

## **Frequently Asked Questions**

*The following is to be used by entities licensed by the Department of Health to assist in implementing the requirements of Act 179 of 2006 and Act 73 of 2007 relating to record checks for employees.*

### **1.) What are the legislative requirements for completing record checks?**

Act 179 of 2006 amended the Child Protective Services Law (Title 23 Pa.C.S., Chapter 63) (CPSL) at different sections. Section 6344.2 was added to require any prospective employee engaging in an occupation with a “significant likelihood of regular contact with children, in the form of care, guidance, supervision or training” to obtain a Pennsylvania Criminal History Record Check through the Pennsylvania State Police and a Pennsylvania Child Abuse History Record Check through the Department of Public Welfare. This specific requirement for Act 179 of 2006 was effective January 28, 2007. However, the Department of Health will require that employees hired beginning July 1, 2008 obtain these record checks..

Act 73 of 2007 amended the CPSL to require that in addition to the Pennsylvania Criminal History Record Check and the Pennsylvania Child Abuse History Record Check, those affected employees in Section 6344.2 will also need a fingerprint based national criminal history record check. This specific requirement for Act 73 of 2007 was effective July 1, 2008.

### **2.) How do individuals obtain these record checks?**

The Pennsylvania Criminal History Record Check must be done through the Pennsylvania State Police and can be obtained through two different means. The first is that individuals can download a form at [www.dpw.state.pa.us](http://www.dpw.state.pa.us). There are instructions on completing and submitting the form on this website.

The second way is that agencies can use the Pennsylvania Access to Criminal History Web Based System (P.A.T.C.H.) to complete these record checks.

Pennsylvania has entered into a contract with Cogent Systems to be the provider for conducting the fingerprint based national criminal history record checks. Individuals must register on-line at [www.pa.cogentid.com/dpw](http://www.pa.cogentid.com/dpw). If an individual does not have access to a computer and the internet, they may register by calling (888) 439-2486. Once registration is complete, the individual can go to any location site throughout the state to have their fingerprints electronically scanned. The fingerprints are then sent to the FBI for processing and then back to the Department of Public Welfare where the results will be interpreted and a results letter will be mailed to the individual.

**3.) What specific employees are required to obtain these record checks?**

The legislative requirement states that any “prospective employee applying to engage in occupations with a significant likelihood of regular contact with children, in the form of care, guidance, supervision or training” is required to obtain these record checks. Entities should work with their solicitors and human resource directors to create a reasonable policy as to which employees meet this requirement.

**4.) There are times when employees need FBI record checks because of requirements by the Department of Aging. Can an individual use a FBI record check obtained through the Department of Aging to fulfill the requirement of Act 73 of 2007?**

No, it will be necessary for an individual who has obtained an FBI background check under the Older Adult Protective Services Act (OAPSA) to undergo another FBI background check from DPW for CPSL compliance. If an individual “passes” the OAPSA background check, the only document sent to that individual by the FBI is a letter confirming that they are cleared to work. Because the list of prohibited offenses is different between OAPSA and the CPSL, approval or disapproval under OAPSA does not necessarily mean approval or disapproval under CPSL. DPW needs to see the actual FBI “rap” sheet to determine if there are any convictions which would bar employment under the CPSL. This can only be obtained if the applicant submits fingerprints and a background check request to the FBI and the FBI sends the results to DPW for review under the CPSL.

**5.) There are times when employees need FBI record checks because of requirements by the Department of Education. Can an individual use a FBI record check obtained through the Department of Education to fulfill the requirement of Act 73 of 2007?**

The Department of Public Welfare will issue a results letter at no charge if the original results sent to the individual by the Department of Education are available for interpretation. The individual will need to mail these original results to the Department of Public Welfare requesting that they be interpreted and that a results letter be issued. This should be mailed to:

ChildLine and Abuse Registry  
Office of Children, Youth and Families  
Hillcrest Building, First Floor  
PO Box 2675  
Harrisburg, PA 17105-2675

**6.) There are times when employees may be foreign nationals that have FBI record checks through Homeland Security. Can an individual use a FBI record check obtained through Homeland Security to fulfill the requirement of Act 73 of 2007?**

FBI record checks conducted through Homeland Security may not be used to fulfill the requirement of Act 73 of 2007. The results of the FBI record checks must be interpreted to meet the requirements of the Child Protective Services Law in reference to which crimes prohibit employment. The manner in which the FBI record checks are conducted through Homeland Security do not allow interpretation. .

### **7.) How long do the results of the record checks take to be returned?**

The Department of Public Welfare is required by the CPSL to process the Pennsylvania Child Abuse History Record Check within 14 days. This requirement is being met by the Department. There are times when individuals do not complete the applications correctly and more information may be needed which often prolong the results being returned.

