

Policy Title: Background Check Requirements for Health Homes and Care Managers

Policy number: HH0010

Effective date: April 1, 2018

Last revised:

Approved by:

Date:

**Applicable to:** This policy pertains to Health Homes (HH) and Health Home Care Management Agencies (CMA) that serve members under the age of 21.

### **Purpose**

The purpose of this policy is to establish procedures for conducting the required background checks for Health Home Care Managers and other applicable Health Home employees to better protect members under the age of 21 and to help ensure their safety. Chapter 57 of the Laws of 2018 includes new statutory requirements related to Criminal History Record Checks (CHRC), Mandated Reporter requirements, and Statewide Central Register (SCR) Database checks.

### **Scope**

Health Home Care Managers and other applicable Health Home employees must cooperate with three (3) required clearances:

- Staff Exclusion List (SEL) through the NYS Justice Center for the Protection of People with Special Needs (Justice Center)
  - NYS Social Services Law 496
  - For HH and CMA employees that will have regular and substantial contact with individuals under the age of 21 enrolled in Health Homes.
- Criminal History Record Check (CHRC) through NYS Department of Health (DOH)
  - NYS Public Health Law Article 28-E
  - For unlicensed HH and CMA employees who provide direct care to Health Home members under the age of 21 or have access to their property and belongings
- Statewide Central Register Database Check (SCR) through the Office of Children and Family Services (OCFS)
  - NYS Social Service Law 424-a
  - For HH and CMA employees that that will have the potential for regular and substantial contact with Health Home members under the age of 21

NOTE: Please note that the employer of record is the agency responsible for completing the required background checks.

Health Homes are responsible for ensuring that the CMAs they subcontract with have complied with all of the necessary background check requirements as outlined below. Health Homes must have policies and procedures in place that outline the background check requirements, including all of the necessary steps for compliance, including training and documentation, as required.

In addition, Health Home Care Managers and other applicable Health Home employees are required to be mandated reporters of child abuse and maltreatment, per NYS Social Services Law 413.

Specific requirements relating to each of these checks are outlined below.

### **Staff Exclusion List (SEL) through NYS Justice Center**

The SEL is a Statewide Register maintained by the NYS Justice Center. The SEL contains the names of people found responsible for serious or repeated acts of abuse and neglect. The SEL is required for all newly hired staff that will have regular and substantial contact with individuals under the age of 21 enrolled in Health Homes. The SEL should be completed prior to all other required background checks for practical purposes.

- The SEL check is free and is required for all prospective Health Home Care Managers and other applicable Health Home employees who require a PCR Database Check. Because the results of the SEL check are not transferrable from agency to agency, the check will need to be conducted for new hires even if they have previously cleared the check.

### **The SEL Check Process:**

- Health Homes and Health Home Care Management Agencies are responsible for registering an Authorized Person with the NYS Justice Center and meeting any additional requirements to ensure completion of the SEL checks.
- Authorized person(s) are the staff at each agency that can request SEL checks online and receive results via email.
- Employers are required to retain documentation of the result for each SEL check.

### **Criminal History Record Check (CHRC) through NYS Department of Health**

The Criminal History Record Check (CHRC) is a fingerprint-based, national FBI criminal history record check. These checks are submitted and processed using the Criminal History Record Check (CHR) application, which is housed within the Health Commerce System (HCS).

Effective April 1, 2018, Article 28-E of the Public Health Law requires a CHRC be conducted for all prospective employees that provide direct care to Health Home members under the age of 21, including Health Home Care Managers and other applicable Health Home employees. The CHRC must be completed for staff who will provide direct care or supervision, which includes all direct hire and contracted Health Home Care Managers. Care Managers who previously had Criminal Background Checks (CBC) completed through the NYS Justice Center are required to have the CHRC because the previously conducted checks do not transfer, and the CBC does not meet the requirements of the CHRC.

The following titles are only exempt from the CHRC requirements if they are operating within their title:

- Professionals licensed under Title 8 of the NYS Education Law

- Licensed nursing home administrators, security guards, volunteers and students enrolled in a program leading to a professional license under Title 8 are not subject to the CHRC

An employee is operating within their title if their license was specifically required for their position. If a Title 8 licensee is not operating within their title, they are still subject to the CHRC.

### The CHRC Process:

Employers of covered persons are responsible for requesting and processing the checks.

