



COMMISSIONER  
Chris Traylor

September 29, 2011

To: Home and Community-based Services Waiver Providers  
Texas Home Living Waiver Providers  
Consumer Directed Services Agencies

Subject: Information Letter No. 11-120-New Convictions Barring Employment Added to Health and Safety Code, Chapter 250

House Bill 2609 (82nd Legislature, Regular Session, 2011) which was signed into law by the Governor on June 17, 2011, amended Section 250.006(a) of the Health and Safety Code by adding:

- Section 250.006(a)(23), an offense under Section 36.06, Penal Code (obstruction or retaliation); and
- Section 250.006(a)(24), clarification regarding offenses under Sections 42.09 (cruelty to livestock animals) and 42.092 (cruelty to non-livestock animals), Penal Code.

Effective September 1, 2011, convictions for the offenses added by House Bill 2609 prohibit employment by any provider or agency subject to Health and Safety Code Chapter 250. Home and Community-based Services (HCS) and Texas Home Living (TxHmL) providers are subject to Health and Safety Code Chapter 250 as outlined in Title 40 of the Texas Administrative Code, Section 9.177(n).

Consumer Directed Service Agencies (CDSAs) and CDS employers are subject to Health and Safety Code Chapter 250, effective September 1, 2011 (see Information Letter No. 11-112). Providers, including a CDSA, must ensure all service providers are employable under Health and Safety Code Section 250.006.

In order to assist HCS and TxHmL providers and CDSAs with this letter, frequently asked questions and the answers to those questions have been provided below. In addition, House Bill 2609 can be reviewed at <http://www.capitol.state.tx.us>. Health and Safety Code Chapter 250 can be reviewed at <http://www.statutes.legis.state.tx.us/Docs/HS/pdf/HS.250.pdf>.

**Question:** Do providers have to run new criminal history checks on all current employees?

**Answer:** No, House Bill 2609 and Health and Safety Code Chapter 250 do not require providers to run new criminal history checks on current employees.

**Question:** If a provider learns, after September 1, 2011, a current employee has a new conviction for one of the offenses listed in Health and Safety Code Section 250.006, is this a bar to continued employment?

**Answer:** Yes, a post-September 1, 2011, conviction for any of the offenses listed in Health and Safety Code Section 250.006 is a bar to continued employment for the period of time described in Section 250.006. Section 250.003(c) of the Health and Safety Code requires that "a facility...immediately discharge any employee...whose criminal history check reveals conviction of a crime that bars employment."

**Question:** Does a conviction for one of the House Bill 2609 offenses prior to September 1, 2011, constitute a bar to employment for job applicants who apply on or after September 1, 2011?

**Answer:** Yes, a conviction for one of the House Bill 2609 offenses prior to September 1, 2011, would be a bar to employment for new job applicants as well as former staff who might seek to be re-hired.

If you need additional information or have specific questions, please contact the Department of Aging and Disability Services Regulatory Services, Waiver Survey and Certification unit at (512) 438-4163.

Sincerely,

*[signature on file]*

Teresa Richard  
Director  
Center for Policy and Innovation

*[signature on file]*

Veronda L. Durden  
Assistant Commissioner  
Regulatory Services