

**DELACARE**

**REGULATIONS**

**FOR**

**CHILD PROTECTION  
REGISTRY**

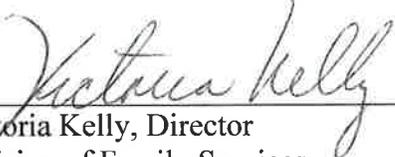
**RECORD CHECKS**

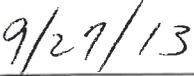
NOTICE OF RESCISSION AND PROMULGATION

The Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families adopts and promulgates the following regulations for conducting child protection registry checks as authorized by Delaware Code Title 11, Chapter 85, Subchapter V, Subsection 8563. All previous regulations are null and void. These regulations shall take effect on October 1, 2013.

  
\_\_\_\_\_  
Jennifer Ranji, Secretary  
Department of Services for Children,  
Youth and Their Families

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Victoria Kelly, Director  
Division of Family Services

  
\_\_\_\_\_  
Date

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## REGULATIONS

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

#### 1.0 Legal Base

The legal base for these regulations is in the Delaware Code Title 11, Chapter 85, Subchapter V, Subsection 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 Protection Registry check. A search of the Child 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 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 Protection Registry Check”** means a computer search of the Child 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 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 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 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 conducting the Child 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 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.

**“Person Seeking Employment”** means any person applying for employment in a public school or public school district, any person applying for employment in a health care 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 February 1, 2003.

4.1.1 Child care, public school and health care persons subject to the Child Protection Registry check shall be persons seeking employment in a child care, public school or health care facility who have direct access to persons receiving care.

#### **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 Protection Registry check for that person. The Child 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 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 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 Protection Registry check.

#### **6.0 Child 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 Protection Registry check to be conducted.

6.2 Upon verification of the signed release, the Criminal History Unit will conduct a Child 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 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 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 Protection Registry as a perpetrator, 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 Child Protection Registry Substantiation Hearing Coordinator provided as part of the results of the Child Protection Registry 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.

## **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 section may voluntarily submit to the provisions of this section 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 § 8562 of this title do not apply to such persons or organizations.

## **9.0 Confidentiality**

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

## **10.0 Penalty**

Any employer who hires a person seeking employment without requesting and receiving a Child 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.

**Delaware Code - TITLE 11**  
**Crimes and Criminal Procedure**  
**Law-Enforcement Administration**  
**CHAPTER 85. STATE BUREAU OF IDENTIFICATION**

**§ 8563. Child Protection Registry check.**

(a) Definitions. --

(1) "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.

(2) "Direct access" means the opportunity to have personal contact with persons receiving care during the course of one's assigned duties.

(3) "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 facilities and adult day care facilities.

(4) "Person seeking employment" means any person applying for employment in a public school or a public school district, any person applying for employment in a health care facility or child care facility, or any person applying for a license to operate a child care facility.

(5) "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.

(6) "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.

(b) No employer who operates a health care facility or child care facility and no public school may hire any person seeking employment without requesting and receiving a Child Protection Registry check for the person. Notwithstanding any

provision to the contrary, no person seeking employment with such an employer may be hired if the person seeking employment is currently on the Child Protection Registry at Child Protection Level III or IV as provided in subchapter II of Chapter 9 of Title 16, or has been convicted of any offense contained in Child Protection Level IV, or for 7 years after the conviction date if the person has been convicted of any Level III offense in which a child was the victim. A person who is employed in a health care facility or child care facility or public school has an affirmative duty to inform, and shall inform, that person's own employer of any criminal conviction or of any entry on the Child Protection Registry.

(c) Any employer who is required to request a Child Protection Registry check under this section shall obtain a statement signed by the person seeking employment wherein the person authorizes a full release for the employer to obtain the information provided pursuant to such a check.

(d) Notwithstanding the provisions of this section, when exigent circumstances exist which require an employer to fill a position in order to maintain the required or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested a Child Protection Registry check. The employment of the person pursuant to this subsection shall be conditional and contingent upon the receipt of the Child Protection Registry check by the employer. Any person hired pursuant to this subsection shall be informed in writing, and shall acknowledge in writing, that the person's own employment is conditional, and contingent upon receipt of the Child Protection Registry check.

(e) The Department of Services for Children, Youth and Their Families shall promulgate regulations giving guidance for a procedure to notify employers of any relevant matters indicated in the Child Protection Registry check.

(f) Costs associated with providing a Child Protection Registry check shall be borne by the State.

(g) Any employer who hires a person seeking employment without requesting and receiving a Child Protection Registry check for such person shall be subject to a civil penalty or not less than \$1,000 nor more than \$5,000 for each violation.

(h) 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 section may voluntarily submit to the provisions of this section 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 § 8562 of this title do not apply to such persons or organizations.

71 Del. Laws, c. 199, § 15; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 200, § 2; 73 Del. Laws, c. 412, §§ 10-19.;

