

**New Jersey State Legislature
Office of Legislative Services
Office of the State Auditor**

**Department of Human Services
Licensed Residential Programs
Serving Individuals with Developmental Disabilities**

July 1, 2012 to April 30, 2017

**Stephen M. Eells
State Auditor**

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Enclosed is our report on the audit of the Department of Human Services, Licensed Residential Programs Serving Individuals with Developmental Disabilities for the period of July 1, 2012 to April 30, 2017. If you would like a personal briefing, please call me at (609) 847-3470.

A handwritten signature in black ink, appearing to read "Stephen M. Eells".

Stephen M. Eells
State Auditor
October 17, 2017

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Scope

We have completed an audit of the Department of Human Services, Licensed Residential Programs Serving Individuals with Developmental Disabilities for the period July 1, 2012 through April 30, 2017.

The Division of Developmental Disabilities contracts with over 570 providers to provide residential services and supports to over 8,000 New Jersey adults with intellectual and developmental disabilities. Residential options include group homes, supervised apartments, supported living, or community care residences.

The Office of Licensing (OOL) is the licensing and regulatory authority of the Department of Human Services (department). The OOL licenses, regulates, inspects, and provides technical assistance to programs serving persons with developmental disabilities in residential settings. The OOL's primary objective is to promote the health, safety, well-being, and rights of persons receiving services in programs regulated or reviewed by the department. It employs 26 inspectors to annually inspect nearly 2,300 licensed programs.

Objective

The objective of our audit was to determine whether the department's licensing and monitoring procedures were adequate to ensure applicable residential programs are licensed and in compliance with relevant licensing regulations.

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section I, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

Methodology

Our audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In preparation for our testing, we studied legislation, the administrative code, and policies of the department. Provisions we considered significant were documented and compliance with those requirements was verified by interview, observation, and through our testing. We interviewed department personnel to obtain an understanding of the internal control system, the licensing process, and monitoring procedures. We also reviewed personnel files and payroll records at 12 residential program providers.

A nonstatistical sampling approach was used. Our samples were designed to provide conclusions on our audit objective, as well as on internal controls and compliance. Sample populations were judgmentally selected for testing.

Conclusions

We found that the department's licensing and monitoring procedures were adequate to ensure applicable residential programs are licensed and in compliance with most relevant licensing regulations. However, the department needs to improve controls to ensure compliance with laws and regulations governing provider employee criminal history background checks. We also noted certain weaknesses regarding inspections and the licensing of supported living programs meriting management's attention. In addition, we observed opportunities for the department to defray the costs of criminal history background checks and the expense of inspecting and licensing residential programs.

Criminal History Background Checks – Residential Program Employees

The department needs to improve its monitoring of residential program providers to prevent the hiring of employees with disqualifying criminal histories. Legislative changes may be needed.

Pursuant to N.J.S.A. 30:6D-64, the Department of Human Services (department) shall not contract with any provider who employs an individual with a disqualifying criminal history record if that individual may come into direct contact with individuals being served. Disqualifying offenses are delineated in the statute. Prospective employees are required to submit to a fingerprint scan by the state's contracted vendor and to state and federal criminal history background checks conducted by the New Jersey State Police Bureau of Identification and the Federal Bureau of Investigation. The department's Central Fingerprinting Unit (CFU) is notified of these results and enters them into a database maintained by the CFU.

Federal Background Check Results

We found some providers hired individuals with disqualifying federal criminal histories, contrary to state law. From July 1, 2013 through September 30, 2016, there were 53,200 federal criminal history background check records in the CFU database. The CFU disqualified 72 individuals based on the applicants' federal criminal history results. We matched those individuals against the Department of Labor and Workforce Development's wage reporting data and found 9 of the 72 individuals had reported wages subsequent to the background check results. Disqualifying offenses for these individuals included murder, first-degree homicide, armed robbery, assault and battery, endangering the welfare of a child, and drug offenses. We found two of the disqualified individuals still employed as of the end of May 2017, including an individual convicted of murder and who is still on parole until 2028. When we brought this to the attention of the provider, we were told it was an oversight, and the individuals were immediately terminated.

State law allows the provider to determine whether an employee's criminal history is disqualifying. The statute specifies that no individual shall be disqualified from employment on the basis of any conviction disclosed by a criminal history record background check if the individual has affirmatively demonstrated to the provider clear and convincing evidence of the individual's rehabilitation. However, federal regulations do not allow federal results to be disseminated to third parties, such as the providers. Therefore, the federal results are reviewed by the CFU and a letter is sent to the provider indicating whether the individual is qualified for or disqualified from employment. This letter does not disclose the disqualifying offense. The letter instructs the provider to notify the applicant of the disqualification and of the opportunity to appeal to the department within fourteen business days. If the applicant appeals, the CFU examines any presented evidence and determines whether the individual has been rehabilitated.

