

### Employment Organizations Providing Direct Caregivers

The purpose of this enclosure is to assist direct care entities using organizations not licensed by the Department who provide direct caregivers in complying with Article 23, Section 44-7-2810. Section 44-7-2910 (A)(2) states: “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.”

**NOTE: 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), (See Enclosure 1 for Website References and contact information).**

Direct care entities receiving inquiries from such organizations as described above regarding criminal background checks should request that the organization first read our procedures memorandum. You can either provide them a copy of the memorandum or direct them to our Website at <http://www.scdhec.net/health/licen/memo1g.htm>.

**State Background Checks:** For state background checks, organizations may obtain results on direct caregivers directly through SLED without having to go through the direct care entity. For information regarding state background checks through SLED, please visit their Website at <http://www.sled.state.sc.us>.

**Federal Background Checks:** If a direct caregiver does not meet the twelve-month residency requirement of Section 44-7-2910, a federal fingerprint background check must be conducted in addition to the SCSLED background check. The organization can obtain the fingerprint cards through our office. Contact numbers and procedures for conducting federal background checks are contained in enclosure 1 of this memorandum.

**The only fingerprint card you can request from our office is the one with the ORI (Office Originating Request) SCDHEC00Z.** Public Law 105-277 limits the Division of Health Licensing to releasing federal criminal background check results only to nursing homes and home health agencies. Employment organizations requesting a federal background check will only receive a Departmental letter stating that the direct caregiver has or does not have a criminal conviction or has pled no contest (nolo contendere).

In the “**EMPLOYER AND ADDRESS**” block of the fingerprint card, enter your organization name and mailing address. In the “**REASON FINGERPRINTED**” block, enter the **type** (i.e. Nursing Home) of direct care entity or entities the direct caregiver will be working for, followed by the word “**Temporary Employee**”. All other instructions for completing the FBI fingerprint card are contained in enclosure 1 as well as the fees charged for this service.

Depending upon the direct care entity's hiring policies and applicable DHEC regulations, a federal background check may not be necessary if the results of the state background check would prohibit the direct caregiver from working with residents, patients, or clients under the care of a direct care entity.

DHEC's authority to enforce Section 44-7-2910 is limited to direct care entities that the Department licenses that are affected by the law. The Department holds the direct care entity ultimately responsible for compliance with the law. If the following procedure is used, you will be in compliance with Section 44-7-2910:

A. The organization must have a written policy for conducting criminal background checks on their direct caregivers. A copy of the policy must be on file at each direct care entity where direct caregivers will be working. The policy must fully explain:

1. How the criminal background checks are being conducted.
2. The measures that are in place to maintain custody and integrity of the results.

B. The organization must have a written contract with the direct care entity. A copy of the contract must be on file at the direct care entity. The contract must stipulate that:

1. Criminal background checks will be conducted by the organization in accordance with Section 44-7-2910 of the SC Code of Laws and the procedures contained in this memorandum.
2. The organization shall be required to provide a copy of the background results to the direct care entity, or to our Department for inspection purposes, within 2 hours after receiving a request on any direct caregiver.

C. The organization understands that possibility exists that the results of a federal background check may not be available until after the direct caregiver is no longer working with the direct care entity. The organization understands that regardless of this happening, the organization is still required to follow through with the federal background checks as stipulated in this memorandum and in Article 23.

D. The organization understands and agrees that a criminal background check on a direct caregiver must be kept on file at the organization for no less than two years after the direct caregiver is no longer employed by the direct care entity.

Direct Care Entities are:

A. Required to keep a copy of all letters sent by the organization regarding background checks conducted on a direct caregiver for a period of two years from the date the direct caregiver last worked for the direct care entity.

- B. Required to keep a copy of all letters sent by the organization clearing the direct caregiver to work for the direct care entity for a period of two years from the date the direct caregiver last worked for the direct care entity.
- C. Required to keep a copy of the written contract that was made with the organization, for a period of two years after the contract is no longer in effect.
- D. Required to keep a copy of the organization's written policy for conducting criminal background checks for a period of two years after the written contract is no longer in effect.
- E. Responsible for ensuring that the organization is abiding by the written contract and their written policies for conducting criminal background checks.