

May 28, 2014

Dear Intellectual Disabilities Facility Operator:

This letter clarifies the requirements of the Older Adult Protective Services Act (OAPSA, 35 P.S. §§ 10225.101 - 10225.5102) and 6 Pa.Code Chapter 15 (relating to protective services for older adults) for licensed facilities serving individuals with intellectual disabilities including residential facilities like Community Homes for Individuals with Intellectual Disabilities, 55 Pa.Code Ch. 6400; Family Living Homes, 55 Pa.Code Ch. 6500; as well as non-residential facilities like Adult Training Facilities, 55 Pa.Code Ch. 2380; and Vocational Facilities, 55 Pa.Code Ch. 2390. Effective immediately, BHSL will measure compliance with OAPSA requirements during the inspection process for Chapter 2380, 2390, 6400 and 6500 licensed settings.

The OAPSA requirements supersede any criminal history check and hiring policy criteria in the applicable regulatory chapter and corresponding Licensing Inspection Instrument.

When hiring a new employee, OAPSA requires that the facility determine if the applicant has held permanent residency in a state other than Pennsylvania within the past two years and request the appropriate criminal background checks from Pennsylvania State Police (PSP) and FBI on or before the first day of work. Facilities may employ applicants on a provisional basis for a single period not to exceed 30 days who have been a resident of Pennsylvania for two years immediately preceding the date of the application for employment and a period of 90 days for applicants who have not been a resident of Pennsylvania for two years immediately preceding the date of the application for employment, if specific conditions are met. A copy of the OAPSA regulations, a list of OAPSA prohibited offenses and additional OAPSA information can be found on the Department's website at:

<http://www.dhs.state.pa.us/provider/longtermcareservices/>. In addition, a criminal background check self-study course can be found on the Pennsylvania Department of Aging's website at:

http://www.aging.state.pa.us/portal/server.pt/community/self_study_course/18031/unit_4_criminal_background_checks/616720.

Residential Facilities

OAPSA and its regulations apply directly to residential Chapter 6400 and 6500 licensed settings because they meet the definition of "home health care agencies" that provide "care to a care-dependent individual in the individual's place of residence." See 35 P.S. § 10225.103. OAPSA requirements apply to all staff employed by Chapter 6400 and 6500 licensed settings who were hired on or after July 1, 1998. Failure of Chapter 6400 and 6500 licensed settings to hire in accordance with OAPSA for all new

hires from the date of this letter will result in a regulatory violation of 62 P.S. § 1007. BHSL will not cite Chapter 6400 and 6500 licensed settings for failure to obtain FBI criminal history checks for employees hired prior to the date of this letter who did not hold permanent residency in Pennsylvania for the two consecutive years prior to beginning employment, as long as the FBI check is obtained within 120 days from the date of this letter.

Non-residential Facilities

OAPSA and its regulations do not apply directly to non-residential Chapter 2380 and 2390 facilities. Nevertheless, in accordance with 55 Pa. Code Chapter 51 (relating to Office of Developmental Programs Home and Community-based Services), Chapter 2380 and 2390 facilities receiving waiver funding are required to obtain criminal background checks and implement hiring policies in accordance with OAPSA in addition to other licensing regulations. Criminal history checks under 55 Pa. Code § 51.20 are required for any person who is newly hired to provide Waiver services on or after May 1, 2013. BHSL will report failure of Chapter 2380 and 2390 facilities to comply with OAPSA requirements directly to the Office of Developmental Programs for appropriate action.

The BHSL Provider Support Hotline is available to answer questions about OAPSA, and can be reached at: 1-866-503-3926. Questions about OAPSA may also be directed to the BHSL Headquarters email address at: rapwarlheadquarters@state.pa.us.

Thank you for your continued partnership in protecting the health, safety, and welfare of the Commonwealth's most vulnerable citizens.

Sincerely,

Matthew Jones

Matthew Jones
Director