The CFU eventually cleared two of the nine individuals cited above, but the rehabilitation process occurred only after it was brought to the providers' attention that they were employing

disqualified individuals. One of the individuals had worked several months before being cleared by the CFU, while the other had worked more than two years. In the other seven instances, the applicants were never cleared by the CFU for employment, but are no longer employed by the provider.

State Criminal Background Results

State law does not prevent New Jersey criminal history results from being disseminated to providers. Therefore, the state criminal background check results are forwarded to the applicant's prospective employer so that the provider can determine whether any criminal history disqualifies the applicant. The CFU may provide guidance on whether offenses are disqualifying, but the provider makes the final determination.

For the period July 1, 2013 through September 30, 2016, there were 47,700 state criminal history background check records in the CFU database, with 4,087 disclosing a New Jersey criminal history. We sampled 12 of the 117 providers and reviewed the records of 147 direct service staff individuals with a New Jersey criminal history according to the CFU database. There were 19 individuals who had criminal histories that may be disqualifying, including drug and assault offenses. An additional 40 files lacked adequate documentation for us to determine if the criminal history was disqualifying or, if applicable, rehabilitation had been demonstrated.

We also identified an individual working for a provider, but having no record of a completed criminal history background check for that provider. This individual had a background check for another provider that included a criminal history with a disqualifying offense. The CFU was also aware of this individual. According to the CFU, the individual had given the provider an outdated form letter that was altered. We later reviewed this document and came to the same conclusion. This individual was still employed at the same provider and no further action had been taken by the department.

Allowing the provider to make criminal history determinations stands in contrast to the manner in which criminal background checks are handled by other state departments. Applicants for positions in New Jersey's public schools, charter schools, and private schools for students with disabilities go through a similar fingerprinting and background check process. However, for those applicants, a unit within the Department of Education determines whether any criminal history disqualifies an applicant. For most programs under the Department of Children and Families (DCF), the CFU or a unit within the DCF will determine whether an applicant is disqualified. Giving the Department of Human Services more control over who providers may hire could prevent the hiring of employees with disqualifying criminal records and promote the safety of those receiving services.

Employees Lacking Criminal Background Checks

The department needs to improve its monitoring procedures to prevent providers from hiring employees who have not obtained a required background check. All provider employees who may come into direct contact with individuals receiving services (direct service staff) are

statutorily required to undergo a criminal history background check, with additional checks occurring every two years. However, our review found that not all such employees had done so. We obtained two payroll registers from 12 of the 117 community residence providers to determine if all direct service staff had a criminal background check record in the CFU's database. Of the 2,340 employees tested, 175 employees did not have a record in the database, strongly suggesting they had not had a criminal background check performed. These employees have worked, on average, more than two years for their respective providers, with 136 still having received wages as of the fourth quarter of 2016.

It is common for individuals to work as direct service staff for multiple providers. Individuals are required to obtain a separate criminal background check for each provider they work for. This allows providers to be notified of any criminal activity subsequent to an employee's background check. The CFU database does not identify whether an individual's background check was for the residential program or for another program that requires a background check. We performed a data match between the background check database and wage reporting data for the period January 1, 2013 through March 31, 2016 and found 1,086 instances of individuals who had a background check, but not for all of the providers they had worked for (working a minimum of five weeks), with 305 still receiving wages as of the fourth quarter 2016. The CFU database includes results for individuals fingerprinted for various programs, not just the residential program, and it does not identify which program the individual was fingerprinted for. Therefore, we cannot determine whether any of the 1,086 individuals we identified were not employees of a residential program. However, these individuals were likely working in a position that requires a background check and would be subject to the same notification rules.

Monitoring

The OOL is required to inspect each program annually. During an inspection, the OOL reviews the personnel files of the provider's direct service staff to monitor the criminal background check requirements. However, the OOL does not verify all direct service staff employees have obtained the required criminal history background check. Instead, the OOL reviews the personnel records for a sample of no more than 24 employees. The total number of direct service staff varies greatly from provider to provider. Smaller providers may have as few as 12 while the larger providers may employ more than 500.

