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Missouri State Auditor

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DEPARTMENTS OF
SOCIAL SERVICES,
MENTAL HEALTH,
AND HEALTH AND
SENIOR SERVICES

Protecting Clients from
Abuse



More Could Be Done to Protect Clients from Abuse

The departments of Social Services (DSS), Mental Health (DMH), and Health and Senior Services (DHSS) have responsibility to protect clients that receive department services. Because of the importance of protecting the young, elderly, and other clients, we focused review efforts on determining whether improvements are needed to (1) increase protection of clients at DSS, DMH, and DHSS; (2) improve the Family Care Safety Registry (FCSR) registration process, FCSR screenings, and the processing of good cause waivers; and (3) provide opportunities to enhance client protection.

DSS could do more to protect foster children at licensed facilities

Personnel at three of eight DSS licensed residential facilities reviewed had not always performed annual Central Registry checks as required by DSS guidance and state regulations. In addition, DSS policy and state law have not automatically precluded individuals with child abuse charges or criminal convictions from being employed at residential facilities. Instead, the decision of whether anything in a potential employee's background would prevent the individual from being employed at a facility is left to the discretion of the residential facility's executive director. Missouri is one of only a few states that does not disqualify individuals from employment at residential facilities based on criminal history. (See page 11)

Improvements needed to protect DMH clients

Four DMH state-run facilities reviewed did not perform periodic criminal history and Central Registry checks of employees because DMH did not require it. One DMH state-run facility did not conduct all screenings required by state law for new employees. In addition, persons included on DSS's Central Registry have not been disqualified from employment at DMH facilities and providers. Our review disclosed 22 individuals who abused DMH clients also had prior substantiated child abuse or neglect incidents. (See page 14)

Persons with dangerous histories permitted to work in DHSS licensed long-term care facilities

Persons with histories of child abuse or neglect; stealing, theft, and forgery convictions; or pending charges for serious crimes have been permitted to work in DHSS licensed long-term care facilities. Approximately 23 percent of all long-term care facilities have employed at least one individual with a questionable background. (See page 18)

Improvements needed in FCSR registration, screenings, law, and processing waivers

DHSS data disclosed delays in processing initial FCSR registrations. We also found employers are not always required to conduct FCSR screenings for individuals required to register. When FCSR results show problems, potential employees are allowed to request a waiver. However, we found delays in the waiver process, and periodic screenings have not been required for individuals with a waiver. (See page 20)

Opportunities exist to enhance protection for clients

Providers and facilities have not been required to conduct nationwide criminal background checks when hiring new employees. As a result, some persons with out-of-state criminal histories have worked for Missouri providers. The departments should take advantage of additional opportunities to enhance the protection of clients served by (1) requiring facilities and/or providers to conduct nationwide background checks and/or reviewing databases in other states, and (2) using employment and FCSR data to identify problem employees. (See page 24)

Supreme Court ruling prevents DSS from placing substantiated abusers on central registry until criminal charges are resolved

A ruling by the Missouri Supreme Court in March 2007 prevents DSS from placing individuals with substantiated findings of child abuse on the Central Registry if criminal charges are pending. The Supreme Court found an individual is entitled to notice and a hearing with the Child Abuse and Neglect Review Board (CANRB) before being placed on the Central Registry. However, state law does not allow a person who has criminal charges pending to request a review board hearing until after the court's final disposition or dismissal of the charges.

Changing state law to allow individuals with substantiated child abuse charges and related criminal charges to have a CANRB hearing before criminal charges are resolved would improve the effectiveness of the Central Registry. (See page 28)

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Abbreviations

CANRB	Child Abuse and Neglect Review Board
CSR	Code of State Regulations
DHSS	Department of Health and Senior Services
DMH	Department of Mental Health
DSS	Department of Social Services
EDL	Employee Disqualification List
EDR	Employee Disqualification Registry
FCSR	Family Care Safety Registry
RSMo	Missouri Revised Statutes
SAO	State Auditor's Office



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The departments of Social Services (DSS), Mental Health (DMH), and Health and Senior Services (DHSS) have responsibility to protect clients that receive department services. Because of the importance of protecting the young, elderly, and other clients, we focused review efforts on determining whether improvements are needed to (1) increase protection of clients at DSS, DMH, and DHSS; (2) improve the Family Care Safety Registry (FCSR) registration process, FCSR screenings, and the processing of good cause waivers; and (3) provide opportunities to enhance client protection.

We found improvements are needed to enhance protection of clients of the three departments. Improvements are needed at DSS facilities because not all residential facilities have performed required annual child abuse checks, and the department has not automatically disqualified employment based on certain crimes or abuse. Improvements are also needed at DMH facilities because facilities have not been required to conduct periodic background checks, and DMH has not disqualified persons included on DSS's Central Registry. Improvements are needed at DHSS because the department has not always disqualified individuals from employment based on information in the Central Registry, or forgery and stealing convictions, and the department has allowed persons charged with disqualifying crimes to work with clients.

Improvements are also needed because delays have occurred in registering individuals with the FCSR, and state law has not required employers to screen all employees required to register with the FCSR. Delays have also occurred in processing good cause waivers and DHSS has not required periodic screening of individuals with a waiver. The departments should improve current processes and take advantage of additional opportunities to enhance the protection of clients served by (1) requiring facilities and/or providers conduct nationwide background checks and/or reviewing other state data bases, and (2) using employment and FCSR data to identify problem employees.

We conducted our audit in accordance with applicable standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and included such procedures as we considered necessary in the circumstances. This report was prepared under the direction of John Blattel and key contributors to this report included Robert Spence, Anissa Falconer, Kelly Davis, Michael Reeves, Dana Wansing, and Ryan Redel.

A handwritten signature in black ink that reads "Susan Montee". The signature is written in a cursive, flowing style.

Susan Montee, CPA
State Auditor

Introduction

The elderly, children, and mentally challenged persons often do not have the capability to protect themselves from abuse and neglect. Instead, they rely on the departments of Social Services (DSS), Mental Health (DMH), and Health and Senior Services (DHSS) to provide that protection. To accomplish that objective, the departments maintain listings of individuals that have abused or neglected children, the mentally challenged, or the elderly. In addition, the Missouri State Highway Patrol (Highway Patrol) conducts criminal background checks of individuals and maintains the sexual offender registry.

Agencies Protect Clients Through Various Means

The mission¹ of DSS's Children's Division is to protect children from abuse and neglect and assure the safety, permanency, and well being of Missouri's children. Children in DSS care are placed in licensed residential care facilities that provide 24-hour care in a group setting to children that are unrelated to the person operating the facility.

DSS's Central Registry is a listing of persons who have a substantiated report of child abuse or neglect by a court after 1991, by a probable cause finding by the Children's Division after 1994, or by a preponderance of evidence finding by the Children's Division after 2004. Abuse and neglect can include incidents of physical abuse, sexual maltreatment, neglect, educational neglect, medical neglect, or emotional maltreatment. State regulations² describe which facilities must screen potential employees against the Central Registry before hiring individuals.

DMH's facilities and screening tools

DMH is comprised of three program divisions that serve approximately 150,000 Missourians annually. Those divisions include (1) Mental Retardation and Developmental Disabilities, (2) Comprehensive Psychiatric Services, and (3) Alcohol and Drug Abuse. The department provides services through state-operated facilities and contracts with private organizations and individuals. State law disqualifies persons included on DMH's employee disqualification registry (EDR), DHSS's employee disqualification list (EDL), and those who have been convicted of, or pled guilty to various crimes from working with clients receiving department services. These disqualifying crimes are listed in Appendix I.

EDR used to disqualify

DMH's EDR includes a listing of individuals the department has disqualified from working with clients receiving department services. The listing consists of individuals with substantiated abuse, neglect, or misuse of

¹ *Missouri Child Abuse and Neglect Report Calendar Year 2005*, Department of Social Services, June 2006.

² 13 CSR 40-59.

client funds. Perpetrators are added to the EDR after the appeals process has been exhausted.

DHSS's facilities and screening tools

DHSS's Division of Regulation and Licensure, Section for Long-Term Care Regulation is responsible for inspecting and issuing state licenses to approximately 1,168 long-term care facilities with more than 78,216 beds. State law requires long-term care providers to request a criminal background check and determine whether or not the individual is listed on the EDL prior to allowing the individual to have contact with clients. Long-term care providers are prohibited by state law from employing persons on the EDL or those convicted of certain crimes, listed in Appendix II.

Home and community-based services

Home and community-based services are offered to adults, 18 years and older, that are Medicaid eligible, or potentially Medicaid eligible, and in need of assistance. Home and community services include personal care, general and heavy household activities, nursing, respite, adult day health care, home delivered meals, and counseling. State law disqualifies persons who refuse to register with the Family Care Safety Registry (FCSR), or who are listed on any of the background check lists in the FCSR, from providing in-home services to clients, unless DHSS grants a good cause waiver (waiver). Providers are required to request a FCSR screening on all prospective employees, according to DHSS regulations.³ See pages 7 and 20 for discussion of FCSR.

