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Applicability: DDSN Residential Centers, DDSN Autism Division, DSN Boards and Contracted Service Providers

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE SOUTH CAROLINA DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS (DDSN). THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. DDSN RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

I. POLICY

Reference checks of previous employment, criminal background, DSS Child Abuse and Neglect Central Registry, and CMS "List of Excluded Individuals and Entities (LEIE)," are required for all prospective employees who meet the definition of direct caregiver staff as defined in S.C. Code Ann. § 44-7-2910 (B)(2) (Supp. 2016). This applies also to members of the Community Training Home I (CTH-I) caregiver household who are 18 years of age and older. Volunteers and interns who act in the place of regular staff must also undergo the same checks. Volunteers that only assist regular staff with occasionally events do not require background checks. If at

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P.O. Box 239
Clinton, SC 29325-5328
Phone: (864) 938-3497

Midlands Center - Phone: 803/935-7500
Whitten Center - Phone: 864/833-2733

DISTRICT II

9995 Miles Jamison Road
Summerville, SC 29485
Phone: 843/832-5576

Coastal Center - Phone: 843/873-5750
Pee Dee Center - Phone: 843/664-2600
Saleeby Center - Phone: 843/332-4104

any time, a provider agency determines the DSS Central Registry or LEIE documentation cannot be located in the employee's file, a new search must be conducted.

All prospective employees who cannot establish South Carolina residency for the 12 months preceding the date of the employment application and/or those who will work with children under age 18, will be required to undergo a national federal fingerprint based criminal background check.

In accordance with DDSN Directive 534-02-DD: Procedures for Preventing and Reporting Abuse, Neglect, or Exploitation of People Receiving Services from DDSN or a Contracted Provider Agency, no person is eligible for employment with DDSN or a contract provider if he/she has a history of substantiated child abuse or neglect or has been convicted of one of the crimes listed in S.C. Code Ann. § 63-7-2350 (Supp. 2016). Namely, one who has "pled guilty or "nolo contendere" or who has been convicted of one of the following offenses:

- "Offense Against the Person" as provided for in Chapter 3, Title 16;
- "Offense Against Morality or Decency" as provided for in Chapter 15, Title 16;
- "Contributing to the delinquency of a minor" as provided for in S. C. Code Ann. § 16-17-490;
- The common law offense of "Assault and Battery of a High and Aggravated Nature" when the Victim was a person 17 years of age or younger;
- "Criminal Domestic Violence" as defined in S.C. Code Ann. § 16-25-20;
- "Criminal Domestic Violence of a High and Aggravated Nature" as defined in S.C. Code Ann. § 16-25-65;
- "A felony drug-related offense under the laws of the State of South Carolina;" or are
- "A person who has been convicted of a criminal offense similar in nature to a crime above when the crime was committed in another jurisdiction or under federal law."

II. PROCEDURES

A. Reference Checks of Previous Employment

1. All previous employment reference checks for prospective employees must be made in writing, received and completed no earlier than 45 days prior to an offer of employment. In instances where prospective employees indicate that the current employer is not to be contacted, an employment offer shall be made contingent upon receipt of a written satisfactory employment reference.
2. According to S.C. Code Ann. § 41-1-65(c)(Supp. 2016), unless otherwise provided by law, "an employer who responds in writing to a written request concerning a current

employee or former employee from a prospective employer of that employee, shall be immune from civil liability for disclosure of the following 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 current or former employee:

- Written employee evaluations;
- Official personnel notices that formally record the reasons for separation if applicable;
- Whether the employee was voluntarily or involuntarily released from service and the reason for the separation if applicable; 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, as well as residential and day services providers shall use the attached Service Letter form (Attachment A) 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 contracted service providers must respond in writing to a written request from another contracted service provider or DDSN Regional Center within ten (10) business days of receipt of the request.

3. If a DDSN Regional Center or contracted service provider does not respond to the written Service Letter request, sanctions may be imposed for failing to follow policy. However, the prospective employer may make an offer of employment, if all other requirements for employment are met except for the receipt of the Service Letter from prior DDSN contracted service providers.
4. To further protect employers from liability for disclosure of information as outlined in S.C. Code Ann. § 41-1-65(c)(Supp. 2016) and to facilitate compliance with Service Letter completion, DDSN encourages contracted service providers to obtain written consent of the applicant to gather previous employment information by including the following text on every criminal record check and reference check document that will be sought:

“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 and its contracted service providers, 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 and its contracted service providers to make inquiries of third parties. I further release the organization, educational entity, present and former employers, law enforcement organizations, and 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.”

B. Reference Checks of Criminal Records

In accordance with S.C. Code Ann. § 44-7-2910 (Supp. 2016), DDSN requires all direct care entities (i.e., a provider of a residential or a day program operated or contracted for operation by DDSN) to conduct criminal records checks prior to employing, or contracting with, a direct caregiver. For the purposes of this directive, a “direct caregiver” is defined as:

- A Registered Nurse (RN), a Licensed Practical Nurse (LPN), or a Certified Nurse Assistant (CNA);
- Any other licensed professional employed by, or contracting with, a direct care entity who provides to patients, clients or consumers, direct care or services, and includes (but is not limited to) a physical therapist, a speech therapist, an occupational therapist, or a 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.)*
- A person who is not licensed, but provides physical assistance, support or care to a patient, client, or consumer being served by a direct care entity;
- A person employed by, or under contract with, a direct care entity who works within any home, or location in which patients, clients or consumers reside or spend the work day;
- A person employed by, or under contract with, a direct care entity whose duties include the possibility of patient, client or consumer contact.

