

**Office of Inspector General
DVR Vendor Background Screening**

Report #A-1516-010

June 2016

Executive Summary

In accordance with the Department of Education's (department) fiscal year 2015-16 audit plan, the Office of Inspector General conducted an audit of the Division of Vocational Rehabilitation's (DVR) Vendor Background Screening process. The purpose of this audit was to determine if DVR ensures that vendors appropriately screen employees that provide services to DVR clients.

During this audit we noted that, in general, DVR has sufficient controls in place. However, we noted instances where DVR could make improvements to strengthen some of these controls. For example, we cited instances where DVR did not ensure that all required individuals were background screened, one instance where DVR cleared an employee who should have been disqualified, and instances where DVR did not ensure that vendors initiated the screening process timely. The Audit Results section below provides details of the instances noted during our audit.

Scope, Objectives, and Methodology

The scope of this audit included background screenings conducted for DVR vendor employees who were employed between May 1, 2015, and October 31, 2015. We established the following objectives for our audit:

1. Ensure DVR effectively conducts background screenings on all required vendor employees; and
2. Determine if DVR has sufficient internal controls to ensure all vendor background screenings are conducted in accordance with the guidelines set forth in Florida Statutes.

To accomplish our objectives we reviewed applicable laws, rules, and regulations; interviewed appropriate department employees; reviewed applicable policies and procedures; and reviewed a sample of background screenings through the AHCA Vendor Background Screening (VBS) Clearinghouse.

Background

House Bill 943 was passed in 2012, and created a Care Provider Background Screening Clearinghouse (Clearinghouse) to provide a single data source for background screening results of persons that provide services to children, the elderly, and disabled individuals. The

Clearinghouse allows state agencies serving the vulnerable population to share the state and federal criminal background screening results for vendors and their employees. The Agency for Health Care Administration (AHCA), in consultation with the Florida Department of Law Enforcement (FDLE), developed the Clearinghouse database and maintains all associated information for the specified agencies. DVR began utilizing the Clearinghouse in May 2014.

As a condition of registration, DVR vendors must have level 2 background screenings conducted for their administrator, financial officer, director, and board members. They are also required to have level 2 background screenings conducted for any employee or volunteer who is expected to have direct, face-to-face contact with DVR clients or have access to the client's living areas, funds, personal property, or personal identification information. Vendors must send these employees to be fingerprinted through authorized Livescan fingerprinting providers. The FDLE runs the fingerprints for any matching arrests through their intrastate system for collection, compilation, and dissemination of state criminal history records systems. The FDLE runs the fingerprints through similar multi-state and federal criminal history records systems and reports to the Clearinghouse. If the vendor registers the employee with the Clearinghouse prior to the employee being fingerprinted, the Clearinghouse automatically alerts the vendor, via email, if the employee has passed the screening, otherwise they do not get an email notification. If there is a criminal history match, the Clearinghouse posts a work item to the queue of the assigned DVR employee, who reviews the results of the background screening through the Clearinghouse and determines whether the employee is qualified to begin providing services to DVR clients. If the employee is disqualified, they may request an exemption.

DVR established the Vendor Background Screening (BGS) unit to ensure that these vendors screen their employees through the Clearinghouse. The BGS unit is responsible for all DVR vendors that are not Centers for Independent Living (CIL). The Independent Living Program is responsible for ensuring the completion of background screenings for the CILs and their employees.

Audit Results

Finding 1: DVR properly accepts proof of screening compliance from other agencies and grants exemptions for disqualifying offenses when appropriate.

Section 413.208(2)(d)2 of Florida Statutes (F.S.) allows agencies participating in the Clearinghouse to accept proof of compliance of level 2 background screenings submitted within the previous five years from other participating agencies, which include the Agency for Health Care Administration (AHCA), Department of Health (DOH), Department of Elder Affairs (DOEA), Agency for Persons with Disabilities (APD), and the Department of Children and Families (DCF). The proof of compliance must be accompanied by an affidavit of compliance with Chapter 435 and section 413.208 of the statutes.

