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Owner: Samantha Hudziak: Coord HR Operations
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Applicability: Ministry Health Care Systemwide

HR-5704: Background Checks Policy

Scope:

Ministry Health Care and all Wholly Owned Ministry Health Care ministries, including Ministry Door County Medical Center, Affinity and all Wholly Owned Affinity ministries, excluding Network Health and Saint Elizabeth's Medical Center.

Defined terms are "**Capitalized.**" Definitions are imbedded in or included at the end of the Policy.

Policy Statement/s:

1. Ministry Health Care and its wholly owned subsidiaries identified in the "Scope" section above ("**ministries**") continually work to comply with state and federal employment laws and the Wisconsin Caregiver Background Check law ("**Caregiver Law**").
2. Ministry Health Care ("Ministry") ministries will conduct Background Checks in the hiring process, contracting or credentialing process, clinical placement process, and volunteer screening process as permitted by applicable state and federal laws and regulations. A history of a criminal charge, arrest or conviction will not automatically eliminate an individual from consideration for gaining employment, contracting with, or obtaining privileges within Ministry.
3. Background Checks are conducted on associates, contingent workers, those seeking privileges at the ministries, including all Caregivers, and others working at Ministry (collectively, "**Individuals**"), as follows:
 - A. After Ministry offers employment, agrees to accept a placement of a worker by a staffing or employment agency, or offers a contract to an Individual who is not seeking privileges from the ministry;
 - B. After initially applying for clinical privileges, for an Individual who is seeking privileges from the ministry;
 - C. Volunteers (if they fill staff positions or are used to document compliance with staff-to-patient ratios); and
 - D. Students and interns completing educational, clinical or in-service training at Ministry.
4. At least every four (4) years after the Individual is hired by, placed at, contracted with,

granted privileges by, allowed to volunteer at, or is allowed to complete educational, clinical or in-service training with the ministry.

5. For purposes of this Policy, a "**Caregiver**" means a person who is, or is expected to be (i) employed by or under contract with ministry and in doing so has Regular, Direct Contact with patients¹ and is Under the Control of the ministry; or (ii) an individual otherwise subject to the Caregiver Law². For these purposes, Caregivers include volunteers, if the volunteers fill staff positions or are used to document compliance with staff-to-patient ratios, and students and interns completing educational, clinical or in-service training for sixty (60) or more days at the ministry. Ministries that provide daycare services should contact the Legal Services Department to determine whether daycare staff are considered Caregivers under applicable law.
6. Ministry will consider and evaluate an Individual's pending criminal charges, criminal arrest record, and/or conviction records only as appropriate under the Caregiver Law and in accordance with all legal requirements.

Procedures:

1. Ministry will ensure that Background Checks are conducted for all Individuals, provided that certain non-employed Individuals may be excluded from the Background Check requirements if Human Resources determines that they perform clerical, administrative, maintenance or other support services and are not expected to have Regular, Direct Contact with patients or patients' personal property, or the Individuals provide infrequent or occasional services, such as delivering items to the Ministry, equipment maintenance, grounds keeping, construction, or other similar services that are not directly related to the care of patients.
2. The Medical Staff Coordinator or equivalent staff in Compliance will conduct appropriate Background Checks on all Individuals applying for, or already having, privileges at a ministry. The Service Center within Human Resources will conduct appropriate Background Checks for all Individuals who do not have, and are not seeking, privileges at the Ministry. Volunteer background checks are run within the local volunteer services departments.
 - A. **Completion of the Background Information Disclosure Form.** All Individuals, including those who qualify, are applying to work as, or care for patients as Caregivers, are required to complete the State of Wisconsin Background Information Disclosure form ("**BID**") at the time a *bona fide*, conditional offer of employment or placement is made, services are to be contracted, the credentialing process has been initiated, or an offer of an educational, clinical or in-service training at Ministry has been made. An Individual's failure or refusal to complete the form in a timely manner will lead to withdrawal of the offer of employment or contract or placement; suspension of the credentialing process; loss of the educational, clinical or in-service training, disciplinary action up to and including discharge, termination of contract, and/or loss of ministry privileges, as applicable. An entity does not have to require that their caregivers complete a BID form every four years **if** the entity has a written self-disclosure policy, **and** the entity reminds their caregivers of that policy annually.
 - B. **Caregiver Response to BID.** Upon return of the BID, the ministries will evaluate it and, in consultation with the Legal Services Department, will respond as follows, if the

Individual indicated the existence of a crime, act, offense, or pending charge.

