

## **FAQs FROM DEPARTMENT TRAININGS NEW EOHHS CORI REGULATIONS AT 101 CMR 15.00**

- 1. Do the EOHHS CORI regulations apply to PCAs or other individuals hired directly by individuals or their families? What if the individual obtained funding from an EOHHS agency to pay for the PCA?**

Answer: No. 101 CMR 15.00 et seq. applies to EOHHS, EOHHS agencies and vendor programs.

- 2. Are the EOHHS CORI regulations available online? Will other documents such as the EOHHS Hiring Review Form and Information for Job Applicants - CORI be available online?**

Answer: Yes, at <http://www.mass.gov/hhs/cori>

- 3. In addition to positions that entail the potential for unsupervised contact with program clients, what are the “other legal requirements, or for whom a CORI is otherwise deemed by EOHHS, its agencies, or vendor programs to be relevant to the duties and qualifications of the position.” 101 CMR 15.03(1)(B)?**

Answer: Each vendor program, subject to its certification by CHSB, identifies for itself the positions for which a CORI must be done to comply with other legal requirements as well as the types of positions for which it deems a CORI is relevant to the duties and qualifications of position.

- 4. Can the hiring authority require a CORI release and/or criminal disclosure form to be completed at the time of the initial interview or with the initial application form but then hold the form until the hiring authority makes a conditional offer of employment? If possible, the hiring authority would be able to retain its streamlined process to obtain all necessary documents in one interview.**

Answer: No. A hiring authority cannot ask an applicant to fill out a CORI release or answer questions related to his or her criminal history until after the hiring authority has made a conditional offer of employment subject to the consideration of any criminal record. The hiring authority may provide the additional documents to the applicant at the time of the interview and explain that the applicant will be required to fill them out if he or she is given a conditional offer of employment.

- 5. Can the hiring authority provide applicants with a CORI release form and questionnaire regarding criminal background so that they have the proper forms if the hiring authority makes a condition offer of employment?**

Answer: Yes.

- 6. We are a large company and use a common application form for all positions including those that are not subject to the EOHHS regulations. In the interest of consistency and administrative efficiency, may a hiring authority continue to use its common employment application which includes questions regarding criminal history and a CORI release but add instructions to the form instructing applicants for positions subject to the EOHHS CORI regulations not to complete those sections unless and until a conditional offer of employment is made?**

Answer: Yes, so long as the questions that are prohibited under the CORI regulations pending a conditional offer of employment are clearly identified and the instructions to the applicant are prominent and clear.

- 7. Can the initial employment application inform the applicant that the hiring authority will conduct a CORI check of candidates that it determines are otherwise qualified for the position after it makes a conditional offer of employment?**

**Answer:** Yes. The hiring authority may inform applicants that the position for which they are hiring requires CORI clearance under the EOHHS CORI regulations. The hiring authority may choose to use the EOHHS form, *Information for Job Applicants*, to provide information regarding the CORI process.

- 8. Must the hiring authority allow the candidate a certain amount of time to dispute the accuracy of a CORI report? How long a period of time must be allowed for a candidate to correct a CORI or to obtain relevant documents?**

Answer: The hiring authority must allow a candidate a reasonable period of time to dispute the accuracy of a CORI report and to provide supporting documents. As an example, EOHHS guidance to EOHHS agencies identifies ten (10) calendar days as a reasonable period of time.

- 9. If the hiring authority is not considering the information in the CORI report when making its hiring decision, does it still have to provide the candidate with a copy of the CORI report and other documents identified in 101 CMR 15.09 before it can hire?**

Answer: 101 CMR 15.09 requires the hiring authority to comply with Criminal History Systems Board (CHSB) requirements under 803 CMR 2.00-9.00; therefore, even though the EOHHS regulations do not require explicitly that the hiring authority provide the CORI report, etc., if the CORI report will not be considered in the hiring determination, CHSB regulations do. According to the CHSB, the CORI report, along with two additional documents (*Information Concerning the Process for Correcting a Criminal Record* and *Information*

*Concerning the Process for Establishing Yourself as the Victim of Identity Theft for CORI Purposes*), must be provided to the applicant each time the hiring authority obtains a CORI. Please see 803 CMR 2.00-9.00 or contact the CHSB if you have additional questions regarding CHSB requirements.

- 10. Our company provides per diem and relief employees to the Department and other vendor programs with notice as short as one hour. May a hiring authority obtain CORI checks on per diem/relief employees prior to actually identifying employment assignments?**

Answer: Yes, if these are positions that would be subject to a CORI.