- Employers must ensure appropriate direct observation and evaluation of the *temporary employees*, effective July 1, 2019.
- Temporary employees are those whose CHRCs are pending.
- Per Chapter 57 of the Laws of 2019, effective July 1, 2019, temporary employees will not be able to provide direct care without supervision by an employee whose check has been successfully completed or by exempt staff.
- If an employee is later employed by another agency that requires a CHRC, the CHRC process will be expedited once the direct employer (the Health Home or Care Management Agency) submits their request for a CHRC. If the applicant has already been evaluated by DOH/CHRC, the direct employer will not receive a Live-Scan Request Letter. However, they will receive a letter of determination concerning employment eligibility. There is no additional fee in this situation and the expedited checks are typically processed in one (1) to two (2) weeks.
- There is a cost for the CHRC (2018-2019 total cost of CHRC is \$99.00). The employer of record is responsible for the cost. These costs are statutorily prohibited from being passed on to the employee. However, a Health Home or HH CMA may reimburse an agency for the cost of contract staff.
- There are some crimes which may statutorily disqualify a person from obtaining employment pursuant to Executive Law 845-b (5)(a). If the prospective employee has one of these convictions, he/she may only be approved for employment if the DOH determines, in its discretion, that approval of the application ... "will not in any way jeopardize the health, safety or welfare of the beneficiaries of such services." This is a very high standard of review and the applicant will need to provide significant information to overcome a denial of employment eligibility. If the prospective employee's convictions are for crimes other than those mentioned above, the DOH "may approve or disapprove the prospective employee's eligibility for employment by the provider, consistent with article twenty-three-A of the correction law." See, Executive Law Sec. § 845-b (5) (b). The agency will receive CHRC Legal Determination Letters which are based on legal review of NYS and FBI criminal histories.
- Sample notification letters that are favorable to the applicant and which are sent only to the health care provider include the following:

1. **No Hits No Violations** letter issued when both the Department of Criminal Justice Services (DCJS) and FBI report the applicant has no criminal history at all.
2. **Legal no conviction/no hit** letter issued following receipt of a criminal history record indicating charges or convictions by the DCJS or the FBI which upon investigation and legal determination are not reportable convictions for any felony or misdemeanor (for example violations, infractions, sealed records, family court, military non-judicial punishment).
3. **DOH non-denial (a)** letter issued when an applicant has submitted, in advance of an initial attorney review, sufficient rehabilitation materials to attenuate a statutorily disqualifying conviction.
4. **DOH non-denial (b)** letter issued following application of Article 23-A of the NYS Correction Law and initial attorney review of an applicant's record and legal determination made finding no direct relationship or unreasonable risk to the granting of employment eligibility regarding that criminal history (for example, a 1999 Class U misdemeanor DWI).
5. **Open charges/not held in abeyance** letter issued when the applicant has a pending minor misdemeanor matter which does not relate to the proposed employment in a health care setting or creates an unreasonable risk to patients or where the applicant has received an adjournment in contemplation of dismissal with respect to an open charge.
6. **Final non-denial (a)** letter issued following the issuance of a pending denial letter when the applicant has submitted sufficient rehabilitation materials to attenuate a statutorily disqualifying conviction.
7. **Final non-denial (b)** letter issued following the issuance of a pending denial letter when the applicant has submitted sufficient rehabilitation materials to attenuate a discretionarily disqualifying conviction.

Note, Letters #2 through #5 above are issued after the criminal history check is perfected and a comparative law analysis performed, and do not require an applicant response, leaving the final hiring decision with the health care provider. Letters #6 and #7 communicate favorable final decisions rendered after the applicant submits rehabilitation information. These are issued following an attorney review of the applicant's complete rehabilitation submission and a thorough DOH investigation concerning the circumstances of a crime.

- Sample notification letters that are unfavorable to the applicant and which are sent to both the health care provider and the applicant include the following:

8. **Pending denial to provider/pending denial to employee** letters issued following attorney review of a perfected rap sheet where the applicant has misdemeanor and/or felony convictions which, upon legal review, contain either a statutorily or discretionarily disqualifying conviction and requesting the submission of rehabilitation documentation from the applicant.
9. **Final denial (a)** letter to provider/employee issued following the issuance of a pending denial letter where the applicant has not submitted sufficient rehabilitation materials to attenuate a statutorily disqualifying conviction.
10. **Final denial (b)** letter to provider/employee issued following the issuance of a pending denial letter where the applicant has not submitted sufficient rehabilitation materials to attenuate a discretionarily disqualifying conviction.
11. **Hold in abeyance** letter to provider/employee issued when the applicant has a pending felony, or a pending misdemeanor which relates to the proposed employment in a health care setting or creates an unreasonable risk to individuals enrolled in Health Homes.

In addition, following the DOH issuance of a pending denial letter to the provider and employee, a favorable final employment eligibility determination can also be made by DOH attorneys in the form of a final non-denial (a) or final non-denial (b) letter (letters 6 and 7) as referenced above.

12. A 12<sup>th</sup> type of letter, referred to as a **Charge notification-after hire** letter, concerning a subsequent arrest is sent only to the health care employer. When subsequent arrests involve particularly egregious circumstances, DOH attorneys may also telephone the employer to read the charges to that employer, thereby allowing the employer to make a timely risk management decision concerning ongoing employment.
- Results of CRMs must be kept confidential unless provided to an authorized party. Access to results must be restricted to the employee, the provider and/or the provider's authorized designee, others involved in the hiring decision, and the Department of Labor. Criminal history record information must remain strictly confidential and be kept in a separate area that only authorized persons have access to.

