

**DEPARTMENT OF HUMAN SERVICES
Developmental Disabilities Division**

POLICY ISSUANCE

PI-10-03

To: Regional DD Program Administrators;
Barb Murray, ND Association of Community Facilities;
Licensed DD Service Providers;
Acumen

From: Division of Developmental Disabilities

Date: March 22, 2010

Subject: Employee Background Checks

EFFECTIVE DATE OF POLICY: March 22, 2010

*This policy replaces former Policy DDD-PI-086, effective April 1, 2000

1. Background

North Dakota Century Code (NDCC) Chapter 25-16 (<http://www.legis.nd.gov/cencode/t25c16.pdf>) requires the Department of Human Services (DHS) to license entities which provide services to individuals with developmental disabilities. North Dakota Administrative Code (NDAC) 75-04-01 (<http://www.legis.nd.gov/information/acdata/pdf/75-04-01.pdf>) establishes the rules of licensure. Those rules (75-04-01-06) require disclosure of criminal records of employees and officers of a licensee to (DHS).

NDAC 75-04-01-06 (<http://www.legis.nd.gov/information/acdata/pdf/75-04-01.pdf>) requires that the licensee conduct criminal background checks on all persons employed to work with clients and to disclose that information to DHS, whom must then determine if a conviction has a direct bearing on the capacity of the person to provide a service and determine if the person is sufficiently rehabilitated.

The Centers for Medicare and Medicaid Services (CMS) have conducted a number of reviews of Medicaid Waivers in other states. A state must assure the health and welfare of individuals receiving services under a waiver. CMS has cited some of those states for not requiring criminal background checks for persons working with individuals with developmental disabilities.

II. Policy

- A. Licensees and license applicants must obtain a criminal background report and complete a check of the North Dakota Child Abuse and Neglect Central Registry for all persons hired after April 1, 2000 and forward the results to DHS, Division of Developmental Disabilities, for any person who is found to have a record. Additionally, checks must be made with the North Dakota Health Department and North Dakota Board of Nursing for sanctions for persons who may be registered with either as a Certified Nurse Aide or Nurse Assistant. DHS will determine if an offense has a direct bearing on the person's ability to provide services to individuals with developmental disabilities and if the person is sufficiently rehabilitated according to NDCC Chapter 12.1-33-02. 1.

Century Code Title 12.1 Criminal Code can be accessed by clicking on the following link:

<http://www.legis.nd.gov/cencode/t121.html>

Century Code 12.1-33-02.1 Rights of Convicts can be accessed by clicking on the following link: <http://www.legis.nd.gov/cencode/t121c33.pdf>

- B. Licensees and applicants shall disclose to the Department any criminal conviction of any officer or employee of the organization prior to April 1, 2000.
- C. Criminal background checks may be obtained directly from the North Dakota Bureau of Criminal Investigation or from an agency licensed by the North Dakota Private Investigation and Security Board according to NDCC Chapter 43-30 (<http://www.legis.nd.gov/cencode/t43c30.pdf>) and NDAC Chapter 93-01 (<http://www.legis.nd.gov/information/acdata/html/93-01.html>).
- D. For prospective employees who have not lived in North Dakota continuously for 5 years, a criminal background check must be obtained from the person's state(s) of previous residence.
- E. DHS will not hear challenges to the accuracy of criminal background checks. If a licensee or employee wishes to challenge the accuracy of any report, it must be done in the jurisdiction involved with the charge or conviction.
- F. DHS will not hear appeals from employees of the licensee. If the Department determines an employee has a 'direct bearing' offense, or, is not sufficiently rehabilitated, the licensee may appeal a decision to deny, suspend, or revoke a license under the provisions of NDAC 75-04-01 (<http://www.legis.nd.gov/information/acdata/pdf/75-04-01.pdf>).

- G. A licensee may not employ, in any manner that involves or permits contact between the employee and any individual with developmental disabilities served by the agency, any person who has been found guilty of, pled guilty to, or pled no contest to a 'direct bearing' offense. A 'direct bearing' offense includes:
- An offense described in NDCC chapters 12.1-16, homicide; 12.1-17, assaults - threats - coercion; or 12.1-18, kidnapping; NDCC sections 12.1-20-03, gross sexual imposition; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; NDCC chapter 12.1-27.2, sexual performances by children; or NDCC sections 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05 (<http://www.legis.nd.gov/cencode/t121.html>) child procurement; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or.,
 - An offense, other than an offense identified above, if DHS determines the person has not been sufficiently rehabilitated.
- H. Fees for obtaining criminal background checks will be considered allowable program costs.

III. Procedures

- A. How to obtain background checks:

Criminal background checks may be obtained from the North Dakota Bureau of Criminal Investigation (ECI), P.O. Box 1054 Bismarck, ND 58502-1054 (phone 701-328-5500). (Do not send requests to the Division of Developmental Disabilities).

A release of information authorization from the person on whom the check is requested is not required. However if a release authorization is not included in the request to BCI, you will need to include a current address since they will send notice to the prospective employee that a records check has been requested. BCI will need a full name, Social Security number, and date of birth.

If the person has not resided in North Dakota continuously for the past **five** years, checks will need to be obtained from the state(s) of previous residence. BCI does maintain a list of agency contacts in other states and will provide you with them on request.

BCI charges \$15 for each background report. Payment will need to accompany each request.

