



Date: December 18, 2017

To: All Nursing Facilities (NFs)

Subject: Provider Letter No. 17-40 – Reminder: Criminal History, Nurse Aide Registry (NAR), and Employee Misconduct Registry (EMR) Requirements for Facility Job Applicants and Employees (Replaces Provider Letter 16-39)

The Texas Health and Human Services Commission (HHSC) is reminding nursing facilities of their responsibilities related to determining employability of nurse aides and other employees of a facility.

State law requires nursing facilities to conduct a criminal history record check of any applicant for employment or employee before the person has direct contact with a resident.¹ NFs are authorized to obtain this criminal history record information directly from the Texas Department of Public Safety ([DPS](#)). Alternatively, NFs may use a private agency to obtain DPS crime record information.²

NFs also must check the EMR and the NAR to verify employability before hiring anyone to work in the facility.³ In addition to the initial verification of employability, a facility must search the NAR and the EMR annually to determine whether an employee of the facility is designated in either registry as having committed abuse, neglect, or exploitation of an individual. The facility must maintain copies of the initial and annual search results for each facility employee.

HHSC maintains a list of questions and answers related to the employability requirements.⁴ If you need additional information or have specific questions, please contact:

Criminal History Record Checks
Policy, Rules, and Training Section
(512) 438-3161

¹ Texas Health and Safety Code [Chapter 250](#)

² Texas Health and Safety Code [§250.002](#)

³ Texas Health and Safety Code [§250.003](#)

⁴ See [Appendix 1](#)

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EMR and NAR

Professional Credentialing Enforcement, Registry Branch

(512) 438-5495

Sincerely,

[signature on file]

Mary T. Henderson

Associate Commissioner

Long-Term Care Regulatory

MTH/cg

Appendix 1

1. On which job applicants and staff personnel are providers required to perform criminal history checks?

NFs are required to check the criminal history record of **all** employees and applicants (to whom an offer of employment is made).

2. Which convictions prohibit 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 in a position involving direct contact with residents for a period of five years from the date of conviction, with the exception of burglary [Section 30.02 (burglary of a habitation or a building) of the Penal Code], which is a permanent bar to employment in nursing homes and assisted living facilities, as outlined in THSC §250.006(c).

In the case of offenses that are not automatic bars to employment, facilities are to consider whether those offenses represent a “contraindication to employment,” per §250.003(a) and (c).

3. Can an individual be employed in an “emergency situation” without a criminal history check?

THSC §250.003(b) allows a NF to hire a person pending the results of a criminal history check “on a temporary or interim basis...in an emergency requiring immediate employment.” In these instances, a criminal history check must be requested within 24 hours.

Given the availability of real-time online criminal history checks, providers should be able, in most cases, to get the results of a criminal history check before the decision to hire is made.

4. Should a NF notify applicants/employees of criminal history checks?

THSC §250.005(a) requires that if a facility believes that a conviction may bar a person from employment or may be a contraindication to employment, the facility must notify the applicant or employee. THSC §250.005(b) requires that DPS give a person notified under subsection (a) the opportunity to be heard concerning the accuracy of the criminal history

record information and to notify the facility or individual employer if inaccurate information is discovered.

5. How can a provider obtain crime record information from DPS?

DPS maintains three websites that provide criminal history information. The information maintained on these sites is part of DPS' Computerized Criminal History System, the statewide repository of criminal history data reported to DPS by local criminal justice agencies in Texas. DPS information generally does not include records of offenses in other states, nor does it include federal offenses or offenses under military law. [Access the three sites online.](#)

The public Criminal History Conviction Database site contains public record information (convictions and deferred adjudications only) and is available to the general public. Use of this site requires completion of an online application, the establishment of a user account, and the purchase of credits to pay for searches.

The Sex Offender Registry website includes public sex offender registration information submitted to DPS by local law enforcement agencies. A search of the Sex Offender Registry does not require a user account and there is no fee.

The Crime Records Service Secure Site is restricted. Access is available only to legislatively authorized government entities, criminal justice agencies, and legislatively authorized private entities. Use of this site requires completion of an online application, the creation of a user account, and the purchase of credits to pay for searches. The NFs specified in THSC §250.001(3) are authorized to access this site to obtain criminal history record information on the individuals described in THSC §250.002(a-1)(1), (2), and (4). This site provides the most complete criminal history information and the fee for searches is approximately two-thirds less than the fee at the public site. Some providers regulated by HHSC use this site to do their criminal history searches when the searches are authorized under THSC Chapter 250.