1. **Permanent Bars to Employment.** If the BID reflects an offense or conviction that permanently bars a Caregiver from providing services under the current Caregiver Law (see the Department of Health Services' ("**DHS**") Offenses List³), the offer of employment/ placement or contract will be withdrawn, the educational, clinical or in-service training will end, or the employment, placement or contract of the Caregiver will be terminated immediately, consistent with the term of any applicable employment or other contractual agreement. If applicable, the privileges of a Caregiver will be suspended pending termination in accordance with the ministry's Medical Staff Bylaws. Caregivers who have permanent bars in their records will not be further considered for employment, placement, contracting, or privileges unless they already received rehabilitation review approval.
2. **Offenses Permitting Rehabilitation Review.** If the BID reflects an offense or conviction for which the Caregiver is eligible for rehabilitation review under the current Caregiver Law, the Caregiver is required to demonstrate that he or she received appropriate rehabilitation review approval from DHS. This option exists only for current associates, volunteers, contingent workers, and persons seeking educational, clinical or in-service training at Ministry, and current providers with privileges
 - a. If a Caregiver has not applied for rehabilitation review, the ministry must terminate or suspend the Caregiver's employment, volunteer status, contingent worker status, educational, clinical or in-service training, and/or clinical privileges, subject to Medical Staff Bylaws and any employment or other contractual agreement, until rehabilitation review approval has been received. An employed Caregiver must use paid time off ("**PTO**") during the suspension, if available, unless an employment agreement provides otherwise. If PTO is not available, the suspension will be unpaid unless not allowed by applicable law or the employment agreement. If a Caregiver is suspended and asked to request rehabilitation review approval, the Caregiver will remain suspended pending the outcome of the rehabilitation review process. If the Caregiver fails to submit a request for rehabilitation review approval within three (3) weeks, the ministry will terminate the Caregiver's employment, placement, educational, clinical or in-service training, contract and/or clinical privileges subject to any applicable employment or other contractual agreement and Medical Staff Bylaws.
 - b. If a Caregiver, at the time of initial application for employment, placement, contract, educational, clinical or in-service training, and/or privileges with a ministry, has applied for but has not obtained, or has not yet applied for, rehabilitation review approval, he or she is ineligible for hire, for placement at, to contract with, and/or for privileges unless and until rehabilitation review approval is granted.
 - c. If a Caregiver has received rehabilitation review approval, the ministry must determine whether it wishes to:
 - i. Terminate the Caregiver's employment, placement, volunteer status, educational, clinical, or in-service training, contract and/or privileges in

accordance with the Medical Staff Bylaws, ministry policies, and any applicable employment or other contractual agreement, as appropriate; or

- ii. Amend the Caregiver's employment, placement, volunteer status, educational, clinical, or in-service training, contract, and/or privileges, subject to appropriate Medical Staff Bylaws, ministry policies, and the Caregiver's employment or other contractual agreement, by imposing limitations that may include, but are not limited to:
 - a. Probationary status;
 - b. Prohibition on certain activities;
 - c. Additional monitoring or supervision;
 - d. Periodic alcohol or drug testing;
 - e. Other relevant actions to maintain the safety of the Ministry's patients; and/or
 - f. Any other limitations required by the rehabilitation review approval.

C. Acceptable BID from Caregiver.

1. If a Caregiver's BID does not reveal any information that would bar the Caregiver from providing Caregiver patient services (such as convictions or findings by a governmental agency of patient abuse, neglect, or misappropriation, or child neglect or abuse), the ministry may permit the Caregiver to begin or continue to provide services as an associate, contingent worker, volunteer, student participating in educational, clinical, or in-service training and/or holder of privileges provided the Caregiver has otherwise completed any required credentialing process.
2. New Caregivers who are completing the BID at the time of initial hiring/ placement, student placement, contract, or application for privileges and have an acceptable BID may work or provide services for the ministry for up to sixty (60) days pending the receipt of the Background Check results as permitted by applicable ministry policy and ministry and Medical Staff Rules, Regulations and Bylaws.
 - a. During this interim period, the Caregiver may work under supervision, which shall include, at a minimum, periodic direct observation of the person;
 - b. The first day of employment for purposes of determining the length of service for an employed Caregiver shall be determined in accordance with the Employment Service Date Policy (HR-5713). The date of appointment/contract is the date a non-employed Caregiver is first granted privileges at a ministry or the effective date of the Caregiver's contractual relationship with the ministry.

