

**DISTRICT OF  
COLUMBIA  
MUNICIPAL  
REGULATIONS**

**HEALTH-CARE  
FACILITY  
UNLICENSED  
PERSONNEL CRIMINAL  
BACKGROUND  
CHECKS**

**CHAPTER 47. HEALTH-CARE FACILITY UNLICENSED PERSONNEL  
CRIMINAL BACKGROUND CHECKS**

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**4700 GENERAL PROVISIONS**

- 4700.1 These rules are promulgated pursuant to the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999, as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002, (D.C. Laws 12-238 and 14-98), D.C. Official Code § 44-551 et seq., (hereinafter "the Act").
- 4700.2 These rules are applicable to each facility licensed pursuant to the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48, D.C. Official Code § 44-501 et seq.) and to any entity furnishing Medicaid services.

**4701 BACKGROUND CHECK REQUIREMENT**

- 4701.1 A facility, long-term care facility or provider, shall not offer to employ or contract with any unlicensed person having direct patient, resident, or client access, or person licensed, registered, or certified under chapter 12 of title 3 of the D.C. Official Code unless within a forty-five (45) day period immediately preceding the date of initial employment or initial commencement of contract services the following has occurred:
- (a) Pursuant to § 4701.2 and 4701.3, the person has undergone fingerprinting or live scan performed in the District of Columbia which has resulted in a criminal history, that reveals all convictions that have occurred within the District of Columbia and the fifty (50) states;
- (b) The Department of Health verifies that the person has not been convicted, within the seven (7) years before the criminal background

check, of any of the offenses listed in § 4705.1;

(c) The Department of Health and those facilities identified pursuant to

§ 4701.1 verify by means of a check, that the person's name is not on the Dru Sjodin National Sex Offender Public Website coordinated by the United States Department of Justice, or the Nurse Aide Abuse Registry of the District of Columbia or such registry in the state or states in which the person has lived or worked; and

(d) The person provides a sworn statement affirming that there are no criminal matters pending against him or her.

- 4701.2 Each facility, long-term care facility or provider, identified in § 4701.1 shall cause each prospective employee or contract worker who will have, or foreseeably may have direct patient, resident, or client access, to undergo a criminal background check that shall reveal the criminal history, if any, in the District of Columbia and the fifty (50) states. Fingerprinting or live scan shall be performed in the District of Columbia utilizing the Metropolitan Police Department (MPD) or a private agency. The criminal background check shall be performed, following fingerprinting or live scan, by the MPD and Federal Bureau of Investigation (FBI) in an FBI-approved environment. The results of the criminal background checks shall be forwarded to the Department of Health.
- 4701.3 The results of the criminal background check shall disclose the criminal history, if any, of the prospective employee or contract worker for the previous seven (7) years before the check.
- 4701.4 An employee or a contract worker shall be required to undergo a subsequent criminal background check every four (4) years after the date of his or her initial background check, provided that if the name of the employee appears in the FBI databank when the "rap back" system is implemented, the employee shall not be required to have a subsequent criminal background check performed.
- 4701.5 The Department of Health shall notify a facility, long-term care facility or provider that employs the subject of a criminal background check which returns positive results for any of the offenses listed in § 470.1 within forty-five (45) days prior to the commencement of the subjects' employment.
- 4701.6 A facility, long-term care facility or provider shall inform the Department of Health within ten (10) days of the resignation or termination of any employee subject to criminal background checks under this chapter whose resignation or termination was for a criminal, unprofessional, or unethical conduct.
- 4701.7 A contract worker shall not be considered resigned or terminated for purposes of § 4701.6 as long as the employment contract with the facility is renewed within forty-five (45) days of its satisfaction.

4701.8 Nothing in this section shall prohibit a facility from requiring, in a contract agreement, that the criminal background checks for contract workers be obtained by the contractor.

4701.9 REPEALED

**4702 FEES**

4702.1 In order to obtain the criminal background check, the facilities or provider identified in § 4701.1, the prospective employee, or contract worker shall pay the fee that is established to have the criminal background check performed by the Metropolitan Police Department and the Federal Bureau of Investigation (FBI), or a private agency.