The South Carolina Department of Health and Environmental Control (DHEC) defines a direct caregiver as “anyone who is paid or who has a written contract with a direct care entity to

provide hands-on care to a resident or client.” In addition to the definitions included in law and by DHEC, DDSN clarifies that a direct caregiver includes behavior support providers, EIBI providers and Early Intervention providers.

Proof of Residency:

The direct caregiver applicant shall provide verification of residency for the 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 12 month period with evidence verified by the provider. Residency can be verified through:

- A driver’s license issued by the State of South Carolina;
- Rent, mortgage or utility receipts in the applicant’s name from a home within South Carolina;
- Pay stubs in the applicant’s name from a business located in South Carolina; or
- Bank records in the applicant’s name showing a deposit or checking account held in a South Carolina bank or credit union.

State Criminal Record Check:

Those direct care applicants who are able to verify South Carolina residency as described above shall undergo a name-based criminal background check using the person’s name, aliases, date of birth, social security number, etc., that is conducted through the South Carolina State Law Enforcement Division’s (SLED) website: www.sled.sc.gov/default.aspx?MenuID=Home. Results of this SLED criminal record check are sent directly to and maintained by the requesting potential employer. A copy of such shall be included in applicant’s file.

Federal Criminal Record Check:

A direct care applicant who is unable to verify South Carolina residency as described above, or who will be expected to work directly with children, newborn to 18 years old, shall submit to a Federal Criminal Record Check conducted by the Federal Bureau of Investigation (FBI) prior to employment. The results will include any applicable state law enforcement agency results and the FBI database information. The Federal Criminal Record Check shall be conducted via an electronic fingerprint scan. No other type of criminal background check can be substituted for an FBI database check when a Federal background check is required.

- To conduct a Federal Criminal Record Check, the potential employer will need to schedule the applicant for an electronic fingerprint scan with Identigo by MorphoTrust USA via the website: <https://www.ibtfingerprint.com/state/?st=sc>. Appointments can also be made by phone at 1-866-254-2366. Employers are encouraged to schedule appointments online. Select “South Carolina” and enter the direct caregiver’s first and last name. The employer address must be provided as follows: DDSN – (Employer’s Organization Name) – 3440

Harden Street Ext., Columbia, SC 29203. By Federal law, DDSN is considered the “direct care entity” and therefore, all results of FBI checks will be returned to DDSN.

- When completing the online forms, users will need to select “DHEC- Employee working in a Disabilities & Special Needs Facility.” That designation will direct the results to DDSN. If users check “In-Home Care Provider,” their results will arrive in another division at DHEC and may not be forwarded to DDSN for processing.
- If the employer is not able to call or schedule the appointment online, the Direct Caregiver Application for Electronic Scan form (Attachment B) will need to be completed. A copy of the form should be given to the applicant to take with him/her to the IdentoGo scanning center. Instructions for completing the form are included within the attachment. Please note that all Federal background check results will be sent to DDSN, Central Office. DDSN is prohibited by Federal Law from forwarding FBI results; however, DDSN is permitted to forward SLED results.
- The fee for a fingerprint scan is \$51.50 for potential employees or \$45.25 for volunteers. Payment can be made online when scheduling appointments, by credit/debit card or direct withdrawal from a bank account. The option to pay at the time of the appointment with a business check or money order payable to IdentoGo by MorphoTrust USA is also available.
- Onsite scanning via a mobile unit is available for a minimum of 30 persons. Reservations must be made two (2) weeks in advance by calling 1-866-254-2366 or by sending the request to the following email address: statemobileservices@morphotrust.com.

Results of Checks:

- **FBI Criminal Background Checks:** Federal public law prohibits DDSN from forwarding or disclosing the results of the Federal background check results to any potential employer/provider/Regional Center. DDSN, however, is allowed to inform each that the individual does or does not have a criminal conviction or has pled no contest (nolo contendere).
- **State SLED checks:** Potential employers/providers/regional centers may request and maintain the State SLED check results.

For direct caregivers and other specified employees that were hired prior to March 2006, DDSN issued guidance on October 27, 2015, requiring contracted provider agencies to conduct a Criminal Background Check prior to December 31, 2015.

Security and Retention of Results:

- **FBI:** DDSN is **not** permitted to forward FBI results to potential employers/providers/Regional Centers; however, a “Verification of Criminal Background Check” letter will be returned. This letter must be maintained by the employer/provider/DDSN Regional Center, and it shall be made available to DHEC or

DDSN within two (2) hours of a request for such records. The DDSN Quality Management Division will be responsible for maintaining actual results of the FBI checks.

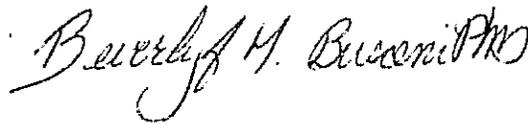
- State SLED check results will be maintained by the potential employer/provider/Regional Center.

Periodic Re-Check:

- DDSN Contracted Providers and Regional Centers will be required to obtain an updated SLED Background check for each employee/contracted caregiver every three (3) years. For employees hired prior to January 1, 2014, the provider may implement a schedule to bring one-half of the affected employees into compliance each year for 2017 and 2018. Results of the SLED checks must be placed in the Human Resources file. In the event conviction data are returned, the provider must address the continued employment status in accordance with the Provider's Human Resources policies.



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(Originator)



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State Director
(Approved)

To access the following attachments, please see the agency website page "Attachments to Directives" under this directive number.

- Attachment A: Service Letter
Attachment B: Direct Caregiver Application for Electronic Fingerprint Scan
(DHEC Form 0285)

REFERENCES:

- S.C. Code Ann. §41-1-65 (Supp. 2016)
- 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>