

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, BUNT, COLAFELLA, C. WILLIAMS, TRICH, STEELMAN, L. I. COHEN, RAYMOND, LUCYK, EGOLF, ROBERTS, HABAY, ORIE AND EACHUS, JANUARY 29, 1997

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

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) 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 report of Federal criminal history record information pursuant to the Federal Bureau of Investigation's appropriation under the Departments of State,

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

(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 State approved
nurse aide 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 under one or more of the following provisions of 18 Pa.C.S. (relating to crimes and offenses):~~

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

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

~~Section 3122 (relating to statutory 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 4302 (relating to incest).~~

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

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

~~record information indicates the applicant has been convicted,
within ten years immediately preceding the date of the report,
of one or more 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.:~~

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

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

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

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

~~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 4304 (relating to endangering welfare of
children).~~

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

~~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).~~

~~(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 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 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.