



Delaware Health
And Social Services

DIVISION OF MANAGEMENT SERVICES

PROCUREMENT

Date: August 28, 2009

HSS 10 006
DACSES REPLACEMENT PROJECT
FOR
DIVISION OF CHILD SUPPORT ENFORCEMENT
Date Due: September 10, 2009 11:00 AM EDT

ADDENDUM #4

PLEASE NOTE: THE ATTACHED SHEETS HEREBY BECOME A PART OF THE ABOVE MENTIONED BID

1. DHSS Policy Memorandum 36, Standardized Requirements During the Development Phase of Community Based Residential Homes for the DHSS/Division
2. DHSS Policy Memorandum 40, Criminal Background Check Policy
3. DHSS Policy Memorandum 46, Injury to Clients

SANDRA S. SKELLEY, CPPO, CPPB
PROCUREMENT ADMINISTRATOR
(302) 255-9291

MIDGE HOLLAND
CHIEF OF ADMINISTRATION, DCSE
(302) 395-6698

Delaware Health and Social Services

Policy Memorandum 36

September 24, 2008

Subject: Standardized Requirements During the Development Phase of Community Based Residential Homes for the DHSS/Division

I. Background:

DHSS has funded and supported community based residential homes and supervised apartments, for people with disabilities, for many years. The DHSS believes that community based residential options provide individuals with more opportunities to become valued citizens, develop self-worth and self-direction and engage in lifestyles that are healthy and productive. Community based residential homes support the mission of the DHSS; "To improve the quality of life for Delaware's citizens by promoting health and well-being, fostering self-sufficiency, and protecting vulnerable populations."

II. Purpose:

The purpose of this policy is to delineate minimal requirements of contractors who are engaging in a contractual agreement to develop community based residential arrangements for those individuals served by Divisions within DHSS. This policy seeks to enhance the transparency of the operations within DHSS Divisions and their contractors.

III. Application:

This policy applies to all DHSS Divisions who support community based housing to individuals qualified to receive their services. The policy also applies to individuals/entities that enter into a contractual arrangement (*contractors*) with the DHSS/Division to develop a community based residential home(s) and apartment(s). Contractors shall be responsible for their subcontractors' adherence with this policy and related protocol(s) established by the applicable Division.

IV. Procedures:

1. Contractors shall obtain written approval from the DHSS/Division prior to their acquisition of a site selected for development.
2. Contractors shall develop community based residential homes and supervised apartments efficiently and within a timely manner so as to avoid excessive delays for the individuals planning to transition into the home.
3. Contractors shall ensure that the development site does not present safety hazards to residents or neighbors or create appearances that degrade neighboring properties.

4. Contractors shall adhere to the Fair Housing Act which makes discrimination unlawful for “protected” persons with disabilities (i.e., treated less favorably than people without disabilities). Community based residential homes and supervised apartments shall meet the design and construct requirements set forth in the Fair Housing Act.
5. Contractors shall adhere to all applicable local and state housing codes, including zoning laws, permitting procedures and historical preservation requirements.
6. Contractors shall secure all applicable business licenses, certificates and insurance coverage prior to the development of a community based residential housing. They shall further ensure that the aforementioned remain active.
7. Contractor shall obtain the required licensing/certification and Fire Marshal inspection prior to occupancy.
8. The Contractor’s conduct shall mirror community standards, ethical principles and professional standards. Business practices shall not degrade the individuals who will live in the community based residential home, the DHSS or the Division or be cause for community insult or offense.
9. The applicable Division shall monitor housing contract standards with the Contractor, to ensure compliance.
10. The applicable Division(s) shall monitor compliance with standards/regulations associated with the development of housing, environment and safety issues.
11. The applicable Division’s Quality Assurance/Improvement unit shall serve as a resource to the Contractor re: issues concerning residential licensing/certification and occupancy readiness.

