



Long-Term Care Regulatory Provider Letter

Number: PL 2021-15

Title: Fingerprint-based Criminal History Checks for Current and Prospective Medication Aides

Provider Types: 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 Conditions (ICF/IID), Nursing Facility (NF), and Prescribed Pediatric Extended Care Center (PPECC)

Training Program: Medication Aide Training Program

Date Issued: April 15, 2021

1.0 Subject and Purpose

The purpose of this letter is to notify providers that beginning August 1, 2021, HHSC will require fingerprint-based criminal history checks on:

- medication aides who apply to renew their permits; and
- applicants for the medication aide examination in accordance with [26 TAC §557.111](#).

2.0 Policy Details & Provider Responsibilities

2.1 Description of Responsibilities

Under “Resources” in this provider letter are several attachments describing the responsibilities of training programs, applicants who are applying to take an examination, and medication aides who apply to renew their permits.

2.2 Reciprocity

An applicant to become a medication aide in Texas through reciprocity will be required to submit to a fingerprint-based criminal history check.

2.3 Possible Adverse Actions Against a Medication Aide or Medication Aide Applicant

If a medication aide or medication aide applicant has been convicted of a criminal offense listed in Attachment #4 of this provider letter, HHSC may take one of the following adverse actions:

- revoke or suspend a medication aide's permit;
- deny a medication aide's application to renew a permit; or
- deny a medication aide applicant the opportunity to take a medication aide examination.

2.4 HHSC's Response to a Criminal Conviction

If an aide/applicant has a conviction for an offense listed in Attachment #4 of this provider letter, HHSC provides written notice to the applicant stating that:

- HHSC intends to take adverse action and the reason for the intended adverse action; and
- the aide/applicant has at least 30 days to submit to HHSC any relevant information to be considered by HHSC.

If an aide/applicant has a conviction for an offense listed under [Health and Safety Code, §250.006](#) in Attachment #4 of this provider letter that is not also a conviction under the [Occupations Code, Chapter 53](#), HHSC considers the following factors in determining whether to take adverse action:

- the extent and nature of the person's past criminal activity;
- the age of the person when the crime was committed;
- the amount of time that has elapsed since the person's last criminal activity;
- the conduct and work activity of the person before and after the criminal activity;
- evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;
- evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and
- other evidence of the person's fitness, including letters of recommendation provided by the person.

If HHSC takes adverse action after considering the information provided by the person, HHSC provides written notice to the person of:

- the adverse action being taken and the reason for the adverse action;
- the review procedures provided by the [Occupations Code §53.052](#); and
- the procedures for the person to appeal.

2.5 Provider Responsibility to Continue to Conduct Public Criminal History Checks

Although HHSC will conduct fingerprint-based criminal history checks on all medication aides as described above, providers must continue to conduct criminal history checks, in addition to nurse aide registry and employee misconduct registry checks, to verify employability in accordance with [Texas Health and Safety Code, Chapter 250](#).

3.0 Background/History

Although all provider types listed on this provider letter do not specifically employ medication aides, a provider may employ a person who holds a permit but is acting in the capacity of an unlicensed person.

4.0 Resources

Attachment #1 - Responsibilities of a Medication Aide Training Program

Attachment #2 – Responsibilities of an Applicant for Examination.

Attachment #3 – Responsibilities of a Medication Aide When Applying to Renew Permit.

Attachment #4 – Chart of Criminal Offenses

Computer-based training for current medication aides and applicants is available at <https://apps.hhs.texas.gov/training/cbt/fingerprinting-for-aides/>. The training describes:

- why aides and applicants are required to submit finger prints for a criminal background check by HHSC;
- the actions HHSC takes when a current aide or applicant is ineligible for renewal or examination; and

- how to find a fingerprinting service and submit finger prints.

For additional information see [Medication Aide Program](#) on the HHSC website.

5.0 Contact Information

If you have any questions about this letter, please contact the Policy and Rules Section by email at LTCRpolicy@hhs.texas.gov or call (512) 438-3161.