We sampled 12 DVR vendors and their employees and found 43 employees who had been screened through the Clearinghouse by another participating agency. DVR appropriately accepted proof of compliance of screening from other agencies for these 43 employees (29 from

DCF, 13 from AHCA, and 1 from DOEA). All of these screenings had been conducted within the mandatory five years and included an affidavit of compliance.

Section 535.07(1)(a), F.S., allows an agency head to grant exemptions from disqualifying offenses under certain circumstances, which include felonies for which three years have passed and misdemeanors as long as the employee has been lawfully released from confinement, supervision, or monetary conditions imposed by the court. The agency head cannot remove disqualification for a person who is a sexual predator, a career offender, or a registered sexual offender. The employee must demonstrate by clear and convincing evidence that the employee should not be disqualified from employment.

DVR has a process in place that they follow when reviewing requests for exemptions, which includes review and approval by the bureau chief, DVR director, Office of General Counsel, and the Commissioner of Education. The department granted eight exemptions during the scope of the audit. DVR adequately documented compliance with exemption requirements for all granted exemptions, and each of the eight employees provided a statement demonstrating evidence that they should not be disqualified.

Finding 2: DVR did not adequately screen or disqualify all required individuals.

Section 435.04, F.S., states that employees must undergo security background investigations including statewide criminal history checks through the Florida Department of Law Enforcement and national criminal history checks through the Federal Bureau of Investigation. The statute goes on to state, “no persons under the provisions of this section have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a pleas of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction.” The statute then lists all of the disqualifying offenses.

Section 413.208, F.S., states vocational rehabilitation service vendors must register with DVR. As a condition of registration, level 2 background screenings must be conducted for the administrator, financial officer, director, and any person employed by, or otherwise engaged on behalf of, the service vendor who is expected to have direct, face-to-face contact with a vulnerable person while providing services to the vulnerable person and having access to that person’s living areas, funds, personal property, or personal identification information.

The BGS unit has maintained a list of vendor employees since DVR joined the Clearinghouse. In order for a vendor to bill for services provided by an employee, they must complete the electronic billing application, which will then trigger the BGS unit to send an email with instructions regarding the background screening process. However, the BGS unit must rely on the vendor for timely notifications of employees for which the vendor does not directly bill for services.

We selected a sample of 244 DVR vendor employees, including 60 directors. Our review of the Clearinghouse revealed that DVR failed to screen 18 directors and one employee and erroneously cleared one other employee. DVR provided no explanation why the one employee was not screened. The vendor informed DVR that the employee would soon be retiring, but did not state why she had never been screened.

We found that DVR granted exemptions for directors of employment services providers, and thus, did not screen 18 directors. DVR permitted the 18 directors to complete a Board Member Affidavit for Exemption from Background Screening. These affidavits state that the board member is a volunteer, does not take part in the day-to-day operations, has no financial interest, does not have face-to-face contact with DVR clients, and does not have access to DVR clients' personal information. However, Florida Statutes do not allow for these exemptions from background screenings, and the department's Office of General Counsel agreed that DVR should ensure the board members are screened.

Finally, one employee who had been screened through the Clearinghouse was erroneously cleared for employment although he had a disqualifying offense. A review of the screening results from the Clearinghouse revealed that the employee pled nolo contendere, adjudication withheld, for possession of cocaine, and he was sentenced to one year and six months of probation and 250 hours of community service. According to DVR, there was a misunderstanding on the part of BGS employees due to another charge associated with the arrest being reflected as nolle prossed. The BGS unit has since taken action to review the request for exemption.

The lack of screening of vendor employees and directors, as well as the erroneous clearing of employees with disqualifying offenses, increases the likelihood of DVR clients being exposed to vendor employees that have disqualifying offenses, thereby increasing the risk of abuse and exploitation.

Recommendation

We recommend DVR enhance policies and procedures to ensure BGS Unit employees utilizing the Clearinghouse properly screen vendor employees in accordance with Florida Statutes. We recommend DVR require vendors to background screen all directors. We also recommend DVR include language in its vendor contracts to hold the vendors accountable for timely background screenings and providing DVR with updated lists of their employees.