Current processing times at the time of this FAQ for the FBI clearances through Cogent/DPW and the PA Child Abuse Clearance are 0.57 days and 11 days respectively. With regards to the FBI clearance, this is the time it takes for the results to get to DPW for interpretation from the time the applicant has their prints electronically scanned through a Cogent approved site. If no record exists, the results letter is immediately printed and mailed. With mailing and processing time, these results are not taking longer than a week. There are exceptions to this, for example if there is a criminal record the results have to be interpreted. However, as long as the applicant is cooperative with getting additional information as requested, this is not taking longer than 3 weeks. The processing time for the PA Child Abuse History clearance is currently 11 days and then the appropriate time for mailing should be added. For questions regarding the processing time for the PA State Police Criminal History Clearance, please contact the PA State Police at (717) 783-9973. When agencies make a decision to hire an applicant, they should be proactive in ensuring that the applicant is completing the necessary requirements for the clearances in a timely manner to avoid delays in hiring.

Questions regarding the status of the Child Abuse History Record Check or the FBI Record Check may be directed to ChildLine at (717) 783-6211.

### **8.) Can an employee be hired prior to the results of the record checks being returned?**

If entities run into special circumstances where they need to hire an employee before the results of their record checks are returned, there is a provision in the CPSL that allows for a provisional hiring period. This period is to not exceed 30 days for in state residents and 90 for out of state residents. The employee must have applied for all three record checks and provide documentation of this, the employee must swear or affirm in writing that they are not disqualified from employment based on a criminal conviction or a determination made by a child abuse investigation which would prohibit employment, and that the employee not work alone with any children and that they work in the immediate vicinity of a permanent employee.

**9.) If an employee transfers from one job to another in the same entity, are they subjected to the requirements of obtaining the record checks or may any “grandfathered” employee (on payroll as of July 1, 2008) transfer into any position that entails regular contact with children in the form of care, training, guidance or supervision even if his/her prior position did not involve any such contact?**

No, if an employee is transferring into a position that entails a significant likelihood of regular contact with children in the form of care, guidance, supervision or training and they were not previously working in a position such as this, they are required to obtain an FBI clearance. Staff who were employed prior to July 1, 2008 do not need to obtain the information required by 23 Pa.C.S. § 6344(b) as a condition of continued employment in their present positions.

**10.) 23 Pa.C.S.A. Section 6344.2 specifically references subsections (b) and (c) from 23 Pa.C.S.A. Section 6344. Are we correct in understanding that all subsections from Section 6344 including the provisional hire subsection (m) and the grandfather/transfer subsection (k) also apply to “hospital personnel” referenced in Section 6344.2?**

Yes, § 6344.2 should be read in context with the existing provisions of the CPSL. While § 6344.2 specifically references § 6344 (b), the other provisions of § 6344 are also relevant, including § 6344 (k) (relating to existing or transferred employees) and § 6344 (m) (relating to provisional employees for limited periods).

**11.) If a provider voluntarily assumes the obligation to obtain the information required in subsection (b) of Section 6344 for all new hires after July 1, 2008 (including those who do not have regular contact with children), are we correct in understanding that any such once-cleared employee may subsequently transfer into any position within the organization that entails regular contact with children even if the position for which he or she was initially hired and cleared did not involve such contact?**

Yes, so long as the background checks are completed and no disqualifications are found the employee can transfer into a position in the same organization which would involve significant likelihood of regular contact with children.

**12.) In Section 6344.2, what is the scope of the term “hospital personnel?” Does it extend to physician practices, non-hospital-based therapy of all kinds, and home-based care for patients who are children?**

Under § 6344.2, “hospital personnel” is provided as an example of one the groups of individuals who are covered. The key focus of the section is on “prospective employees applying to engage in occupations with a significant likelihood of regular contact with children, in the form of care, guidance, supervision or training.” Any prospective

employees who fall within this classification must undergo the required background checks.

**13.) Does DOH intend to issue regulations or other technical guidance to implement the terms of the statute as applied to “hospital personnel” and “ambulatory surgical facility”? If so, when?**

The Department has a notice on its health care facility message board .

**14.) Is the Department developing an approach to provisional employment that reflects the realities of the home care setting.**

All parties are bound by the statutory provisions of § 6344(m) which lists the circumstances for provisional employment. Individuals who have applied for the required background checks may be employed on a provisional basis for a single period not to exceed 30 days for Pennsylvania resident applicants or 90 days for out of state applicants if all of the following conditions are met:

- 1) The applicant has applied for the necessary background checks and the applicant has provided a copy of the appropriate completed request to the facility’s administrator.
- 2) The administrator has no knowledge of information pertaining to the applicant which would disqualify the applicant from employment.
- 3) The applicant swears or affirms in writing that the applicant is not disqualified from employment.
- 4) If the information obtained from the background checks reveals that the applicant is disqualified from employment, the applicant shall be immediately dismissed by the administrator.
- 5) The administrator requires that the applicant not be permitted to work alone with children and that the applicant work in the immediate vicinity of a permanent employee.

