

## Unit 4: Criminal Background Checks



### Criminal Background Checks

**Please note:** Effective Sept. 15, 2007, the fee for processing Federal Criminal History Background Checks has increase to \$30.25.

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#### UNIT INTRODUCTION AND LEARNING OBJECTIVES

The Act 169-1996 Amendment to OAPSA requires a criminal background check for all employees and administrators of a facility. Facilities are defined by the act to include: Domiciliary Care Homes, Home Health Care Agencies, Long Term Care Nursing Facilities (licensed by Dept. of Health), Adult Daily Living Centers (licensed by Dept. of Aging), and Personal Care Homes (licensed by Dept. of Public Welfare). In addition, the Pennsylvania Department of Health has defined home health care organization or agency to include: hospices and birth centers, and the Pennsylvania Department of Public Welfare (DPW) has concluded that the Act is applicable to all DPW-licensed and DPW-operated residential facilities for adults; specifically: Personal Care Homes, 55 Pa. Code Ch. 2620; Community Residential Rehabilitation Services, 55 Pa. Code Ch. 5310; Long Term Structured Residences, 55 Pa. Code Ch. 5320; Community Homes for Individuals with Mental Retardation, 55 Pa. Code Ch. 6400; Family Living Homes, 55 Pa. Code Ch. 6500; ICF-MR's (private and state), 55 Pa. Code Ch. 6600; State Mental Hospitals; and Nursing Facilities. A Home Health Care Agency is further defined to include those agencies licensed by the Department of Health and any public or private organization which provides care to a care-dependent individual in their place of residence. Individuals with convictions for [prohibitive offenses](#) are prohibited from employment in these facilities.

An employee is defined as any applicant or new employee hired after July 1, 1998. Individuals employed by the facility prior to July 1, 1998, are not required to undergo the background check.

The definition of employee includes contract employees who have direct contact with residents or unsupervised access to their personal living quarters. It also includes persons employed or contracted by a public or private organization to provide care to a care dependent person in his/her own residence.

## STUDY STEPS

1. Read the narrative section and review forms.
2. Take the Self-Check Quiz.
3. Check your answers to the Quiz at the end of the unit.

## NARRATIVE

Inquiries on criminal history procedures, state and /or federal, may be directed to PDA at: 717-265-7887.

***There are specific procedures that an applicant or a current facility employee must follow to meet the requirement for employment in a facility as described in the next section.***

### PROCEDURES TO OBTAIN CRIMINAL BACKGROUND CHECK

#### ***Facility Applicant/Employee (35 P.S. § [10225.502](#) and § [10225.503](#))***

Effective July 1, 1998, a facility employment applicant, and a facility employee since July 1, 1998, must be free from certain criminal convictions. ***Thus, on and after July 1, 1998, facility employment applicants and facility employees employed on and after July 1, 1998 must satisfy conditions of the Act for employment.***

The criminal background check requirement is that all facility applicants must submit with their employment application a criminal history report from the Pennsylvania State Police (**35 P.S. § [10225.502\(a\)\(1\)](#); see 18 Pa. C.S.A. § 9109**). If the applicant is not a resident of Pennsylvania, or has not been a resident of Pennsylvania for the entire two years immediately preceding employment application, then ***in addition to the report from the PA State Police***, a report of Federal criminal history record information must be obtained from the Federal Bureau of Investigation through the PA Department of Aging which has been designated by statute as the intermediary (**35 P.S. § [10225.502\(a\)\(2\)](#); see 28 U.S.C.A. § 534(a)(1)**). A facility employee who has continuously been employed at the same facility before and since July 1, 1998 shall not be required to obtain the criminal background check as a condition of continued employment in that facility (**35 P.S. § [10225.508\(1\)](#)**).

***The following letter and attachments sent by the Department of Aging to an employee of a facility or an applicant for employment in a facility are to be completed and distributed as indicated in the directions within the letter.***

Dear Applicant/Employee:

Enclosed are the various forms that will need to be completed in order to obtain a criminal history background check to work in a facility as defined by Act 169 of 1996 as amended by Act 13 of 1997. The effective date of the act is July 1, 1998.

An applicant/employee is defined as an individual who is employed by a facility. The term includes contract employees who have direct contact with residents or unsupervised access to their personal living quarters. The term includes any person who enters into a contractual relationship to provide care to a care-dependent individual for monetary consideration in their place of residence.

If the applicant/employee has been a resident of the Commonwealth of Pennsylvania for 2 or more years prior to application for employment, the applicant will need to obtain a clearance from the Pennsylvania State Police. This clearance is obtained by completing a [Criminal Record Check Form \(SP4-164\)](#).

