

**Department of Behavioral Health
TRANSMITTAL LETTER**

SUBJECT Criminal Background Check Program for Certain Unlicensed Personnel		
POLICY NUMBER DBH Policy 716.5	DATE DEC 17 2013	TL# 207

Purpose. To set forth the Department Behavioral Health (DBH) requirements for criminal background checks for certain unlicensed applicants, employees, volunteers, and contract workers of Saint Elizabeths Hospital and the Comprehensive Psychiatric Emergency Program.

This revision adopts the policy from the former Department of Mental Health, now merged into the new Department of Behavioral Health, in accordance with the DBH Establishment Act of 2013.

Applicability. Applies specifically to unlicensed persons who function or will function in a complementary or assistance role to licensed health care professionals in providing direct services to consumers or who come into direct contact with consumers at Saint Elizabeths Hospital and the Comprehensive Psychiatric Emergency Program as follows: (1) applicants for employment in unlicensed positions, (2) employees, (3) volunteers, and (4) contract workers.

Policy Clearance. Reviewed by affected responsible staff and cleared through appropriate Behavioral Health Authority offices.

Implementation Plans. Specific staff whose roles are relevant to the implementation of this policy should be trained, as needed. Program managers are responsible for following through to ensure compliance.

Policy Dissemination and Filing Instructions. Managers/supervisors of DBH must ensure that staff is informed of this policy. Each staff person who maintains policy manuals must promptly file this policy in the DBH Policy and Procedures Manual.

ACTION

REMOVE AND DESTROY

DMH Policy 716. 5

INSERT

DBH Policy 716.5


Stephen T. Baron
Director, DBH 12/17/13



**DEPARTMENT OF
HEALTH**

Policy No.
716.5

Date
DEC 17 2013

Page 1

Supersedes:
DMH 716.5, same title, dated April 21, 2008

Subject: Criminal Background Check Program for Certain Unlicensed Personnel

1. **Purpose.** To set forth the Department Behavioral Health (DBH) requirements for criminal background checks for certain unlicensed applicants, employees, volunteers, and contract workers of Saint Elizabeths Hospital and the Comprehensive Psychiatric Emergency Program.

2. **Applicability.** Applies specifically to unlicensed persons who function or will function in a complementary or assistance role to licensed health care professionals in providing direct services to consumers or who come into direct contact with consumers at Saint Elizabeths Hospital and the Comprehensive Psychiatric Emergency Program as follows: (1) applicants for employment in unlicensed positions, (2) employees, (3) volunteers, and (4) contract workers. **See Section 4j below for definition of unlicensed persons.**

In accordance with D.C. Official Code Section 44-552(a), this policy shall not apply to persons employed on or before July 23, 2001.

3. **Authority.** Title 22, Chapter 47, the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, as amended, and D.C. Official Code Sections 44-551 *et seq.*, Unlicensed Personnel Criminal Background Check, provides that independent District Government Agencies that are subject to the Act shall be required to conduct criminal background checks and to check the Nurse Aide Abuse Registry for certain unlicensed employees and persons being considered for DBH employment.

4. **Definitions.** When used in this policy, the following terms have the meaning ascribed:

4a. Applicant - a person who has filed a written application or resume for employment with DBH for a position that does not require a license to provide direct services to consumers or to come into direct contact with consumers as described in Section 4j below, or a person who has made an affirmative effort through written application, resume, or verbal request, to serve as a volunteer in a covered position with DBH.

4b. Appointee – a person who has been made a tentative job offer to a compensated covered position, subject to the satisfactory completion of a criminal background check, and a satisfactory check of the Nurse Aide Abuse Registry.

4c. Contract Worker – a compensated contractor, or the agent or employee of a contractor, for whom it is foreseeable that he or she will come in direct contact with consumers.

4d. Criminal Background Check – an investigation into a person's criminal history to determine whether the person has been convicted of any criminal offenses within the seven (7) years preceding the background check.

4e. Director – the Director of the Department Behavioral Health or his or her designee.

4f. Employee – a person who is hired and compensated by DBH.

