



# Minimum Standards Revision Notice

**Date:** July 19, 2023

**Effective Date:** August 9, 2023

**To:** All Holders of Chapter 748, Minimum Standards for General Residential Operations

**From:** Rachel Ashworth-Mazerolle, HHSC Associate Commissioner for Child Care Regulation

**Subject:** New Requirements for Employee Reference Checks in General Residential Operations

The amended and new rules are necessary to support the June 9, 2022, court filing regarding the June 6, 2022, status hearing in the MD v. Abbott litigation. The filing, signed by the court, refers to an agreement by HHSC to initiate rulemaking to require operations to contact all an applicant's job references prior to commencement of employment. In addition to this court filing, Child Care Regulation (CCR) has determined that the rules will improve the safety of children in care in general residential operations by requiring a more thorough vetting of prospective employees.

CCR has adopted new and amended rules to establish:

- Employment history verification standards that require a General Residential Operation (GRO) to obtain and verify the most recent five years of an applicant's employment history; and
- Applicant reference check requirements that require a GRO to complete reference checks for each applicant by obtaining at least two references and contacting each of those references as part of an operation's pre-employment screening process.

The changes are effective August 9, 2023.

## **New Requirements for Employee Reference Checks in General Residential Operations**

This memo covers substantive changes made to the rules in Chapter 748 to establish employment history verification standards and employee reference check requirements in GROs.

In addition to the substantive changes outlined in this memo, CCR made non-substantive changes to the rules to improve the understanding and readability of the rules. In addition, CCR added Technical Assistance (TA) boxes that follow the rules in the minimum standards publication to provide additional clarification and/or additional resources. These non-substantive changes and updates to TA boxes are not identified in this document but are identified in the highlighted version of the rules.

### **Specific Rule Changes**

#### **Organization and Administration**

§748.105. What are the requirements for my personnel policies and procedures?

Amended §748.105(3) adds a requirement that a GRO's personnel policies and procedures must include written procedures for screening applicants to determine suitability for any position for which the GRO is considering the applicant. The procedures must include:

- Employment history verification as required by new §748.751; and
- Requirements for reference checks as required by new §748.753.

#### **Reports and Record Keeping**

§748.363. What information must the personnel record of an employee include?

Amended §748.363(3) adds a requirement that a GRO include in each employee's personnel record documentation that the GRO has:

- Verified employment history as required by new §748.751; and
- Conducted reference checks as required by new §748.753.

## **Personnel – General Requirements**

§748.505. What minimum qualifications must all employees meet?

Amended §748.505(5) adds a requirement that each employee must have cleared a pre-employment screening assessment in which the GRO determined the employee is suitable for the employee's position. The pre-employment screening must include:

- Employment history verification as required by new §748.751; and
- Reference checks as required by new §748.753.

## **Personnel – Pre-employment Screening**

§748.751. What are the requirements for obtaining and verifying an applicant's employment history?

§748.753. What are the requirements for completing an applicant's reference checks?

New §748.751 outlines the requirements for obtaining and verifying an applicant's employment history prior to employment. The rule requires a GRO to:

- At (a)(1), obtain in writing the most recent five years of an applicant's employment history, including:
  - Any history for an applicant who has not been continuously employed for the last five years or a statement; or
  - A statement that an applicant has no employment history during the last five years;
- At (a)(2), for any applicant whose history includes employment within the last five years, verify whether the applicant was employed as described in the employment history by contacting:
  - Each employer listed in the five-year employment history; or
  - The applicant's three most recent employers, at a minimum, if the employment history contains more than three employers.
- At (b), for any applicant hired, maintain the following documentation in the applicant's personnel file:
  - The applicant's employment history; and
  - The results of any contact with the applicant's previous employers, including:
    - Any refusal by the applicant's previous employer to provide information; or

- The GRO's diligent efforts to contact an employer who is not permanently unreachable. Diligent efforts are defined as more than one attempt to contact the employer; and
  - If an employer is permanently unreachable, how the GRO made that determination.
- At (c), obtain and verify employment history for applicants seeking employment on or after August 9, 2023.

New §748.753 outlines the requirements for completing an applicant's reference checks prior to employment. The rule requires a GRO to:

- At (a)(1), obtain from each applicant two references from unrelated individuals who can speak to whether the applicant is suitable to work with or around children;
- At (a)(2), contact each of the required references, through an interview or in writing, to verify the applicant's suitability to work with or around children;
- At (b), for an applicant who is currently or has previously been employed in a role providing care or services to children within the past five years, conduct at least one reference check with a current or prior employer who is familiar with the applicant's history and performance in that capacity;
- At (c), for any reference check that is unsuccessful, document in the applicant's personnel file:
  - Any refusal by a reference to provide information; or
  - The GRO's diligent efforts to contact a reference who is not permanently unreachable. Diligent efforts are defined as more than one attempt to contact the reference;
  - If a reference is permanently unreachable, how the GRO made that determination; and
  - The GRO's assessment of the applicant's suitability to work with or around children;
- At (d), for any applicant hired, maintain the following documentation related to each reference check in the applicant's personnel file:
  - The reference's name;
  - The reference's relation to the applicant;
  - The reference's contact information;
  - The date the GRO completed the reference check;

- The information obtained from the reference, including a summary of the interview or a copy of written information from the reference; and
  - The name of the person who interviewed the reference, if the GRO conducted the reference check via an interview;
- At (e), complete reference checks for applicants seeking employment on or after August 9, 2023.

## Highlighted Versions

You may view highlighted versions of the adopted rules at [Minimum Standards | Texas Health and Human Services](#). CCR is updating the minimum standards publication and will complete the update by August 9.

If you have questions, please contact your CCR inspector or send an email to [HHSC Residential Child Care Regulation Minimum Standards Comments](#).