

## **Criminal History Record Check Home Care Surveillance Protocol**

Division of Home and Community Based Services

10-27-2016 Revised and updated 5/3/18

**Purpose:** Validate home care agency's compliance with Criminal History Record Check (CHRC) regulations found in 10 NYCRR Part 402 and Department directives during re-licensure survey using the CHRC Surveyor Checklist.

Survey objectives to determine if the agency is:

- submitting CHRC requests on all subject individuals within the required time frame;
- using the required DOH process and the required DOH forms for obtaining and requesting CHRCs;
- supervising temporary employees while awaiting the CHRC determination;
- acting on non-favorable determination letters (Hold in Abeyance, Pending Denials, Final Denials) and immediately removing temporary employees from providing patient care;
- submitting the DOH termination notice when required; and
- maintaining confidentiality of CHRC information.

Document all findings on the CHRC Surveyor Worksheet.

### **Offsite Pre-survey Activities:**

1. Identify CHRC Authorized Person(s) (CHRC APs) listed on the Health Commerce System and notate on CHRC Surveyor Worksheet. The agency is required to designate at least two CHRC APs.
2. Review agency's past survey compliance related to CHRC requirements.
3. Obtain Monthly CHRC Negative Determination Report and select survey sample of at least 2 employees listed on the report, notate on CHRC Surveyor Worksheet.

This report includes the following:

**Hold in Abeyance:** Letter is issued to the employee and the agency and indicates the individual has open charges that will result in a CHRC denial if there is a conviction. The individual must be immediately removed from providing direct care. The individual is responsible for contacting CHRC when the charges are resolved, at which time CHRC legal will revisit the case and make a determination. If the provider no longer plans to employ this individual, an electronic termination must be submitted to the DOH.

**Pending Denial:** Letter is issued to the employee and the agency and indicates the individual has criminal convictions sufficient for CHRC to deny employment eligibility. The individual must be immediately removed from providing direct care. The individual has thirty days to submit rehabilitation information to assist CHRC in making a final determination.

**Final Denial:** Letter is issued to the employee and the agency and indicates the individual must be immediately removed from providing direct care. An electronic

termination must be submitted to the DOH. This letter may be issued after a Pending Denial letter when the employee has not provided sufficient evidence of rehabilitation.

**Onsite Activities:**

1. Verify agency's CHRC AP(s) are accurate and currently employed.
2. Request a current employee roster (which includes all employed licensed and non-licensed staff), date of hire, and title. Verify the number of currently employed aides/non-licensed staff subject to CHRC.
3. Review the agency's CHRC policies and procedures and determine if it meets requirements. The policy must address the following elements:
  - Designation of at least two CHRC Authorized Person(s) (APs);
  - Determination of who is subject to a CHRC (aides and non-licensed employees);
  - Employee rights including informed consent for CHRC and use of required DOH consent form, right to withdraw application, and challenge of determination;
  - Process for requesting CHRC within 15 calendar days of date of hire;
  - Process for obtaining Livescan fingerprinting using required DOH process/forms;
  - Supervision of temporary personnel while awaiting determination;
  - Procedures for Hold-in- Abeyance, Pending Denial, or Final Determination letters;
  - Process for reporting terminations and separations to the Department including use of required DOH form;
  - Retention, confidentiality, of CHRC records.
4. Determine and verify that the agency has implemented and is following their CHRC policies and procedures based on information gathered during the survey.
5. Conduct interviews with the agency's CHRC AP or administrative staff to ascertain:
  - The agency's procedure when they receive a Negative Determination letter- Hold in Abeyance, Pending Denial, or Final Denial.
  - The agency's procedure for supervision of temporary staff while awaiting CHRC determination.
6. Select a sample of current employed aides/non-licensed personnel (a minimum of 6 personnel records and generally no more than 15 personnel records) should be reviewed to determine compliance with CHRC requirements. The sample should be selected using the agency's employee roster and at least 2 employees listed on the Monthly CHRC Negative Determination Report.

**\*Please note that the survey sample may be expanded at the discretion of the survey team if there are issues identified or dependent on the number of aides employed by the agency.**

7. Review each personnel record to determine documentation of the following:

- CHRC **Acknowledgement and Consent Form** (102) was completed and signed by the prospective employee.
- CHRC **Request for Criminal History Record Check Form** (103) electronic submission was submitted within 15 days of date of hire. This can be verified by print out of the Form 103, or receipt of CHRC determination letter, or LiveScan Request letter date, or listing on the agency's CHRC Roster.
- Required weekly supervision was conducted during temporary employment while awaiting CHRC determination. The agency is required to provide **onsite direct observation and evaluation** of the temporary employee for the **first week of supervision and every other week**. This onsite supervision must be done by an individual employed by the agency with at least 1-year experience working in an Article 36 agency (this may be a licensed health care professional, senior aide or other paraprofessional). In the alternating weeks, the supervision may be on-site *or* by phone call to the patient or patient's representative.

