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Identified Offender Update

THIS WEEK we summarize the requirements for resident background checks and what to do if the background check reveals that the facility has an identified offender. The Illinois Department of Public Health (IDPH) recently published the revised regulations as proposed amendments. These changes were based on amendments to the Identified Offenders Act passed by the legislature last summer and were highlighted in newsletters 1117 and 1144. Now that facilities and surveyors have worked for six months with the new procedures and the IDPH Office of Health Protection has conducted a Criminal History Risk Analysis on all the reported Identified Offenders in nursing homes in the state, it is possible to review the steps facilities need to take in order to comply with the Act and the new proposed regulations.

I. Requirements for All Facilities

1. Notice Requirements: *“Every licensed facility shall provide to every prospective and current resident and resident’s guardian, and to every facility employee, a written notice, prescribed by the Department, advising the resident, guardian or employee of his or her right to ask whether any residents of the facility are identified offenders. The facility shall confirm whether identified offenders are residing in the facility. The notice shall also be prominently posted within every licensed facility.”*

The official IDPH notice (with an orange border) and the letter to be sent to residents, guardians and employees were sent to facilities by IDPH in November, and surveyors continue to check on most surveys to see that the notice is posted.

2. Conduct Web Site and Background Check: At this point facilities should have checked the two sex offender Web sites (www.isp.state.il.us and www.idoc.state.il.us) and conducted a name-based UCIA police background check on all existing residents and all new admissions. According to the regulations, a background check needs to be requested within 24 hours of admission.

3. Fingerprint Check on Inconclusives: *“The facility shall arrange for a fingerprint-based background check or request a waiver from the Department within 5 days after receiving inconclusive results of a name-based background check. The fingerprint-based background check shall be conducted within 25 days after receiving the inconclusive results of a name-based check....The facility shall provide for or arrange for any required fingerprint-based checks to be taken on the premises of the facility.”* The facility can request a waiver from IDPH from conducting the fingerprint check (not the name-based check) if *“the resident is completely immobile or that the resident meets other criteria related to the resident’s health or lack of potential risk, such as the existence of a severe debilitating physical, medical, or mental condition that nullifies any potential risk presented by the resident.”* Please note that this waiver request is only for conducting a fingerprint-based check on residents with an inconclusive name-based check who are completely immobile or severely disabled. There is no waiver for the name-based background check, and there is no waiver needed or allowed (any more) on room assignments. We will discuss the requirements for room assignments in next week’s newsletter.

4. Protect Everyone All the Time Anyway: Whether or not the facility has an Identified Offender, *“the facility shall be responsible for taking all steps necessary to ensure the safety of residents while the results of a name-based background check or a fingerprint-based background check are pending; while the results of a request for waiver of a fingerprint-based check are pending; and/or while the Criminal History Analysis Report is pending.”*

5. Determine If the Resident Is an Identified Offender: According to the Identified Offender Act, an Identified Offender is any registered or convicted sex offender, or is serving a term of parole, mandatory supervised release or probation for **any** felony, or anyone with a **felony** conviction listed in the Healthcare Worker Background Check Act. During the Criminal History Risk Analysis Investigations conducted by the IDPH Office of Health Protection on all existing residents over the previous four months, many of the Identified Offenders reported to IDPH were found to have misdemeanor offenses, and consequently were not Identified Offenders.

II. Requirements If You Have an Identified Offender:

If the background check reveals that the resident is NOT an Identified Offender, record that information in the resident's record and there is nothing more the facility needs to do. However, if the background check reveals that the resident is an Identified Offender (less than 1% of all residents statewide), then a number of steps must be taken:

1. Notify IDPH Immediately: *"The facility shall immediately fax the resident's name and criminal history to the Department."* "Immediately" is not defined, although, procedurally in other areas, "immediately" generally means within one working day. The name and criminal history should be faxed to 312-814-2757, using the IDPH "Identified Offender Information Form." The form calls for the resident's name, social security number, date of birth, admission date, diagnosis, a copy of the background check and the Registered Sex Offender Database Report and Sex Offender Evaluation, if needed. Faxed Information Forms that do not contain all the information will be returned to the facility.

2. Notify Local Law Enforcement on Sex Offenders and Parolees: *"The facility shall inform the appropriate county and local law enforcement offices of the identity of identified offenders who are registered sex offenders or are serving a term of parole, mandatory supervised release or probation for a felony offense....The facility staff shall meet with local law enforcement officials to discuss the need for and to develop, if needed, policies and procedures to address the presence of facility residents who are registered sex offenders or are serving a term of parole, mandatory supervised release or probation for a felony offense."* Note that the regulations do not require facilities to notify local law enforcement about identified offenders who are not sex offenders or on supervised release, although some facilities may consider it prudent to seek the advice and cooperation of local law enforcement, even on identified offenders for whom it is not required.

3. Notify Probation Officers: *"If the identified offender is on probation, parole, or mandatory supervised release, the facility shall contact the resident's probation or parole officer, acknowledge the terms of release, update the contact information with the probation or parole office, and maintain updated contact information in the resident's record. The record must also include the resident's criminal history record."*

Next week, we will continue a review of what you need to do if you have an identified offender, **including incorporating the IDPH Criminal History Analysis into the resident's care plan, bedroom assignments, incident reports involving identified offenders, and the discharge and transfer of identified offenders.**

Associate Member Highlights

Starting this week, the newsletter will begin highlighting **one Council vendor Associate Member each week.** These Associate Members are instrumental in providing quality service for the long term care profession, and have been supportive of Council efforts to promote the delivery of quality healthcare for the residents of our facilities. A hardcopy version of the vendor information can be printed via a link at the beginning of each newsletter under **Associate Member Highlights** and at the end of each **THIS WEEK** newsletter. Council Associate Members have been very supportive and are intimately involved in the concerns of our profession, and deserve member interest.