



COMMISSIONER  
Jon Weizenbaum

February 19, 2013

To: Licensed Adult Day Care Facilities, Assisted Living Facilities, Home and Community Support Services Agencies, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Condition, and Nursing Facilities

Subject: **Provider Letter 13-02** – Requirement to Present Texas Department of Public Safety (DPS) Criminal History Reports Obtained from Private Agencies to Surveyors

The Texas Department of Aging and Disability Services (DADS) is issuing this letter to provide information related to DADS surveyors' review of DPS criminal history reports obtained from private agencies.

Texas Health and Safety Code (H&SC) §250.002 allows a private agency on behalf of a facility to obtain from DPS criminal history record information maintained by DPS that relates to a person who is:

1. "an applicant for employment at a facility other than a facility licensed under Chapter 142 (pertaining to home and community support services agencies);
2. an employee of a facility other than a facility licensed under Chapter 142;
3. an applicant for employment at or an employee of a facility licensed under H&SC Chapter 142 whose employment duties would or do involve direct contact with a consumer in the facility; or
4. an applicant for employment by or an employee of an individual employer."

H&SC §250.001(3) states that a "facility" means:

- (A) a nursing home, custodial care home, or other institution licensed by the Department of Aging and Disability Services under Chapter 242;
- (B) an assisted living facility licensed by the Department of Aging and Disability Services under Chapter 247;
- (C) a home and community support services agency licensed under Chapter 142;
- (D) an adult day care facility licensed by the Department of Aging and Disability Services under Chapter 103, Human Resources Code;
- (E) a facility for persons with mental retardation licensed under Chapter 252."

H&SC §250.001(4) states that a "private agency" means a person engaged in the business of obtaining criminal history checks on behalf of a facility."

H&SC §250.001(3-b) states that an “individual employer” means an individual or legally authorized representative who participates in the consumer-directed service option described by Section 531.051, Government Code, and is responsible for hiring service providers to deliver program services.”

In general, DPS criminal history reports obtained by a facility, or by a private agency on behalf of a facility, from the DPS secure website are “confidential” and are intended for the exclusive use of the requesting facility (H&SC §250.007) or the private agency on behalf of the facility. DADS, as a regulatory agency, is entitled by H&SC §250.002(a) and Government Code §411.1387 to obtain criminal history information from DPS. DPS defines access to criminal history information as the ability to receive, view or discuss criminal history record information regardless of the retrieval method. DPS agrees that surveyors, while on an on-site regulatory visit, may review the confidential criminal history reports that a facility has obtained, or a private agency has obtained on behalf of a facility, from the DPS secure website. If a surveyor needs to retain a particular criminal history report, the surveyor will obtain a copy of the report from DPS.

If you have questions about this letter, please contact a Regulatory Services policy specialist at (512) 438-3161.

Sincerely,

*[signature on file]*

Veronda L. Durden  
Assistant Commissioner  
Regulatory Services

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