

SOUTH CAROLINA HEALTH CARE ASSOCIATION

Background Checks under
61-17, FLSA Update, and
Labor Update
JUNE 9, 2010
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BACKGROUND CHECKS

- SC Regulation 61-17, § 602 requires facilities to conduct criminal record checks on direct caregivers under S.C. Code § 44-7-2910, *et seq.*
- Statutory requirements:
- "Direct Caregiver" defined as:
 - (1) RN, LPN, or CNA;

BACKGROUND CHECKS

- (2) any other licensed professional employed by or contracting with the facility;
- (3) unlicensed person who provides physical assistance or care to patient/client served by facility;
- (4) person employed by or under contract with facility who works within any building housing patients/clients; or
- (5) person employed by or under contract with facility whose duties include possibility of patient/client contact

BACKGROUND CHECKS

- "Direct caregiver" does not include faculty member or student enrolled in an educational program, including clinical study
- "Direct caregiver" can include volunteers, family members, and visitors if these individuals meet the 3rd definition listed above

BACKGROUND CHECKS

- For direct caregivers who can show residency in SC for prior 12 months, facility must obtain criminal background check from SLED (directly or via third party) prior to employment

BACKGROUND CHECKS

- For direct caregivers who cannot show residency in SC for prior 12 months, facility must obtain state check from SLED before employment and federal check after employment begins

BACKGROUND CHECKS

- Applicant disqualified from employment if applicant has prior conviction or pled no contest for:
 - (1) child or adult abuse;
 - (2) neglect;
 - (3) mistreatment; or
 - (4) any other felony

BACKGROUND CHECKS

- "Any other felony" clarified to include:
 - Classes A, B, C, and D felonies (as listed in S.C. Code § 16-1-90); and
 - Class E and F felonies (as listed in § 16-1-90) related to felonies involving:
 - (1) criminal sexual conduct;
 - (2) physical or sexual abuse of children, the elderly, or the infirm; and
 - (3) crimes in which victim is patient/resident of health care facility

WAGE & HOUR ISSUES AT THE FOREFRONT

- USDOL recently announced that it is launching wage-hour investigations of NY Healthcare employers
 - Aim is to promote compliance with FLSA's minimum wage, overtime, recordkeeping, and coverage provisions
 - Launched due to USDOL's Albany, NY office finding violations of FLSA by 2/3 of healthcare employers investigated

**WAGE & HOUR ISSUES
AT THE FOREFRONT**

- In 2009, federal court in NY granted class certification to large group of RNs, LPNs, NPs, and CNAs who have direct patient care responsibility and who are subject to automatic meal break deduction through Kronos system

**WAGE & HOUR ISSUES
AT THE FOREFRONT**

- In December 2009, SSM Healthcare in Missouri settled collective action with USDOL covering 4000 nurses for \$1.7 million
 - Claims arose from nurses who suffered automatic timekeeping deductions for meal periods and rest breaks regardless of whether nurses were relieved of duty or were working

**WAGE & HOUR ISSUES
AT THE FOREFRONT**

- In August 2009, Kaiser Permanente settled class action for \$1.4 million for misclassifying project managers as exempt
- In late-November 2007, Total Health Home Care Corp. entered settlement for \$2 million stemming from compensable travel time violations

NEW FACES IN THE LABOR WORLD

- Mary Kay Henry – elected as new president of SEIU
 - Began with SEIU in 1979 and rose to become SEIU's chief healthcare strategist
 - In June 2004, elected to serve as an International Executive Vice President of SEIU, leading SEIU's healthcare unionization efforts
 - Quote from SEIU's website: "*Henry has devoted her life to helping America's healthcare workers form unions, improve their jobs and the quality of care, and advocate for a more rational and humane health care system.*"

NEW FACES IN THE LABOR WORLD

- Recess appointments to NLRB:
 - Craig Becker (former general counsel of AFL-CIO and SEIU)
 - Mark Pearce (union attorney from Buffalo, NY)
 - Creates 4-Member Board with 3-1 employee/union-friendly majority

CHANGES EXPECTED DUE TO "NEW" NLRB

- Regulatory – Possible attempts to implement portions of EFCA/other union-friendly regulations through rulemaking process
- Decisional – Reversal/modification of employer-friendly "Bush Board" precedent

**CHANGES EXPECTED
DUE TO "NEW" NLRB**

1. What constitutes a supervisor (*Oakwood Healthcare*) (RESPECT Act)
2. Supervisors' solicitation of union support (*Harborside Healthcare*)
3. Inclusion of employees of two or more employers in one unit (*Oakwood Care Center*)
