

SEARCH Resolution 13-61

Of the Membership Group of SEARCH, The National Consortium for Justice Information and Statistics

August 29, 2013

Employment Screening Recommendations Proposed in the Centers for Medicare & Medicaid Services' National Background Check Program Long-Term Care Criminal Convictions Work Group Report

WHEREAS, criminal history record background checks play an important role in employment screening, licensing, and other noncriminal justice decisions;

WHEREAS, SEARCH, The National Consortium for Justice Information and Statistics, is governed by a Membership Group comprised of one gubernatorial appointee from each of the 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands, as well as eight at-large appointees selected by SEARCH's Chair;

WHEREAS, the SEARCH Members are state justice officials responsible for operational decisions and policymaking concerning the management of criminal justice information, particularly criminal history information;

WHEREAS, SEARCH is comprised of policymakers from states who have years of experience in the area of public safety and criminal justice and have a long history of leadership on criminal history record information policy as applied to the protection of vulnerable populations;

WHEREAS, SEARCH recognizes that the use of criminal history record information in employment decisions inherently involves a balancing between protecting the safety of those being served by a prospective employee, protecting an employer from financial risk, and enabling employment of competent individuals;

WHEREAS, SEARCH believes that the starting point for considering how criminal conduct factors into the hiring decision must be premised on the nature and gravity of the offense, the time that has passed since the commission of the offense or, where appropriate, release from criminal justice sanction as determined by the State, and the nature of the job sought;

WHEREAS, the Centers for Medicare & Medicaid Services (CMS) formed the CMS Long-Term Care Criminal Conviction Work Group (Work Group) to provide CMS with options to consider in developing a list of State convictions that should disqualify individuals from direct access employment with long-term care (LTC) facilities and providers, the conviction types that should be considered for mitigation or rehabilitations, and the time period for which each conviction should disqualify individuals from employment;

(More)

[SEARCH Resolution 13-61, Continued](#)

WHEREAS, the Work Group intended that its options serve as Federal minimums, where States would be free to enact stricter parameters as they saw fit (however, experience has shown that adopting a Federal minimum standard puts states in a position to continuously defend enhanced criteria that go beyond that minimum);

WHEREAS, the SEARCH Membership Group strongly supports the use of criminal history information as a component of employment fitness determinations;

NOW, THEREFORE, BE IT RESOLVED by the Membership Group of SEARCH, The National Consortium for Justice Information and Statistics, that:

- CMS recognize that the promulgation of a Federal minimum standard will likely be adopted as the fitness standard in those states that have not previously adopted more stringent criteria.
- CMS recognize that to optimally protect long-term care patients, a Federal rule should require states to conduct fingerprint-based criminal history record checks at the state and national levels.
- CMS encourage each state to independently adopt appropriate screening standards.
- Any guidance provided by CMS specifically address previous offenses that targeted the elderly, although this may require research to determine the facts and circumstances underlying the information on the criminal history record.
- Any guidance provided by CMS sufficiently differentiate offenses that may put long-term care patients at heightened safety risk, including crimes of violence, sex offenses and drug-related offenses.