

What You Don't Know Can Hurt You: Employee Background Checks at Skilled Nursing Facilities

Labor & Employment Law Update

By Suzannah Wilson Overholt on March 13, 2019

Skilled Nursing Facilities (SNFs) are responsible for shielding residents “from abuse, neglect, misappropriation of resident property, and exploitation.” 42 C.F.R. § 483.12. This regulation implicates the employment process, since SNFs are prohibited from employing “or otherwise engag[ing]” individuals who have been “found guilty by a court of law,” had a “finding entered into the State nurse aide registry,” or had “a disciplinary action in effect against his or her professional license” as a result of “abuse, neglect, exploitation, mistreatment of residents or misappropriation of their property.” 42 C.F.R. § 483.12(a)(3)(i)-(iii). One of the most important ways that SNFs can protect residents is by properly screening and monitoring their employees.

There are no federal requirements for how a SNF should screen its employees. However, there is a variety of agency guidance that describes what a thorough screening process should look like. According to the State Operations Manual, Appendix PP, a facility should conduct a thorough “investigation of the histories of . . . prospective staff.” Any individual hired or otherwise engaged by the facility should be screened, including “the medical director, consultants, contractors, volunteers” and students in training programs. The screening must also be thorough, including checking the State nurse aide registry and licensing authorities, contacting previous employers, attempting to identify prior criminal prosecutions, and checking the HHS Office of Inspector General’s List of Excluded Individuals/Entities (“Exclusion List”). The Exclusion List is a searchable electronic database of individuals and entities who are excluded from participation in any federal health care program, including Medicare and Medicaid, for the commission of certain crimes and violations laid out in 42 U.S.C. § 1320a-7. A SNF may not receive payment from a federal health care program for any items or services furnished, ordered, or prescribed by an excluded individual or entity. If a SNF does receive payment for services provided by an excluded individual or entity, the SNF could be subject to civil monetary penalties. Because the consequences of hiring an excluded individual are so severe, CMS has issued letters to each state Medicaid director reminding them to have employers check the Exclusion List monthly. Certain states, such as Indiana, have made such monthly checks mandatory.

Finally, the Office of Inspector General has also issued guidance urging health care providers to check the System for Award Management ("SAM") database maintained by the General Services Administration. The SAM database includes a list of suppliers, vendors, and individuals who are excluded from receiving contracts or other financial assistance from the federal government. Thus, checking this list should be part of any screening process for prospective employees.

Conducting thorough screenings of all prospective employees is important in a SNF's ongoing efforts to protect residents from abuse or mistreatment. Following state and federal guidance and regulations is the best way to ensure that screenings are appropriate.

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