



**Review of Occupational Licensing
Requirements and an Applicant's
Criminal History**

As Required by

**House Bill 91,
85th Legislative Session**

**Health and Human Services
Commission**

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Executive Summary

The Regulatory Services Division at the Texas Health and Human Services Commission (HHSC) is required to review occupational licensing eligibility requirements related to criminal history per the 2018-2019 General Appropriations Act, House Bill 91, 85th Legislature, Regular Session, 2017.

HHSC thoroughly reviewed current processes and requirements for criminal background checks for the professional and occupational licenses and certifications it oversees. Based on that review, the agency's regulatory division recommends the following:

- Modify three of five professional license types in the Health Care Quality department, which licenses professionals providing behavioral health services.
- Modify three of three professional certifications in the Long-term Care Regulatory department, which regulates professionals serving individuals in long-term settings such as nursing facilities and assisted living facilities.
- Retain two of two requirements for professional certifications in the Child Care Licensing department, which regulates day care and residential child care operations.

All of these recommendations reflect the need to strengthen or retain important protections for the health and safety of the individuals served in regulated settings in Texas, whether they are receiving behavioral health services, long-term care, or child care. These recommended changes also will enhance consistency and efficiency within the Regulatory Services division, in keeping with the goals of the transformation of the health and human services system.

Background

In September 2017, health and human services regulatory functions transitioned from the Department of Aging and Disability Services (DADS), the Department of Family and Protective Services (DFPS), and the Department of State Health Services (DSHS) to a single division at the Health and Human Services Commission (HHSC). Three of the five programs that transitioned oversee the following professional and occupational licenses and certifications:

Child Care Licensing

- Child Care Administrators
- Child Placing Administrators

Health Care Quality

- Professional Counselors
- Marriage and Family Therapists
- Social Workers
- Chemical Dependency Counselors
- Sex Offender Treatment Providers

Long-term Care

- Nursing Facility Administrators
- Medication Aides
- Nurse Aides

Child Care Licensing

Overview

Child Care Licensing (CCL) regulates child care operations and Child Placing Agencies (CPAs) to protect the health, safety, and well-being of children in out-of-home care. CCL issues permits, inspects operations to evaluate compliance with minimum standards, investigates complaints of non-compliance, and takes enforcement actions as necessary. Residential CCL regulates CPAs and residential operations that provide 24-hour care for children 17 or younger whose parents are unable to care for them.

Child-care Administrators: Fingerprint-based check

690 active licensed administrators

112 inactive licensed administrators

A child-care administrator supervises and controls a General Residential Operation (GRO), including a residential treatment center. Administrators have daily supervision and on-site administrative responsibility of the overall operation, including its programs and personnel, regardless of whether the person has an ownership interest in the operation or shares duties with anyone.

Recommendation - Retain

Given that Child Care Administrators are in charge of day-to-day operations for GROs, the FBI fingerprint-based criminal history check provides an important safeguard for the health and safety of children. These fingerprint-based checks include a so-called "rap-back" service, which automatically notifies CCL of any new criminal activity, such as an arrest, for any incident that occurs nationwide.

CCL's current process also involves an annual review of criminal history that would prohibit a person from receiving or maintaining a child-care administrator license.

CPA Administrators: Fingerprint-based check

549 active licensed administrators

48 inactive licensed administrators

These administrators supervise and control a licensed CPA. The administrator has daily supervision and administrative responsibility for the CPA and each of its offices, including programs and personnel, regardless of whether the administrator has an ownership interest in the operation or shares duties with anyone else.

Recommendation - Retain

Given that administrators are in charge of day-to-day operations for CPAs, the current FBI fingerprint-based criminal history check provides an important safeguard for the health and safety of children. CCL's current process also involves an annual review of criminal history that would prohibit a person from receiving or maintaining a CPA administrator license.

Overview

The Professional Licensing and Certification Unit issues 60,000 initial and renewal licenses biennially on behalf of three independent behavioral health boards, along with one dependent board and one counseling program. The three independent boards are:

- Texas State Board of Examiners of Marriage and Family Therapists
- Texas State Board of Examiners of Professional Counselors
- Texas State Board of Social Worker Examiners

The dependent board is the Council on Sex Offender Treatment, and the licensing program without board direction is the Licensed Chemical Dependency Counselor program. In general, mental health and social work professionals must hold a license to comply with state law and to provide and bill for services. Licensing involves review of application forms, fee payments, transcripts, experience, exam scores, criminal history, and continuing education. This unit is responsible for protecting consumer health and safety and ensuring compliance with state law and rules.

