

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 133 Session of 1997

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 AND BUNT, JANUARY 29, 1997

REFERRED TO COMMITTEE ON AGING AND YOUTH, JANUARY 29, 1997

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
14 must give specific emphasis to identifying abusive situations,
15 understanding what abuse is and learning methods and techniques

1 to further prevent resident abuse from actually occurring.

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

4 Section 1. Short title.

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

7 Section 2. Definitions.

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

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

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

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

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

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

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

27 "Exploitation." An act or course of conduct by a caretaker
28 or other person against an older adult or an older adult's
29 resources, without the informed consent of the older adult or
30 with consent obtained through misrepresentation, coercion or

1 threats of force, that results in monetary, personal or other
2 benefit, gain or profit for the perpetrator or monetary or
3 personal loss to the older adult.

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

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

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

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

24 "State Police." The Pennsylvania State Police.

25 Section 3. Resident abuse prevention training.

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

29 (1) Identification and prevention of abuse.

30 (2) Identification and prevention of exploitation.

1 (3) Identification and prevention of neglect.

2 (4) Identification and prevention of improper use of
3 physical or chemical restraints.

4 (5) Procedures for reporting abuse, exploitation,
5 neglect or improper use of physical or chemical restraints to
6 appropriate supervisory, law enforcement or governmental
7 authorities.

8 (6) Options and strategies for responsiveness to abusive
9 behavior directed toward nurse aides by residents.

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

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

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

24 (2) Where the applicant is not a resident of this
25 Commonwealth, the applicant shall be required to submit with
26 his application for enrollment a report of Federal criminal
27 history record information pursuant to the Federal Bureau of
28 Investigation's appropriation under the Departments of State,
29 Justice, and Commerce, the Judiciary, and Related Agencies
30 Appropriation Act, 1973 (Public Law 92-544, 86 Stat. 1109).

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

7 Section 5. Grounds for denying enrollment in State-approved
8 nurse aide training program.

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

15 Section 2502(a) or (b) (relating to murder).

16 Section 3121 (relating to rape).

17 Section 3122 (relating to statutory rape).

18 Section 3122.1 (relating to statutory sexual assault).

19 Section 3123 (relating to involuntary deviate sexual
20 intercourse).

21 Section 3124.1 (relating to sexual assault).

22 Section 3125 (relating to aggravated indecent assault).

23 Section 3126 (relating to indecent assault).

24 Section 4302 (relating to incest).

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

26 (b) Other offenses.--In no case may an applicant for
27 enrollment in a State-approved nurse aide training program be
28 enrolled into the program if the applicant's criminal history
29 record information indicates the applicant has been convicted,
30 within ten years immediately preceding the date of the report,

1 of one or more of the following offenses:

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

5 (2) An offense under one or more of the following
6 provisions of 18 Pa.C.S.:

7 Chapter 25 (relating to criminal homicide) except for
8 section 2502(a) and (b).

9 Section 2702 (relating to aggravated assault).

10 Section 2901 (relating to kidnapping).

11 Section 2902 (relating to unlawful restraint).

12 Section 3301 (relating to arson and related
13 offenses).

14 Section 3502 (relating to burglary).

15 Section 3701 (relating to robbery).

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

19 Section 4101 (relating to forgery).

20 Section 4304 (relating to endangering welfare of
21 children).

22 Section 4305 (relating to dealing in infant
23 children).

24 Section 4953 (relating to retaliation against witness
25 or victim).

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

28 Section 5903(c) or (d) (relating to obscene and other
29 sexual materials and performances).

30 Section 6301 (relating to corruption of minors).

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

(c) 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.

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

6 Section 9. Implementation.

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

21 Section 10. Promulgation of regulations.

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

24 Section 11. Effective date.

25 This act shall take effect as follows:

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

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

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