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California Office of Patients' Rights Information Notice #2021-02

Criminal records checks and denials, suspensions, or revocations of licenses for certain criminal offenses WIC § 5405.

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The California Office of Patients' Rights (COPR), under contract with the Department of State Hospitals, provides technical assistance and training to county patients' rights advocates, conducts program reviews of county patients' rights programs, and investigates patients' rights complaints that the county patients' rights advocate has been unable to resolve.

This is an informational notice to give guidance to county patients' rights advocates to review regarding criminal records checks and denials, suspensions, or revocations of licenses for certain criminal offenses.

Background: Criminal Background Checks

Under the LPS Act, section 5405 of the California Welfare and Institutions Code, fingerprint images must be submitted to the Department of Justice for the purposes of a criminal record check for:

- Any person to operate or manage a facility licensed by the State Department of Health Care Services;
- Direct care staff; and/or
- Direct services contractor.

Purpose

According to the Assembly Bill 1454 (2002), requiring a background check is meant to ensure the safety and security of mental health clients in inpatient facilities. The Department of Mental Health stated that the provision requiring fingerprinting and criminal record checks of direct service personnel in inpatient facilities will greatly improve client and staff personal safety.

Who

The statute applies to facilities licensed by the State Department of Health Care Services. "Facility" means psychiatric health facilities and mental health rehabilitation centers. Welf. & Inst. § 5405(a).

The statute applies to any person to operate or manage a facility licensed by the State Department of Health Care Services, direct care staff, and direct services contractors. Welf. & Inst. § 5405(b)(1)(A),(B),(C).

"Direct care staff" means any person who is an employee, contractor, or volunteer who has contact with other patients or residents in the provision of services. Administrative and licensed personnel shall be considered direct care staff when directly providing program services to participants. Welf. & Inst. § 5405(h)(1).

Fingerprint Images

If individual being hired have resided in California for at least the previous 7 years, the individual shall only submit one set of fingerprint images and related information to the Department of Justice (DOJ). Fingerprints and related information include fingerprint images captured and transmitted electronically. Welf. & Inst. § 5405(b)(2).

The submittal of fingerprint images and related information pertaining to the individual hired to the DOJ is for purposes of a criminal record check. The DOJ shall provide the results of the criminal record check to the State Department of Health Care Services. Welf. & Inst. § 5405(b)(1)(A),(B),(C)

When requested, the DOJ shall forward one set of fingerprint images to the Federal Bureau of Investigation for the purpose of obtaining any record of previous convictions or arrests pending adjudication of the applicant, licensee, direct care staff person, or direct services contractor. Welf. & Inst. § 5405(b)(2).

The results of a criminal record check provided by the DOJ shall contain every conviction rendered against an applicant, licensee, direct care staff person, or direct services contractor, and every offense for which the applicant, licensee, direct care staff person, or direct services contractor is presently awaiting trial, whether the person is incarcerated or has been released on bail or on his or her own recognizance pending trial. Welf. & Inst. § 5405(b)(2).

The State Department of the Health Care Services shall request subsequent arrest notification from the Department of Justice pursuant to Section 11105.2 of the Penal Code. Welf. & Inst. § 5405(b)(2).

Fee

The DOJ shall charge a fee sufficient to cover the reasonable cost of processing the fingerprint submission. Welf. & Inst. § 5405(b)(2).

Self-Report

Any person specified in the statute shall provide information as to whether or not the person has any prior criminal convictions, has had any arrests within the past 12-month period, or has any active arrests, and shall certify that, to the best of their knowledge, that the information provided is true. Welf. & Inst. § 5405(b)(3)

Any person specified in this statute shall provide information on any prior administrative action taken against them by any federal, state, or local government agency and shall certify that, to the best of their knowledge, that the information provided is true. Welf. & Inst. § 5405(b)(3)

An applicant or other person required to provide information pursuant to this section that knowingly or willfully makes false statements, representations, or omissions may be subject to administrative action, including, but not limited to, denial of their application or exemption or revocation of any exemption previously granted. Welf. & Inst. § 5405(b)(3)

Felony Convictions

The State Department of Health Care Services shall deny any application for any license, suspend or revoke any existing license, and disapprove or revoke any employment or contract for direct services, if the applicant, licensee, employee, or direct services contractor has been convicted of, or incarcerated for, a felony defined in subdivision (c) of Section 667.5 of, or subdivision (c) of Section 1192.7 of, the Penal Code, within the preceding 10 years. Welf. & Inst. § 5405(c)(1).

Under the subdivision (c) of Section 667.5 of the California Penal Code, there are 23 codified definitions for violent felonies. Examples are but not limited to:

murder or voluntary manslaughter; mayhem; rape; sodomy; oral copulation; lewd or lascivious act; any felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved or any felony in which the defendant uses a firearm which use has been charged and proved; any robbery; arson; and more.

