

**RULES AND REGULATIONS
FOR
EMPLOYEE CRIMINAL RECORDS CHECK**

DEPARTMENT OF MENTAL HEALTH RETARDATION AND HOSPITALS

**A. Kathryn Power
Director**

January 14, 2001

EMPLOYEE CRIMINAL RECORDS CHECK

DEPARTMENT OF MENTAL HEALTH, RETARDATION AND HOSPITALS

MHRH 1000: LEGAL AUTHORITY TO ISSUE

Authority for these Regulations is found in Rhode Island General Laws section 40.1-25.1 et seq., Rhode Island General Laws section 40.1-24-1 et seq. and Rhode Island General Laws section 40.1-1-13 (11).

MHRH 2000: SCOPE

These Regulations apply to any facility or program licensed, funded or operated by the Department of Mental Health, Retardation and Hospitals. All references within these Regulations to other Departmental rules and regulations are incorporated by reference and have the same force and effect as if promulgated herein.

These Regulations apply to any job or position at any facility or program licensed, funded or operated by the Department of Mental Health, Retardation and Hospitals if that job or position involves routine contact with patients, residents or clients without the presence of other employee. These Regulations apply to volunteers or consultants at any facility or program licensed, funded or operated by the Department of Mental Health, Retardation and Hospitals who have routine contact with patients, residents or clients without the presence of others, hired after January 12, 2002.

MHRH 3000: DEFINITIONS

Authorization to Release Information: means a document signed by the Prospective Employee consenting, requesting and authorizing the release of all information concerning his or her criminal history to the Employer from the Bureau of Criminal Identification for the purpose of determining eligibility for employment including the specifics of Disqualifying Information.

Bureau of Criminal Identification: means the state or local police.

Conviction: means judgments of conviction entered by a court of competent jurisdiction, subsequent to a finding of guilty or a plea of guilty, pleas of no lo contendre with a sentence of probation and a deferred sentence agreement entered into with the Attorney General.

Criminal Records Document: is a document signed by the Prospective Employee prior to the initiation of a Nationwide Criminal Records Check and any offer of employment. The Criminal Records Document shall indicate at a minimum whether the Prospective Employee has ever been convicted of a crime, and if so a description of

the relevant facts, the date(s) of the conviction and the sentence imposed or resolution of the case.

Department: means the Department of Mental Health, Retardation and Hospitals.

Disqualifying Information: means information contained in the national criminal identification computer pertaining to conviction or arrest pending disposition for the following crimes:

Murder, voluntary manslaughter, involuntary manslaughter, kidnapping, kidnapping with intent to extort, first, second and third degree sexual assault, assault by spouse, assault with intent to commit specified felonies, felony assault, domestic assault, first and second degree child abuse, incest, child snatching, exploitation for commercial or immoral purposes, transportation for indecent purposes, harboring, prostitution, pandering, deriving support or maintenance from prostitution, circulation of obscene publication and shows, sale or exhibition to minors of indecent publications, pictures or articles, child nudity in publication, theft, larceny, embezzlement, burglary, financial exploitation and any offense constituting a felony which is enumerated in Rhode Island General Law section 21-28-1.01 et seq., The Uniform Controlled Substances Act.

Employer: means any facility, employer, program or agency licensed, operated and/or funded by the Department.

Employer Certification: some employees, volunteers, or consultants need not receive a Nationwide Criminal Records Check if they do not have routine contact with patients, residents or clients without the presence of others. In these situations the Employer must have certified in writing that this individual has no routine contact with patients, residents or clients without the presence of others. A copy of this certification must be filed in such an employee's personnel file, or maintained in a file containing the personal/contact information of consultants and/or volunteers.

Facility: means any community residence, day treatment program, rehabilitation program, public or private, excluding hospitals, except for the Eleanor Slater Hospitals, providing program services which do not constitute medical or custodial care but do offer rehabilitation, habilitation, psychological support and social guidance.

