What You Need to Know About Criminal Background Checks

In 1996, the General Assembly ratified Senate Bill 1014 which requires criminal history record checks of unlicensed applicants for employment in nursing homes, adult care homes, and home care agencies. Over the past 13 years, this law (N.C. Gen. Stat. § 131E-265) has undergone many revisions, including recent amendments in 2004, 2005, and 2007. This purpose of this FOCUS newsletter is to provide an accurate summary of current state and federal law on nursing home criminal background checks and to answer some of the most frequently asked questions in this evolving area of North Carolina law.

Are nursing homes required to conduct criminal background checks on all applicants for employment?

No. This requirement applies only to unlicensed personnel in a nursing home, for example, certified nurse aides (CNAs), social workers, receptionists, maintenance workers, dietary workers, administrative staff, and housekeeping staff. For all practical purposes, the criminal background check requirement applies to ALL part-time and full-time staff in a nursing home except nurses (RNs and LPNs), nursing home administrators (see exception below, however), and therapists offered employment by the facility (speech, physical and occupational therapists).

Does a facility need to perform a criminal background check on an applicant for a nursing home administrator position?

No. A nursing home administrator criminal history record check is, however, performed as part of the administrator’s application for licensure through the North Carolina State Board of Examiners for Nursing Home Administrators. See G.S. 114-19.25.

What criminal background checks must be performed on applicants for unlicensed positions?

If the applicant has been a resident of North Carolina for less than 5 years, the offer of employment is conditioned on their consent to BOTH a State and national criminal history record check. The national check must include a check of the applicant’s fingerprints.

If the applicant has been a resident of North Carolina for 5 years or more, the offer is contingent on the applicant’s consent to a State criminal history record check only.

What other procedural requirements should I be aware of?

You must submit a request to the Department of Justice (DOJ) to establish a contract with the State Bureau of Investigation (SBI) Criminal Record Check Unit to conduct the national criminal history record check (and if you so choose the statewide criminal record), or to a private entity to
conduct the State record check, **within 5 days of making the conditional offer of employment.** DOJ can charge a reasonable fee for conducting the checks, but the fee for the State criminal check may not exceed **$14.00.**

**Do I need to maintain any records regarding the criminal history record check?**

The statute provides that nursing homes shall make available, upon request, verification that a criminal history record check has been completed on any staff member. As a result, the record of the criminal history check for current staff must be maintained by the facility. However, the state statute specifies that all criminal history record check information received by the facility is confidential and may not be disclosed to anyone, except to the employment applicant. We recommend that you keep criminal background checks for 4 years after an employee’s termination or resignation.

**If the criminal history record check reveals a problem, can I still hire the applicant?**

The statute does not prohibit a nursing home from hiring a person whose criminal record check reveals conviction of “a relevant offense.” Ultimately, the facility makes the hiring decision considering the following factors specified in the statute:

1. The level and seriousness of the crime.
2. The date of the crime.
3. The age of the person at the time of the conviction.
4. The circumstances surrounding the commission of the crime, if known.
5. The nexus between the criminal conduct of the person and the job duties of the position to be filled.
6. The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
7. The subsequent commission by the person of a relevant offense.

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As used in this section, “relevant offense” means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or felony, that bears upon an individual’s fitness to have responsibility for the safety and well-being of aged or disabled persons. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.
Can an applicant begin working prior to obtaining the results of the criminal history record check?

A nursing home may employ an applicant conditionally prior to obtaining the results of a criminal history record check, if the following two requirements are met: (1) the nursing home has obtained the applicant’s consent for a criminal history record check and completed fingerprint cards and, (2) the nursing home submits the request for the criminal history record check not later than 5 business days after the individual begins their conditional employment.

What if the nursing home is part of a hospital and the Human Resources Department is based in the hospital but hires for the nursing home? Must a criminal history record check be performed on the applicant?

The relevant question is whether the individual is applying for an unlicensed position within the nursing home. It does not matter that the Human Resources Department is located in the hospital; if the individual is applying for a position as a CNA or dietary aide within the nursing home portion of the facility, the background check requirement applies. However, if a nursing home is licensed as a part of a hospital under the hospital licensure act they are not covered by this criminal background check requirement. These facilities are considered part of a hospital and are thus not subject to N.C. Gen. Stat § 131E-265.

What private companies are authorized to conduct criminal background checks for facilities?

Individual unofficial record checks may be conducted through several companies that will sell information to you. The North Carolina Administrative Office of the Courts (NCAOC) lists on its website companies that obtain information from the NCAOC on an ongoing basis pursuant to a licensing agreement. The records that the NCAOC provides to the companies are accurate reflections of the data in the clerks' databases, but the NCAOC cannot guarantee that the information the companies provide to their customers is current or accurate. Click on the following link for a list of companies that have asked to be listed on the NCAOC website: http://www.nccourts.org/Citizens/GoToCourt/Documents/cbccompanies.pdf. The Division of Health Service Regulation (DHSR) refers facilities to this list when they are seeking companies for background check services.

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If you have any additional questions about criminal background checks, please call Kristi Huff, NCHCFA Director of Government Affairs at (919) 782-3827.