

TEXAS HEALTH AND HUMAN SERVICES COMMISSION  
**OFFICE OF INSPECTOR GENERAL**

**PERSONAL CARE SERVICES**

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*Inspection of Attendant Background Checks*



January 16, 2019  
OIG Report No. INS-18-011

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# HHSC OIG

TEXAS HEALTH AND HUMAN  
SERVICES COMMISSION

OFFICE OF  
INSPECTOR GENERAL

## WHY THE OIG CONDUCTED THIS INSPECTION

The OIG conducted an inspection to determine if home health providers obtain and evaluate background information on attendant care personnel to ensure client safety.

The inspection objectives were to determine if:

- Home health providers have policies and procedures to ensure required criminal history and exclusion checks are performed.
- Home health providers document and evaluate attendant care personnel's criminal history to ensure they have not been convicted of an offense that excludes them from employment.

Texas Medicaid expenses for personal care services (PCS) totaled approximately \$128 million statewide for fiscal year 2017. The U.S. Department of Health and Human Services Centers for Medicare & Medicaid Services (CMS) has drafted a review, *Texas Personal Care Services Focused Program Integrity Review*, to assess the level of program integrity for PCS in Texas. One concern CMS identified was that home health agencies may not perform adequate background checks on PCS attendants. The OIG Inspections and Investigations Division conducted this inspection to further assess the concern raised in the CMS integrity review.

The scope of the inspection focused on the Hidalgo service delivery area, which had the highest use of PCS, with approximately \$26 million in expenditures for 4,472 PCS clients in fiscal year 2017.

View the report online at  
<https://oig.hhsc.texas.gov/>

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## PERSONAL CARE SERVICES:

### *Inspection of Attendant Background Checks*

#### WHAT THE OIG FOUND

The OIG Inspections and Investigations Division found all 12 inspected home health providers had policies and procedures in place to perform the four required background checks. However, home health providers did not consistently document that they performed the required background checks. Of the 229 attendant records reviewed at the provider's office, 25 percent were missing at least one of the required background checks, or the background checks were performed only after the attendant provided direct client services. To ensure client safety, it is critical for home health providers to perform and document background checks prior to attendants entering client homes.

The OIG made the following observations:

- Seven percent of attendant records were missing the required Texas Department of Public Safety (DPS) criminal history, and seven percent of the background checks were performed after attendants provided services.
- The Texas Health and Safety Code (THSC) does not require home health providers to complete additional criminal history checks after the initial check.
- Fifteen percent of attendant records were either missing the required Nurse Aide Registry (NAR)/Employee Misconduct Registry (EMR), the OIG exclusion background checks, or both.

Home health providers are permitted by the Texas Administrative Code and THSC to document background checks by either retaining a copy of the check or maintaining a log that shows who performed the check and when the check was performed. Of the 229 PCS attendant records reviewed, 17 (7 percent) of the DPS criminal history checks were missing. The 17 records were unavailable from 3 out of the 12 providers visited. Additionally, 15 (7 percent) of the DPS criminal history checks were performed after the attendant provided direct client services, which is not in compliance with THSC.

The THSC requires HHSC-regulated facilities and agencies to check the NAR/EMR before hiring and verify annually that attendants have not committed an act that would bar them from providing services to clients. Additionally, the THSC requires providers to check the federal and state OIG Lists of Excluded Individuals/Entities (LEIEs) before hiring an applicant and monthly thereafter. An applicant listed on the LEIEs is prohibited from employment with a home health provider. Of the 229 PCS attendant records reviewed, 34 (15 percent) were missing either the NAR/EMR, the OIG exclusion background check documentation, or both for fiscal year 2017.

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## I. PURPOSE AND OBJECTIVES

The Texas Health and Human Services Commission (HHSC) Office of Inspector General (OIG) Inspections and Investigations Division conducted an inspection to determine if home health providers obtain and evaluate background information on attendant care personnel to ensure client safety. The inspection focused on whether:

- Home health providers have policies and procedures to ensure required criminal history and exclusion checks are performed.
- Home health providers document and evaluate attendant care personnel's criminal history to ensure they have not been convicted of an offense that excludes them from employment.

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## II. BACKGROUND

Texas Medicaid expenses for personal care services (PCS) totaled approximately \$128 million statewide for fiscal year 2017.<sup>1</sup> PCS are delivered by home health providers to eligible Medicaid clients under 21 years of age who require assistance because of a disability or severe chronic illness. PCS attendants provide assistance with activities of daily living (ADL), such as eating, bathing, and dressing, as well as instrumental ADLs, such as meal preparation, medication management, and laundry. Home health providers hire attendants to provide PCS at the client's residence. Due to the vulnerable PCS population, it is essential for home health providers to ensure client safety by performing required background checks for all attendants.