Child care

DHSS's Division of Regulation and Licensure, Section for Child Care Regulation, is responsible for the licensing of certain family child care homes, group child care homes, and child day care centers. Services of the section include inspections to determine compliance with licensing rules and issuing licenses, receiving and investigating complaints about facilities, and receiving and investigating complaints on persons providing care for more than four unrelated children without a license. Licensed child care providers are required to conduct Central Registry and Missouri criminal history screenings when hiring new employees.

Use of EDL

DHSS maintains the EDL, which lists individuals DHSS has determined to have (1) abused or neglected a client; (2) misappropriated funds or property belonging to a client; or (3) falsified documentation verifying the delivery of services to an in-home services client.

³ 19 CSR 30-82.060 (18).

FCSR provides comprehensive resource

These acts must have occurred while the individual was employed or by reason of their employment. Individuals are given an opportunity to appeal before being placed on the EDL.

DHSS is responsible for maintaining the FCSR. State law⁴ established the FCSR to protect children, the elderly, and disabled individuals in Missouri. The law requires child care, elder care and personal care workers to register with the FCSR, and allows others to voluntarily register. Any entity requesting a FCSR background check must first ensure the applicant has completed a registry application. When a background check is requested, the FCSR database is updated. The requesting entity is notified if the individual is included on any of the following lists:

- The Highway Patrol's criminal record check system
- The DSS Central Registry
- DHSS's EDL
- DMH's EDR
- Foster parent licensure denials, revocations, and involuntary suspensions
- Child care facility license denials, revocations, and suspensions
- Residential living facility and nursing home license denials, revocations, suspensions, and probationary status
- Highway Patrol's Missouri Uniform Law Enforcement System for sexual offender registrations

State law⁵ requires DHSS to make an annual report to the speaker of the House of Representatives and president pro tem of the Senate on FCSR operations. This report is to include data on the number of requests received, barriers encountered, and recommendations for minimizing barriers or improving delivery of information.

Granting waivers

DHSS is authorized by state law⁶ to allow the waiver of hiring restrictions, except placement on the EDL, for good cause. Granting a waiver means the department has examined the applicant's prior work history and other relevant factors, and determined the individual does not present a risk to the health or safety of clients.

Highway patrol services

The Highway Patrol conducts criminal background checks of individuals through the criminal records and identification division. The resulting report

⁴ Sections 201.900 to 210.936, RSMo.

⁵ Section 210.927, RSMo.

⁶ Section 660.317.10, RSMo.

Scope and Methodology

shows whether screened individuals have a Missouri criminal record. Requestors must provide the name, date of birth, and social security number of the person to be screened to the Highway Patrol. A more comprehensive search can be completed when fingerprints are provided. There is a fee when the Highway Patrol conducts background checks. State law⁷ allows the release of the criminal record to the requestors.

The Highway Patrol also maintains the Sex Offender Registry. Individuals listed on the registry have been convicted of, found guilty of, or pled guilty to, committing or attempting to commit sexual offenses. The Highway Patrol completes this review by comparing names and social security numbers to individuals on the sex offender registry.

To accomplish review objectives, we conducted work at DHSS, DMH, and DSS. We interviewed knowledgeable officials and personnel at those agencies and reviewed program documentation and/or data needed to accomplish objectives.

To accomplish review objectives, we obtained the FCSR database, the EDL database, and the waiver database from DHSS. We obtained the EDR database, a listing of persons with substantiated abuse from July 2004 to June 2006, a listing of all providers from July 2004 to June 2007, and examples of contracts from DMH. We obtained a listing of all licensed residential care facilities as of July 2006, Central Registry data for persons with substantiated child abuse findings reported from January 2003 to October 2006, and a listing of all persons on either the EDL or EDR who were included on the Central Registry from DSS. We received a listing of persons registered with FCSR included on the Sex Offender Registry from the Highway Patrol.

To determine whether improvements are needed to enhance protection of clients served by the departments, we conducted on-site field visits at DSS, DMH, and DHSS facilities. We interviewed human resource personnel at 15 facilities to discuss background check procedures. We then haphazardly selected a sample of the lesser of 25 or 10 percent of current employee files to review background checks done prior to hiring and after employees had been hired. Also during the site visits, we reviewed employment files for selected persons because they represented a potential danger to clients. We conducted site visits in Fulton, Hannibal, Independence, Kingdom City, Rolla, St. James, Springfield, and St. Louis.

⁷ Section 43.530, RSMo.

To determine whether improvements are needed to enhance the protection of DSS clients, we reviewed the licensing files for all DSS licensed residential facilities visited. For those providers not conducting regular annual Central Registry screenings, we reviewed the most recent form showing the last date of each employee's Central Registry check. We reviewed employment data, FCSR data, Central Registry data, and criminal history information on case.net⁸ for persons working at licensed residential facilities. Also, we obtained information from 48 other states⁹ and the District of Columbia regarding their residential facility rules for hiring persons with criminal or child abuse histories.

To determine whether improvements are needed to enhance the protection of DMH clients for state-run facilities reviewed, we compared a current employee listing as of February or March 2007 against case.net, the Central Registry, FCSR data, and criminal histories shown on the Kansas Department of Corrections website¹⁰ to determine whether they had criminal or abuse histories while working in a state-run facility.

To determine whether improvements are needed to enhance the protection of DMH and DHSS long-term care clients, we compared employment data for persons with substantiated child abuse or neglect, reported from January 2003 through October 2006 to a listing of DMH providers and long-term care facilities. We also compared persons on the EDR and EDL to Central Registry data and criminal convictions shown in case.net.

To determine whether improvements are needed to enhance the FCSR registration process, we reviewed DHSS data and information gathered during site visits. To determine whether improvements are needed to enhance FCSR screenings, we reviewed state law, DHSS data, and FCSR annual reports for fiscal years 2004, 2005, and 2006.

To determine whether improvements are needed to enhance the DHSS waiver process, we reviewed and analyzed the waiver database, reviewed employment data for persons with denied or pending waivers, and reviewed

⁸ Case.net provides access to the Missouri State Courts Automated Case Management System. Only courts that have implemented the case management software as part of the Missouri Court Automation Program and only cases that have been deemed public by state law can be accessed through case.net. The web site can be viewed at <<http://www.courts.mo.gov/casenet/base/welcome.do>>.

⁹ South Carolina did not respond to our requests for information.

¹⁰ The Kansas Adult Supervised Population Electronic Repository is a database that contains information about offenders sentenced to the custody of the Kansas Department of Corrections since 1980 and those offenders under community corrections supervision on or after July 1, 2002. The web site can be viewed at <<http://www.dc.state.ks.us/kasper>>.

criminal convictions recorded in case.net and employment data for persons with an approved waiver.

To determine whether other enhancements would be useful, we reviewed information gathered during site visits to facilities, requested and obtained information from 48 other states and the District of Columbia regarding national background check policies for persons working with the elderly, and reviewed criminal history information on the Kansas Department of Corrections website for persons registered with the FCSR. We selected the Kansas website to review because of the population concentrated in the Kansas City metropolitan area. We also reviewed employment data for persons on the DHSS Section for Child Care Regulation threat list and compared persons on the EDL due to abuse at in-home providers to criminal conviction information recorded at case.net and to Central Registry data.

We performed data reliability tests on DHSS's FCSR database and found the data to be sufficiently reliable for our purposes.

We requested comments on a draft of our report from the Directors of DHSS, DMH, and DSS and have included them in this report. We conducted audit work between August 2006 and June 2007.

More Could Be Done to Protect Clients From Possible Abuse

Vulnerable persons at state facilities and licensed providers may be at risk of being abused or otherwise harmed. This situation has occurred because (1) DSS licensed residential facilities have not always performed required annual Central Registry checks, and DSS has not automatically disqualified employment based on crimes or abuse; (2) DMH facilities have not always conducted regular periodic criminal or child abuse background checks of employees and DMH has not disqualified persons on DSS's Central Registry from employment; and (3) DHSS has allowed persons included on the Central Registry, those convicted of forgery or theft, and those charged with disqualifying crimes to have contact with clients in long-term care facilities.

Vulnerable persons may also be at risk because DHSS has incurred delays in processing FCSR registrations, and state law has not required employers to use the FCSR to screen employees who are required by law to register with the FCSR. In addition, DHSS has experienced delays in processing waivers, and DHSS has not required periodic screenings for individuals with a waiver. Protection of clients could be enhanced by improving processes, and requiring nationwide background checks or developing automated reviews to look for disqualified persons working in facilities.

DSS Could Do More to Protect Foster Children at Licensed Facilities

Our review of eight DSS licensed residential facilities disclosed personnel at three facilities had not always performed annual Central Registry checks as required by DSS guidance and state regulation.¹¹ State regulation requires licensed residential facilities to submit to DSS annual results of reviews of the registry for all staff and volunteers working directly with children as part of the license renewal process.