4702.2 Nothing in this section shall preclude the facility from seeking reimbursement of the fee paid for the criminal background check from the applicant for employment or contract work.

**4703 PERSONNEL EMPLOYED ON THE EFFECTIVE DATE OF THESE RULES**

4703.1 A facility may obtain a criminal background check on each unlicensed person who is employed by the facility or whose contract services are used by the facility on the effective date of these rules.

4703.2 A facility shall not continue to employ or use the contract services of a person whose criminal history is found to be in noncompliance with section 4705.

**4704 RECORDKEEPING**

4704.1 Each facility shall maintain, in the personnel record of each employee covered by these rules, the following:

- (a) The date of hire;
- (b) The date on which a criminal background check was requested; (c) The date on which the results of the criminal background check were received by the facility;
- (d) Official documentation of the criminal background check results;
- (e) Documentation of a check of the District of Columbia Nurse Aide Abuse Registry;
- (f) Any sworn statements submitted by the employee; and
- (g) Documentation of any actions taken by the facility as a result of information obtained from the criminal background check.

4704.2 A facility shall not disclose criminal background check records obtained for the purpose of hiring or continuing to employ a person, except:

- (a) To the Director or his or her designee during an official inspection or investigation of the facility;
- (b) To the person who is the subject of the criminal background check; (c) To comply with a court order; or
- (d) To any person, with the written consent and authorization of the person who is the subject of the criminal background check.

4704.3 Recordkeeping and disclosure of information maintained on the District of Columbia Nurse Aide Abuse Registry shall be managed by each facility in accordance with rules on Certified Nurse Aides, [29 DCMR 3250-3254](#), effective April 5, 1991 (38 DCR 2023).

4704.4 Each facility shall maintain the criminal background records required by subsection 4704.1 in the facility for at least one (1) year after the end of the employment of the person to whom the records relate.

#### **4705 CRIMINAL OFFENSES**

4705.1 Except as provided in subsection 4705.2, a facility shall not employ or use the contract services of an unlicensed person who has been convicted, within the seven (7) years prior to a criminal background check conducted pursuant to these rules, of one or more of the following offenses or the equivalent thereof:

- (a) Murder;
- (b) Attempted murder;
- (c) Manslaughter;
- (d) Arson;
- (e) Assault;
- (f) Battery;
- (g) Assault and battery;
- (h) Assault with a dangerous weapon;
- (i) Mayhem;
- (j) Threats to do bodily harm;
- (k) Burglary;
- (l) Robbery;
- (m) Kidnapping;

- (n) Theft;
- (o) Fraud;
- (p) Forgery;
- (q) Extortion;
- (r) Blackmail;
- (s) Illegal use of a firearm;
- (t) Illegal possession of a firearm;
- (u) Rape;
- (v) Sexual assault;
- (x) Sexual battery;
- (y) Sexual abuse;
- (z) Child abuse;
- (aa) Cruelty to children;
- (bb) Unlawful distribution of a controlled substance; and
- (dd) Unlawful possession of a controlled substance with intent to distribute.

4705.2 A facility may employ or use the contract services of an unlicensed person who has been convicted only of one (1) offense listed in section 4705.1 at the misdemeanor level, provided that:

- (a) The misdemeanor offense did not involve abuse or moral turpitude;
- (b) There are no criminal matters pending against the person on the date of the person's employment or commencement of contract service with the facility; and
- (c) The person's name is not on the Nurse Aide Abuse Registry.

4705.3 The facility must verify, by information obtained in the original criminal background check or by one or more supplemental checks, that the unlicensed person meets the requirements for employment or contract service contained in subsection 4705.2.

## **4706 PENALTIES**

4706.1 Any person who discloses any information in violation of the Act or of these rules shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine not to exceed three hundred dollars (\$ 300), a term of imprisonment not to exceed thirty (30) days, or both.

