

# DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

## DIVISION OF FAMILY SERVICES

Office of Child Care Licensing

Criminal History Unit

Statutory Authority: 11 Delaware Code, Section 8563 (11 Del.C. §8563)

9 DE Admin. Code 302

### FINAL

### ORDER

#### 302 Child Abuse Registry Checks for Child Care and Health Care Persons

Proposed amended Regulation 302 relating to Child Protection Registry Checks for Child Care, Health Care, and Public School Persons was published in the *Delaware Register of Regulations* on May 1, 2013. The comment period remained open until May 31, 2013. There was no public hearing held. Public notice of the proposed amended Regulation 302 in the *Register of Regulations* was in conformity with Delaware Law.

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comments were received on the proposed amended Regulation from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The Office of Child Care Licensing (OCCL), Department of Services for Children, Youth and Their Families (DSCYF), Division of Family Services (DFS) has considered each comment and revised the draft as shown below.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the 302 Child Protection Registry Checks for Child Care, Health Care, and Public School Persons as published below is adopted and shall be effective October 1, 2013.

Jennifer Ranji, Secretary

#### 302 Child Abuse Protection Registry Checks for Child Care[, and] Health Care[, and Public School] Persons

##### 1.0 Legal Base

The legal base for these regulations is in ~~the 19~~ 11 Del.C. §708 8563.

##### 2.0 Purpose

The overall purpose of these regulations is the protection for the "vulnerable" population in child care, public schools and health care facilities. To this end, persons seeking employment in a licensed child care facility, public school or health care facility shall submit to a Child Abuse Protection Registry check. A search of the Child Abuse Protection Registry will be conducted to determine if the person is a perpetrator in any substantiated cases of child abuse or neglect.

##### 3.0 Definitions

"**Child Abuse Protection Registry**" means a central registry of information about persons the Division of Family Services has found cause to believe, or a court has substantiated through court adjudication, have committed child abuse or neglect since August 1, 1994.

"**Child Abuse Protection Registry Check**" means a computer search of the Child Abuse Protection Registry to determine if a person is a perpetrator in any substantiated cases of child abuse or neglect.

"**Child Care Facility**" means any child care facility which is required to be licensed by The Department of Services for Children, Youth and Their Families.

"**Child Care Person**" means any person ~~[in a child care facility in a position which provides the opportunity to have direct access to children without the presence of other employees or adults seeking employment in a child care facility with regular direct access to children in care. This definition shall also include any person applying for a license to operate a child care facility].~~

**“Conditional Child Care Person”** means a child care person who has been offered a position or has agreed to volunteer in a child care facility. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child ~~abuse~~ protection registry check by the employer.

**“Conditional Health Care Person”** means a health care person who has been offered a position or has agreed to volunteer in a health care facility. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child ~~abuse~~ protection registry check by the employer.

**“Conditional Public School Person”** means a public school person who has been offered a position or has agreed to volunteer in a public school. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child protection registry check by the employer.

**“Criminal History Unit”** means the Unit located in the Division of Family Services that is responsible for the ~~implementation of conducting~~ the Child ~~Abuse~~ Protection Registry checks for child care, public school and health care persons.

**“Department”** means the Department of Services for Children, Youth and Their Families or any of the Divisions.

**“Direct Access”** means the opportunity to have personal contact with persons receiving care during the course of one’s assigned duties.

**“Division of Family Services”** means the Division that maintains the Child ~~Abuse~~ Protection Registry.

**“Employer”** means any child care facility, public school or health care facility as defined.

**“Health Care Facility”** means any custodial or residential facility where health, nutritional, or personal care is provided for persons including nursing homes, hospitals, home health care agencies and adult day care facilities.

**“Health Care Person”** means any person **[seeking employment]** in a health care facility **[in a position which provides the opportunity to have direct access to persons receiving care without the presence of other employees or adults].**

**“Person Seeking Employment”** means any person applying for employment in a ~~child care~~ public school or public school district, ~~any person applying for employment in a health care facility that affords direct access to persons receiving care at such a facility or child care facility,~~ or a person applying for licensure to operate a child care facility. **[This definition also includes volunteers.]**

**“Person Seeking Employment With a Public School”** means any person seeking employment for compensation with a public school or with an agency that supplies contracted services to students of a public school or any other person who for any reason has regular direct access to children at any public school, as that term is defined in this section, including substitute teachers.