D. Non-Caregivers: If an Individual is not a Caregiver, the response to the BID and other information revealed during a Background Check must be analyzed by the ministry to determine whether a pending charge or conviction is "substantially related" to the Individual's role within the ministry, as further discussed in Section 2(F) below. Information besides a pending charge and/or conviction may be considered by the ministry in addition to any "substantial relationship" analysis, only as permitted by applicable law.

E. **Record Keeping.** The BID form and other information that is part of the Background Check must be maintained in an employed Individual's personnel file. For Individuals who are not associates, the BID form and other Background Check information will be maintained in a separate file, such as a credential, contingent worker, student, or volunteer file. The period of retention for BID forms and other Background Check materials is at least four (4) years or until the next Background Check is done, whichever is later.

F. **Substantially Related Offenses.**

1. **Consequences:** If a conviction or pending charge is one that Human Resources, Volunteer Services, or the Medical Staff Director in consultation with the Legal Services Department (for providers with, or applying for, clinical privileges), determines is "substantially related" to an Individual's job, including caring for a patient, a "serious crime" as defined under DHS 12, or a comparable crime, the ministry may:
 - a. Withdraw an offer of employment or contract made to an Individual;
 - b. Terminate the Individual's employment or contract, end his or her placement, end his or her educational placement, or suspend his or her privileges, pending termination in accordance with the Medical Staff Bylaws and Ministry policies, any employment or other contractual agreement, and the law; or
 - c. Continue to employ, work with, contract with and/or grant privileges to, retain as a volunteer, or retain as a student the Individual, and, if appropriate, amend the Individual's employment, placement terms, contract, volunteer status, training, and/or privileges subject to Medical Staff Bylaws and appropriate limitations that may include but are not limited to:
 - i. Suspension;
 - ii. Probationary status;
 - iii. Prohibitions on certain activities;
 - iv. Additional monitoring or supervision;
 - v. Periodic alcohol and drug testing, if applicable; and/or
 - vi. Other relevant actions to maintain the safety of the ministry's patients.
2. The primary consideration in evaluating the relatedness of a conviction record or pending charge for Caregivers is patient safety and other factors.
3. To determine whether a pending charge or conviction record of an Individual is "substantially related" to the Individual's job, the ministry may consider factors in relation to the job, the offense, and the Individual, including but not limited to, the following:
 - a. The nature and scope of the Individual's patient contact;
 - b. The nature and scope of the Individual's discretionary authority and degree of independence in judgment relating to the decisions or actions that affect care of patients;
 - c. The opportunity the job presents for the commission of similar offenses;

- d. The extent to which acceptable job performance requires the trust and confidence of patients;
- e. The amount and type of supervision received in the job;
- f. Whether intent is an element of the offense;
- g. Any pattern of offenses;
- h. Whether the elements or circumstances of the offense are substantially related to the job duties;
 - i. The extent to which the offense relates to vulnerable patients;
 - j. The number and types of offenses for which the Individual has been convicted;
- k. The length of time between the conviction and the decision to hire, to place as a volunteer, to accept as a student undergoing training, contract or grant privileges to the Individual;
- l. The Individual's employment history, including references, if available; and
- m. The Individual's participation in or completion of pertinent rehabilitation programs.

3. **Background Checks.** Ministry will ensure that required Background Checks are completed on all Caregivers and other Individuals.

