second type of check and is conducted by the Federal Bureau of Investigation (FBI). The FBI conducts this check on direct caregivers who have lived in South Carolina for less than 12 months and from all other states where they have lived, regardless of how long they have lived there. The hiring entity submits fingerprint cards along with the payment to the Department's Division of Health Licensing. The Division of Health Licensing will forward the payment to the Bureau of Finance and then forward the cards to SLED. SLED will forward the cards to the FBI. The FBI will forward the results to Health Licensing.

With the exception of volunteers, Health Licensing can only forward the results of the Federal background check to nursing homes and home health agencies. For employees and volunteers of community residential care facilities and day care facilities for adults, Health Licensing is not permitted by law (P.L. 92-544) to forward or disclose the results of the federal background check. We can only inform the direct care entity that the individual has or does not have a criminal conviction or has pled no contest (nolo contendere).

4. FEES FOR BACKGROUND CHECKS

The current fee for an FBI background check is \$30.25 for employees and \$15.25 for volunteers. For state background check fees on employees, volunteers, and special rates for charitable organizations, please contact SC SLED at the number or Website listed in these procedures. Also, depending upon your hiring policies and the legal limitations discussed in these procedures, a federal background check may not be necessary, if the results of the state background check prohibit the direct care entity from hiring the applicant.

5. ASSESSING THE APPLICANT:

A. To determine if the applicant must have one or both types of background checks, he/she must first provide you with proof to verify that he/she has been a resident in SC for the past 12 months. The 12 month period is determined from the date of the employment application. For example, if the application is dated January 1, 2009, the applicant must have been a resident in SC no later than December 31, 2007. The applicant can provide verification of residency through:

1. A driver's license or identification card issued by the State of SC;
2. Rent, mortgage, or utility receipts in the applicant's name for a home within SC;
3. Pay stubs in the applicant's name from a business located in SC; or
4. Bank records in the applicant's name showing a deposit or checking account held in a SC branch office of a bank.

B. If the applicant can prove SC residency within the past 12 months, then only a state criminal background check is required.

C. If you are unable to verify that the applicant has been a resident in this state for the past 12 months, then both a state (South Carolina) and federal criminal background check using fingerprint cards will be required. If the direct care entity can verify residency in the preceding twelve months, the direct care entity may conduct only a state criminal record check in the applicant's resident state or jurisdiction where the applicant previously resided.

6. REQUESTING A STATE CRIMINAL BACKGROUND CHECK FROM SLED:

Using the Internet can decrease the length of time it takes to obtain State results. The SLED internet Website is located at <http://www.sled.state.sc.us>. If you are unable to use the SLED Website option, results can be obtained by mail.

To obtain State results by mail, you will need to complete the appropriate form(s) and include with your mailing to SLED. To obtain the appropriate form, please visit the SLED Website at <http://www.sled.state.sc.us> or contact their office at (803) 896-1443. Mail your completed form(s) and a self-addressed stamped envelope to State Law Enforcement Division, Post Office Box 21398, Columbia, SC, 29221, ATTN: Records.

All questions related to obtaining a SLED background check should be directed to their office at (803) 896-1443.

You must maintain a copy of the State results and make them available to Division of Health Licensing inspectors upon request. SLED will not provide extra copies of the results.

7. REQUESTING A FEDERAL & STATE CRIMINAL BACKGROUND CHECK

The procedures contained in this section are intended for direct care entities licensed by the Division of Health Licensing. Our ability to administer the law is limited to licensed entities only. Third party organizations such as an employment agency, may not furnish employees to a direct care entity without conducting a criminal record check on each employee. An employee who works in multiple direct care settings must have a criminal record check on file at the location of the employment agency, the home office of his employer, or at the individual's primary place of employment. The licensed direct care entity is held responsible, not the third party organization, by the Department for providing copies of the background check upon request within 2 hours of receiving the request from the Department.

NOTE: For organizations conducting criminal background checks on behalf of a licensed direct care entity, see enclosure 4 before proceeding.

NOTE: For employment services organizations providing employees to a licensed direct care entity, see enclosure 5 before proceeding.

Once you have determined that a federal background check is necessary:

A. Obtain fingerprint cards from the Division of Health Licensing by writing to DHEC, Division of Health Licensing, 2600 Bull Street, Columbia, SC, 29201; calling our office at (803) 545-4049; or by e-mail at FORDSR@dhec.sc.gov.

B. There are two types of fingerprint cards that you can request from the Division of Health Licensing. The type of card you need depends upon the type of direct care entity for which you are licensed, and whether or not the applicant is an employee, contract direct caregiver or volunteer direct caregiver. The supply of cards we have on hand are limited and we ask that you only request the number of cards necessary for each applicant who requires a fingerprint card check.

1. A **nursing home** or **home health agency** that has hired or is considering hiring an applicant who is an **employee or contract direct caregiver**, must submit fingerprint cards with the OIR number “**SCNFHHC9Z, PL 105-277, Columbia, SC**” (See enclosure 2, Figure 5). In the block of the fingerprint card “Reason Fingerprinted”, type or print legibly:

- (a) “Nursing Home, Employee” or;
- (b) “Home Health Agency, Employee”.