4g. Facility – any entity required to be licensed pursuant to the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24,

1984 (D.C. Law 5-48, D.C. Official Code 44-501 et seq.), and any entity furnishing Medicaid services under a provider agreement with the District of Columbia in accordance with regulations promulgated under Title XIX of the Social Security Act, approved July 30, 1965 (Public Law 89-97; 42 U.S.C. §1396 et seq.).

4h. Medicaid Services – nursing facility services, home health-care services, inpatient hospital and nursing services for individuals 65 years of age or older in an institution for mental disease, services in an intermediate care facility for the mentally retarded, home and community care for functionally disabled elderly individuals, and community supported living arrangement services as defined in Title XIX of the Social Security Act, approved July 30, 1965 (Public Law 89-97; 42 U.S.C. §1396 et seq.).

4i. Nurse Aide Abuse Registry – a record, maintained by the District of Columbia in accordance with the Omnibus Budget Reconciliation Act of 1987, Public Law 100-2032, and pursuant to 29 DCMR 3250-3254, containing names of persons who worked as nurse aides and were determined to have abused, neglected or misappropriated the property of a nursing home resident.

4j. Unlicensed Person – a person who is not licensed pursuant to the Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99, D.C. Official Code §3-1201.01 et seq.) and who functions in a complementary or assistance role to licensed health care professionals in providing direct patient care or carrying out common nursing tasks, such as nurse aides, orderlies, assistant technicians, attendants, home health aides, personal care aides, medication aides, geriatric aides, or other health aides. “Unlicensed person” also includes housekeeping, maintenance, dietary staff, and administrative staff for whom it is foreseeable that the person will come in direct contact with consumers.

5. Policy.

5a. Criminal background checks shall be required for the following unlicensed persons:

(1) Each unlicensed person being considered for employment for a position that has been identified and determined by DBH to be a covered position subject to the Act and this policy with duties and responsibilities that provide direct services to consumers or come in direct contact with consumers. (See Section 4j above, and Sections 6b and 6c below).

(2) Each unlicensed person who has made an affirmative effort through a written application, resume, or verbal request to become a volunteer in a covered position.

(3) Each unlicensed contract worker for whom it is foreseeable that he or she will come in direct contact with consumers.

(4) Each DBH unlicensed employee or volunteer occupying a covered position shall be required to submit to an initial criminal background check, and subsequent to that, to periodic criminal background checks while employed by, or volunteering at DBH.

5b. Nurse Aide Abuse Registry – Any position subject to the criminal background check requirement of this Act shall be subject to a check of the DC Nurse Aide Abuse Registry. A person whose name is listed on the Registry shall not be considered for or employed in a covered position.

6. Delegation of Authority and Responsibility.

6a. The DBH Director has delegated authority to the DHR Director, Division of Human Resources (DHR) to administer the Criminal Background Check Program for certain unlicensed personnel and to make determinations regarding the acceptability of unlicensed applicants, employees, and volunteers to perform work in covered DBH positions.

6b. The DHR Director or designee, in conjunction with DBH program managers, shall determine which positions shall be subject to the provisions of the ACT and this policy.

6c. The DHR Director shall publish the list of DBH positions that are subject to a criminal background check under the Criminal Background Check Program for Certain Unlicensed Personnel. This list shall be published on an annual basis.

6d. DBH program managers considering persons for a volunteer assignment designated as requiring a criminal background check and Nurse Aid Abuse Registry check shall inform the DHR Director of the tentative selection so that the checks may be conducted.

6e. Prior to a criminal background check being conducted, DHR shall inform each unlicensed appointee, employee, or volunteer subject to the check where and when to report for fingerprinting, and provide each appointee, employee, or volunteer with a form to be utilized for this purpose. The District of Columbia Metropolitan Police Department will conduct the fingerprinting and criminal background check.

6f. DHR shall perform the Nurse Aide Abuse Registry check.

6g. DHR shall ensure that a record on each person occupying a position covered by this policy is maintained for at least one (1) year after the end of employment of the person to whom the record relates.

6h. The DBH Office of Contracts and Procurement shall ensure that contract agreements for unlicensed contract workers who are subject to the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998 include a requirement that the criminal background check and Nurse Aide Abuse Registry check be obtained by the contractor prior to commencement of contract services.

6i. Each covered employee and volunteer shall disclose to his or her supervisor any of the offenses listed in Section 8e below, immediately after any of these actions occur.