These provisions were established by the General Assembly in statute and cannot be changed or varied by policy or regulation. If the provisional employee provides home care where there will be significant likelihood of regular contact with children in the form of care, guidance, supervision or training, then the provisional employee must be accompanied by a permanent employee.

**15.) As to the scope of the grandfather/transfer subsection (k) in Section 6344, are we correct in understanding that any employee on payroll as of July 1, 2008 is not required to obtain the information required in subsection (b) in the future as a condition of continued employment?**

Staff who were employed prior to July 1, 2008 do not need to obtain the information required by 23 Pa.C.S. § 6344(b) as a condition of continued employment in their positions.

**16.) Does the term “same organization” in the transfer subsection (k) include all affiliated entities within a network of health care entities, or just the corporate entity that actually employed the transferring employee?**

The term “same organization” in 23 Pa.C.S. § 6344(k) extends only to the same licensed entity that employed the transferring employee and not to other related entities within the same network or umbrella organization.

**17.) What is the rationale for classifying home health care services for children as “child care services”**

Staff who provide home health care services for children must obtain the clearances required by 23 Pa.C.S. § 6344(b) because they “engage in occupations with a significant likelihood of regular contact with children, in the form of care, guidance, supervision or training” pursuant to 23 Pa.C.S. § 6344.2.

**18.) How does the definition of “child-care service” in subsection (k) relate to “hospital personnel” since the definition of “child-care service” found in Section 6303(a) of the Child Protective Services Law (which apparently applies to the language used in Section 6344), focuses only upon those engaged in providing child care per se?**

We interpret subsection (k) of Section 6344 to include those individuals under 6344.2 to obtain the required clearances in subsection (b) of 6344.

**19.) From time to time, the hospital hires people who are under the age of 18 (summer jobs, etc.). Because they are considered children, does the supervisor of that “child” need to undergo background clearance and fingerprinting since they now have regular contact with a “child” under the age of 18?**

**We employ high school students who are 16 and 17 years old. They work in dietary as dishwashers between the hours of 5p/8p. Will we be required to run a child clearance for anyone who works in dietary from this date forward since they will be providing guidance/training to the high school students?**

Supervisors of employees under age 18 do not need background checks. In general, the Commonwealth does not consider the mere fact of an employer/employee relationship to constitute “care, guidance, supervision, or training” that would require a background check pursuant to 23 Pa.C.S. § 6344.2.

**20.) How do we deal with foreign nationals that have been hired and been fingerprinted by Homeland Security weeks earlier?**

**Are fingerprint based Federal Criminal History Records required for Foreign Nationals? (They go through extensive background checks to come into the country, and do not have a history within the U.S.) If so, they often do not get a SSN until they have been in the U.S. about 30 days. I believe it would be hard to comply with the law.**

Foreign nationals are not exempt from the requirements of 23 Pa.C.S. § 6344.2 and therefore must undergo background checks. The FBI does not require a SSN to process a request for fingerprinting.

**21.) Are hospice volunteers required to have a PA Criminal Check and PA Child Abuse History Clearance?**

Under the Medicare Conditions of Participation for hospices (42 CFR § 418.1 *et seq.*), all volunteers are classified as “employees.” Consequently, any volunteer in a Medicare certified hospice in Pennsylvania is an employee. However, unless the hospice in question routinely treats children it is unlikely that these employees would meet the CPSL requirement that they have a significant likelihood of regular contact with children.

**22). How often must the clearances be updated?**

There is no requirement in the CPSL for periodic updates.

**23). Is it possible to get child line clearances directly to the employer or at least have the ability to provide generic level clearances to the employers without specific detail?**

In compliance with the Child Protective Services Law regarding confidential information, ChildLine will not release the results letter to any agency. The results letter will only be released to the applicant. Because of legislative requirements ChildLine clearances must be processed within 14 days of receipt of the application. It is suggested that the applicant/agency track when the application is sent. The applicant should have the results within 3 weeks after that date.