A. The Medical Staff Coordinator or equivalent staff in Compliance for all Individuals applying for or already having privileges at the ministry, Volunteer Services for volunteers, and the Service Center within Human Resources for all other Individuals, will do as follows:

1. Initiate Background Checks by submitting a Wisconsin Criminal History Record Request (either on-line or via paper form) to the Wisconsin Department of Justice requesting information on convictions, pending charges, arrest records, abuse records and restriction of credentials. Arrest records may be reviewed only for Caregivers.
2. In addition to submitting a Wisconsin Criminal History Record Request to the Wisconsin Department of Justice, an online check may also be completed through the Wisconsin Circuit Court Access public site.
3. Obtain the following information:
 - a. Conviction records from another state or U.S. jurisdiction (such as Native American tribes) in which an Individual is or was a resident, if the Caregiver lived outside of Wisconsin in the past three (3) years.
 - b. Discharge papers indicating an Individual's discharge status or information from the Armed Forces, if an individual was discharged in the last three (3) years. If the discharge status is other than honorable, the ministry will obtain information on the nature and circumstances of the military discharge.
 - c. For all Individuals, information maintained by the Office of Inspector General, the General Services Administration or other relevant government agencies/ listings regarding individuals or entities excluded from participation in federally

funded health care programs. The ministry will use the sanction reports or other materials readily available from the government or other sources to meet the requirements of federal law. Sanction reports will need to be analyzed for all Individuals. No Individual on the list is eligible for employment, placement, volunteering, clinical educational placement, or privileges at a ministry.

4. **Results of Background Check.** Upon return of the Background Check information from the Wisconsin Department of Justice, DHS, the Wisconsin Department of Safety & Professional Services ("DSPS"), and other sources as applicable, the Medical Staff Coordinator or equivalent staff in Compliance for all Individuals applying for or already having privileges at ministries, Volunteer Services for volunteers and the Service Center within Human Resources for all other Individuals, will do as follows:
 - A. Seek additional information related to the following:
 1. **"Serious Crime" Convictions for Caregivers:** Make every reasonable effort to contact the county clerk of courts or its equivalent to determine the final disposition of a charge of a "serious crime" as defined by the Caregiver Law (known as DHS' Offenses List) if the BID or any disclosure of a Caregiver pursuant to a self reporting policy does not completely and clearly indicate the charge's final disposition.
 2. **Certain Convictions for Caregivers and Other Individuals:** Make every reasonable effort to contact the county clerk of courts or its equivalent to obtain the criminal complaint and judgment of conviction to misdemeanor battery (Wis. Stat. § 940.19[1]), battery to an unborn child (Wis. Stat. § 940.195), battery - special circumstances (Wis. Stat. § 940.20), reckless endangerment (Wis. Stat. § 941.30), invasion of privacy (Wis. Stat. § 942.08), disorderly conduct (Wis. Stat. 947.01[1]); and harassment (Wis. Stat. § 947.013) within the past five (5) years, if information in the BID form, other criminal Background Check results or another source indicates that a Caregiver or another Individual has been convicted of those offenses.
 3. **Other Convictions for Caregivers or Other Individuals:** May make a reasonable effort to confirm the final disposition of the information on the BID form, including reviewing court records, and contacting the clerk of court to obtain a copy of the criminal complaint and the final disposition (including conviction records) from the appropriate jurisdiction for convictions other than those noted in Sections 4(A)(1-2) above, if there is information listed on the Caregiver's or other Individual's BID form that is not confirmed by the Background Check result.
 - B. When the Background Check reveals information inconsistent with that provided on the BID form, the Medical Staff Coordinator or equivalent staff in Compliance for all Individuals applying for or already having privileges at the Ministry, Volunteer Services for volunteers and the Service Center within Human Resources for all other Individuals, will review the BID form, the employment, contractor, or volunteer process, and the credentialing application (if applicable) and other information to determine the inconsistencies.
 1. The Individual may be contacted to explain any discrepancy.
 - a. If the ministry determines the explanation is satisfactory, the information will be

processed in accordance with this Policy.

- b. If the explanation is not found to be satisfactory, the Individual's employment/ placement, contract and/or privileges may be suspended or terminated in accordance with the provisions of the Medical Staff Bylaws, ministry policies, and any applicable employment or other contractual agreement.
- c. The Individual will be suspended pending the outcome of the evaluation of the explanation. Use of PTO, if available, by employed Individual during the suspension is required unless otherwise prohibited by an employment agreement. If PTO is unavailable, the suspension will be unpaid unless not allowed by applicable law or the employment agreement.