**“Public School”** means any public school and includes any board of education, school district, reorganized school district, special school district, or charter school, and any person acting as an agent thereof.

**“Volunteer”** means any person who has direct access to persons receiving care during the performance of unpaid duties.

#### 4.0 Persons Subject to the Law

4.1 Persons subject to the law shall be those persons who are hired or apply for the status described below on or after ~~January 1, 1998~~ February 1, 2003.

4.1.1 Child care, public school and health care persons subject to the Child ~~Abuse~~ Protection Registry check shall be persons **[seeking employment]** in a child care, public school or health care facility who **[are in a position which involves:]**

4.1.1.1 ~~Supervisory or disciplinary authority over persons receiving care, or~~

4.1.1.2 **[The opportunity to]** have direct access to persons receiving care **[without the presence of other employees or adults.]**

#### 5.0 Employer Responsibilities

5.1 No employer who operates a child care facility, public school or health care facility shall hire any person without requesting a Child ~~Abuse~~ Protection Registry check for that person. The Child ~~Abuse~~ Protection Registry check shall relate to substantiated cases of child abuse or neglect reported after August 1, 1994.

5.2 The employer shall obtain a full release from each person subject to the law. The release must be completed and signed in order for the employer to obtain the information provided pursuant to the Child ~~Abuse~~ Protection Registry check. The release is a form developed by the Department.

- 5.3 Any person hired prior to the employer receiving the results of the Child ~~Abuse~~ Protection Registry check, must be informed in writing, and must acknowledge in writing that employment is conditional and contingent upon the receipt and evaluation of the Child ~~Abuse~~ Protection Registry check.

## **6.0 Child [~~Abuse~~ Protection] Registry Check Process**

- 6.1 The child care, public school or health care person completes and signs a release form in order for a Child ~~Abuse~~ Protection Registry check to be conducted.
- 6.2 Upon ~~receipt of the~~ verification of the signed release, the Criminal History Unit will conduct a Child ~~Abuse~~ Protection Registry check to determine if the person is named as a perpetrator in any substantiated cases of child abuse or neglect.
- 6.3 When the person is not listed in the Child ~~Abuse~~ Protection Registry as a perpetrator of child abuse or neglect, notification of the results will be provided to the appropriate employer.
- 6.4 When the person is listed in the Child ~~Abuse~~ Protection Registry as a perpetrator of child abuse or neglect, notification of the results will be provided to the employer along with details on how to obtain further information pertaining to the substantiated case(s) of child abuse or neglect.

## **7.0 Review of Department Records**

- 7.1 When a person is listed in the Child ~~Abuse~~ Protection Registry as a perpetrator[, ~~they~~ **that person**] will be allowed the opportunity to review the record information maintained by the Division of Family Services.
- 7.2 The following procedures shall be established to permit the review of record information[~~, :~~ ]
- 7.2.1 The person shall submit a request in writing to the ~~address~~ Child Protection Registry [Substantiation] Hearing Coordinator provided as part of the results of the Child ~~Abuse~~ Protection Registry ~~Request~~ check.
- 7.2.2 Upon receipt of the request, an appointment shall be scheduled for the person to review the record information.
- 7.2.3 The review shall take place in the presence of a Division of Family Services staff member. ~~The employer may also be present.~~

## **[8.0 Voluntary Child Protection Registry Checks**

- 8.1 **Any person or organization whose primary concern is that of child welfare and care, including any nonpublic school, and which is not otherwise required to do so under the provisions of this regulation may voluntarily submit to the provisions of this regulation at such person's or organization's expense pursuant to procedures established by the Department of Services for Children, Youth and Their Families. The provisions of 11 Del.C. §8562 do not apply to such persons or organizations.]**

## **[~~8.0~~ 9.0]Confidentiality**

The Department shall ensure that confidentiality regarding case file reviews and the dissemination of information is followed according to Department policy.

## **[~~9.0~~ 10.0]Penalty**

Any employer who hires a person seeking employment without requesting and receiving a Child ~~Abuse~~ Protection Registry check for such person shall be subject to a civil penalty of not less than \$1,000.00 nor more than \$5,000.00 for each violation.