
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 367 Session of
1995

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VANCE, DENT, STEELMAN, STURLA, STABACK, PETRARCA AND
LAUGHLIN, JANUARY 26, 1995

REFERRED TO COMMITTEE ON AGING AND YOUTH, JANUARY 26, 1995

AN ACT

1 Requiring certain information relating to prospective home care
2 employees.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Home Care
7 Background Check Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall
10 have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Administrator." An individual who is employed by a home
13 care agency and is responsible for the authoritative control
14 over the business affairs of the home care agency.

15 "Area agency on aging." The single local agency designated

1 within each planning and service area by the Department of Aging
2 to develop and administer the delivery of a comprehensive and
3 coordinated plan of social service activities for older persons.

4 "Director." An individual who is responsible for overseeing
5 the functions of an area agency on aging.

6 "Home care agency." An organization or part thereof staffed
7 and equipped to provide skilled nursing and at least one other
8 therapeutic service, such as physical therapy, occupational
9 therapy, speech pathology, medical social services or home
10 health aides, on a part-time or intermittent basis, to persons
11 who are disabled, aged, injured or sick in their place of
12 residence, or any organization or part thereof which supplies,
13 arranges or refers personnel to provide home care services on an
14 hourly, continual basis for which that organization receives a
15 fee, consideration or compensation of any kind. The term
16 includes, but is not limited to, Medicare-certified home health
17 agencies, Commonwealth-licensed home health agencies, private
18 duty home care providers, homemaker or home care aide providers,
19 companion care providers, registry services, intravenous therapy
20 providers, governmental departments, area agencies on aging
21 which provide direct home care services and in-home dialysis
22 providers. The term does not include durable medical equipment
23 providers.

24 "State Police." The Pennsylvania State Police.

25 Section 3. Information relating to prospective home care
26 employees and providers.

27 (a) Required information.--Administrators shall obtain from
28 all prospective direct and contract employees who will be
29 assigned as direct caregivers to home care recipients to submit
30 with their applications the following information obtained

1 within the preceding one-year period, and directors shall
2 require all persons employed directly by area agencies on aging
3 as home care employees and all persons contracting with area
4 agencies on aging as home care employees to submit the following
5 information obtained within the preceding one-year period:

6 (1) Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal
7 history record information), a report of criminal history
8 record information from the State Police or a statement from
9 the State Police that their central repository contains no
10 such information relating to that person. The criminal
11 history record information shall be limited to that which is
12 disseminated pursuant to 18 Pa.C.S. § 9121(b)(2) (relating to
13 general regulations).

14 (2) Where the applicant is not a resident of this
15 Commonwealth, administrators or directors shall require the
16 applicant to submit with the application for employment a
17 report of Federal criminal history record information
18 pursuant to the Federal Bureau of Investigation appropriation
19 of the Department of Justice Appropriation Act of 1973
20 (Public Law 92-544, 86 Stat. 1109).

21 (b) Information and documents.--For the purposes of this
22 section, an applicant may submit a copy of the required
23 information with an application for employment. Administrators
24 and directors shall maintain a copy of the required information
25 and shall require applicants to produce the original document
26 prior to employment or contract.

27 Section 4. Grounds for denying or terminating employment or
28 contract.

29 (a) General rule.--In no case shall an administrator hire an
30 applicant or maintain a direct or contract employee and in no

1 case shall a director hire an applicant or maintain a direct or
2 contract employee if the applicant's or employee's criminal
3 history record information indicates the applicant or employee
4 has been convicted of any of the following offenses:

5 (1) An offense designated as a felony under the act of
6 April 14, 1972 (P.L.233, No.64), known as The Controlled
7 Substance, Drug, Device and Cosmetic Act.