The U.S. Department of Health and Human Services Centers for Medicare & Medicaid Services (CMS) has drafted a review, *Texas Personal Care Services Focused Program Integrity Review*, to assess the level of program integrity for PCS in Texas. CMS found, based on a limited sample, that home health agencies (HHA) may not perform adequate background checks on PCS attendants. The OIG Inspections and Investigations Division conducted this inspection to further assess the concern raised in the CMS integrity review.

The Texas Health and Safety Code (THSC) and Texas Administrative Code (TAC) require home health providers to perform four different background checks for PCS attendants. The background check requirements are: (1) Texas Department of Public Safety (DPS) Criminal History Check, (2) Nurse Aide Registry (NAR), (3) Employee Misconduct Registry (EMR), and (4) the federal and state OIG Lists of Excluded Individuals/Entities (LEIEs). Table 1 explains each of the four background check requirements reviewed by the OIG Inspections and Investigations Division.

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<sup>1</sup> Per OIG Data and Technology; approximately \$101 million was expended for managed care organizations and approximately \$27 million for fee-for-service.

**Table 1: Summary of Background Check Requirements for Attendants**

	Type	Code	Requirement	Additional Info	Frequency			
1	DPS Criminal History	THSC § 250.003 & § 250.006 <sup>2</sup>	An employer may not employ an applicant if the employer determines that the applicant has been convicted of an offense that bars employment.	Barred criminal convictions such as assault, theft, murder, and sexual abuse.	Initially/ Upon Hire			
		THSC § 250.003	If a facility employs a person pending a criminal history check, the facility shall ensure that the person has no direct contact with a consumer until the facility obtains the person's criminal history record information and verifies the person's employability.					
		THSC § 250.004	An employer shall obtain the person's criminal conviction record when the person applies for employment.					
2	NAR	THSC § 250.003	Employer must ensure applicant is not designated in the registry as having committed an act of abuse, neglect, or mistreatment of an individual, or misappropriation of the property of an individual.	The EMR search returns results for both registries. Results will not include information regarding criminal convictions.	Initially/ Upon Hire and Annually			
3	EMR	THSC § 250.003				4	OIG LEIEs	40 TAC § 49.304(f) <sup>3</sup>
4	OIG LEIEs	40 TAC § 49.304(f) <sup>3</sup>	Employer may not employ an applicant to perform duties if applicant is listed on the federal or state OIG LEIEs.	The LEIEs provide information to the healthcare industry, patients, and the public regarding individuals and entities currently excluded from providing Medicare or Medicaid services.	Initially/ Upon Hire and at Least Monthly			

<sup>2</sup> THSC § 250.003, 250.004, 250.006: <https://statutes.capitol.texas.gov/Docs/HS/htm/HS.250.htm>

<sup>3</sup> 40 TAC § 49.304(f): <http://texreg.sos.state.tx.us/public/49.304>

The four background checks are critical to determine whether HHAs comply with state requirements. The required background checks are designed to protect vulnerable clients from attendants who have been excluded from Medicaid participation or have barred criminal convictions that prohibit these attendants from providing PCS in client homes. It is critical to client safety that home health providers perform background checks prior to attendants providing direct services to clients.

The scope of this inspection focused on the Hidalgo service delivery area (SDA), which had the highest use of PCS, with approximately \$26 million in expenditures for 4,472 PCS clients in fiscal year 2017.<sup>4</sup> OIG Data and Technology (DAT) divided Hidalgo SDA PCS providers into groups and selected 12 PCS providers for on-site visits and background check record reviews.<sup>5</sup> From these 12 providers, DAT drew a random sample of 229 attendants.<sup>6</sup> The OIG Inspections and Investigations Division reviewed documentation of each of the attendants to determine if HHAs performed the required background checks.

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<sup>4</sup> See Appendix A, *Scope of Inspection*.

<sup>5</sup> See Appendix A, *Sampling Information: Home Health Providers*.

<sup>6</sup> See Appendix A, *Sampling Information: Attendant Records*.

### III. INSPECTION RESULTS

The OIG Inspections and Investigations Division found that all 12 inspected home health providers had policies and procedures in place to perform the four required background checks. However, home health providers did not consistently document that they performed the required background checks. Of the 229 attendant records reviewed at the provider's office, 25 percent were missing at least one of the required background checks, or the background checks were performed only after the attendant provided direct client services.<sup>7</sup> To ensure client safety, it is critical for home health providers to perform and document background checks prior to attendants entering client homes.