Nationwide Criminal Records Check: means a nationwide criminal records check through the Bureau of Criminal Identification that conforms to the applicable federal standards, including the taking of the Prospective Employee's fingerprints.

Program: means a planned service delivery system structured to provide specific components, which are responsive to the needs of those served.

Prospective Employee: means a person over the age of eighteen (18) who has applied for and been offered employment in a facility, program or agency licensed, funded and/or operated by the Department and any person over the age of eighteen (18)

who has applied for and been offered a position as a volunteer, and/or consultant when such volunteer/consultancy positions involve routine contact with patients, residents or clients without the presence of other employees. Employees, volunteers, or consultants need not receive a Nationwide Criminal Records Check if they do not have routine contact with patients, residents or clients without the presence of others. In these situations the employer must have certified in writing that this individual has no routine contact with patients, residents or clients without the presence of others. A copy of this certification must be filed in such an employees personnel file. (See **Employer Certification** above)

MHRH 4000: Nationwide Criminal Records Check Requirement

MHRH 4001: Any facility or program licensed, funded or operated by the Department must require all Prospective Employees who are offered employment in certain jobs or positions or whose prospective employment would involve routine contact with patients, residents or clients without the presence of other employees to receive a Nationwide Criminal Records Check.

MHRH 4002: The Department will pay for the cost of the Nationwide Criminal Records Check of the Prospective Employee.

MHRH 4003: In those situations where no Disqualifying Information has been found, the Bureau of Criminal Identification shall inform both the Prospective Employee and the Employer in writing of this fact.

MHRH 4004: In the event that there is Disqualifying Information discovered, the results of the Nationwide Criminal Records Check will be provided in writing to the Prospective Employee by the Bureau of Criminal Identification with specific disqualifying offense(s) identified and listed in the notification. The Employer shall only receive written notice that an item of disqualifying nature is discovered. The Prospective Employee may request that a copy of the Nationwide Criminal Records Check listing the specific disqualifying offense(s) be sent to the Employer. If the Prospective Employee has signed and submitted to the Bureau of Criminal Identification an Authorization to Release Information as required by MHRH 5000.3b of these Regulations then the Employer shall receive a copy of the Nationwide Criminal Records Check listing specific disqualifying offense(s).

MHRH 4005: If a Prospective Employee's Nationwide Criminal Records Check contains Disqualifying Information then the Employer shall make a judgment regarding the employment of the Prospective Employee. Such judgment shall be based upon the Employer's consideration of whether the Disqualifying Information contained on the Nationwide Criminal Records Check indicates that the employment could endanger the health or welfare of patients, clients or residents.

In exercising its judgment as to whether the Employment would endanger the health or welfare of patients, clients or residents the Employer shall consider the following factors:

- a. the extent to which the Disqualifying Information relates to vulnerable clients
- b. whether the Disqualifying Information involves violence or threats of harm,
- c. any pattern of offenses,
- d. whether the offense is of a sexual nature,
- e. whether intent is an element of the offense,
- f. the number and type of offenses the person committed or for which the person has been convicted,
- g. the length of time between convictions,
- h. the Prospective Employee's participation in or completion of pertinent programs of a rehabilitative nature,
- i. the age of the Prospective Employee on the date of conviction or dates of conviction,
- j. the Prospective Employee's employment history, including references if available, and
- k. any and all other relevant factors.

MHRH 4006: In such circumstances where Disqualifying Information is indicated through a Nationwide Criminal Records Check, the Prospective Employee may be employed subject to the written approval of the governing body of the facility or program and if the specific Disqualifying Information is not listed in the applicable Departmental licensing regulations. Specifically, see: Rules, Regulations and Standards for Licensing of Mental Health Facilities and Programs, MHPG 400.4, Rules, Regulations and Standards for the Licensing of Substance Abuse Facilities, 11.8 and Rules and Regulations for the Licensing of Facilities for the Developmentally Disabled DD 5.

