

NURSE AIDE RESIDENT ABUSE PREVENTION TRAINING ACT

Act of Jun. 9, 1997, P.L. 169, No. 14

Cl. 24

AN ACT

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

(Findings and declarations repealed Nov. 25, 2020, P.L.1301, No.138)

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

Section 1. Short title.

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

Section 1.1. Findings.

The General Assembly finds that:

(1) Nurse aides in this Commonwealth are required to successfully complete a State-approved training and evaluation in order to be employed as a nurse aide in a skilled nursing facility or nursing facility in this Commonwealth.

(2) The purpose of the training, as mandated by the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203, 101 Stat. 1330), is to ensure that nurse aides have the education, practical knowledge and skills needed to care for residents of facilities participating in the Medicare and Medicaid programs.

(3) During the COVID-19 pandemic, Federal and State regulatory and statutory provisions have been waived to assist in the hiring of nurse aides.

(4) Individuals have served admirably and compassionately in this capacity and have demonstrated through accelerated training and experience adequate competency to transition to fully registered status as a nurse aide.

(5) As a matter of public policy, the training effort must give specific emphasis to identifying abusive situations, understanding what abuse is and learning methods and techniques to further prevent resident abuse from actually occurring.

(6) As a matter of public policy, the State-approved training program should take into account training and experience acquired during the COVID-19 pandemic to

transition these individuals to placement on the State's nurse aide registry.

(1.1 added Nov. 25, 2020, P.L.1301, No.138)

Section 2. Definitions.

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

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

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

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

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

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

"CMS." The Centers for Medicare and Medicaid Services. (Def. added Nov. 25, 2020, P.L.1301, No.138)

"COVID-19." The Coronavirus Disease 2019, an infectious disease caused by severe acute respiratory syndrome coronavirus 2 that was first identified during December 2019 in Wuhan, China. (Def. added Nov. 25, 2020, P.L.1301, No.138)

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

"Exploitation." An act or course of conduct by a caretaker or other person against an older adult or an older adult's resources, without the informed consent of the older adult or with consent obtained through misrepresentation, coercion or threats of force, that results in monetary, personal or other benefit, gain or profit for the perpetrator or monetary or personal loss to the older adult.

"Hiring entity." A nursing facility or other health care facility in which a nurse aide has been hired to perform nurse aide duties. (Def. added Nov. 25, 2020, P.L.1301, No.138)

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

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

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

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

"State Police." The Pennsylvania State Police.

"Temporary nurse aide." A nurse aide who has been hired under the processes authorized according to Federal and State waivers provided under the Federal and State emergency declarations related to COVID-19. (Def. added Nov. 25, 2020, P.L.1301, No.138)

Section 3. Resident abuse prevention training.

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

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

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

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

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

(2) Where the applicant is not a resident of this Commonwealth, the applicant shall be required to submit with his application for enrollment a full set of fingerprints. The department shall forward the fingerprints to the Federal Bureau of Investigation for purposes of conducting a criminal background investigation and receiving a report of Federal criminal history record information.

((a) amended May 12, 1999, P.L.63, No.5)

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

Section 5. Grounds for denying enrollment in training program.

(a) Grounds enumerated.--In no case shall an applicant for enrollment in a State-approved nurse aide training program be approved for admission into such a program if the applicant's criminal history record information indicates the applicant has been convicted of any of the following offenses:

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

(2) An offense under one or more of the following provisions of 18 Pa.C.S. (relating to crimes and offenses):
Chapter 25 (relating to criminal homicide).
Section 2702 (relating to aggravated assault).
Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).
Section 3121 (relating to rape).
Section 3122.1 (relating to statutory sexual assault).
Section 3123 (relating to involuntary deviate sexual intercourse).
Section 3124.1 (relating to sexual assault).
Section 3125 (relating to aggravated indecent assault).
Section 3126 (relating to indecent assault).
Section 3127 (relating to indecent exposure).
Section 3301 (relating to arson and related offenses).
Section 3502 (relating to burglary).
Section 3701 (relating to robbery).
A felony offense under Chapter 39 (relating to theft and related offenses) or two or more misdemeanors under Chapter 39.
Section 4101 (relating to forgery).
Section 4114 (relating to securing execution of documents by deception).
Section 4302 (relating to incest).
Section 4303 (relating to concealing death of child).
Section 4304 (relating to endangering welfare of children).
Section 4305 (relating to dealing in infant children).
Section 4952 (relating to intimidation of witnesses or victims).
Section 4953 (relating to retaliation against witness or victim).
A felony offense under section 5902(b) (relating to prostitution and related offenses).
Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).
Section 6301 (relating to corruption of minors).
Section 6312 (relating to sexual abuse of children).