V. Responsibility

1. Each Division who supports community based residential homes and supervised apartments shall develop procedures/protocols that are consistent with this DHSS policy and make such procedures/protocols available to Contractors of community based residential homes.
2. Contractors with the DHSS/Division are responsible for ensuring that subcontractors they employee adhere to the requirements set forth in this policy and the applicable Division’s procedures/protocol.

VI. Effective:

This policy shall be effective immediately.

Vincent P. Meconi, Secretary

Date

DELAWARE HEALTH AND SOCIAL SERVICES

DHSS Policy Memorandum Number 40

March 10, 2008

Subject: Criminal Background Check Policy

I. Purpose

Delaware Health and Social Services is committed to providing a safe and secure environment for our patients, residents and employees. Additionally, the Delaware Code (Title 16, sec. 1141) requires criminal background checks of all individuals seeking work in long term care facilities. To that end, it is the policy of DHSS to conduct criminal background checks for all persons hired or promoted into any permanent or temporary position with any long term care or psychiatric facility operated by the DHSS. The Delaware Psychiatric Center is licensed as a hospital and while the Code does not require criminal background checks for employees of the DPC, long standing policy and practice mandates a criminal background check on all prospective employees at the Psychiatric Center.

II. Scope

This policy applies to all applicants and employees of the five facilities operated by DHSS. Under this policy, a criminal background check is required for any current employee who applies for another position within a DHSS facility or laterally transfers or promotes into another position within any DHSS facility. In addition, a criminal background check can be conducted on an employee if an employee takes a voluntary demotion or where there is a reasonable suspicion that a staff person has been recently been involved in criminal activity.

If an applicant has been convicted of any crime, a review of the individual's complete record must be considered prior to permanent hire. If an applicant has been convicted of a disqualifying crime as enumerated by regulations promulgated by the Division of Long Term Care Residents Protection (DLTCRP) in accordance with Delaware Code, Title 16, sec. 1141(b)(e), that applicant is deemed unsuitable for employment, unless the time parameters surrounding the conviction(s) have eliminated that automatic bar to employment. See Addendum A for a list of disqualifying crimes and conviction time parameters.

This policy covers all full-time and part-time permanent, limited term, temporary and casual/seasonal positions providing direct care, or serving within the facilities operated by DHSS. This policy also applies to all positions and temporary positions filled directly by contractors, vendors, and other entities providing services at DHSS facilities

III. Policy

A criminal background check will be conducted for all newly-hired employees for positions within DHSS facilities. The Division of Long Term Care Residents Protection (DLTCRP) is responsible for completing a criminal background check and review of the Adult Abuse Registry. Once the review has been completed, the DLTCRP will send a letter to the facility's Human Relations Representative outlining the applicant's status. A facility director may extend an offer of employment to an applicant prior to the completion of the criminal background check but that offer is conditional until the Director of Management Services or his/her designee reviews the criminal background check and determines that no adverse action will be taken based upon information contained in that report.

Although a disqualification is possible, a previous conviction does not automatically disqualify an applicant from consideration from employment within a DHSS facility. The Director of Human Resources and the Division Director or designee will together consider the following factors in determining whether a candidate is eligible for employment with DHSS:

1. the relevance of the conviction to the duties and responsibilities of the position for which selected;
2. the nature of the conviction(s);
3. the age of the candidate when the illegal activity occurred;
4. the dates of the convictions; and
5. the candidate's record since the date(s) of the conviction(s).

A pardon has no impact on a conviction. It may, however, be used as a consideration in the criteria above. However, if an applicant fails to reveal any previous conviction, he/she will be disqualified from employment in that or any other position at DHSS for falsification of an application.

If the facility director desires to retain the applicant, he or she may forward a request through the Director of Management Services for final consideration by the Cabinet Secretary.

