

February 24, 2010

Susan Del Pesco, Director
Division of Long Term Care Residents Protection
3 Mill Road, Suite 208
Wilmington, DE 19806

20. DLTCRP Prop. Adult Abuse Registry Regulation [13 DE Reg. 1002 (February 1, 2010)]

Dear Ms. Del Pesco,

The Developmental Disabilities Council understands that the Division of Long-term Care Residents Protection proposes to adopt some discrete amendments to its adult abuse registry standards prompted by enactment of H.B. No. 165 in 2009.

In general, the amendments appear to be reasonable and consistent with the recently revised enabling legislation codified at Title 11 Del.C. §8564. However, we offer a few observations.

First, the Code still contains an authorization to hire an applicant pending receipt of results of a registry check. See Title 11 Del.C. §8564(d). Although the drafters of H.B. No. 165 envisioned that instant access to the on-line registry would obviate any invocation of this statutory provision, it could conceivably be invoked if the website “crashed” or became unavailable. Out of an abundance of caution, the Division could consider retaining some variation of the existing §2.1.2.

Second, the enabling legislation does not explicitly require that an employment applicant or contractor be given notice or consent to the background check. Reasonable persons could differ on the prudence of at least requiring notice. The statute [§8564(e)] recites that the records maintained in the registry are not public records. This is reinforced by §7.0 of the regulation being amended. Therefore, there may be some expectation of privacy. Query whether an employer who does not disclose an intent to check the registry, and then uses a Social Security number to check the data base, and then discloses the results to others may violate a right of privacy. In the analogous

context of criminal background checks, the DLTCRP regulations include several confidentiality safeguards. See, e.g., 13 DE Reg. 1009, 1012 (February 1, 2010). The Division may wish to consider whether it is preferable to retain some variation of current §2.1.4 which requires the applicant to sign a specific release statement or form. As a practical matter, if the applicant declined to sign a release, the provider could not hire him. Finally, the Division may wish to consider whether to include a provision, consistent with §7.0, reciting that the employer may use the results solely for the purpose of determining the suitability of the applicant for employment and shall not disseminate the results further. Cf. 16 DE Admin Code 3110, §3.6.

Thank you in advance for your consideration of our comments. Should you have any questions regarding these please contact our office at 739-3333.

Sincerely,

Diann Jones
Chair