

§ 558.247 Verification of Employability and Use of Unlicensed Persons

(a) The provisions in this subsection apply to an unlicensed applicant for employment and an unlicensed employee, if the person's duties would or do include face-to-face contact with a client.

(1) An agency must conduct a criminal history check authorized by, and in compliance with, Texas Health and Safety Code Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly, Persons with Disabilities, or Persons with Terminal Illnesses) for an unlicensed applicant for employment and an unlicensed employee.

(2) The agency must not employ an unlicensed applicant whose criminal history check includes a conviction listed in Texas Health and Safety Code § 250.006 that bars employment, or a conviction the agency has determined is a contraindication to employment. If an applicant's or employee's criminal history check includes a conviction of an offense that is not listed in Texas Health and Safety Code § 250.006, the agency must document its review of the conviction and its determination of whether the conviction is a contraindication to employment.

(3) Before the agency hires an unlicensed applicant, or before an unlicensed employee's first face-to-face contact with a client, the agency must search the nurse aide registry (NAR) and the employee misconduct registry (EMR) using the HHSC website to determine if the applicant or employee is listed in either registry as unemployable. The agency must not employ an unlicensed applicant who is listed as unemployable in either registry.

(4) The agency must provide written information about the EMR to an unlicensed employee in compliance with the requirements of 40 TAC § 93.3(c) (relating to Employment and Registry Information).

(5) In addition to the initial verification of employability, the agency must search the NAR and the EMR to determine if the employee is listed as unemployable in either registry as follows:

(A) for an employee most recently hired before September 1, 2009, by August 31, 2011, and at least every twelve months thereafter; and

(B) for an employee most recently hired on or after September 1, 2009, at least every 12 months.

(6) The agency must immediately discharge an unlicensed employee whose duties would or do include face-to-face contact with a client when the agency becomes aware:

(A) that the employee is designated in the NAR or the EMR as unemployable; or

(B) that the employee's criminal history check reveals conviction of a crime that bars employment or that the agency has determined is a contraindication to employment.

(b) The provisions in this subsection apply to an unlicensed volunteer if the person's duties would or do include face-to-face contact with a client.

(1) An agency must conduct a criminal history check before an unlicensed volunteer's first

face-to-face contact with a client of the agency.

(2) The agency must not use the services of an unlicensed volunteer for duties that would or do include face-to-face contact with a client whose criminal history information includes a conviction that bars employment under Texas Health and Safety Code § 250.006 or a conviction the agency has determined is a contraindication to employment. If an unlicensed volunteer's criminal history check includes a conviction of an offense that is not listed in Texas Health and Safety Code § 250.006, the agency must document its review of the conviction and its determination of whether the conviction is a contraindication to employment.

(3) Before an unlicensed volunteer's first face-to-face contact with a client, the agency must conduct a search of the NAR and the EMR using the HHSC website to determine if an unlicensed volunteer is listed in either registry as unemployable. The agency must not use the services of an unlicensed volunteer who is listed as unemployable in either registry.

(4) The agency must provide written information about the EMR that complies with the requirements of 40 TAC § 93.3(c) to an unlicensed volunteer within five working days from the date of the person's first face-to-face contact with a client.

(5) In addition to the initial verification of employability, the agency must search the NAR and the EMR to determine if a volunteer is designated in either registry as unemployable, as follows:

(A) for a volunteer with face-to-face contact with a client for the first time before September 1, 2009, by August 31, 2011, and at least every twelve months thereafter; and

(B) for a volunteer with face-to-face contact with a client for the first time on or after September 1, 2009, at least every twelve months.

(6) The agency must immediately stop using the services of an unlicensed volunteer for duties that would or do include face-to-face contact with a client when the agency becomes aware that:

(A) the unlicensed volunteer is designated in the NAR or the EMR as unemployable; or

(B) the unlicensed volunteer's criminal history check reveals conviction of a crime that bars employment or that the agency has determined is a contraindication to employment.

(c) Upon request by HHSC, an agency must provide documentation to demonstrate compliance with subsections (a) and (b) of this section.

(d) An agency that contracts with another agency or organization for an unlicensed person to provide home health services, hospice services, or personal assistance services under arrangement must also comply with the requirements in § 558.289(c)-(d) of this subchapter (relating to Independent Contractors and Arranged Services).

Notes

26 Tex. Admin. Code § 558.247

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