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PI-09-19

PROGRAM INSTRUCTION

TO: Aging Services Access Points
Area Agencies on Aging

From: Ann L. Hartstein, Secretary

Date: December 7, 2009

RE: Criminal Offender Record Information (CORI) Revised Regulations (101 CMR 15.00 *et. seq*)

Purpose:

The purpose of this Program Instruction (PI) is to notify vendors of the Executive Office of Elder Affairs (EOEA) that the Executive Office of Health and Human Services (EOHHS) has revised its Criminal Offender Record Information (CORI) regulations (101 CMR 15.00 *et. seq*) ("Regulations") as they pertain to employment. The Regulations are applicable to vendors of EOEA. Consistent with the CORI requirements in the standard service provider agreement, this PI extends the requirements of 101 CMR 15.00 *et seq.* to those individuals and entities that contract with certain EOEA vendors. In practical effect, this PI requires service providers who contract with Aging Services Access Points (ASAPs) to follow the Regulations.

This PI also notifies vendors of EOEA that the CORI PI (EOEA-PI-09-15) contained an error. It incorrectly instructed vendors to submit to EOEA for second level review by the Secretary or her designee a CORI Hiring Review Form where the vendor wished to hire a candidate whose CORI contains certain Table B crimes. While the CORI Hiring Review Form does have to be completed for certain crimes within that category of offenses, no Table B offenses triggers a requirement for second level review by the Secretary or her designee.

This Program Instruction supersedes all other CORI related Program Instructions, including without limitation EOEA PI-09-15, EOEA-PI-03-01 and EOEA-PI-02-62.

Background and Program Implications:

Executive Order 495 directed EOHHS to revise CORI regulations to ensure that rehabilitated individuals with criminal backgrounds will be given a fair opportunity to be employed and reintegrate successfully into the workforce without compromising the Secretariat's commitment to ensuring the safety and security of vulnerable populations. EOHHS promulgated those regulations, which became effective for vendors of EOEAs on July 1, 2009.

Required Actions:

Pursuant to MGL c. 6, § 172C, the entities listed below are some of the entities that must perform a CORI check on any individual employed, accepted as a volunteer/student or referred for employment to a client, any individual who will provide care, treatment, education, training, transportation, delivery of meals, instruction, counseling, supervision, recreation or other services in a home or in a community based setting for any elder or person with a disability or who will have any direct or indirect contact with such persons or access to such persons' files:

- any agency that provides homemaker, home health aide, companion or other community based services in home or community based settings, including, but not limited to home health agencies certified under Title XVIII of the Social Security Act;
- a home care corporation established pursuant to the provisions of chapter nineteen A;
- any other entity receiving federal, state or local funds.

Such entities shall obtain all available criminal offender record information concerning any such individual from the criminal history systems board prior to employing such individual, accepting such individual as a volunteer or referring such individual for employment to an elderly or disabled person.

While MGL c. 6, § 172C mandates CORI checks in specified circumstances, it does not provide any mandate or guidance regarding the results of a CORI check. The Regulations provide a framework for interpreting CORI information in the context of hiring decision.

I. Applicability of Regulations

As noted above, the Regulations require all ASAP vendors to conduct CORI checks on any individual whose position fits the description in Paragraph II below. In addition, EOEAs requires that service providers who contract with ASAPs to provide services to elders must conduct CORI checks on those individuals whose positions fit the description in Paragraph II below. The person(s) legally authorized to make hiring decisions is the Hiring Authority.

II. Relevance of CORI

The Regulations provide that CORI must be sought only when it is clearly relevant to the job the individual seeks. As the statute makes clear, CORI is relevant where an individual will have direct or indirect contact with an elder or an elder's files. The Regulations specifically provide that CORI checks will only be done in the following types of positions:

- Applicants and employees seeking a position that entails the potential for unsupervised contact with program clients;

- Applicants and employees for whom a CORI is necessary to comply with other legal requirements (such as MGL c. 6, §172C), or for whom a CORI is otherwise deemed by EOHHS, its agencies, or vendor programs to be relevant to the duties and qualifications of the position; and
- Employees who apply for a new position that falls under one of the above mentioned categories.

III. *Timing of Request for CORI*

A Hiring Authority must now refrain from checking CORI until it determines that an individual is otherwise qualified for employment and makes a conditional offer of employment. That offer will be subject to consideration of any criminal record.

IV. *Review Standards for CORI*

The Regulations recognize three categories of CORI:

1. **No Record Finding:** If the CORI process reveals no record, the Hiring Authority must confirm the offer of employment.
2. **Positive CORI for Outstanding Warrant:** The Hiring Authority must inform the candidate that he/she is not eligible for employment until the default is removed.
3. **Positive CORI Finding of Crime(s) or Pending Offense(s):** The hiring authority must refer to the two tables of crimes found in the Regulations and follow the new review process summarized below: (The Regulations have eliminated Table C from the Table of Offenses previously in effect and has reclassified and updated Table A and Table B.)

The New Review Process

- The Regulations contain a “look back” provision that only applies to Table B crimes. Table B crimes cannot be cited as a reason to disqualify a candidate, when:
 - For felony records, court supervision was completed ten years prior and there is no subsequent criminal activity.
 - For misdemeanors, court supervision was completed five years prior and there is no subsequent criminal activity.

