



# STATE OF NEW YORK DEPARTMENT OF HEALTH

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*Commissioner*

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*Executive Deputy Commissioner*

March 24, 2005

**DAL/HCBC #05-04                      DAL/DQS #05-02**  
**Criminal History Record Checks for Nursing Homes  
and Home Care Services Agencies**

Dear Administrator:

On December 2, 2004, the State Hospital Review and Planning Council adopted regulations mandating the use of criminal history record checks by operators of residential health care facilities, licensed home care agencies, certified home health agencies, long term home health care programs, personal care services agencies and AIDS home care programs. The State Commissioner of Health approved amendment to 10 NYCRR through Sections 400.23, 763.13, 766.11 and 18 NYCRR 505.14 which require operators to obtain a criminal history record report from the United States Attorney General (Attorney General) for all prospective employees prior to their employment. An employee is defined as any person employed by the facility or program, including those persons employed by a temporary employment agency, providing direct care or supervision to patients, other than those persons licensed under Title 8 of the Education Law or Article 28-D of the Public Health Law.

These regulations, which take effect April 1, 2005, represent the culmination of a commitment by the administration to implement new safeguards to protect the welfare and security of the vulnerable patients of New York's nursing facilities and home care services agencies. The regulations reflect Section 124 of federal Public Law 105-277 which permits nursing facilities and home health care agencies to request the FBI to supply fingerprint-based national criminal history reports for positions involving direct patient care. These regulations will deter those individuals who may pose a risk to patients by actively barring those individuals convicted of serious crimes from being employed in a nursing home or home care services agency and by providing operators with the criminal history of each applicant when making employment decisions.

To comply with the regulation, the operator must obtain from the prospective employee or applicant a signed, sworn statement disclosing any prior finding of patient or resident abuse or conviction of a crime and specific written and signed authorization from the prospective employee to submit a ten point rolled fingerprint card and other identifying information to the Attorney General for a search of the criminal history records of the FBI.

The operator must forward payment with the fingerprint card and cannot seek compensation from the potential employee for any expenses incurred. The procedures for the record check process are more fully detailed in the enclosed "Guidelines for NYS DOH Criminal History Record Checks (CHRC) Program".

The employee must have the opportunity to review and explain the information obtained through the criminal history record report and may withdraw his or her application for employment without prejudice prior to the operator's decision on employment and, upon such withdrawal, the operator shall destroy any criminal history records obtained pursuant to the criminal history record check.

Upon receipt, the Department of Health will promptly forward the criminal history record report obtained from the Attorney General to the operator. The operator is obliged to make his/her employment decision considering this information. However, for applicants convicted of the following offenses, employment is prohibited: any Class A felony defined in the Penal Law; any Class B or C felony occurring within ten years preceding the date of the criminal history check; any Class D or E felony listed in Article 120, Article 130, Article 155, Article 160, Article 178 or Article 220 of the Penal Law occurring within the 10 years preceding the criminal history check, any crime defined in Sections 260.32 or 260.34 of the Penal Law occurring within 10 years of the criminal history check, or; any comparable offense in any other jurisdiction.

An operator may not extend employment to an individual until he/she has reviewed the criminal history record information. However, an operator may employ an applicant on a provisional basis for a period of time not to exceed 60 calendar days, subject to certain conditions including the operator maintaining direct supervision of the applicant at all times, as directed within the regulations. If the operator has not received the applicant's criminal history record within the 60 day period due to the inability of the Department or the Attorney General to provide such records within a timely manner, the period of provisional employment may be extended for an additional 60 calendar days.

Verification of compliance with the criminal history record check regulations will be included in the surveillance process.

Please carefully read the enclosed guidelines. The Department will provide the FBI issued fingerprint cards to all operators by April 1, in a separate mailing. These cards must be used to comply with the regulations.

Thank you in advance for your cooperation in implementing these regulations to further protect the health and safety of vulnerable individuals who are served by New York State nursing homes and home care services agencies.

If you have any questions regarding the implementation of criminal history record checks, please contact Diane Lenzner Cohen, Director, Bureau of Professional Credentialing at (518) 408-1297, or [CHRC@health.state.ny.us](mailto:CHRC@health.state.ny.us). The Department shall be issuing Frequently Asked Questions (FAQs) from time-to-time.

Sincerely,

A handwritten signature in black ink that reads "David Wollner". The signature is written in a cursive style with a long horizontal flourish at the end.

