

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL****No. 133** Session of  
1997

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INTRODUCED BY VANCE, E. Z. TAYLOR, GRUPPO, BLAUM, SAYLOR, TIGUE, BUXTON, NAILOR, KREBS, MASLAND, GEORGE, FLICK, ARMSTRONG, M. COHEN, NICKOL, COY, B. SMITH, MILLER, JAMES, BELARDI, TULLI, MAITLAND, WAUGH, CORNELL, FEESE, OLASZ, READSHAW, PESCI, DENT, BATTISTO, BOSCOLA, PETRARCA, DeLUCA, TRAVAGLIO, GLADECK, TRELLO, VAN HORNE, ROONEY, BEBKO-JONES, D. W. SNYDER, SHANER, MARSICO, ITKIN, MUNDY, MANDERINO, MICHLOVIC, CURRY, BUNT, COLAFELLA, C. WILLIAMS, TRICH, STEELMAN, L. I. COHEN, RAYMOND, LUCYK, EGOLF, ROBERTS, HABAY, ORIE AND EACHUS, JANUARY 29, 1997

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AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
FEBRUARY 11, 1997

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## AN ACT

1 Providing for Statewide nurse aide training programs relating to  
2 nursing facilities.

3 The General Assembly finds and declares that nurse aides in  
4 this Commonwealth are required to successfully complete a State-  
5 approved training and evaluation in order to be employed as a  
6 nurse aide in a skilled nursing facility or nursing facility in  
7 this Commonwealth. Further, it is recognized that the purpose of  
8 the training, as mandated by the Omnibus Budget Reconciliation  
9 Act of 1987 (Public Law 100-203, 101 Stat. 1330) is to ensure  
10 that nurse aides have the education, practical knowledge and  
11 skills needed to care for residents of facilities participating  
12 in the Medicare and Medicaid programs. The General Assembly  
13 declares, as a matter of public policy, that the training effort

1 must give specific emphasis to identifying abusive situations,  
2 understanding what abuse is and learning methods and techniques  
3 to further prevent resident abuse from actually occurring.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Nurse Aide  
8 Resident Abuse Prevention Training Act.

9 Section 2. Definitions.

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

13 "Abuse." The occurrence of one or more of the following  
14 acts:

15 (1) The infliction of injury, unreasonable confinement,  
16 intimidation or punishment with resulting physical harm, pain  
17 or mental anguish.

18 (2) The willful deprivation by a caretaker of goods or  
19 services which are necessary to maintain physical or mental  
20 health.

21 (3) Abuse, as defined in 23 Pa.C.S. Ch. 61 (relating to  
22 protection from abuse).

23 No older adult shall be found to be abused solely on the grounds  
24 of environmental factors which are beyond the control of the  
25 older adult or the caretaker, such as inadequate housing,  
26 furnishings, income, clothing or medical care.

27 "Department." The Department of Education of the  
28 Commonwealth.

29 "Exploitation." An act or course of conduct by a caretaker  
30 or other person against an older adult or an older adult's

1 resources, without the informed consent of the older adult or  
2 with consent obtained through misrepresentation, coercion or  
3 threats of force, that results in monetary, personal or other  
4 benefit, gain or profit for the perpetrator or monetary or  
5 personal loss to the older adult.

6 "Neglect." The failure to provide for oneself or the failure  
7 of a caretaker to provide goods or services essential to avoid a  
8 clear and serious threat to physical or mental health. An older  
9 adult who does not consent to the provision of protective  
10 services shall not be found to be neglected solely on the  
11 grounds of environmental factors which are beyond the control of  
12 the older adult or the caretaker, such as inadequate housing,  
13 furnishings, income, clothing or medical care.

14 "Nurse aide." Any individual providing nursing or nursing-  
15 related services to residents in a nursing facility or skilled  
16 nursing facility. The term does not include an individual who is  
17 a licensed health professional or an individual who volunteers  
18 to provide such services without monetary compensation.

19 "Nursing facility." A facility that provides either skilled  
20 or intermediate nursing care or both levels of care to two or  
21 more residents, who are unrelated to the nursing home  
22 administrator, for a period exceeding 24 hours.