IV. Procedure

When a hiring manager reaches the final selection stage in the hiring process, the applicant will be given a "DHSS Terms and Conditions of Employment" form authorizing the DLTCRP to conduct a criminal background check. The applicant is then sent to the state police for fingerprinting and initiation of the criminal background check process. The hiring manager then sends the completed and signed form to Human Resources staff person for the respective facility. Human Resources will submit the request to DLTCRP for processing. Refusal to provide a completed and signed DHSS Terms and Conditions of Employment form will be considered sufficient grounds to discontinue any employment consideration for that candidate.

When the investigation is complete, the DLTCRP will submit a report on each applicant

to the facility's HR representative. If the criminal background check reveals a criminal history, HR will review and notify the facility director.

The facility director or designee will conduct an additional inquiry to determine the nature of the offense(s) and other circumstances surrounding the criminal record. It is expected that the investigation of an applicant will not take longer than ten days to complete. Applicant information is confidential personnel information, and all parties having access to this information will maintain it as confidential.

If adverse action is contemplated, based on information revealed in the criminal background report, the HR representative will inform the hiring manager and or HR Director to implement due process proceedings. The hiring manager will in turn notify the employee immediately verbally and in writing.

V. Responsibility

It shall be the responsibility of the affected Division Directors to ensure that they, their staff and contractors adhere to the procedures outlined in this policy as written.

It shall be the responsibility of contractors and vendors to conduct criminal backgrounds checks on their employees prior to their assignment to a DHSS facility.

VI. Implementation

This policy is effective immediately.

Vincent P. Meconi March 10, 2008
Vincent P. Meconi, Secretary

Attachment:

Addendum A, List of Disqualifying Crimes and Conviction Time Parameters

Department of Health and Social Services

DHSS Policy Memorandum 46
Subject: Injury to Clients

April 18, 2008

I. PURPOSE

- a. To protect the right of residents/clients of Delaware Health and Social Services (DHSS) facilities to be free from abuse, neglect, mistreatment, financial exploitation or significant injury.
- b. To require that each Division that has, or contracts for the operation of, residential facilities establish standardized written procedures for the reporting, investigation and follow up of all incidents involving suspected resident/client abuse, neglect, mistreatment, financial exploitation, or significant injury.
- c. To require that all DHSS residential facilities comply with The Patient Abuse Law (Title 16, Chapter 11, section 1131, et seq.) and Title 29, Chapter 79, sections 7970 and 7971 (Attachments I and II); and that all Medicaid and/or Medicare certified long term care facilities and Intermediate Care Facilities for Mental Retardation (ICF/MR) comply with the federal regulations (42 CFR) and State Operations Manual for such facilities.
- d. To require that all DHSS residential facilities comply with all applicable state and federal statutes, rules and regulations pertaining to suspected abuse, neglect, mistreatment, financial exploitation, or significant injury.

II. SCOPE

- a. This policy applies to anyone receiving services in any residential facility operated by or for any DHSS Division, excluding any facilities/programs in which the only DHSS contract is with the DHSS Division of Social Services Medicaid Program.
- b. This policy is not intended to replace additional obligations under federal and/or state laws, rules and regulations.

III. DEFINITIONS

- a. Abuse shall mean:
 1. Physical abuse the unnecessary infliction of pain or injury to a resident or client. This includes, but is not limited to, hitting, kicking, pinching, slapping, pulling hair or any sexual molestation. When any act constituting physical abuse has been proven, the infliction of pain shall be assumed.