Responsibilities of a Medication Aide Training Program

Removal of Requirement for Training Program to Conduct Criminal History Check

Beginning August 1, 2021, a medication aide training program will no longer be responsible for verifying that a trainee has not been convicted of a criminal offense listed in [Texas Health and Safety Code \(THSC\), §250.006\(a\)](#), or convicted of a criminal offense listed in [THSC, §250.006\(b\)](#) within the five years immediately before participating in the training program, as described in the HHSC rule ([26 TAC, §557.119\(b\)\(4\)\(B\)](#)).

Notification to Potential Trainees

Beginning August 1, 2021, and using HHSC-developed materials as defined in the updated curricula, a program must notify each potential trainee prior to accepting payment or admittance into the program and obtain their signature on the required form of:

- the potential ineligibility of a person who has been convicted of an offense listed in Attachment #1 of this provider letter;
- HHSC's guidelines related to the practice of registering aides that state the reasons a particular crime is considered to relate to the duties and responsibilities of an aide and the criterion that affects HHSC's decisions;
- the right to request a criminal history evaluation letter from HHSC regarding a potential trainee's eligibility for active listing in the registry if the potential trainee has reason to believe that he/she is ineligible for active listing in the registry due to a criminal conviction; and
- how to request a criminal history evaluation letter from HHSC.

Notifying potential trainees as described in this section is required by the [Occupations Code, §53.152](#).

Criminal History Evaluation Letter

Potential trainees interested in becoming a medication aide can request HHSC to provide a criminal history evaluation letter regarding the person's eligibility. To request a criminal history evaluation letter, a person must

complete a [Request for Criminal History Evaluation Letter for Medication Aide Permit form](#) and submit fingerprints. HHSC staff will review the person's criminal history and provide a criminal history evaluation letter regarding the person's eligibility to become a medication aide.

Consequences for Lack of Notification

If HHSC determines that a training program failed to provide the notice to a potential trainee as required above, and HHSC denies the trainee the opportunity to take an examination because the trainee has been convicted of an offense, the training program must:

- refund the amount of any tuition paid by the trainee to the training program; and
- pay to the trainee an amount equal to the total of the following, as applicable:
 - the amount of any application fees paid by the trainee to HHSC; and
 - the amount of the examination fee paid by the trainee to HHSC or to the training program.

The consequences for lack of notification as described in this section is required by the [Occupations Code, §53.153](#).

Training Program Responsibility to Inform Trainees of the Process

A training program must provide the information described in Attachments #2 and #3 of this provider letter to all trainees.

Responsibilities of an Applicant for Examination

Requirement to Submit Fingerprints and Pay for Fingerprint-based Criminal History Check

Through July 31, 2021, a training program completes a name-based criminal background check on all trainees before allowing a trainee to take an examination.

Beginning August 1, 2021, all applicants for an examination will be required to submit fingerprints and have their criminal history approved by HHSC before being allowed to take the examination. The criminal history check will be FBI-based and include nationwide criminal history information.

An applicant for an examination is responsible for paying the cost of the fingerprint-based criminal history check.

Criminal History Evaluation Letter

An applicant for an examination can request HHSC to provide a criminal history evaluation letter regarding the person's eligibility. To request a criminal history evaluation letter, a person must complete a [Request for Criminal History Evaluation Letter for Medication Aide Permit form](#) and submit fingerprints. HHSC staff will review the person's criminal history and provide a criminal history evaluation letter regarding the person's eligibility to become a medication aide.

Application Requirement

Applicants for the medication aide examination will continue to utilize the current medication aide application.

Computer-based Training Available

Computer-based training for current medication aides and applicants is available at <https://apps.hhs.texas.gov/training/cbt/fingerprinting-for-aides/>. The training describes:

- why aides and applicants are required to submit finger prints for a criminal background check by HHSC;

- the actions HHSC takes when a current aide or applicant is ineligible for renewal or examination; and
- how to find a fingerprinting service and submit finger prints.

