



Criminal Background Check and Security Check Policy for Nursing Facility Management in Louisiana

Introduction

All of our facilities are committed to the health, safety, and welfare of our residents. Part of fulfilling this commitment requires ensuring we hire the best professionals available to care for our residents. For this reason and as required by state and federal law, our facilities are required to perform criminal background checks and security checks on any non-licensed personnel who will provide nursing care, health-related services, or supportive assistance to residents of our facilities. A "security check" is the use of personal identifiers, such as name, social security number, date of birth, and/or driver's license number, to search the national sex offender public registry. The Office of State Police or a private agency authorized by the Office of State Police may conduct these checks. The following is a summary of various methods used for background checks and the requirements for each.

- A. Louisiana Background Check Requirements- Nursing facilities are required to conduct a criminal history and security check "prior to ...making an offer to employ or to contract with a nonlicensed person or any licensed ambulance personnel to provide nursing care, health-related services, medic services or supportive assistance to any individual." A "nonlicensed person" is considered to be "any person who provides for compensation nursing care or other health-related services directly related to patient care to residents in or patients of a nursing facility."
 1. *Before requesting the background check*- The employer must notify "each applicant ...that the employer is required to obtain a criminal history record and perform a security check" before the applicant may be hired and must obtain "written permission" for the release of such information (La. R.S. 40:1203). [see pg. 6 for a sample form]
 2. *Requesting the background check*- The employer must request in writing that the office of the state police, or any other authorized agency, "conduct a criminal history and security check...and shall provide ...any relevant information required to conduct the check (La. R.S. 40:1203.2 (B)). The background check fee is \$26, and the results will take up to 30 days. The employer may also request the criminal history and security check be performed using the fingerprints of the applicant. If fingerprints are requested and obtained, the samples shall be sent to the Louisiana Bureau of Criminal Identification and Information. (La. R.S. 40:1203.2 (B)(2)).
 3. *If hiring a nurse aide* – If your facility is hiring a nurse aide, the facility must verify through the Louisiana's Certified Nurse Aide Registry that the certified nurse aid is currently certified and has current state registration (La R.S. 40:2120.55).
 4. *If using a staffing services company* – Employers shall only contract for staffing services with businesses who comply with Louisiana law regarding mandatory criminal history and security checks. In addition, the staffing service shall send accompanying letters certifying that the contracted staff meet license and certification standards of their profession and have undergone and passed criminal background checks. (La. R.S. 40:1203.2(F)).

5. *Temporary Employment of nonlicensed person* – An employer may make an offer of temporary employment to a nonlicensed person...pending the results of the criminal history and security check on the person” (La. R.S. 40:1203.2(C)(1). If the employer chooses to hire the employee on a temporary basis, it must notify the office of state police or authorized agency within seventy-two (72) hours after the person accepts temporary employment. If the temporary employee is found to be ineligible for employment for any reason state above, “the employer shall immediately terminate the person’s employment.” Furthermore, they will not be eligible for unemployment compensation (La. R.S. 40:1203.6).

B. Results of Criminal History Check and Security Check

1. If the criminal history check or security check shows that the applicant (who is a nonlicensed person or licensed ambulance personnel) has been convicted of or been convicted of the attempt to commit or conspiracy to commit one of the crimes listed below, under Louisiana law, the applicant must not be hired. If the employee is working under a temporary offer of employment, the employee must be immediately terminated. These crimes are:

- a. La. R.S. 14:28.1: Solicitation of Murder
- b. La. R.S. 14:30: First Degree Murder
- c. La. R.S. 14:30.1: Second Degree Murder
- d. La. R.S. 14:31: Manslaughter
- e. La. R.S. 14:32.6: First-Degree Feticide
- f. La. R.S. 14:32.7: Second Degree Criminal
- g. La. R.S. 14:32.12: Assistance to Suicide
- h. La. R.S. 14:34: Aggravated Battery
- i. La. R.S. 14:34.1: Second Degree Battery
- j. La. R.S. 14:34.7: Aggravated Assault
- k. La. R.S. 14:35.2: Simple Battery of the Infirm
- l. La. R.S. 14:37: Aggravated Assault
- m. La.R.S.14:37.1: Assault by Drive-by Shooting
- n. La. R.S. 14:37.4: Aggravated Assault with a Firearm 1
- o. La. R.S. 14:38.1: Mingling Harmful Substances
- p. La. R.S. 14:42: Aggravated Rape
- q. La. R.S. 14:42.1: Forcible Rape
- r. La. R.S. 14:43: Simple Rape
- s. La. R.S. 14:43.1: Sexual Battery
- t. La. R.S. 14:43.2: Second Degree Sexual Battery
- u. La. R.S. 14:43.3: Oral Sexual Battery
- v. La. R.S. 14:43.5: Intentional Exposure to AIDS Virus
- w. La. R.S. 14:44: Kidnapping and False Imprisonment
- x. La. R.S. 14:44.1: Second Degree Kidnapping
- y. La. R.S. 14:46.2: Human Trafficking
- z. La. R.S. 1 4:51: Aggravated Arson
- aa. La. R.S. 14:60: Burglary
- bb. La. R.S. 14:62.1: Simple Burglary of a Pharmacy
- cc. La. R.S. 14:64: Armed Robbery
- dd. La. R.S. 14:64.1: First Degree Robbery
- ee. La. R.S. 14:64.4: Second Degree Robbery

- ff. La. R.S. 14:66: Extortion
- gg. La. R.S. 14:89: Crime Against Nature
- hh. La. R.S. 14:89.1: Aggravated Crime Against Nature
- ii. La. R.S. 14:93.3: Offenses Affecting the Health and Safety of the Infirm
- jj. La. R.S. 14:93.4: Exploitation of the Infirm
- kk. La. R.S. 14:93.5: Sexual Battery of the Infirm
- ll. Distribution or possession with the intent to distribute controlled dangerous substances as listed in Schedules I through V of the Uniform Controlled Dangerous Substances Act.

- If the employer provides care or service to a person under the age of 21, convictions of the following offenses are also prohibited: (1) Aggravated kidnapping of a child [La. R.S. 14:44.2], (2) Misdemeanor Carnal Knowledge of a Juvenile [La. R.S. 14:80.1], (3) Molestation of a Juvenile or person with physical or mental disability [La. R.S. 14:81.2], and (4) Cruelty to Juveniles [La. R.S. 14:93]. A conviction for an attempt or conspiracy to commit any of the above mentioned crimes is also prohibited.
- The law also prohibits the hiring of anyone convicted of a felony offense involving theft, pursuant to R.S. 14:67, or theft of assets of an aged person or person with disability, pursuant to R.S. 14:67.21 in excess of five hundred dollars **OR** in any case in which the offender has been previously convicted of theft, pursuant to 14:67, or theft of assets of an aged person or person with a disability, pursuant to R.S. 14:67.21, regardless of the value of the instant theft. Any conviction or conspiracy to commit any of the preceding offenses is also prohibited.
- The provisions of this section shall not apply to a person when he/she has received a pardon of the conviction or who has had the conviction expunged.
- Care should be taken before hiring anyone with a criminal record, even if the crime is not listed above. Although Louisiana law does not require that a person be terminated or denied employment for crimes not listed above, caution should be taken in deciding to hire any person with a criminal record with the safety of the residents as the foremost consideration. The facility could be exposed to liability for acts of this person while an employee, whether the crime is listed or not.

C. Fair Credit Reporting Act- If your facility uses a third party company to run a background check on a prospective employee, the resulting documentation will be called a “consumer report”. Consumer reports can include information from a variety of sources including credit reports and criminal records. When you use consumer reports to make employment decisions, including hiring, retention, promotion or reassignment, you must comply with the Fair Credit Reporting Act (FCRA). Accordingly, you must take certain steps before you can get a consumer report, and before and after you take an adverse action. The following is an analysis of the requirements.

1. *Before you get a consumer report-*

- (i) **You must** tell the applicant or employee that you might use the information in their consumer report for decisions related to their employment. This notice must be in writing and in a stand-alone format. The notice cannot be in an employment application. You can include some minor additional information in the notice, like a brief description of the nature of the consumer reports, but only if it does not

confuse or detract from the notice.

