



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

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DAL: HCBC #06-11
DAL: DQS #06-12

Dear Administrator:

This letter is being issued to give nursing homes, certified home health agencies, licensed home care services agencies, and long term home health care programs preliminary information regarding the new Criminal History Record Check (CHRC) program being implemented by the Department on September 1, 2006. Please read this letter carefully as it contains important information. **Included in this letter are instructions that each nursing home, certified home health agency, licensed home care services agency, and long term home health care program must complete prior to September 1, 2006 in order to submit CHRC requests on or after September 1, 2006.**

In April 2005, the Department of Health implemented a criminal history record check (2005 CHRC) program for unlicensed workers of nursing homes, certified home health agencies, licensed home care services agencies, and long term home health care programs (hereafter referred to as covered providers). This program was based upon federal statute that enabled covered providers to receive and review the criminal histories of potential caregivers as part of the employment determination process. The 2005 CHRC program has been very successful with the Department processing over 100,000 requests for federal FBI CHRC since April 2005.

The 2005 CHRC program provided a means for covered providers to review the criminal histories of individuals who would have unrestricted access to vulnerable individuals residing in nursing homes or receiving care in their own homes preventing those who could pose a threat from gaining such access and the opportunity to do harm. The Department and the long term care community realized that program improvements could be achieved through the enactment of a state enabling statute.

Chapter 769 of the Laws of 2005, as amended by a Chapter of the Laws of 2006 (S. 6630), provides for the improvement in the Department's CHRC program. The state laws establish new requirements for the CHRC performed by nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs that will improve the efficiency and effectiveness of the CHRC program.

The requirements of the law become effective September 1, 2006 and are contained in new State Public Health Law Article 28-E and amendments to State Executive Law section 845-b. The main provisions of the laws have been listed in Attachment A of this letter.

Effective September 1, 2006, the CHRC regulations contained in Title 10 NYCRR 400.23 are no longer valid for persons applying for employment or newly utilized on or after September 1, 2006. The Department is promulgating new regulations, which will be a new Title 10 NYCRR Part 402, CHRC Program, to carry out the new CHRC mandates contained in the Public Health Law and Executive Law.

The Department shall post additional information for covered providers on the new CHRC Program to the Health Provider Network (HPN) shortly. The Department, in conjunction with the home care and nursing home provider associations, will be providing statewide training during August 2006 and will be issuing a list of Frequently Asked Questions (FAQ) and answers for the new statutory CHRC Program requirements in the beginning of September.

In order to submit a CHRC request to the Department, each nursing home, certified home health agency, licensed home care services agency, and long term home health care program must, BEFORE September 1, 2006, comply with the requirements contained in Attachment B of this letter.

The forms, with the exception of the fingerprint card, for the new CHRC Program will be posted to the HPN. To make it easy for all covered providers to find the CHRC documents, the Department has created a CHRC page within the HPN. All documents including this Dear Administrator Letter, FAQ's and required or optional forms will be posted on this page as PDF files. If your facility has not secured HPN access as required by state regulations, please review the process identified in Dear Administrator Letters DQS #05-02 and HCBC #05-04 and submit the required information to the Department for HPN access.

At this time the forms can not be completed on-line. All forms must be completed and include all necessary signatures and notarizations. To complete the forms, the forms must be either

- A. Downloaded and saved as a word document to the individual's computer, then completed, printed and mailed to DOH. No changes to the format or text of the form can be made; or
- B. Printed on a printer, then filled in using black ink and mailed to DOH.

The Department will not supply any forms other than the fingerprint cards to providers. All providers should at this time have computer and internet access.

We believe that the transition from the 2005 CHRC Program to the new CHRC Program established pursuant to state law will improve the efficiency of the process with little disruption to your normal activities. Please check the HPN often for information on the transition. If you have any questions on the new CHRC Program, please e-mail them to CHRC@health.state.ny.us. If you have any questions regarding HPN access please e-mail questions to the HPN e-mail address specific to your provider type: for nursing homes: hpnnh@notes.health.state.ny.us, and for certified home health agencies, licensed home care services agencies, and long term home health care programs: hpnacfhc@notes.health.state.ny.us. Thank you for your continued cooperation.