Submitting Fingerprints

The Texas Department of Public Safety (DPS) provides fingerprinting services through a vendor. Locations can be found at:

https://www.dps.texas.gov/administration/crime_records/pages/FASTSubLoc.htm

Responsibilities of a Medication Aide When Applying to Renew Permit

Requirement to Submit Fingerprints and Pay for Fingerprint-based Criminal History Check

Effective August 1, 2021, a medication aide who applies to renew his/her permit must submit fingerprints and have his/her criminal background approved by HHSC prior to approval of the renewal. The criminal history check will be FBI-based and include nationwide criminal history information.

A medication aide is responsible for paying the cost of the fingerprint-based criminal history check.

If the medication aide remains active on the medication aide registry, fingerprinting is a one-time requirement and cost.

A medication aide who is active on the medication aide registry will be notified via mail of the fingerprinting requirement prior to his/her renewal month. If a medication aide attempts to renew prior to his/her renewal month, HHSC will notify the aide of the fingerprinting requirement.

Computer-based Training Available

Computer-based training for current medication aides and applicants is available at <https://apps.hhs.texas.gov/training/cbt/fingerprinting-for-aides/>. The training describes:

- why aides and applicants are required to submit finger prints for a criminal background check by HHSC;
- the actions HHSC takes when a current aide or applicant is ineligible for renewal or examination; and
- how to find a fingerprinting service and submit finger prints.



Convictions Barring Employment or Disqualifying a person from HHSC¹ Licensure as a Nurse Aide (NA) or Medication Aide (MA)

Convictions <ul style="list-style-type: none"> • HSC: Health and Safety Code • TOC: Occupations Code • PC: Penal Code 	HSC §250.006: Convictions Barring Employment of a Medication Aide subject to Ch. 250 or a Nurse Aide.²	HSC §250.006: Convictions creating 5-year Bar to Employment involving consumer contact for a Medication Aide subject to chapter 250 or a Nurse Aide.	Convictions described in TOC §53.021(a)(2) & (3) that will be disqualifying for HHSC NA or MA Licensure.^{3,4}
Criminal solicitation of a capital offense (first degree felony under Section 15.03, Penal Code)	No	No	Yes

¹ Health and Human Services Commission

² The convictions listed in this first column concerning employment bars also include a conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed in this column.

³ Even if the last column of disqualifying convictions for HHSC NA or MA licensure displays a “No,” HHSC may still take adverse licensure action against an MA or NA applicant or licensee for a conviction other than one described in TOC §53.021(a)(2) & (3), if the offense directly relates to the duties and responsibilities of the licensed occupation and HHSC has determined adverse action is warranted after considering relevant factors and following applicable procedures described in TOC chapter 53 and otherwise required by law. HHSC may consider adverse licensure action under these alternative procedures for convictions for offenses listed under the permanent or 5-year employment bar columns that are not also listed as convictions that will be disqualifying for HHSC MA or NA licensure. It may also do so for convictions of other offenses listed in Title 26, Texas Administrative Code §557.121 that are not also listed in the last column as convictions that will be disqualifying for HHSC MA or NA licensure, such as convictions, other than for a Class C misdemeanor, for sale or display of harmful material to a minor (PC §43.24), and possession or promotion of child pornography (PC §43.26).

