



North Carolina Department of Health and Human Services
Division of Health Service Regulation • Mental Health Licensure and Certification Section
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Michael F. Easley, Governor

Dempsey Benton, Secretary

Stephanie M. Alexander, Chief

NOTICE

To: Providers licensed under 122C
From: Stephanie Alexander, Chief, MH Licensure & Certification Section
Re: Revisions to 122C-80: Criminal Background Check Statute
Date: September 27, 2007

In July of this year, the Criminal Background Check statute governing 122C facilities was amended to allow providers to ***use a private entity to conduct State criminal record checks***. Please note that providers ***still need to request national criminal record checks through the SBI***. Previously the statute required that a county had to pass a special ordinance in order for providers to be able to use private entities for state criminal record checks.

Following is the section of the bill that specifically refers to General Statute 122C-80

SECTION 3. G.S. 122C-80(b) reads as rewritten:

"(b) Requirement. – An offer of employment by a provider licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a State and national criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A provider shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Except as otherwise provided in this subsection, within five business days of making the conditional offer of employment, a provider shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a criminal history record check required by this ~~section~~ section or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, Criminal Records Check Unit, shall notify the provider as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be



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shared with the provider. Providers shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. A county that has adopted an appropriate local ordinance and has access to the Division of Criminal Information data bank may conduct on behalf of a provider a State criminal history record check required by this section without the provider having to submit a request to the Department of Justice. In such a case, the county shall commence with the State criminal history record check required by this section within five business days of the conditional offer of employment by the provider. All criminal history information received by the provider is confidential and may not be disclosed, except to the applicant as provided in subsection (c) of this section. For purposes of this subsection, the term 'private entity' means a business regularly engaged in conducting criminal history record checks utilizing public records obtained from a State agency."

Following is a link to the entire ratified bill:

<http://www.ncga.state.nc.us/Sessions/2007/Bills/House/HTML/H772v5.html>