

# Administrator Alert

## *Policy updates & rule clarifications for Assisted Living, Residential Care & Nursing Facilities*

Office of Licensing & Quality — Oregon Department of Human Services

*February 18, 2009*

### ***Criminal History Checks on Private Duty Caregivers:***

Facilities have the responsibility of ensuring the safety and well-being of all residents therefore reasonable precautions must be exercised against any condition that could threaten the health, safety or welfare of residents. In recent months, Seniors and People with Disabilities (SPD) has received calls asking if facilities are required to perform criminal history checks on private duty caregivers. Licensing rules do not address this issue. In addition the DHS Criminal Records Unit (CRU) does not have the statutory authority to conduct criminal histories on private duty caregivers in licensed communities.

Even though the rules are silent on this issue, SPD encourages facilities to develop policies for caregivers who are privately contracted with individual residents and not employed by the facility, including determining criminal history. Options for obtaining criminal histories include private agencies as well as the Oregon State Police Identification Services (OSPIS). Following is a list and a description of the searches that the OSPIS conducts:

#### **1. Oregon search with Fingerprint card: (Oregon Only Search)**

Individual would provide a completed fingerprint card to Oregon State Police Identification Services. The fingerprint card would be completed by a local law enforcement agency or private company for which there would be a cost. Identification Services would run the card to determine if the individual has had any crimes in Oregon only. Results of background check are returned to individual. Cost is \$33 per card.

#### **2. Open Records or LED check: (Oregon Only Search)**

Individual's name, birth date and social security number (individual has option of providing) is needed to complete the LED check. Anyone can do a LED's check or set up an account (\$10 per check) with OSPIS. The check is for Oregon only. The OSP Website [http://oregon.gov/OSP/ID/public\\_records.shtml](http://oregon.gov/OSP/ID/public_records.shtml) has the forms needed for this



check. If the check shows no criminal history, then results would be sent to the facility. If a criminal history is found, results would be sent to the individual and they would have 14 days to review and respond. The results of the Oregon Name Check are then sent to the requestor. This is not a positive ID. Fingerprints are the only definitive way to link a criminal history to an individual.

### **3. Clearinghouse Unit through Oregon State Police: (National Search)**

A facility would set up an account with OSPIS (\$71.25 per check). The facility would have to provide OSPIS a list of the Oregon Criminal Charges in which a private duty caregiver would not be allowed to work in their building. A packet that includes a list of all Oregon Criminal Charges is provided on the OSP website at [www.oregon.gov/OSP/ID/clearinghouse.shtml](http://www.oregon.gov/OSP/ID/clearinghouse.shtml). The facility would send OSPIS a completed fingerprint card on the individual for a national search. After the check is completed the OSPIS clearing house would notify the facility with an “Approved” or “Denied” letter based upon the criteria provided by the facility.

As mentioned above, another option would be a private agency that does background checks. Costs will vary and may be limited in what information they can obtain.

When developing policies the criminal history rules (OAR Chapter 407, Division 47) could be reviewed to identify what information would be needed, timeframes as to when criminal history checks should occur and in what situations fingerprints should be obtained.

#### ***Summary:***

The licensee is responsible for the quality of care provided in facilities and has the responsibility of exercising reasonable precautions against any circumstance that could jeopardize the safety and well-being of their residents. Therefore, facilities are encouraged to take the prudent approach of developing policies and procedures that address criminal history checks for private duty care givers if facility has residents who employ them.

#### ***Reference:***

Tag – C 0200, OAR 411-054-0027 – Resident Rights

Tag – C 0230, OAR 411-054-0028 (2) – Abuse Reporting