Annual registry checks not always done at all facilities

Our review of the three facilities disclosed one facility performed bi-annual checks of the registry while two other facilities checked the registry only when hiring new employees. Personnel at one of the residential facilities told us they failed to perform Central Registry checks during a period of high staff turnover. Personnel at another facility were not aware of the requirement.

DSS officials told us problems at the three facilities most likely had not been identified by DSS because a sample of staff files randomly chosen for review had the necessary information at the time DSS staff did the site visit. Regular license renewal visits are made every two years for non-accredited¹²

¹¹ 13 CSR 40-71.020(6)(D)5.

¹² Section 210.112, RSMo, states the division shall accept as prima facie evidence of completion of the requirements for licensure if the facility is accredited by a nationally recognized organization.

facilities. Officials also told us the exact reason is difficult to pinpoint because of staff turnover at facilities.

Once we notified DSS of the problems at the three facilities, the department requested the facilities to submit corrective action plans. Each facility submitted a plan, however, one facility official stated facility personnel performed annual criminal checks, not Central Registry checks. DSS agreed to follow-up with that facility.

DSS limits its reviews of non-accredited facilities

According to DSS personnel, DSS reviews three to five personnel files when conducting licensing visits of non-accredited facilities. There are no requirements that licensing specialists review a certain percentage of personnel files based on the size of the facility.¹³ In addition, there are no requirements that licensing specialists select files of individuals employed greater than one year. If three files are selected for individuals hired within one year, an annual registry check would not be required and therefore, non-compliance would not be found by the licensing specialist.

Non-accredited facilities are required to submit forms showing the last date of each employee's registry check. A DSS official stated licensing specialists are supposed to review these forms when they are submitted. One form submitted by one of the three facilities showed 14 of 49 employees (28 percent) had been overdue for registry checks. According to DSS personnel, the department requested corrective action for this non-compliance, but it was not received.

DSS not automatically disqualifying individuals based on crimes or abuse

DSS policy and state law have not automatically precluded individuals with child abuse charges or criminal convictions from being employed at residential facilities. Instead, the decision of whether anything in a potential employee's background would prevent the individual from being employed at a facility is left to the discretion of the residential facility's executive director, according to DSS officials.

The division has the right to revoke or deny a residential facility license for facilities hiring employees that abuse children when facilities have not taken acceptable corrective action.¹⁴ However, according to a DSS official, only one facility license has been revoked since 2000 for general licensing problems not related to child abuse.

¹³ Of the 8 facilities visited, the number of employees ranged from 30 to 408.

¹⁴ In accordance with 13 CSR 40-71.030.

Residential facilities employ persons with criminal and/or abuse histories

Our review of employment data, FCSR data, and Central Registry data revealed individuals had been hired by facilities despite a history of child abuse or criminal activity. We identified 105 individuals employed at 31 residential facilities that had (1) a substantiated child abuse finding, (2) been convicted of a felony within the last 10 years, (3) committed an assault related crime, or (4) a drug conviction within the last 5 years. The abuse or crime occurred before the individual had been hired, or employment data showed employment at a facility after the event.

The following are examples of these various problem histories:

- Of the 105, 39 (37 percent) had substantiated child abuse charges. The child abuse findings included serious medical neglect, moderate and serious physical abuse, sexual maltreatment, and severe emotional maltreatment.
- 33 (31 percent) had a felony conviction within the last 10 years, including theft, burglary, robbery, and tampering.
- 24 (23 percent) had a conviction for some type of assault or endangerment crime including crimes such as felony domestic assault and endangering the welfare of a child.
- 9 (9 percent) had some sort of drug conviction within the last five years ranging from misdemeanors to felonies.

One DSS facility does disqualify

One facility reviewed created a list of disqualifying crimes as part of its employment policy. The disqualifying crimes include those which show a past history of violence or harm to children. The listing is designed to prevent individuals that could potentially harm residents from working at that facility. The facility created the policy to standardize hiring decisions when potential employee background screenings show a criminal or abusive history.

Majority of states disqualify based on criminal offenses or abuse

Missouri is one of a few states that does not disqualify individuals from employment at residential facilities on the basis of criminal history. Most states have specific crimes that, if committed, disqualify someone from working in a residential child care facility. Of the states that had licensing information online, or responded to our inquiries (48 states and the District of Columbia), 44 had regulations which disqualify persons from employment based on some criminal history. The disqualifying crimes varied among states, but most included violent crimes and crimes against children. Thirty-two of the states contacted disqualify based on a finding on

the state child abuse registry. A listing of the states reviewed is at Appendix III.

Other state agencies disqualify

DMH and DHSS have established listings of crimes or other abuse situations which preclude an individual with a history of those incidents from working at state contracted facilities.

Improvements Needed to Protect DMH Clients

Our review of DMH screening procedures disclosed (1) none of the four state-run facilities reviewed had conducted regular periodic criminal and Central Registry checks of employees, (2) one state-run facility has not conducted EDL screenings since state law established the requirement, and (3) DMH has not disqualified from employment persons included on DSS's Central Registry.

Facilities not required to conduct periodic background checks

The four DMH state-run facilities visited have not performed periodic regularly scheduled criminal history and Central Registry checks of employees. This situation occurred because DMH did not require facilities to conduct the checks. DMH's policy only requires facilities to check criminal and child abuse histories when hiring personnel.

Our review of employee records at four DMH state-run facilities showed background screenings of criminal and child abuse history had only routinely been done when hiring the employee. In reviewing criminal and abuse histories of employees of the four facilities,¹⁵ we found the following examples where employees had been convicted of child abuse, felonies, and violent crimes.

- Eleven employees at a state-run facility had been convicted of drug offenses within the last 2 years, or had been convicted after being employed by the facility. The facility's human resources director stated the facility would not hire anyone that had a drug conviction within the last 2 years. According to DMH officials, the facility hired two employees with drug offenses in the past two years because the convictions had not been included on the criminal history from the highway patrol. However, the individuals disclosed the convictions on applications. The other nine employees committed crimes after employment began. Since the facility did not conduct follow-up screenings, facility officials were not aware of the crimes committed.

¹⁵ As of February or March 2007.

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- Four other employees at state-run facilities had been convicted of, or recently charged with, drug violations in the last 5 years.
 - Five individuals had substantiated child abuse incidents, including at least one who had physically abused a child after a state-run facility hired him.¹⁶
 - Six employees had been convicted of, or recently charged with, serious violent crimes, including assault and domestic assault.
 - Six employees had been convicted of, or recently charged with, felonies in the past ten years, including theft and persistent driving while intoxicated offenses. Some of these individuals may be disqualified from employment at DMH facilities due to these convictions, according to DMH officials.

Officials willing to consider requiring periodic checks

DMH officials stated they were not averse to exploring the option of requiring periodic criminal history and child abuse screenings. However, they are not aware of a cost-effective way to accomplish the screenings for approximately 8,000 facility employees and officials believe it would take significant effort on the part of human resource personnel to conduct annual FCSR screenings. In discussing this issue, DMH officials expressed a willingness to work with other state agencies to facilitate some type of automated data sharing to complete periodic screenings.

According to a DHSS official, each DMH facility could have access to on-line screenings and there are no fees associated with FCSR screenings of registered individuals. Once an employee is registered with the FCSR, it takes about one minute to conduct an online screening, according to the official. In terms of workload for DHSS, FCSR personnel conducted 184,890 screenings in fiscal year 2006. Screening an additional 8,000 DMH facility employees each year would increase FCSR volume by 4 percent and would not be a burden to DHSS.

Although officials believe it would take significant effort to conduct FCSR screenings, we computed the average time it would take to conduct annual screenings and found the DMH state-run facility with the most employees would spend approximately 6 minutes screening 6 employees per day, to complete annual screenings. The remaining DMH facilities would spend, on

¹⁶ Data we reviewed did not show whether the other four instances of child abuse occurred before or after the facility hire date.

average, 3 or fewer minutes screening 1 to 3 employees per day, in order to complete annual screenings.¹⁷

One facility has not followed screening requirements

As of August 2003, state law¹⁸ required DMH facilities to conduct EDL and EDR screenings on new employees, and to disqualify anyone included on either list from employment. However, our review of four state-run facilities disclosed one facility did not follow the August 2003 law. Personnel did not screen new employees against the EDL, and did not screen employees against EDR until June 2006. According to DMH officials, human resources personnel at this facility seemed confused as to which listing represented the EDR and which represented the EDL, and it was unclear exactly what they had done. After we brought this issue to DMH officials' attention, they told us that as of March 2007, the facility had initiated the EDL screenings.

DMH did not implement periodic screenings against EDL and EDR until SAO recommended action

DMH had no assurance persons hired prior to August 2003 had not been included on the EDR until March 2005. This situation occurred because state law required DMH facilities to conduct EDR and EDL screenings on new employees, but the law did not require screening existing employees on a periodic basis. DMH did not initiate these screenings until after the SAO recommended conducting automated matches to accomplish the screenings.¹⁹ In March 2005, DMH established guidance requiring screening of current employees against the EDR on a periodic basis.