A release of information authorization is required for a check of the Child Abuse and Neglect Central Registry. The Registry can be accessed at:

Cindy Nolz
Children and Family Services
Department of Human Services
600 East Boulevard Avenue
Bismarck, ND 58505
(701) 328-4806

The North Dakota Department of Health Certified Nurse Aide Registry can be accessed at:

Health Resources Section
North Dakota Department of Health
2nd Floor - Judicial Wing
600 East Boulevard Avenue
Bismarck, ND 58505
(701) 328-2388

The North Dakota Board of Nursing Nurse Assistant Registry can be accessed at:

North Dakota Board of Nursing
919 S. 7th St. Suite 504
Bismarck, ND 58504
(701) 328-9777

B. When to obtain background checks:

Background checks must be obtained for all persons hired on or after April 1, 2000. All licensee employees and officers prior to April 1, 2000 are exempt from mandatory checks. However, for any that have a criminal record, it must be noted on the 'Criminal Offense Conviction Statement' to accompany the license renewal application.

C. Reporting results:

Whenever a criminal record is found, the results must be reported to the Division of Developmental Disabilities immediately. The report to the Division of Developmental Disabilities must include:

1. The nature of the violation,
2. Where it occurred,
3. When it occurred,
4. Sentencing information,
5. Rehabilitation participation, if any,
6. Identity of the person's probation/ parole officer (if applicable),

7. Job description,
8. Supervision arrangements,
9. Access to client medications or client funds, and
10. Any listings in the Department of Human Services/Child Protective Services abuse and neglect registry or sanctions by the Department of Health or the ND Board of Nursing.

When a person is hired who has a record and it has been determined the offense does not have a 'direct bearing' and the person has been determined to be sufficiently rehabilitated, the person should be listed on the Criminal Conviction Offense Statement in the licensure application form for as long as that person is with the licensed agency. That list will include all current employees with a criminal even though the record may have been reported to the Division of Developmental Disabilities at the time of hire.

D. Department of Human Services Response:

Upon receipt of a background report and necessary supporting information, DHS will make a determination as to whether or not the person can be employed by the licensee. If the person has a conviction of a 'direct bearing' offense as described in I.G. above, the person cannot be employed by the licensee in a capacity that allows contact with individuals with developmental disabilities served by the employer. If it is not a 'direct bearing' offense, the person may be employed if found by DHS to be sufficiently rehabilitated. A person will be deemed to be sufficiently rehabilitated if five years have elapsed since the conviction and there have been no subsequent convictions or there is information to support a decision of sufficient rehabilitation.

DHS will report the above determination to the licensed agency. If the licensee elects to employ or continue to employ a person found to have a 'direct bearing' offense or to be insufficiently rehabilitated, the licensee will be in violation of the provisions of NDAC 75-04-01 (<http://www.legis.nd.gov/information/acdata/pdf/75-04-01.pdf>) and be subject to licensure denial, suspension, or revocation. If the licensee disagrees with the determination, appeal of the intent to deny, suspend or revoke the license may be made according to NDAC 75-04-01-05.

IV Regulating Authority

North Dakota Century Code (NDCC) Chapter 25-16 requires the Department of Human Services to license entities which provide services to individuals with developmental disabilities.

NDCC Chapter 25-16 can be accessed by clicking on the following link:
<http://www.legis.nd.gov/cencode/t25c16.pdf>

North Dakota Administrative Code (NDAC) 75-04-01 establishes the rules of licensure. NDAC 75-04-01-06 regulates criminal background check requirements and the disclosure of criminal records,

requiring the licensee to conduct criminal background checks on all persons employed to work with clients and to disclose that information to the Department.

NDAC 75-04-01 can be accessed by clicking on the following link:
<http://www.legis.nd.gov/information/acdata/pdf/75-04-01.pdf>

North Dakota Administrative Code 75-04-01-06.1 Criminal Conviction regulates criminal conviction and the effect on the operation of a facility or employment by a facility.

NDAC 75-04-01-06.1 can be accessed by clicking on the following link:
<http://www.legis.nd.gov/information/acdata/pdf/75-04-01.pdf>

North Dakota Century Code can be accessed by clicking on the following link:
<http://www.legis.nd.gov/information/statutes/cent-code.html>

North Dakota Administrative Code can be accessed by clicking on the following link:
<http://www.legis.nd.gov/information/rules/admincode.html>

North Dakota Century Code Chapter 25-16 Residential Care and Services for the Developmentally Disabled can be accessed by clicking on the following link:
<http://www.legis.nd.gov/cencode/t25c16.pdf>

Interpretive Guidelines for Intermediate Care Facilities for Persons with Mental Retardation – Tags W152 to W157 can be viewed by clicking on the following link:
http://www.cms.hhs.gov/manuals/downloads/som107ap_j_intermcare.pdf

The following attachments are not applicable to this policy, but are included for reference or to assist licensees in designing forms or procedures to meet requirements of this policy:

- Form SFN 838 Personal Authorization for Criminal History Background Check Inquiry, ND DHS, CFS Division can be accessed by clicking on the following link:
<http://www.nd.gov/eforms/Doc/sfn00838.pdf>
- Form SFN 377 Criminal history Background Check Address Disclose/Release of Information, ND DHS, CFS Division can be accessed by clicking on the following link:
<http://www.nd.gov/eforms/Doc/sfn00377.pdf>

- Form SFN 508 Authorization for Child Abuse & Neglect Background Check, ND DHS Early Childhood Services, (11-2008) can be accessed by clicking on the following link:
<http://www.nd.gov/eforms/Doc/sfn00508.pdf>