Professional Counselors: Name-based check

25,405 licensees

A licensed professional counselor is a mental health professional who provides therapeutic services to individuals and groups that involve the application of mental health, psychotherapeutic, and human development principles to facilitate adjustment and development throughout life. Services may include individual counseling, group counseling, marriage counseling, family counseling, chemical dependency counseling, rehabilitation counseling, education counseling, career development counseling, sexual issues counseling, psychotherapy, play therapy, diagnostic assessment, hypnotherapy, expressive therapies, biofeedback, and related services.

Recommendation - Modify

The Texas Sunset Advisory Commission and HHSC recommend switching from name-based checks to national FBI fingerprint-based checks with rap-back service for professional counselors.

Marriage and Family Therapists: Name-based check

3,531 licensees

A licensed marriage and family therapist is a mental health professional who provides therapeutic services to individuals and groups that involve the application of family systems theories and techniques.

Recommendation - Modify

The Texas Sunset Advisory Commission recommends switching from name-based checks to national FBI fingerprint-based checks with rap-back service for marriage and family therapists.

Social Workers: Name-based check

24,197 Licensees

A licensed social worker is a mental health professional who provides services to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, or communities.

Recommendation - Modify

The Texas Sunset Advisory Commission recommends switching from name-based checks to national FBI fingerprint-based checks with rap-back service for social workers.

Chemical Dependency Counselors: Fingerprint-based check

10,421 Licensees

A licensed chemical dependency counselor is a mental health professional who assists individuals or groups to develop an understanding of chemical dependency problems, define goals, and plan actions reflecting the individual's or group's interest, abilities, and needs as affected by chemical dependency problems.

Recommendation - Retain

The Texas Sunset Advisory Commission has recommended moving our other license types to fingerprint-based searches, so retaining that functionality for LCDC and CSOT is consistent with that recommendation. Fingerprint searches allow for more accurate information, information about criminal history in other states, and the "rap-back" feature, which alerts the agency when a licensee's record is updated.

Sex Offender Treatment Providers: Fingerprint-based check

592 Licensees

A licensed sex offender treatment provider is a mental health professional who provides services for the treatment of sex offenders. A sex offender is a person who has been convicted or adjudicated of a sex crime or a sexually motivated offense, or has received deferred adjudication for a sex crime or a sexually motivated offense.

Recommendation - Retain

The Texas Sunset Advisory Commission has recommended moving our other license types to fingerprint-based searches, so retaining that functionality for LCDC and CSOT is consistent with that recommendation. Fingerprint searches allow for more accurate information, information about criminal history in other states, and the "rap-back" feature, which alerts the agency when a licensee's record is updated.

Long-term Care Regulatory

Overview

The Nursing Facility Administrator unit licenses, certifies, or permits Nursing Facility Administrators (NFAs), Certified Nurse Aides (CNAs), and Medication Aides (MAs), and it also administers the Nurse Aide Training and Competency Evaluation Program (NATCEP).

Nursing Facility Administrators: State fingerprint-based check

2,176 Licensees

An NFA oversees an institution or facility licensed as a nursing facility under the Texas Health and Safety Code, Chapter 242, without regard to whether the person has an ownership interest in the facility or whether the functions and duties are shared with any other person.

Recommendation - Modify

Currently, HHSC requires fingerprinting of NFAs that includes a state rap-back service, which automatically notifies HHSC of any new criminal activity, such as an arrest, but only for incidents that occur in Texas. HHSC recommends changing this to a national FBI rap-back service, which would alert HHSC to a criminal incident occurring anywhere in the United States.

Medication Aide: Name-based check

9,885 Licensees

An MA is permitted by HHSC to administer medications to residents in:

- Nursing facilities
- Intermediate care facilities for individuals with an intellectual disability or related conditions (ICF/IID)
- Correctional institutions
- Assisted living facilities

Recommendation - Modify

Initial criminal background checks are currently completed by the training program, or in some instances an MA signs an attestation saying they have not committed criminal offenses that would bar them from employment as an MA. Upon renewal of their permits, aides also sign this attestation regarding their criminal history.

This process does not allow for review of all background checks by HHSC staff and does not include rap-back notification of any new criminal offenses. HHSC recommends changing this to a national FBI rap-back service. HHSC will be submitting an exceptional item in its 2019 Legislative Appropriations Request to implement this process.

Nurse Aides: Name-based check

115,267 Licensees

A nurse aide is an individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse and who has successfully completed a NATCEP or has been determined competent by waiver or reciprocity from another state. This term does not include an individual who is a licensed health professional or a registered dietitian or who volunteers services without monetary compensation.

Recommendation - Modify

The current process for initial background checks is completed by the NATCEP, or in some instances sent to HHSC staff for review. Upon renewal, the aide or the employer signs a statement attesting that the aide does not have a criminal offense that would bar them from employment as a nurse aide.

The current process does not allow for an HHSC review of all criminal background and does not include rap-back notification of any new offenses. HHSC therefore recommends modifying this process to include national, finger-print based FBI background check, which includes a rap-back service.

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