David Wollner  
Director  
Office of Health Systems Management

Enclosures

**NEW YORK STATE DEPARTMENT OF HEALTH**  
**Guidelines for NYS DOH Criminal History Record Checks (CHRC) Program**

The New York State Department of Health (DOH) recently adopted regulatory requirements directing that all prospective non-licensed nursing home and home care staff who are employed or used to provide direct care or supervision to residents/clients undergo a criminal history record check by the Federal Bureau of Investigation (FBI).

To assist operators in meeting the requirements of this regulation, the Department is issuing the following "Procedural Guidelines": Please keep this document available to provide staff with direction when implementing the Criminal History Record Check (CHRC) regulations.

***Requirement***

Sections 400.23, 763.13 and 766.11 of Title 10 and Section 505.14 of Title 18 of the New York Codes, Rules and Regulations (NYCRR) require that an FBI criminal history record check be performed on all applicants for non-licensed positions in a nursing home or home care setting where the applicant would be providing direct care or supervision to patients.

***Effective Date***

This regulatory requirement becomes effective on April 1, 2005.

***Covered Nursing Homes and Home Care Agencies***

The Criminal History Record Check (CHRC) requirement applies for those affected positions within a residential health care facility, and licensed home care agency, certified home health agency, long-term home health care program, personal care services agency or AIDS home care program (For these guidelines such home care providers to be called "home care agency").

The requirement does not apply to the Consumer-Directed Personal Assistance Program (CDPAP). However, to the extent the CDPAP is part of an affected home care agency, then such non-licensed staff would be subject to the requirement. CDPAPs may not participate in this CHRC program. Likewise, nursing home/home care agency operators may not submit CHRC requests to the DOH for any individuals not covered by this regulation.

***Covered Individuals***

For purposes of this regulation, CHRCs will be required of any person to be employed or used by a nursing home/home care agency to provide direct care or supervision to patients. Persons licensed or certified under Title 8 of the Education Law or Article 28-D of the Public Health Law (i.e., nursing home administrators) are excluded from this requirement. CHRCs are also not required of volunteers or unpaid students in State-approved health-related training programs.

While it is not possible to provide an exhaustive listing of job titles for all of the individuals subject to these regulations, the list is provided below to assist operators in determining those individuals for whom criminal history records will be required prior to employment:

- Personal Care Aides
- Home Health Aides
- Homemakers
- Housekeepers
- Certified Nurse Aides including those working in PT/OT
- Unlicensed staff providing direct service to patients or residents

- Unlicensed social service staff (e.g. admissions/discharge planners, social service designee)
- Therapeutic recreation (activities) staff
- Hairdresser and beauty parlor staff
- Housekeeping staff
- Dietary staff that dispense trays to patients or residents
- Ward clerks, etc., working on the patient or resident floors that may assist license staff
- Transporters (push the wheelchairs or take residents to appointments)
- Nourishment dispensers

Unlicensed staff employed through temporary employment agencies (“temp agencies”) are subject to this regulatory requirement. For such staff, a temp agency may request a CHRC on behalf of the nursing home/home care agency where the individual is to be utilized; with the CHRC provided directly to the nursing home/home care agency. A CHRC request must be submitted each time a temp employee begins a work assignment with a particular nursing home/home care agency. However, the temp agency employee may work at the facility or agency for the period of provisional employment or until the CHRC report is received by the provider, whichever occurs first, once the CHRC request has been submitted to DOH. Once the CHRC report has been received by the provider or the provisional employment period(s) has ended, a new CHRC request must be submitted in order for the temp agency employee to begin a new work assignment for the same nursing home or agency beyond that date. If the operator decides to permanently employ the temp agency employee, a new CHRC request will be required to be submitted to DOH prior to or at the time of the change in employment.

Neither the temp agency nor the nursing home/home care agency will be permitted to withdraw the CHRC request for temp staff once the request is submitted to DOH.

***Notification to Prospective Employees and Authorization***

Prior to initiating the fingerprinting process, the nursing home/home care agency operator must inform the prospective employee of the CHRC requirement, and provide a description of the process. The operator must also inform the prospective employee, including temporary staff, that (s)he:

1. Will have an opportunity to obtain, review and explain the information contained in the CHRC; and
2. May withdraw his or her application for employment at any time, without prejudice, prior to the operator’s decision on employment, and that upon such withdrawal any fingerprints and criminal history record concerning the individual received by the operator shall be destroyed.

