



COMMISSIONER
Adelaide Horn

August 24, 2007

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

Subject: **Provider Letter #07-50** – New Convictions Barring Employment Added to Health and Safety Code Chapter 250

House Bill 8 and Senate Bill 199 (80th Regular Session), which were signed into law by the governor on June 15, 2007, contained provisions adding new convictions to Section 250.006 of the Health and Safety Code. Senate Bill 199 also added new Subsection 250.006(d), which clarifies that a person who is placed on deferred adjudication community supervision for an offense listed in Section 250.006 is not considered convicted of the offense.

Section 1.17 of House Bill 8 amended Chapter 21 of the Penal Code, creating an offense at Section 21.02, continuous sexual abuse of young child or children.

Section 3.44 of House Bill 8 amended Section 250.006(a) of the Health and Safety Code, adding the new, above-described offense to Section 250.006(a)(3).

Per Section 4.01(a) of House Bill 8, the provision of 250.006(a) regarding prohibition of employment will apply to offenses under Section 21.02 of the Penal Code committed on or after September 1, 2007. Offenses under Section 21.02 of the Penal Code that result in conviction prohibit employment of the offender.

Section 1 of Senate Bill 199 amended Section 250.006(a) of the Health and Safety Code, adding the following offenses:

- Section 21.08, Penal Code (indecent exposure),
- Section 21.12, Penal Code (improper relationship between educator and student),
- Section 21.15, Penal Code (improper photography or visual recording),
- Section 22.05, Penal Code (deadly conduct),
- Section 22.021, Penal Code (aggravated sexual assault),
- Section 22.07, Penal Code (terroristic threat),
- Section 33.021, Penal Code (online solicitation of a minor),
- Section 34.02, Penal Code (money laundering),
- Section 35A.02, Penal Code (Medicaid fraud), and
- Section 42.09, Penal Code (cruelty to animals).

Section 1 of Senate Bill 199 amended Section 250.006(b) of the Health and Safety Code, adding the following offenses:

Section 37.12, Penal Code (false identification as peace officer) and
Section 42.01(a)(7), (8), or (9), Penal Code (disorderly conduct).

Effective September 1, 2007, existing convictions and new convictions for the offenses added by Senate Bill 199 constitute barriers to employment in facilities and agencies subject to Health and Safety Code Chapter 250.

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

Answer: No, House Bill 8, Senate Bill 199, 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, on or after September 1, 2007, that a current employee has a past conviction or 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 past conviction or a new 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 SB 199 offenses prior to September 1, 2007 constitute a bar to employment for job applicants who apply on or after September 1, 2007?

Answer: Yes, a conviction for one of the SB 199 offenses prior to September 1, 2007 would be a bar to employment for new job applicants as well as former staff who might seek to be rehired.

House Bill 8 and Senate Bill 199 can be reviewed at: <http://www.capitol.state.tx.us/>. Health and Safety Code Chapter 250 can be reviewed at: <http://tlo2.tlc.state.tx.us/statutes/hs.toc.htm>.

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

Sincerely,

[signature on file]

Veronda L. Durden
Assistant Commissioner
Regulatory Services

VLD:ca