**24.) What happens if my fingerprints are rejected by the FBI?**

Poor fingerprint detail may be caused by age, trade, or some other environmental/physical condition. In the case of a fingerprint rejection by the FBI, applicants are requested by the FBI to submit a second set of fingerprints, at no charge to the applicant. This second submission must occur before alternative means of conducting a federal background can be initiated. If an applicant receives an FBI rejection letter they must submit a second set of fingerprints if they wish to complete their applicant background check. Individuals should take their rejection letter and proper identification to the nearest Pennsylvania Fingerprint location. A second fingerprint submittal will be conducted at no charge. Individuals **do not** need to re-register for their second

fingerprinting session if they received an FBI rejection letter. If an individual's fingerprints are rejected a second time by the FBI, notification is forwarded to ChildLine by the FBI. ChildLine will then conduct a name based check based on the demographic information on the initial application. Results of the FBI name based record check are also forwarded by the FBI to ChildLine for interpretation.

**25.) An outpatient clinic has provided medical services to adults only. Recently, the clinic began accepting children and adolescents. As facilities change the focus of the services to include children and adolescents, must employees hired after July 1, 2008 get background clearances? The employee(s) were hired without the intent of significant likelihood of regular contact with children.**

If a facility chooses to re-focus the services provided to include children and adolescents, the facility must assure that employees hired after July 1, 2008 meet the requirements for Act 179 and Act 73. Whether the decision is made by the employee to change job locations or by the facility to expand services to include children and adolescents, background checks are required, as specified by the regulation if the job duties include significant likelihood of regular contact with children.

**26.) A facility's policy proposes to conduct background checks on staff hired after July 1, 2008 only if the volume of patients 18 years and younger in the particular department in which the employee works exceeds a pre-established percentage of the total department patient volume. The determination of the percentage of pediatric patients is proposed to be calculated annually.**

This is unacceptable to the PA DOH. Act 73 of 2007 requires that all employees hired after July 1, 2008 with significant likelihood of regular contact with children in the form of care, guidance, supervision or training must have a fingerprint based national criminal history record check prior to employment. The Department will not establish a percentage threshold for purposes of determining which employees should be screened by hospitals and which employees should not be screened. Consultation with the hospital's human resources department and legal counsel is recommended to determine if particular employees meet the requirements of the Act. Any policies developed and implemented should assure proactive compliance with the Act.

**27) An employee is hired prior to July 1, 2008, but does not start working until after July 1, 2008. Is an FBI background check required?**

If the individual is being paid for days prior to July 1, 2008, but for some reason wasn't physically working until after July 1, he/she is grandfathered. If the person is hired prior to July 1, 2008, begins work after July 1, 2008 and gets paid for days after July 1, 2008, then the appropriate clearances must be obtained.

**28) Can prospective employees submit fingerprints for FBI background checks before they move to PA?**

DPW will accept any fingerprint based federal criminal history that is less than one year old. If the applicant cannot appear in Pennsylvania to come to a Cogent site, he/she can check with the children and youth agency or state police in the home state to see what process is available there. If the home site cannot or will not submit fingerprints to the FBI for this purpose, the applicant can also get ink fingerprints and submit them to the FBI, but that will likely take longer than the electronic process. The FBI's process for submitting prints is at [www.fbi.gov/hq/cjisd/fprequest.htm](http://www.fbi.gov/hq/cjisd/fprequest.htm).

**29) Will DOH follow the policy adopted by DPW which permits individuals to be hired despite convictions for crimes which would otherwise ban employment?**

Yes. In response to a decision by Commonwealth Court in the case of Warren County Human Services v. State Civil Service Commission, 844 A2d. 70 (Pa. Cmwlth. 2003) , DPW issued a letter on August 12, 2004. [See attachment](#). Under this policy, facilities may hire employees with convictions that would otherwise bar them from working with children under the CPSL if certain conditions are met. The key requirement is that the convicted person must have a minimum five year aggregate work history in care dependent services since the conviction of the crime or release from incarceration and no record of misconduct. This determination must be made by the employer, not by DPW or DOH. If a facility follows the procedures outlined in the August 12, 2004 letter, DOH will not issue a citation for violation of the CPSL in the event that this individual is hired.

**30) Question: Does a health care professional who has already had a background check done by the health care organization that is their primary employer need to have an additional background check completed by a different health care organization where they work at on a prn basis.?**

All health care professionals who will have a significant likelihood of regular contact with children must undergo a fingerprint based national criminal history record check for all facilities where they provide health care services. When being audited by DOH for compliance, each health care organization must be able to provide proof that the health care professionals who have a significant likelihood of regular contact with children have completed this background check. Therefore, it is recommended that if the health care professional provides services at various facilities and the various facilities are part of a health care system, then the background check completed on behalf of the health care system is sufficient provided that the information is accessible to all entities. However, if services are provided at separate and unaffiliated facilities, then a separate background check for each separate facility where the health care professional provides services must be completed.