

LEGAL NEWS FOR YOUR BUSINESS

May 2023

Employment Alert

UPDATED NOTICE OF RIGHTS UNDER FCRA REQUIRED WITH BACKGROUND CHECKS

On March 24, 2023, the Consumer Financial Protection Bureau (CFPB) released an updated version of their notice, “A Summary of Your Rights Under the Fair Credit Reporting Act” (the “Updated Notice”). Employers who conduct background or credit checks on employees or job applicants are required to provide the Updated Notice under FCRA. The Updated Notice provides employees or applicants with a summary of their rights, including:

- ***The right to know if something in their file has been used against them:*** If information that is gathered from a background or credit check leads or contributes to an adverse action against the employee or applicant, they have a right to know. In these cases, employers should provide a pre-adverse action notice that includes the Updated Notice and a copy of the consumer report.
- ***The right to dispute incomplete or inaccurate information:*** If the employee or applicant identifies incorrect or incomplete information in the consumer report, they have a right to report it to the consumer reporting agency, which must investigate the disputed information and correct any inaccuracies or unverifiable information.
- ***The right to limit access to their file and reports:*** Consumer reporting agencies may only release information to those with a valid need and employees or applicants must give consent for reports to be provided to employers. Employers should use a compliant consent form when requesting background checks.

While the Updated Notice only provides non-substantive changes, such as formatting corrections and updated contact information for the CFPB, employers should replace the 2018 version of the notice with the updated version. CFPB has instituted a grace period until March 20, 2024, for mandatory compliance, but recommends that employers begin using the Updated Notice as soon as possible to get ahead of the deadline and ensure

employees and applicants are provided the correct contact information for relevant agencies. The Updated Notice is available in both English and Spanish on the official **CFPB website**.

If you have questions or concerns about the Updated Notice or your background check practices, please reach out to any member of Gardner Skelton's employment team.

Healthcare Alert

WHAT YOU NEED TO KNOW ABOUT NC'S CON REFORMS

On March 23, 2023, North Carolina passed Session Law 2023-7 into law. While the law primarily aims to expand Medicaid coverage across the state, it also institutes significant reforms for the state's Certificate of Need ("CON") Program. CON Law requires health care providers to apply to the program and obtain a certificate in order to develop or offer a "new institutional health service," such as hospitals, or diagnostic centers. CONs must also be obtained before adding beds, operating rooms or expanding to offer certain additional services at an existing healthcare facility. CON reform has been long awaited and aims to loosen restrictions on providers.

Changes Effective Immediately:

- A CON will no longer be necessary to develop or offer psychiatric and chemical dependency treatment beds and facilities;
- Screening, diagnosis, and treatment services provided by a licensed home care agency to children under age 21 will be exempt from CON review under certain circumstances;
- Monetary thresholds have been increased for capital expenditures for nursing homes, adult care homes, and ICFs, for replacement equipment, and for diagnostic centers. The expansion of these thresholds will give providers more latitude. Additionally, for replacement equipment, monetary thresholds will be adjusted using the Medical Care Index component of the Consumer Price Index published by the U.S. Department of Labor for the prior year.

Changes Effective Over Time:

- Ambulatory Surgical Facilities licensed by DHHS, with a single- or multi-specialty ambulatory surgical program and located in a county with a population greater than 125,000 ("Qualified Urban Ambulatory Surgical Facilities") will be exempt from CON review and will be required to commit 4% of their total revenue to charity care. These changes take effect two years after DHHS issues the first payment to hospitals in accordance with the Healthcare Access and Stabilization Program ("HASP").
- Purchasing, donating, leasing, or transferring MRI scanners located in counties with a population greater than 125,000 will no longer require CON

review. These changes will take effect three years after the first HASP payment.

HASP payments are issued to hospitals as part of Medicaid expansion. North Carolina hospitals are expected to receive their first payments in 2023, which would make the previously mentioned provisions effective in 2025 and 2026, respectively.

The changes to CON law will likely have a large impact on healthcare facilities and providers across the state.

If you have questions about CON law and its impact on your practice, equipment, or facility, please reach out to any member of Gardner Skelton's healthcare team.



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