5. Self-Reporting Requirements.

A. Caregivers:

1. All Caregivers must immediately (and no later than the next working day after learning of the charge or conviction or committing the crime, act, or offense) provide notice when:
 - a. The Caregiver has been charged with, has committed, or has been convicted of any crime, act, or offense, including one that may bar him or her from providing services, including, but not limited to, abuse, neglect or misappropriation;
 - b. Professional credential restrictions, limitations, or revocations have been imposed on the Caregiver;
 - c. Program licensure limitations, revocations or denials have been imposed on the Caregiver;
 - d. The Caregiver has been discharged from any branch of the US Armed Forces, including any reserve component;
 - e. The Caregiver has residency outside the state of Wisconsin; and
 - f. Any rehabilitation review requests are made by the Caregiver.
2. Caregivers shall provide any required notice as follows:
 - a. **Non-Privileged, Employed Caregivers:** Notice must be given to the Human Resources Service Center;
 - b. **Non-Privileged, Non-Employed Caregivers:** Notice must be given to the associate at the ministry who serves as the Caregiver's point of contact and, if applicable, to the agency/company/school that arranged the placement at the ministry. As applicable, the ministry's associate who receives this information should immediately contact the agency/company/school who employs or otherwise is responsible for placing the Caregiver at the ministry to discuss next steps, and to work with Human Resources regarding applying this policy to a non-employed Caregiver.
 - c. **Privileged Caregivers (Employed and Non-Employed):** Notice must be given to the Medical Staff Coordinator, and, if the Caregiver is employed, to the Service Center.

B. **Non-Caregivers:** Any Individual who is not a Caregiver is required to notify the Service Center or Volunteer services for volunteers immediately and no later than the next working day, of any conviction record and pending criminal charges.

C. Failure to self-report within the timeline specified may result in Corrective Action up to, and including, termination.

6. **Other Reporting Requirements.** The Legal Services Department must be immediately notified if any Caregiver is suspected of patient abuse or neglect, or misappropriating patient property.

7. **Background Check Standards for Caregivers.**

A. Caregivers and persons who seek to work as Caregivers may not do so if:

1. They have been convicted of a "serious crime" as defined under DHS 12 or a comparable crime in another jurisdiction;
2. They have been found by the State to have abused or neglected a patient or misappropriated property of a patient;
3. They were determined under the laws of any jurisdiction to have abused or neglected a child; or
4. Their credentials (licensure, certificate and/or registration) needed for the positions are not current or are restricted so as to restrict them from providing adequate care to patients.

B. Caregivers and persons who seek to work as Caregivers are subject to the consequences outlined in section 2(F)(1) above if they have pending charges for a serious crime or for a crime that is substantially related to their current or sought-after jobs or roles at a ministry, or if they have conviction records that are substantially related to their current or sought-after jobs or roles at the ministry.

C. Caregivers are to report allegations of misconduct committed by other Caregivers in accordance with Chapter HFS 13, Reporting and Investigation of Caregiver Misconduct, and applicable ministry policy.

8. **Background Check Standards for Non-Caregivers.** Non-Caregivers are subject to the consequences outlined in section 2(F)(1) above if they have pending charges for a crime that is substantially related to their current or sought-after jobs or roles at a ministry, or if they have conviction records that are substantially related to their current or sought-after jobs or roles at the ministry.

Related Policies/Position Statements/Other Documents:

- HR-5713: Employment Service Date
- HR-5735: Volunteer Policy
- Physician duty to Report Another Physician (Ministry Medical Group Policy)
- HR-5308: Sanction Screening Policy
- CI-008 Sanction Screening

Replaces:

CI-1 Policy

Definitions:

Access: Access is Direct, Regular Contact with patients as a result of performing the essential duties or functions of a job with a ministry.

Background Check: Includes information that will show 1) the Individual's eligibility to be employed, to volunteer, to undergo educational training at, to contract with, or privileged by a Ministry; and/or 2) the Individual's eligibility to be licensed or approved by a state or county agency. A complete Background Check, which must be on file to document compliance, when required by law, includes:

- A. A completed BID form (F-82064A and appendix, F-82069A), if applicable;
- B. A copy of the submitted Wisconsin Criminal History Record Request paper form or online request, and the results of the Wisconsin criminal history record search;
- C. A Response to the Caregiver Background Check letter, which is also called an Integrated Background Information System (IBIS) response, from DHS containing:
 - Nurse Aide training status and findings on the Caregiver Registry of abuse or neglect of a patient or misappropriation of a patient's property in Wisconsin or another state, if known;
 - Restrictions, denials or revocations of licenses to operate covered programs;
 - Rehabilitation review request status and findings; and
 - The status of credentials, licenses, or certifications of persons whose professions are regulated by the State of Wisconsin Department of Safety & Professional Services.
- D. Any other documentation obtained by the ministry that may be needed to complete the Background Check.