- 11. It is not unusual for per diem and relief workers to identify their own schedules and not to work for more than sixty (60) days at a time. In cases of per diem and relief workers, for whom a period of sixty (60) days has passed since their last placement, does the hiring authority have to obtain a new CORI report before it can assign them?**

Answer: Yes

- 12. Our practice has been to submit a CORI application to the CHSB and to simultaneously check references. May a hiring authority run a CORI check simultaneously with reference checks but then decide not to hire the candidate based on the references it obtains?**

Answer: No. The hiring authority may only conduct a CORI check after it has identified an otherwise qualified candidate and has made a conditional offer of employment subject to consideration of criminal record information. If the hiring authority considers reference checks in its hiring determination process, they must be completed before the final candidate is identified and a CORI investigation is conducted. (15.04)

- 13. If a hiring authority does not hire a candidate based on his or her criminal history, what must it do if, after a reasonable amount of time was provided, the candidate later demonstrates that the information on the CORI report was incorrect? Does the hiring authority have to hire the candidate?**

Answer: No. The hiring authority must allow a candidate a reasonable period of time to dispute the accuracy of his or her CORI. In the event that the reasonable period of time has passed, the hiring authority may proceed to identify and hire a different candidate. If the hiring authority hired a different candidate, it does not have to offer a position to the original candidate.

- 14. If a CORI-cleared candidate declines to accept an offered position, does the POS provider have to retain the CORI report, hiring form, etc.? If so, for how long?**

Answer: The regulations do not provide a specific period of time that a hiring authority must retain a CORI report or other relevant documents for candidates that it did not hire. However, the EOHHS Departments will conduct audits of compliance with the CORI regulations. Retaining the CORI report and other relevant documentation at least until after the audit has occurred will allow the Purchasing Department to confirm the hiring authority's compliance with the regulations. To the extent that a hiring authority might wish to retain a CORI report after the audit has been completed, the CHSB provides that a CORI report may be retained for no longer than three (3) years after termination of the employment relationship.

**15. Can a candidate begin employment pending CORI clearance?**

Answer: The regulations provide that a candidate may not be permitted to commence employment until after he or she is CORI-cleared in accordance with the regulations; however, notwithstanding such prohibition, a hiring authority may permit the candidate to commence employment in a position that does not require a CORI check. See 101 CMR 15.03 and 15.07. For example, if a candidate has applied for a position where a CORI is required because of the potential for unsupervised contact with clients, the candidate may be temporarily placed in a position where a CORI-cleared employee is with the candidate at all times when clients are present.

**16. If a vendor program conducts periodic CORI checks and sees that the crimes table reorganization results in a current employee's CORI showing a conviction for a Table B crime that was changed to a Table A crime, does the POS provider have to reassess the employee in light of the reclassification of the crime?**

Answer: No. Information on subsequent CORI reviews may only go back to the date of the previous CORI. See 101 CMR 15.03(2). Moreover, so long as the hiring authority properly complied with the regulations that were in effect at time of hire, the hiring authority will have properly considered the information regarding the criminal history information and mitigating factors when it hired the employee.

**17. 101 CMR 15.12 requires a POS provider to report allegations that an employee with a CORI history has harmed a client; does this mean any CORI history or only those identified on Tables A and B that were considered under the regulations? How will an employer that conducts periodic CORI checks know that there was a positive CORI history if it discards previous CORI reports? (The CHSB allows an employer to retain one CORI report on file.)**

Answer: POS Providers must report such allegations in any case where the employee has a CORI showing any criminal activity, regardless of whether the

crime is on either Table A or B or is similar to such crimes. CORI reports show all crimes, hence the latest single report should suffice.

**18. Does an employer have to consider criminal history information that appears on a subsequent CORI check of a current employee? Does the employer have to fill out a new EOHHS Hiring Form?**

Answer: Yes. The hiring authority should conduct the same analysis and review when it conducts periodic CORI checks as it did at time of original hire. The employer should fill out a new *EOHHS CORI Hiring Review Form* considering relevant CORI information that occurred since the previous CORI check.

**19. If a periodic CORI check on a current employee reveals a Table A or B conviction or pending matter that occurred within the applicable look-back periods, does the employer have to suspend the employee pending review under the regulations? Does the employer have to fill out a new EOHHS CORI Hiring Form?**

Answer: The regulations do not require specific action on the part of an employer when a CORI check reveals any crime on Table A or a Table B within the look-back period. If an employer elects to conduct periodic background checks, it should develop its own policy for addressing this situation.

**20. How long must a POS provider retain a CORI report regarding current employees for audit or other purposes under the regulations?**

Answer: For current employees, it is recommended that the employer should retain the CORI report, the *EOHHS CORI Hiring Review Form* and other relevant documentation during the total period of his or her employment. The CHSB allows the employer to retain only one CORI report on file at a time; so, employers who conduct periodic CORI checks must discard the previous CORI report when the new CORI report is obtained.

**21. How long must a POS provider retain a CORI report regarding former employees for audit or for other purposes under the regulations?**

The CORI report and *EOHHS CORI Hiring Review Form* should be retained for a reasonable period of time and at least until after the Purchasing Department's next CORI audit following the employee's separation from employment. According to the CHSB, CORI reports may not be retained for longer than three (3) years after termination of the employment relationship.

**22. How will a POS provider establish that it obtained a CORI at the time of the original hire after it conducts a subsequent CORI check, in light of CHSB rule that only one CORI report may be retained by a POS provider?**

Answer: In cases that there was a positive CORI subject to additional documentation requirements under the regulations, the hiring review form will confirm that a CORI had been conducted. In cases that the CORI report indicated “no record” or no offenses that may be considered under the regulations, the Department’s audit confirmation document will confirm that the appropriate CORI checks were performed. Department CORI audits are conducted annually.