

# Sullivan County Department of Public Health

<p><b>Title:</b> Criminal History Record Checks (CHRC)</p> <p><b>Number:</b> AG-10</p> <p><b>Page Number:</b> 1 of 7</p>	<p>Original Approval: 9/06</p> <p>Reviewed/ revised: 9/07, 10/07, 9/08, 6/09, 8/09, 11/09, 6/10, 12/13, 9/16, 11/18, 6/19, 3/24</p>
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**Statement/ Purpose:**

To comply with NYCRR Title 10, Part 402- Criminal History Record Check

**Authority:**

NYCRR Title 10, Part 402 – Criminal History Record Check

**Application:**

All SCDPH employees

**Terminology:**

**Responsible Party:**

Director of Patient Services

**Cross-Reference:**

**Procedure:**

1. If there is ever a change in the designation of one of the two Authorized Persons (AP), which includes the Public Health Director, Director of Patient Services and the Administrative Assistant, Form #106- Revocation of Authorized Person Designation From- needs to be completed, as well as another Form #101 which designates an AP. This needs to be sent to the CHRC unit at PO Box 2607, Albany, NY 12220 or faxed to (518) 474-7477. The 2 designees are Director of Patient Services and Administrative Assistant.
2. Determine whether the potential employee is an “employee in direct care and supervision” and is subject to a criminal history record check (for the CHHA, this if for Home Health Aids & Personal Care Aides only), which means: *“Any unlicensed person employed by or used by a certified home health agency, licensed home health care program or long term health care services program, pursuant to Article 36 of the Public Health Law, providing face-to-face care following the professional or paraprofessional plan of care developed for the individual patient in accordance with Section 700.2”* of the above-mentioned Title.
3. The agency will protect the safety of patients receiving services from temporary employees as indicated in NYCRR Title 10, Part 402 Criminal History Record Check, Section 402.4, (b)(2)(ii).
4. If the employee is deemed to be subject to a CHRC, the employee must complete Form #102- Consent Form & Attestation.
  - a. This form should be filed in the employee’s personnel file. Prior to completion of the form, the potential employee will be informed of their rights.
    - i. Informed consent- The consent form will be reviewed with the potential employee and any

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questions answered.

- ii. Right to withdraw- The potential employee will be informed that they “have the right to withdrawn my application for employment, without prejudice, any time before employment is offered or declined, regardless of whether an agency, DOH or I have reviewed my criminal history information”.
  - iii. Challenge of determination- The potential employee has the right to request a correction of the criminal history found on the background check.
5. The Administrative Assistant should complete a 428 (Report of Personnel Change form) on the employee- if the employee is appointed from a list and is permanent. The 428 should indicate that it is a *permanent appointment contingent upon the CHRC results*. If the individual is being hired on a provisional basis, the 428 should indicate that they are provisional and their *appointment is also pending CRHC results*. This is to be completed within 15 calendar days of hire.
6. **All CHRC fingerprint requests must be submitted electronically (effective 7/15/08), using the 103-E form.** Instructions for completing 103-E forms can be found on the HPN- CHRC page. The AP should submit this on the individual.
7. A response as to whether an individual needs to be fingerprinted OR they already have been fingerprinted (which is considered an “Expedited Review” and does not require any payment) will be received electronically from the CHRC Unit within 24-48 hours of their receipt of the 103-E form.
8. **Procedure for Fingerprinting:**  
When notification is received from the CHRC Unit on the CHRC file viewer that an individual should be fingerprinted/ sent to L1 for fingerprinting:
- a. Let the Full Charge Bookkeeper know that a PO will be needed for fingerprinting (cost of fingerprinting is \$105.75) and for who- they will have done by Purchasing and will give the AP a copy of the PO.
  - b. The AP will be notified within 24 hours (after submitting form 103E) by the CHRC unit whether the individual needs to be fingerprinted or not. If they do, we will get notification to contact L1 to schedule a fingerprinting appointment. This will come through the HIN viewer. A copy of this notification should be taken along to the fingerprinting appointment by the individual.
  - c. The AP gets several dates/ times that the individual would be available.
  - d. The AP calls L1 Enrollment Services (1877-472-6915) or goes on the website L1enrollment.com and sets up an appointment within 7 days.
  - e. The AP gives L1 the information they as for OR enters it online.
  - f. The AP gives L1 the county’s account #: **NYB000287**
  - g. The individual should go to their appointment with proof of identity (two forms, one of which must be a picture ID), and should bring along the CHRC notification letter, and the PO.
  - h. A picture of the individual will also be taken at the appointment.
  - i. In the meantime, a voucher should be prepared (see attachment)- the Full Charge Bookkeeper can do this in the Administrative Assistant’s absence.
  - j. The individual will be given a receipt after they are fingerprinted- which should be brought back to the office and give to the AP.
  - k. Once the AP gets the CHRC results (in HIN viewer), the receipt should be signed by the AP **AND** the date the CHRC results were received should be put on the receipt by the AP. The receipt should then be attached to the voucher and sent to the appropriate office for the voucher to be signed.
  - l. If fingerprints are rejected, the AP will be notified and an appointment should be rescheduled with L1, but the cost is then only \$11.50.
  - m. A copy of the results should be printed out and placed in the employee’s personnel file. The Public Health Director should be informed of the results immediately.
9. **CRHC Results:** If CHRC results indicate that the employee has a criminal record, the AP and Public Health

