



COMMISSIONER
Chris Traylor

February 28, 2011

To: All Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions (ICFs/MR)

Subject: **Provider Letter 11-07** – Annual Checks of the Employee Misconduct Registry (EMR) and Nurse Aide Registry (NAR) (**Replaces Provider Letter 10-38**)

This letter provides guidance for conducting annual EMR and NAR checks in ICFs/MR. Effective immediately, these guidelines supersede those set forth in Provider Letter 10-38 dated September 1, 2010, for licensed ICFs/MR.

In response to Senate Bill 806, 81st Legislature, Regular Session, 2009, the Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopted rule amendments to Texas Administrative Code (TAC), Title 40, Chapter 93, Employee Misconduct Registry. These rules require all ICFs/MR to conduct annual EMR and NAR checks. These checks can be done via the DADS website at <http://www.dads.state.tx.us/providers/employability/eseach.cfm>.

Department of Aging and Disability Services (DADS) Rules that Apply to both Licensed and Non-licensed ICFs/MR

40 TAC Chapter 93, §[93.2](#)(4), states that the term “agency” includes:

- (C) *a facility for persons with mental retardation or related conditions licensed under Texas Health and Safety Code, Chapter 252;*
- (D) *a state supported living center;*
- (E) *a local mental retardation or mental health authority designated under Texas Health and Safety Code, §533.035;*
- (F) *a community mental health and mental retardation center as defined in Texas Health and Safety Code, §531.002; and*
- (H) *the intermediate care facility for persons with mental retardation component of the Rio Grande State Center.*

40 TAC §[93.3](#), states:

- (a) Before a facility or agency hires an employee, the facility or agency must search the EMR and NAR to determine if the person applying for employment is listed as unemployable on either registry.
- (b) A facility or agency must not hire or continue to employ a person listed in the EMR or NAR as unemployable.
- (c) A facility or agency must provide information about the EMR to an employee within five working days after hiring the employee. The information must:
 - (1) be in writing;
 - (2) state that a person listed in the EMR is not employable by a facility or agency; and
 - (3) include a reference to this chapter and Chapter 253, Texas Health and Safety Code, Employee Misconduct Registry.

- (d) A facility or agency must search the EMR and NAR annually to determine if an employee is listed on either registry as unemployable.
- (e) A facility or agency must maintain a copy of the results of the searches required by subsections (a) and (d) of this section in the person's personnel file.

Therefore, all ICFs/MR must conduct annual EMR and NAR checks for all unlicensed employees, in addition to an initial search (before hiring an employee) and provide information regarding the EMR to employees.

Title 42 of the Code of Federal Regulations §483.420(d)(1) (W149) states: "The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of the client." The facility, through implementation of its policies, has set up a structure that protects individuals from mistreatment, neglect and abuse. Surveyors may cite an ICF/MR for employing or the continuing to employ a person listed in the EMR or NAR as unemployable.

DADS Rules that Apply to Licensed ICFs/MR only

40 TAC §[90.321](#)(c)-(e), states:

- (c) *In addition to the initial search of the EMR and NAR, a facility must conduct a search of the EMR and NAR to determine if the employee is designated in either registry as unemployable, as follows:*
 - (1) *for an employee most recently hired before September 1, 2009, by August 31, 2011 and at least every twelve months thereafter; and*
 - (2) *for an employee most recently hired on or after September 1, 2009, at least every twelve months.*
- (d) *A facility must keep a copy of the results of the initial and annual searches of the EMR and NAR in the employee's personnel file and make it available to DADS upon request.*
- (e) *A facility is prohibited from hiring or continuing to employ a person who is listed in the EMR or NAR as unemployable.*

If you have questions regarding the content of this letter, please contact an ICF/MR policy specialist in the Policy, Rules and Curriculum Development unit at (512) 438-3161.

Sincerely,

[signature on file]

Veronda L. Durden
Assistant Commissioner
Regulatory Services

VLD:dIm