

## **Client Advisory: New State Requirement for Long Term Care Facilities Requires Employers Adds Extra Check-Time and Costs**

A new background check system being run by the Department of Public Health will have an impact on the employment process of Long Term Health Facilities. Connecticut was one of several states to receive federal funding for the National Background Check Program (NBCP). The money was to be used for establishing a criminal background check program for long-term care facilities and providers.

The Connecticut Department of Public Health has established a computerized system referred to as the Applicant Background Check Management System (ABCMS) and requires that newly-hired direct care employees of long-term care be the subject to the state's criminal history records checks using the ABCMS system. The system will be operational on April 1<sup>st</sup>. Because this system has generated a number of questions from employers, we believe it would be helpful to provide the client of Research Services information to clarify the law, and the issues that they should consider with respect to this development.

### **What the Law States**

The long-term care background check program is authorized by a state law, CGS 19a-491 and is being operated by the Connecticut Department of Public Health. The law provides that before a Long Term Care Facility hires an employee, contractor and some regular volunteers who have "direct access and provide "long term care" to patients or residents of the facility, the facility must conduct a background check using the Department of Public's Health Applicant Background Check Management System (ABCMS).

### **Use of the System**

Long-term care facilities and providers subject to the background check may register with the ABCMS through the Department of Public Health. The user then has an obligation to conduct checks on applicants, contractors and regular care-providing volunteers who will have "direct access" and provide "long term care services" to patients or residents. The check must be conducted before an offer of employment is made. Checks are not required for employees already employed and a new check is not required for someone who has been the subject of the ABCMS check. Volunteers must also be fingerprinted.

### **Disqualification-Who Decides and Why?**

The decision to disqualify an applicant **is not the employers**; the Department of Public Health's program staff makes the determination. The law specifies the disqualifying offenses as:

Conviction of program-related crimes-any criminal offense related to Medicare or a state health care program, convictions for patient abuse, health care fraud, theft or embezzlement, convictions for controlled substances, or the abuse or theft of state or federal property.

### **Fingerprints**

In addition, once the background check has been completed, the applicant must be fingerprinted. The applicant would take a Fingerprinting Authorization Form which is generated by the ABCMS to one of the State Police Troops and Districts designated. The applicants must also bring acceptable photo identification. They may not merely go to the local police department. The applicant has 30 days from the date of authorization to have the fingerprinting done.

### **Cost**

The cost of the services, that is, the bottom line is \$79.75 although theoretically, ABCMS check is free until the grant money is depleted. The State Police charge \$15.00 for fingerprints, \$50.00 for the Connecticut criminal history search and the FBI charges \$14.75 for the record check; the total, \$79.75. After the money runs out, you will have to pay for the checks.

### **Time**

The Department of Public Health acknowledges that while the automatic determinations by the system are quick, the finger printing and FBI processing can take six weeks. Therefore, an applicant can be hired conditionally for a period of no more than 60 days.

### **A Word About Problems**

The Department of Public Health provided set of questions and answers concerning the new system. One of them should be carefully considered by employers:

***Q: I received a Connecticut State Police “Rap Sheet” that has a criminal history, but the applicant has been determined eligible for employment in the ABCMS, why?***

***A: Pursuant to Section 19a-491c, only individuals with a disqualifying offense as identified under the law are ineligible for employment in a long term care facility, See C.G.S 19a-491 c (e).***

It is perhaps the most important question and answer provided. Our clients should be aware that merely because the ABCMS establishes eligibility based on a narrow range of offenses. This may not be the qualified equivalent to work in a client’s organization. Moreover, the ABCMS provides the disqualified individual with the right to contest the eligible/ineligible determination that will be made by the Department of Public Health employees.

The Department also indicates that the Department of Public Health will not disclose information from the federal rap sheets to the employer or anyone outside the department. .

### **Other Problems-Clerical Errors**

The Department of Public Health also cautions uses of the system to submit accurate data “as you cannot correct certain information if you enter it incorrectly” so states the department. The Department goes on to say, ‘For example, the applicant’s name as it appears in the ABCMS **MUST MATCH** (*emphasis theirs*), the photo identification that the applicant brings to one of the designated Connecticut Police Troop Locations. Please double check the applicant data you’ve entered before saving it into the ABCMS.”

## **Our Recommendation**

**Research Services conduct hundreds of thousands background checks every year. We have received training on the ABCMs and can perform these checks for you. However, while we appreciate the objectives of the legislation and the effort by the Department of Public Health in setting up the system, we are also wary of its limitations,-its cost, the time involved, and the narrowness of the information that can render an applicant eligible for employment. Our experience shows that many employer conduct background checks and find in them information by which they disqualify applicants who would be nonetheless “eligible” by the Department of Public Health. Moreover, we suspect our client will not be comfortable with a determination pertaining to their hiring an applicant that is being made by state or federal agency.**

**On this basis, we recommend the following:**

- 1. We believe that the background checks we currently perform for you should continue. They are fast, inexpensive and complete;**
- 2. In the event you determine though your employment process and our background check that you have a candidate whom should not be hired, follow your current employment process.**
- 3. In the event you have a candidate that you would like to hire, then advise us. We will run the ABCMS check and arrange for the finger printing.**
- 4. Use the ABCMS check only for the final candidates. The ABCMS system does not determine qualifications; it determines eligibility in accordance with a set of narrow standards.**

We will be happy to provide our Long Term Care Facility Clients with additional information. Please feel free to contact us concerning your integrating the ABCMS check into your current employment process. We hope you find this information helpful.

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