

Seniors and People with Disabilities

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Authorized Signature

Number: SPD-IM-11-036
Issue Date: 4/19/2011

Topic: Developmental Disabilities

Subject: Criminal Records and Abuse Check Rule for DHS, OHA providers

Applies to (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> All DHS employees | <input checked="" type="checkbox"/> County Mental Health Directors |
| <input type="checkbox"/> Area Agencies on Aging | <input type="checkbox"/> Health Services |
| <input type="checkbox"/> Children, Adults and Families | <input type="checkbox"/> Seniors and People with Disabilities |
| <input checked="" type="checkbox"/> County DD Program Managers | <input checked="" type="checkbox"/> Other (please specify): DD - Brokerage Directors; CDDP Services Coordinators; SPD -CIIS Staff; 24 Hour Residential providers; Employment and Alternative to Employment providers; Supported Living providers |

Message: Beginning April 15, 2011, the Oregon Department of Human Services (DHS) and the newly formed Oregon Health Authority (OHA) will implement the use of certain substantiated abuse findings as a part of conducting background checks for subject individuals of DHS and OHA providers. **This is a new requirement.** The temporary rules are posted online at http://www.oregon.gov/DHS/chc/rules_policy.shtml.

There is no change to the criminal records checks already being conducted.

The DHS Background Check Unit will now conduct a weighing test and fitness determination when a subject individual has been identified as the perpetrator of abuse in certain cases of sexual abuse, physical abuse or financial exploitation. The Background Check Unit will specifically consider the most serious cases of abuse reported and substantiated from January 1, 2010 forward. In the event of a denial due to potentially disqualifying abuse, the Background Check Unit will notify the local employer or "qualified entity" of a "potentially disqualifying condition." No specific information about abuse shall be provided to the employer. The subject individual will receive notice that they have been denied and reason(s) for the denial. They will also receive information about their right to due process, which includes a contested case hearing before an administrative law judge.

Which providers are affected? The rules apply to all providers that are currently required to conduct a criminal records check through DHS.

Why is this change being made? DHS has authority to use information regarding substantiated abuse findings in conducting pre-employment background checks (ORS 409.027), and DHS and OHA have already implemented the use of abuse information into background checks for DHS employees and volunteers. This new requirement is an important step to ensure safety and quality care for the most vulnerable Oregonians - children, seniors and people with disabilities. Only a fraction of substantiated findings of abuse are criminally prosecuted, and this change will help close the gap when an employee with significant and recent sexual abuse, physical abuse or financial exploitation may move from one job to another without the employer or others being alerted. "Substantiated" means an investigation found a preponderance of evidence that the alleged act occurred and the accused person was responsible for it.

What are the next steps? A Rules Advisory Committee for permanent rules is being organized, and interested parties will have the opportunity to provide comment on the proposed final rules.

If you have any questions or would like to participate in the Rules Advisory Committee, please contact Kelly C. Myrick-Duckett, Hearing & Policy Analyst, DHS Background Check Unit: kelly.c.myrick-duckett@state.or.us.

To subscribe to email updates and notices re: DHS background checks, visit <http://www.oregon.gov/DHS/chc/>.

If you have any questions about this information, contact:

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