Documentation must include the dates of supervision, the name(s) of person conducting the supervision, and type of supervision (onsite or by phone call).

- CHRC Determination Letter is in file.
  - Evidence that negative CHRC determination letters (Hold-in-Abeyance, Pending Denial, or Final Denial) were acted upon and that the employee was removed from providing direct care "immediately" upon notice consistent with the CHRC letter date. (if applicable)
  - Documentation that CHRC electronic termination form (105) was submitted if applicable. The termination form is required and must be submitted: within 30 days of the Final Denial letter date; and/or within 30 days of date of termination, or within 30 days of being permanently removed from direct care even if the person is still employed by the agency in a different capacity.
  - Verify CHRC information is maintained and retained confidentially and not available beyond the Authorized Persons, agency representatives, or Human Resource Department involved in hiring decisions. In addition, the Charge/Conviction Report and Evidence of Rehabilitation attachments to the letters must be secured separately and accessible only to CHRC AP(s), Agency Representative(s) and those involved with hiring decisions.
8. Determine the agency's compliance with the requirement to notify DOH using Termination Form 105 within 30 days of employee's termination/separation date. Select at least 2 separated aides from the either the Agency Profile of Inactive Aides listing or from the agency's list of terminated aides and review each personnel record to verify that Termination Form 105 was submitted within 30 days of the aide's separation date.

**CHRC Surveyor Worksheet**  
**Division of Home and Community Based Services**  
**10 NYCRR Part 402**  
**Updated May 2018**

<b>Agency Name:</b>	<b>Surveyor Name(s):</b>	<b>Survey Dates:</b>
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**Review Agency's CHRC Policy. Does Agency have a CHRC Policy?** Yes  No

**Policy Name/Policy Date:**

**Does policy address the following elements:**

Designation of at least two CHRC Authorized Person(s) (APs) Yes  No

Determination of who is subject to a CHRC Yes  No

Employee rights, informed consent, use of required DOH consent form, right to withdraw application, and challenge of determination Yes  No

Process for requesting CHRC within 15 calendar days of date of hire Yes  No

Process for obtaining Livescan fingerprinting within 15 calendar days of date of hire using required DOH forms Yes  No

Supervision of temporary personnel while awaiting determination Yes  No

Procedures for Hold-in- Abeyance, Pending Denial, or Final Determination letters Yes  No

Process for reporting terminations and separations to the Department including use of required DOH form Yes  No

Retention, confidentiality of CHRC records. Yes  No

**Notes regarding policy review and whether agency is following their written procedures:**

**CHRC Authorized Person (AP)**

Are at least 2 CHRC APs assigned? Yes <input type="checkbox"/> No <input type="checkbox"/> CHRC APs are accurate/currently employed? Yes <input type="checkbox"/> No <input type="checkbox"/> If AP is missing/no longer employed or other, please describe:	<b>Names of CHRC AP(s):</b> _____ _____ _____
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**Interview Notes:**

<b>Personnel Record Review (review a minimum of 6 records)</b>					
<b>Employee Name/Date of Hire</b>	<b>Consent Form (102) on file?</b>	<b>CHRC request within 15 days?</b>	<b>Weekly Supervision documented?</b>	<b>Determination Letter/Date</b>	<b>Confidentiality maintained?</b>
<b>Personnel Record Review of employees with Negative Determination Letter (at least 2 records)</b>					
<b>Employee Name/ Date of Hire</b>	<b>Negative Determination Letter Date</b>	<b>Immediately removed from direct care?</b>	<b>Termination form (105) submitted within 30 calendar days of Final Denial Date /Termination date/permanent removal from direct care?</b>		
		Yes <input type="checkbox"/> /No <input type="checkbox"/> Date:	Yes <input type="checkbox"/> /No <input type="checkbox"/> Date:		
		Yes <input type="checkbox"/> /No <input type="checkbox"/> Date:	Yes <input type="checkbox"/> /No <input type="checkbox"/> Date:		
		Yes <input type="checkbox"/> /No <input type="checkbox"/> Date:	Yes <input type="checkbox"/> /No <input type="checkbox"/> Date:		
		Yes <input type="checkbox"/> /No <input type="checkbox"/> Date:	Yes <input type="checkbox"/> /No <input type="checkbox"/> Date:		
<b>Personnel Record Review of separated/terminated employees (Select 2 employees from inactive aide list or agency list of terminated aides)</b>					
<b>Employees Name/Date of Separation</b>		<b>Termination form (105-e) submitted within 30 calendar days of termination/separation?</b>			
		Yes <input type="checkbox"/> /No <input type="checkbox"/> Date:			
		Yes <input type="checkbox"/> /No <input type="checkbox"/> Date:			
<b>NOTES:</b>					