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|---|---|
| **Reference Number**: | 406-04-DD |
| **Title of Document**: | Criminal Record Checks and Reference Checks of Direct Caregivers |
| Date of Issue: | February 23, 2006 |
| Effective Date: | February 23, 2006 |
| Last Review Date: | March 5, 2010 - **Revised** |
| Date of Last Revision: | March 5, 2010 |
| Applicability: | DDSN Residential Centers, DDSN Autism Division, DSN Boards and Contracted Service Providers |

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**The language used in this policy does not create an employment contract between the employee and the Department of Disabilities and Special Needs (DDSN). DDSN reserves the right to revise the contents of this policy, in whole or in part.**

## I. POLICY

Reference checks, a criminal records check, a check from the DSS Child Abuse and Neglect Central Registry and a CMS "List of Excluded Individuals/ Entities" check, are required for all prospective employees who meet the definition of a direct care staff as defined in S.C. Code Ann. §44-7-2910 (B)(2) (Supp. 2004). This includes members of the household of a Community Training Home I caregiver who are over 18 years of age. Volunteers and interns who act in the place of regular staff must also undergo the same checks. Those prospective direct care staff who will work with children under age 18 are also required to have a federal criminal check within two (2) weeks after employment.

Finally, in accordance with DDSN policy 534-02-DD, no person is eligible for employment with DDSN or a contract provider agency if he/she has a prior history of substantiated child abuse or neglect or has been convicted of a crime as listed in S.C. Code §63-7-2350 (Supp. 2009).

## II. PROCEDURES

A. Criminal Record Check

1. In accordance with S.C. Code Ann. §44-7-2910, DDSN requires all direct care entities (i.e., a provider of a residential or day program operated or contracted for operation by DDSN) to conduct a criminal record check prior to employing or contracting with a direct caregiver. For purposes of this directive a "direct caregiver" is defined as:

(a) a registered nurse, licensed practical nurse, or certified nurse assistant;
(b) any other licensed professional employed by or contracting with a direct care entity who provides to patients or clients direct care or services and includes, but is not limited to a physical, speech, occupational, or respiratory care therapist; a licensed professional may provide evidence of a criminal records check in lieu of a new records check to be completed by the direct care entity.
(c) a person who is not licensed but provides physical assistance or care to a patient or client served by a direct care entity;
(d) a person employed by or under contract with a direct care entity who works within any building housing patients or clients;
(e) a person employed by or under contract with a direct care entity whose duties include the possibility of patient or client contact.

2. The direct caregiver applicant shall provide verification of residency for the twelve (12) months preceding the date of the employment application. The provider shall conduct a state criminal record check if the applicant has resided in South Carolina during that twelve (12) month period with evidence verified by the provider. Residency can be verified through:

(a) a driver's license issued by the State of South Carolina;
(b) rent, mortgage or utility receipts in the applicant's name from a home within South Carolina;
(c) pay stubs in the applicant's name from a business located in South Carolina; or
(d) bank records in the applicant's name showing a deposit or checking account held in a South Carolina branch office or a bank.

3. A provider unable to verify South Carolina residency as described above or that is expecting a direct caregiver to work directly with children from birth to age 18, shall conduct a state criminal record check on the applicant prior to employment and shall have a federal criminal record check within two weeks after employment.

A federal criminal record check shall be obtained by following the procedures outlined at the FBI/CJIS Division website **http://www.fbi.gov/hq/cjisd/fprequest.htm**.

4. If the provider can verify residency in another state for the preceding twelve (12) months, the provider shall conduct only a state criminal record check in the applicant's resident state.

5. In addition to requirements for criminal record checks, the background check must also include a search and written report from the Department of Social Services Child Abuse and Neglect Central Registry prior to employing or contracting with a direct caregiver. These checks must be made by the South Carolina Department of Social Services (DSS). An allowance will be made for prospective employees to begin pre-service orientation if a request for the Central Registry check has been submitted but not returned. This allowance shall only be valid for the first seven calendar days after employment and does not allow the employee to work alone with consumers under any circumstances. If a provider would like to check the status of a request to DSS that is over 10 days old from date of request, please call (803) 898- 7710 for assistance.

B. Reference Checks

1. All reference checks must be in writing, completed and dated within 90 days of application of employment on those applicants that will be made an offer of employment and, prior to an offer of employment being made. In instances where prospective employees indicated that the present employer is not to be contacted, any employment offer will be made contingent upon receipt of a written satisfactory reference.