2. **Volunteers** working as direct caregivers for a **nursing home** or **home health agency**, must submit fingerprint cards with the OIR number “**SCDHEC00Z, SC DHEC, Columbia, SC**” (See enclosure, 2 Figure 4). In the block of the fingerprint card “Reason Fingerprinted”, type or print legibly:

- a. “Nursing Home, Volunteer” or;
- b. “Home Health Agency, Volunteer”.

3. A **community residential care facility** or **day care facility for adults** that has hired or is considering hiring an applicant as an employee, contract direct caregiver, **or volunteer** who will be working as a direct caregiver must submit fingerprint cards with the OIR number “**SCDHEC00Z, SC DHEC, Columbia, SC**” (See enclosure 2, Figure 4). In the block of the fingerprint card “Reason Fingerprinted”, type or print legibly:

- (a) “Day Care Facility for Adults, Employee”; or
- (b) “Day Care Facility for Adults, Volunteer”; or
- (c) “Community Residential Care Facility, Employee”; or
- (d) “Community Residential Care Facility, Volunteer”.

4. In the fingerprint card block that says “**Your NO. OCA**”, enter your **license number** as assigned by the Division of Health Licensing (See enclosure 2, Figures 4 and 5).

5. In order for the FBI check to be conducted, the **social security number of the applicant must be entered on the card**. This information will be used only for the purposes of conducting a criminal background check. This mandatory requirement is based on Section 44-7-2910 of the SC Code of Laws, as amended. We are informing you of this requirement pursuant to the Privacy Act of 1974 (PL. 93.579), which requires that federal, state, or local agencies inform individuals whose social security number is requested whether such disclosure is mandatory or voluntary, the basis of authority for such solicitation and uses that will be made of it.

C. Fingerprinting the Applicant: An individual who has been properly trained in the procedure must do the fingerprinting. In addition to the fingerprinting, the applicant must be properly identified by legitimate identification. We recommend that you request your local law enforcement agency to do this for you. DHEC does not provide this service. In the event the FBI rejects the cards, our office will notify you that the individual must be fingerprinted again and the cards resubmitted to our office. There is no additional charge for resubmitting the fingerprint cards. However, our Department is not responsible for any additional cost you may incur from the entity that does the fingerprinting for your facility or organization. Whether or not the entity waives the additional cost for re-fingerprinting is between you and that entity.

D. Once you have completed the fingerprint cards and the applicant has been fingerprinted, send the cards, along with your payment, in the form of a certified check, bank check, money order, or credit card for the correct fee.

(PERSONAL CHECKS OR CASH WILL NOT BE ACCEPTED).

For employees, the fee is \$30.25

For volunteers, the fee is \$15.25

Make check or money order payable to SCDHEC to the address below:

SCDHEC
Division of Health Licensing ATTN: Administrative Assistant
2600 Bull Street
Columbia, SC, 29201

The Division of Health Licensing will forward the payment to our Bureau of Finance and then forward the FBI cards to SLED. SLED will forward the fingerprint cards to the FBI. The FBI will return the results to the Division of Health Licensing.

8. RESULTS OF FBI BACKGROUND CHECK:

Nursing homes and home health agencies, Health Licensing will forward the results of the FBI background check to the direct care entity. For third party organizations conducting criminal background checks on behalf of a nursing home or home health agency, the results will be forwarded directly to the direct care entity. Exception: by law (P.L. 92-544) we are not

permitted to release the results on volunteers. We can only inform the direct care entity that the individual has or does not have a criminal conviction or has pled no contest (nolo contendere).

Community residential care facilities, day care facilities for adults, and third party organizations, the Division of Health Licensing is not permitted by law (P.L. 92-544) to forward or disclose the results of the federal background check. We can only inform the direct care entity that the individual has or does not have a criminal conviction or has pled no contest (nolo contendere).

For inspection purposes, the direct care entity must retain a copy of the federal background check results on file at the facility location. For volunteers for whom the Department provides a letter in lieu of the results, the direct care entity or third party organization shall retain a copy of the letter.

Results of an FBI background check can take up to 90 days or more to reach our office. We ask that you do not call us for the results. Please be assured that you will be informed as soon as possible.

9. PENALTIES FOR VIOLATION OF ARTICLE 23:

The Department of Health and Environmental Control's Division of Health Licensing is the entity responsible for enforcement of Article 23. In accordance with Section 44-7-2950 of the 1976 SC Code of Laws, as amended, an individual who violates this article, or a regulation promulgated pursuant to this article, is subject to a civil fine of one hundred dollars for the first violation and five hundred dollars for each subsequent violation. A fine imposed pursuant to this section must be paid before a direct care entity's license can be renewed. Fines collected pursuant to this section must be retained by the Department to help offset the costs associated with carrying out the Department's responsibility under this article.

10. ASSISTANCE:

The Division of Health Licensing has staff available to answer questions and to assist you with the procedures outlined in this memorandum. You can contact our office by writing to SCDHEC, Division of Health Licensing, 2600 Bull Street, Columbia, SC, 29201; calling our office at (803) 545-4049; or by e-mail at FORDSR@dhec.sc.gov.

For determining eligibility for employment or contract services for crimes not covered by regulation, it may be necessary for you to consult with your legal counsel prior to determining eligibility.

If you have questions regarding state criminal background checks, please contact SLED, CJIS Division-Records Section at (803) 737-9000 or by fax at (803) 896-7005.