The OOL inspectors only check the files for a receipt indicating the employee had been fingerprinted. The inspectors' work instructions stress that no criminal records, fingerprint records, or details surrounding criminal background checks or offenses found in an employee's personnel file are to be reviewed at any time by any staff of the OOL, even if offered by the provider. However, N.J.A.C. 10:48A-3.6(c) clearly states that provider records regarding criminal history background checks shall be available for review by department staff in order to assure compliance. Furthermore, the CFU does not notify the OOL when it determines an employee is disqualified or has a potentially disqualifying state background check result. Without knowing the results of an individual's criminal background check, the OOL inspectors cannot determine if any employees have a disqualifying criminal history, which employees need to have demonstrated rehabilitation, or if applicable, whether it has been demonstrated.

This increases the risk of an individual with a disqualifying record being hired by a provider.

Recommendation

The Department of Human Services should seek statutory changes that would allow it to make the criminal record background check determinations on all employees of residential program providers. The Department of Education's process governing applicants for positions in New Jersey's public schools, charter schools, and private schools for students with disabilities provides a good model for any legislative or administrative changes.

Regardless of any statutory changes, the department should improve its monitoring of background checks by reviewing all employee files to determine if a background check has been performed, whether there are any disqualifying offenses, and if so, whether rehabilitation has been properly demonstrated and documented. Furthermore, the CFU should notify the OOL of any employees who have been disqualified or have a potentially disqualifying offense.



Criminal History Background Checks – Community Care Residences

The department needs to improve its monitoring of criminal history background checks for community care residence providers and their alternates.

A community care residence (CCR) is a program operated in a private family home in which the provider resides and delivers care, services, and supports to an intellectually and/or developmentally disabled person. N.J.A.C. 10:44B-1.4(h) states that no CCR license shall be issued to any person when that person, or any occupant of the household 18 years of age or older, at any time has been convicted of any disqualifying offenses, as delineated by the code. Unlike for employees of community residence providers, the Office of Licensing (OOL) makes the determination of whether a CCR provider's criminal history is disqualifying.

During our review of the 452 CCR providers, only two were not found in the Central Fingerprinting Unit's (CFU) database. These two providers had been fingerprinted for other state programs in 1998. However, because they were not fingerprinted as CCR providers, the OOL would not have been notified of any criminal activity subsequent to their background checks in 1998. Both of the providers have since been re-fingerprinted and had no disqualifying offenses. Although we did not find a significant number of CCR providers operating without the required background check, CCR providers are subject to only a state background check. Without a federal background check, the department is unaware of any criminal history from other states.

In addition, the department does not require alternates to obtain a criminal background check. An alternate is a person identified by the provider to assume the provider's responsibilities when the provider is absent. We compared the list of 1,463 CCR alternates maintained by the

Division of Developmental Disabilities with the CFU's database of CCR providers and found 581 alternates had a state criminal background check. These individuals were likely in the database because they were either former or current CCR providers or adult occupants. However, the remaining 882 alternates were not in the database and may not have had a background check.

The administrative code allows alternates with a criminal record to provide care to individuals in a CCR program in accordance with the terms of the Rehabilitated Convicted Offenders Act. However, the administrative code prohibits those who have been adjudged criminally liable for abuse, neglect, or exploitation of another person from serving as an alternate. Absent a criminal background check, the department is unable to determine if there are individuals who should be disqualified from serving as alternates.

Recommendation

We recommend the department require CCR providers obtain federal background checks in addition to the state background check already required. Alternates should also be required to obtain both state and federal background checks.



Inspections

The department's Office of Licensing (OOL) is required to annually inspect all licensed residential programs serving persons with developmental disabilities. Providers are notified seven days in advance of their annual inspection. Once all programs for a given provider have been inspected, a written inspection report specifying all deficiencies is sent to the provider. Deficiencies deemed more serious by the OOL will require the provider to submit a Plan of Correction (POC) within 30 days detailing the provider's plan to address those deficiencies. Deficiencies requiring a POC are typically related to health and safety concerns, or are repeat deficiencies from the prior year's inspection. Based on the results of the inspection, the OOL can issue a provisional license, a full license, or it can revoke a license. When a full license is issued, there is generally no follow-up visit or review by the OOL until the next annual inspection to verify the deficiencies requiring a POC have been corrected. When a provisional license is issued, the OOL will follow up to determine all deficiencies have been corrected before issuing a full license. The OOL does not normally perform surprise inspections.

Inspection Process

The OOL should improve the inspection process.

In our assessment of the inspection process, we judgmentally selected 83 programs from 8 of the 117 providers and we performed a walkthrough of each residence. Prior to our visits, we reviewed each program's most recent inspection report. There were 939 deficiencies noted for

the programs we reviewed, consisting of 668 administrative deficiencies, 261 home inspection deficiencies, and 10 deficiencies from the inspections of vehicles. The average number of deficiencies was 11, with eight programs having at least twice that average. The most deficiencies for a single program were 42, while two programs had no deficiencies. All programs were given a full license to operate.