Table 2 shows the OIG Inspections and Investigations Division results for required background check documentation for the 229 PCS attendant records reviewed. The table indicates the type of background check required, the documentation issue, and the percentage of errors for each issue.

**Table 2. Background Check Inspection Results for Attendant Records**

Type	Issue	Percentage
DPS Criminal History	Document missing from attendant records.	7%
	Document showed background check performed after attendant provided services.	7%
NAR/EMR or OIG Exclusion Background Check	Documents missing were either the NAR/EMR, the OIG exclusion background check documentation, or both.	15%

*Source: OIG Inspections and Investigations Division based on data provided by home health providers.*

**Observation 1: Seven percent of attendant records were missing the required DPS criminal history check and seven percent of the background checks were performed after attendants provided services.**

Home health providers are permitted by TAC and THSC to document background checks by either retaining a copy of the check or maintaining a log that shows who performed the check and when the check was performed. Of the 229 PCS attendant records reviewed, 17 (7 percent) of the DPS criminal history checks were missing. The 17 records were unavailable from 3 out of the 12 providers visited. Two out of those three providers stated they performed the criminal history checks and destroyed them; however, they could not provide evidence that the criminal history checks were

<sup>7</sup> Six percent of the attendant records had two or more errors.

conducted or destroyed.<sup>8</sup> Additionally, of the 229 PCS records reviewed, 15 (7 percent) of the DPS criminal history checks were performed after the attendant provided direct client services, which is not in compliance with THSC § 250.003(a-2).<sup>9</sup> The inspectors found no criminal convictions in any of these attendant records.

**Observation 2: THSC does not require home health providers to complete additional criminal history checks after the initial check.**

THSC § 250.004 states that an employer may obtain a criminal history record from DPS by submitting a form when the person applies for employment and at other times as determined by the employer.<sup>10</sup> The home health providers are not required to conduct another criminal history check other than prior to employment, but the THSC requirement allows employers the latitude to conduct additional checks other times as they deem appropriate.

The OIG Inspections and Investigations Division reviewed criminal convictions identified in the DPS criminal history records and compared those convictions to the list of barred convictions in THSC § 250.006.<sup>11</sup> Of the 229 attendant records reviewed, 2 criminal history checks warranted further research related to pending charges that, if convicted, would bar the attendant from providing direct services to clients. The THSC allows employers the latitude to conduct additional checks after the initial check, however, the HHAs did not perform additional checks even though criminal charges were pending.

**Observation 3: Fifteen percent of attendant records were missing either the required NAR/EMR, the OIG exclusion background checks, or both.**

The THSC requires HHSC-regulated facilities and agencies to check the NAR/EMR before hiring and to verify annually that attendants have not committed an act that would bar them from providing services to clients. Additionally, the THSC requires providers to check the federal and state OIG LEIEs before hiring an applicant and monthly thereafter. An applicant listed on the LEIEs is prohibited from employment with a home health provider. Of the 229 PCS attendant records reviewed, 34 (15 percent) were missing either the NAR/EMR, the OIG exclusion background check documentation, or both for fiscal year 2017.

Ensuring DPS criminal history, NAR/EMR, and OIG exclusion checks are performed in compliance with regulations is critical to client safety in the PCS program. Home health providers should ensure all required background checks are performed and documented according to program requirements.

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<sup>8</sup> 40 TAC § 49.305(f), (g) states employers must conduct a background check and maintain records indicating the check was performed.

<sup>9</sup> THSC § 250.003(a-2): <https://statutes.capitol.texas.gov/Docs/HS/htm/HS.250.htm>

<sup>10</sup> THSC § 250.004: <https://statutes.capitol.texas.gov/Docs/HS/htm/HS.250.htm>

<sup>11</sup> THSC § 250.006: <https://statutes.capitol.texas.gov/Docs/HS/htm/HS.250.htm>

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#### IV. CONCLUSION

The OIG Inspections and Investigations Division completed an inspection to determine if home health providers obtain and evaluate background information on attendant care personnel to ensure client safety. The OIG Inspections and Investigations Division found that all 12 inspected home health providers had policies and procedures in place to perform the required background checks. However, providers did not consistently document that they performed the required background checks. Of the 229 attendant records reviewed, 25 percent were missing at least one of the required background checks, or the background checks were performed only after the attendant provided direct client services. To ensure client safety, it is critical for home health providers to perform and document background checks prior to attendants entering client homes.

The OIG Inspections and Investigations Division made the following observations:

- Seven percent of attendant records were missing the required DPS criminal history and seven percent of the background checks were performed after attendants provided services.
- THSC does not require home health providers to complete additional criminal history checks after the initial check.
- Fifteen percent of attendant records were missing either the required NAR/EMR, the OIG exclusion background checks, or both.