2. Emotional abuse - This includes, but is not limited to, ridiculing or demeaning a resident or client, cursing or making derogatory remarks towards a resident or client, or threatening to inflict physical or emotional harm to a resident or client.
- b. Neglect shall mean:
 1. Lack of attention to the physical needs of the resident or client including, but not limited to, toileting, bathing, meals, and safety.
 2. Failure to report client or resident health problems or changes in health problems or changes in health condition to an immediate supervisor or nurse.
 3. Failure to carry out a prescribed treatment plan for a resident or client.
 4. A knowing failure to provide adequate staffing (where required) which results in a medical emergency to any patient or resident where there has been documented history of at least 2 prior cited instances of such inadequate staffing within the past 2 years in violation of minimum maintenance of staffing levels as required by statute or regulations promulgated by the department, all so as to evidence a willful pattern of such neglect. (Reference 16 DE Code, §1161-1169)
 - c. Mistreatment shall mean the inappropriate use of medications, isolation, or physical or chemical restraints on or of a resident or client.
 - d. Financial exploitation shall mean the illegal or improper use or abuse of a client's or resident's resources or financial rights by another person, whether for profit or other advantage.
 - e. Significant Injury is one which is life threatening or causes severe disfigurement or significant impairment of bodily organ(s) or functions which cannot be justified on the basis of medical diagnosis or through internal investigation.
 - f. Residential Facility shall include any facility operated by or for DHSS which provides supervised residential services, including Long Term Care licensed facilities, group homes, foster homes, and community living arrangements.
 - g. Long Term Care Facility is any facility operated by or for DHSS which provides long term care residential services and the Delaware Psychiatric Center.
 - h. High managerial agent is an officer of a facility or any other agent in a position of comparable authority with respect to the formulation of the policy of the facility or the supervision in a managerial capacity of subordinate employees.

IV. RESPONSIBILITIES

- a. The Director, or his/her designee of each Division within the scope of this policy, is hereby designated as an official DHSS designee under the State Mandatory Patient Abuse Reporting Law.

- b. Each Division will develop written procedures consistent with the standards contained in this policy and which will be activated immediately upon discovery of any suspected abuse, neglect, mistreatment, financial exploitation or significant injury of or to a client of a residential or long-term care facility. These procedures must clearly outline the reporting chain from the witness to the Division Director, and other appropriate parties, to require the expedient relay of information within the required time frames.
- c. These standardized procedures shall also apply when the preliminary inquiry suggests that the significant injury, suspected abuse, neglect, mistreatment or financial exploitation may have been caused by a staff member of the residential facility, whether on or off the grounds of the residential facility. Suspicion of facility/program negligence (including inadequate supervision resulting in client-client altercations) and incidents involving abuse by persons who are not staff members of the residential facility shall also be reported.
- d. The standardized procedures shall be approved by the appropriate Division Director prior to implementation. The Division Director or designee shall forward a copy of the approved procedures to the Chief Policy Advisor, Office of the Secretary, and other appropriate agencies.
- e. Each Division will require that the standards established in this policy are incorporated in all residential operational procedures and all residential contracts. Each Division shall require that all residents and providers of these programs be informed of their specific rights and responsibilities as defined in the Division's written procedures.
- f. Each Division shall require that all levels of management understand their responsibilities and obligations for taking and documenting appropriate corrective action.
- g. Each Division shall require appropriate training of all staff and contract providers in the PM 46 policy and procedures. Such training shall also include the laws prohibiting intimidation of witnesses and victims (11 Del. C., sections 3532 through 3534) and tampering with a witness or physical evidence (11 Del. C., sections 1261 through 1263 and section 1269).
- h. Each Division shall develop quality assurance/improvement mechanisms to monitor and oversee the implementation of the PM 46 policy and procedures.
- i. Each Division must ensure that all employees of, or contractors for, residential facilities shall fully cooperate with PM 46 investigations.