6j. The DHR Director shall take appropriate action when informed by a supervisor or manager that a covered employee or volunteer discloses a relevant conviction.

7. Recruitment for Covered Positions.

7a. Vacancy announcements for positions identified and designated as requiring a criminal background check and a check of the Nurse Aide Abuse Registry shall include statements informing each applicant that:

(1) The position for which he or she is applying has been identified and designated as requiring a criminal background check and a check of the Nurse Aide Abuse Registry.

(2) A final job offer and appointment to the position will be contingent upon the appointee satisfying the requirements of the criminal background check and a check of the Nurse Aide Abuse Registry.

7b. All applicants shall be subject to an initial check of the Nurse Aide Abuse Registry. Names appearing on the registry will be ineligible for further employment consideration.

7c. If tentatively selected for the position, a criminal background check and Nurse Aide Abuse Registry check will be conducted, unless the appointee provides acceptable proof that is described under 7e(3) below.

7d. Non-competitive recruitment – In the case of non-competitive recruitment for positions identified and designated as requiring a criminal background check and a check of the Nurse Aide Abuse Registry, DHR shall inform the person being considered for employment, in writing, of the requirements specified above for competitive recruitment actions.

7e. Offers of employment.

(1) No offer of employment shall be extended to an unlicensed person whose name is listed in the DC Nurse Aide Abuse Registry.

(2) DHR may tentatively offer employment contingent upon receipt of a satisfactory criminal background check.

(3) DBH may offer to employ an unlicensed person if the person provides the following on or before the date of employment:

(a) Proof that a criminal background check and a check of the Nurse Aide Abuse Registry have been conducted within the forty-five (45) days immediately preceding the date of employment;

(b) Proof that the results of the criminal background check discloses the criminal history of the prospective employee for the previous seven (7) years in all jurisdictions within which the prospective employee has worked or resided within the seven (7) years prior to the check, and the person meets the requirements in 8e below;

(c) Proof that the person's name is not on the Nurse Aide Abuse Registry; and

(d) A sworn statement affirming that there are no criminal matters pending against the person, and denying the existence of any relevant convictions.

8. Criminal Background and Nurse Aide Abuse Registry Checks.

8a. DHR shall check the Nurse Aide Abuse Registry prior to review of application for employment. Unlicensed employees and volunteers who occupy a covered position will receive an initial Nurse Aide Abuse Registry Check, and will be subject to periodic checks thereafter. DBH shall not employ an unlicensed person in a covered position if the person is listed on the District of Columbia Nurse Aide Abuse Registry.

8b. All DBH unlicensed appointees, employees, and volunteers who are tentatively selected for, or who occupy a position covered under the Act and this policy will be given a criminal background check form (DBH Form 26, see Exhibit 1) from DHR, and asked to

present the original document, along with picture identification, to the Criminal Records Office, Metropolitan Police Department Headquarters.

- The Metropolitan Police Department will complete a Criminal History Report (PD70) and a letter containing any additional criminal history information obtained from other states and forward to DBH.
- DBH must verify, by information obtained in the original criminal background check or by one or more supplemental checks, that the unlicensed person meets the requirements for employment contained in 8e below.

8c. An employee who is detailed, temporarily promoted, or temporarily reassigned from a non-covered position to a covered position shall be subject to an initial criminal background check and a check of the Nurse Aide Abuse Registry prior to the personnel action being effected, and shall be subject to periodic checks while detailed, temporarily promoted, or temporarily reassigned.

8d. A volunteer whose assignment changes from non-covered duties and responsibilities to covered duties and responsibilities shall be subject to an initial criminal background check and a check of the Nurse Aide Abuse Registry, upon being moved to the covered assignment, and to periodic checks while in the covered assignment. A volunteer will not be moved to the covered assignment if his/her name is listed on the Nurse Aide Abuse Registry.

