**ATTACHMENT C**

**FEDERAL AND STATE REQUIREMENTS THAT PROHIBIT THE EMPLOYMENT OF INDIVIDUALS WITH DISQUALIFYING OFFENSES AND STATEWIDE CRIMINAL BACKGROUND CHECKS**

**FEDERAL REQUIREMENT:**

FED - F0606 - Not Employ/Engage Staff w/ Adverse Actions 42 C.F.R. §483.12(a)(3)(4)

42 C.F.R.§483.12(a) The facility must-

42 C.F.R.§483.12(a)(3) Not employ or otherwise engage individuals who-

(i) Have been found guilty of abuse, neglect, exploitation, misappropriation of property, or mistreatment by a court of law;

(ii) Have had a finding entered into the State nurse aide registry concerning abuse, neglect, exploitation, mistreatment of residents or misappropriation of their property; or

(iii) Have a disciplinary action in effect against his or her professional license by a state licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of residents or misappropriation of resident property.

**STATE REQUIREMENTS:**

La. R.S. 40: §1203.1. Definitions

(4) "Employer" means any of the following facilities, agencies, providers, or programs:

 (a) A nursing facility as defined in R.S. 40:2009.2.

(6) "Nonlicensed person" means any person who provides for compensation nursing care or other health-related services directly related to patient care to residents in or patients of a nursing facility, intermediate care facility for people with developmental disabilities, adult residential care facility or provider, pediatric day health care facility, adult day health care center, psychiatric residential treatment facility, end stage renal disease facility, behavioral health services provider, home health agency, hospice agency, provider of ambulance services, hospital, adult brain injury facility, crisis receiving center, pain management clinic, outpatient abortion facility, rural health clinic, ambulatory surgical center, therapeutic group home, forensic supervised transitional residential and aftercare facility, case management provider, or home- and community-based service provider and who is not a licensed health provider. "Nonlicensed person" also means any person who provides such services to individuals in their own homes as an employee or contract provider of a home health agency, hospice, or home- and community-based service provider. "Nonlicensed person" also means any other direct service worker as defined in R.S. 40:2179 and 2179.1. "Nonlicensed person" also means a student or trainee applying for enrollment in a clinical preceptor training program authorized by R.S. 40:1201.1 et seq., or in a nurse aide training program approved by the department pursuant to federal and state law or regulation.

La. R.S. 40: §1203.2. Employment of nonlicensed persons and licensed ambulance personnel; training program enrollment of nonlicensed persons; mandatory criminal history and security checks; temporary employment; notice to applicants

A.(1) Except as otherwise provided in Subsection C of this Section, prior to any employer making an offer to employ or to contract with a nonlicensed person or any licensed ambulance personnel to provide nursing care, health-related services, medic services, or supportive assistance to any individual, the employer shall request that a criminal history and security check be conducted on the nonlicensed person or any licensed ambulance personnel pursuant to the provisions of this Section. If the employer is a facility, home, or institution which is part of a larger complex of buildings, the requirement of a criminal history and security check shall apply only to an offer of employment or contract made to a nonlicensed person or any licensed ambulance personnel who will work primarily in the immediate boundaries of the facility, home, or institution.

(2) Except as otherwise specified in Paragraph (D)(1) of this Section, an employer may obtain the criminal history record maintained by the office of state police of a nonlicensed person or any licensed ambulance personnel offering to provide nursing care, health-related services, or supportive services to any individual.

B.(1) The employer shall request in writing that the office or authorized agency conduct a criminal history and security check on the nonlicensed person or any licensed ambulance personnel and shall provide the office or authorized agency with any relevant information required by the office or authorized agency to conduct the check. The employer may request that the criminal history and security check be performed using the fingerprints of the nonlicensed person or any licensed ambulance personnel.

(2) An employer or authorized agency shall pay a fee of twenty-six dollars to the office for a search of the office's criminal history files on an applicant for employment.

(3) The security check shall consist of the use of personal identifiers, such as name, social security number, date of birth, and driver's license number, to search the national sex offender public registry. An authorized agency shall notify the office if a security check reveals that an applicant is listed in the national sex offender public registry.

