

CLIENT ALERT: New Regulations Change How Massachusetts Health and Human Services Vendors Obtain Criminal Background Information

The Massachusetts Executive Office of Health and Human Services (“EOHHS”) recently completed a revision of its regulations pertaining to the use of Criminal Offender Record Information (“CORI”) in hiring processes. The new regulations are effective July 1, 2009 and apply to EOHHS and all EOHHS vendors. The regulations will likely change the hiring process for affected employers as they, among other things, require that ***“no initial employment application form may ask whether an applicant has a criminal record.”***

Timing of CORI Checks and Questions about an Applicant’s Criminal History

Under the new regulations, the CORI check and any questions about an applicant’s criminal history may only be conducted after the individual has been deemed otherwise qualified for the position, has been selected as the final candidate, and has been given a conditional offer of employment, subject to consideration of any criminal record.

Affected Agencies and Vendors

EOHHS agencies or their vendor programs, including the following agencies and the vendor programs they support, are subject to the new revisions:

- Department of Children and Families
- Department of Elder Affairs
- Department of Mental Health
- Department of Mental Retardation
- Department of Public Health
- Department of Transitional Assistance
- Department of Veterans’ Services
- Department of Youth Services
- Division of Health Care Finance & Policy
- Massachusetts Commission for the Blind
- Massachusetts Commission for the Deaf and Hard of Hearing
- Massachusetts Rehabilitation Commission
- MassHealth
- Office for Refugees and Immigrants
- Soldiers’ Home in Chelsea
- Soldiers’ Home in Holyoke

Categories of Applicants and Employees For Whom CORI Checks Will Be Conducted

The new CORI regulations specify that CORI checks can only be conducted for positions where a criminal background is relevant. Subject to certification by the Criminal History Systems Board, this includes:

- 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;
- applicants and employees for whom a CORI is otherwise deemed by a EOHHS, an agency or a vendor program to be relevant to the duties and qualifications of the position; and
- current employees in positions where a CORI is required may be subject to a criminal record review at other times at the discretion of the hiring authority.

A CORI check should only be conducted for candidates for those positions. A CORI check should not be conducted for candidates for positions that do not meet these criteria.

What Should a Covered Employer Do?

Employers subject to the regulations should revise employment applications, removing questions relating to criminal backgrounds. Those inquiries should appear in a supplemental form, which should be given to the applicant after a conditional offer of employment has been made.

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This publication was prepared on July 2, 2009.

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