
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 119 Session of
2015

INTRODUCED BY HAYWOOD, BREWSTER, TEPLITZ, FONTANA, TARTAGLIONE,
COSTA, SCHWANK AND YUDICHAK, MAY 22, 2015

REFERRED TO AGING AND YOUTH, MAY 22, 2015

AN ACT

1 Amending the act of November 6, 1987 (P.L.381, No.79), entitled
2 "An act relating to the protection of the abused, neglected,
3 exploited or abandoned elderly; establishing a uniform
4 Statewide reporting and investigative system for suspected
5 abuse, neglect, exploitation or abandonment of the elderly;
6 providing protective services; providing for funding; and
7 making repeals," in preliminary provisions, further providing
8 for definitions; and, in criminal history for employees,
9 repealing provisions relating to definitions, further
10 providing for information relating to prospective facility
11 personnel, for grounds for denying employment and for
12 provisional employees for limited periods; providing for
13 registry of home care workers; and making editorial changes.

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

16 Section 1. The definitions of "abuse," "administrator,"
17 "employee," "exploitation," "facility" and "older adult in need
18 of protective services" in section 103 of the act of November 6,
19 1987 (P.L.381, No.79), known as the Older Adults Protective
20 Services Act, renumbered and amended December 18, 1996
21 (P.L.1125, No.169), is amended and the section is amended by
22 adding definitions to read:
23 Section 103. Definitions.

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

4 * * *

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

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

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

13 (3) Sexual harassment, rape or abuse, as defined in the
14 act of October 7, 1976 (P.L.1090, No.218), known as the
15 Protection From Abuse Act.

16 No older adult shall be found to be abused solely on the grounds
17 of environmental factors which are beyond the control of the
18 older adult or the caretaker, such as inadequate housing,
19 furnishings, income, clothing or medical care.] Intentionally,
20 willfully, knowingly or recklessly causing or attempting to
21 cause any of the following:

22 (1) Infliction of injury or unreasonable confinement
23 resulting in physical harm or pain.

24 (2) Intimidation or punishment resulting in mental
25 anguish.

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

28 (4) Sexual abuse including:

29 (i) Rape.

30 (ii) Involuntary deviate sexual intercourse.

- 1 (iii) Sexual assault.
- 2 (iv) Aggravated indecent assault.
- 3 (v) Indecent assault.
- 4 (vi) Incest.
- 5 (vii) Statutory sexual assault.
- 6 (5) Sexual harassment including:
- 7 (i) Unwelcome sexual advances.
- 8 (ii) Requests for sexual favors.
- 9 (iii) Other unwelcome verbal or physical conduct of
- 10 a sexual nature.

11 "Administrator." The person responsible for the
12 administration of a facility. The term includes a person
13 responsible for employment decisions or an independent
14 contractor responsible for administration of a facility.

15 * * *

16 "Agent." A person authorized to act on behalf of an older
17 adult or care-dependent individual including a person acting
18 under a power of attorney duly executed in accordance with 20
19 Pa.C.S. Ch. 56 (relating to powers of attorney).

20 "Applicant." An individual seeking employment or engagement
21 as an administrator, employee or a caretaker of a facility.

22 * * *

23 "Employee." An individual who [is employed by a facility.
24 The term includes contract employees who have direct contact
25 with residents or unsupervised access to their personal living
26 quarters. The term includes any person who is employed or who
27 enters into a contractual relationship to provide care to a
28 care-dependent individual for monetary consideration in the
29 individual's place of residence.] has unsupervised access to an
30 older adult or care-dependent individual or the individual's

1 living quarters, resources or personal records who:

2 (1) is employed by the facility; or

3 (2) enters into a contractual relationship with a
4 facility to provide care to an older adult or care-dependent
5 individual.

6 "Exploitation." An act or course of conduct by a caretaker,
7 agent, guardian or other person against an older adult or care-
8 dependent individual or an older adult's or care-dependent
9 individual's resources or personal records, without the informed
10 consent or authorization of the older adult or care-dependent
11 individual or with consent or authorization obtained through
12 misrepresentation, coercion or threats of force, [that results
13 in] resulting in monetary, personal or other benefit, gain or
14 profit [for the perpetrator or monetary or personal loss to the
15 older adult.] to the caretaker, agent, guardian or person, or
16 monetary or personal loss to the older adult or care-dependent
17 individual, including an act or course of conduct by an agent or
18 guardian that violates the agent's or guardian's duties to the
19 older adult or care-dependent individual.

20 "Facility." Any of the following:

21 (1) A domiciliary care home as defined in section 2202-A
22 of the act of April 9, 1929 (P.L.177, No.175), known as The
23 Administrative Code of 1929.

24 (2) [A home health care agency.

25 (3) A long-term care nursing facility as defined in
26 section 802.1 of the act of July 19, 1979 (P.L.130, No.48),
27 known as the Health Care Facilities Act.

28 (4) An older adult daily living center as defined in
29 section 2 of the act of July 11, 1990 (P.L.499, No.118),
30 known as the Older Adult Daily Living Centers Licensing Act.

1 (5) A personal care home as defined in section 1001 of
2 the act of June 13, 1967 (P.L.31, No.21), known as the Public
3 Welfare Code.] The following entities as defined in section
4 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as
5 the Health Care Facilities Act:

6 (i) A home health care agency.

7 (ii) A long-term care nursing facility.

8 (iii) A hospice.

9 (iv) A home care agency.

10 (v) A home care registry.

