



**DELAWARE HEALTH  
AND SOCIAL SERVICES**

DIVISION OF  
DEVELOPMENTAL DISABILITIES SERVICES

SERVICE INTEGRITY & ENHANCEMENT

TO: DDDS Home and Community Based Service Providers

FROM: Dione Grant, Director of Service Integrity and Enhancement

DATE: August 4, 2022

SUBJECT: Conditional Hires

This guidance is intended to assist providers in complying with the following DDDS HCBS standards: “*The provider shall ensure that prior to hire all staff are screened through the Back Ground Check Center (BCC) to include: Adult Abuse Registry, Sex Offender Registry, Office of Inspector General, Child Protection Registry, Division of Professional Regulation Registry, State and Federal Criminal Back Ground Checks (see appendix A for disqualifying crimes), 10 panel drug screening and Service Letters from prior employers*”.

DDDS recognizes the processing time to fulfill the requirements of employee background checks may be a barrier to hiring, retaining, and/or onboarding new staff. As a result, the Division is providing guidance for **conditionally** hiring new employees.

**§ 8564. Adult Abuse Registry check**

11 Del.C. §8564(d) sets forth the following regarding Adult Abuse Registry checks:

*(d) Notwithstanding the provisions of this section, when exigent circumstances exist which require an employer subject to this section to fill a position in order to maintain the required or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested an Adult Abuse Registry check. Any person hired pursuant to this subsection shall be informed in writing, and shall acknowledge in writing, that the person’s employment is conditional and contingent upon receipt of the Adult Abuse Registry check.*

In an effort to ensure compliance with § 8564. Adult Abuse Registry check and DDDS HCBS Standard requirements for “*Adult Abuse Registry*”, during the Quality Service/Random Review and the New Site Inspection, the DDDS Program Evaluator will require the agency to provide verification that the Adult Abuse Registry check was initiated in the Background Check Center (BCC) *prior* to hire. The Program Evaluator will also request written and acknowledged notification, that the person’s employment is conditional and contingent upon receipt of the Adult Abuse Registry check. The written conditional and contingent notification must be signed and dated by the employee and employer.



## Sex Offender Registry

Provider agencies are required to initiate the search of the Sex Offender Registry in the Background Check Center.

In an effort to ensure compliance with DDDS HCBS Standard requirements for “*Sex Offender Registry*”, during the Quality Service/Random Review and the New Site Inspection, the DDDS Program Evaluator will require the agency to provide verification that the Sex Offender Registry check was initiated in the BCC *prior* to hire. The Division strongly recommends that the person hired be informed in writing, and acknowledge in writing, that the person’s employment is conditional, and contingent upon receipt of their Sex Offender Registry background check.

## Office of Inspector General

Office of Inspector General (OIG) has the authority to exclude individuals and entities from Federally funded health care programs pursuant to section 1128 of the Social Security Act (Act) (and from Medicare and State health care programs under section 1156 of the Act) and maintains a list of all currently excluded individuals and entities called the List of Excluded Individuals/Entities (LEIE). Anyone who hires an individual or entity on the LEIE may be subject to civil monetary penalties (CMP).

To ensure consistency with the standard and the regulation, provider agencies are required to initiate the search of the Office of Inspector General in the Background Check Center.

In an effort to ensure compliance with DDDS HCBS Standard requirements for “Office of Inspector General”, during the Quality Service/Random Review and the New Site Inspection, the DDDS Program Evaluator will require the agency to provide verification that the Office of Inspector General check was initiated in the BCC *prior* to hire. The Division strongly recommends that the person hired be informed in writing, and acknowledge in writing, that the person’s employment is conditional, and contingent upon receipt of their Office of Inspector General background check.