This form is used to obtain a report from the Pennsylvania State Police criminal history files. Complete Part I of the Form. Follow the instructions printed in each section for proper completion of the form. Failure to follow the instructions will result in a considerable delay in the processing of your request. A processing fee of \$10.00 is required. Enclose a money order, cashier's check or certified check made payable to the **"Commonwealth of PA"**. **No cash, personal or business checks will be accepted.** Mail the completed application and fee to the address below:

**PA State Police Central Repository-164  
1800 Elmerton Avenue  
Harrisburg, PA 17110-9758**

When the applicant/employee ***has not been a resident of the Commonwealth of Pennsylvania for the entire two years (without interruption) immediately preceding the date of application for employment or currently lives out-of-state, in addition to the Pennsylvania State Police Criminal History Check***, the applicant/employee will also need to obtain an FBI Criminal History Check. This clearance is obtained by completing an **FBI Fingerprint Card (FD-258)**. An example of a blank fingerprint card can be seen [here](#).

This form is used to obtain a report from the FBI criminal files. Please follow the instructions given below for proper completion of the FBI fingerprint card. Failure to follow the instructions will result in a considerable delay in the processing of your clearance. Fingerprint cards can be obtained from Pennsylvania Department of Aging or your local Area Agency on Aging.

Complete the information in the top portion of the card by following the enclosed sample sheet. The applicant/employee will need to write **"Long Term Care Employment, 35 PaSA § 10225.502 [a] [2]"** in the Reason Fingerprinted Block. To see completed form, [click here](#).

Take the completed card to your nearest PA State Police facility or local police department to have your fingerprints applied to the card. A fee may be charged for this service. The fingerprints must be of sufficient quality that they can be classified by the FBI. The police officer must sign and date the card.

A separate \$30.25 processing fee must be enclosed for each FBI card submitted. **Do not send cash, personal checks or agency checks. Payments MUST be in the form of a money order, cashier's check or certified check made payable to Commonwealth of Pennsylvania.**

In addition to completing the FBI fingerprint card, the applicant/employee will need to also complete the FBI Background Check Transmittal Form (PDACBC-1). This form contains information on the applicant and employer. The proper completion of this form will allow for the timely processing of the request. For an example of the blank form, click [here](#).

**THE FBI FINGERPRINT CARD CANNOT BE BENT OR FOLDED IN ANY WAY.** Place the fingerprint card, transmittal form and processing fee in a large manila envelope. Remember to include your return address in the upper left-hand corner of the envelope. Mail the envelope to the address listed below:

**PA Department of Aging  
FBI Background Check Unit  
555 Walnut St., 5th Floor  
Harrisburg, PA 17101-1919**

Responses from the FBI will be forwarded to the PA Department of Aging after processing to determine if any convictions listed would prohibit the applicant/employee from being

employed. The Department of Aging will forward an employment eligibility response to the applicant and the facility.

If you would have any questions, please contact the PA Department of Aging at (717) 265-7887, Monday through Friday.

**The forms needed to obtain a criminal history background check by the facility are the same as indicated in the above letter sent to the applicant/employee. The letter which is sent to the employer is included here. Please note the definition of a facility under the Act.**

Dear Employer:

Enclosed are the various forms that will need to be completed in order to obtain a criminal history background check to work in a facility as defined by Act 169 of 1996 as amended by [Act 13 of 1997](#). The effective date of the act is July 1, 1998.

Facilities are defined by the act to include: Domiciliary Care Homes, Home Health Care Agencies, Long Term Care Nursing Facilities (licensed by Dept. of Health), Adult Daily Living Centers (licensed by Dept. of Aging), and Personal Care Homes (licensed by Dept. of Public Welfare). In addition, the Pennsylvania Department of Health has defined home health care organization or agency to include: hospices and birth centers, and the Pennsylvania Department of Public Welfare (DPW) has concluded that the Act is applicable to all DPW-licensed and DPW-operated residential facilities for adults; specifically: Personal Care Homes, 55 Pa. Code Ch. 2620; Community Residential Rehabilitation Services, 55 Pa. Code Ch. 5310; Long Term Structured Residences, 55 Pa. Code Ch. 5320; Community Homes for Individuals with Mental Retardation, 55 Pa. Code Ch. 6400; Family Living Homes, 55 Pa. Code Ch. 6500; ICF-MR's (private and state), 55 Pa. Code Ch. 6600; State Mental Hospitals; and Nursing Facilities. A Home Health Care Agency is further defined to include those agencies licensed by the Department of Health and any public or private organization which provides care to a care-dependent individual in their place of residence.

An applicant/employee is defined as an individual who is employed by a facility. The term includes contract employees who have direct contact with residents or unsupervised access to their personal living quarters. The term includes any person who enters into a contractual relationship to provide care to a care-dependent individual for monetary consideration in their place of residence.