DMH did not conduct EDL screenings on all employees hired before August 2003 until January 2007. Therefore, DMH also did not have full assurance employees hired prior to August 2003 had not been included on the EDL until January 2007. In March 2006, DMH personnel expanded the monthly EDR reviews to include persons on the EDL. However, according to DMH personnel, they did not conduct the queries correctly, but corrected the procedure in January 2007.

DMH not monitoring state facilities

DMH personnel had not been aware of problems encountered by facilities in conducting EDR/EDL screenings until we brought it to their attention. This situation occurred because DMH had not monitored its state facilities for compliance with EDR and EDL screenings. Department personnel stated they plan to begin to monitor background screenings by facilities in 2007.

¹⁷ Computed by taking the number of employees per facility, divided by 245 work days.

¹⁸ Section 630.170, RSMo.

¹⁹ In a SAO audit report "Protecting Clients from Abuse and Neglect," September 2005, Report No. 2005-62, we recommended DMH conduct automated matches to ensure persons on the EDL and EDR are not employed by DMH facilities or providers.

DMH not automatically disqualifying persons included on DSS's Central Registry

Persons included on DSS's Central Registry have not been disqualified from employment at DMH state-run facilities and contracted providers. Our review of employment data and Central Registry data²⁰ disclosed 129 persons with substantiated child abuse working for DMH state-run facilities or contracted providers. They had not been disqualified from employment because state law and DMH regulations do not prohibit persons who have committed child abuse from working with DMH clients. Our review disclosed the following:

- The 129 persons had 153 incidents of child abuse, including 32 incidents of physical abuse, 88 of neglect, 6 of medical neglect, and 15 of sexual maltreatment.
- Ten of the 129 that worked with DMH clients had abused a child in the course of their prior employment at daycare facilities, schools, or institutions.
- Twenty-two individuals worked for DMH facilities and 107 worked for contracted providers.

Child abusers also abused DMH clients

Our comparison of persons on the EDR to Central Registry data, or FCSR data, disclosed 22 individuals who had abused DMH clients had a prior substantiated child abuse or neglect incident. For example:

- One individual had neglected her children prior to the time she fatally neglected a DMH client. The contracted provider who hired her was aware of the child abuse incident.
- One individual had fatally neglected a child prior to the time she neglected a DMH client.
- One individual had two separate instances of sexually abusing a child prior to the time he sexually abused a DMH client.

Guidance does not automatically disqualify applicants

DMH guidance requires each state facility to determine whether or not new employees are on the Central Registry. However, inclusion on the Central Registry does not automatically disqualify the applicant. The DMH guidance applies only to state-run facilities. Therefore, contracted providers are not required to conduct child abuse screenings for new employees.

²⁰ Based on review of DSS's Central Registry of abuse reported for January 2003 through October 2006.

DMH officials told us state law does not prohibit persons on the Central Registry from working with DMH clients. In addition, they believe some findings, such as educational neglect, do not pose harm to DMH clients.

Persons With Dangerous Histories Permitted to Work in Long-Term Care

Persons with histories of child abuse or neglect; stealing, theft, and forgery convictions; or pending charges for serious crimes are permitted to work in DHSS licensed long-term care facilities. Approximately 23 percent of all long-term care facilities have employed at least one individual with a questionable background. For example, state law has not disqualified individuals included on the Central Registry from working with long-term care clients. During our review of employment data, we found 447 persons on the Central Registry working in 272²¹ long-term care facilities in 2005 or 2006. These 447 persons had a total of 602 incidents of child abuse or neglect, some of these incidents included:

- 125 counts of physical abuse,
- 367 counts of neglect,
- 29 counts of medical neglect, and
- 27 counts of sexual maltreatment.

Five of these 447 persons abused a child during prior employment at daycare facilities, schools, or institutions.

We also found some persons included on the Central Registry who abused elderly clients while working in a long-term care facility. Our comparison of the EDL to substantiated cases of child abuse reported January 2003 to October 2006, disclosed 15 persons had committed child abuse or neglect prior to abusing long-term care clients. Of these 15 individuals, 3 had committed severe sexual maltreatment and 6 had committed severe neglect of a child.

DHSS officials stated they could not disqualify based on inclusion on the Central Registry because state law does not allow this. Historically, they felt that populations working in long-term care have been seen as distinct from the population working in child care, with the belief that the populations do not overlap much.

²¹ The 272 providers represented 23 percent of the 1,169 long-term care providers, as of August 2006.

Persons with theft and
forgery convictions
harmed clients

State law disqualifies persons with certain criminal histories from working in long-term care facilities, as shown at Appendix II. However, persons with stealing, theft, and forgery convictions are allowed to work in long-term care. For example, our comparison of persons included on the EDL²² to criminal histories shown on case.net disclosed six persons with prior theft or forgery convictions who subsequently committed misappropriation of client funds and/or property in a long-term care setting. One of the six persons had two felony forgery convictions, one felony theft conviction, and two misdemeanor theft convictions. A second individual had been convicted of six counts of felony theft prior to committing misappropriation in a long-term care facility.

DHSS officials open to expanding
listing of disqualified crimes

DHSS officials stated that they are open to expanding the listing of disqualified crimes. According to the officials, a bill considered during the 2007 legislative session would have disqualified individuals with an A or B felony forgery conviction, and individuals with a felony or three or more misdemeanor convictions of theft from working with DHSS and DMH clients. However, the General Assembly did not pass the bill.

Persons with pending
charges worked with clients

DHSS allows persons charged with, but not yet convicted of, a disqualifying crime to work with long-term care clients. Our reviews of the FCSR database, employment data, and criminal histories shown in case.net disclosed the following:

- One individual charged with second degree murder and armed criminal action in September 2005 worked in long-term care facilities from that time until the first part of 2007. As of June 30, 2007, the criminal case was still pending.
- Another individual charged with statutory rape in September 2005 worked in long-term care facilities until convicted in July 2006.

State law disqualifies only
those convicted of crimes

DHSS officials told us that until convictions occurred, nothing could be done on these cases. State law disqualifies only those convicted of crimes, meaning DHSS cannot disqualify someone not yet convicted, according to officials. They also believe forcing a facility to prohibit client contact in this type of situation might infringe upon due process rights, and might lead to false charges made by disgruntled employees.

Clients served by DHSS in-home care or by DMH state-run facilities and contracted providers may have protection from persons charged with dangerous crimes. For example, a person charged with a crime is

²² Persons added to the EDL between July 2003 and August 2006.

disqualified from working for a DHSS in-home provider if the charge appeared on the criminal background check from the highway patrol. Also, DMH officials told us state law would allow a state-run facility to suspend the employee without pay, pending trial. If a DMH contracted provider did not take action against an employee charged with a serious crime, DMH officials would look into the situation, and could request that the provider ensure the employee did not have contact with clients.

Improvements Needed in FCSR Registration, Screenings, Law, and Processing Waivers

Our review of DHSS data disclosed delays in processing initial FCSR registrations. We also found employers are not required to conduct FCSR screenings for individuals required to register. When FCSR results show problems, potential employees are allowed to request a waiver. However, we found delays in the waiver process, and periodic screenings have not been required for individuals with a waiver.

Delays in FCSR registration and screening place clients at increased risk

Data provided by DHSS personnel showed the average number of days to process FCSR registration requests²³ increased from 7 days in fiscal year 2002 to 70 days in fiscal year 2006. State law requires individuals to register with the FCSR when employed as a child care, elder care, or personal care worker.²⁴ State law does not require employers to have the results of the screenings prior to individuals having contact with clients. Therefore, during the registration process employers may allow employees to work with vulnerable clients, even though they do not have the screening results.

Our review of 11 providers disclosed 10 providers employed individuals, pending the outcome of FCSR registration. Our review of those providers disclosed one instance, at a DMH provider, where an individual with a disqualifying crime had been allowed to have contact with clients for approximately 2 months because it took FCSR personnel more than 3 months to register the individual. The employee had been convicted twice of robbery.

Our review of the 11 providers also disclosed some providers had experienced significant delays in obtaining results on FCSR screenings. For example, we found seven instances where the FCSR registration took from 3 to more than 5 months.

²³ Delays occur for initial registration requests. Subsequent screenings on an individual already registered are generally completed in one day.

²⁴ Section 210.906, RSMo.

Increase in FCSR registration, screening requests, and lack of staff caused delays

Delays in registrations have occurred because the volume of FCSR registrations and screenings has increased without a corresponding increase in staff. For example, during fiscal year 2001, DHSS received 25,066 registrations and 6,417 screenings. By fiscal year 2006, the volume had increased to 116,138 registrations and 184,890 screenings.

A DHSS official told us the department has requested additional staffing, but has only received four new full-time employees—all in 2004. Another DHSS official stated that the FCSR process has no revenue stream or dedicated appropriations. The \$5 fee²⁵ that is submitted with each registration is remitted to the Highway Patrol's Criminal Record System Fund.