DVR Management Response

BGS policies and procedures will be updated to ensure vendor employees are properly screened. Language clarifying vendor responsibilities regarding background screening will be added to applicable contracts and registration approval letters. We do not agree that all directors should be background screened. DVR Management is currently working with the Office of General Counsel on legislation to align our background screening requirements for directors with AHCA's.

Finding 3: The IL Program did not screen all required individuals or ensure vendor employee screenings occurred in a timely manner, allowing employees to have contact with DVR clients before being cleared.

Section 413.208, F.S., states vocational rehabilitation service vendors must register with DVR. As a condition of registration, level 2 background screenings must be conducted for the administrator, financial officer, director, and any person employed by, or otherwise engaged on behalf of, the service vendor who is expected to have direct, face-to-face contact with a vulnerable person while providing services to the vulnerable person and having access to that person's living areas, funds, personal property, or personal identification information.

We found that one employee providing interpreter services did not have a screening conducted. IL Program leadership asserted that they are not required to screen interpreters because they are interpreting for the client in a meeting with other people and are never alone with the clients. However, these interpreters do have face-to-face contact with vulnerable individuals and likely have access to their personal identification information. The department's Office of General Counsel reviewed the applicable statutes and agreed that the interpreters should be screened.

Section 435.05, F.S., states that employers must submit information on covered employees necessary for level 1 and level 2 screening to the Florida Department of Law Enforcement within five working days after receiving it. Section 435.06 (2)(d), F.S., states that an employer can hire an employee to a position that requires background screening before they complete the screening process for training and orientation. However, the employee may not have contact with the vulnerable persons until the screening process is completed.

We selected a sample of 69 CIL employees. We found eight instances where the IL Program did not ensure the screenings occurred in a timely manner, with screenings completed 31 to 217 days after the employee's hire date. One CIL employee had direct contact with DVR clients for 38 days before the background screening was completed showing that the employee had a disqualifying offense.

We inquired as to how the IL Program is ensuring the CILs are not allowing employees to have contact with DVR clients or have access to the clients' personal information or funds prior to conducting the screenings. IL Program employees did not indicate how they have provided assurances in the past, but instead made several suggestions on how the IL Program unit could better monitor and provide assurances going forward.

The IL Program had not monitored CIL provider employees until recently and were still obtaining lists of provider employees at the beginning of the audit. They responded, "We haven't been doing any of this long enough to have an annual process. It was a combination of knowing that this review was on the IG's radar and wanting to be sure that the CILs were in compliance now that they are all in the system and doing screenings routinely."

The IL Program's inability to ensure the CILs are screening employees prior to contact with DVR clients has exposed clients to employees with disqualifying offenses, thereby increasing the risk of abuse and exploitation.

Recommendation

We recommend DVR require vendors to background screen interpreters. We also recommend DVR include language in its vendor contracts to hold the CILs accountable for timely initiating the background screening process and providing DVR with updated lists of their employees. We further recommend DVR transfer responsibility for CIL background screenings to the BGS unit in order to ensure a more consistent background screening process or develop policies and procedures specific to the IL Program to ensure background screenings are conducted according to statutory requirements.

DVR Management Response

Language addressing CIL responsibilities for initiating screenings and maintaining employee rosters will be included the next time the contracts are amended or rewritten. CIL and BGS staff will work collaboratively to ensure background screening processes are consistent, which may include transferring responsibility for CIL screenings to the VReg BGS unit. We do not agree that interpreters should be background screened. DVR Management is currently working with the Office of General Counsel on legislation to clarify our original intent that interpreters are not subject to background screening requirements.

Closing Comments

The Office of Inspector General would like to recognize and acknowledge the Bureau of Vendor and Contracted Services and the IL Program for their assistance during the course of this audit. Our fieldwork was facilitated by the cooperation and assistance extended by all personnel involved.

To promote accountability, integrity, and efficiency in state government, the OIG completes audits and reviews of agency programs, activities, and functions. Our audit was conducted under the authority of section 20.055, F.S., and in accordance with the International Standards for the Professional Practice of Internal Auditing, published by the Institute of Internal Auditors, and Principles and Standards for Offices of Inspector General, published by the Association of Inspectors General. The audit was conducted by William Bull and supervised by Janet Snyder, CIA, CGAP, CISA, Audit Director.

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