

# PROVIDERS' COUNCIL

January 19, 2018

To: Felicia Sullivan, General Counsel  
Department of Early Education and Care

From: Michael Weekes, President/CEO  
Providers' Council

cc: Thomas L. Weber, Commissioner  
Department of Early Education and Care

Re: Comments regarding 606 CMR 14.00, *Criminal offender and other background checks*

Thank you for giving the Providers' Council, our members and other community-based organizations the opportunity to submit comments regarding 606 CMR 14.00, *Criminal offender and other background checks*. We appreciate the Department of Early Education and Care holding three public hearings on this issue and extending the deadline to submit comments until January 26, 2018.

The Providers' Council is the largest statewide association of community-based human services organizations that provide an array of services to one-in-ten Massachusetts residents on behalf of the Commonwealth. Since the mid-1970s, providers have built community supports that have been transformative in protecting the lives of many residents, advancing our state's system of care and ensuring hundreds of thousands of state residents receive critical supports.

The Council joins our members and the Department of Early Education and Care in the principle that the safety and care of children is of paramount importance in any changes being proposed. We do, therefore, have concerns that DEEC's proposed amendments to background record checks, if adopted, could harm our members' ability to *timely* hire qualified staff for their residential programs. This would impact their ability to provide quality care to children. A major concern is that it appears the first step in the background check process will become fingerprint checks, which is the lengthiest process and one where delays are frequently encountered.

## ***Problems with the new regulations***

Currently, once a SORI check, a CORI check and a DCF background check have been completed – and a fingerprint appointment has been scheduled – providers are able to hire employees on a provisional basis and those employees are permitted to have unmonitored contact with children. EEC's review and approval of the fingerprint results is currently the final part in the process, moving employees from provisional status to a "suitable" status.

The new regulations, however, in section 14.13(2)(a) state "*After a candidate completes the required sex offender checks, a fingerprint-based check and EEC completes its*

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*preliminary screen process, EEC may authorize the program to provisionally hire the candidate.*" This does not address:

- Is fingerprinting now the first step in the background check process? Is it the second step after the SORI check?
- At what point are CORI or DCF record checks processed? This does not include any information about either of those. Are they to be done after the fingerprint-based check?
- Why has the sequence changed and how long do you expect approvals from EEC to take?

Further, the new regulations make changes to the way provisional hires are permitted to work with clients. As noted earlier, provisional employees who have passed a SORI, CORI and DCF background check are able to have unmonitored contact with children pending results from the fingerprint check. But the proposed regulations at 14.13(2)(b) state *"Upon receipt of notification that a candidate is eligible for provisional status, a Program may, within its discretion, utilize a candidate in a position under the direct visual supervision of a Program employee who has a current "suitable" finding with EEC until the candidate's remaining checks are completed and the Program receives a "suitable" final suitability determination from EEC."*

We are unclear why EEC is seeking to change this regulation, as it has the potential to cause a staffing and scheduling and financial hardship for programs, particularly when providers may need to hire for numerous vacancies, as programs must ensure provisional staff are paired with "suitable" staff. This requires Program Managers to have an intricate knowledge of each staff's final hiring determination status and creates difficulties when arranging for coverage in the event of sick time or vacancies. This may not always be practical – or even possible – in some programs – especially if providers continue to experience long delays in receiving a "suitable" designation from the department. Programs may experience client waiting lists or worse, close.

Our members have a number of other concerns including:

- The proposed regulations indicate that each candidate *"must re-certify his/her consent for EEC to complete a BRC on a yearly basis in a manner described by and in accordance with timelines established by EEC policy."* EEC had required this every three years – is EEC now requiring annual re-checks?
- The proposed regulations also indicate that EEC will remove providers as the hiring authority. Providers will not have access to review and discuss CORI and DCF record results with candidates, nor will programs be able to consider this information in conjunction with other screening factors in order to make hiring decisions. Providers note that CORI and DCF results are weighted heavily in determining if a candidate is suitable for employment. Many of our members are concerned that EEC will make hiring decisions based solely on BRC results and may disqualify high quality candidates solely on EEC's review of these records.

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- In regard to EEC acting as the hiring authority for all candidates, members have serious concerns about the timeliness with which this process can be accomplished. Additionally, how will EEC staff be trained on making hiring judgements for community providers? Will a metric or rubric be used so hiring decisions are fair and do not change from reviewer to reviewer?

#### ***Alternate process for fingerprint checks***

In addition to altering the hiring authority from the employer, the other major issue our members identified with the current process seems to be the inordinate delay in receiving a determination from EEC in response to the fingerprint checks. The current process is lengthy, but it allows providers to provisionally hire employees who have completed a CORI, SORI and DCF background check while awaiting the results of the fingerprint check from EEC. Most of their programs operate on a 24/7 basis and must be available for the state's clients and consumers.

The Council and our members remain unclear why there is such a delay in EEC issuing "suitable" designations after receiving fingerprint information from provisional candidates. In our conversations with the state's Department of Developmental Services (DDS), the agency indicates it is able to clear fingerprint checks for providers the day it receives them if there's a finding of "no record" on the fingerprints. If there is a fingerprint record, DDS estimates it might take between two and ten days to research the case and issue a determination.

DDS's process includes an employee receiving a CORI check and DDS background check, and after clearing both of those, the employee can be *provisionally* hired awaiting the results of a fingerprint check.

We hope EEC discusses its fingerprint check operation with DDS, which also checks hundreds of provider candidates, to determine efficiencies can be realized, allowing suitability letters to be issued in a more expedient fashion. It is in the best interest of everyone – clients, the state and providers – to have qualified, caring staff working with children throughout the Commonwealth approved in a timely manner.

#### ***In closing***

The Providers' Council supports information submitted by our members, including The Key Program, and we share many of the same questions submitted by maaps and the Association for Behavioral Healthcare in separate correspondence to EEC. We would be happy to convene a working group of providers to meet with EEC to discuss proposed regulations for 606 CMR 14.00 and what might be most effective for our joint goal – providing high-quality, safe services to the children who receive care from the Department of Early Education and Care and the hundreds of community-based providers with properly vetted staff in the Commonwealth.

Thank you for your attention to this matter, and we look forward to hearing from you soon.