DHSS plans to reduce delays

According to DHSS personnel, they recently implemented a new web-based system to help reduce the registration backlog. In July 2007, they initiated a web-based site for individuals to register and pay fees with credit cards. After discussing FCSR problems found during our review with DHSS officials, they hired temporary workers to work nights and weekends to reduce the FCSR backlog. As of June 2007, the delay in processing new registrations had been reduced to 11 days. DHSS officials told us they were hopeful the new on-line processes would help keep the registration delay minimal.

Registered employees not always required by law to be checked

Child care, elder care, and personal care workers are required by law²⁶ to register with FCSR. However, state law has not required child care or long-term care facilities to conduct FCSR screenings of employees. DHSS regulations²⁷ do require in-home care providers who contract with the department to use the FCSR to screen employees.

Although in-home care providers contracting with DHSS are the only employers required to conduct FCSR screenings, many providers are doing so voluntarily. For example, the FCSR Annual Report for fiscal year 2006 showed 39 percent of all screenings requested that year had been for child care providers.²⁸

²⁵ As of August 28, 2007, this fee increased to \$9.

²⁶ Section 210.906, RSMo.

²⁷ 19 CSR 30-82.060 (18).

²⁸ Statistics maintained by DHSS do not differentiate between screenings completed for in-home providers and those completed for long-term care providers, so we could not report the percentage of fiscal year 2006 screenings related to long-term care.

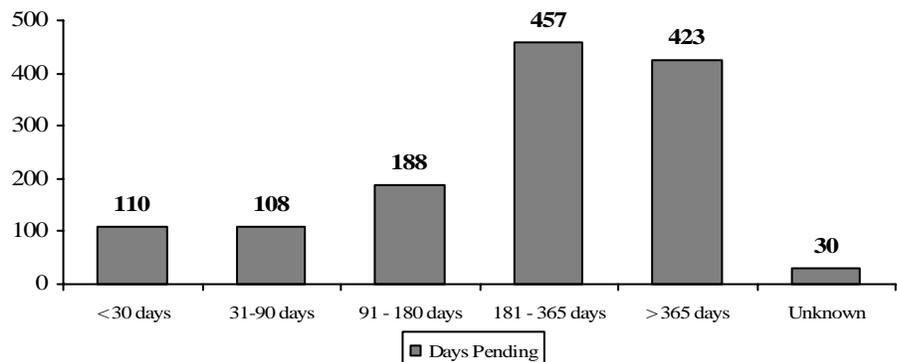
DHSS has not monitored whether elder care workers in long-term care facilities have registered with FCSR, because there has been no requirement for the facilities to conduct FCSR screenings, according to DHSS personnel.

DHSS commented in its FCSR annual report that it is difficult to communicate to the individual caregivers the responsibility to register without the assistance of the employer. In its 2004, 2005, and 2006 annual reports, DHSS requested the General Assembly require facilities licensed by a state agency to become responsible for registration of their employees, and that state licensure agencies monitor compliance as part of licensure activities. However, the General Assembly did not take action on DHSS's request.

Delays in processing waivers

DHSS has not always processed waivers in a timely fashion, and many have taken more than a year to be processed. The department had 1,316 waiver requests pending, as of March 1, 2007. Figure 2.1 depicts the time these waivers had been pending at DHSS.

Figure 2.1: Time Delays for Waivers



Source: SAO analysis of DHSS waiver database.

As shown above, 35 percent (457) of the waivers had been pending from 181 to 365 days and 32 percent (423) had been pending over 365 days.

Persons disqualified from employment with DHSS providers may apply for a waiver in accordance with department guidance. In most circumstances, the facility may allow the individual to work while DHSS is processing the waiver. Only those individuals convicted of a disqualifying crime cannot work during the waiver application process. Department guidance has not addressed the timeliness of processing waivers and, as of June 2007, personnel had not established goals for processing waivers.

Persons awaiting waiver results can place clients at increased risk

Our review of waiver data disclosed individuals with substantiated abuse histories or convicted of serious crimes had been working with clients while waiting on waiver requests that DHSS eventually denied. For example:

- One individual convicted of misdemeanor assault on a law enforcement officer in 2001 and added to the DMH EDR in 2003 for abuse or neglect of a DMH client, worked with a DHSS in-home care client for 9 months in 2005 until DHSS denied the waiver. This individual was able to work while the waiver was pending because she had not committed any disqualifying crimes.
- A second individual, convicted of felony second degree burglary, felony stealing, felony second degree assault, and felony armed criminal action, worked with a DHSS in-home care client for 9 months while DHSS processed his waiver, which was ultimately denied. This individual was able to work while the waiver was pending because none of these convictions are disqualifying crimes.

Requests for waivers have increased

Delays have occurred, in part, because the number of waiver requests has increased dramatically. For example, waiver requests increased from 14 in fiscal year 2001 to 1,580 in fiscal year 2006.²⁹ In addition, waiver applications are often incomplete when received by DHSS, and delays occur while waiting for missing information. Finally, prior to June 2007, no dedicated staff existed to process waiver requests. Each waiver is unique so processing them can be very time intensive, according to DHSS officials.

After discussing delays in processing waivers with DHSS officials, DHSS hired two employees dedicated to working on waivers. Officials told us they are hopeful this step will allow waivers to be processed more quickly.

Lack of periodic screenings may increase client risk

Our review of 849 individuals with a waiver working for in-home providers at some point between January 2005 and March 2007, disclosed 28 individuals with subsequent abuse or criminal histories since DHSS granted their waiver. For example, we found individuals convicted of burglary, robbery, stealing, assault, identity theft, and passing bad checks after having received a waiver. We also found persons had been added to the Central Registry or the EDR after personnel had approved their waiver.

According to a DHSS official, the department has not periodically screened applicants approved for a waiver, and an employee may never be re-

²⁹ From March 30, 1999 through March 1, 2007, DHSS received 4,225 waiver applications.

screened if the employee stays with the same employer. However, employers can request additional screenings if they choose to do so.

After discussing this issue with department officials, in July 2007 officials began conducting periodic screenings of individuals with a waiver. They plan to review each individual during the anniversary of the month the waiver was approved.

Opportunities Exist to Enhance Protection for Clients

We found some facilities conduct screenings that have not been required in order to provide additional protection for clients. We also found opportunities for one or more of the departments to take advantage of screening procedures used by other departments. For example, we found (1) some facilities conducted nationwide and/or other state background checks without being required to do so, and (2) employment data has been used to identify problem employees, but not for child care providers.

Providers have not been required to conduct nationwide or other state background checks

Our review of policies and procedures for DSS, DMH, and DHSS disclosed facilities have not been required to perform national criminal background checks or checks of states that border Missouri. State law³⁰ has not required nationwide criminal history checks for employees of DMH contracted providers, DHSS licensed long-term care facilities and contracted in-home care providers, unless the prospective employee has not lived in Missouri for the past 5 years and only then if state funding is available for that purpose. The law states providers are only responsible for \$5 of the cost of the nationwide check. State funding for nationwide criminal history checks is subject to appropriation by the General Assembly. However, according to DMH and DHSS officials, funds have not been provided. Therefore, nationwide criminal history checks have been limited.

Some facilities and over half of other states perform checks

While facilities are not required to check other states for criminal backgrounds, we found 9 of 15 facilities reviewed performed checks of at least the state bordering the area where the facility is located. For example, two facilities in St. Louis check Illinois criminal records. Other facilities checked states where an applicant has lived. One facility incurred the expense of having a private company conduct name searches of all other state criminal databases and sex offender registries. All four DMH state-run facilities reviewed have been conducting nationwide criminal record screenings using fingerprints.

We also found 27 of 48 states (55 percent), and the District of Columbia, responding to our request for information, require a national criminal history

³⁰ Section 660.317, RSMo.

DSS would like to implement the check

check be performed on individuals who provide care to the elderly. At least eight of these states required the facility to pay the costs of the background checks.

DSS personnel told us they would like to implement fingerprint background check requirements, however, they will need to consider the fiscal impact on facilities before implementation. As of October 2007, the cost for a combined Missouri and nationwide criminal background screening will be \$39.25.

The FCSR annual reports to the legislature for fiscal years 2004, 2005, and 2006 include a recommendation to integrate reporting of national criminal history information through the FCSR. However, the General Assembly did not implement this recommendation.

Reviewing other state data reveals problems

Reviewing information available from other states can reveal problems. For example, we found the following when we compared persons registered with FCSR to the Kansas Department of Corrections website:³¹

- At least 279 persons registered with FCSR had criminal convictions in Kansas.
- At least 100 persons with Kansas convictions worked for a provider at some point from January 2005 through September 2006. Ninety-one providers had employed the 100 persons.
- At least 16 persons had Kansas convictions for violent or disqualifying crimes.
- 30 persons with Kansas convictions were employed in the DHSS in-home services program, which requires a waiver for any criminal history. Only four of these persons applied for a waiver and none disclosed a Kansas criminal history.

The following are examples of crimes committed in Kansas.

