MEMORANDUM
Texas Department of Human Services * Long Term Care/Policy

TO: LTC-R Regional Directors & Program Managers
    State Office Section/Unit Managers
    HCSSA Program Administrators
    ICFMR/RC Program Administrators

FROM: Jim Lehrman
    Associate Commissioner
    Long Term Care-Regulatory & HCSSA
    State Office MC: E-340

SUBJECT: Clarification on Conducting Criminal History Checks on Unlicensed Applicants for Employment -- S&CC #01-07

DATE: October 19, 2001

The purpose of this letter is to inform survey staff that Provider Letter #01-43, addressing procedures for criminal history checks and inquiries to the Employee Misconduct (EMR) and Nurse Aide (NAR) Registries, is being submitted to providers. New procedures were previously addressed in Provider Letters #00-11, #01-22, and #01-29 to nursing facilities, assisted living facilities, adult foster care facilities, adult day care facilities, Intermediate Care Facilities Serving Persons with Mental Retardation or a Related Condition, and Home and Community Support Services Agencies.

Providers previously were informed that effective August 15, 2001, Texas Department of Human Services (TDHS) stopped providing criminal history checks. They were advised to contact Texas Department of Public Safety (DPS) to set up a billing account. Due to the volume of requests received by DPS, processing delays have occurred; therefore, facilities have been given an extended time frame for processing criminal history checks. The deadline for conducting checks on unlicensed staff will be extended to November 1, 2001, for those providers who can demonstrate they had submitted an application to DPS for a user account by September 1, 2001. The extended deadline will only apply to facilities that have this documentation. Failure to obtain a DPS account by November 1, 2001, will require the provider to secure criminal history checks by utilizing a private data broker or by accessing the DPS public database. November 1, 2001, is the deadline for obtaining a user account and for conducting the criminal history checks.

With the one exception noted above regarding providers attempting to obtain a user account with DPS, criminal history checks must be conducted on unlicensed staff within 72 hours of hire. For verification purposes during the survey, providers submitting inquiries via computer for criminal history checks should have a copy of the transaction.

Questions have arisen about the intent of Texas Health and Safety Code, Chapter 250, Section 250.006(a)(14), that addresses a conviction under the laws of another state, federal law, or the
Uniform Code of Military Justice. Facilities/administrators are only required to check for convictions in Texas. However, when a provider becomes aware that an unlicensed employee has a military, federal, or out-of-state conviction that meets one of the automatic bars of employment, the provider is required to refuse employment or discharge that individual from employment.

If you have any questions, please contact Bevo Morris, Professional Services Section, at (512) 438-2179.

- Signature on File -

Jim Lehrman

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