23 "Resident." A person who is admitted to a nursing facility  
24 for observation, treatment or care for illness, disease, injury  
25 or other disability.

26 "State Police." The Pennsylvania State Police.  
27 Section 3. Resident abuse prevention training.

28 The State-approved nurse aide training programs shall in  
29 curriculum pertaining to residents' rights include, but not be  
30 limited to, specific training regarding the following:

- 1 (1) Identification and prevention of abuse.
- 2 (2) Identification and prevention of exploitation.
- 3 (3) Identification and prevention of neglect.
- 4 (4) Identification and prevention of improper use of  
5 physical or chemical restraints.
- 6 (5) Procedures for reporting abuse, exploitation,  
7 neglect or improper use of physical or chemical restraints to  
8 appropriate supervisory, law enforcement or governmental  
9 authorities.
- 10 (6) Options and strategies for responsiveness to abusive  
11 behavior directed toward nurse aides by residents.

12 Section 4. Information relating to applicants for enrollment in  
13 State-approved nurse aide training programs.

14 (a) Required information.--Individuals applying for  
15 enrollment in State-approved nurse aide training programs shall  
16 submit with their applications for enrollment the following  
17 information obtained within the preceding one-year period:

18 (1) Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal  
19 history record information), a report of criminal history  
20 record information from the State Police or a statement from  
21 the State Police that their central repository contains no  
22 such information relating to that person. The criminal  
23 history record information shall be limited to that which is  
24 disseminated pursuant to 18 Pa.C.S. § 9121(b)(2) (relating to  
25 general regulations).

26 (2) Where the applicant is not a resident of this  
27 Commonwealth, the applicant shall be required to submit with  
28 his application for enrollment a report of Federal criminal  
29 history record information pursuant to the Federal Bureau of  
30 Investigation's appropriation under the Departments of State,

1 Justice, and Commerce, the Judiciary, and Related Agencies  
2 Appropriation Act, 1973 (Public Law 92-544, 86 Stat. 1109).

3 (b) Original document.--For the purposes of this section, an  
4 applicant may submit a copy of the required information with the  
5 application for enrollment in the program. The applicant may,  
6 however, be required to produce the original document by the  
7 individual responsible for reviewing and approving the  
8 applications for enrollment in the program.

9 ~~Section 5. Grounds for denying enrollment in State approved~~ <—  
10 ~~nurse aide training program.~~

11 ~~(a) Grounds enumerated. In no case shall an applicant for~~  
12 ~~enrollment in a State approved nurse aide training program be~~  
13 ~~approved for admission into such a program if the applicant's~~  
14 ~~criminal history record information indicates the applicant has~~  
15 ~~been convicted under one or more of the following provisions of~~  
16 ~~18 Pa.C.S. (relating to crimes and offenses):~~

17 ~~Section 2502(a) or (b) (relating to murder).~~

18 ~~Section 3121 (relating to rape).~~

19 ~~Section 3122 (relating to statutory rape).~~

20 ~~Section 3122.1 (relating to statutory sexual assault).~~

21 ~~Section 3123 (relating to involuntary deviate sexual~~  
22 ~~intercourse).~~

23 ~~Section 3124.1 (relating to sexual assault).~~

24 ~~Section 3125 (relating to aggravated indecent assault).~~

25 ~~Section 3126 (relating to indecent assault).~~

26 ~~Section 4302 (relating to incest).~~

27 ~~Section 6312 (relating to sexual abuse of children).~~

28 ~~(b) Other offenses. In no case may an applicant for~~  
29 ~~enrollment in a State approved nurse aide training program be~~  
30 ~~enrolled into the program if the applicant's criminal history~~

1 ~~record information indicates the applicant has been convicted,~~  
2 ~~within ten years immediately preceding the date of the report,~~  
3 ~~of one or more of the following offenses:~~

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

7 ~~(2) An offense under one or more of the following~~  
8 ~~provisions of 18 Pa.C.S.:~~

9 ~~Chapter 25 (relating to criminal homicide) except for~~  
10 ~~section 2502(a) and (b).~~