- One individual had a 1995 aggravated robbery conviction. He worked in one nursing home for all of 2005 and the first half of 2006. He then worked at another nursing home in the third quarter

³¹ Not all persons included on this website are currently in prison. This website contains information on persons currently incarcerated, those under post-incarceration supervision, those discharged from a sentence, and those under community correction supervision.

of 2006. DHSS officials researched this case and determined that the crime is equivalent to a Missouri disqualifying crime.

- Another individual had a 2004 attempted aggravated robbery conviction. She was employed by a DMH/in-home provider for two quarters in late 2005 and early 2006, and two different nursing homes for one quarter in 2005. First or second degree robbery is a DMH and a long term care disqualifier. Any conviction is an in-home care services disqualifier, unless a waiver is obtained. This person has not applied for a waiver.
- A third individual had a 1982 class B felony, aggravated robbery conviction. A DMH provider employed him for 2 quarters during 2005. While working at this provider, he neglected a client and was subsequently placed on the EDR. First or second degree robbery is a DMH disqualifier.

Officials not always aware of other resources

DMH and DHSS officials stated they had not been aware of the Kansas Department of Corrections website prior to the time we brought it to their attention. They were interested in investigating it further, and notifying providers of its existence.

Employment and FCSR data useful in identifying problems

Persons considered threats provided child care, and disqualified persons provided in-home services without DHSS's knowledge. For example, our comparison of DHSS Section for Child Care Regulation data to employment data revealed eight persons determined by DHSS to present a threat to children³² working in eight different daycares. For example:

- Five of these individuals had been included in the Central Registry due to abuse or neglect of a child, including one person with two counts of severe physical abuse.
- Two of the eight individuals had criminal histories, including one person with a felony conviction of distributing a controlled substance near a school.

DMH and DHSS have used employment data to help ensure disqualified persons are not working with DMH, long-term care, or in-home clients,

³² DHSS Section for Child Care Regulation personnel review all FCSR screenings with negative information requested by licensed child care providers. Section personnel then determine whether or not the individual presents a threat to the health, safety, or welfare of children in the facility. Persons determined to be a threat are not to be on the facility's premises.

according to DMH and DHSS officials. In addition, our reviews did not identify any persons on the EDR or EDL working with DMH clients, or any persons on the EDL working with long-term or in-home clients.

In discussing ways to enhance screenings, DHSS officials told us they would like to create a match to compare employment data to the list of persons determined to be threats to children in child care.

Requiring FCSR personnel to notify in-home personnel of findings on in-home screenings would be useful

DHSS disqualifies anyone with an FCSR finding from working for an in-home care provider, unless the individual obtains a waiver. However, DHSS has not required FCSR personnel to notify the department's in-home care personnel of any FCSR screening findings found by in-home providers. Therefore, in-home care personnel have not had the capability to follow-up with in-home providers to ensure disqualified individuals are not employed.

Our comparison of individuals on the EDL to case.net and Central Registry information disclosed some individuals with criminal or substantiated child abuse histories abused clients while working for in-home providers. For example:

- We found 11 persons included on the Central Registry who were allowed to work with, and subsequently abused, in-home clients. Three of these persons had physically abused a child before committing abuse of an in-home care client. Another of these individuals had severely neglected and sexually maltreated a child before abusing an in-home care client.
- We also found two individuals that should have been disqualified because of criminal history. However, the providers allowed them to work with, and subsequently harm, in-home clients. One of these individuals had five felony and one misdemeanor convictions for stealing prior to misappropriating an in-home care client's funds or property.

Increasing oversight could help identify disqualified individuals

Disqualified persons have been allowed to work with provider in-home clients in part, because DHSS limits the number of provider on-site visits. The visits are not conducted on a regular basis, and problem providers are visited more often than those providers with few problems, according to DHSS officials. As of June 30, 2007, DHSS had not developed any data reviews to identify persons on the Central Registry or with criminal backgrounds working for in-home care providers.

DHSS officials told us that a review similar to that done for child care regulation officials may not be feasible for in-home providers because of

time constraints and a lack of consistent provider numbers in the FCSR database. However, DHSS child care regulation officials have arranged to be notified by FCSR staff when a child care provider screens an individual with an FCSR hit.

Supreme Court Ruling Prevents DSS from Placing Substantiated Abusers on Central Registry Until Criminal Charges Are Resolved

A ruling by the Missouri Supreme Court in March 2007³³ required changes in DSS procedures that prevent DSS from placing individuals with substantiated findings of child abuse on the Central Registry if they have criminal charges pending. The Supreme Court found an individual is entitled to notice and a hearing with the Child Abuse and Neglect Review Board (CANRB) before being placed on the Central Registry. DSS changed its procedures to comply with this ruling. However, current state law³⁴ does not allow a person who has criminal charges pending to request a CANRB hearing until after the court's final disposition or dismissal of the charges. According to a DSS official, this limitation prevents individuals with a substantiated child abuse finding from being included on the Central Registry until the potentially long process of a criminal court case is concluded. DSS officials stated this could allow some of the most potentially harmful individuals from being on the registry for years while criminal cases are pending.

In discussing this issue with DSS officials, they stated they believe state law should be amended to allow the agency to proceed with CANRB hearings before the final disposition of the court case. This change would allow the agency to place individuals on the central registry after their CANRB hearing while criminal charges are pending.

Conclusions

DSS licensed residential facilities have not always performed annual child abuse checks as required by DSS. As a result, children at these facilities may be at an increased risk of abuse. Taking action to ensure facilities are aware of this requirement and follow-up to ensure checks are completed by applicable facilities would reduce risk to children. Also, by establishing requirements for licensing specialists to review an increased percentage of personnel files in its reviews of DSS facilities and ensuring file reviews include employees who have worked for at least a year, DSS would increase the likelihood that it would find registry check non-compliance. In addition, DSS policy and state law have not automatically precluded individuals with substantiated child abuse charges or criminal convictions from being employed at residential facilities. Instead facility administrators are allowed

³³ *Mildred Jamison, et al., v. State of Missouri, Department of Social Services, Division of Family Services*. Slip opinion issued March 13, 2007.

³⁴ Section 210.152.3, RSMo.

to make these decisions. Developing policy and procedures and working with the General Assembly to develop law that disqualifies persons from employment that have serious criminal and child abuse histories would also enhance protection of department clients.

DMH has not required state facilities to perform periodic criminal and child abuse background checks on current employees. Requiring state facilities to perform periodic employee background checks would enhance the welfare of DMH clients. Additionally, working with other state agencies to develop an automated method for completing periodic background checks would ensure staff resources were used effectively. Ensuring all state facilities follow state law and conduct EDR and EDL screenings to assure potentially abusive or dangerous new employees do not have access to clients would also improve the welfare of clients. In addition, DMH has not automatically disqualified persons on DSS's Central Registry. Working with the General Assembly to establish state law, and establishing department guidance that disqualifies persons included on DSS's Central Registry would enhance protection of DMH clients.

DHSS has not disqualified persons on DSS's Central Registry from employment in long-term care facilities and a significant number of facility employees have been included on that registry. Working with the General Assembly to establish state law, and establishing department guidance that disqualifies persons included on that registry would enhance protection of long-term care clients. Expanding the list of disqualified crimes for such things as theft and forgery convictions would also enhance protection for long-term care clients. In addition, working with the General Assembly to establish state law to prohibit persons with pending criminal charges from working with long-term care clients would also enhance protection for those clients.

The combination of the continued need for FCSR registrations, screening checks, and the lack of additional DHSS staff have caused significant delays in processing FCSR requests. However, the backlog has been reduced somewhat through the use of temporary workers, and the new on-line system implemented in July 2007 should help further reduce the backlog. If this initiative is successfully implemented, it should help reduce delays in processing FCSR requests. DHSS should monitor the status of this initiative to ensure successful implementation.

Although child care and elder care workers are required by law to register with FCSR, state law has not required child or long-term elder care facilities to screen employees. Working with the General Assembly to enact

legislation to require facilities to request these screenings, and establishing policies and procedures requiring the screenings, would reduce client risks.

DHSS has not always processed good cause waivers in a timely fashion, nor have they established goals for the timely processing of waivers. Although the department has taken some action to decrease delays with the hiring of two staff, by assessing why delays are occurring and initiating action to further reduce delays to an acceptable level, DHSS could reduce the time a potentially disqualified employee could work with clients while their waiver is processed. DHSS also has not required periodic screening for employees with a waiver. Establishing guidance that requires DHSS personnel to conduct periodic screenings for individuals awarded a waiver would reduce the risk that employees could have committed offenses that could go undetected.

Sound business practices dictate that DSS, DMH, and DHSS take advantage of all reasonable means to enhance the protection of clients served. By requiring facilities and/or providers to conduct nationwide background checks, informing facilities of resources available from other states such as the Kansas Department of Corrections website, and using employment and FCSR data to identify problem employees, the departments could further enhance the protection of clients. Additionally, the departments should review the employment status of individuals identified in audit work as having questionable backgrounds, and take necessary action to protect clients.