⁴ A conviction under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice with elements that are substantially similar to the elements of an offense under PC Section [21.02](#), [21.11\(a\)\(1\)](#), [22.011](#), [22.021](#), 43.25, 20.04(a)(4), or

Convictions <ul style="list-style-type: none"> ● HSC: Health and Safety Code ● TOC: Occupations Code ● PC: Penal Code 	HSC §250.006: Convictions Barring Employment of a Medication Aide subject to Ch. 250 or a Nurse Aide.²	HSC §250.006: Convictions creating 5-year Bar to Employment involving consumer contact for a Medication Aide subject to chapter 250 or a Nurse Aide.	Convictions described in TOC §53.021(a)(2) & (3) that will be disqualifying for HHSC NA or MA Licensure.^{3,4}
Criminal homicide (Chapter 19, Penal Code)	Yes (any criminal homicide)	No	PC §19.02 (Murder) PC §19.03 (capital murder) ⁵
Kidnapping, unlawful restraint, smuggling of persons and related offenses (Chapter 20, Penal Code)	Yes (any chapter 20 offense)	No	PC §20.04 (Aggravated Kidnapping) ⁶
Trafficking of persons (Section 20A.02, Penal Code)	No	No	Yes
Continuous trafficking of persons (Section 20A.03, Penal Code)	No	No	Yes
Continuous sexual abuse of a young child or children (Section 21.02, Penal Code)	Yes	No	Yes

30.02 , is also included in the last column to the same extent, as described more fully in the last column and applicable footnotes, as the Penal Code conviction referenced in this footnote to which it has substantially similar elements is included. In addition, the offenses included in the last column as disqualifying for HHSC NA or MA licensure or potentially subject to adverse action under footnote 3 do not include an offense punishable as a Class C misdemeanor.

⁵ Criminal homicide other than murder or capital murder may still be considered for adverse licensure action as described in footnote 3.

⁶ An offense under Chapter 20, Penal Code, other than aggravated kidnapping, may still be considered for adverse licensure action as described in footnote 3.

Convictions <ul style="list-style-type: none"> • HSC: Health and Safety Code • TOC: Occupations Code • PC: Penal Code 	HSC §250.006: Convictions Barring Employment of a Medication Aide subject to Ch. 250 or a Nurse Aide.²	HSC §250.006: Convictions creating 5-year Bar to Employment involving consumer contact for a Medication Aide subject to chapter 250 or a Nurse Aide.	Convictions described in TOC §53.021(a)(2) & (3) that will be disqualifying for HHSC NA or MA Licensure.^{3,4}
Indecent exposure (Section 21.08, Penal Code)	Yes	No	No
Indecency with a child (Section 21.11, Penal Code)	Yes	No	PC §21.11(a)(1) (Indecency with a child involving sexual contact) ⁷
Improper relationship between educator and student (Section 21.12, Penal Code)	Yes	No	No
Invasive visual recording (Section 21.15, Penal Code)	Yes	No	No
Assault punishable as a Class A misdemeanor or as a felony (Section 22.01, Penal Code)	No	Yes	No
Sexual assault (Section 22.011, Penal Code)	Yes	No	Yes
Aggravated assault (Section 22.02, Penal Code)	Yes	No	No

⁷ Indecency with a child under a provision of PC §21.11 other than §21.11(a)(1) may still be considered for adverse licensure action as described in footnote 3.

Convictions <ul style="list-style-type: none"> ● HSC: Health and Safety Code ● TOC: Occupations Code ● PC: Penal Code 	HSC §250.006: Convictions Barring Employment of a Medication Aide subject to Ch. 250 or a Nurse Aide.²	HSC §250.006: Convictions creating 5-year Bar to Employment involving consumer contact for a Medication Aide subject to chapter 250 or a Nurse Aide.	Convictions described in TOC §53.021(a)(2) & (3) that will be disqualifying for HHSC NA or MA Licensure.^{3,4}
Aggravated sexual assault (Section 22.021, Penal Code)	Yes	No	Yes
Injury to a child, elderly individual, or disabled individual (Section 22.04, Penal Code)	Yes	No	PC §22.04(a)(1), if punishable as a first-degree felony and the victim is a child. ⁸
Abandoning or endangering a child (Section 22.041, Penal Code)	Yes	No	No
Deadly conduct (Section 22.05, Penal Code)	Yes	No	No
Terroristic threat (Section 22.07, Penal Code)	Yes	No	No
Aiding suicide (Section 22.08, Penal Code)	Yes	No	No

⁸ An offense under PC §22.04(a)(1) is one causing serious bodily injury to a child, elderly individual, or disabled individual. A conviction is listed as a disqualifying only if: (A) the offense is punishable as a felony of the first degree (i.e., it is intentional or knowingly committed conduct); and (B) the victim of the offense is a child. However, an offense under PC §22.04(a)(1) that doesn't meet these conditions, or another offense under PC §22.04, may still be considered for adverse licensure action as described in footnote 3.