8e. Except as provided in Section 8f below, DBH shall not employ an unlicensed person in a covered position who has been convicted, within the seven (7) years prior to a criminal background check conducted pursuant to this policy, of one or more of the following offenses or the equivalent thereof:

- (1) Murder;
- (2) Attempted murder;
- (3) Manslaughter;
- (4) Arson;
- (5) Assault;
- (6) Battery;
- (7) Assault and battery;
- (8) Assault with a dangerous weapon;
- (9) Mayhem;
- (10) Threats to do bodily harm;
- (11) Burglary;

- (12) Robbery;
- (13) Kidnapping;
- (14) Theft;
- (15) Fraud;
- (16) Forgery;
- (17) Extortion;
- (18) Blackmail;
- (19) Illegal use of a firearm;
- (20) Illegal possession of a firearm;
- (21) Rape;
- (22) Sexual assault;
- (23) Sexual battery;
- (24) Sexual abuse;
- (25) Child abuse;
- (26) Cruelty to children;
- (27) Unlawful distribution of a controlled substance; and
- (28) Unlawful possession of a controlled substance with intent to distribute.

8f. DBH may employ an unlicensed person or volunteer who has been convicted only of one (1) offense listed in Section 8e above at the misdemeanor level, provided that:

- (1) The misdemeanor offense did not involve abuse or moral turpitude;
- (2) There are no criminal matters pending against the person on the date of the person's employment or commencement of contract service with the facility; and
- (3) The person's name is not on the Nurse Aide Abuse Registry.

8g. If the criminal background check reveals convictions as listed in Section 8e above, and the exception in Section 8f does not apply, the individual will be considered to have failed the criminal background check.

8h. When there is a discovery of charges with no clear disposition, DHR shall:

- (1) Contact the individual and inform him or her of the charges with no clear disposition contained in the criminal background check;
- (2) Notify the individual, in writing, that he or she has five (5) days to provide the necessary information on the final disposition of the charges; and
- (3) Determine whether or not the information submitted by the individual resolves the charges.

8i. Periodic criminal background checks and Nurse Aide Abuse Registry checks for employees or volunteers shall be conducted when:

- (1) Information about the employee or volunteer, of a nature that will impact the employee's or volunteer's suitability to continue performing the duties of the covered position, is disclosed to DBH by a credible source(s), or is independently discovered by DBH;
- (2) Information about a criminal offense committed by the employee or volunteer is disclosed to DBH by a credible source(s) or is independently discovered by DBH; and
- (3) on a periodic basis as determined by DBH.

9. Criminal Background Check for Certain Unlicensed Applicants, Employees and Volunteers (DBH Form 26) is utilized for the following purposes:

- 9a. To inform each appointee, employee, or volunteer subject to the check, where and when to report for fingerprinting;
- 9b. To authorize the MPD to conduct the criminal background check and confirm that the bearer has been informed that DBH is authorized to conduct a criminal background check;
- 9c. To acknowledge that the appointee, employee or volunteer has been notified of his or her right to obtain a copy of the criminal background check report and to challenge the accuracy of the report; and
- 9d. To acknowledge that DBH may deny the appointee employment or a volunteer position or to terminate an employee or volunteer based on the outcome of the criminal background check.

10. **Confidentiality of and Release of Records.** Criminal background check records obtained under this policy are considered confidential and for the exclusive purpose of making employment related determinations. These records shall not be released or otherwise disclosed to any person, except when:

- Required as one component of an application for employment under the Health Care Facility Unlicensed Personnel Criminal Background Check Act;
- Requested by DBH during an official inspection or investigation of the facility;
- Ordered by a court;
- Authorized by the written consent of the person being investigated; or

- Utilized for an administrative action in a personnel proceeding, including but not limited to, disciplinary actions under DC Personnel Regulations, Chapter 16.

11. Penalties for Disclosing Confidential Information.

Any person who discloses any information in violation of any of the provisions in this policy shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine not to exceed three hundred dollars (\$300), a term of imprisonment not to exceed thirty (30) days, or both.

12. Use of Results of the Criminal Background Check.**12a. Appointees.**

(1) Based upon the outcome of the criminal background check, the DHR Director shall determine whether a final offer of appointment should be made or denied.

(2) If the determination is that a final offer of appointment should be made to an appointee, a final offer letter will be issued to the appointee.

(3) If the determination is to deny the final offer of employment, DHR shall do the following:

(a) Send the appointee a written notification of the determination. The written notification shall inform the appointee of the specific basis for the determination and his or her right to obtain a copy of the criminal background check report, and

(b) Maintain a copy of the written notification.

12b. Employees.

