

## Criminal Background and Screening FAQs for Nursing Home Providers

*La. R.S. 40:1203.1-2 requires that licensed health care providers request that a criminal history and security check be conducted on the non-licensed person, prior to any employer making an offer to employ or to contract with a non-licensed person or any licensed ambulance personnel to provide nursing care, health-related services, medic services, or supportive assistance to any individual.*

### **Q. What is the definition of a non-licensed person in a nursing home setting?**

*A. As relevant to a nursing home provider, La. R.S. 40:1203.1(6), provides the following definition of a “non-licensed person”: A “Nonlicensed person” is any person who provides for compensation nursing care or other health-related services directly related to patient care to residents in or patients of a nursing facility, and who is not a licensed health provider. “Nonlicensed person” also means any other direct service worker as defined in La. R.S. 40:2179 and 2179.1. “Nonlicensed person” also means a student or trainee applying for enrollment in a clinical preceptor training program authorized by La. R.S. 40:1201.1 et seq., or in a nurse aide training program approved by the department pursuant to federal and state law or regulation.*

### **Q. Are nursing home providers required to check the backgrounds of ambulance drivers, facility beauticians, volunteers, pastors, entertainers, private sitters?**

*A. It depends. These are individuals whose job title and duties must be reviewed against the definitions of a “licensed ambulance personnel” and a “nonlicensed person”, found in La. R.S. 40:1203.1, and the examples that are given in LAC 48:I.9759. The regulation enlarges the definition of a “nonlicensed person” to include “housekeeping staff, activity workers, social service personnel and any other non-licensed personnel who provide care or other health related services to the residents”. In light of the examples provided by Section 9759, those individuals who regularly provide hands-on care to residents must have background checks done.*

### **Q. For contract therapists providing their own criminal background check from a state-approved company, how recent must this check be? When does it “expire”?**

*A. We recommend that the timing given in LAC 48:I.9759.B. be followed for personnel requiring licensure. A criminal history check does not “expire”.*

### **Q. When and how often are background checks completed?**

*A. Please see: La. R.S. 40:1203.2.*

**Q. How long are criminal background records kept?**

**A.** *The criminal history check is to be kept for the duration of the individual's employment. Pursuant to La. R.S. 40:1203.4, criminal background records are destroyed one year from the employee's termination.*

**Q. What is the Sanction Search?**

**A.** *Sanction Search runs all employees and vendors on the OIG, SAM, Adverse Action, and CNA registry each month that monitors exclusions on the CAN/DSW Registry, Nursing Boards, and State Board of Medical Examiners, and other licensed professions that meet the requirements of participating in the Louisiana Medicaid, or Medicare Program. Providers are required to maintain proof in their records that checks were done for employees and/or subcontractors.*

**Q. Who should be searched on the Adverse Action site and how often?**

**A.** *Providers should check the Louisiana Department of Health Adverse Actions website at <https://adverseactions.dhh.la.gov> upon hire and monthly thereafter for individuals and entities that have had adverse actions imposed. Providers should review for any exclusion imposed at the federal level upon hire and monthly thereafter for employees and/or subcontractors who perform services that are compensated with Medicaid/Medicare funds.*

**Q. How long should we keep the monthly adverse action reports?**

**A.** *Facilities are to maintain the monthly adverse action report for no less than **10 years**.*

**Q. Can a newly hired employee begin orientation that doesn't include direct patient care while waiting for the back ground check to be completed?**

**A.** *It depends. Please note that 40:1203.2(C)(2)(a), provides that it is possible for a temporarily employed CNA, who is awaiting the results of the criminal history and security check, to begin orientation that does not include direct patient care prior. However, he/she must be under the direct supervision of a permanent employee or be in the presence of a member of the immediate family of the patient or of a care giver designated by the immediate family of the patient.*

**Q. For background checks, can you only use agencies from the list or can other companies like Hire Right be utilized, if they utilized the LA State Police website?**

**A.** *Pursuant to La. R.S. 40:1203.2(A)(2) the criminal history record are to be obtained from the office of state police or authorized agency. La. R.S. 40:1203.1 defines "authorized agency" as "a private entity authorized by the office of state police to conduct the criminal history checks".*

**Q. Would a private duty sitter paid by a resident's family need to have these checks on file?**

**A.** *We would recommend this as a best practice for the facility.*

**Q. For a nursing home who contracts with the hospital, are contract laundry staff required to have a background check?**

**A.** *As a best practice we would recommend that it be verified that such staff have recent criminal history records on file with the hospital.*

**Q. Is there an updated list of the criminal charges that can be obtained?**

**A.** *The statutory list of non-hirable offenses can be found at La. R.S. 40:1203.3.*

**Q. What if an applicant has a Governor's pardon for one of the listed non hire codes?**

**A.** *The provisions of La. R.S. 40:1203.3 that prohibit employment for specific convictions do not apply if "a person has received a pardon of the conviction".*

**Q. Should background checks be conducted on employees who have been employed at facility for over 15 yrs.?**

**A.** *A facility is expected to comply with all criminal history records. If a facility does not have documentation on file for an individual who has been employed at the facility for more than 15 years, we recommend that a criminal history check be done and the results kept on file and/or other actions taken by the facility depending upon the results of the criminal history records.*

**Q. Do students of local high school nursing classes, who do their rotations in a nursing facility, need background checks?**

**A.** *Yes.*

**Q. Do we have to do background checks on contract workers who are not paid by the facility, such as: therapy providers, dental companies, etc.**

**A.** *It depends. If the individual in question holds a license, then LAC 48:I.9759(B) applies, and his/her credentials must be verified annually. If the individual does not hold a license but provides health-related services directly to patient care to residents in/of a nursing facility, then the requirements of La. R.S. 40:1203.1 et seq. apply.*

**Q. If we are unable to locate the initial criminal background check for employees who have been employed for several years, and the company that provided the background check no longer has access to the information. What should we do?**

**A.** *We recommend that new criminal background checks be done so that the proper documentation will be on file.*

**Q. Where is the HSS Criminal Background and Screening training be posted?**

**A.** *The webinar training is posted to the HSS - Criminal Background Check Information webpage: <https://ldh.la.gov/page/criminal-background-check-information>*

***\*\*Please note that the answers provided above do not constitute legal advice.  
If you have specific questions related to the above responses, please consult an  
attorney. \*\****