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January 5, 2015

**MEMORANDUM TO:** Dr. Robert J. O'Hara, Jr.  
PCC Executive Director

**RE:** Background Checks

On October 22, 2014, Governor Corbett signed the final remaining bill in the Child Protection Legislative Package for 2013-14. The bill approved that day was House Bill 435 (PN 4225) (Rep. Moul). It became Act 2014-153.

As amended late in the legislative session, the bill made a number of changes in the requirements found in the Child Protective Services Law (CPSL) with respect to background checks. Those changes with respect to **employees** of child care services that are subject to DPW (nka "Department of Human Services") regulation, as well as those who are foster parents or prospective adoptive parents, became effective on December 31, 2014. Those changes with respect to volunteers who have direct contact with children will become effective on July 1, 2015.

**Beginning on December 31, 2014**, the following individuals will need to obtain new child abuse, state criminal and federal criminal history clearances every thirty-six months:

- An **employee** of any child-care service. "Child-care services" include child day-care centers, group day-care homes, family day-care homes, foster homes, boarding homes for children, juvenile detention centers or programs for delinquent or dependent children, mental health services for children, programs for children with intellectual disabilities, early intervention services for children, drug and alcohol services for children, **day-care services or programs that are offered by a school**, and any other child-care services that are subject to approval, licensure or registration or certification by the Department of Human Services.
- A foster parent or a prospective adoptive parent.
- A self-employed family day-care provider.
- An individual 14 years of age or older applying for a paid position as an employee responsible for the welfare of a child or having direct contact with children.
- Any individual seeking to provide child-care services under contract with a child-care facility or program.
- An individual 18 years of age or older who resides in the home of a foster parent for at least 30 days in a calendar year or who resides in the home of a prospective adoptive parent for at least 30 days in a calendar year.

Background checks for all other school employees who have direct contact with children continue to be governed by the provisions of Section 111 of the Public School Code of 1949. Act 2014-153 does not disturb that provision of the School Code. However, all school employees who are subject to Section 111 of the School Code must obtain new certifications under that Section every 36 months.

Any person currently **employed in a school or child-care service** whose current clearance certifications were issued more than 36 months ago must obtain new certifications on or before **December 31, 2015**. Any person currently employed in a school or child-care service whose current clearance certifications were issued less than 36 months ago must obtain new certifications within 36 months of their most recent certifications.

**Beginning July 1, 2015**, all **adult volunteers** having contact with or responsibility for children in any setting (school, child-care service, etc.) will be required to submit a child abuse and **State** criminal history clearance prior to approval as a volunteer. A single 30-day grace period is allowed for the provisional use of a volunteer who has applied for clearances. The clearance must be renewed every 36 months. **Federal** history clearances are not required provided all of the following conditions are met:

- The position is unpaid.
- The individual has been a PA resident for the past 10 years.
- The individual swears or affirms in writing that s/he has not been convicted of any of the crimes or equivalent crimes in any other jurisdiction listed under the Child Protective Services Law that would disqualify an individual from employment involving contact with children.

For adult volunteers who had obtained clearance certifications less than 36 months prior to July 1, 2015, new clearances must be obtained within 36 months of their most recent certifications. For adult volunteers whose clearances were obtained more than 36 months prior to July 1, 2015, new clearances must be obtained prior to July 1, 2016.

Effective December 31, 2014, the Pennsylvania Child Abuse History Clearance application can be submitted online. Upon entering the DHS website (linked below) the user is directed to the Child Welfare Portal where an account is required. An email address is required to create an account. Creating an account and submitting a clearance application online will give the user immediate access to her/his results or the status of those results if the clearance request cannot be processed immediately. Paper submission of requests will still be accepted. Payments can be made in the form of checks, money orders, credit cards or debit cards.

For details on how to request a child abuse history clearance electronically, the mailing address for paper submissions, and other information, the DHS website can be found at:  
<http://www.dhs.state.pa.us/findaform/childabusehistoryclearanceforms/>

Any **employee or adult volunteer** who is subject to the background check requirements in the CPSL must notify her/his employer or administrator in writing within 72 hours after her/his arrest or conviction for a disqualifying crime or her/his notification of listing as a perpetrator of child abuse.

The administrator within a covered entity who is responsible for hiring or the approval of volunteers must demand that an employee or volunteer produce new background clearances if the administrator has a reasonable belief that the employee or volunteer has been arrested for or convicted of a crime that would require disqualification from employment involving contact with children or has been named as the subject of an indicated or founded report of child abuse. The cost of the new clearance must be borne by the program or entity.

Any **employee** of a covered entity who has current clearances may transfer to another “subsidiary or branch established and supervised by the same organization” without obtaining new clearances. That formulation differs from the analogous provision found in the School Code which avoids the issue of determining whether a separate parish within a diocese has been “established and supervised” by the diocese. The School Code provision simply allows for transfer of school employees who move to another entity “in the same ... diocese or religious judicatory.” PCC had sought the language in the School Code in order to avoid any implications that parishes were not separate legal entities from the diocese.

In contrast, **adult volunteers** may serve in a volunteer capacity in **any** program so long as their certifications remain current.

Criminal penalties are prescribed for any willful noncompliance with any of the CPSL provisions regarding background check requirements or required notifications by employees of arrests or convictions.

**BALL, MURREN & CONNELL**

*Philip J. Murren*

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