


agency for persons with disabilities
State of Florida

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DATE: December 15, 2005
TO: APD Area Program Administrators
FROM: Shelly Brantley
Director
SUBJECT: Abuse Risk Reduction Measures

Due to recent concerns relating to the possible exposure of Agency clients to persons with past criminal histories or verified instances of abuse, I am taking this opportunity to reiterate both our current statutory background screening requirements and agency policy regarding service providers who place agency clients in high risk environments.

Pursuant to section 393.0655, Florida Statutes (F.S.), Level 2 background screening, as provided in section 435.04, F.S., which includes a statewide criminal and juvenile records check by the Florida Department of Law Enforcement, as well as a federal criminal records check by the Federal Bureau of Investigation; employment history checks, as provided under section 435.03(1), F.S.; and local criminal records checks through local law enforcement are required for:

- All direct service providers, which are defined, pursuant to section 393.063, F.S., as any person 18 years of age or older who has direct contact with individuals with developmental disabilities, or has access to a client's living areas or to a clients funds or personal property, and is not a relative of such individuals. In addition to independent contractors, and employees or staff providing direct care to agency clients in any setting, this also includes support coordinators, and managers and supervisors of foster care facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs.
- All volunteers in any setting who meet the definition of a 'direct service provider' and who assist on an intermittent basis for 40 hour or more per month.
- Persons residing with a direct service provider, including family members, if they are in direct contact with individuals with developmental disabilities, or have access to a client's living areas or to a clients funds or personal property.

As you know, there are several exceptions to these screening requirements.

- Volunteers who assist consumers on an intermittent basis for less than 40 hours per month do not have to be screened as long as they are under the direct and constant supervision of persons who do meet statutory screening requirements.

- A person selected by the family or the individual with a developmental disability and paid by the family or the individual to provide supports or services is not required to undergo a background screening at all.
- Screening of persons who are 12 to 18 years of age who reside with a direct service provider, including family members, who have direct contact with individuals with developmental disabilities, or have access to a client's living areas or to a client's funds or personal property, is limited to screening for delinquency records only.
- Health care practitioners who are licensed and regulated by the Department of Health are not subject to background screening if they are providing a service within the scope of their licensed practice.
- In accordance with section 393.0657, F.S., human resource personnel who have met Level II screening requirements pursuant to chapters 393, 394, 397, 402, and 409, and teachers pursuant to chapter 1012, F.S., and who have not been unemployed for more than 90 days are not required to be re-screened in order to comply with the screening requirements of section 393.0655, F.S.

With respect to the licensing of foster care facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs, section 383.067(5), F.S., prohibits the agency from issuing or renewing a license if any of the direct service providers have failed the screening requirements of section 393.0655, F.S.¹

More broadly, section 393.0674, F.S., makes it a misdemeanor of the first degree, for any person to willfully, knowingly, or intentionally:

- Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for voluntary or paid employment a material fact used in making a determination as such person's qualifications to be a direct service provider.
- Provide or attempt to provide supports or services with direct service providers who are in noncompliance with the minimum standards for good moral character (i.e., as determined by background screening).

The requirement that all Medicaid waiver direct service provider applicants comply with Level 2 screening requirements has been incorporated into *The Developmental Services Waiver Services Medicaid Coverage & Limitations Handbook, dated October 2003* (hereafter referred to as "*the Handbook*"), which has been incorporated by reference in Agency for Health Care Administration rule 59G-8.200, F.A.C. Further, the Medicaid Waiver Services Agreement incorporates the Handbook and obligates the waiver provider to comply with these requirements as a matter of contract.

¹ Pursuant to s. 435.07, F.S., the licensing agency may grant an exemption from disqualification under certain circumstances,

Adherence to the statutory requirements presented above is of utmost importance to the Agency. Research indicates that the strongest indicator of a potential abuser is past behavior. **Anyone with a history of committing sexual abuse presents an extremely high risk for repeating such acts if he or she is afforded the opportunity.**

Background screening helps identify such persons before they have contact with APD clients. Unfortunately, the population we serve is especially vulnerable to instances of abuse, particularly sexual abuse. It has been estimated that up to 90% of persons with developmental disabilities will be victims of sexual violence at some time during their life.² Therefore, as a matter of law and policy, the Agency will not contract with, or continue to contract with, a provider who does not meet, or employs persons who do not meet, the background screening requirements provided above.

When the Agency contracts with a provider to render services to APD clients, there exists an obligation on the part of the contractor to render services in a manner that ensures the health, safety, and welfare of the client. Therefore, the Agency must undertake proactive measures as soon as high-risk environments are revealed. Area office staff shall notify providers that individuals with criminal histories (which would include any disqualifying offense as defined within chapter 435.02, F.S.) are not permitted to have direct contact with APD clients while they are under the care and supervision of the APD-contracted service provider. Providers who fail to comply with this prohibition will be subject to a variety of adverse actions as authorized by state law and contract including license revocation and waiver de-certification.

When the Agency becomes aware of instances wherein APD-contracted service providers have knowingly allowed persons with previous criminal histories to have direct contact with APD clients, the Agency shall hold the contracted service provider culpable and pursue any or all of the aforementioned adverse actions.

In the Fall of 2003, the Agency implemented the Zero Tolerance Initiative as a means to prevent the sexual abuse, assault, and exploitation of persons with developmental disabilities. However, in order for our Zero Tolerance efforts and activities to truly succeed in preventing occurrences of abuse, it is essential that our service providers fully understand the consequences of allowing unscreened individuals to assist them in rendering contracted services to APD clients or to otherwise have any contact with our clients. Therefore, please share this information with all individuals and organizations involved in the provision of services to persons with developmental disabilities on behalf

² Valenti-Hein, D. & Schwartz, L., *The Sexual Abuse Interview For Those With Developmental Disabilities*. (1995), estimated that 90% of people with developmental disabilities will be the victim of sexual violence in their lifetime. Wilson, C & Brewer, N., *The Incidence Of Criminal Victimization Of Individuals With An Intellectual Disability*, 27 *Australian Psychologist* (1992,114-117), report that women with developmental disabilities are 10.7 times as likely to be sexually assaulted than other women. The most widely cited study on the incidence of assault on individuals with disabilities was published in 2000 in the *Journal of Child Abuse and Neglect*. The study looked at about 50,000 public and private school children in Nebraska, almost 5,000 of whom were disabled. The study found that children with mental retardation were four times more likely to be sexually assaulted than their typically developing peers. Overall the study found that one in three children with disabilities had been abused compared to one in 10 children who were not disabled.

of the Agency.

Thank you in advance for your immediate and consistent adherence to this policy and procedure. I am confident that the measures described herein will greatly reduce the opportunity for known perpetrators to commit further acts of abuse against individuals with developmental disabilities. If you have any questions or require guidance in responding to specific situations, please contact Tom Rice at (850) 414-7649 or Suncom 994-7649.

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