The criminal record reports on individuals run on the Crime Records Service Secure Site typically give identification information (including alias names), arrest details (including dates and arresting agency), information on charges (including the arrest offense, statute citation reference, level of offense, and the arrest disposition), and court record information (including final pleading, disposition and disposition date, and sentencing information, if convicted). On occasion, the data on a report may appear incomplete or

missing; in most cases, the reason for this is that the local law enforcement agency or court simply has not yet reported the information to DPS. DPS staff, upon request, will contact local authorities to obtain the unreported information.

The key information on criminal record reports that should be reviewed by providers is the statute citation reference (to see if the offense matches one of the offenses listed in THSC §250.006) and the disposition data (to determine if the individual was convicted of a listed offense). NFs should also be mindful of the provision in THSC §250.003(a) and (c) that advises against the hiring of individuals who have convictions (other than those which automatically bar) that would be a "contraindication to employment with the consumers the facility serves."

If a criminal record report appears to be incomplete (e.g., there is no disposition data), or if there is a question about any of the information (numbers, abbreviations, acronyms, etc.) on the report, providers can contact DPS staff for clarification or to request that DPS obtain the disposition data. The main phone number for the DPS Criminal History Inquiry Unit is (512) 424-2474. The number for the Error Resolution Department (the department that obtains and verifies information such as disposition data) is (512) 424-7256. Several crime records technicians are usually available by phone. NFs with questions about criminal record reports should not hesitate to contact DPS if they need clarification or additional information.

6. Is crime record information obtained from DPS confidential?

All criminal record information obtained from the DPS Crime Records Service Secure Site is privileged information in accordance with THSC §250.007 and TGC §411.085. The information is for the exclusive use of the requesting NF or the private agency on behalf of the requesting NF 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 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 from the secure website without the authorization described. However, HHSC, as a regulatory agency is entitled by THSC §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 site, may review the confidential criminal history reports that providers have retrieved 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.

7. In THSC Chapter 250, there are references in sections 250.006(a)(14) and 250.006(c)(2) to convictions “under the laws of another state, federal law, or the Uniform Code of Military Justice...” Are NFs required to conduct criminal history searches for convictions under these jurisdictions?

NFs may, but are not required to, conduct criminal history record searches for convictions in other states and convictions under federal and military law. However, if a NF 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 one of the Texas Penal Code convictions listed in THSC §250.006, the NF may not employ the individual.

8. Individuals sometimes receive “deferred adjudication” for criminal offenses. Is “deferred adjudication” considered to be a conviction?

“Deferred adjudication community supervision” is provided under Article 42A.101(a) of the Texas Code of Criminal Procedure. In a deferred adjudication with community supervision, the judge may, after receiving the defendant’s plea of guilty or nolo contendere (no contest), hearing the evidence, and finding that it substantiates the defendant’s guilt, defer further proceedings without entering an adjudication of guilt and place the defendant on community supervision. On successful completion of the period of community supervision, the court dismisses the proceedings and discharges the defendant. Except as provided by Penal Code §12.42(g) (Repeat and Habitual Offender), a dismissal and discharge may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for the conviction of an offense.

9. Criminal history record reports sometimes show offenses that were committed by an applicant or employee when they were a juvenile. How should juvenile offenses be regarded in determining suitability for employment under THSC Chapter 250?

There are significant differences in the criminal justice procedures used to process juvenile and adult offenders. Juveniles may be arrested and charged

with the Penal Code offenses listed in §250.006. Juveniles may be prosecuted for crimes as adults. If a juvenile is prosecuted as an adult, the same rules apply to that conviction as to any other adult conviction. However, juveniles may instead go through the juvenile justice system under the Juvenile Justice Code (Title 3 of the Family Code). Juvenile courts conduct adjudication hearings to determine whether a child did, in fact, engage in delinquent conduct. **Under Family Code §51.13(a), an order of adjudication or disposition in a juvenile proceeding is not considered a criminal conviction.** An order of adjudication or disposition under the Juvenile Justice Code does not impose any civil disability ordinarily resulting from a conviction, with an exception for the civil commitment of sexually violent predators.

10. How should NFs check the EMR and NAR?

HHSC directs providers to verify employability of nurse aides using the Employability Status Check Search website. This website consolidates checks of the EMR, NAR, and other systems. Therefore, verifying a nurse aide's status through the Employability Status Check Search system is the equivalent of using the NAR and is considered in compliance with all applicable federal regulations and state licensure laws.

<https://emr.dads.state.tx.us/DadsEMRWeb/> should be used for initial verification of employability and for annual employability checks.

Providers may also find it useful to search other information maintained by [HHSC Regulatory Services Credentialing Branch online](#).