4706.2 Civil fines, penalties, and fees may be imposed as sanctions for any violation of the Act or of these rules, pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42, D.C. Code § 6-2701, et seq., D.C. Official Code § 2-1801.01, et seq.).

4706.3 Any person who makes a false statement concerning a material matter required by this chapter shall be subject to prosecution.

#### **4799 DEFINITIONS**

4799.1 For the purposes of this Chapter, the following terms shall have the meanings ascribed:

**Contract services** - services provided on behalf of a facility by a person or entity other than the facility pursuant to a contractual agreement.

**Contract worker** - a compensated contractor, or the agent or employee of a contractor, for whom it is foreseeable that he or she will come in direct contact with patients.

**Criminal background check** - an investigation into a person's criminal history to determine whether, within the seven (7) years preceding the background check, the person has been convicted, in the District of Columbia or in any other state or territory of the United States where such person has worked or resided, of any criminal offenses.

**Direct patient, resident, or client access** – access to a patient, resident, or client of a facility, long-term care facility or provider, that involves, or may foreseeably involve, presence in a room occupied by a patient, client, or resident while not under the immediate and contemporaneous supervision of a licensed health care professional employed by the facility. However, the term does not include a volunteer unless the volunteer has duties that are equivalent to the duties of a direct patient, resident, or client access employee and those duties involve, or may involve, presence in a room occupied by a patient, resident, or client of the long-term care facility, or other facility while not under the immediate and contemporaneous supervision of a licensed health care professional employed by the facility.

**Director** - the Director of the Department of Health or his or her designee.

**Employee** - a person who is hired and compensated directly by a facility.

**Facility** - any entity required to be licensed pursuant to the Health- Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48, D.C. Official Code § 44-501 et seq.) and any entity furnishing Medicaid services under a provider agreement with the District of Columbia in accordance with regulations promulgated under Title XIX of the Social Security Act, approved July 30, 1965 (Pub. L. 89-97; [42 U.S.C. § 1396](#) et seq.).

**Long-term care facility or provider** – means the following

District of Columbia Municipal Regulations  
facilities or providers which receive payment for services under title  
XVII or XIX of the Social Security Act:

- (a) A provider of hospice care (as defined in § 1861(dd)(1) of 42 U.S.C. 195x(dd)(1);
- (b) A long-term care hospital as described in § 1886(d)(1)(B)(iv) of 42 U.S.C. 1395ww(d)(1)(B)(iv);
- (c) A residential care provider that arranges for, or directly provides, long-term care services, including an assisted living facility that provides a level of care established by the Secretary; and
- (d) Any other facility or provider of long-term care services under such titles as the District of Columbia deems appropriate.

**Medicaid services** - nursing facility services, home health-care services, inpatient hospital and nursing services for individuals 65 years of age or older in an institution for mental disease, services in an intermediate care facility for the mentally retarded, home and community care for functionally disabled elderly individuals, and community supported living arrangement services as defined in Title XIX of the Social Security Act, approved July 30, 1965 (Pub. L. 89-97; [42 U.S.C. § 1396](#) et seq.).

**Nurse Aide Abuse Registry** - a record, maintained by the District of Columbia in accordance with the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-2032, and pursuant to [29 DCMR 3250-3254](#), containing names of persons who worked as nurse aides and were determined to have abused, neglected or misappropriated the property of a nursing home resident.

**Person** - an individual human being.

**Private agency** - an entity or person that offers customer assistance in the use of criminal background checks for employment purposes.

**Unlicensed person** - a person who is not licensed pursuant to the Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99, D.C. Official Code § 3-1201.01 et seq.) and who functions in a complementary or assistance role to licensed health care professionals in providing direct patient care or carrying out common nursing tasks, such as nurse aides, orderlies, assistant technicians, attendants, home health aides, personal care aides, medication aides, geriatric aides, or other health aides. "Unlicensed person" also includes housekeeping, maintenance, and administrative staff for whom it is foreseeable that the person will come in direct contact with patients.