

APRIL 2005
FREQUENTLY ASKED QUESTIONS
COMPILED BY THE DEPARTMENT OF HEALTH & HUMAN SERVICES (DHHS)
CRIMINAL RECORD CHECK (CRC) UNIT

Senate Bill 41 (national criminal record checks) applies to:

Direct access employees only, who were employed after March 23, 2005, and who have not lived in North Carolina for the past 5 consecutive years.

Definitions

Provider refers to the agency/facility/employer

Applicant and employee both refer to the employee

The questions below refer to the employees covered by Senate Bill 41 (SB 41).

1. *Who are direct access employees?*

Direct access employees are the employees who do not provide direct care, but who may have access to patients. This might include most employees or contract employees working in a covered facility.

2. *Does SB 41 require my current employees who have lived in NC for less than 5 consecutive years to have a national check?*

No. SB 41 is not retroactive for current employees.

The only direct access employees (living in NC less than 5 yrs) who are required to have the national criminal record check performed are those who were employed after March 23, 2005.

3. *What if I hired someone on April 1, 2005 who has lived in NC for the past 6 consecutive years. Do I have to run a national check on this person?*

No. See answer to question #2.

SB 41 only refers to employees (hired after 3/23/05) that have lived in NC for less than 5 consecutive years.

4. *I use a private company now for my criminal record checks. Can I continue to use them?*

SB 41 requires that providers use either the State Bureau of Investigation (SBI) for the national checks or if a provider has a private company that performs the checks for them, then that private company must only use the Division of Criminal Information data bank to compile the national information on an applicant. If the private company does not use the Division of Criminal Information data bank, then the provider can not hire that private company to perform the national checks.

5. Do we have to use the SBI?

See answer to question #4.

6. What will the provider receive back from DHHS after the national check is completed?

DHHS will notify the provider whether a “hit” has occurred either at the state or national level. At this time, the provider will receive the State check back only. If a national result is received, the provider will be sent a letter stating such. DHHS is not permitted to give the provider the actual results; however, see the question and answer for #7 for the process an applicant can use to obtain the national results from DHHS. The applicant may share the results of the national check with the provider if the applicant chooses to do so.

7. What is the SB 41 process and how long does it take to receive the information back from DHHS?

- The provider first must set up an access agreement with the SBI (see question #12).
- Once the access agreement is in place, the provider sends the applicant to have his/her fingerprints rolled.
- Once the fingerprint card is completed, the provider sends the completed fingerprint card to the SBI for processing. The SBI provides samples of how the cards must be filled out for the different categories of searches.
- At the same time the provider submits the fingerprints to the SBI for processing, the provider should have the applicant complete the form “Request for Criminal History Record Information (CHRI).” Once that release form has been completed, the provider or applicant mails this form to the DHHS CRC Unit. The purpose of this form is to provide authorization for DHHS to release any national CRC results to the applicant. **Please note:** The applicant is not required by Statute to request the national check information be released to them directly; however, refusal to do so may be cause for concern for a prospective employer. DHHS is prohibited from releasing the national information to anyone except the applicant and DHHS may not release the information to the applicant without the completed/signed CHRI request form.
- The SBI completes its check and then sends the results to DHHS. DHHS has 5 business days from the date of receipt from the SBI to send notification of results to the provider.
 - A. If no “hits” are reported, DHHS sends a letter to the provider confirming this.
 - B. If a state “hit” is reported, DHHS will send a notification letter along with a copy of the results to the provider.
 - C. If a national “hit” is reported, DHHS will send a notification letter to the provider and will send a letter with a copy of the results to the applicant.

NOTE: DHHS cannot release the information on the criminal background check without the completed/signed release form from the applicant. If the release form is not sent to DHHS in a timely manner, the notification process will be delayed.

8. Can I hire the person while we are waiting on the fingerprints to come back?

Yes, but employment should be “conditional” pending the results of the criminal record check.

9. Do I get to decide to hire someone with a record or will DHHS tell me whether or not I can hire the person?

DHHS will make the state check available to the provider as well as whether a “hit” was found on the national check. It will be up to the provider to determine if they want this person to work for their company. DHHS will not make a determination of employment.

