



COMMISSIONER
Jon Weizenbaum

Date: July 5, 2016

To: Home and Community Support Services Agencies (HCSSAs)

Subject: Provider Letter No. 16-21
Criminal History, Nurse Aide Registry (NAR), and Employee Misconduct Registry (EMR) Requirements (**Replaces PL 15-34 and PL 06-48**)

HCSSAs are required to verify an unlicensed employment applicant's employability before hiring, if the employee's duties would or do include face-to-face contact with a client. The verification includes criminal history checks as well as searches of the EMR and the NAR. The following provides additional information about these requirements.

Verification of Employability

Per the Licensing Standards at [§97.247](#), a HCSSA must conduct a criminal history check to determine whether **an unlicensed applicant for employment** has a conviction listed in the Texas Health and Safety Code (THSC) [§250.006](#), or whether the applicant is listed on the EMR or the NAR as unemployable. Additional licensure standards for hospice agencies in [§97.855](#), which reflect federal standards (42 CFR [§418.114\(d\)](#)), require a hospice to conduct a criminal history check on **all hospice employees and volunteers** (including licensed professionals) with direct client contact or access to client records. A HCSSA may not employ a person or use a volunteer whose criminal history report includes a conviction that bars employment under THSC [§250.006](#) or a conviction that the HCSSA determines is a contraindication to employment.

Also, if an **unlicensed employee's** duties do or would include face-to-face contact with a client, [§97.247\(a\)\(3\)](#) requires a HCSSA to conduct a search of the NAR and EMR to determine whether the unlicensed employee is listed in either registry as unemployable before the employee's first face-to-face contact with the client. A HCSSA must conduct the same criminal history check and registry searches if the HCSSA uses an **unlicensed volunteer** and the volunteer's duties do or would include face-to-face contact with a client.

In addition to the initial verification of employability, the Licensing Standards at [§97.247\(a\)\(5\)](#) and THSC [§250.003\(d\)](#) require a HCSSA to search the NAR and the EMR annually to determine whether an unlicensed employee or volunteer is listed as unemployable in either registry. The HCSSA should maintain a copy of the results of the annual search in the employee or volunteer's personnel record. The HCSSA is not required to perform NAR or EMR searches on an employee who has a professional license, such as a nurse.

In compliance with the Licensing Standards at [§97.289](#), a HCSSA that uses an independent contractor or "arranged services" to provide home health, hospice, personal assistance, or habilitation services must ensure that the contracted personnel have criminal history checks performed before they have face-to-face contact with a client. The Licensing Standards at [§97.855\(b\)](#) require that a hospice contract for inpatient care must include a provision that requires

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all contracted entities to conduct a criminal history check on contract staff who have direct client contact or access to client records. The contracted entity must verify that the criminal history reports do not contain convictions that bar employment under THSC §[250.006](#).

If a HCSSA contracts with another agency for an unlicensed person to provide services under arrangement, the HCSSA must ensure that either it or the contracting agency or organization performs employability searches of the EMR and NAR on the unlicensed staff.

Obtaining EMR and NAR Information

The Texas Department of Aging and Disability Services (DADS) authorizes a HCSSA to verify employability of unlicensed personnel using the DADS [Employee Misconduct Registry Search System website](#). The website consolidates reports from the EMR, NAR and of other systems. A HCSSA's use of the EMR Search System complies with the licensure requirement to perform a search of the NAR and the EMR on unlicensed applicants for employment, employees and volunteers. The website should be used for initial verification of employability and for annual employability checks.

If the DADS EMR website is unavailable, HCSSAs may contact DADS EMR and NAR Professional Credentialing Enforcement, Registry Branch at (512) 438-5495 for assistance.

Obtaining Criminal History Information

A HCSSA is authorized by THSC Chapter 250 and Texas Government Code (TGC) §[411.1387\(b-1\)](#) to obtain criminal history record information directly from the Texas Department of Public Safety (DPS). A HCSSA may use the [DPS Crime Records Service \(CRS\) Secure Website](#) to search the criminal history of an applicant for employment, an employee, a contractor or a volunteer.

THSC Chapter 250 also allows the option of using a private agency to obtain DPS criminal history information. A private agency may offer search possibilities that exceed the minimum requirement, such as obtaining out-of-state crime record information that is ordinarily not contained in DPS' databases. While these expanded searches are not required, a HCSSA may not employ an individual if the HCSSA becomes aware that an employee or an applicant has a conviction under the laws of another state or federal or military law that is "substantially similar" to a Texas Penal Code conviction listed in THSC §[250.006](#).

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

Convictions Barring Employment

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 from the date of conviction.

In the case of an offense that is not an automatic bar to employment listed in [§250.006](#), HCSSAs may choose not to hire an individual if they believe a particular conviction represents a contraindication to employment with the agency.

Criminal History Notification Requirements

Per THSC [§250.005](#)(a), if a HCSSA believes that a conviction may bar a person from employment or is a contraindication to employment, the HCSSA 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 HCSSA employer 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](#) and TGC [§411.085](#). The information is for the exclusive use of the requesting HCSSA, the private agency on behalf of the HCSSA, and the applicant or employee who is the subject of the records search. The records may not be released or otherwise disclosed to any person or entity except on court order, or with the written consent of the person being investigated. THSC [§250.008](#) makes it a Class A misdemeanor for the unauthorized release or disclosure of criminal history information.

DADS, as a regulatory agency, is entitled by THSC [§250.002](#)(a) and TGC [§411.1387](#) to obtain criminal history information from DPS. Under agreement with DADS, DPS will allow DADS surveyors, while on site at a HCSSA, to review the confidential criminal history check reports that a HCSSA retrieves from the DPS secure website.

If you need additional information or have specific questions, please contact:

Regulatory Services Policy, Rules, and Curriculum Development section
(512) 438-3161

EMR and NAR, Professional Credentialing Enforcement, Registry Branch
(512) 438-5495

Sincerely,

[signature on file]

Mary T. Henderson
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Regulatory Services

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