

**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 No facility shall employ or use the contract services of an unlicensed person if:
- (a) The person has been convicted of a criminal offense listed in section 4705.1 of these rules within the seven (7) years prior to a criminal background check conducted pursuant to these rules; or
- (b) The person is listed in the District of Columbia Nurse Aide Abuse Registry.
- 4701.2 Except as provided in section 4701.6, each facility shall obtain a criminal background check, and shall either obtain or conduct a check of the District of Columbia Nurse Aide Abuse Registry, before employing or using the contract services of an unlicensed person.

- 4701.3 Before offering to employ or use the contract services of any unlicensed person, the facility shall inform the prospective employee or contract worker of the criminal background check requirement, and shall require the applicant to provide the information necessary for the initiation of the background check.
- 4701.4 The facility shall obtain a criminal background check from the Metropolitan Police Department, from the U.S. Department of Justice, or from a private agency.
- 4701.5 The criminal background check shall disclose the criminal history of the prospective employee or contract worker for the previous seven (7) years, in all jurisdictions within which the prospective employee or contract worker has worked or resided within the seven (7) years prior to the check.
- 4701.6 A facility may offer to employ or use the contract services of an unlicensed person if the person provides the following to the facility on or before the date of employment or commencement of contract service:
- (a) Proof that a criminal background check and a check of the Nurse Aide Abuse Registry have been conducted within the forty-five (45) days immediately preceding the date of employment;
 - (b) Proof that the results of the criminal background check indicate that the person is in compliance with section 4705;
 - (c) Proof that the person's name is not on the Nurse Aide Abuse Registry; and
 - (c) A sworn statement affirming that there are no criminal matters pending against the person, and denying the existence of any relevant convictions.
- 4701.7 Any person who makes a false statement, concerning any material matter, on a sworn statement required by these rules shall be subject to prosecution.
- 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 Failure by a facility to obtain such a contract agreement shall not be a defense to a charge of non-compliance with the Act or with these rules.

4702. FEES

- 4702.1 In order to obtain the criminal background check, the facility shall pay the fee that is established and charged by the government entity or private agency that provides the criminal background check results at

the facility's request.

- 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.).

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.

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.).

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.