

DELAWARE HEALTH AND SOCIAL SERVICES

DHSS Policy Memorandum Number 40

March 10, 2008

Subject: Criminal Background Check Policy

I. Purpose

Delaware Health and Social Services is committed to providing a safe and secure environment for our patients, residents and employees. Additionally, the Delaware Code (Title 16, sec. 1141) requires criminal background checks of all individuals seeking work in long term care facilities. To that end, it is the policy of DHSS to conduct criminal background checks for all persons hired or promoted into any permanent or temporary position with any long term care or psychiatric facility operated by the DHSS. The Delaware Psychiatric Center is licensed as a hospital and while the Code does not require criminal background checks for employees of the DPC, long standing policy and practice mandates a criminal background check on all prospective employees at the Psychiatric Center.

II. Scope

This policy applies to all applicants and employees of the five facilities operated by DHSS. Under this policy, a criminal background check is required for any current employee who applies for another position within a DHSS facility or laterally transfers or promotes into another position within any DHSS facility. In addition, a criminal background check can be conducted on an employee if an employee takes a voluntary demotion or where there is a reasonable suspicion that a staff person has been recently been involved in criminal activity.

If an applicant has been convicted of any crime, a review of the individual's complete record must be considered prior to permanent hire. If an applicant has been convicted of a disqualifying crime as enumerated by regulations promulgated by the Division of Long Term Care Residents Protection (DLTCRP) in accordance with Delaware Code, Title 16, sec. 1141(b)(e), that applicant is deemed unsuitable for employment, unless the time parameters surrounding the conviction(s) have eliminated that automatic bar to employment. See Addendum A for a list of disqualifying crimes and conviction time parameters.

This policy covers all full-time and part-time permanent, limited term, temporary and casual/seasonal positions providing direct care, or serving within the facilities operated by DHSS. This policy also applies to all positions and temporary positions filled directly by contractors, vendors, and other entities providing services at DHSS facilities

III. Policy

A criminal background check will be conducted for all newly-hired employees for positions within DHSS facilities. The Division of Long Term Care Residents Protection (DLTCRP) is responsible for completing a criminal background check and review of the Adult Abuse Registry. Once the review has been completed, the DLTCRP will send a letter to the facility's Human Relations Representative outlining the applicant's status. A facility director may extend an offer of employment to an applicant prior to the completion of the criminal background check but that offer is conditional until the Director of Management Services or his/her designee reviews the criminal background check and determines that no adverse action will be taken based upon information contained in that report.

Although a disqualification is possible, a previous conviction does not automatically disqualify an applicant from consideration from employment within a DHSS facility. The Director of Human Resources and the Division Director or designee will together consider the following factors in determining whether a candidate is eligible for employment with DHSS:

1. the relevance of the conviction to the duties and responsibilities of the position for which selected;
2. the nature of the conviction(s);
3. the age of the candidate when the illegal activity occurred;
4. the dates of the convictions; and
5. the candidate's record since the date(s) of the conviction(s).

A pardon has no impact on a conviction. It may, however, be used as a consideration in the criteria above. However, if an applicant fails to reveal any previous conviction, he/she will be disqualified from employment in that or any other position at DHSS for falsification of an application.

If the facility director desires to retain the applicant, he or she may forward a request through the Director of Management Services for final consideration by the Cabinet Secretary.

IV. Procedure

When a hiring manager reaches the final selection stage in the hiring process, the applicant will be given a "DHSS Terms and Conditions of Employment" form authorizing the DLTCRP to conduct a criminal background check. The applicant is then sent to the state police for fingerprinting and initiation of the criminal background check process. The hiring manager then sends the completed and signed form to Human Resources staff person for the respective facility. Human Resources will submit the request to DLTCRP for processing. Refusal to provide a completed and signed DHSS Terms and Conditions of Employment form will be considered sufficient grounds to discontinue any employment consideration for that candidate.

When the investigation is complete, the DLTCRP will submit a report on each applicant

to the facility's HR representative. If the criminal background check reveals a criminal history, HR will review and notify the facility director.

The facility director or designee will conduct an additional inquiry to determine the nature of the offense(s) and other circumstances surrounding the criminal record. It is expected that the investigation of an applicant will not take longer than ten days to complete. Applicant information is confidential personnel information, and all parties having access to this information will maintain it as confidential.

If adverse action is contemplated, based on information revealed in the criminal background report, the HR representative will inform the hiring manager and or HR Director to implement due process proceedings. The hiring manager will in turn notify the employee immediately verbally and in writing.

V. Responsibility

It shall be the responsibility of the affected Division Directors to ensure that they, their staff and contractors adhere to the procedures outlined in this policy as written.

It shall be the responsibility of contractors and vendors to conduct criminal backgrounds checks on their employees prior to their assignment to a DHSS facility.

VI. Implementation

This policy is effective immediately.

Vincent P. Meconi March 10, 2008
Vincent P. Meconi, Secretary

Attachment:

Addendum A, List of Disqualifying Crimes and Conviction Time Parameters