Under the subdivision (c) of Section 1192.7 of the California Penal Code, there are 42 codified definitions for violent felonies. Examples are but not limited to:

murder or voluntary manslaughter; mayhem; rape; sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; oral copulation by

force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; and more.

This applies to convictions that occurred out of state, if committed or attempted in this state, would have been punishable as one or more of the offenses referenced above. Welf. & Inst. § 5405(c)(2).

Misdemeanor Convictions

The State Department of Health Care Services may approve an application for, or renewal of, a license, or continue any employment or contract for direct services, if the person has been convicted of a misdemeanor offense: (1) that is not a crime upon the person of another; and (2) the nature of which has no bearing upon the duties for which the person will perform as a licensee, direct care staff person, or direct services contractor. The Department will take into consideration the factors below to determine whether to approve an application, renew a license, or continue employment or contract. Welf. & Inst. § 5405(d)(1).

If the criminal record of a person indicates any conviction other than a minor traffic violation, the State Department of Health Care Services may deny the application for license or renewal, and may disapprove or revoke any employment or contract for direct services. Welf. & Inst. § 5405(d)(2)

In determining whether or not to deny the application for licensure or renewal, or to disapprove or revoke any employment or contract for direct services, the department shall take into consideration the following factors:

- The nature and seriousness of the offense under consideration and its relationship to the person's employment, duties, and responsibilities. Welf. & Inst. § 5405(d)(2)(A).
- Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior. Welf. & Inst. § 5405(d)(2)(B).
- The time that has elapsed since the commission of the conduct or offense and the number of offenses. Welf. & Inst. § 5405(d)(2)(C).
- The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanction lawfully imposed against the person. Welf. & Inst. § 5405(d)(2)(D).
- Any rehabilitation evidence, including character references, submitted by the person. Welf. & Inst. § 5405(d)(2)(E).
- Employment history and current employer recommendations. Welf. & Inst. § 5405(d)(2)(F).

- Circumstances surrounding the commission of the offense that would demonstrate the unlikelihood of repetition. Welf. & Inst. § 5405(d)(2)(G).
- The granting by the Governor of a full and unconditional pardon. Welf. & Inst. § 5405(d)(2)(H).
- A certificate of rehabilitation from a superior court. Welf. & Inst. § 5405(d)(2)(I).

Plea/Verdict

A plea or verdict of guilty, or a conviction following a plea of nolo contendere shall be deemed a conviction within the meaning of this section. Welf. & Inst. § 5405(g).

The State Department of Health Care Services may:

- deny any application; or
- deny, suspend, or revoke a license; or
- disapprove or revoke any employment or contract for direct services based on a conviction of a felony when the judgment of conviction is entered or when an order granting probation is made suspending the imposition of sentence. Welf. & Inst. § 5405(g).

Appeal/Exemption

Licenses that are denied, suspended, or revoked due to felony convictions or any conviction other than a minor traffic violation are not subject to appeal. Welf. & Inst. § 5405(e).

Any employment or contract for direct service that are disapproved or revoked due to felony convictions or any conviction other than a minor traffic violation are not subject to appeal. Welf. & Inst. § 5405(e).

After a review of the record, the director may grant an exemption from denial, suspension, or revocation of any license, or disapproval of any employment or contract for direct services, if the crime for which the person was convicted was:

- (1) a property crime that did not involve injury to any person; and
- (2) the director has substantial and convincing evidence to support a reasonable belief that the person is of such good character as to justify issuance or renewal of the license or approval of the employment or contract. Welf. & Inst. § 5405(f).

Notice

When an application is denied on the basis of a conviction pursuant to this section, the individual whose application shall be provided a notice, in writing, of the specific grounds for the proposed denial. Welf. & Inst. § 5405(h)(3).

Analysis

Whether the criminal background check requirement applies to county patients' rights advocates.

The statute applies to any person to operate or manage a facility licensed by the State Department of Health Care Services, direct care staff, and direct services contractors. Welf. & Inst. § 5405(b)(1)(A),(B),(C). "Direct care staff" means any person who is an employee, contractor, or volunteer who has contact with other patients or residents in the provision of services. Administrative and licensed personnel shall be considered direct care staff when directly providing program services to participants. Welf. & Inst. § 5405(h)(1).

Here, county patients' rights advocates are employed to assist patients in facilities. This is important because they are directly working with patients and providing services to these patients. A plain reading of the statute, this statute applies to employees and individuals contracted to work with the patients. Thus, county patients' rights advocates would be required to proceed with the background check.

Conclusion

Due to their contact with patients or residents in the course of providing advocacy services, County Patients' Rights Advocates are required to do the background check. If any employment or contract for services is revoked or denied as a result of a conviction discovered in a background check, a County Patients' Rights Advocate's ability to appeal or ask for an exemption of the denial depends on the nature of the conviction.