



Report on Occupational Licensing Eligibility Requirements Related to Criminal History

As Required by

**House Bill 91, 85th Texas
Legislature, Regular Session,
2017**

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Executive Summary

This report is provided by the Texas Department of State Health Services (DSHS) in accordance with the requirements of [House Bill 91](#), 85th Texas Legislature, Regular Session, 2017.

The legislation required a licensing authority to review the eligibility requirements related to an applicant's criminal history for each license issued by the authority and make a recommendation whether the requirement should be retained, modified, or repealed. A report must be submitted to the lieutenant governor, the speaker of the house of representatives, and each member of the legislature by December 1, 2018.

DSHS administers two areas where background checks are a licensure requirement: Emergency Medical Services (EMS) and Wholesale Prescription Drug Distributors.

DSHS reviewed the relevant statutory provisions relating to criminal background checks and finds these provisions as they relate to eligibility for licensure to be necessary to protect public health and safety. The state has a compelling interest in ensuring the safety and efficacy of services and products provided by EMS personnel and providers, and by wholesale prescription drug distributors. The current standards protect the public and include an appeals process for individual applicants. There are no recommendations to modify or repeal current eligibility requirements.

1. Introduction

This report is provided by the Texas Department of State Health Services (DSHS) in accordance with the requirements of House Bill 91, 85th Texas Legislature, Regular Session, 2017.

The legislation required a licensing authority to review the eligibility requirements related to an applicant's criminal history for each license issued by the authority and make a recommendation whether the requirement should be retained, modified, or repealed.

The report must be submitted by December 1, 2018, to the lieutenant governor, the speaker of the house of representatives, and each member of the legislature and include the authority's recommendations.

This review is a one-time requirement as the legislation expires January 1, 2019.

2. Background

DSHS administers two areas where background checks are a licensure requirement: Emergency Medical Services (EMS) and Wholesale Prescription Drug Distributors.

- [Texas Health and Safety Code \(HSC\) Chapter 773](#), the Emergency Health Care Act, governs Emergency Medical Services.
- [HSC Chapter 431](#), the Texas Food, Drug and Cosmetic Act, regulates Wholesale Prescription Drug Distributors.

[Texas Government Code Section 411.110](#) gives DSHS the authority to conduct criminal background checks on certain licensees and obtain criminal history record information maintained by the Texas Department of Public Safety.

3. Emergency Medical Services

Emergency Medical Services Personnel

Emergency medical services (EMS) personnel provide emergency and non-emergency prehospital care to the sick or injured before or during transportation to a medical facility or home, including any necessary stabilization of the sick or injured persons in connection with that transportation. The Health and Safety Code (HSC) authorizes five levels of EMS personnel:

1. Emergency Care Attendant;
2. Emergency Medical Technician;
3. Advanced Emergency Medical Technician;
4. Emergency Medical Technician-Paramedic; and
5. Licensed Paramedic.

Related Statutes

The following statute provisions relate to Department of State Health Services (DSHS) authority to check and act on the criminal history of an EMS personnel applicant or licensee:

- HSC Section 773.050(h) allows DSHS to provide a prescreening criminal history record check for an emergency medical services personnel applicant to determine the applicant's eligibility to receive certification before enrollment in an educational or training program.
- HSC Section 773.070 grants authority to DSHS to deny a certificate or license to an applicant who does not provide a complete set of fingerprints in order to obtain criminal history records.
- HSC Section 773.0614 states that a certificate must be revoked if the certificate holder has been convicted of or placed on deferred adjudication, community supervision, or deferred disposition for certain offenses listed in Article 42A.054 of the Code of Criminal Procedure. These include: murder, capital murder, aggravated kidnapping, indecency with a child, sexual assault, aggravated sexual assault, aggravated robbery, or an offense of Chapter 481 (Texas Controlled Substance Act) of the Health and Safety Code for which punishment is increased under Sections 481.140 or 481.134 (c), (d), (e), or (f).

- The authority to disqualify a person from receiving a certificate under HSC Section 773.0614 allows DSHS to deny an initial application for certification to an individual with a criminal history record that lists any crimes fitting the description in the previous paragraph.
- HSC Section 773.0614 gives DSHS the authority to revoke, suspend, disqualify for, or deny EMS personnel certification for certain criminal offenses. However, HSC Section 773.0617 requires DSHS to notify the applicant in writing of the reason that the certification was not issued, the review procedure, and the process the applicant may take to appeal the decision. The applicant may request an appeal hearing within 30 days after the date of the notice from DSHS. The appeal hearing and any appeal from that hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001.

DSHS Procedure

Upon receipt of an application, licensing staff conduct a criminal history check on the Texas Department of Public Safety (DPS) Crime Records Service Secure Website. If there were any misdemeanor or felony convictions, the issue would be taken to the Compliance Review Committee (CRC) for discussion and determination about whether to deny the application based on authorization in statute and rules.

For licensees, DSHS receives daily rap-back reports from the DPS FACT Clearinghouse, which provides DPS and the Federal Bureau of Investigation (FBI) fingerprint-based criminal history results. If any Emergency Medical Services (EMS) Personnel were listed on that report, the issue would be taken to the Compliance Review Committee for discussion and determination about whether to suspend or revoke the license based on statute and rules. In addition, DSHS has a notification form available on its website for licensees to report arrests and court outcomes to the department.

