A Study on Feasibility of Enhanced Criminal Background Check Standards

As Required by
Senate Bill 1, 85th Legislature,
Regular Session, 2017, Rider 219

Health and Human Services Commission

March 2018
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Executive Summary

Criminal background checks range from standard, name-based checks to enhanced, fingerprint-based checks, which are considered a more precise method for returning accurate records. Senate Bill 1, 85th Legislature, Regular Session, 2017, Rider 219 requires the Health and Human Services Commission (HHSC) to conduct a study on the feasibility and necessity of developing enhanced criminal background check standards for individuals who provide services to or otherwise work with children and the elderly as an employee of an entity that contracts with HHSC. HHSC is required to submit a report, by March 1, 2018, on the findings of the study together with the recommendations to the Legislative Budget Board, the Governor, members of the House Appropriations Committee, Senate Finance Committee, and the permanent standing committees in the House of Representatives and the Senate with jurisdiction over health and human services.
1. Introduction

Rider 50 requires HHSC to submit a one-time report to the Legislative Budget Board, the Governor, members of the House Appropriations Committee, Senate Finance Committee, and the permanent standing committees in the House of Representatives and the Senate with jurisdiction over health and human services. HHSC is submitting the Rider 219 preliminary assessment on the feasibility and necessity of developing enhanced criminal background check standards for individuals who provide services to or otherwise work with children and the elderly as an employee of an entity that contracts with HHSC.
2. Background

Health and Human Services (HHS) agencies require vendors who provide services to or otherwise work with children and the elderly to comply with certain criminal background check requirements. Prior to awarding a contract, HHS Procurement and Contracting Services works closely with each program area in developing contracts to ensure all required checks are included in each contract awarded. The information gathered in this review primarily focused on services provided to the elderly, since the majority of services provided to children are under the oversight of the Department of Family and Protective Services, which is no longer considered an HHS system agency.

For the purposes of this initial assessment, relevant contract language and respective criminal background check requirements were examined for the following agency program areas:

- **State Hospitals.** Currently, contracts that support the work of the agency’s state hospitals require contractors and sub-contractors to submit to certain statewide and nationwide criminal background checks and clearance in statewide databases, including the Employee Misconduct Registry (EMR), the Client Abuse and Neglect Reporting System (CANRS), and the Texas Nurse Aide Registry (NAR). In addition, sexual exploitation reference checks are conducted, when applicable.

  State hospital contracts also require contractors and sub-contractors with active direct patient contact (e.g., interaction with a patient that is more than a brief, informal greeting or casual interaction) to self-report any of the following reportable events, with the exception of routine traffic tickets that do not involve an arrest, within five (5) calendar days of the event: arrests, indictments, adjudications of guilt, pleas of guilty or nolo contendere, assessments of probation, pretrial diversion or community supervision/deferred adjudications for any criminal offenses, or dismissals, acquittals, or similar final outcomes.
that do not involve pleas of guilty or nolo contendere. If any of these situations apply, the contractor or sub-contractor must self-report by completing a new *Texas Department of State Health Services Criminal History Disclosure-Part One* form. A copy is retained by the state hospital.

Prior to performing any services under a contract at any state hospital, potential direct patient contact contractors and sub-contractors must be screened for issues related to statewide (which includes name-based checks) and nationwide (which includes fingerprint checks) criminal background checks and for possible listings in statewide databases, as described in the state hospital operating procedure manual, to ensure appropriateness for provision of services with consumers in the state hospital system. All checks required for contractors and sub-contractors must be completed prior to the contractor or sub-contractor providing services at the state hospital.

- **State Supported Living Centers (SSLC).** Contractors who provide services to individuals served by a state supported living center must disclose the identity of any staff person who is in direct contact with individuals served by an SSLC and who has been convicted of, received a probated sentence for, arrested for, for whom there exists an arrest warrant, or for whom there exists a wanted persons notice for a crime listed as a bar to employment at the SSLCs. The disclosures must cover convictions, probated sentences, arrests, arrest warrants, and wanted person notices in the United States, the Professional Personnel’s country of origin, and any other country in which the Professional Personnel has spent a significant amount of time. If the Professional Personnel are temporary, nonimmigrant workers, Contractor must ensure that criminal background and fingerprint checks are conducted for their country of origin and for every country in which the Professional Personnel have resided. Contractor must ensure that these checks are conducted prior to the Professional Personnel’s first day of work onsite at an SSLC.
• **Community Services.** Contracts in these program areas include requirements related to contractor compliance with criminal background checks, as required by Title 40, Texas Administrative Code, Part 1, Chapter 49 and Texas Health and Safety Code, Title 4, Chapters 250 and 253.

• **Nursing Facility.** Contracts in these program areas require providers to comply with criminal background check standards, as required by Texas Health and Safety Code, Title 4, Chapters 250 and 253.

• **Intermediate Care Facilities for Individuals with an Intellectual Disability Program.** Contracts in these program areas require providers to comply with criminal background check standards, as required by Texas Health and Safety Code, Title 4, Chapters 250 and 253, and 42 CFR 455.434 - Criminal background checks.

**Preliminary Assessment**

Based on a preliminary analysis of the criminal background check requirements currently in place in relevant HHS contracts, a review of best practices identified through a literature search, and analysis of statutory language, the initial assessment is as follows:

• Existing contract requirements appear to adequately address criminal background check requirements.

• Although the contract language appears to adequately address contractor obligations, a more detailed study is needed to investigate not only the requirements in contract language but also contractor compliance with enhanced criminal background check standards.
3. Conclusion

In order to address the findings of the initial assessment, HHS recommends a more thorough analysis be conducted by a third-party vendor with specific skill and expertise in conducting a feasibility study to identify:

- Potential benefits to developing enhanced criminal background check standards.
- Total cost of implementing recommended changes, if applicable.
- Whether standardized language in existing contracts sufficiently address criminal background check requirements.
- The feasibility of standardizing background check requirements across program areas.
- The study may also focus on the feasibility of enhancing criminal background check requirements for private providers licensed by the state.
## List of Acronyms

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<thead>
<tr>
<th>Acronym</th>
<th>Full Name</th>
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<tbody>
<tr>
<td>HHS</td>
<td>Health and Human Services</td>
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<tr>
<td>EMR</td>
<td>Employee Misconduct Registry</td>
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<tr>
<td>CANRS</td>
<td>Client Abuse and Neglect Reporting System</td>
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<tr>
<td>NAR</td>
<td>Nurse Aide Registry</td>
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<td>SSLC</td>
<td>State Supported Living Centers</td>
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