



## Long-Term Care Regulatory Provider Letter

<b>Number:</b> PL 19-01 (ALL) (Replaces PL 09-05 & PL 13-02)
<b>Title:</b> Acceptable Documentation for a Criminal History Check
<b>Provider Types:</b> Assisted Living Facility (ALF), Day Activity and Health Services (DAHS) Facility, Home and Community Support Services Agency (HCSSA), Intermediate Care Facility for Individuals with an Intellectual Disability or Related Condition (ICF/IID), Nursing Facility (NF), Prescribed Pediatric Extended Care Center (PPECC)
<b>Date Issued:</b> January 4, 2019

### 1.0 Subject and Purpose

This provider letter describes acceptable documentation that a provider may use to demonstrate that the provider has conducted a criminal history check of an employment applicant or an employee and, after reviewing the results, has determined that there is no bar or contraindication to employment for the applicant or employee.

### 2.0 Policy Details & Provider Responsibilities

#### 2.1 Verification of Employment Requirements & Acceptable Documentation

A provider is required to conduct a criminal history check for certain applicants for employment and to determine if the applicant has been convicted of an offense that bars the person from employment or that is a contraindication to employment with the provider.<sup>1</sup> A provider, or private agency on behalf of a provider, is authorized to obtain from the Department of Public Safety (DPS) criminal history record information (CHRI)<sup>2</sup> that relates to an applicant for employment or an employee.<sup>3</sup> This CHRI is

<sup>1</sup> See Health & Safety Code (H&SC) §250.003.

<sup>2</sup> With certain exclusions, CHRI is "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions." Government Code §411.082(2). In addition, Government Code §411.081 excludes some criminal history record information from Government Code, Subchapter F, relating to CHRI.

<sup>3</sup> H&SC [§250.002\(a-1\)](#); Government Code [§411.1387\(b-1\)](#).

available to the provider or private agency by using the Computerized Criminal History (CCH) search on DPS's Crime Records Service Secure Site. To demonstrate that it has conducted a criminal history check, reviewed the CHRI, and made the required determination, a provider may maintain a log that contains the information included in Attachment 1. If the log is complete and accurate, an HHSC surveyor accepts it as evidence that a provider has taken the required actions. An HHSC surveyor considers the adequacy of alternative documentation on a case-by-case basis.

## **2.2 Unacceptable Documentation**

An HHSC surveyor may find that a criminal history log in the form of Attachment 1 is not acceptable documentation if it:

- is not fully and accurately completed; or
- does not include information about one or more employees of the provider.

If an HHSC surveyor considers a log to be unacceptable, the surveyor may consider other documentation to evaluate a provider's compliance. If a provider does not provide acceptable documentation to show compliance with applicable requirements, a surveyor will cite the provider.

## **2.3 Surveyor Access to Documentation**

An HHSC surveyor may copy a provider's log or a record of conviction obtained from a public source. A surveyor may also verify information contained on a provider's log through HHSC's own authorized access to DPS CHRI.<sup>4</sup> However, CHRI obtained from the DPS Secure Site is regulated by state statute and cannot be copied.

## **3.0 Background/History**

HHSC, as a regulatory agency, may access confidential CHRI to verify a provider's compliance with requirements related to an applicant for employment or employee.<sup>5</sup>

A provider using the DPS Secure Site must comply with all restrictions applicable to its access, use, dissemination, storage, and retention of CHRI,<sup>6</sup>

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<sup>4</sup> H&SC [§250.002\(a\)](#); Government Code [§411.1387\(b\)](#).

<sup>5</sup> See footnote 4.

<sup>6</sup> See H&SC [§250.007 and Government Code §411.083-§411.087](#). This includes restrictions under federal law when a provider obtains authorized access to CHRI maintained by the Federal Bureau of Investigation.

including any user agreement with DPS and DPS's security policy for such information (see DPS Access and Dissemination Policy).

#### **4.0 Forms/Appendices**

Attachment 1 — Log of Criminal History Checks

#### **5.0 Contact Information**

If you have any questions about this letter, please contact the Policy, Rules and Training Section of Long-term Care Regulatory at (512) 438-3161.

*[signature on file]*

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