



COMMISSIONER  
Chris Traylor

August 18, 2011

To: Adult Day Care Facilities (ADCs), Assisted Living Facilities (ALFs), Home and Community Support Services Agencies (HCSSAs), Intermediate Care Facilities for Persons With Mental Retardation or a Related Condition (ICFs/MR), and Nursing Facilities (NFs)

Subject: **Provider Letter 11-32** – New Convictions Barring Employment Added to Health and Safety Code Chapter 250

House Bill 2609 (82<sup>nd</sup> Legislature, Regular Session), 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, at §250.006(a)(23), an offense under Section 36.06, Penal Code (obstruction or retaliation) and adding, at §250.006(a)(24), clarification regarding offenses under Sections 42.09 (cruelty to livestock animals) and 42.092 (cruelty to nonlivestock animals), Penal Code.

Effective September 1, 2011, new convictions for the offenses added by House Bill 2609 prohibit employment in facilities and agencies subject to Health and Safety Code Chapter 250.

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**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 that providers run new criminal history checks on current employees.

**Question:** If a provider learns, after September 1, 2011, that 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 rehired.

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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>.

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If you need additional information or have specific questions, please contact a Regulatory Services policy specialist at (512) 438-3161.

Sincerely,

*[signature on file]*

Veronda L. Durden  
Assistant Commissioner  
Regulatory Services

VLD:dlm