



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

EDUCATIONAL ALERT!!!

TO: DDA Licensed Service Providers
All Concerned

FROM: Michael S. Chapman, Executive Director, Developmental Disabilities Administration
Margie Heald, Acting Director, Office of Health Care Quality

DATE: September 8, 2009

RE: **Employee Background Checks**

The purpose of this educational alert is to re-emphasize that all provider agencies licensed by the Developmental Disabilities Administration (DDA) are to perform thorough background checks of potential hires, prior to employment. If the background check reveals behavior which could potentially harm people receiving services, the provider agency is not to hire the individual.

The purpose of all background checks is to assure to the extent possible that the potential employee is unlikely to harm an individual physically, psychologically or financially.

COMAR 10.22.02.11B provides: "A licensee may not employ or contract with any person who has a criminal history which would indicate behaviors potentially harmful to individuals, documented through either a criminal history records check or a criminal background check, pursuant to Health-General Article, §19-1902 et seq., Annotated Code of Maryland, and COMAR 12.15.03." This regulation and its statutory references require two types of background checks – former employer and criminal.

Although the following is a summary of the requirements, the licensee should not rely on this alert alone. The licensee shall be familiar with and comply with all the laws and statutes cited above as well as other DHMH regulations requiring reporting of abuse and neglect incidents. DDA regards failure to comply with this, a basic health and safety standard, a serious violation of its regulations.

EMPLOYER REFERENCE CHECK

This background information is essential to a provider contemplating a new hire. The licensee is required to request a reference from the most recent employer. The reference request shall, at a minimum, seek information about any history of physical abuse on the part of the potential employee.

Additionally, DDA notes that dependent on what that employer says, good judgment may require that the licensee dig deeper and check all references. If the eligible employee is licensed/certified/approved by a Health Occupations Board, the licensee would check their status. Often, this can be done on-line through the respective board's website.

Remember, when seeking information from former employers, that HG 19-1911 provides certain immunity for a former employer who reports information. (*§ 19-1911(a) An employer providing a reference for employment under this subtitle and acting in good faith may not be held liable for disclosing any information about the job performance or the reason for termination of employment of an employee or former employee of the employer.*)

CRIMINAL BACKGROUND CHECKS

COMAR 12.15.03 and Health-General Article, §19-1902 and the following set forth the requirements of conducting a criminal background check. Provider agencies must comply with these directives. The licensee shall, for each potential employee or contractor (before s/he works with individuals):

- A. Apply for a State criminal history records check as set forth in COMAR 12.15.03, **or**
- B. Request a private agency perform the background check as set forth in COMAR 12.15.03

A “criminal history records check” means a check of criminal history record information, as defined in § 10-201 of the Criminal Procedure Article, by the Department of Public Safety and Correctional Services.

A “background check” means a check of court and other records by a private agency.

The licensee should pay for the cost of the State criminal history records check or a private agency background check for each potential employee. For licensees who use a private agency to conduct a background check, the private agency shall conduct a background check in **each state** in which the licensee knows or has reason to know the eligible employee worked or resided during the past **7 years**.

Please note that:

- 1) An internet search of a potential employee’s background information or
- 2) A reference from the potential employee’s most recent employer are **not** substitutes for a State criminal history records check or a private agency background check.

ADDITIONAL REQUIREMENTS FOR LICENSEES SERVING CHILDREN

Licensees serving children must **also** be in compliance with COMAR 14.31.06.05 and Family Law Article § 5-560—5-568 et seq.:

- 1. An agency that provides services to people under the age of 21 may not appoint as an employee, a member of a board of directors, or a volunteer with unsupervised access to children any individual who refuses to submit to a criminal background check or a Child Protective Services clearance;
- 2. In addition, per Family Law § 5-561(c)(5)(iii), an adult who is residing in a foster care home requires a criminal history records check; The local department of social services shall reimburse this adult for the cost of a criminal history records check;
- 3. An agency that provides services to people under the age of 21 may not utilize an individual in a capacity provided unsupervised access to children if the individual has an indicated child abuse or neglect finding; or a conviction for child abuse or neglect, spousal abuse, rape, sexual assault, homicide, or any crime against children; or has a conviction within 5 years of application for assault, drug-related offense, or a violation of the Courts and Judicial Proceedings Article §3-838 or 3-8A-30, Annotated Code of Maryland..

ADDITIONAL INFORMATION

In addition to the checks required, licensees are permitted to require further screening of potential employees. Other checks are allowed, such as substance abuse and credit reports, inquiries to licensing boards, and original source documentation. DDA strongly suggests that all licensees have internal policies and procedures that guide their hiring practices as related to applicants/employees with a documented criminal history, especially if the history denotes prior convictions for felony crimes.

SUMMARY

The purpose of background checks is to protect the individuals supported by the licensees and staff. Thus the licensee is responsible for not only obtaining information but also weighing the information to decide whether or not to hire or contract with a potential employee. Although the law requires the licensee to obtain both former employer information and criminal background information, there is no formula for what information the licensee might need in making an employment decision. As with all decisions, much depends on the information. However, whenever a background check reveals negative information and a licensee decides to hire the individual, DDA expects that the reasons for so doing should be contained in the employee's personnel record.

Thank you for your attention to this important issue. If you have questions, please contact Amy Daugherty, Statewide Quality Assurance Chief of DDA, at 410-767-5630, or Jennifer Baker, DD Program Manager of OHCQ at 410-402-8100.

Enclosures: Health General Article § 19-1902
Family Law § 5-560—5-568