V. STANDARDS/PROCEDURES

Standard and consistent implementation of this Department policy is required. Each Division's written procedures shall include the following:

- a. Employee(s) of the residential facility, or anyone who provides services to residents/clients of the facility, who have reasonable cause to believe that

a resident/client has been abused, mistreated, neglected, subjected to financial exploitation, or has received a significant injury shall:

1. Take actions to assure that the residents/client(s) will receive all necessary medical attention immediately.
 2. Take actions to protect the residents/client(s) from further harm.
 3. Report immediately to the Division of Long Term Care Residents Protection (if the incident occurred in a long term care facility or if the client was a resident of a long term care facility); and to the Department of Services for Children, Youth and Their Families/Division of Family Services (if the client is a minor, as required under 16 Del. C., section 903). It is essential that the reporting person ensure that the report be made to the appropriate division designee immediately.
 4. Report immediately to the facility/program director and the Division's designated recipient(s) of PM 46 reports.
 5. Follow up the verbal report with a written initial incident report to the persons/ agencies named in (a) 3 and (a) 4 (above) within 48 hours.
- b. In addition to the above named persons, any other person may make a report to a staff person of the facility or to the Division director or his/her designee. Such a report shall trigger activities under V(a), items 1 through 5.
- c. Each written initial report of suspected abuse, neglect, mistreatment, financial exploitation, or significant injury (completed by the reporting employee) must include:
1. The name and gender of the resident or client.
 2. The age of the resident or client, if known.
 3. Name and address of the reporter and where the reporter can be contacted.
 4. Any information relative to the nature and extent of the abuse, neglect, mistreatment, financial exploitation or significant injury.
 5. The circumstances under which the reporter became aware of the abuse, neglect, mistreatment, financial exploitation or significant injury.
 6. The action taken, if any, to treat or otherwise assist the resident or client.
 7. Any other information that the reporter believes to be relevant in establishing the cause of such abuse, neglect, mistreatment, financial exploitation or significant injury.
 8. A statement relative to the reporter's opinion of the perceived cause of the abuse, neglect, mistreatment, financial exploitation or significant injury (whether a staff member or facility program negligence).
- d. The Division's designated recipient of PM 46 reports shall report all allegations of abuse, neglect, mistreatment, financial exploitation and significant injury, to the Office of the Secretary; the Office of the Attorney

General/Medicaid Fraud Control Unit (for Medicaid and/or Medicare certified long term care facilities); the appropriate state licensing agency for the program, if applicable; and the Division Director or designee, within 24 hours of receiving notification of such.

- e. In instances where there is immediate danger to the health or safety of a resident/client from further abuse, mistreatment or neglect; if criminal action is suspected; or if a resident/client has died because of suspected abuse, mistreatment, neglect or significant injury, the Division Director or his/her designee shall immediately notify the appropriate police agency. The Division of Long Term Care Residents Protection, and the Office of the Secretary, shall be notified if the police were contacted. Further, the Division Director or his/her designee shall notify the Office of the Attorney General/Medicaid Fraud Control Unit, the Office of the Secretary, and the Chief Medical Examiner, if a resident/client has died because of suspected abuse, mistreatment, neglect, significant injury, or as a result of any cause identified by 29 Del. C., section 4706.
- f. The Division Director or his/her designee shall review the initial incident report and initiate an investigation into the allegations contained in the report. The investigation, with a written report, shall be made within 24 hours, if the Division has reasonable cause to believe that the resident's/client's health or safety is in immediate danger from further abuse, neglect or mistreatment. Otherwise, the investigation and written Investigative Report, up to and including the Division Director's or designee's signed review of the report, shall be made to the Division of Long Term Care Residents Protection (DLTCRP) within 10 days. This timeframe may be extended by DLTCRP if extenuating facts warrant a longer time to complete the investigation. If the facility is a Medicaid-Medicare certified long-term care facility, or an ICF/MR facility, the report of suspected abuse, neglect, mistreatment, financial exploitation or significant injury shall be sent to the appropriate authorities, as required in the respective regulations under 42 CFR, within 5 working days of the incident.
- g. The investigative process shall be confidential and not subject to disclosure both pursuant to 24 Del. C., section 1768 and because it is privileged under the governmental privilege for investigative files. Each Investigative Report shall be labeled as confidential and privileged, pursuant to 24 Del. C., section 1768. Each investigation shall include the following:
 - 1. A visit to the facility or other site of incident.
 - 2. A private interview with the resident or client allegedly abused, neglected, mistreated, whose finances were exploited or whose injury was significant.
 - 3. Interviews with witnesses and other appropriate individuals.
 - 4. A determination of the nature, extent and cause of injuries, or in the case of exploited finances, the nature and value of the property.
 - 5. The identity of the person or persons responsible.