Emergency Medical Services Provider

The Health and Safety Code defines an emergency medical services provider as a person who uses or maintains emergency medical services vehicles, medical equipment, and emergency medical services personnel to provide emergency medical services. An EMS provider is the person, entity, or governmental body that holds a DSHS EMS provider license to do business as an ambulance service transporting the sick, injured or persons that ride on a stretcher.

Related Statutes

The Health and Safety Code requires DSHS to review the criminal background of the Administrator of Record of an EMS Provider. The Administrator of Record is the administrator or manager of an EMS provider.

- HSC Section 773.05712 requires the Administrator of Record for an EMS Provider to submit to a criminal history record check.
- HSC Section 773.070 allows DSHS to deny a certification or licensure if the applicant fails to provide a complete set of fingerprints in order to obtain criminal history record information.
- HSC Section 773.06141 allows DSHS to suspend, revoke, or deny an EMS Provider License if the administrator of record, employee, or other representative has been convicted of or placed on deferred adjudication of an offense directly related to the duties and responsibilities of their role within the business.
- HSC Section 773.0615 allows DSHS to consider factors related to an applicant's criminal history record and the circumstances of the situation and/or crime in regards to the suspension, revocation, or denial of a certificate.
- HSC Section 773.0617 requires DSHS to notify the applicant in writing of the reason that the certification was not issued, the review procedure, and the process the applicant may take to appeal the decision. The applicant may request for an appeal hearing within 30 days after the date of the notice. The appeal hearing and any appeal from that hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001.

DSHS Procedure

DSHS follows a similar procedure for criminal history checks on EMS providers to that of EMS personnel previously described.

Appropriateness of Background Checks

EMS personnel and providers perform crucial services that require professional conduct and public confidence while serving individuals in vulnerable circumstances. Current eligibility requirements related to criminal history for EMS occupational licenses and certifications are appropriate given the circumstances in which these professionals must provide their services to the public.

4. Wholesale Prescription Drug Distributors

The Health and Safety Code (HSC) defines a wholesale prescription drug distributor as a person engaged in the wholesale distribution of prescription drugs. The distributor, includes, but is not limited to, a:

- Manufacturer,
- Repackager,
- Own-label or private-label distributor,
- Jobber,
- Broker,
- Manufacturer warehouse, distributor warehouse, or other warehouse,
- Manufacturer's exclusive distributor, authorized distributor of record,
- Drug wholesaler or distributor,
- Independent wholesale drug trader,
- Specialty wholesale distributor,
- Third-party logistics provider,
- Retail pharmacy that conducts wholesale distribution, and
- Pharmacy warehouse that conducts wholesale distribution.

Related Statutes

The following statutory provisions relate to criminal background checks for Wholesale Prescription Drug Distributors:

- HSC Section 431.404 allows for the Department of State Health Services (DSHS) to collect necessary information to complete a criminal history record check for a designated representative for each place of business.
- HSC Section 431.407 requires the DSHS to submit fingerprints provided by an applicant to the Department of Public Safety and allows for the criminal history record information to be forwarded to the Federal Bureau of Investigation for a federal criminal history check.
- HSC Section 431.414 gives DSHS the authority to refuse, suspend or revoke an applicant or licensee for certain criminal offenses. The refusal to license

an applicant or the suspension or revocation of a license by DSHS and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Additionally, the Food and Drug Administration (FDA) requires all states to consider an applicant's convictions as a factor in determining whether or not to grant a prescription drug wholesale distributor license. This requirement is found in the Code of Federal Regulation, Title 21, Chapter 1, Subchapter C, Part 205.5, Minimum qualifications, requires DSHS to consider local, state, and federal convictions related to drug distribution or samples, as well as any felony convictions. FDA regulations also state that the State has the right to deny a license application based on these convictions and other factors.

DSHS Procedure

Upon receipt of an application, licensing staff conduct a criminal history check on the Texas Department of Public Safety (DPS) Crime Records Service Secure Website. If there were any misdemeanor or felony convictions, the issue would be taken to the Compliance Review Committee (CRC) for discussion and determination about whether to deny the application based on authorization in statute and rules.

DSHS checks fingerprint criminal history for each applicant through the Department of Public Safety. For licensees, DSHS receives daily rap-back reports from the DPS FACT Clearinghouse. If any Wholesale Prescription Drug Distributors were listed on that report, the issue would be taken to the Compliance Review Committee for discussion and determination about whether to suspend or revoke the license based on statute and rules. In addition, DSHS has a notification form available on its website for licensees to report arrests and court outcomes to the department.

Appropriateness of Background Checks

Wholesale prescription drug distributors handle substances that are regulated and controlled by state and federal laws because they may be subject to misuse and abuse. There is a risk that unscrupulous individuals may try to introduce illicit or counterfeit drugs into commerce to the detriment of unsuspecting consumers or divert these drugs for illegal purposes. For that reason and based on the requirement from the FDA to consider an applicant's criminal history, DSHS does not recommend modifying or repealing requirements related to checking criminal histories for wholesale prescription drug distributors.

5. Conclusion

DSHS reviewed the relevant statutory provisions relating to criminal background checks and finds these provisions as they relate to eligibility for licensure to be necessary to protect public health and safety. The state has a compelling interest in ensuring the safety and efficacy of services and products provided by EMS personnel and providers and wholesale prescription drug distributors. The current standards protect the public and include an appeals process for individual applicants.

List of Acronyms

Acronym	Full Name
CRC	Compliance Review Committee
DPS	Texas Department of Public Safety
DSHS	Texas Department of State Health Services
EMS	Emergency Medical Services
FDA	U.S. Food and Drug Administration