Convictions <ul style="list-style-type: none"> • HSC: Health and Safety Code • TOC: Occupations Code • PC: Penal Code 	HSC §250.006: Convictions Barring Employment of a Medication Aide subject to Ch. 250 or a Nurse Aide.²	HSC §250.006: Convictions creating 5-year Bar to Employment involving consumer contact for a Medication Aide subject to chapter 250 or a Nurse Aide.	Convictions described in TOC §53.021(a)(2) & (3) that will be disqualifying for HHSC NA or MA Licensure.^{3,4}
Agreement to abduct from custody (Section 25.031, Penal Code)	Yes	No	No
Sale or purchase of a child (Section 25.08, Penal Code)	Yes	No	No
Arson (Section 28.02, Penal Code)	Yes	No	No
Robbery (Section 29.02, Penal Code)	Yes	No	No
Aggravated robbery (Section 29.03, Penal Code)	Yes	No	Yes
Burglary (Section 30.02, Penal Code)	Yes (as to employment of an MA subject to chapter 250 or an NA in a licensed nursing facility or assisted living facility) ⁹	Yes	Specified PC §30.02 offenses ¹⁰ (if licensure disqualification applies, the licensure disqualification is not time-limited)

⁹ The employment bar for burglary described in this first column for convictions barring employment also applies if the conviction is under the laws of another state or federal law, or under the Uniform Code of Military Justice and has substantially similar elements to burglary under PC §30.02.

¹⁰ A conviction for burglary under section 30.02, Penal Code will be disqualifying for licensure only if:

Convictions <ul style="list-style-type: none"> • HSC: Health and Safety Code • TOC: Occupations Code • PC: Penal Code 	HSC §250.006: Convictions Barring Employment of a Medication Aide subject to Ch. 250 or a Nurse Aide.²	HSC §250.006: Convictions creating 5-year Bar to Employment involving consumer contact for a Medication Aide subject to chapter 250 or a Nurse Aide.	Convictions described in TOC §53.021(a)(2) & (3) that will be disqualifying for HHSC NA or MA Licensure.^{3,4}
Theft punishable as a felony under Chapter 31, Penal Code	No	Yes	No
Misapplication of fiduciary property or property of a financial institution (Section 32.45, Penal Code), where the value of the misapplied property is \$750 or more (i.e., offense is punishable as a Class A misdemeanor or a felony)	No	Yes	No
Securing execution of a document by deception (Section 32.46, Penal Code), where the value of the misapplied property is \$750 or more (i.e., offense is punishable as a Class A misdemeanor or a felony)	No	Yes	No

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- the offense is punishable under PC §30.02(d) (i.e., the premises are a habitation and a party to the offense entered with intent to commit or did commit or attempt to commit a felony other than felony theft); and
 - the actor committed the offense with the intent to commit a felony under Penal Code, Section 21.02 (continuous sexual abuse of a young child or children); 21.11 (indecenty with a child); 22.011 (sexual assault); 22.021 (aggravated sexual assault); 20.04(a)(4) (aggravated kidnapping), with intent to violate or abuse the victim sexually; or 25.02 (prohibited sexual conduct).