6. All other pertinent facts.
 7. An evaluation of the potential risk of any physical or emotional injury to any other resident or client of that facility, if appropriate.
- h. A written report (Investigative Report) containing the information identified in V (g) shall be completed within the time frames identified in V (f) and shall include a summary of the facts resulting from the investigation. (Attachment 3)
 - i. The Investigative Report shall be sent to the facility director and to the Division Director or designee. The Facility Director and the Division Director or designee shall review the report. If the incident is serious, the Division Director must review the incident with the Department Secretary prior to the completion of the report. The Facility Director and the Division Director or designee shall indicate in writing their concurrence or non concurrence with the report. If the facts show that there is a reasonable cause to believe that a resident/client has died as a result of the abuse, neglect, mistreatment, or significant injury, the Division Director or designee shall immediately report the matter to the Office of the Attorney General/Medicaid Fraud Control Unit, the Division of Long Term Care Residents Protection, and the Office of the Secretary.
 - j. All Investigative Reports shall be forwarded by the reporting division, forthwith, to the Division of Long Term Care Residents Protection. The Division of Long Term Care Residents Protection shall complete the investigation by making a determination of findings and documenting their conclusions.
 - k. If a determination is made at the Division level (upon consultation with the Division of Management Services, Human Resources office) that discipline is appropriate, the Investigative Report shall be forwarded to the Human Resources office. Human Resources shall determine the appropriate level of discipline, forward their recommendations to the Office of the Secretary and to the originating division for implementation, and proceed as appropriate.
 - l. The Office of the Secretary shall be informed by the Division of Long Term Care Residents Protection, in writing, of the results of the investigation, including the findings and recommendations, within 5 days following the completion of the investigation.
 - m. The Division Director or designee shall notify the appropriate licensing or registration board, if the incident involved a licensed or registered professional, and the appropriate state or federal agency, including the appropriate state licensing agency of the program, if applicable, upon a finding of: 1) abuse, mistreatment, neglect, financial exploitation, or significant injury; 2) failure to report such instances by a licensed or registered professional; or 3) failure by a member of a board of directors or high managerial agent to promptly take corrective action.
 - n. The Division Director or designee shall notify the employee, resident/client, the guardian of the resident/client, if applicable, and the incident reporter of the results of the facility-based case resolution, unless

otherwise prohibited by law. They shall also advise the parties of the fact that there is a further level of review that will occur through the Division of Long Term Care Residents Protection and/or the Office of the Attorney General/Medicaid Fraud Control Unit.

- o. The Division of Long Term Care Residents Protection shall, at the conclusion of their review of the case, notify the DHSS employee (or the agency director for contract providers), the resident/client, or the guardian of the resident/client, if applicable, and the originating Division Director or designee, of the substantiated or unsubstantiated status of the case, unless otherwise prohibited by law. The Division of Long Term Care Residents Protection shall also notify the Office of the Attorney General/Medicaid Fraud Control Unit of all substantiated cases.

VI. IMPLEMENTATION

- a. This policy shall be effective immediately (upon the completion of mandatory departmental training).
- b. In carrying out this policy, all parties must protect the confidentiality of records and persons involved in the case, and may not disclose any Investigative Report except in accordance with this policy.

VII. EXHIBITS

- a. Attachment 1 - Delaware Code, Title 16, Chapter 11, Sections 1131-1140.
- b. Attachment 2 - Delaware Code, Title 29, Chapter 79, Sections 7970-7971.
- c. Attachment 3 - Investigative Report form

Vincent P. Meconi April 18, 2008

Vincent P. Meconi, Secretary