- (ii) **You must** get written permission from the applicant or employee. This can be part of the document you use to notify the person that you will get a consumer report. If you want authorization to allow you to get consumer reports throughout the person's employment, make sure you say so clearly and conspicuously.
 - (iii) **You must** certify compliance to the company from which you are getting the applicant or employee's information. You must certify that you did all of the following: notified the applicant or employee and got their permission to get the report, complied with all of the FCRA requirements, and will not discriminate against the applicant or employee or otherwise misuse the information, as provided by any applicable federal or state equal opportunity laws or regulations.
2. *Before you take an adverse action-* Before you reject a job applicant, reassign or terminate an employee, deny a promotion or take any other adverse employment action based on information in a consumer report:
- (i) **You must** give the applicant or employee notice that includes a copy of the consumer report you relied on to make your decision, and
 - (ii) **You must** give the applicant or employee a copy of A Summary of Your Rights Under the Fair Credit Reporting Act (which the company that gave you the report should have given to you.). This allows the person the opportunity to review the report and tell you if it is correct
 - (iii) **You must** then wait a reasonable period of time before taking any adverse employment action.
3. *After you take an adverse action-* If you take an adverse action based on information in a consumer report, you must give the applicant or employee a notice of that fact- orally, in writing or electronically. The notice must include the following:
- (i) The name, address, and phone number of the consumer reporting company that supplied the report
 - (ii) A statement that the company that supplied the report did not make the decision to take the unfavorable action and can't give specific reasons for it; and
 - (iii) A notice of the person's right to dispute the accuracy or completeness of any information the consumer company furnished, and to get an additional free report from the company if the person asks for it within 60 days.

D. Medicare and Medicaid Facility Requirements

- If you facility receives Medicare and/or Medicaid residents, 42 CFR 483.13 requires all such nursing facilities not to employ individuals "who have been (A) found guilty of abusing, neglecting, or mistreating residents by a court of law; or (B) have had a finding entered into the State nurse aide registry concerning abuse, neglect mistreatment of residents or misappropriation of their property." There are no federal requirements to perform a background check, as each state is given deference to develop their own

background check procedures (see Louisiana section above).

However, Medicaid entities are prohibited from hiring “excluded persons.” Excluded persons are those who have: (1) convictions of program-related crimes; (2) convictions relating to patient abuse; (3) felony convictions related to health care fraud; and (4) felony convictions relating to controlled substances. 42 U.S.C. 1320a-7(a). The Office of Inspector General (“OIG”) maintains the List of Excluded Individuals and Entities (“LEIE”), and any entity who hires a person listed on the LEIE may be subject to civil monetary penalties. OIG may impose penalties of up to \$10,000 for each item or service furnished by an excluded person. 42 C.F.R. § 1003.102

While the OIG does not require providers to review the LEIE before making hiring decisions, it advises providers to review the LEIE monthly as best practice.

In addition, pursuant to Medicaid regulations, the Louisiana Department of Health has now implemented its own database for individuals and entities that have had adverse actions imposed, found at <https://adverseactions.dhh.la.gov>. LDH advises that providers check the website upon hire and every month thereafter.

E. Confidentiality

All criminal history checks and security checks are to be kept confidential. These records shall only be seen and used by the employer making the request. This information shall not be released to any other person or agency unless the person being investigated gives written consent or a court order demands it.

When you are done using a consumer or criminal history report, you must securely dispose of the report and any information you gathered from it. That can include shredding, pulverizing or shredding documents and disposing of the electronic information so that it can't be read or reconstructed.

Acknowledgment of the Need for a Criminal History Check and Security Check

I understand that this facility is committed to the health, safety, and welfare of its residents. I also understand that as part of meeting this commitment and as required by Louisiana Law, the facility must conduct a criminal history check and security check before a final job offer is made. A "security check" is the use of my personal information, such as my name, social security number, date of birth, and driver's license number, to check the national sex offender's registry. I understand that no job offer will be final until the facility receives the results of the criminal history check and security check and has had a chance to evaluate them. Most importantly, I understand that once the results of the checks are received, I can be denied a job offer or terminated if I have begun work temporarily. Even if I am extended a final job offer, I understand that I am still an employee at-will, which means the facility can terminate my employment or I can terminate my employment with the facility at any time.

Applicant's Signature

Date

Signature of Company Representative

Date