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Guidance for Implementation of Executive Order 202.13 Provisions Regarding Background Checks

In response to increasing concerns regarding staffing shortage related to COVID-19, and pursuant to Executive Order 202.13 (EO), issued March 30, 2020, the background check process required of authorized programs has been temporarily modified. The interim process, described in this document, is designed to enable programs to obtain new staff members more quickly, in order to maintain critical staffing ratios, while ensuring the safety of the individuals that they serve. The following guidance is applicable to all Office of Mental Health (OMH) licensed, funded, or approved programs (Authorized Programs) and is in effect on a time limited basis, subject to revocation without notice. OMH is also requesting that the attached Executive Order 202.13 Criminal History Information Attestation be completed and stored in the personnel file.

Nothing herein shall preclude any provider from requiring all regularly required pre-employment checks of any prospective staff members.

A. Staff Members Currently Employed by an OMH Provider

Any current employee of OMH or an OMH licensed, funded, or approved program, who has already completed a background check, is eligible to be employed in an OMH Authorized Program without the need to perform a new Criminal Background Check (CBC), Staff Exclusion List (SEL) check, or Statewide Central Register (SCR) check.

To verify that a potential employee meets the criteria of the EO, prior to hiring, the Authorized Program must do the following:

1. Authorized Programs should complete the Executive Order 202.13 Criminal Background Check Request form and send such completed form to OMH at cbc@omh.ny.gov. The Authorized Program must include the following:
 - a. Name of the individual;
 - b. Date of birth;
 - c. Social security number;
 - d. Agency Name;
 - e. Agency 5-digit code;
 - f. Job title of the position sought; and,
 - g. If known, the name of the provider for which the prospective employee was fingerprinted, and approximate date of such fingerprinting
2. OMH will transmit the form to the Justice Center.

3. The Justice Center will review the information for the individual for whom the request has been made and, unless additional information is requested, will respond to OMH within 1 business day advising that:
 - a. The Individual meets the requirements of EO 202.13 and may be hired;
 - or
 - b. The individual does not meet the requirements of EO 202.13 and may not be hired pursuant to this provision and should be treated as a new employee in accordance with Section (C) below.
4. The OMH contact will communicate this within 24 hours of receipt of the Justice Center verification to the Authorized Program point of contact. Communication may be via phone or email.

Any employee who continues to work in this program on a regular basis shall be required to complete an updated criminal background check, as soon as practicable, after the commencement of their employment and in no event later than the expiration of EO 202.13.

B. Staff Members Currently Employed by a Provider of Another State Oversight Agency

Any current employee of an Office of Addiction Services and Supports certified, funded or authorized programs, Office for People with Developmental Disabilities (OPWDD), or OPWDD approved providers, or Office of Children and Family Services operated, licensed or certified programs, who has already completed a background check, is eligible to be employed in an OMH Authorized Program without the need to perform a new Criminal Background Check (CBC), Staff Exclusion List (SEL) check, or Statewide Central Register (SCR) check.

To verify that a potential employee meets the criteria of the EO, prior to hiring, the Authorized Program should follow the process outlined in Section (A).

Any employee who continues to work in this program on a regular basis shall be required to complete an updated criminal background check, as soon as practicable, after the commencement of their employment and in no event later than the expiration of EO 202.13.

C. New Staff Members Not Otherwise Employed by an Approved Provider

New employees who have not gone through a background check are eligible to work unsupervised, as long as such individual does not appear on the SEL and has completed the attached OMH Executive Order 202.13 Criminal History Information Attestation form; provided, however, that the program should limit the unsupervised contact of such employee to the extent practicable. Criminal history information disclosed on the attestation should be considered pursuant to Article 23-A of the New York State Correction Law in making a hiring decision.

New employees will still be required to complete all other pre-employment checks. An appointment for fingerprinting shall be scheduled at the time the prospective employee fills out the hiring paperwork, with the scheduled appointment occurring no later than 5 business days after the prospective employee's first scheduled day of work. Where efforts to secure an appointment within such time period cannot be made, the Authorized Program should contact the OMH contact person at cbc@omh.ny.gov for assistance in securing such appointment, as soon as practicable.

EO 202.13 is available at: <https://www.governor.ny.gov/news/no-20213-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.