The operator must obtain from the prospective employee, including temporary staff:

1. A signed authorization from the applicant for the search and exchange of the records of the FBI’s Criminal Justice Information Services Division pertaining to the applicant, and
2. A signed sworn statement from the applicant disclosing any finding of patient or resident abuse or a conviction for a crime or violation other than a traffic infraction.

The nursing home/home care agency operator must provide the prospective employee, including temporary staff, with an opportunity to explain any criminal history record information contained in the CHRC. If a nursing home/home care agency chooses not to hire a prospective employee based on the information contained within the CHRC, the operator must set forth in writing the basis for not hiring the individual and provide same to the individual.

### ***Required Documentation***

To initiate a CHRC request, a nursing home/home care agency operator must submit to the DOH the following:

1. The completed DOH Criminal History Record Check Request Cover Sheet (DOH Form # 4342)
2. A completed DOH pre-printed fingerprint card (FD-258) for each prospective employee/applicant, and
3. The cost of conducting the CHRC (\$22 per new fingerprint card submission).

All documentation for a CHRC request may be submitted to the DOH at any time during the prospective employee's application process. It is to the benefit of the operator to submit this documentation as soon as possible. Requests may be submitted to DOH on a daily basis. The DOH CHRC Cover Sheet has space for the submission of the fingerprint cards for up to 10 individuals. If the operator has more than 10 individuals to submit for any day, the operator shall attach a separate sheet of paper listing the requested information for the additional prospective employees.

Individuals may not begin working under "provisional employment" (described later in this document) until the fingerprint card and other required materials have been submitted to the DOH except under specific circumstances applicable to emergency (unplanned) work assignments where temp agency staff work basically as substitute staff. In this case, the temp agency staff person may begin work on a substitute basis with the facsimile submission (via FAX) of the completed DOH CHRC Cover Sheet to the CHRC Program Unit and the submission of the original completed DOH CHRC Cover Sheet, completed fingerprint cards and fees to the CHRC Program Unit within 48 hours of the FAX submission. Submitted, for the purpose of these guidelines, is defined as the postmark date of the CHRC package or the FAX date, whichever is first.

### ***Completion of the DOH CHRC Cover Sheet***

The operator must complete and submit the Criminal History Record Check Request Cover Sheet. Enter all information on the cover sheet. The PFI is the permanent facility identifier the Department issues to nursing homes, certified home care agencies, long term home health care programs and hospices. Licensed home care service agencies, which do not receive a PFI number, shall enter the Department issued license number whenever the PFI number is requested for the CHRC program.

Indicate the number of NEW and the number of REJECTED fingerprint cards being submitted on the cover sheet. New cards are those being submitted for the first time. A Rejected submission is one where the FBI has returned the originally submitted fingerprint card because of an error. (Additional information on REJECTED FINGERPRINT CARDS is provided later in this document)

Compute the amount of the check that must be enclosed. The amount is equal to \$22.00 times the number of NEW submissions. There is no charge for REJECTED submissions. Additional information for REJECTED submissions is provided later in this document. The check made payable to NYS DOH CHRC must be submitted to DOH with the Cover Sheet and fingerprint cards.

Print the following information for each fingerprint card submitted in this batch. Additional pages may be attached if submitting more than 10 fingerprint cards.

- Last name,
- First Name,
- Date of Birth (mm/dd/yyyy format),
- Confirmation that the signed statement and authorization required by sections (a)(1) and (b)(2) of 10 NYCRR 400.23 have been obtained from this individual and are on file at the nursing home/home care agency,
- Indicate if the submission is NEW or REJECTED, and
- Indicate if the individual is employed by the operator or a temporary staffing agency.

### ***Preparation of Fingerprint Cards***

Each nursing home/home care agency operator will receive an initial supply of preprinted FBI fingerprint cards from the DOH. A copy of this card is provided as Attachment A. These cards are printed with the DOH OBI information necessary for the FBI to process the CHRC request. All fingerprints MUST be submitted on the DOH-supplied fingerprint cards. Failure to do so will result in the return of the request to the operator and a non-compliance determination. Additional cards may be requested from DOH by contacting [CHRC@health.state.ny.us](mailto:CHRC@health.state.ny.us) or at the CHRC Program Unit address found later in this document.