10. What constitutes a “hit”?

Relevant offense" means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of aged or disabled persons or persons needing mental health, developmental disabilities, or substance abuse services. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: **Article 5**, Counterfeiting and Issuing Monetary Substitutes; **Article 5A**, Endangering Executive and Legislative Officers; **Article 6**, Homicide; **Article 7A**, Rape and Other Sex Offenses; **Article 8**, Assaults; **Article 10**, Kidnapping and Abduction; **Article 13**, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; **Article 14**, Burglary and Other Housebreakings; **Article 15**, Arson and Other Burnings; **Article 16**, Larceny; **Article 17**, Robbery; **Article 18**, Embezzlement; **Article 19**, False Pretenses and Cheats; **Article 19A**, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; **Article 19B**, Financial Transaction Card Crime Act; **Article 20**, Frauds; **Article 21**, Forgery; **Article 26**, Offenses Against Public Morality and Decency; **Article 26A**, Adult Establishments; **Article 27**, Prostitution; **Article 28**, Perjury; **Article 29**, Bribery; **Article 31**, Misconduct in Public Office; **Article 35**, Offenses Against the Public Peace; **Article 36A**, Riots and Civil Disorders; **Article 39**, Protection of Minors; **Article 40**, Protection of the Family; **Article 59**, Public Intoxication; and **Article 60**, Computer-Related Crime. These crimes also include **possession or sale of drugs** in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and **alcohol-related offenses** such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

11. How do I know if a prospective employee has lived in NC for the past 5 consecutive years?

One way for a provider to know is to ask the question on the employment application. If the applicant is less than truthful and the provider later finds out, it is grounds for dismissal. Another method is to check references going back 5 years.

12. How do I get signed up to have the SBI conduct the national checks for my company?

A provider must call Harold Nance at (919)662-4509, ext. 6332 to set up an access agreement.

13. How much does it cost for the SBI to run the national check?

DHHS does not impose a cost for the national check so a provider must check with Harold Nance at the SBI at the above number for cost amounts.

14. I already have an access agreement with the SBI to conduct state checks on all of my employees. Do I have to have another one?

Yes. Check with Harold Nance at the SBI at the above number regarding how to obtain the additional access agreement.

15. How do I know if my program is subject to this new law?

SB 41 applies to nursing homes, home health agencies, family care and adult care homes, and mental health facilities in the State of North Carolina. If you are unsure of your status, you may contact Jesse Goodman at the Division of Facility Services (DFS) by calling (919)855-3968.

16. How often do I have to have a national check run on employees?

All new hires covered by the law must have a fingerprint check regardless of when any were conducted in the past.

17. What do I do until I receive the access agreement from the SBI?

Although the new law is effective as of March 23, 2005, a provider should continue with business as usual until they receive the access agreement from the SBI. As long as a provider has contacted Harold Nance (at the above given number) and has provided him with their contact name and information to receive the access agreement when the agreements are made available, the provider is in compliance with the law. A provider can not be held responsible for something that is not available to them at this time (the access agreement to process the national checks with the SBI on the direct access employees).

18. How do I handle prospective employees who do not live in North Carolina currently and do not plan to move to North Carolina?

This situation is most common in the border counties of North Carolina. These types of prospective employees will be subject to the national check because they have not lived in NC for the past 5 consecutive years.

19. What is the contact information for DHHS CRC?

Melynda Swindells, DHHS Criminal Record Check Program Manager
Melynda.Swindells@ncmail.net
(919)773-2856, ext. 247

To be announced, DFS Criminal Record Check Program Coordinator
(919)773-2856 (ext. to be announced)

Mailing Address

DHHS Criminal Record Check Unit
2201 Mail Service Center
Raleigh, NC 27699-2201

Phone Numbers

(919)773-2856 or (800)859-0829 (in state only)
Fax: (919)661-6167

Unit Email

DHHS.CRC.UNIT@ncmail.net