Each home health provider received an education letter with their respective documentation errors. The OIG Inspections and Investigations Division thanks the home health providers in Hidalgo SDA for their cooperation and assistance during this inspection.

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## V. APPENDICES

### Appendix A: Detailed Methodology

#### **Scope of Inspection:**

In order to geographically focus the inspection, OIG DAT conducted an initial review of PCS claims for fiscal year 2017 across all Medicaid SDAs in the STAR Kids program. Analysis of the data suggested that the Hidalgo SDA had the highest use and expenditures of PCS in fiscal year 2017. Therefore, the scope of this inspection was narrowed to the Hidalgo SDA.

#### **Sampling Information: Home Health Providers**

OIG DAT generated a population of home health providers for the Hidalgo SDA. The population was comprised of 264 home health providers who billed for PCS during fiscal year 2017. The OIG Inspections and Investigations Division deconflicted with OIG Audit Division, OIG non-Audit, and Office of Attorney General Medicaid Fraud Control Unit open cases, yielding a population of 209 providers. DAT ranked these providers based on the number of clients they served. DAT created three strata to represent the providers who served the largest number of clients, the medium number of clients, and the lowest number of clients. DAT selected a random sample of four providers from each stratum. The final sample consisted of 12 providers.

#### **Sampling Information: Attendant Records**

The OIG Inspections and Investigations Division requested a list of attendants who provided PCS during fiscal year 2017 from the selected 12 home health providers. This list was comprised of 546 attendants. From this list, a statistically random sample of the attendants yielded a final population of 229 attendant records.

#### **Standards**

The OIG Inspections and Investigations Division conducts inspections of the Texas Health and Human Services programs, systems, and functions. Inspections are designed to be expeditious, targeted examinations into specific programmatic areas to identify systemic trends of fraud, waste, or abuse. Inspections typically result in observations and may result in recommendations to strengthen program effectiveness and efficiency. The OIG Inspections and Investigations Division conducted the inspection in accordance with Quality Standards for Inspection and Evaluation issued by the Council of the Inspectors General on Integrity and Efficiency.

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## **Appendix B: Report Team and Report Distribution**

### **Report Team**

The OIG staff members who contributed to this OIG Inspections and Investigations Division report include:

- Lisa Campos Garza, CFE, CGAP, Director for Inspections
- Troy Neisen, Manager for Inspections
- Robin Zenon, BSN, RN, CPC, Team Lead for Inspections
- Marco Diaz, Inspector
- Leslie Gibson, Inspector
- Coleen McCarthy, MS, CHES<sup>®</sup>, Editor
- Nishamathi Kumaraswamy, MS, Investigative Data Analyst for Data and Technology

### **Report Distribution**

Texas Health and Human Services:

- Courtney N. Phillips, PhD, Executive Commissioner
- Cecile Erwin Young, Chief Deputy Executive Commissioner
- Victoria Ford, Chief Policy Officer
- Karen Ray, Chief Counsel
- Enrique Marquez, Chief Program and Services Officer
- Wayne Salter, Deputy Executive Commissioner, Access and Eligibility Services
- Stephanie Muth, Deputy Executive Commissioner, Medicaid and CHIP Services
- Todd B. Byrnes, Deputy Associate Commissioner, Eligibility Operations
- Ivan Libson, Deputy Associate Commissioner, Program Enrollment and Support
- Karin Hill, Director, Internal Audit

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## Appendix C: OIG Mission and Contact Information

### Inspector General Mission

The mission of the OIG is to prevent, detect, and deter fraud, waste, and abuse through the audit, review, investigation, and inspection of federal and state taxpayer dollars used in the provision and delivery of health and human services in Texas. The senior leadership guiding the fulfillment of OIG's mission and statutory responsibility includes:

- Sylvia Hernandez Kauffman, Inspector General
- Anita D'Souza, OIG Chief Counsel and Chief of Staff
- Christine Maldonado, Chief of Operations and Workforce Leadership
- Olga Rodriguez, Chief Strategy Officer
- Lizet Hinojosa, Deputy IG for Benefits Program Integrity
- Brian Klozik, Deputy IG for Medicaid Program Integrity
- David Griffith, Deputy IG for Audit
- Quinton Arnold, Deputy IG for Inspections and Investigations
- Alan Scantlen, Deputy IG for Data and Technology
- Judy Knobloch, Assistant Deputy IG for Medical Services

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- Online: <https://oig.hhsc.texas.gov/report-fraud>
- Phone: 1-800-436-6184

### To contact the Inspector General

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