### **Statewide Central Register Database Check (SCR) through NYS OFCS**

The Statewide Central Register (SCR) maintains a database of records of child abuse and maltreatment reports. The purpose of the database check is to find out if a prospective employee of a Health Home or Health Home Care Management Agency is a confirmed subject of an indicated report of child abuse or maltreatment. The SCR Database Check is required for those employees that will have regular and substantial contact with members, which includes but is not limited to Health Home Care Managers.

SCR Database checks will be required for prospective employees hired on or after April 1, 2018 that will have the potential for regular and substantial contact with individuals under the age of

21 who are served by Health Homes, and those agencies that are providing Care Management via contracts. SCR Database checks are not transferable and are prohibited from being re-disclosed. There is a cost for the SCR Database check (2018-2019 SCR Database Check is \$25.00) that may be paid by either the employer or the employee. The payment must be submitted when the SCR Database Check request is submitted. Please note that if an SCR check was conducted within the last 6 months, and the results are still accessible in the Online Clearance System, the request for a new SCR check may not be submitted until the results are no longer in the system.

### **The SCR Database Process/Results:**

If the prospective employee is not found to be a confirmed subject of an indicated report, the employer will receive notification that the SCR has no record of the applicant being an indicated subject of a report of child abuse or maltreatment.

- If the prospective employee is found to be the subject of an indicated report, the SCR is required to send a letter informing the applicant of their due process rights. The applicant is given ninety (90) days to respond back to the SCR in writing that they want to exercise their due process rights through an administrative review and fair hearing process. If the SCR does not hear back from the applicant within that timeframe, the SCR will then notify the Health Home or Health Home Care Management Agency that the SCR has a record of the applicant being an indicated subject of a report.
  - If a Health Home or Health Home Care Management Agency is notified that the SCR has a record of an applicant being an indicated subject of a report, the notification will not contain any details related to the report of abuse or maltreatment.
  - An indicated SCR report is not an automatic exclusion from employment.
  - The Health Home or Health Home Care Management Agency can request that the prospective employee sign an authorization for release of information, allowing the prospective employer to request of and obtain a copy of the indicated SCR report. After reviewing the records, it is the prospective employer's discretion as to whether they hire or do not hire the prospective employee.

### **Mandated Reporter Requirements**

Health Home Care Managers and other applicable Health Home employees are mandated to report suspected child abuse or maltreatment. Reports of suspected child abuse or maltreatment are to be made immediately by telephone, to the mandated reporter line at 1-800-635-1522. The mandated reporter line is available 24 hours a day, 7 days a week. This line is dedicated to mandated reporters. Please do not provide this number to the public, who can report child abuse or maltreatment by calling 1-800-342-3720. In addition to the report made by phone, the mandated reporter must complete a written form (form LDSS 2221A) and submit it, within 48 hours, to the child protective services of which the child resides.

The Office of Child and Family Services offers free training online for mandated reporters that can be completed at any time of day, any day of the week. Upon completion of the online

training, participants will electronically receive a certificate of attendance. There are no costs associated with this requirement.

➤ Free training for mandated reporters on the OCFS website:

[https://ocfs.ny.gov/main/cps/Mandated\\_Reporter\\_Training.asp](https://ocfs.ny.gov/main/cps/Mandated_Reporter_Training.asp)

➤ Register for Mandated Reporter Training at the following link:

<https://www.nysmandatedreporter.org/RegistrationInstructions.aspx>

### **Training Requirements**

The Health Home and Health Home Care Management Agency Human Resources staff must receive training on these requirements to ensure that staff receive the appropriate required clearances and to ensure that the Health Home or Care Management Agency is in compliance.

### **Quality Monitoring and Oversight**

Lead Health Homes are responsible for monitoring their subcontracted Care Management Agencies to ensure that they are in compliance with these requirements. Lead Health Homes should have a process in place to monitor and oversee their Care Management Agencies to ensure that the appropriate employees are receiving the required checks.

As outlined above, employers are required to retain the following, which will be subject to audit by the State:

- Criminal History Record Checks
  - Employers must retain the approval or disapproval letter for each employee.
  - These letters are housed within the CHRC application in HCS.
  - Please note that criminal history information cannot be shared.
- Statewide Central Register Database Checks
  - Employers must retain the results of each SCR check.
  - Please note that results are maintained in the Online Clearance System for only 6 months. For this reason, employers will need to print or save the results to make sure they remain available.
- Staff Exclusion List Checks
  - Employers must maintain the results of each SEL check.
  - These results are sent via email.
- Mandated Reporter
  - Employers must maintain the certificate of attendance that employees receive upon completion of the required training.

For more information on this requirement, please refer to the Department's *Health Home Policy and Standards* webpage at:

[https://www.health.ny.gov/health\\_care/medicaid/program/medicaid\\_health\\_homes/health\\_homes/children/index.htm](https://www.health.ny.gov/health_care/medicaid/program/medicaid_health_homes/health_homes/children/index.htm) - Under: *Background Checks*