Sincerely,



Robert P. Dougherty
Director
Division of Home and Community Based Care



Keith Servis, Director
Division of Quality and Surveillance
for Nursing Homes and ICFs/MR

Attachments

CRIMINAL HISTORY RECORD CHECK PROGRAM 2006

ATTACHMENT A

The main changes in the CHRC program are highlighted below. For additional information regarding these changes, please read the Public Health Law Article 28-E and Executive Law 845-b.

- Both a state and federal criminal history record check will be performed.
- Employers that are subject to the CHRC are defined in state law and are identified as providers under state Executive Law.
- Pursuant to state Executive Law, each provider must identify at least one (1) Authorized Person who will be responsible for submitting the CHRC request to the Department and receiving the CHRC determination from the Department while maintaining the confidentiality of the material as required by state law.
- The authorized person is the only person authorized to submit the CHRC request to the Department with the individual's fingerprints and to receive the DOH eligibility determination.
- The Department will review the criminal history records and make a determination of eligibility for employment (use) of the individual by the provider and the determination shall be transmitted to the provider.
- The results of the Department's determination shall be maintained in a CHRC database as long as the individual continues to be employed or used by a covered provider.
- The CHRC database shall be used to provide a potential future covered provider with the DOH CHRC eligibility determination upon request for prospective employees, who have already been fingerprinted on or after September 1, 2006, without the submission of new fingerprints. This is referred to as an expedited CHRC request.
- Individuals subject to a CHRC between April 1, 2005 and August 31, 2006 will NOT be listed in the CHRC database as the Department has no authority to place information into the CHRC database that was not produced under the provisions of PHL Article 28-E. The CHRC database is established as of September 1, 2006 for CHRC requests submitted to DOH for prospective employees on or after September 1, 2006.
- Reimbursement is available, pursuant to new Public Health Law Article 28-E.
- The fingerprint cards used for the 2005 CHRC program with the Department of Health ORI number of NYDOH009Z will no longer be valid. A new ORI number will be

issued to the Department for the new CHRC program. A supply of the new fingerprint cards shall be mailed to each covered provider. Please continue to use the old cards until receipt of the new cards. Covered providers shall continue to request the fingerprint cards via e-mail to: CHRC@health.state.ny.us

- The Department is committed to utilizing electronic means for the submission and transmission of information and data to the greatest extent possible.

CRIMINAL HISTORY RECORD CHECK PROGRAM 2006

ATTACHMENT B

THE FOLLOWING MUST BE COMPLETED PRIOR TO September 1, 2006

In order to submit a CHRC request to the Department, each nursing home, certified home health agency, licensed home care service agency, and long term home health care program BEFORE September 1, 2006, must:

1. Have an active HPN account linked to the covered provider PFI number (nursing homes, certified home care agencies and long term home health care programs) or for licensed home care service agencies, their DOH license number;
2. Agree to abide by the state laws regarding the submission of and use of CHRC information. This is accomplished when the Operator** completes, signs and returns the Authorized Party form (DOH CHRC 100) to the Department;
3. Identify the name of at least two (2) employees to will be responsible for submitting the CHRC requests to the Department as well as receiving the CHRC eligibility determinations from the Department through the completion of DOH CHRC 101;
4. Each person to be designated an Authorized Person must read, complete, sign and have notarized the Authorized Person Form DOH CHRC 101 and return the completed form to the Department; and
5. Each authorized person must be listed in the HPN Communications Directory as CHRC Authorized Person (CHRC AP).

The DOH CHRC 100 and 101 forms will be posted to the HPN on or about August 9, 2006. These forms must be printed and then completed, signed and, if required, notarized prior to mailing to DOH.

** Operator means a sole proprietor for a sole proprietorship, any authorized partner of a partnership, any authorized director or officer for a corporation, and any authorized member or manager of a limited liability corporation (LLC). These are the only individuals that may complete and sign the Agency Request (DOH CHRC 100) form.