The operator is responsible for completing the required information on the FBI fingerprint card for the prospective employee and obtaining the fingerprints of the individual on the card. The fingerprint card information must be typed or legibly printed in black or blue ink and must not exceed the boundaries of the designated block (field). All data fields are important and should be completed if the information is known. The FBI has defined all fields with instructions and/or codes for completion. However, the minimum required data fields, including the FBI instructions, to be completed by the operator on each fingerprint card are as follows:

- (1) NAM – last name, first name and middle name. Abbreviations are NOT to be used for any part of the name. This format is last name followed by a comma (,) first and middle name, if any. Suffixes denoting seniority (Jr., Sr., III, etc.) should follow the middle or first name.
- (2) Signature of Person fingerprinted (in ink).
- (3) ORI – this number has been assigned to DOH and is pre-printed on the fingerprint card by the FBI.
- (4) DOB – Date of Birth mm/dd/yyyy format.
- (5) SEX – Sex must be indicated by either “F” (female) or “M” (male). Indicate in the ALIAS block if the individual is a transvestite (cross-dresser) or has had a sex change operation. Also list any opposite-sex names used by the individual.
- (6) RACE – Race must be indicated by one of the following one-character alphabetic characters:

**A = Asian, B = Black, I = American Indian, U = Unknown, and W = White**

FBI definitions for each code are:

**A** – A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

**B** – A person having origins in any of the black racial groups of Africa.

**I** – A person having origins in any of the original peoples of the Americas and maintaining cultural identification through tribal affiliations or community recognition.

**U** – Of indeterminable race.

**W** – A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

- (7) OCA number – enter the DOH issued PFI (permanent facility identifier) number assigned to the Employer identified in the Employer and Address block. This is where the DOH will mail the CHRC report obtained for this individual. Licensed home care service agencies must enter their DOH issued license number here.
- (8) SOC number – enter the prospective employee’s or applicant’s Social Security Number. (This is optional for the prospective employee or applicant - operator can not require submission of Social Security Number) Do not enter a federal tax identification number.
- (9) Date prints taken – mm/dd/yyyy format.
- (10) Employer and Address – enter the name and address of the nursing home or home care service agency where the prospective employee or applicant will be working. The PFI of this employer is entered into the OCA number block. Temporary staffing agencies completing the fingerprint card, must enter the name, address and PFI number for the nursing home/home care agency where the individual named on the card will be working.
- (11) Reason Fingerprinted – insert the following: “NH/HHCA unlicensed direct care provider/PL 105-277 & NYCRR” in this block, being careful not to write or type outside of the block’s lines.
- (12) Fingerprint Impression Blocks (Individual & Simultaneous) – it is very important that care be taken to roll the fingers from nail to nail when taking the individual’s finger impressions. This will help ensure legibility. Roll the prints in the correct sequence (note the right and left hand designations in the finger blocks) and obtain simultaneous plain “flat” impressions at 45 degree angles that do not extent into the rolled impressions. Indicate amputated fingers, tip-amputated, transplanted toes/fingers, missing at birth, deformed, bandaged, scars, etc., in the appropriate finger block(s).

The National Crime Information Center (NCIC) Code Manual can be used as a reference tool for codes for the various fields.

The fingerprinting may be performed by anyone designated within the nursing home/home care agency to do so, or performed by an outside source (e.g., law enforcement agency, private vendor, etc.). The fingerprints must be obtained and printed to ensure they are clear and legible for use by the FBI. Fingerprints that are rejected by the FBI will be returned to the operator without a CHRC. Fingerprints that are returned by the FBI as unusable may be re-submitted for one time only without incurring an additional fee if the procedures for a Rejected search (as described above) are followed.

### **Costs**

Along with all required documentation, nursing home/home care agency operators must submit the fee for conducting the CHRC (\$22). Operators may NOT seek to obtain from a prospective employee, either directly or indirectly, compensation in any form for the payment of neither this fee nor any facility/agency costs associated with obtaining the required CHRC.

The Department will be sending to nursing homes and home care services agencies, via the Health Provider Network (HPN), a Criminal History Record Check Questionnaire. This questionnaire will assist the Department in reviewing the potential expense resulting from compliance with the CHRC regulation. Responses to this questionnaire will provide the Department with initial data to determine the appropriate level of reimbursement for a provider, should funding become available.

If a check is returned to the DOH for non-payment, the operator will be charged a return check fee of \$20.00. Failure to pay the required fee may result in collection action by the DOH as permitted by State law.

All submissions are non-refundable.