(1) An employee who fails a criminal background check will be subject to administrative action up to and including removal.

(2) DHR will issue the employee a written notification of determination and maintain a copy. If the determination is to remove an employee, DHR shall follow the procedures in DC Personnel Regulations, Chapter 16.

12c. Volunteers.

A volunteer who fails a criminal background check will not be allowed to volunteer under the provisions of this policy.

13. Consequences for Employees and Volunteers who Fail a Periodic Criminal Background Check.

13a. An employee who fails a periodic criminal background check may be subject to administrative action up to and including removal.

13b. The employee will be issued a written notification of determination. If the determination is to remove an employee, DHR shall follow the procedures in Section 12 above.

13c. A volunteer who fails a periodic criminal background check will be terminated.

14. Procedures for Challenging the Results of a Criminal Background Check.

14a. In challenging the results of a criminal background check, the basis for denying the final offer, or removing an employee or terminating voluntary services, the appointee, employee or volunteer may present information and documentation to the DHR Director to clarify any errors in the report.

14b. Upon receiving a challenge to a criminal background check report, the DHR Director shall promptly make a determination on the case and notify the appointee, employee, or volunteer of the decision in writing.

14c. If the determination is that a final offer of appointment should be made to an appointee, a final offer letter will be issued to the appointee.

14d. If the determination is to terminate employment, DHR will process the action to terminate the employment within ten (10) days of the determination.

15. Reports. The DBH Division of Human Resources will prepare a compliance report every six (6) months. Each report shall be maintained by DHR and shall include:

15a. The number of initial criminal background checks and Nurse Aide Abuse Registry checks conducted for appointees and volunteers;

15b. The number of appointees and volunteers who were hired upon completion of the check and the number rejected;

15c. The number of periodic criminal background checks conducted for DBH unlicensed employees and volunteers occupying a covered position; and

15d. Any administrative action initiated or taken upon completion of the periodic checks.

Related References: DCMR 22-4700 et seq., Health-Care Facility Unlicensed Personnel Criminal Background Check

Approved By:

**Stephen T. Baron
Director, DBH**

(Signature)

(Date)



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF BEHAVIORAL HEALTH**



Health-Care Facility Unlicensed Personnel Criminal Background Check Act

**CRIMINAL BACKGROUND CHECK
FOR CERTAIN UNLICENSED EMPLOYEES, APPLICANTS, AND VOLUNTEERS**

Applicant, Employee, or Volunteer:

Please read all the information contained in this form. This form must be presented, with picture identification, to the Metropolitan Police Department’s Criminal Records Office in the Henry J. Daley Building, Metropolitan Police Department Headquarters, located at 300 Indiana Avenue, N.W., Washington, D.C., Room 3055. *(The closest Metrorail Station is Judiciary Square, on the Red Line).* The hours of operation are Monday through Friday, 9:00 a.m. to 5:30 p.m.

The Criminal Records staff will sign and retain this original form, and provide you with a copy.

Criminal Records Staff:

The individual listed below is an applicant, employee or volunteer who occupies or who is being considered for a position as covered under the Health-Care Facility Unlicensed Personnel Criminal Background Check Act. Hiring and/or continuous employment requires that a criminal background check be conducted for this individual. The Department of Behavioral Health (DBH) and the Metropolitan Police Department (MPD) have arranged for the mandatory fingerprint-based, national criminal background check to be processed at no fee to the individual.

Please Type or Print: _____

Full Name of Applicant, Employee, or Volunteer

Work Location/Program Name: _____

The appropriate MPD Criminal Records Office staff member will sign and retain this original form, provide a copy of the entire form to the individual, and forward the findings of the criminal background check to:

**Department of Behavioral Health
64 New York Avenue, N.E.
Washington, D.C. 20002
Attention: Human Resources Division, 3rd Floor
Policy, Training and Special Programs Branch**

CRIMINAL RECORDS OFFICE RECEIPT FOR FINGERPRINTS TAKEN

Signature of Criminal Records Staff

Date

Criminal Records Staff Printed Name

DBH may deny an individual employment or a volunteer position, or terminate a current employee or volunteer based on the outcome of the criminal background check.

You have the right to obtain a copy of your criminal background check report from DBH, and help ensure accuracy.