2. S.C. Code Ann. §41-1-65 (c) (Supp. 2009), unless otherwise provided by law, an employer who responds in writing to a written request concerning a current or former employee from a prospective employer of that employee, shall be immune from civil liability for disclosure of the listed information to which an employee or former employee may have access. Upon written request by a prospective employer the following information may be released on a former employee:

- Written employee evaluations;
- Official personnel notices that formally record the reasons for separation;
- Whether the employee was voluntarily or involuntarily released from service and the reason for the separation; and
- Information about job performance.

This protection and immunity shall not apply where an employer knowingly or recklessly releases or discloses false information.

All DDSN regional centers and residential and day service providers shall use the attached service letter form or the equivalent as the written request for prior employment information for employees who are current or former employees of DDSN or a DDSN contracted service provider. DDSN Regional Centers and providers must respond in writing to a written request from another provider/Regional Center within ten (10) business days of receipt of request.

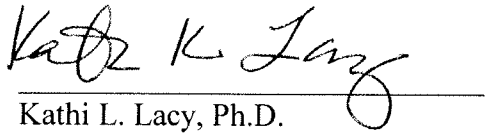
3. If a DDSN Regional Center or residential/day service provider does not respond to the written request, sanctions may be imposed for not following policy. If no written references are received from within the DDSN system, and if all other requirements for employment are

met, the Regional Center or residential/day service providers may make an offer of employment.

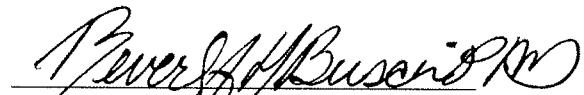
4. To further protect employers from liability for disclosure of information as outlined in S.C. Code §41-1-65 (c) (Supp. 2009), DDSN encourages providers to include the types of criminal record checks and reference checks that will be sought on all applications for employment with a place for the applicant to sign giving consent. State employment applications are worded as follows: "***Authority to Release Information: By my signature, I consent to the release of information to authorized officers, agents, and employees of the State of South Carolina which may include but not be limited to information concerning my past and present work; including my official personnel files; attendance records, evaluations, education records including transcripts, military service, law enforcement records; and any personnel record deemed necessary. In addition, I consent to authorize appropriate officers, agents and employees of the State to make inquires of third parties. I further release the organization, educational entity, present and former employers, law enforcement organizations, all third parties from any and all claim of whatever nature that I may have as a result of any inquiry or response given to such inquiries made in connection with my application for employment.***" Consent to request a written release as a condition of employment is lawful and advised.

C. Centers for Medicare & Medicaid Services (CMS) List of Excluded Individuals/ Entities (LEIE)

A search on the website **http://www.oig.hhs.gov/fraud/exclusions.asp**. must be conducted of all prospective direct care staff. Bases for exclusion include convictions for program-related fraud and patient abuse, licensing board actions, and default on Health Education Assistance Loans. The national search must be conducted (at no cost) via this website and documentation of such shall be included in the employee's file.



Kathi L. Lacy, Ph.D.
Associate State Director-Policy
(Originator)



Beverly A.H. Buscemi, Ph.D.
State Director
(Approved)

ATTACHMENT: Service Letter Form

REFERENCES:

- S.C. Code Ann. §41-1-65 (Supp. 2009)
- 534-02-DD Procedures for Preventing and Reporting Abuse, Neglect and Exploitation
- US Department of Health and Human Services, Office of Inspector General's website: **http://www.oig.hhs.gov/fraud/exclusions.asp**

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**TO:** Facility Administrators-Residential Centers, Director-Autism Division, Executive Directors-DSN Boards and CEO's, Contracted Service Providers

**FROM:** Kathi K. Lacy, Ph.D.
Associate State Director for Policy

**RE:** Revised Directive 406-04-DD

**DATE:** **March 5, 2010**

The below-mentioned Internal Communication System (ICS) directive was recently revised. Please reference the table below for the number, name, and status of the directive.

| Reference # | Directive Title | Status | Applicability |
|---|---|---|---|
| 406-04-DD | Criminal Record Checks and Reference Checks of Direct Caregivers | Revised | DDSN Residential Centers, DDSN Autism Division, DSN Boards and Contracted Service Providers |

Department Directive 406-04 has been revised in its entirety. Input from providers and the public were excellent and incorporated into the document. Please read carefully through the Directive and circulate to all applicable staff.

Thank you for all you do to ensure the health and safety of people you support everyday.