### ***Submittal of Request to the DOH***

The formal CHRC request occurs when the nursing home/home care agency operator submits all required documentation (previously addressed) and the requisite fee for each prospective employee to the DOH at:

CHRC Program Unit  
NYS DOH OHSM  
PO Box 2607  
Empire State Plaza  
Albany, New York 12220-0607

FAX Number: 518-474-7477

Upon receipt of the request materials, DOH staff will record all submitted materials and review the cover sheet and fingerprint card(s) for completeness. If complete, the operator will be notified by letter and the fingerprint cards will be forwarded to the U.S. Attorney General for a search of the criminal history records of the FBI. If the submission is incomplete or if there is no payment, the materials will be returned to the requesting operator for correction.

### ***Provisional Employment***

The regulation permits nursing home/home care agency operators to employ applicants on a provisional basis for 60 calendar days from the date the operator requests a CHRC through the DOH, as long as the following conditions are met:

- (1) The operator has submitted the request for a CHRC, and maintains a copy of the completed request forms.
- (2) The operator has no knowledge of the applicant which would disqualify the applicant from employment via this regulatory requirement (i.e., "disqualifying offense", described later in this document).
- (3) The applicant has, as required, submitted a signed sworn statement disclosing any finding of patient or resident abuse or a conviction for a crime other than a traffic infraction.
- (4) A nursing home operator must provide direct supervision of the applicant while the applicant is in the facility or with residents. Direct supervision is defined as the supervisor is present on the same floor and nursing unit as the provisional employee. If the provisional employee provides services off the nursing unit, the supervisor is present in the same area as the employee.
- (5) The operator of a home care agency must supervise the applicant through random, direct observation and evaluation of the applicant and patient by an employee who has been employed by the home care agency for at least 1 year.
- (6) A home care agency which has been in business for less than 1 year must supervise the applicant through random, direct observation and evaluation of the applicant and patient by an employee with prior employment experience of at least 1 year with one or more home care agencies.



- (7) The results of the aforementioned observations (items 4 through 6) must be documented in the applicant's personnel file.

If the operator has not received the applicant's CHRC report by the 60<sup>th</sup> day of provisional employment, then the provisional employment ends. However, if the CHRC report has not been provided due to the documented inability of the DOH or the FBI to provide it, then the operator may extend the provisional employment period for an additional 60 calendar days or upon receipt of the CHRC report, whichever occurs first.

The Department will provide the operator written documentation of the inability of the DOH or FBI to provide the CHRC by the 60<sup>th</sup> day. The documentation will be mailed to the operator no later than the 55<sup>th</sup> calendar day after receipt of the complete fingerprint card and fee. Such documentation should be retained by the operator in the prospective employee's/applicant's personnel file. This will allow the operator to extend the provisional employment period for the applicant for an additional 60 calendar days.

### ***Return of CHRC Report***

It is expected that a CHRC report will be provided to the DOH within four to six weeks of fingerprint card submittal to the FBI. DOH staff will record date of receipt of the report and forward the entire report to the requesting nursing home/home care agency operator for employment determination.

There are three (3) types of FBI responses to the request for a Criminal History Record. They are:

- (1) "I" or Positive Identification. Called an ident and means the fingerprint submission was found to be identical with an FBI Identification Record on file at the FBI. The criminal history record or "Rap Sheet" associated with the individual's fingerprints is provided to the operator for review.
- (2) "N" or No Record Response. Or the message, "A search of the fingerprints on the above individual has failed to disclose prior arrest data." This means that no criminal history record was found which matched the fingerprint submission.
- (3) Error (or Reject) Response. The fingerprint submission could be rejected by the FBI for data (e.g. no statutory authority to request an FBI Fingerprint Background Check) or image quality (bad fingerprinting). Error/reject messages are defined in the Electronic Fingerprint Transmission Specification (EFTS), Appendix M. The EFTS is available on the FBI web site at [www.fbi.gov](http://www.fbi.gov)

### ***Rejected Fingerprint Cards***

If the FBI rejects the card (response #3 above), the rejected fingerprint card and an FBI-issued error report are mailed to the operator by the DOH. The operator may re-submit the fingerprints of the individual whose first card was rejected one time more at no additional cost. The REJECTED submission must include a newly completed fingerprint card, the returned (rejected) fingerprint card and the FBI-issued error report. If a REJECTED submission results in another Error Response (response #3 above), any additional submission of another new fingerprint card for this same individual is considered a NEW submission and must be submitted with the full fee.

### ***Reading the CHRC Report – Criminal History Record or "Rap Sheet"***

Operators may consult their counsel or trade association for information and interpretation of the CHRC report and any non-New York offenses.