Direct Contact: Face-to-face physical proximity to a patient that affords the opportunity to commit abuse or neglect of a patient or to misappropriate the property of a patient.

Non-Privileged, Employed Caregiver: Registered Nurses, Certified Nursing Assistants, Physical Therapists, Occupational Therapists, Respiratory Care Practitioners, Medical Technicians, Licensed Practical Nurses, Pharmacists, Surgical Technicians (this list is an example, but not all inclusive)

Non-Privileged, Non-Employed Caregiver: Registered Nurses, Certified Nursing Assistants, Physical Therapists, Occupational Therapists, Respiratory Care Practitioners, Medical Technicians, Licensed Practical Nurses, Pharmacists Surgical Technicians which work in Ministry Health Care but employed through a contract or agency (this list is an example, but not all inclusive)

Privileged Caregivers (Employed and Non-Employed): Nurse Practitioners, Physician Assistants, **Certified Registered Nurse Anesthetists, Doctor of Medicine (MD), Doctor of Osteopathic Medicine (DO)** (this list is an example, but not all inclusive)

Regular Contact: Contact that is planned, scheduled, expected, or periodic.

Under The Control of the Ministry: Indicates that the ministry does both of the following:

- A. Determines whether the Caregiver, who has Access to patients served by the ministry, provides care, treatment, or other similar support service functions to those patients; and
- B. Directs or oversees **one or more** of the following:
 1. The policies or procedures the Caregiver must follow in performing his or her duties as a Caregiver;
 2. The conditions under which the Caregiver performs his or her duties;
 3. The tasks performed by the Caregiver;
 4. The Caregiver's work schedule;
 5. The supervision or evaluation of the Caregiver's work or job performance, including imposing discipline or awarding performance awards; and/or
 6. The compensation the Caregiver receives for performing his or her duties.

Distribution:

Ministry Health Care and all wholly owned Ministry Health Care ministries, including Affinity Health System and all wholly owned Affinity ministries including Ministry Door County Medical Center but excluding Agape, Network Health and Saint Elizabeth's Medical Center. Agape and Saint Elizabeth's Medical Center will be provided access to this Policy for informational purposes. Network Health will have their own Human Resources policies similar to Ministry Health Care but also based on business needs

Values:

This Policy has been reviewed for support of the Ministry Health Care Values.

Key Words:

Background information disclosure (BID) form, background checks, caregiver background checks

Applicable Federal/State Regulations/Statutes:

- Wis. Admin. Code DHS 12, Caregiver Background Checks
- Wis. Admin. Code DHS 13, Reporting and Investigation of Caregiver Misconduct
- Wis. Stats. § 48.685
- Wis. Stats. § 50.065
- Wis. Stats. § 111.31 (Wisconsin Fair Employment Act)

For More Information Contact:

Human Resources Managers; Recruitment; Ministry Health Care Director of Corporate Responsibility

Responsible Senior Leader:

Vice President, Human Resources/Chief Human Resources Officer

¹For purposes of this Policy, a "patient" means a person who receives care or treatment from an entity subject to the Caregiver Law as specified in Wis. Admin. Code DHS 13.03.

²Under Wis. Stat. § 50.065(ag)(1), a Caregiver also includes a person who has, or is seeking, a license, certification, registration or certificate of approval issued or granted by the Department of Health Services to operate an entity that provides direct care or treatment services to clients (i.e., hospitals, home health agencies, skilled nursing facilities, etc.)

³The list of offenses affecting Caregiver eligibility is available on the DHS website: <http://www.dhs.wisconsin.gov/publications/p0/p00274.pdf>, as amended from time to time.

Attachments:

No Attachments

Approval Signatures

Approver

Date

Samantha Hudziak: Talent Management Analyst 10/1/2015

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