If a current employee has been with a facility from July 1, 1998 and prior and is still with the same facility on the effective date of this act, **no** criminal background check is necessary. If the current employee was hired on or after July 1, 1998 the facility has **one year from the effective date of the act** to conduct the background check. Any employee seeking employment on or after July 1, 1998 will need to obtain a criminal history background check.

If the applicant/employee has been a resident of the Commonwealth of Pennsylvania for **2 or more consecutive years prior to application for employment**, the applicant will need to obtain a clearance from the Pennsylvania State Police. This clearance is obtained by doing the following:

[REQUEST FOR CRIMINAL RECORD CHECK FORM \(SP4-164\)](#)

This form is used to obtain a report from the Pennsylvania State Police criminal history files. Complete Part I of the Form. Follow the instructions printed in each section for proper completion of the form. Failure to follow the instructions will result in a considerable delay in the processing of your request. A processing fee of \$10.00 is required. Enclose a money order, cashier's check or certified check made payable to the **"Commonwealth of PA"**. **No cash, personal or business checks will be accepted**. Mail the completed application and fee to the address below:

**PA State Police Central Repository-164  
1800 Elmerton Avenue  
Harrisburg, PA 17110-9758**

The act does allow for a 30-calendar-day provisional hire for those individuals who need only a Pennsylvania State Police Background Check. In order for the provisional hire to be allowed the following items *must* occur:

1. The applicants must provide proof they have applied for the background check.
2. Applicants swear or affirm in writing that they have not been convicted of one of the offenses contained in the act.
3. Administrator has no knowledge of information pertaining to the applicant which would disqualify the applicant from employment pursuant to the act.

When the State Police Criminal History Background Report is received and the provisionally hired applicant has been found to have a conviction for one of the prohibitive offenses, the applicant will be immediately dismissed by the administrator.

The Department has enclosed two informational tools to facilitate the interpretation of the State Police Criminal History Background Reports. The first tool developed by the Department of Aging contains [a list of all the prohibitive offenses](#), corresponding offense code and type of conviction necessary to preclude employment. The second information tool was developed by the Pennsylvania State Police on [how to read a criminal history background report](#).

When the applicant/employee ***has not been a resident of the Commonwealth of Pennsylvania for the entire two years (without interruption) immediately preceding the date of application for employment or currently lives out-of-state, in addition to the Pennsylvania State Police Criminal History Check, the applicant/employee will also need to obtain an FBI Criminal History Check.*** This clearance is obtained by doing the following:

**[FBI FINGERPRINT CARD \(FD-258\)](#)**

This form is used to obtain a report from the FBI criminal files. Please follow the instructions given below for proper completion of the FBI fingerprint card. Failure to follow the instructions will result in a considerable delay in the processing of your clearance. Fingerprints cards can be obtained from Pennsylvania Department of Aging or your local Area Agency on Aging.

Complete the information in the top portion of the card by following the enclosed sample sheet. The applicant/employee will need to write ***"Long Term Care Employment, 35 PaSA § 10225.502 [a] [2]"*** in the Reason Fingerprinted Block ([See Sample](#)).

Take the completed card to the nearest PA State Police facility or local police department to have the applicant's fingerprints applied to the card. A fee may be charged for this service. The fingerprints must be of sufficient quality that they can be classified by the FBI. The police officer must sign and date the card.

A separate \$30.25 processing fee must be enclosed for **each** FBI card submitted. **Do not send cash, personal checks or agency checks. Payments MUST be in the form of a money order, cashier's check or certified check made payable to Commonwealth of Pennsylvania.**

In addition to completing the FBI fingerprint card, the applicant/employee will need to also complete the [FBI Background Check Transmittal Form](#). This form contains information on the applicant and employer. The proper completion of this form will allow for the timely processing of the request. A sample of this form is also enclosed.

***The fingerprint card cannot be bent or folded in anyway.*** Place the fingerprint card, transmittal form and processing fee in a large manila envelope. Remember to include your return address in the upper left-hand corner of the envelope. Mail the envelope to the address listed below:

**PA Department of Aging  
FBI Background Check Unit  
555 Walnut St., 5th Floor  
Harrisburg, PA 17101-1919**

Responses from the FBI will be forwarded to the PA Department of Aging after processing to determine if any convictions listed would prohibit the applicant/employee from being employed. The Department of Aging will then forward the response to the applicant and agency.

The act does allow for a 90-calendar-day provisional hire for those individuals who need a Pennsylvania State Police Background Check ***and*** the FBI Background Check. In order for the provisional hire to be allowed the following items ***must*** occur:

1. The applicants must provide proof they have applied for the background check.
2. Applicants swear or affirm in writing that they have not been convicted of one of the offenses contained in the act.
3. Administrator has no knowledge of information pertaining to the applicant which would disqualify the applicant from employment pursuant to the act.

When the PA Department of Aging's response to the FBI Background Check is received for the provisionally hired employee and the provisional employee has been found to have a conviction for one of the prohibitive offenses, the applicant will be immediately dismissed by the administrator.