A recent Missouri Supreme Court ruling has made the Central Registry less effective by preventing DSS from including individuals who have substantiated child abuse charges and related criminal charges to be included on the registry until the related criminal charges are resolved and a CANRB hearing is held. Changing state law to allow individuals with substantiated child abuse charges and related criminal charges to have a CANRB hearing before criminal charges are resolved would improve the effectiveness of the Central Registry.

Recommendations

We recommend the Director of the Department of Social Services:

- 2.1 Ensure required residential facilities are aware annual child abuse checks are to be conducted on applicable employees and follow-up to ensure checks are completed.
- 2.2 Develop procedures that require licensing specialists review representative samples of personnel files including files of employees who have been employed for greater than one year.

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- 2.3 Develop policies and procedures, and work with the General Assembly to develop law, that disqualify persons from employment that have serious child abuse and/or criminal histories.
 - 2.4 Work with the General Assembly to change current laws to allow individuals with substantiated child abuse charges to have a CANRB hearing before the court has dismissed or reached a final disposition on related criminal charges.

We recommend the Director of the Department of Mental Health:

- 2.5 Require state facilities perform periodic criminal and abuse background checks in order to determine whether employees have committed a crime or child abuse while employed at covered facilities.
- 2.6 Work with other state agencies to determine the feasibility of developing automated methods for completing periodic criminal and abuse background checks.
- 2.7 Ensure state facilities conduct EDR and EDL screenings at employee hiring, in accordance with state law, to ensure potentially abusive or dangerous individuals are not allowed to work in the facilities unchecked.
- 2.8 Work with the General Assembly to disqualify persons included on DSS's Central Registry to enhance the protection of DMH clients.

We recommend the Director of the Department of Health and Senior Services:

- 2.9 Develop policies and procedures, and work with the General Assembly to develop law, to disqualify persons included on DSS's Central Registry and those convicted of forgery or theft offenses.
- 2.10 Develop policies and procedures, and work with the General Assembly to develop law, to ensure persons charged with disqualifying crimes, but not yet convicted, are not allowed to have contact with clients.
- 2.11 Monitor the status of initiatives to reduce delays associated with FCSR registrations and screenings to ensure successful implementation.
- 2.12 Develop policies and procedures, and work with the General Assembly to develop law that requires child and elder care facilities conduct FCSR screenings.

2.13 Establish goals for the timely processing of waivers, determine why good cause waiver delays are occurring and continue actions to reduce delays to an acceptable level.

2.14 Develop guidance that requires department personnel conduct periodic screenings on individuals awarded a waiver.

We recommend the Directors of the Departments of Social Services, Mental Health, and Health and Senior Services:

2.15 Use employment data and/or the FCSR to identify employees with questionable backgrounds and require applicable facilities and/or providers to conduct nationwide criminal background checks.

2.16 Inform facilities and/or providers of resources available in other states, such as the Kansas Department of Corrections website.

2.17 Review the employment status of individuals which audit test work identified as having questionable backgrounds and take necessary actions to protect clients.

We recommend the General Assembly establish state law that:

2.18 Disqualifies persons on DSS's Central Registry from employment at DMH facilities and providers.

2.19 Disqualifies persons on DSS's Central Registry, and those convicted of forgery or theft offenses from employment at DHSS licensed long-term care facilities.

2.20 Ensures persons charged with, but not yet convicted of, disqualifying crimes are not allowed to have contact with clients.

2.21 Requires child and elder care facilities request FCSR screenings.

2.22 Requires a nationwide criminal history check for all persons seeking employment at licensed residential facilities, DMH contracted providers, long-term care providers, and in-home care providers. In addition, clarify existing state law to allow providers to seek reimbursement from applicants.

2.23 Ensures individuals with substantiated child abuse charges have a CANRB hearing before the court has dismissed or reached a final disposition on related criminal charges.

Agency Comments

Department of Social Services comments

- 2.1 *We agree with this recommendation. Children's Division (CD) Licensing Consultants shall reinforce with licensed residential child care agencies, the requirement to conduct annual child abuse/neglect checks through the Central Registry. The Children's Division will improve monitoring of compliance by establishing statistically valid sampling techniques including expanded sample sizes. Results will be documented and corrective action shall be requested as necessary.*
- 2.2 *We agree with this recommendation. Consistent with 2.1, the Children's Division will improve monitoring of compliance by establishing statistically valid sampling techniques including expanded sample sizes. Results will be documented and corrective action shall be requested as necessary.*
- 2.3 *We agree in part with this recommendation. Current regulations require residential care facilities to perform annual Central Registry checks for child abuse and neglect. The department is considering broadening the scope beyond child abuse and neglect through the Family Care Safety Registry (FCSR). We agree that anyone with a serious child abuse/neglect history should not work directly with children. However, the department believes that automatic disqualification for employment through these registries may not be appropriate. Any decision of employment will always take into account the affect on children; still, mitigating circumstances should be considered. For example, someone who committed educational neglect may be an acceptable choice for a groundskeeper or maintenance person.*
- 2.4 *We agree with this recommendation. The department has put forth a legislative proposal to be considered by the General Assembly to address this issue during the 2008 legislative session.*
- 2.15 *We agree in part with this recommendation. As stated in 2.3, the department is considering the best approach to using the Family Care Safety Registry (FCSR), which includes criminal background checks. Requiring criminal background checks, including fingerprinting through the Missouri Highway Patrol or the Federal Bureau of Investigation, will pose a significant financial impact on providers. While there is no cost to the provider for using the FCSR, fingerprinting can cost up to \$40 each. An unfunded requirement such as this will require the Children's Division to consult with*

representatives from the residential care facilities, as required by RSMo 210.506.

- 2.16 We agree with this recommendation. CD Licensing Consultants will request licensed residential child care agencies to conduct out-of-state child abuse/neglect and criminal background checks on a case by case basis. For example, residential care facilities should conduct checks in other states before hiring staff who have recently moved from that state. Licensing consultants shall also request licensed residential child care agencies to conduct such screenings in states that border where an operating site is located, for example, Kansas for agencies in Kansas City, and Illinois for agencies in St. Louis.*
- 2.17 We agree with this recommendation. The Children's Division has sent letters to the respective CEOs of the identified licensed residential child care agencies about the employees in question. The Children's Division is requesting documentation about the current employment status and what steps have or will be taken to protect the youth in their agencies.*

Department of Mental Health comments

- 2.5 We agree only in part. DMH has explored conducting annual screenings utilizing the existing process. To enter each of the 8000 plus DMH employees on an annual basis would require significant staff resources plus the expense of FCSR fees for employees not already enrolled in the registry. DMH recommends use of automated processes to conduct periodic screenings for a large number of employees. DMH will continue to explore options that will provide an electronic and cost-effective tool for periodic automated screenings of DMH staff to determine additional relevant events since hire.*
- 2.6 We agree. DMH is interested in working collaboratively with other state agencies to study the potential development for a cost-effective method of automating the process of periodically conducting criminal and abuse background checks.*
- 2.7 We agree. DMH will ensure state facilities are conducting EDR and EDL screenings at the time of hire, in accordance with state law.*
- 2.8 We agree in part and understand the rationale behind the recommendation. DMH currently reviews the DSS's Central Registry as part of the screening process to assist in evaluating applicant fitness and will continue to use CAN findings on an incident-specific*

basis for hiring decisions. In cases where the finding has relevance to a person's job responsibilities and ability to protect the safety of DMH clients, the candidate would not be hired. As an example, a candidate for a position in a children's treatment hospital or treatment facility with a finding of child abuse within the last year would not be hired. However, in a case where a job applicant for a groundskeeper position had been found to have committed educational neglect, the finding would not necessarily be disqualifying. DMH believes continued discretion in use of CAN findings is warranted and current practice utilizes the Central Registry to protect DMH clients.

2.15 We agree in part. 1) DMH facilities do use a nationwide screening by using the fingerprint-based FBI screening. To require nationwide criminal background checks for all provider employees would be cost prohibitive to providers who have not received additional funding for this purpose. Current statute specifies that this requirement be contingent on appropriations. (2) Facilities and providers can currently initiate an additional background screen on individual employees if there is reason to believe events have taken place outside of Missouri that might affect employability. If a cost effective method of automating the process of periodically conducting criminal and abuse background checks is developed, it would be more feasible to accomplish this on a statewide basis for both department and provider employees.

2.16 We partially agree. DMH will consider making providers in communities which border other states aware of resources in those states which will help them assess criminal activity beyond the state of Missouri. Community providers will rely on their legal and human resources expertise for their practices and must examine the value-added benefit of screenings beyond statutory requirements.

2.17 We agree. DMH has reviewed these individuals and taken action as necessary.

Department of Health and Senior Services comments

2.9 During the past two legislative sessions, DHSS recommended statutory changes to the disqualifying offenses. The proposed changes would have broadened the scope of crimes that disqualified persons from working in long-term care facilities. Specifically, the recommendations would have expanded the list of disqualifying crimes by adding Class A and B felony drug violations, forgery, felony violation of stealing, three or more misdemeanor violations of stealing, and financial

exploitation of an elderly or disabled person. The recommendations also would have prohibited employment of a registered sex offender.

