



Missouri Department of Health and Senior Services

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**Julia M. Eckstein**  
Director

VM-07-08

September 25, 2006

**MEMORANDUM FOR VENDORS OF CONSUMER-DIRECTED SERVICES**

FROM: Brenda F. Campbell, Director  
Division of Senior and Disability Services

SUBJECT: Clarification of Opportunity for "Good Faith Employment"

The Division of Senior and Disability Services (DSDS) has received numerous inquiries as a result of VM-07-04 regarding conditional employment of personal care attendants. VM-07-04 related to employment of attendants whose FCSR results have been received and who have requests for good cause waivers pending.

This memorandum is being sent to clarify the employment requirements for attendants as they relate to employment during the time the Family Care Safety Registry (FCSR) screening is pending. "Good faith employment" is a term used to describe the period of time a vendor/consumer/attendant is waiting for the response from the FCSR screening request regarding the background checks on new employees completed through the registry. If a vendor chooses to work with consumers and attendants during a "good faith employment" period, documentation must be maintained that verifies: (1) the attendant's job application must not indicate any criminal convictions, findings of guilt, pleas of guilty or pleas of *nolo contendere* except for minor traffic offenses, (2) the attendant must have completed registration with the FCSR, and (3) the vendor must have completed a request for an FCSR screening on the attendant. Vendors should exercise caution because if the attendant is employed pending the results of an FCSR screening and the FCSR screening discloses that the attendant is listed on any of the lists in the FCSR, the vendor will be required to repay any funds paid by the State or Federal governments for the attendant's services from the date the employment began to the date the vendor received the screening results. Consistent with VM-07-04, use of government funds to make reimbursement for employment of the attendant must stop until a good cause waiver is received.<sup>1</sup>

This position is based on state statute and the Participation Agreement for Home and Community Based Care that vendors have signed.

Section 208.909.4, RSMo Supp. 2005 states:

No state or federal financial assistance shall be authorized or expended to pay for personal care assistance services provided by a personal care attendant who is listed on any of the background check lists in the family care safety registry under sections 210.900 to 210.937, RSMo, unless a good cause waiver is first obtained from the department in accordance with section 660.317, RSMo.

<sup>1</sup> Please note that a good cause waiver will not be granted for a listing on the Department of Health and Senior Services' Employee Disqualification List (EDL). See Section 660.317.10, RSMo Supp. 2005.

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The State Fiscal Year 2007 vendor participation agreement states:

- The vendor shall ensure personal care attendants are registered, screened and employable pursuant to the Family Care Safety Registry (FCSR) and the Employee Disqualification List (EDL) and the applicable regulations.
- The vendor agrees to maintain documentation in its files that verifies the adoption, implementation and enforcement of the following policies in screening persons for eligibility as a personal care attendant:
  - All personal care attendants shall complete an employment application. The application shall contain a question requiring disclosure of all criminal convictions, findings of guilt, pleas of guilty and pleas of *nolo contendere* except minor traffic offenses.
  - The vendor will maintain in its files copies of all screening information to document screening was conducted pursuant State and Federal laws and regulations.
  - The vendor shall require disclosure of all aliases and social security numbers used by any personal care attendant. FCSR and EDL checks shall be performed for all aliases and social security numbers utilized by such persons.
- In the event the vendor allows a consumer to employ any personal care attendant who is not registered, screened and employable pursuant to this Agreement, the Department shall not make reimbursement for any services provided. The Vendor agrees to repay any and all amounts paid for services performed in violation of these provisions to the Department.

To summarize, in accordance with the vendor's participation agreement and Section 208.909.4, RSMo Supp. 2005, vendors that make the determination that "good faith employment" is warranted should be aware of their ultimate responsibility for repayment of government funds paid for an attendant's services if the attendant is found to be listed on any of the background check lists in the FCSR. When making the decision to allow "good faith employment", the vendor and consumer must determine the attendant's application does not disclose a criminal history other than minor traffic offenses, the attendant's FCSR registration has been completed, and the vendor's request for an FCSR screening has been completed. If the vendor and consumer assume the responsibility of "good faith employment" and the FCSR check reveals that a period of employment prohibition prevents payment for services using state and federal funds, the liability for repayment of any funds will fall to the vendor. Also, if the FCSR screening discloses a finding, as stated in VM-07-04, consumers choosing to employ an attendant whose good cause waiver is pending will not have access to reimbursement using state or federal funds for the period of employment pending the determination.

Any questions regarding this memorandum may be directed to the Bureau of Quality Assurance by telephone at 573/526-8546 or via e-mail at [jhscontracts@dhss.mo.gov](mailto:jhscontracts@dhss.mo.gov).

BFC/WS

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