Of the 939 deficiencies, 50 required a POC, of which just 17 were related to a home inspection. During our walkthroughs of these programs, we found three instances where the provider said they would correct the deficiency, but had not done so in the time period noted in the POC. The following are two examples.

- During the OOL inspection on 8/23/16, it was noted that “two counter tiles by the kitchen stove are broken and sharp, posing a risk of injury.” A POC was required and submitted in which the provider stated the counter would be fixed by 11/23/16. During our visit of the program on 2/17/17, we noted the counter was still not fixed, six months after the OOL inspection and nearly three months after the date the provider said it would be fixed.
- During the OOL inspection on 9/6/16, it was noted that the carpet in one bedroom was “loose and bunching up, posing a tripping hazard.” A POC was required and submitted in which the provider stated that a bid had been sought and the work was expected to be completed by 12/30/16. During our visit of the program on 2/24/17, five months after the OOL inspection and nearly two months after the provider said it would be completed, it was not.

The OOL informed us that they may follow up on a POC when a full license is issued if it is determined there is a significant risk of injury. However, we were not provided with any evidence of such a follow-up occurring prior to the end of our fieldwork, including for the examples noted above. Since the end of our fieldwork, the OOL has followed up on the POCs of three programs to determine if the deficiencies had been corrected.

Finally, some providers indicated frustration with the inconsistency of inspections. While we acknowledge the difficulty in applying standards to such a varied and large number of programs, our reviews of inspection reports noted inconsistencies regarding which deficiencies require a POC. For example, one program was required to complete a POC for two broken kitchen counter tiles, but not for an awning over the back door that was, according to the inspection report, “in disrepair and [was] falling down”. We visited that program more than five months after the OOL inspection and noted the awning had not been repaired. The OOL likely will not determine if the awning is repaired until the provider’s next annual inspection.

Timeliness of Inspections

Improvements have been made, but not all residential programs are being inspected timely.

For purposes of our review, we considered an inspection performed within 395 days of the previous inspection to be timely. Procedural changes by the OOL in recent years have led to a significant decline in the backlog and number of untimely inspections. However, there were still a number of programs not inspected in a timely manner, as shown in the following chart.

Programs	Calendar Year				
	2013	2014	2015	2016	2017*
Needing Inspection	1,824	1,838	2,058	2,063	278
Inspected Timely	865	940	1,326	1,930	261
Not Inspected Timely	959	898	732	133	17
Percentage of Inspections Not Done Timely	52.58%	48.86%	35.57%	6.45%	6.12%

*As of March 31, 2017

Annual inspections are essential to the OOL mission of promoting the health, safety, well-being, and rights of those receiving services in a residential program. The possibility of an unsafe environment increases when programs are not inspected in a timely manner.

Recommendation

We recommend the OOL follow up on deficiencies requiring a POC prior to a program's next annual inspection to verify the plan is being followed. We also recommend the OOL perform surprise inspections to further enhance the inspection process and continue to work toward inspecting programs prior to their license expiring.



Supported Living Programs

The Office of Licensing is unable to explain the current status of a number of programs, which may or may not require a license.

Supported living programs are living arrangements in which a highly flexible array of services and supports are provided to those with developmental disabilities in a variety of settings. If none of the individuals residing within a particular program require personal guidance, as determined by an interdisciplinary team, licensing shall be available on a strictly voluntary

basis in recognition of an individual's right to choose independent living. If it is determined a program does not require a license, the program information is not forwarded to the Office of Licensing (OOL). As of March 31, 2016, there were 242 supported living programs that were not licensed by the OOL. It is possible most, if not all of these programs do not require a license. However, as the licensing authority, the OOL should be aware of all programs that are not licensed in accordance with its regulations in order to detect those that are, in error, not licensed.

Recommendation

We recommend the OOL coordinate with the Division of Developmental Disabilities to confirm these programs do not need to be licensed. We also recommend the OOL establish procedures for being informed of those programs that do not require a license.



Observations

Criminal History Background Check Fees

Defraying the cost of criminal background checks for provider employees would require legislative changes.

Any provider employee who may come into direct contact with individuals receiving services is statutorily required to undergo a criminal history background check, with additional checks every two years. Pursuant to N.J.S.A. 30:6D-72, the department assumes those costs entirely. During the period January 1, 2013 through September 30, 2016, more than 58,000 criminal history background checks were performed by the department at a cost of over \$3 million.