11 ~~Section 2702 (relating to aggravated assault).~~

12 ~~Section 2901 (relating to kidnapping).~~

13 ~~Section 2902 (relating to unlawful restraint).~~

14 ~~Section 3301 (relating to arson and related~~  
15 ~~offenses).~~

16 ~~Section 3502 (relating to burglary).~~

17 ~~Section 3701 (relating to robbery).~~

18 ~~A felony offense under Chapter 39 (relating to theft~~  
19 ~~and related offenses), or two or more misdemeanors under~~  
20 ~~Chapter 39.~~

21 ~~Section 4101 (relating to forgery).~~

22 ~~Section 4304 (relating to endangering welfare of~~  
23 ~~children).~~

24 ~~Section 4305 (relating to dealing in infant~~  
25 ~~children).~~

26 ~~Section 4953 (relating to retaliation against witness~~  
27 ~~or victim).~~

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

5 ~~(c) Immunity. No individual responsible for reviewing and~~  
6 ~~approving applications for enrollment in a State approved nurse~~  
7 ~~aide training program shall be held civilly liable for any civil~~  
8 ~~action directly related to good faith compliance with this~~  
9 ~~section.~~

10 SECTION 5. GROUNDS FOR DENYING ENROLLMENT IN TRAINING PROGRAM. <—

11 (A) GROUNDS ENUMERATED.--IN NO CASE SHALL AN APPLICANT FOR  
12 ENROLLMENT IN A STATE-APPROVED NURSE AIDE TRAINING PROGRAM BE  
13 APPROVED FOR ADMISSION INTO SUCH A PROGRAM IF THE APPLICANT'S  
14 CRIMINAL HISTORY RECORD INFORMATION INDICATES THE APPLICANT HAS  
15 BEEN CONVICTED OF ANY OF THE FOLLOWING OFFENSES:

16 (1) AN OFFENSE DESIGNATED AS A FELONY UNDER THE ACT OF  
17 APRIL 14, 1972 (P.L.233, NO.64), KNOWN AS THE CONTROLLED  
18 SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT.

19 (2) AN OFFENSE UNDER ONE OR MORE OF THE FOLLOWING  
20 PROVISIONS OF 18 PA.C.S. (RELATING TO CRIMES AND OFFENSES):

