

CRIMINAL HISTORY/EMR/NAR INFORMATION

INTRODUCTION

Chapter 250 of the Health and Safety Code, Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities, was enacted in 1993. From 1995 through 2003, the statute was amended several times. The information in this memorandum is provided as an update on issues and common questions related to the requirement to perform criminal history checks and related checks of the NAR and EMR on job applicants and employees. Chapter 250 is available online at: <http://tlo2.tlc.state.tx.us/statutes/statutes.html>.

Chapter 250 requires certain long-term care facilities and home and community support services agencies (HCSSAs) to verify the employability of individuals by conducting a criminal history record check. Facilities and providers are authorized by Chapter 250 (through an amendment in 2001) to obtain criminal history record information directly from the Texas Department of Public Safety (DPS). Chapter 250 also allows the option of using a private agency to obtain DPS crime record information. A search of the DPS crime record database satisfies the minimum requirement under Chapter 250 for a criminal history check on job applicants and employees. 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.

All long-term care facilities, home health agencies, and hospices (HCSSAs) licensed by the Texas Department of Aging and Disability Services (DADS) are also required to check the EMR and the NAR to determine the employability of job applicants (employees, contractors, volunteers). The EMR was enacted into law in 1999 in Chapter 253 of the Health and Safety Code, with additional references in Chapter 48 of the Human Resources Code.

The following questions and answers were taken from the Texas Department of Aging and Disability Services' letter dated February 6, 2007 with 09/01/09 change to # 4 and 09/01/10 change to # 12

1. What types of providers or facilities are covered under Chapter 250?

Refer to list of provider and facility types outlined in §250.001(3). The list includes those types that are required to check the NAR and the EMR.

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

Providers are required to check the criminal history record of all employees and applicants (to whom an offer of employment is made) with the following exceptions and conditions:

- Except for applicants at or employees of nursing homes and assisted living facilities, persons licensed under another law of this state are exempt from the requirements of Chapter 250, as outlined in §250.003(a).
- HCSSAs are required to perform criminal history checks on applicants and employees whose duties would or do involve direct contact with consumers, as defined in §250.001(2), unless the applicant or employee is exempt from a criminal history check as outlined in §250.003(a).
- HCSSAs, in accordance with 40 TAC §97.248(b)(1), must also perform criminal history checks on volunteers. An agency that performs criminal history checks through the Texas Department of Public Safety must use the DPS public Criminal History Conviction Database website (and not the DPS Crime Records Service (CRS) Secure Site) to perform criminal history checks on volunteers. In accordance with §250.001 of the Health and Safety Code and §§411.083, 411.84, and 411.1387 of the Government Code, agencies are authorized to access the DPS CRS Secure Site to perform criminal history checks only on job applicants and employees. (See answer to “How can a provider obtain crime record information from DPS?”)
- HCSSAs that use independent contractors or “arranged services” (per 40 TAC §97.289) to provide care must ensure that these personnel have appropriate criminal record history checks and that they meet the agency’s staffing policies as required in 40 TAC §97.245.

3. Which convictions prohibit employment?

The convictions that prohibit employment are outlined in §250.006. There are 18 separate Texas Penal Code offenses. The 13 convictions listed in §250.006(a) constitute a permanent bar to employment. The five convictions listed in §250.006(b) bar employment 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 §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).

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

Section 250.003(a-1) effective 09/01/2009 prohibits employees of HCSSA agency from having face-to-face contact with a patient/client until the agency obtains the employee’s criminal history information and verifies his/her employability.

5. Should a provider notify applicants/employees of criminal history checks?

Providers should inform each applicant that a criminal history check is required before an offer of employment can be made. Providers should inform the applicant or employee of the results of the criminal history screening.

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

DPS (www.txdps.state.tx.us) maintains three websites that provide criminal history information. The information maintained on these sites is part of DPS’ Computerized Criminal History System (CCH), 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 to the three sites is at: https://records.txdps.state.tx.us/DPS_WEB/APP_PORTAL/index.aspx.

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 CRS 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 facilities and providers specified in §250.001(3) are authorized to access this site to obtain criminal history record information on the individuals described in §250.002(a)(1)(2)(3). 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. Most providers regulated by DADS use this site to do their criminal history searches when the searches are authorized under Chapter 250.

The criminal record reports on individuals run on the CRS Secure Site will 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 §250.006) and the disposition data (to determine if the individual was convicted of the offense). Providers should also be mindful of the provision in §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 Unit (the unit that obtains and verifies information such as disposition data) is 512-424-7256. Several crime records technicians are usually available by phone. Providers with questions about criminal record reports should not hesitate to contact DPS if they need clarification or additional information.

7. Is crime record information obtained from DPS confidential?

All criminal record information obtained from DPS is privileged information in accordance with §250.007 of the Health and Safety Code and §411.085 of the Texas Government Code. The information is for the exclusive use of the requesting facility or the private agency on behalf of the requesting facility 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 Chapter 250 without the authorization described.

8. How is standing as a certified nurse aide affected by criminal history?

The requirements of Chapter 250 apply only to nurse aides' employment in certain licensed facilities serving the aged or disabled; they do not affect nurse aide certification or Nurse Aide Registry listing. This means that after successful completion of training, a nurse aide may be certified and placed on the NAR even in cases where the individual may have a conviction that precludes employment in facilities covered by Chapter 250. As a practical matter, since Chapter 250 prohibits employment "in direct contact with a consumer or client," it would be difficult for nurse aide trainees to be allowed to complete the clinical portion of their training if they have a disqualifying conviction. It is important for prospective nurse aide training students and new employees to understand this before committing themselves to nurse aide training.

9. In 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 providers required to conduct criminal history searches for convictions under these jurisdictions?

Providers 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 provider 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 §250.006, the provider may not employ the individual.

10. Individuals sometimes receive "deferred adjudication" for criminal offenses. Is "deferred adjudication" considered to be a conviction?

"Deferred adjudication community supervision" is provided under Article 42.12 [781D] Section 5 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 may dismiss the proceedings and discharge a defendant. Except for 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.

11. 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 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 also not be prosecuted as adults but instead go through the juvenile justice system under the Juvenile 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, with an exception for individuals who reach “habitual offender status.”** 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.

12. How should the EMR and NAR be checked?

All provider types are minimally required to check both the EMR and NAR by searching the Employability Status Check at:

<https://emr.dads.state.tx.us/DadsEMRWeb/>

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

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