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Director are to be notified immediately. Refer to NY Codes, Rules, & Regulations (NYCRR), Title 10 Health Section 402.7 and 402.8 on how to proceed (see attached).

**For results indicating a CHARGE for any felony or misdemeanor, a determination of eligibility for employment may be held in abeyance by the NYS Department of Health until the final resolution of the criminal charge. During the period of abeyance, the employer shall not allow the prospective employee to provide direct care or supervision to patients, residents, or clients.**

10. Supervisory responsibilities while waiting for CHRC results (to protect the safety of patients receiving services from potential employees): Supervision is done pursuant to Section 402.2 of NY Codes, Rules & Regulations (NYCRR), Title 10 Health. A supervisory checklist (attached) is completed as required by Section 402.4 of NYCRR and filed in the employee's personnel file until such time as the CHRC results are received. Provisional employees should be supervised regularly on a weekly basis.

**Supervisors meet formally with the provisional employee and utilize the Supervisory Check list for Personal Care Aid/ Home Health Aids to guide oversight of professional conduct, compliance with applicable SCPHS policies, address any safety concerns, and identify issues requiring additional instruction, support, or training.**

11. Copies of any/ all correspondence from CHRC are filed in the employee's personnel file which can only be viewed by management confidential staff. Personnel files are retained in a locked cabinet during employment and after retirement.
12. When an employee (who was subject to CHRC) leaves the agency and is no longer employed by the agency, OR is no longer working in a position defined in Section 402.3(i) of NYCRR, OR the employee withdraws their application and is no longer being considered for employment, Form 105-E must be submitted electronically **immediately**, but within no later than 30 calendar days after the event.
13. The Administrative Assistant will send a ***Criminal History Record Checklist*** to the Personnel department, on a semi-annual basis, and will keep such lists/ rosters on file.

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Supervisory Check List for Personal Care Aide/Home Health Aide  
(Prior to Criminal History Background Check results being received)  
Weekly in home supervisory visit while aide is present

Employee\_\_\_\_\_

Date\_\_\_\_\_

	SATISFACTORY	UNSATISFACTORY
Compliance with dress code	_____	_____
Evidence of Photo ID	_____	_____
Appearance is appropriate	_____	_____
Attitude: courteous and cooperative	_____	_____
Response to Client's needs	_____	_____
Client hygiene and grooming	_____	_____
Documentation of care	_____	_____
Interaction with client	_____	_____
Interaction with client family/caregiver	_____	_____
Reports appropriately to RN	_____	_____
Develops efficient routine	_____	_____
Equipment care and safety	_____	_____
Compliance with Standard Precautions	_____	_____
Safe client transfers	_____	_____

Other Comments

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Client Signature\_\_\_\_\_ Date\_\_\_\_\_

RN Signature\_\_\_\_\_ Date\_\_\_\_\_

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**Effective Date:** 12/02/2009

**Title:** Section 402.7 - Department Criminal History Review

Section 402.7 Department Criminal History Review.

(a) After reviewing a criminal history record of an individual who is subject to a criminal history record check pursuant to this Part, the Department and the provider shall take the following actions:

(1) Where a prospective employee of a provider has no criminal history information, the Department shall promptly advise the provider that the Department will not issue a disapproval for employment, is not directing the provider to issue a disapproval, and the provider may act on the application in its own discretion.

(2) Where the criminal history information of a prospective employee reveals a felony conviction at any time for a sex offense, a felony conviction within the past ten years involving violence, or a conviction for endangering the welfare of an incompetent or physically disabled person pursuant to section 260.25 of the Penal Law, or where the criminal history information concerning such prospective employee reveals a conviction at anytime of any class A felony, a conviction within the past ten years of any class B or C felony, any class D or E felony defined in articles 120, 130, 155, 160, 178 or 220 of the Penal Law or any crime defined in sections 260.32 or 260.34 of the Penal Law or any comparable offense in any other jurisdiction, the Department shall propose disapproval of such person's eligibility for employment unless the Department determines, in its discretion, that the prospective employee's employment will not in any way jeopardize the health, safety or welfare of patients, residents or clients of the provider.