8 (2) An offense under one or more of the following
9 provisions of 18 Pa.C.S. (relating to crimes and offenses):

10 Chapter 25 (relating to criminal homicide).

11 Section 2702 (relating to aggravated assault).

12 Section 2901 (relating to kidnapping).

13 Section 2902 (relating to unlawful restraint).

14 Section 3121 (relating to rape).

15 Section 3122 (relating to statutory rape).

16 Section 3123 (relating to involuntary deviate sexual
17 intercourse).

18 Section 3126 (relating to indecent assault).

19 Section 3127 (relating to indecent exposure).

20 Section 3502 (relating to burglary).

21 Section 3701 (relating to robbery).

22 Section 4303 (relating to concealing death of child
23 born out of wedlock).

24 Section 4304 (relating to endangering welfare of
25 children).

26 Section 4305 (relating to dealing in infant
27 children).

28 A felony offense under section 5902(b) (relating to
29 prostitution and related offenses).

30 Section 5903(c) or (d) (relating to obscene and other

1 sexual materials and performances).

2 Section 6301 (relating to corruption of minors).

3 Section 6312 (relating to sexual abuse of children).

4 (3) A Federal or out-of-State offense similar in nature
5 to those crimes listed in paragraphs (1) and (2).

6 (b) Immunity.--No administrator or director shall be held
7 criminally or civilly liable for compliance with this section.

8 Section 5. Regulations.

9 The Department of Health shall promulgate regulations
10 necessary to carry out sections 4, insofar as it relates to home
11 care agencies, and 3, and the Department of Aging shall
12 promulgate regulations necessary to carry out sections 4,
13 insofar as it relates to area agencies on aging, and 3. These
14 regulations shall:

15 (1) Set forth criteria for unsuitability for employment
16 by a home care agency or an area agency on aging in relation
17 to criminal history record information which may include
18 criminal history record information in addition to that set
19 forth under section 4.

20 (2) Provide for the confidentiality of information
21 obtained under section 3.

22 Section 6. Violations.

23 An administrator or director who willfully fails to comply
24 with the provisions of section 3 or 4 shall be subject to a
25 civil penalty as provided in this section. The Department of
26 Health and the Department of Aging shall have jurisdiction to
27 determine violators of section 3 or 4 and may, following a
28 hearing, assess a civil penalty of not more than \$2,500.

29 Procedures for the assessment of civil penalties shall conform
30 to 2 Pa.C.S. (relating to administrative law and procedure).

1 Section 7. Existing or transferred employees or providers.

2 No person employed by a home care agency or an area agency on
3 aging on the effective date of this act shall be required to
4 obtain the information under section 3 or 4 as a condition of
5 continued employment. A person who has once obtained the
6 information required under sections 3 and 4 may transfer to
7 another home care agency established and supervised by the same
8 organization and shall not be required to obtain additional
9 reports before making the transfer.

10 Section 8. Provisional employees for limited periods.

11 Notwithstanding section 3, administrators and directors may
12 employ applicants on a provisional basis for a single period of
13 not more than 30 days or, for out-of-State applicants, a period
14 of 90 days, if all of the following conditions are met:

15 (1) The applicant has applied for the information
16 required under section 3 and the applicant provides a copy of
17 the appropriate completed request forms to the administrator
18 or to the director.

19 (2) The administrator or director has no knowledge of
20 information pertaining to the applicant which would
21 disqualify him from employment pursuant to section 4.

22 (3) The applicant swears or affirms in writing that he
23 is not disqualified from employment under section 4.

24 (4) If the information obtained from employment under
25 section 3 reveals that the applicant is disqualified from
26 employment under section 3, the applicant shall be
27 immediately dismissed by the administrator or the director.

28 Section 9. Fees.

29 The State Police may charge a fee of not more than \$10 in
30 order to conduct the certification as required under section 3.

1 Financial responsibility for the fee shall be assumed by the
2 applicant or employee.

3 Section 10. Promulgation of regulations.

4 The Department of Health and the Department of Aging shall
5 promulgate regulations, as required under section 5, no later
6 than July 1, 1996.

7 Section 11. Effective date.

8 This act shall take effect as follows:

9 (1) Section 10 and this section shall take effective
10 immediately.

11 (2) The remainder of this act shall take effect upon the
12 date of publication in the Pennsylvania Bulletin of the final
13 adoption of the regulations described in section 10.