



STATE OF NEW YORK DEPARTMENT OF HEALTH

161 Delaware Avenue

Delmar, New York 12054

January 31, 2007
revised February 7, 2007

DAL/DQS #07-02
DAL: HCBC 07-02
Subject: Additional Information Re:
Criminal History Record Check (CHRC)
Program

Dear Administrator:

This letter is being issued to give nursing homes, certified home health agencies, licensed home care service agencies, and long term home health care programs (covered providers), additional information about the Criminal History Record Check (CHRC) Program implemented on September 1, 2006. Please read this letter carefully as it contains important information.

CHRC Authorized Person Designations (CHRC AP)

On August 4, 2006 the Department issued a DAL: HCBC #06-11 and DAL: DQS #06-12 providing background and information about the recently enacted statutes improving the CHRC Program. Specific guidance was provided to prepare covered providers for the new program. Such guidance included information that prior to September 1, 2006 each covered provider was required to:

- Complete an HPN account linked to its PFI number or for LHCSAs, its license number;
- Complete an Agency Request form (DOH CHRC 100);
- Complete and notarize the Authorized Person Designation Form (CHRC) 101 identifying the names of at least two (2) employees who will be responsible for submission of requests and receipt of information from the department; and
- Designate each CHRC AP in the HPN Communications Directory.

To date, there are several providers who have not provided the Department with completed CHRC 100 and 101 forms. These forms allow the Department to process CHRC requests; without these forms, any CHRC requests will be returned to the provider. Copies of these forms and instructions for completing them are available on the CHRC HPN Website at:

<http://commerce/health.state.ny.us/hpn/hco/chrc.shtml>

Providers must have an HPN account to access this site and to meet the requirements of the CHRC Program. **This is to formally notify you that covered providers without active Health Provider Network (HPN) accounts are currently in violation of 10 NYCRR Section 400.10 for nursing homes and Section 763.11(f) for LHCSA, CHHA and LTHHCP. If the name of the CHRC Authorized Person is not included in the HPN Communications Directory under the CHRC AP role you are also in violation of Section 402.4 of the Department's Rules and Regulations.** Letters have been sent to providers who are not in compliance with these provisions notifying them that they have 15 days from the receipt of the letter to comply. The Department of Health regional offices will be notified to take action against providers who do not make a good faith effort to comply.

Department of Health surveyors have begun reviewing compliance with the CHRC regulations as part of the survey process. Any deficiencies will be cited.

Supervision

As a reminder, the covered provider must comply with the supervisory requirements as outlined in the CHRC regulations while the result of the criminal background check is pending. Additional information regarding the supervision requirements can be found on the CHRC HPN Web Page at:

<http://commerce.health.state.ny.us/hpn/hco/chrc.shtml>

Individuals covered by the CHRC Statute

The issue of which prospective employees of a covered provider must have a CHRC has been raised. The statute provides that unlicensed employees who have direct care or supervision of patients or residents are subject to the CHRC. Direct care and supervision is defined below. Please note, providers must make a good faith attempt to seek criminal history record checks only for those employees who are covered by the definition or risk losing immunity from civil or criminal liability as provided for under Executive Law Section 845-b(9). An example of not making a good faith attempt would include requesting criminal background checks by the Department for all unlicensed employees, regardless of their job duties.

Subject Individual direct care or supervision of patients or clients shall mean:

- i. Nursing Home – Any unlicensed person employed by or used by a nursing home who has physical access to residents receiving services or access to a resident's personal property; or any unlicensed person providing face-to-face care in accordance with the resident's plan of care.
- ii. Home Care – Any unlicensed person providing face-to-face care following the paraprofessional plan of care developed for the individual patient in accordance with 10 NYCRR Section 700.2

Questions regarding the CHRC program can be e-mailed to:

CHRC@health.state.ny.us

Legal questions can be e-mailed to:

CHRCLEGAL@health.state.ny.us

Sincerely,



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For Nursing Homes and
ICFs/MR