(i) The Department shall provide to the provider and the prospective employee, in writing, a summary of the criminal history information along with the notification identified in this paragraph. Upon the provider's receipt from the Department of a notification of proposed disapproval of eligibility for employment, the provider shall not allow the prospective employee to provide direct care or supervision to patients, residents, or clients of such provider until receipt of a final determination of eligibility for employment from the Department.

(ii) In cases where the Department determines that the prospective employee's employment will not in any way jeopardize the health, safety or welfare of patients, residents or clients of the provider and therefore neither issues a disapproval of eligibility for employment nor directs the provider to issue a disapproval, the provider may act on the application in its own discretion.

(3) Where the criminal history information of a prospective employee reveals a conviction for any crime other than one set forth in paragraph (2) of this subdivision, the Department may, consistent with article 23-A of the Correction Law, propose disapproval of eligibility for employment.

(i) The Department shall provide to the provider and the prospective employee, in writing, a summary of the prospective employee's criminal history information along with the notification identified in this paragraph. Upon the provider's receipt from the Department of a notification of proposed disapproval of eligibility for employment, the provider shall not allow the prospective employee to provide direct care or supervision to patients, residents, or clients of such provider until receipt of a final determination from the Department.

(ii) In cases where the Department does not issue a disapproval of eligibility for employment, the provider may act on any application for employment in its own discretion, consistent with article 23-A of the Correction Law.

<http://w3.health.state.ny.us/dbspace/NYCRR10.nsf/11fb5c7998a73bcc852565a1004e9f8...> 12/16/2013

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(4) Where the criminal history information of a prospective employee reveals a charge for any felony, the Department shall hold the determination regarding a prospective employee's eligibility for employment in abeyance until the charge is finally resolved. Upon receipt of notification from the Department of the abeyance, the provider shall not allow the prospective employee to provide direct care or supervision to patients, residents, or clients of such provider before final resolution of the criminal charge.

(5) Where the criminal history information of a prospective employee reveals a charge for any misdemeanor, the Department may, after review of the severity of the misdemeanor, hold such determination in abeyance until the charge is finally resolved. If the Department holds such determination in abeyance, the provider shall not allow, upon receipt of notification of such determination from the Department, the prospective employee to provide direct care or supervision to patients, residents, or clients of such provider before final resolution of the criminal charge.

(b) Prior to making a final determination to disapprove a prospective employee's eligibility for employment pursuant to subdivision (a) of this section, the Department shall afford the prospective employee an opportunity to explain in writing, within thirty calendar days from the date the notification was mailed to the prospective employee, why the prospective employee's eligibility for employment should not be disapproved. This notice shall be sent in a manner of mailing that is capable of verifying the date of mailing.

(c) Where the Department directs a provider to disapprove eligibility for employment of a prospective employee, or terminate a temporarily approved prospective employee based on the criminal history information, the provider shall notify such prospective employee that such criminal history information is the basis of the disapproval. Such notification shall advise the prospective employee that a copy of the summary of the criminal history information provided by the Department to the provider is available from the provider upon written request by the prospective employee.

(d) Documentation and confidentiality requirements.

(1) Only an authorized person(s) or his or her designee who shall be employed by the provider and the subject individual shall have access to criminal history information received by a provider pursuant to this Part. However, criminal history information may be disclosed by an authorized person(s) to other persons who directly participate in any decision by the provider with regard to such subject individual, to which this criminal history information is relevant.

(2) Each authorized person(s) and any other party to whom such criminal history information is disclosed shall keep criminal history information strictly confidential.

(3) Any party who willfully permits the release of any confidential criminal history information obtained from a criminal history record check pursuant to this section to parties not authorized to receive it in accordance with article 28-E of the Public Health Law and section 845-b of the Executive Law shall be guilty of a misdemeanor pursuant to section 12-b of the Public Health Law.

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**Effective Date:** 12/02/2009

**Title:** Section 402.8 - Notifications of Criminal Charges or Convictions Incurred Subsequent to Hiring

Section 402.8 Notification of Criminal Charges or Convictions Incurred Subsequent to Hiring.

(a) Upon receiving notification from the Division that there is a pending criminal action or proceeding, or conviction, with regard to an employee, the Department shall promptly notify an authorized person(s) of a provider of the allegation or new conviction.

(b) The provider shall determine whether the action or proceeding or conviction presents a threat to the health, safety and well-being of a resident or patient.

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