



COMMISSIONER
Jon Weizenbaum

June 20, 2016

To: Assisted Living Facilities (ALFs)

Subject: Provider Letter No. 16-18 - Criminal History, Nurse Aide Registry (NAR), and Employee Misconduct Registry (EMR) Requirements (Replaces PLs 15-34 and 06-48)

Before hiring an applicant, ALFs are required to verify employability by conducting a criminal history record check. Verification includes searches of the Employee Misconduct Registry (EMR) established under the Texas Health and Safety Code (THSC) Chapter 253, and the Nurse Aide Registry (NAR). The following provides additional information about these employability requirements.

Verification of Employability

Title 40 Texas Administrative Code (TAC) §92.123, requires an ALF to comply with the provisions of THSC Chapter 250 relating to criminal history checks of employees and applicants for employment. THSC §250.003 requires that before hiring an applicant for employment, an ALF must conduct a criminal history check to determine whether the applicant has a conviction listed in THSC §250.006 or whether the applicant is designated on the EMR or NAR as unemployable. Both the EMR and the NAR can be accessed on the Texas Department of Aging and Disability Services (DADS) website. A copy of a criminal history report may be obtained from the Department of Public Safety (DPS). In addition to the initial verification of employability, an ALF must perform an annual search of the EMR and NAR and maintain a copy of the results of the initial and annual searches of the registries in the ALF's records.

If an ALF must make an immediate hiring decision due to an emergency situation, THSC §250.003(b) authorizes an ALF to hire an applicant who is not listed on the EMR or NAR as unemployable pending the results of a criminal history check, however, the ALF must request the criminal history report from DPS within 24 hours after the applicant is hired. The ALF must ensure that the employee has no direct contact with a resident until the ALF receives the results of a criminal history check, and must discharge an employee if the results of a criminal history check reveals a conviction of a crime that bars employment or is a contraindication to employment.

Obtaining EMR and NAR Information

DADS authorizes an ALF to verify employability of applicants and employees by using the [DADS Employee Misconduct Registry Search System website](#). The website consolidates reports from the EMR, NAR and other systems. An ALF's use of the Employee Misconduct Registry Search System complies with the licensure requirement to perform a search of the NAR and the EMR on applicants for employment and employees and should be used for initial and annual verification of employability checks.

Obtaining Criminal History Information

An ALF is authorized by THSC §250.002 to obtain criminal history record information directly from DPS. An ALF may use the [DPS Crime Services secure website](#) to search the criminal history of employees or applicants for employment.

Section 250.002 of the THSC and Texas Government Code (TGC) §411.1387, also allows an ALF the option of using a private agency to obtain DPS criminal history information. Private agencies may offer search possibilities that exceed the minimum requirement, such as obtaining out-of-state crime record information, which is ordinarily not contained in DPS databases. While these expanded searches are not required, if a ALF becomes aware that an employee or an applicant has a conviction under the laws of another state or federal or military law that is not listed in convictions listed in THSC §250.006, the ALF may not employ the individual if the conviction is a contraindication to employment.

An ALF with questions about criminal record reports should contact [DPS](#) for clarification or additional information.

Convictions Barring Employment

An ALF may not employ an applicant if the facility determines, as a result of a criminal history check, that the applicant has been convicted of an offense listed in Chapter 250.006 that bars employment, or that a conviction is a contraindication to employment with the facility.

The convictions that prohibit employment are outlined in THSC §[250.006](#). The convictions listed in THSC §250.006(a) constitute a permanent bar to employment. The convictions listed in THSC §250.006(b) bar employment for a period of five years after the date of conviction.

In the case of offenses that are not automatic bars to employment, an ALF may choose not to hire an applicant if the ALF believes a certain conviction represents a contraindication to employment with the facility.

Criminal History Notification Requirements

THSC §250.005(a) requires that if an ALF believes that a conviction may bar a person from employment or be a contraindication to employment, the ALF must notify the applicant or employee. THSC §250.005(b) requires that DPS give a person notified the opportunity to be heard concerning the accuracy of the criminal history record information and to update the ALF if inaccurate information is discovered.

Criminal History Confidentiality Requirements

All criminal record information obtained from DPS is privileged information in accordance with THSC §250.007 for the exclusive use of the requesting ALF, the privacy agency on behalf of the ALF, and the applicant or employee who is the subject of the records search. Per TGC §411.1387(e), the records may not be released or otherwise disclosed to any person or agency except on court order, or with the written consent of the person being investigated. A person commits an offense if the person releases or otherwise discloses any information received under THSC Chapter 250 without the authorization described.

DADS, as a regulatory agency, is entitled by THSC §250.002(a) and TGC §411.1387 to obtain criminal history information from DPS. Under an agreement with DADS, DPS will allow DADS surveyors, while on site at an ALF, to review the confidential criminal history reports that an ALF retrieves from the DPS secure website. If, during a survey or investigation, a surveyor needs to retain a particular criminal history report, the surveyor will obtain a copy from DPS.

If you have questions relating to this provider letter or to policy requirements, please contact the Policy, Rules, and Curriculum Development section (512) 438-3161. For specific questions relating to EMR and NAR please contact the Professional Credentialing Enforcement, Registry Branch at (512) 438-5495.

Sincerely,

[signature on file]

Mary T. Henderson
Assistant Commissioner
Regulatory Services

MTH:cg