Please note: For this category of Table B crimes, it is not necessary to complete a Hiring Review Form.

- If the CORI investigation reveals a conviction of a Table A crime, regardless of when it occurred, or a pending Table A crime, or a conviction of a Table B crime within the five and ten year time periods referenced previously, or a pending Table B crime, the Hiring Authority must complete a Hiring Review Form set forth below:
 - Complete and maintain in its file a short Hiring Review Form (Form) to document appropriate consideration of risk and rehabilitation. (A copy of the Form is attached to this PI.) The Form will reflect the Hiring Authority’s written determination of its decision to hire or not hire an individual after CORI review. Completion of the Form will serve to confirm that the hiring authority has carefully reviewed the CORI and other relevant information, including information provided by the candidate, so that the clients served by EOEA are protected and candidates with criminal histories are given a fair opportunity to be employed and to reintegrate successfully into the workforce. The Form does not have to be

submitted to EOEА unless the Hiring Authority wishes to hire a candidate whose CORI contains one or more Table A crimes.

• **When the Hiring Authority wishes to hire a candidate whose CORI contains Table A crimes, second level review is required:**

- If after this review of a CORI containing one or more Table A crimes the employer determines the candidate is qualified for the position, second level review must be obtained from the Secretary of Elder Affairs (Secretary) or her designee by submitting the Form to EOEА.
- The Secretary or her designee has five business days from receipt of the Form to disapprove the hire or request additional information. Prior to the end of the five day waiting period, the Secretary of Elder Affairs or her designee may inform an employer that she does not intend to disapprove the hiring decision or request additional information.
- The Secretary or her designee has discretion to require that the Hiring Authority's review include a written determination by the candidate's criminal justice official (typically the probation officer, parole officer or correctional facility officer who most recently supervised the candidate) that the candidate does not pose an unacceptable risk of harm to clients. If the Hiring Authority determines that the criminal justice official cannot make such an assessment, the Secretary can require that the Hiring Authority's review include a written determination by a mental health professional that the candidate does not pose an unacceptable risk of harm to clients. If the Secretary or her designee requires such an assessment by a mental health professional, it must be obtained at the expense of EOEА.

V. Security of CORI and Associated Documentation

The Hiring Authority must maintain in a secure location a copy of the Hiring Review Form and the CORI and criminal record disclosure information that may have been requested under 101 CMR 15.06(1)(a).

VI. CHSB Requirements

The Regulations do not alter the Hiring Authority's existing obligations to comply with CHSB regulations. Before making any determination or hiring decision based on CORI, the Hiring Authority must comply with all CHSB regulations as set forth at 803 CMR 2.00 to 9.00 et seq., including:

- Providing the candidate with a copy of his or her CORI, the Regulations, and CHSB information regarding the process for correcting a criminal record;
- Notifying the candidate of the potential adverse decision based on the CORI;
- Informing the candidate what part of the criminal record appears to make him or her ineligible for the position;
- Providing the candidate with an opportunity to dispute the accuracy and relevancy of the CORI; and

- Reviewing any additional documentation received from the candidate or CHSB with the candidate and informing him or her of the decision.

The Hiring Authority must allow a candidate a reasonable period of time to dispute the accuracy of a CORI report and to provide supporting documents. EOHHS guidance to EOHHS agencies identifies ten (10) calendar days as a reasonable period of time. Definition of reasonable period is at the discretion of the Hiring Authority.

VII. Applicability of Regulations to Entities that Contract with ASAPs for the Provision of Home and Community Based Services.

As noted above, EOEA requires entities providing home and community based services authorized by ASAPs to follow the above-described process in making employment decisions for positions with the potential for unsupervised contact with clients or have access to client information. Where such entities wish to hire an individual whose CORI shows a conviction of a Table A crime, regardless of when it occurred, or a pending Table A crime, or a conviction of a Table B crime within the five and ten year time periods referenced previously, or a pending Table B crime, the entity must seek second level review by the Secretary or her designee.

VIII. Inapplicability of Regulations to Individuals Hired Directly by Consumers or Their Families

The Regulations do not apply to personal care attendants or other individuals hired directly by clients or their families. However, EOEA has set certain CORI disclosure requirements in its Consumer Directed Care Program as set forth in EOEA-PI-2009-XX (CDC PI). The Regulations do not impact the CORI requirements set forth in the CDC PI.

IX. Other Resources

EOHHS has provided guidance on the Regulations at a dedicated web page: www.mass.gov/hhs/cori. The site contains links to a Memorandum from EOHHS regarding the new Regulations, Frequently Asked Questions, the Regulations and Tables of Offenses, the Hiring Review Form, and Information for Employers.

This PI is a summary of the Regulations (101 CMR 15.00 et seq.) and not a full detailed review of every regulation. Please use this summary as a guide and read the attached Regulation in its entirety.

Effective Date:

December 7, 2009

Contact:

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Attachments:

101 CMR 15.00 et seq – Final EOHHS CORI Regulations
CORI Hiring Review Form