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

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

Section 6. Regulations.

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

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

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

Section 7. Violations.

An individual who is responsible for reviewing and approving applications for enrollment in a State-approved nurse aide training program and who willfully fails to comply with the provisions of section 4 or 5 shall be subject to a civil penalty as provided in this section. The department shall have jurisdiction to determine violators of section 4 or 5 and may,

following a hearing, assess a civil penalty of not more than \$2,500. Procedures for the assessment of civil penalties shall conform to 2 Pa.C.S. (relating to administrative law and procedure).

Section 8. Fees.

The State Police may charge a fee of not more than \$10 in order to conduct the certification as required by section 4. Financial responsibility for the fee shall be assumed by the applicant for enrollment in the State-approved nurse aide training program.

Section 9. Implementation.

The department shall incorporate the resident abuse prevention training under section 3 as part of the State-approved nurse aide training programs. Under an approved nurse aide training program, curriculum content for the theory and laboratory requirements of the training may be delivered in class, in person, online or via asynchronous, virtual reality or other digital delivery mechanism, or in a blended format which is a combination of any of the above, and must be approved by the department. The clinical hour requirements must be completed in an approved clinical setting. The department shall report annually to the chairperson and minority chairperson of the Aging and Youth Committee of the Senate, the chairperson and minority chairperson of the Aging and Older Adult Services Committee of the House of Representatives, the chairperson and minority chairperson of the Education Committee of the Senate and the chairperson and minority chairperson of the Education Committee of the House of Representatives on the progress in implementing the requirements of this section. In addition, the resident abuse prevention training shall be extended to be part of the regular in-service education of the nurse aide, as required by section 483.75(8) of the regulations of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203, 101 Stat. 1330). Annually, after completion of the nurse aide training and competency evaluation program, the nurse aide shall attend an in-service program that incorporates section 3 as part of the presentation.

(9 amended Dec. 22, 2021, P.L.471, No.98)

Section 9.1. Certification of COVID-19 temporary nurse aides.

(a) Eligibility.--Notwithstanding the State-approved nurse aide training programs, the department shall deem an individual as satisfying the requirement of completing a nurse aide training and competency evaluation program approved by the State if:

- (1) The individual successfully completed a training program and competency assessment authorized under the CMS COVID-19 pandemic waiver, including online training and an online examination.
- (2) The individual completed a minimum of 80 hours of temporary nurse aide or supervised practical nurse aide training, on-the-job training or regular in-service nurse aide education during the declared COVID-19 emergency under the supervision of a licensed or registered nurse.
- (3) The individual's competency has been established by one of the following:
 - (i) the successful completion of the State nurse aide examination;
 - (ii) certification by a site administrator responsible for assessing the individual's competency skills as part of an approved apprenticeship program;or

(iii) through an assessment in all areas of required nurse aide training as provided for in 42 CFR 483.152(b) (relating to requirements for approval of a nurse aide training and competency evaluation program) by the hiring entity.

(b) Registry.--Individuals who meet the eligibility provisions in subsection (a) shall be deemed to have completed all nurse aide training and competency evaluation program requirements and shall be placed on the State nurse aide registry.

(c) Implementation.--The department shall incorporate this section as part of the State-approved nurse aide training programs.

(9.1 added Nov. 25, 2020, P.L.1301, No.138)

Section 10. Promulgation of regulations.

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

Section 11. Effective date.

This act shall take effect as follows:

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

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

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