## § 8563. Child Protection Registry check for health care

11 Del.C. §8563(d) sets forth the following regarding Child Protection Registry checks:

*(d) Notwithstanding the provisions of this section, when exigent circumstances exist which require an employer to fill a position in order to maintain the required or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested a Child Protection Registry check. The employment of the person pursuant to this subsection shall be conditional and contingent upon the receipt of the Child Protection Registry check by the employer. Any person hired pursuant to this subsection shall be informed in writing, and shall acknowledge in writing, that the person’s own employment is conditional, and contingent upon receipt of the Child Protection Registry check.*

To ensure compliance with § 8563. Child Protection Registry check for health care and DDDS HCBS Standard requirements for “*Child Protection Registry*”, during the Quality Service/Random Review and the New Site Inspection, the DDDS Program Evaluator will require the agency to provide verification that the Child Protection Registry check was initiated in the BCC *prior* to hire. The Program Evaluator will



**DELAWARE HEALTH  
AND SOCIAL SERVICES**

DIVISION OF  
DEVELOPMENTAL DISABILITIES SERVICES

SERVICE INTEGRITY & ENHANCEMENT

also request written and acknowledged notification, that the person's employment is conditional, and contingent upon receipt of the Child Protection Registry check. The written conditional and contingent notification must be signed and dated by the employee and employer.

**§ 1141. Criminal background checks**

16 Del.C. §1141 sets forth the following regarding criminal background checks:

- (c) An employer may not employ an applicant for work in a facility before obtaining a criminal history. The criminal history of any person not employed directly by the facility must be provided to the facility upon the person's commencement of work.
- (d) The requirements of subsection (c) of this section may be suspended for **60 days** if the employer wishes to employ the applicant on a conditional basis.
  - (1) Before an employer may offer conditional employment, the employer must receive verification that the applicant has been fingerprinted by the SBI for purposes of the criminal history.
- (e) An employer may not employ or continue to employ an individual with a conviction deemed disqualifying by the Department's regulations.

In an effort to ensure compliance with §1141. Criminal background checks and DDDS HCBS Standard requirements for "*State and Federal criminal Back Ground Checks*", during the Quality Service/Random Review and the New Site Inspection, the DDDS Program Evaluator will require the agency to provide verification that the employee was fingerprinted by SBI for both State and Federal criminal history *prior* to hire. The Division strongly recommends that the person hired be informed in writing, and acknowledge in writing, that the person's employment is conditional, and contingent upon receipt of the background check.

**§ 1142. Mandatory drug screening**

To assist in relieving some of the financial burden the provider community may be experiencing, the Division is amending the requirements for "*10 Panel drug Screening*". Consistent with 16 Del.C. § 1142. Mandatory drug screening, the Division **will permit a 5-panel drug screen** in lieu of the 10-panel drug screen required in the DDDS HCBS Standard.

16 Del.C. §1142 sets forth the following regarding Mandatory drug screening:

- (a) An employer *may not employ* an applicant *without first obtaining the results* of that applicant's mandatory drug screening.
- (b) All applicants must submit to mandatory drug screening, as specified by regulations promulgated by the Department.
- (c) The Department shall promulgate regulations, regarding the pre-employment testing of all applicants, for use of all of the following illegal drugs:
  - (1) Marijuana/cannabis.



**DELAWARE HEALTH  
AND SOCIAL SERVICES**

---

DIVISION OF  
DEVELOPMENTAL DISABILITIES SERVICES

---

SERVICE INTEGRITY & ENHANCEMENT

---

- (2) Cocaine.
- (3) Opiates.
- (4) Phencyclidine (“PCP”).
- (5) Amphetamines.
- (6) Any other illegal drug specified by the Department under regulations promulgated under this section.

In an effort to ensure compliance with § 1142. Mandatory drug screening and DDDS HCBS Standard requirements for mandatory drug screening, during the Quality Service/Random Review and the New Site Inspection, the Program Evaluator will require the agency to provide verification that the employer received the employee’s drug screen results *prior* to hire.

If you have any question regarding this guidance document, please contact Laurie Souza [Laurie.Souza@delaware.gov](mailto:Laurie.Souza@delaware.gov) or Dione Grant [Dione.Grant@delaware.gov](mailto:Dione.Grant@delaware.gov)