



October 24, 2022

Dear Facility Owner:

As you are aware, the safety of Vermont’s vulnerable adults depends, in part, on the character of those who provide them direct care and services. For this reason, it is critical that Vermont Facilities¹ conduct background checks on (1) potential employees prior to hiring them and (2) current employees on a periodic basis.

Vermont laws already require that Facilities refrain from employing individuals with certain disqualifying backgrounds.² The primary purpose of this letter is to provide clarity on *what kinds of background checks Facilities are required to undertake* to determine whether a prospective or current employee has a disqualifying background. Facilities are expected to be in compliance with the Protocol set forth below by no later than May 1, 2023. As of that date, the licensing agency (the Survey and Certification Unit) will begin to enforce these specific requirements.

Required Background Check Protocol

1. Prior to employing an individual and at least annually thereafter, a Facility must query the following entities regarding the prospective / current employee:

Entity	Website	Purpose of check
Vermont Adult Abuse Registry ³	https://dlp.vermont.gov/aps/adult-abuse-registry	To check whether the individual is barred from employment with vulnerable adults based on prior conduct.

¹ Per Title 33 of Vermont Statutes Annotated, “Facility” refers to a residential care home, nursing home, assisted living residence, home for persons who are terminally ill, or therapeutic community residence.

² See 12-4 Vt. Code R. §§ 202:5.11.d; 200:3.17(d), (e); 203:5.10(d); 204:1.1(a); 201:5.9(d); 202:4.4.a; 202:4.16.b; 203:4.3; 203:4.16(b); 201:4.3; 201:4.15; 200:3.17(e).

³ DAIL additionally recommends, but does not require, that Facilities conduct Adult Abuse Registry background checks of the following additional states, to the extent these registries are publicly accessible: (1) For the caregiver’s initial screening, each state of the caregiver’s current and prior residence; (2) For subsequent screenings, each state in which the caregiver resided or was employed since their prior background check.

Entity <i>(continued)</i>	Website <i>(continued)</i>	Purpose <i>(continued)</i>
Vermont Child Protection Registry	https://dcf.vermont.gov/registry/child-protection	To check whether the individual is barred from employment with vulnerable adults based on prior conduct.
Vermont Criminal Information Center	https://vcic.vermont.gov/	To check whether the individual is barred from employment based on prior convictions in Vermont.
Agency providing a national criminal background check	Vermont Criminal Information Center https://vcic.vermont.gov/ or private agency. (Note: any national criminal background check should be based on an individual's social security number or fingerprints).	To check whether the individual is barred from employment based on prior convictions in any state.
U.S. Department of Health and Human Services Office of Inspector General List of Excluded Individuals/Entities ("LEIE List")	https://oig.hhs.gov/exclusions/	For federally funded facilities, to check whether the individual is barred from employment with vulnerable adults based on prior conduct.
State professional licensing agency of state in which individual licensed	For VT: https://sos.vermont.gov/opr/	To confirm that the individual is licensed if/as required.

2. Under Vermont and federal laws and regulations, a Facility must decline to employ a prospective or current employee with:

- Absence/loss of a required professional license;
- Criminal convictions for the abuse/exploitation/neglect of a vulnerable adult or child in any state. (See 12-4 Vt. Code R. §§ 202:5.11.d; 200:3.17(d), (e); 203:5.10(d); 201:5.9(d); 204:1.1(a)).
- Substantiation by any state of the abuse/exploitation/neglect of a vulnerable adult or child. (See 12-4 Vt. Code R. §§ 202:5.11.d; 200:3.17(d), (e); 203:5.10(d); 201:5.9(d); 204:1.1(a)).
- Presence on the federal LEIE list if facility is federally funded. (See Exclusion Authorities per <https://oig.hhs.gov/exclusions/authorities.asp>).

3. What if a potential or current employee has other prior criminal convictions?

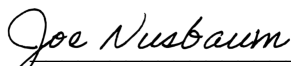
In addition to the prohibitions mentioned above, Vermont laws prohibit long-term care facilities from employing individuals with “criminal convictions relating to bodily injury, theft or misuse of funds or property, and/or crimes inimical to the public welfare.” (See 12-4 Vt. Code R. §§ 202:5.11.d, 200:3.17(d), (e), 203:5.10(d), 201:5.9(d), 204:1.1(a)). However, the Department of Disabilities, Aging and Independent Living (DAIL) recognizes that certain prior crimes (other than those referred to above in Section 2) do not necessarily bear on an individual’s ability to safely care for Facility residents. For example, an individual convicted of retail-theft fifteen years prior to their current application for employment should not necessarily be excluded from employment based on that prior conviction.

Accordingly, if a Facility concludes that an employee with a prior crime (other than those referred to in Section 2 above) presents no foreseeable risk to Facility residents, the Facility may employ that individual *consistent with the requirements of the attached June 2015 memoranda*.

Finally, we wanted to take this opportunity to remind you that, even if your Facility outsources employee background checks to a third-party staffing agency, you are nonetheless required to collect and maintain employee background check results on-site consistent with Vermont laws and regulations.

Thank you for making Vermont a safe state in which to age. Please contact us with any questions at the telephone numbers below.

Sincerely,



Joe Nusbaum
Director, Division of Licensing & Protection
Department of Disabilities, Aging
and Independent Living
802-760-8174



Jamie Renner
Assistant Attorney General
Chair, Elder Protection Initiative
Office of the Vermont Attorney
General
802-828-5947