21 CHAPTER 25 (RELATING TO CRIMINAL HOMICIDE).

22 SECTION 2702 (RELATING TO AGGRAVATED ASSAULT).

23 SECTION 2901 (RELATING TO KIDNAPPING).

24 SECTION 2902 (RELATING TO UNLAWFUL RESTRAINT).

25 SECTION 3121 (RELATING TO RAPE).

26 SECTION 3122.1 (RELATING TO STATUTORY SEXUAL  
27 ASSAULT).

28 SECTION 3123 (RELATING TO INVOLUNTARY DEVIATE SEXUAL  
29 INTERCOURSE).

30 SECTION 3125 (RELATING TO AGGRAVATED INDECENT

1           ASSAULT) .

2           SECTION 3126 (RELATING TO INDECENT ASSAULT) .

3           SECTION 3127 (RELATING TO INDECENT EXPOSURE) .

4           SECTION 3301 (RELATING TO ARSON AND RELATED

5           OFFENSES) .

6           SECTION 3502 (RELATING TO BURGLARY) .

7           SECTION 3701 (RELATING TO ROBBERY) .

8           A FELONY OFFENSE UNDER CHAPTER 39 (RELATING TO THEFT

9           AND RELATED OFFENSES) OR TWO OR MORE MISDEMEANORS UNDER

10          CHAPTER 39 .

11          SECTION 4101 (RELATING TO FORGERY) .

12          SECTION 4114 (RELATING TO SECURING EXECUTION OF

13          DOCUMENTS BY DECEPTION) .

14          SECTION 4303 (RELATING TO CONCEALING DEATH OF CHILD) .

15          SECTION 4304 (RELATING TO ENDANGERING WELFARE OF

16          CHILDREN) .

17          SECTION 4305 (RELATING TO DEALING IN INFANT

18          CHILDREN) .

19          SECTION 4952 (RELATING TO INTIMIDATION OF WITNESSES

20          OR VICTIMS) .

21          SECTION 4953 (RELATING TO RETALIATION AGAINST WITNESS

22          OR VICTIM) .

23          A FELONY OFFENSE UNDER SECTION 5902(B) (RELATING TO

24          PROSTITUTION AND RELATED OFFENSES) .

25          SECTION 5903(C) OR (D) (RELATING TO OBSCENE AND OTHER

26          SEXUAL MATERIALS AND PERFORMANCES) .

27          SECTION 6301 (RELATING TO CORRUPTION OF MINORS) .

28          SECTION 6312 (RELATING TO SEXUAL ABUSE OF CHILDREN) .

29          (3) A FEDERAL OR OUT-OF-STATE OFFENSE SIMILAR IN NATURE

30          TO THOSE CRIMES LISTED UNDER PARAGRAPHS (1) AND (2) .

1 (B) IMMUNITY.--NO INDIVIDUAL RESPONSIBLE FOR REVIEWING AND  
2 APPROVING APPLICATIONS FOR ENROLLMENT IN A STATE-APPROVED NURSE  
3 AIDE TRAINING PROGRAM SHALL BE HELD CIVILLY LIABLE FOR ANY CIVIL  
4 ACTION DIRECTLY RELATED TO GOOD FAITH COMPLIANCE WITH THIS  
5 SECTION.

6 Section 6. Regulations.

7 The department shall promulgate regulations necessary to  
8 carry out the provisions of sections 4 and 5. These regulations  
9 shall:

10 (1) Set forth criteria for unsuitability for  
11 participation in a State-approved nurse aide training program  
12 in relation to criminal history record information which may  
13 include criminal history record information in addition to  
14 that set forth under section 5.

15 (2) Provide for the confidentiality of information  
16 obtained under section 4.

17 Section 7. Violations.

18 An individual who is responsible for reviewing and approving  
19 applications for enrollment in a State-approved nurse aide  
20 training program and who willfully fails to comply with the  
21 provisions of section 4 or 5 shall be subject to a civil penalty  
22 as provided in this section. The department shall have  
23 jurisdiction to determine violators of section 4 or 5 and may,  
24 following a hearing, assess a civil penalty of not more than  
25 \$2,500. Procedures for the assessment of civil penalties shall  
26 conform to 2 Pa.C.S. (relating to administrative law and  
27 procedure).

28 Section 8. Fees.

29 The State Police may charge a fee of not more than \$10 in  
30 order to conduct the certification as required by section 4.

1 Financial responsibility for the fee shall be assumed by the  
2 applicant for enrollment in the State-approved nurse aide  
3 training program.

4 Section 9. Implementation.

5 The department shall incorporate the resident abuse  
6 prevention training under section 3 as part of the State-  
7 approved nurse aide training programs. In addition, the resident  
8 abuse prevention training shall be extended to be part of the  
9 regular in-service education of the nurse aide, as required by  
10 section 483.75(8) of the regulations of the Omnibus Budget  
11 Reconciliation Act of 1987 (Public Law 100-203, 101 Stat. 1330).  
12 Annually, after completion of the nurse aide training and  
13 competency evaluation program, the nurse aide shall attend an  
14 in-service program that incorporates section 3 as part of the  
15 presentation. The resident abuse prevention training component  
16 shall be included as part of the residents' rights curriculum in  
17 all nurse aide training classes and as part of the regular in-  
18 service education of the nurse aide, on or before March 1, 1998.

19 Section 10. Promulgation of regulations.

20 The department shall promulgate regulations, as required  
21 under section 6, no later than May 1, 1998.

22 Section 11. Effective date.

23 This act shall take effect as follows:

24 (1) Section 10 and this section shall take effect  
25 immediately.

26 (2) Sections 4, 5, 6, 7 and 8 shall take effect upon the  
27 date of publication in the Pennsylvania Bulletin of the final  
28 adoption of the regulations described under section 10.

29 (3) The remainder of this act shall take effect in 90  
30 days.