We researched similar programs for five states surrounding New Jersey, and each requires the provider or employee to cover the cost of a criminal history background check, either in whole or in part. In addition, other state departments responsible for monitoring criminal history records require prospective employees to pay for the entire cost of a criminal background check. Applicants for positions in New Jersey's public schools, charter schools, and private schools for students with disabilities pay for their criminal background check, as well as an administrative fee paid to the Department of Education.

Licensing Fees

The department should consider charging a licensing fee to providers to recoup expenses associated with inspecting and licensing residential programs.

The Office of Licensing (OOL) is required to annually inspect and monitor licensed developmental disability residential programs to ensure sites are clean and properly maintained,

free from hazards to the health and safety of those receiving services, and in compliance with administrative code requirements. This is accomplished by one or more OOL quality assurance specialists visiting each residential program at least once a year and completing an on-site inspection. In addition, specialists are required to complete a separate administrative inspection for each provider, which includes reviewing staff records and procedures manuals. During our audit period, there was an average of 121 providers and 2,280 programs per year.

The department does not charge a licensing fee to providers of residential programs serving individuals with developmental disabilities. In comparison, the department assesses a licensing fee to providers of mental health residential programs for each program the provider operates. These programs are similar to the developmental disability residential programs. Additionally, some other states share the cost of licensing their developmental disability residential programs by charging annual licensing fees to providers. The department should consider doing the same.





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October 13, 2017

ELIZABETH CONNOLLY
Acting Commissioner

John J. Termyna
Assistant State Auditor
Office of Legislative Services
Office of the State Auditor
125 South Warren Street
P.O. Box 067
Trenton, NJ 08625-0067

Dear Mr. Termyna:

The Department of Human Services is in receipt of your office's draft report, entitled "Department of Human Services Licensed Residential Programs Serving Individuals with Developmental Disabilities", July 1, 2012 to April 30, 2017.

We agree with your overall conclusion that the Department's licensing and monitoring procedures were adequate to ensure applicable residential programs are licensed and in compliance with most relevant licensing regulations. Our formal responses to the individual findings and related recommendations are as follows:

OLS Recommendation

The Department of Human Services should seek statutory changes that would allow it to make the criminal record background check determinations on all employees of community residence providers. Regardless of any statutory changes, the Department should improve its monitoring of background checks by reviewing all employee files to determine if a background check has been performed, whether there are any disqualifying offenses, and if so, whether rehabilitation has been properly demonstrated and documented. Furthermore, the Central Fingerprint Unit (CFU) should notify the Office of Licensing (OOL) of any employees who have been disqualified or have a potentially disqualifying offense.

Response

The Department will consider statutory changes to allow the Department to make employment fitness determinations of all community residence provider employees.

With regard to monitoring, CFU will collaborate with OOL to support the monitoring of provider compliance with all regulatory requirements of background checks.

The Komninos' Law, recently signed by the Governor, requires drug testing as a precondition of employment for direct care staff at provider agencies, randomly during the course of employment, and at any time for cause, further enhancing the review of employees' fitness to work with individuals with developmental disabilities.

OLS Recommendation

We recommend the Department require Community Care Residence (CCR) providers obtain federal background checks in addition to the state background check already required. Alternates should also be required to obtain both state and federal background checks.

Response

DHS will investigate the applicability of federal background checks for CCRs.

OLS Recommendation

We recommend the OOL follow up on deficiencies requiring a plan of correction (POC) prior to a program's next annual inspection to verify the plan is being followed. We also recommend the OOL perform surprise inspections to further enhance the inspection process and continue to work toward inspecting programs prior to their license expiring.

Response

DHS already performs unannounced inspections and POC inspections. DHS will continue to advance efforts to achieve timely inspections of all licensed programs.

In addition, the Komninos' Law will require the Department annually to conduct two unannounced visits to each community-based residential program, further strengthening oversight and supporting licensing efforts.

OLS Recommendation

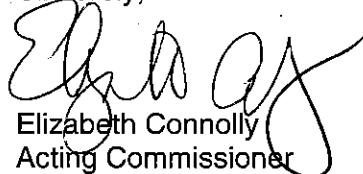
We recommend the OOL coordinate with the DDD to confirm these supported living programs do not need to be licensed. We also recommend the OOL establish procedures for being informed of those programs that do not require a license.

Response

The Department will work with DDD to determine best practices in this regard.

If you have any questions or require additional information, please contact Christopher Bailey at (609) 984-5382.

Sincerely,



Elizabeth Connolly
Acting Commissioner

EC:05

c: Christopher Bailey, Chief Operations and Financial Officer
Gerald Suozzo, Assistant Commissioner, Operations
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