MHRH 4007: The Employer shall maintain on file, subject to investigation by the Department, evidence that Nationwide Criminal Records Checks have been initiated on all Prospective Employees seeking employment after January 12, 2002. (See MHRH 5000.1) Upon receipt from the Bureau of Criminal Identification, the Employer shall maintain on file the written results of the Nationwide Criminal Records Check

MHRH 4008: If the Prospective Employee has undergone a Nationwide Criminal Records Check within eighteen (18) months of an application for employment, then an Employer may request a letter from the Bureau of Criminal Investigation indicating if any Disqualifying Information was discovered. If the Prospective Employee has signed and submitted to the Bureau of Criminal Identification an Authorization to Release Information then such requested letter shall list the specific disqualifying offense(s).

MHRH 5000: PROCEDURE

1. The Employer shall require each Prospective Employee to complete a Criminal Records Document disclosing any and all Disqualifying Information that may render him/her ineligible for employment. The Criminal Records Document shall be placed in either the personnel file or the pre-employment folder.

2. The Prospective Employee shall sign an Authorization to Release Information prior to the initiation of any Nationwide Criminal Records Check.
3. The Prospective Employee shall apply for a Nationwide Criminal Records Check by contacting the Bureau of Criminal Identification at either the State Police or the Local Police Department.
 - a. The Prospective Employee shall provide the Bureau of Criminal Identification at the State or Local Police Department with a driver's license (or other form of photographic identification acceptable to the Police Department) and the State or Local Police Department shall initiate a Nationwide Criminal Background Check that conforms to the applicable federal standards. In addition,
 - b. The Prospective Employee shall provide the State or Local Police Department with the signed Authorization for Release of Information.
 - c. The Prospective Employee shall have her his/her fingerprints taken. The fingerprints shall be compared to those on file through the Nationwide Criminal Identification computer operated by the Federal Bureau of Investigations (FBI).
4. If the Prospective Employee has undergone a Nationwide Criminal Records Check within eighteen (18) months of application for employment, the Employer may accept a letter provided by the Prospective Employee from the Bureau of Criminal Identification at the State or Local Police Department, verifying the date and results of the check.
5. The Bureau of Criminal Identification will notify the Employer as to whether the Prospective Employee's Nationwide Criminal Background Check contains Disqualifying Information.
 - a. If no Disqualifying Information has been discovered, the Employer may proceed to hire the Prospective Employee on a permanent basis and the results of the Nationwide Criminal Records Check shall be placed in their personnel record.
 - b. If Disqualifying Information has been discovered, the Employer shall make a judgment regarding the employment of the Prospective Employee. Such judgment shall be based upon the Employer's consideration of whether the Disqualifying Information contained on the Nationwide Criminal Background Check indicates that the employment could endanger the health or welfare of patients, clients or residents and that the specific Disqualifying Information is not listed in the applicable Departmental licensing regulations. Specifically, see: Rules, Regulations and Standards for Licensing of Mental Health Facilities and Programs, MHPG 400.4, Rules, Regulations and Standards for the Licensing of Substance Abuse Facilities, 11.8 and Rules and Regulations for the Licensing of Facilities for the Developmentally Disabled DD 5. (See also MHRH 4005A).
6. MHRH will reimburse the Employer on a quarterly basis for the actual cost of the Nationwide Criminal Background Check. The Employer will submit the request for such reimbursement to the business/financial office of the Division within

- MHRH that routinely and regularly provides funding and reimbursement to the Employer.
7. The Employer shall maintain on file, subject to investigation by the Department evidence that Nationwide Criminal Records Checks, in accordance with the requirements of these Regulation have been initiated on all Prospective Employees and the results of the Nationwide Criminal Background Checks. Also maintained by the Employer shall be the Criminal Records Document or if applicable the Employer Certification.

MHRH 6000: SANCTIONS

The Employer's failure to maintain evidence of a Nationwide Criminal Records Check of all Prospective Employees, failure to maintain a Criminal Records Document, Employer Certification and/or written results of the Nationwide Criminal Background Check in personnel files shall be grounds to revoke the license or certification of the Employer and shall be considered a material breach of contract by any Employer funded by the Department.