### ***Disqualifying Offenses***

Upon receipt of the CHRC report or Rap Sheet, the nursing home/home care agency operator must review it to determine the applicant's suitability for employment. If the CHRC reveals a conviction for any of the following offenses, then the operator is prohibited from hiring or utilizing the individual in a direct care or patient supervision capacity:

- (1) any Class A felony defined in the Penal Law, (no time limitation);
- (2) any Class B or C felony defined in the Penal Law occurring within the 10 years preceding the date of the CHRC report;
- (3) any Class D or E felony listed in Articles 120 ("Assault"), 130 ("Sexual Offense"), 155 ("Larceny"), 160 ("Robbery"), 178 ("Diversion of Prescription Medications") or 220 ("Bribery") of the Penal Law occurring within the 10 years preceding the date of the CHRC report;
- (4) any crime defined in Sections 260.32 or 260.34 of the Penal Law (i.e., endangering the welfare of a vulnerable elderly person) occurring within the 10 years preceding the date of the CHRC report; and
- (5) any comparable offense in any other jurisdiction.

Where the CHRC report reveals a conviction for a criminal offense other than the aforementioned "disqualifying offenses" or a traffic infraction, the nursing home/home care agency operator must determine the applicant's suitability for employment in accordance with Article 23-A of the Corrections Law.

In general, what must be considered under Article 23-A of the State Corrections Law is whether or not there is a direct relationship between the criminal activity and the position being sought. Other factors, such as the amount of time that has elapsed since the commission of the offense, must also be considered. As stated previously, if an operator chooses not to hire a prospective employee based on the information contained within the CHRC report, the operator must provide the individual with the basis for that decision in writing.

If the CHRC report reveals the applicant is charged with a crime identified above as a "disqualifying offense", but not yet convicted or acquitted of that crime, the nursing home/home care agency operator should ask the applicant to disclose the ultimate outcome of that charge.

It is the responsibility of the applicant to address any perceived discrepancies in a CHRC report with the court of jurisdiction within which the disputed information was generated (i.e., where the documented "conviction" occurred).

In making a determination with regard to an applicant, an operator must give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the individual. In cases where such certificates are produced, the operator, must determine the applicant's suitability for employment in accordance with Article 23-A of the Corrections Law.

### ***Sharing of CHRC Report Information***

Pursuant to PL 105-277, the information contained within an individual's CHRC report may only be used by the nursing home/home care agency requesting the information, and only for the purpose of determining the suitability of the individual for employment by that facility/agency. As such, the requesting operator may not share that information, nor a determination made based upon that information, with the operator of another nursing home/home care agency or any one else.

However, if the requesting nursing home/home care agency is part of a larger healthcare system comprised of numerous nursing homes/home care agencies with the same operator, then the individual's CHRC information and suitability for employment may be portable within that system (i.e., among the system's "sister" nursing homes/home care agencies). In that instance, the prospective employee must sign an additional waiver authorizing the sharing of the information contained in the CHRC report within that healthcare system. Each nursing home/home care agency within the system where the individual works should retain a copy of each individual's signed waivers and authorizations, including this additional waiver.

The term Operator is defined in New York State regulations, 10 NYCRR 600.9(b). The governing authority or operator shall mean:

- (1) the policy making body of a government agency;
- (2) the board of directors or trustees of a not-for-profit corporation;
- (3) the officers, directors and stockholders of a business corporation; and
- (4) the proprietor or proprietors of a proprietary medical facility.

For nursing homes and/or home care agencies to have the same operator for the purpose of sharing a CHRC, the policy making body, board of directors, trustees, officers, directors, stockholders, proprietor or proprietors of each facility or agency must be identical. If these persons are not identical, the CHRC information cannot be shared between nursing homes/home care agencies.

### ***Local Laws***

This requirement supersedes and applies in lieu of any local law requiring a "criminal background check" of applicants for employment who would otherwise be covered under this regulation. No duplication of effort needs to be undertaken.

In jurisdictions where local laws are broader in terms of affected settings (e.g., hospitals) or affected titles/positions (e.g., nurses in nursing homes), those provisions remain in effect and should be followed. This regulatory requirement is to only supersede in those instances involving non-licensed positions of direct care or supervision within the nursing home and home care settings.

### ***Questions***

Questions should be directed to: [CHRC@health.state.ny.us](mailto:CHRC@health.state.ny.us) . DOH staff will respond as quickly as possible. In addition, frequently asked questions (FAQs) and answers will be posted to the DOH website ([www.nyhealth.gov](http://www.nyhealth.gov)) and HPN shortly after April 1, 2005.