C.(1) An employer may make an offer of temporary employment to a nonlicensed person or any licensed ambulance personnel pending the results of the criminal history and security check on the person. In such instances, the employer shall provide to the office or authorized agency the name and relevant information relating to the person within seventy-two hours after the date the person accepts temporary employment.

(2)(a) Notwithstanding the provisions of Paragraph (1) of this Subsection, any nurse's aide offered temporary employment prior to the receipt of the results of the required criminal history and security check shall be under the direct supervision of a permanent employee or shall be in the presence of a member of the immediate family of the patient or of a care giver designated by the immediate family of the patient.

(b) As used in this Paragraph, "member of the immediate family" means a child, parent, grandparent, sibling, uncle, aunt, nephew, or niece of the patient related by blood, marriage, or adoption.

E.(1) An employer shall inform each applicant for employment or each prospective contract provider that the employer is required to obtain a criminal history record and perform a security check before such employer makes an offer of employment to, or contracts with, a nonlicensed person or any licensed ambulance personnel. The employer shall obtain written permission from the applicant for the release of such information to the employer on a form that clearly notifies the applicant it is a crime to provide false information concerning a criminal history check to an employer.

(2) Upon request of the employer, each applicant for employment may be fingerprinted and submit fingerprint samples to the Louisiana Bureau of Criminal Identification and Information pursuant to R.S. 15:587 to be used to obtain the criminal history record.

F. Employers subject to the provisions of this Part shall only contract for staffing services provided by businesses who comply with the provisions of this Part. Businesses that provide contract staffing services to healthcare providers shall comply with the provisions of this Part. Such businesses shall send accompanying letters certifying that the contracted staff meet license or certification standards of their profession and have undergone and passed criminal background checks.

La. R.S. 40: §1203.3. Refusal to hire or contract; termination of employment; exceptions to hiring prohibition; appeal procedure; waiver

A. Except as otherwise provided in R.S. 40:1203.2(C) and Subsection E of this Section, no employer shall hire any licensed ambulance personnel or nonlicensed person when the results of a criminal history check reveal that the licensed ambulance personnel or nonlicensed person has been convicted of any of the following offenses:

(1) R.S. 14:28.1, 30, 30.1, 31, 32.6, 32.7, 32.12, 34, 34.1, 34.7, 35.2, 37, 37.1, 37.4, 38.1, 42, 42.1, 43, 43.1, 43.2, 43.3, 43.5, 44, 44.1, 46.2, 51, 60, 64, 64.1, 64.4, 66, 67.16, 89, 89.1, 93.3, 93.4, 93.5, 283.3 or distribution or possession with the intent to distribute controlled dangerous substances as listed in Schedules I through V of the Uniform Controlled Dangerous Substances Act.

(2) An attempt or conspiracy to commit any of the offenses listed in Paragraph (1) of this Subsection.

(3) The felony offense involving theft, pursuant to R.S. 14:67, or theft of assets of an aged person or person with a disability, pursuant to R.S. 14:67.21 in excess of five hundred dollars or in any case in which the offender has been previously convicted of theft, pursuant to R.S. 14:67, or theft of assets of an aged person or person with a disability, pursuant to R.S. 14:67.21, regardless of the value of the instant theft.

(4) An attempt or conspiracy to commit an offense listed in Paragraph (3) of this Subsection.

B. Additionally, except as otherwise provided in R.S. 40:1203.2(C), no employer who provides care or services to any person under the age of twenty-one shall hire any licensed ambulance personnel or nonlicensed person when the results of the criminal history check reveal that the licensed ambulance personnel or nonlicensed person has been convicted of any of the following offenses:

 (1) R.S. 14:44.2, 80, 81.2, or 93.

 (2) An attempt or conspiracy to commit any of the offenses listed in Paragraph (1) of this Subsection.

C. If the results of a criminal history check reveal that a nonlicensed person or any licensed ambulance personnel hired on a temporary basis or any other person who is an employee has been convicted of any of the offenses listed in Subsection A or B of this Section, the employer shall immediately terminate the person's employment.

La. R.S. 40:§1203.5. Compliance

 The department shall review the employment files of any facility or agency required to obtain criminal history records to ensure such facilities are in compliance with the provisions of this Part.