HOSPICE PROVIDERS

EMPLOYEE DISQUALIFICATION LIST (EDL)/FAMILY CARE SAFETY REGISTRY (FCSR)/ GOOD CAUSE WAIVER (GCW)

CLARIFICATION

Background information:

* **Conditional employment is NOT an option for hospice agencies.**   19 CSR 30.82.060(14) only allows   conditional employment for home health services.
* Section 192.2490.12 RSMo requires that Employee Disqualification List (EDL) be checked **prior to hiring an employee.**
* Section 192.2495.3 RSMo requires a criminal background check **prior to allowing any person who has been hired to have contact with a patient.**
* Section 192.2495.6 RSMo requires that agencies **cannot hire or retain any employee to have patient contact** if found to have a criminal background finding known as a Crimes Against Persons. A complete list of these Crimes Against Persons can be found at <https://health.mo.gov/safety/goodcausewaiver/crimes.php>.
* Missouri House Bill 1350, effective August 28, 2018, changed the background screening disqualifiers from “any FCSR finding” to a defined list of findings.  See Section 192.2495.7 RSMo.  A complete list of these Disqualifying Factors can be found at

<https://health.mo.gov/safety/goodcausewaiver/disqualifying-factors.php>.

After a legal review of the above laws conducted by the *Division of Regulation and Licensure’s Office of General Council* it has been determined the following procedure must be followed by hospice agencies in order to be compliant:

* Employee Disqualification List (EDL) results must be obtained **prior to hire**.
* Criminal Background check results must be obtained **prior to patient contact**.  *Note:  Hospices are not required by regulation to use the Family Care Safety Registry (FCSR) for criminal background checks*.  However, if it is the agency’s policy to use the FCSR for background checks, results must be obtained **prior to patient contact**.  **(If also checking EDL through FCSR, results must be obtained prior to hire.)**
  + If an employee is found to be on the EDL list – **no Good Cause Waiver (GCW) is available.**
  + If a criminal background check shows a  Class A or B felony violation of chapter 565, RSMo (Offenses Against the Person); chapter 566, RSMo (Sexual Offenses), or chapter 569, RSMo (Robbery, Arson, Burglary and Related Offenses), or any violation of subsection 3 of section 198.070, RSMo (required reporter that knowingly fails to report abuse or neglect of a resident of a residential care, intermediate care or skilled nursing facility) or section 568.020, RSMo (Incest); a GCW **must be** **GRANTED** **prior to patient contact.**
  + The other disqualifying factors listed at section 192.2495.7 are not considered disqualifying factors for hospice and do not require a good cause waiver.  It is up to the individual hospice to make the decision for employment.

HOME HEALTH PROVIDERS

EMPLOYEE DISQUALIFICATION LIST (EDL)/FAMILY CARE SAFETY REGISTRY (FCSR)/ GOOD CAUSE WAIVER (GCW)

CLARIFICATION

Background information:

* Section 192.2490.12 RSMo requires that Employee Disqualification List (EDL) be checked **prior to hiring an employee.**
* Section 192.2495.3 RSMo requires a criminal background check **prior to allowing any person who has been hired to have contact with a patient.**
* Section 192.2495.6 RSMo requires that agencies **cannot hire or retain any employee to have patient contact** if found to have a criminal background finding known as a Crimes Against Persons. A complete list of these Crimes Against Persons can be found at <https://health.mo.gov/safety/goodcausewaiver/crimes.php>.
* 19 CSR 30.82.060(14) allows conditional employment for home health services.
* 19 CSR 30.82.060(14) states that any home health employee who has committed a crime listed in Section 192.2495.6 RSMo **cannot be granted conditional employment.**
* Missouri House Bill 1350, effective August 28, 2018, changed the background screening disqualifiers from “any FCSR finding” to a defined list of findings.  See Section 192.2495.7 RSMo.  A complete list of these Disqualifying Factors can be found at

<https://health.mo.gov/safety/goodcausewaiver/disqualifying-factors.php>.

After a legal review of the above laws conducted by the *Division of Regulation and Licensure’s Office of General Council* it has been determined the following procedure must be followed by home health agencies in order to be compliant:

* Employee Disqualification List (EDL) results must be obtained **prior to hire**.
* Family Care Safety Registry (FCSR) results must be obtained **prior to patient contact**.  **(If checking EDL through FCSR, results must be obtained prior to hire.)**
  + If a FCSR finding shows the employee is on the EDL list – **no Good Cause Waiver (GCW) is available.**
  + If a FCSR finding is a Class A or B felony violation of chapter 565, RSMo (Offenses Against the Person); chapter 566, RSMo (Sexual Offenses), or chapter 569, RSMo (Robbery, Arson, Burglary and Related Offenses), or any violation of subsection 3 of section 198.070, RSMo (required reporter that knowingly fails to report abuse or neglect of a resident of a residential care, intermediate care or skilled nursing facility) or section 568.020, RSMo (Incest); a GCW **must be** **GRANTED** **prior to patient contact.**
  + If a FCSR finding is one of the other disqualifiers, a GCW **must be submitted** **but the agency may allow patient contact on a conditional basis.**  **If the GCW is not granted the employee must then be terminated immediately.**