Convictions <ul style="list-style-type: none"> ● HSC: Health and Safety Code ● TOC: Occupations Code ● PC: Penal Code 	HSC §250.006: Convictions Barring Employment of a Medication Aide subject to Ch. 250 or a Nurse Aide.²	HSC §250.006: Convictions creating 5-year Bar to Employment involving consumer contact for a Medication Aide subject to chapter 250 or a Nurse Aide.	Convictions described in TOC §53.021(a)(2) & (3) that will be disqualifying for HHSC NA or MA Licensure.^{3,4}
Exploitation of a child, elderly individual, or disabled individual (Section 32.53, Penal Code)	Yes	No	No
Online solicitation of a minor (Section 33.021, Penal Code)	Yes	No	No
Money laundering (Section 34.02, Penal Code)	Yes	No	No
Health care fraud (Section 35A.02, Penal Code)	Yes	No	No
Obstruction or retaliation (Section 36.06, Penal Code)	Yes	No	No
False identification as a peace officer; misrepresentation of property (Section 37.12, Penal Code)	No	Yes	No

Chart of Criminal Offenses

Attachment #4

Convictions <ul style="list-style-type: none"> • HSC: Health and Safety Code • TOC: Occupations Code • PC: Penal Code 	HSC §250.006: Convictions Barring Employment of a Medication Aide subject to Ch. 250 or a Nurse Aide.²	HSC §250.006: Convictions creating 5-year Bar to Employment involving consumer contact for a Medication Aide subject to chapter 250 or a Nurse Aide.	Convictions described in TOC §53.021(a)(2) & (3) that will be disqualifying for HHSC NA or MA Licensure.^{3,4}
Intentionally or knowingly discharging a firearm in a public place other than a public road or sport shooting range; displaying a firearm or other deadly weapon in a public place in a manner calculated to alarm; or discharging a firearm on or across a public road (Section 42.01(a)(7), (8), or (9), Penal Code)	No	Yes	No
Cruelty to livestock or nonlivestock animals (Section 42.09, Penal Code; Section 42.092, Penal Code)	Yes	No	No
Aggravated Promotion of Prostitution (Section 43.04, Penal Code)	No	No	Yes
Compelling Prostitution (Section 43.05, Penal Code)	No	No	Yes

Convictions <ul style="list-style-type: none"> ● HSC: Health and Safety Code ● TOC: Occupations Code ● PC: Penal Code 	HSC §250.006: Convictions Barring Employment of a Medication Aide subject to Ch. 250 or a Nurse Aide.²	HSC §250.006: Convictions creating 5-year Bar to Employment involving consumer contact for a Medication Aide subject to chapter 250 or a Nurse Aide.	Convictions described in TOC §53.021(a)(2) & (3) that will be disqualifying for HHSC NA or MA Licensure.^{3,4}
Sexual Performance by a Child (Section 43.25, Penal Code)	No	No	Yes
An offense under the Texas Controlled Substances Act (Chapter 481, Health and Safety Code), for which punishment is increased under: (A) HSC Section 481.140 (Use of Child in Commission of Offense); or (B) HSC Section 481.134(c), (d), (e), or (f) (relating to proximity of commission of the offense to school premises, a youth center, a playground, or a school bus) and the defendant has been previously convicted of an offense for which punishment was increased under any of those subsections.	No	No	Yes

Convictions <ul style="list-style-type: none"> ● HSC: Health and Safety Code ● TOC: Occupations Code ● PC: Penal Code 	HSC §250.006: Convictions Barring Employment of a Medication Aide subject to Ch. 250 or a Nurse Aide.²	HSC §250.006: Convictions creating 5-year Bar to Employment involving consumer contact for a Medication Aide subject to chapter 250 or a Nurse Aide.	Convictions described in TOC §53.021(a)(2) & (3) that will be disqualifying for HHSC NA or MA Licensure.^{3,4}
An offense in which: (1) a deadly weapon, as defined by Section 1.07, Penal Code, was used or exhibited during the: (A) commission of a felony offense; or (B) immediate flight from the commission of a felony offense; and (2) the defendant: (A) used or exhibited the deadly weapon; or (B) was a party to the offense and knew that a deadly weapon would be used or exhibited.	No	No	Yes