Enclosed is a summary of Act 169 of 1996 and [Act 13 of 1997](#) for a clearer understanding of both acts. The summary also contains information on Act 28 which was passed during 1995 ([click here](#)).

If you would have any questions, please contact the PA Department of Aging at (717) 265-7887, Monday through Friday.

### **FBI CRIMINAL HISTORY CHECK PROCESS**

Obtain FBI Fingerprint Card from PDA or local Area Agency on Aging

Complete information in top portion. Write "*Long Term Care Employment, 35 PaSA § 10225.502 [a] [2]*" in the Reason Fingerprinted Block

Take completed card to nearest PA State police facility or local police to have applicant's fingerprints applied to card. Police officer signs and dates card.

Applicant also completes FBI Background Check Transmittal Form available from PDA

Mail fingerprint card, transmittal form and \$30.25 processing fee in a large manila envelope to:

**PA Department of Aging  
FBI Background Check Unit  
555 Walnut Street, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1919**

## CONVICTIONS

If certain convictions of statutory infractions are evidenced in the report(s), then employment in a facility is forbidden (**35 P.S. § 10225.503(a)(1)&(2)**). That is, where applicant or employee has a record of certain law convictions, then such individual is prohibited from employment, and shall not be employed, in a facility (cf 18 Pa.. C.S.A. § 6105, 23 Pa. C.S.A. § 6344, 23 Pa.. C.S.A. § 6355 and 42 Pa. C.S.A. § 6308). ***The law convictions prohibiting employment involve the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. § 780-101) and the Pennsylvania Crimes Code (18 Pa. C.S.A. § 101).***

Employment is prohibited where the criminal history reveals a felony conviction of The Controlled Substance, Drug, Device and Cosmetic Act. Likewise, employment is denied where the criminal history lists a conviction of the Crimes Code as indicated. [Click here](#) for a chart of the offenses.

A sample Criminal History Record is provided [here](#) for review.

According to the criminal history record, the individual pled guilty to a summary offense of public drunkenness and disorderly conduct in July of 1987 and was found guilty of misdemeanor 1 for firearm carried without a license and guilty of a misdemeanor 1 prohibited offensive weapons. According to the prohibitive offensives contained in Act 169, these offenses do not preclude the person from being employed in a long-term care facility. However, the arrest in July 1997 for intent to deliver, if found guilty, would precluded employment in a long term care facility.

Note that the disposition of the case is marked, "Disposition Unreported". This could indicate that the case is in process, or that records are not matched up at this time or that the person entered an accelerated rate of disposition program under which they agreed to a set period of time and to certain conditions. The applicant will need to contact either the clerk of court or Prothonotary in the county where the offense occurred to determine the outcome. The disposition outcome should be obtained in writing.

### PROVISIONAL EMPLOYMENT (35 P.S. § [10225.506](#))

Facilities may employ applicants on a provisional basis for a single period not to exceed 30 days who have been a resident of Pennsylvania for two years immediately preceding the date of the application for employment; and, for applicants who have not been a resident of Pennsylvania for two years immediately preceding the date of the application for employment, a period of 90 days, if all of the following conditions are met:

1. The applicant has applied for the information required under the Act and the applicant provides a copy of the appropriate completed request forms to the administrator.
2. The facility has no knowledge of information pertaining to the applicant which would disqualify applicant from employment pursuant to the Act, subject to 18 Pa. C.S. § 4911 (relating to tampering with public records or information).
3. The applicant swears or affirms in writing that applicant is not disqualified from employment under the Act.

### ENFORCEMENT (35 P.S. § [10225.505](#) and § [10225.706](#))

There are administrative and criminal penalties for intentional or willful failure to comply with the provisions of the Act. Any administrative enforcement of the reporting or criminal history provisions shall be conducted by the Commonwealth agency or agencies which license or have oversight authority for the facility. Any criminal enforcement of the reporting or criminal history provisions shall be prosecuted by the County District Attorney or Commonwealth Attorney General [see 71 P.S. § 732-205(a)(6); see also 71 P.S. § 732-205(b)].]

Administrative penalties may include a civil penalty of \$2,500. Intentional or willful failure to comply or obstruction of compliance with the Act could result in criminal conviction as a misdemeanor of the third degree and a fine of \$2,500 and imprisonment for one year. There are also penalties for failure to report a case of suspected abuse under the Act. Summary offense for the first violation, and a misdemeanor of the third degree for the second or subsequent violation.

#### **IMMUNITY**

**(35 P.S. § [10225.302\(d\)](#), § [10225.305](#), § [10225.503\(c\)](#) and § [10225.707](#))**

No person nor entity shall be held liable for any action directly related to good faith compliance with the Act.

**[Click here to view the Unit 4 Self Check Quiz](#)**