



**New York State
Office of
Children &
Family
Services**

www.ocfs.state.ny.us

Andrew M. Cuomo
Governor

Gladys Carrión, Esq.
Commissioner

Capital View Office Park
52 Washington Street
Rensselaer, NY
12144-2834



An Equal Opportunity Employer

**Guidelines for Determining Whether Indicated Instances
of Child Abuse and Maltreatment Are Relevant
and Reasonably Related To Employment or Licensure**
Provided to Subjects of Indicated Reports Requesting Expungement or Amendment

Factors to Consider in Assessing an Applicant's or Employee's Risk to Children

The agency must determine, on the basis of the available information, whether to approve an application of a person or retain a person who is the subject of an indicated report. In making such a determination, the following factors should be considered, although not all factors will be relevant to each particular case:

- 1) the seriousness of the incident(s) cited in the indicated report(s);
- 2) the seriousness and extent of any injury sustained by the child(ren) named in the indicated report(s);
- 3) any detrimental or harmful effect on the child as a result of the applicant's or employee's actions or inactions and relevant events and circumstances surrounding these actions and inactions as these relate to the indicated report(s);
- 4) the age of the subject and child at the time of the incident(s) of child abuse and maltreatment;
- 5) the time which has elapsed since the most recent incident of child abuse and maltreatment;
- 6) the number of indicated incidents of abuse and maltreatment; (Where there is more than one substantiated incident, you should evaluate each incident separately. You should also evaluate the total effect of all indicated incidents when assessing the risk the person might pose to the safety and well-being of the children.)
- 7) the degree to which the position entails supervision of , interaction with, and/or opportunity to be with a child or children on a regular and substantial basis and whether the position may involve being alone with a child or children or in the presence of other adults;
- 8) any information produced by the applicant or employee or produced on his behalf in regard to his rehabilitation. Rehabilitation is a showing by the applicant or employee of positive and successful efforts to rectify a problem which resulted in child abuse or maltreatment so that children under his or her care will not be in danger. In finding rehabilitation it should be shown:
 - a) that acts of child abuse and maltreatment apparently have not been repeated;
 - b) that evidence exists of actions taken by the person which show that he or she is now able to deal positively with a situation or problem that gave rise to the previous incident(s) of child abuse and maltreatment; and
 - c) when relevant, that professional treatment (e.g., counseling or self help groups) has been successful.
- 9) that employment or practice in child care field has been successful.
- 10) although, as earlier stated, each report must be carefully reviewed extra weight and scrutiny must be given to a report(s) where the abuse or maltreatment resulted in a fatality, sexual abuse, subdural hematoma, internal injuries, extensive lacerations, bruises, welts, burns, scalding, malnutrition or failure to thrive.

Application or Employment Decision

The decision of whether to approve an application of a person or retain a person who is the subject of an indicate SCR report(s) should be made on a case by case basis utilizing the above guidelines. Before approving an application of a person or retaining a person who is the subject of an indicated SCR report(s), the agency should carefully analyze whether the relevant facts demonstrably justify approving the application of a person or retaining an employee.

When an agency's decision is to approve an application or retain an employee the agency is to prepare a written analysis which becomes part of the agency personnel or applicant file. The analysis must include:

- 1) relevant information as to each of the guideline factors contained in this document; and
- 2) an explanation of why such person was determined to be appropriate and acceptable to have regular and substantial contact with children being cared for by the agency or determined appropriate and acceptable to be licensed by the agency.

If the decision after the agency review is not to approve an application of a person or retain an employee then the process set forth in Section C(2)(a) of these guidelines is to be followed. [refers to furnishing the applicant or employee with a written statement setting forth whether the detail was based in whole or part, on such indicated report(s), and if so, the reason for the denial. The applicant or employee must be informed that he/she has a right to request a fair hearing before the Department regarding the record maintained by the State Central Register.]

It must be recognized that the Child Abuse and Maltreatment Register screening process is just one component of the inquiry and evaluation which must occur during the application process. The clearance procedures should therefore be viewed as an aid in making the best possible decision regarding an application or employee and not as the solution in preventing the abuse or maltreatment of children in your care. Just as the Child Abuse Prevention Act of 1985 requires these guidelines to be implemented to assist licensing and provider agencies in evaluating applicants with indicate reports of child abuse and maltreatment, these agencies must also review and evaluate an applicant's background and any information supplied by the applicant. The agency must review the applicant's employment history, personal and employment references, and must obtain a signed sworn statement indicating whether to the best of the applicant's knowledge, the applicant has ever been convicted of a crime in this state or any other jurisdiction.

All information regarding an individual's indicated report of child abuse and maltreatment is confidential and must be maintained in a secure manner. Such information is only to be shared with the individual(s) it relates to, and those persons involved in the employment or licensing decision-making process. According to Section 422.4 of the Social Service Law "...A person given access to the names or other information identifying the subjects of the report or other persons named in the report, except the subject of the report or other persons named in the report shall not divulge or make public such identifying information..."

Decisions concerning the approval of applicants and the retention of employees rest with you, and the knowledge that an applicant or employee is the subject of an indicated child abuse or maltreatment report(s) needs to be carefully weighed in making such decisions. The safety and well-being of the children should be the primary concern in the decision making process but the rights of applicants and employees to fair decisions should also receive consideration.

This guideline is effective January 1, 1986. Additionally, as provided in Section 424.a(5)(b) of the Social Services Law, this guideline shall not supersede similar guidelines developed by local governmental agencies prior to January 1, 1986.