While the rationale behind the audit recommendation to disqualify individuals who have been added to the DSS Central Registry is understandable, the department has concerns because the DSS Central Registry contains the names of individuals placed on the registry for a broad range of incidents, such as educational neglect because an individual's child did not attend school. Generally speaking, the department recommends that an incident-specific approach be used to determine disqualifications.

2.10 Criminal charges are simply accusations that must be proven by the charging authority (i.e., local prosecutors). The accused is presumed innocent until proven guilty. In employment situations, it is inappropriate to base hiring decisions on mere accusations (i.e., criminal charges). Nonetheless, because of the potential danger to DHSS clients, it is reasonable to restrict direct contact and access to DHSS clients while the issues surrounding the criminal charges are resolved. It is possible to develop regulations that require a current or potential employee with pending disqualifying criminal charges from direct contact with clients. However, in practical terms, it will disqualify a significant number of these individuals from employment because providers employ few positions that do not involve contact with clients. For example, in the Consumer Directed Services program, individuals are employed to provide services directly for the consumer and contact cannot be avoided. Therefore, de facto, the accused would be denied employment in the Consumer Directed Services program. As a result, any policies, procedures, regulations or laws must be thoroughly evaluated to ensure the proper balance between protection of vulnerable persons and a current/potential employee's rights. DHSS will consult with counsel to determine any legal barriers to the development of such regulations.

2.11 In progress - The Family Care Safety Registry (FCSR) has implemented two information technology projects to expedite the processing of information and minimize the need for additional staff. The FCSR will closely monitor the use of these systems to determine whether the department's goals are being met.

2.12 DHSS is not opposed to requiring that all background checks be conducted through the FCSR, but doing so would require a statutory change since current law does not specify the avenue to conduct the check, but rather simply that the check must be performed against the

Missouri State Highway Patrol database. DHSS would support any legislative efforts to make such statutory changes.

2.13 DHSS concurs with the recommendation. The department has established a goal to complete the review of Good Cause Waiver applications within 90 days. Two staff were hired to manage the waiver process, and the department will monitor progress to determine if additional changes are needed to meet this goal.

2.14 Implemented - In June 2007, DHSS implemented a procedure to review the background screening annually of all individuals who were awarded a Good Cause Waiver to determine whether any such individual has committed a subsequent offense.

2.15 DHSS will consider the feasibility of this recommendation to use employment data and the FCSR to identify employees with questionable backgrounds. DHSS will have discussions with the Department of Labor and Industrial Relations, and will look at how the EDL matches with employment data to see if this system can be replicated with other programs. DHSS will explore how the FCSR can be used to assist with this identification.

Nationwide criminal history screening cannot occur unless additional funds are appropriated by the legislature. Section 660.317.4, RSMo, explicitly states "State funding and the obligation of a provider to obtain a nationwide criminal background check shall be subject to the availability of appropriations." To date, the legislature has not appropriated funds for this purpose. DHSS would support a proposal to appropriate funds for this purpose.

2.16 DHSS concurs with the recommendation. The information will be made available through department publications, provider training sessions, and the Internet.

2.17 DHSS has reviewed those individuals identified by audit test work. The Section for Long-Term Care Regulation reports that one individual convicted with a disqualifying crime has not been employed in long-term care since February 2007. If the individual should apply for employment, past convictions will result in a disqualification. The other individual's case has not been disposed, so the Section for Long-Term Care Regulation will continue to monitor employment activity for that individual.

The Section for Child Care Regulation reviewed the audit test work and took disciplinary action against licensees who violated rules.

The Division of Senior and Disability Services is reviewing the test data provided and will take appropriate action as allowed by statute and/or regulation.

DMH Disqualifying Crimes

Certain crimes disqualify an individual from employment in positions requiring client contact at DMH state-run facilities or contracted providers. However, the crimes are not disqualifying unless they are felonies, except for failure to report abuse and neglect to DHSS which is a Class A misdemeanor. For example:

- First or second degree murder
- Voluntary manslaughter
- First or second degree assault
- Assault while on school property
- Unlawful endangerment of another
- First or second degree assault of a law enforcement officer
- Tampering with a judicial officer
- Kidnapping
- Felonious restraint
- False imprisonment
- Interference with custody
- Parental kidnapping
- Child abduction
- Elder abuse in the first or second degree
- Harassment
- Stalking
- Forcible rape
- First or second degree statutory rape
- Sexual assault
- Forcible sodomy
- First or second degree statutory sodomy
- First or second degree child molestation
- Deviate sexual assault
- First degree sexual misconduct
- Sexual abuse
- Endangering the welfare of a child
- Abuse of a child
- Robbery in the first or second degree
- Arson in the first or second degree
- First or second degree pharmacy robbery
- Incest
- Causing catastrophe
- First degree burglary
- Felony count of invasion of privacy
- Failure to report abuse and neglect to the DHSS as required under subsection 3 of section 198.070, RSMo
- Any equivalent felony offense

DHSS Long-Term Care Disqualifying Crimes

Table II.1 represents the listing of crimes that disqualify an individual from employment with DHSS long-term care providers.

Table II.1: DHSS Long-Term Care Disqualifying Crimes

Criminal Violation	Crime Class
Abusing an individual through forced labor	B felony
Arson in the first degree	A or B felony
Arson in the second degree	B felony
Assault in the first degree	A or B felony
Assault on law enforcement officer in the first degree	A felony
Assault on law enforcement officer in the second degree	B felony
Burglary in the first degree	B felony
Causing catastrophe	A felony
Child kidnapping	A felony
Child molestation in the first degree	A or B felony
Domestic assault in the first degree	A or B felony
Elder abuse in the first degree	A felony
Elder abuse in the second degree	B felony
Enticement of a child (with prior conviction)	B felony
Failure to report acts of abuse or neglect	A misdemeanor
Forcible rape	A or B felony
Forcible sodomy	A or B felony
Incest	D felony
Infanticide	A felony
Kidnapping	A or B felony
Murder in the first degree	A felony
Murder in the second degree	A felony
Pharmacy robbery in the first degree	A felony
Pharmacy robbery in the second degree	B felony
Robbery in the first degree	A felony
Robbery in the second degree	B felony
Sexual abuse/assault (with injury, deadly weapon displayed, victim under age 14 or incapacitated, or forces contact with more than one person)	B felony
Sexual trafficking of a child	A felony
Statutory rape in the first degree	B felony
Statutory sodomy in the first degree	B felony
Tampering with a drug prescription order	A felony
Trafficking for the purpose of sexual exploitation	B felony
Trafficking for the purpose of slavery, involuntary servitude, peonage or forced labor	B felony
Voluntary manslaughter	B felony
Water contamination	B felony

Source: DHSS Administrative Policy and Procedure Manual, Section for Long-Term Care.

State Disqualifiers

Table III.1 depicts the states and whether states deny employment in residential childcare facilities based on criminal history and/or child abuse.

Table III.1: State Disqualifiers

State	Denies Employment Based on Criminal History	Denies Employment Based on Child Abuse
Alabama	Yes	Yes
Alaska	Yes	Yes
Arizona	Yes	No
Arkansas	Yes	No
California	Yes	No
Colorado	Yes	No
Connecticut	Yes	Yes
Delaware	Yes	No
Florida	Yes	No
Georgia	Yes	No
Hawaii	No	No
Idaho	Yes	No
Illinois	Yes	Yes
Indiana	Yes	Yes
Iowa	Yes	Yes
Kansas	Yes	Yes
Kentucky	Yes	Yes
Louisiana	Yes	No
Maine	Yes	Yes
Maryland	Yes	Yes
Massachusetts	Yes	Yes
Michigan	Yes	Yes
Minnesota	Yes	Yes
Missouri	No	No
Mississippi	Yes	Yes
Montana	No	No
Nebraska	Yes	Yes
Nevada	Yes	No
New Hampshire	Yes	Yes
New Jersey	Yes	Yes
New Mexico	Yes	Yes
New York	Yes	Yes
North Carolina	Yes	No
North Dakota	No	No
Ohio	Yes	Yes
Oklahoma	Yes	No
Oregon	No	No
Pennsylvania	Yes	Yes

**Appendix III
Other State Disqualifiers**

State	Denies Employment Based on Criminal History	Denies Employment Based on Child Abuse
Rhode Island	Yes	Yes
South Carolina	Did not respond	Did not respond
South Dakota	Yes	Yes
Tennessee	Yes	Yes
Texas	Yes	Yes
Utah	Yes	Yes
Vermont	No	No
Virginia	Yes	Yes
Washington	Yes	Yes
Washington, DC	Yes	Yes
West Virginia	Yes	Yes
Wisconsin	Yes	Yes
Wyoming	Yes	Yes
Totals:		
Yes	44	32
No	6	18

Source: SAO analysis.