11 (3) An older adult daily living center as defined in
12 section 2 of the act of July 11, 1990 (P.L.499, No.118),
13 known as the Older Adult Daily Living Centers Licensing Act.

14 (4) A personal care home as defined in section 1001 of
15 the act of June 13, 1967 (P.L.31, No.21), known as the Public
16 Welfare Code:

17 (5) An assisted living residence as defined in section
18 1001 of the Public Welfare Code.

19 (6) A provider of Programs of All-Inclusive Care for the
20 Elderly as authorized under the Balanced Budget Act of 1997
21 (Public Law 105-33, 111 Stat. 369) and licensed under the
22 Older Adult Daily Living Centers Licensing Act.

23 (7) Any other public or private organization or entity,
24 or part of an organization or entity, that uses public funds
25 and is paid, in part, to provide care to older adults or
26 care-dependent individuals.

27 The term does not include an entity licensed by the Department
28 of Health or the Department of Drug and Alcohol Programs to
29 provide drug and alcohol addiction treatment services or an
30 entity licensed by the Department of Human Services' Office of

1 Developmental Programs.

2 "Guardian." An individual appointed by a court of competent
3 jurisdiction to make personal, financial or property decisions
4 for another who has been adjudicated incapacitated.

5 * * *

6 "Older adult in need of protective services." An
7 [incapacitated] older adult who is unable to perform or obtain
8 services that are necessary to maintain physical or mental
9 health, for whom there is no responsible caretaker and who is at
10 [imminent] risk of danger to his person or property.

11 * * *

12 "Registry." The publicly accessible Internet website
13 established and maintained by the department under Chapter 6.

14 * * *

15 "State police." The Pennsylvania State Police.

16 Section 2. Section 501 of the act is repealed:

17 [Section 501. Definitions.

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

21 "Applicant." An individual who submits an application, which
22 is being considered for employment, to a facility.

23 "State Police." The Pennsylvania State Police.]

24 Section 3. Section 502 of the act, amended October 24, 2012
25 (P.L.1412, No.175), is amended to read:

26 Section 502. Information relating to prospective facility
27 personnel.

28 (a) General rule.--A facility shall require all applicants
29 to submit with their applications, and shall require all
30 employees, administrators and any operators who have or may have

1 direct contact with a recipient to submit, the following
2 information obtained within the preceding one-year period:

3 (1) [Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal
4 history record information), a] A report of criminal history
5 record information from the State Police or a statement from
6 the State Police that [their] the State Police central
7 repository contains no such information relating to that
8 person[. The criminal history record information shall be
9 limited to that which is disseminated pursuant to 18 Pa.C.S.
10 § 9121(b) (2) (relating to general regulations).] under 18
11 Pa.C.S. Ch. 91 (relating to criminal history information).
12 The provisions of 18 Pa.C.S. § 9121(b) (2) (relating to
13 general regulations) shall not apply to criminal history
14 information or other criminal history record information
15 requested or received under this section.

16 (2) [Where] If the applicant [is not and for the two
17 years immediately preceding the date of application has not],
18 employee, administrator or operator has been a resident of
19 this Commonwealth[, administration] for less than the
20 previous two years, the facility shall require the
21 [applicant] person to submit [with the application for
22 employment] a report of Federal criminal history record
23 information pursuant to the Federal Bureau of Investigation's
24 appropriation under the Departments of State, Justice, and
25 Commerce, the Judiciary, and Related Agencies Appropriation
26 Act, 1973 (Public Law 92-544, 86 Stat. 1109). [The department
27 shall be the intermediary for the purposes of this
28 paragraph.] For the purposes of this paragraph, the
29 [applicant] person shall submit a full set of fingerprints to
30 the State Police in a manner prescribed by the department.

1 The [Commonwealth] State Police or its authorized agent shall
2 submit the fingerprints to the Federal Bureau of
3 Investigation. [for a national criminal history record check.
4 The information obtained from the criminal record check shall
5 be used by the department to determine the applicant's
6 eligibility. The determination shall be submitted to the
7 administrator by the applicant prior to commencing
8 employment. The administrator shall insure confidentiality of
9 the information. The provisions of 18 Pa.C.S. § 9121(b)(2)
10 shall not apply if the request for a report of Federal
11 criminal history record information is made pursuant to this
12 section.

13 (b) (Reserved).]

14 (3) Criminal history information shall be used by the
15 department to determine the person's eligibility for
16 employment with a facility or engagement as an administrator
17 or operator of a facility who may have direct contact with a
18 recipient. The department's findings shall be provided to the
19 facility and the person prior to commencement of employment
20 or engagement as an administrator or operator. The facility
21 shall ensure confidentiality of the information.

22 (4) The department may require the person to submit
23 additional information from a court or other authority within
24 the time frame designated by the department. Failure to
25 provide the requested information within the time frame
26 designated by the department may result in ineligibility.

27 Section 4. Section 503 of the act, amended June 9, 1997
28 (P.L.160, No.13), is amended to read:

29 Section 503. [Grounds for denying employment] Provisions
30 related to employment or engagement.

1 (a) General rule.--In no case shall a facility hire or
2 engage an applicant, administrator or operator who may have
3 direct contact with a recipient or retain an employee [required
4 to submit information pursuant to section 502(a)], administrator
5 or operator who has or may have direct contact with a recipient
6 if the [applicant's or employee's] person's criminal history
7 record information indicates the [applicant or employee] person
8 has been convicted of [any of the following offenses:] an
9 offense or attempt, solicitation or conspiracy to commit an
10 offense under any of the following provisions of 18 Pa.C.S.
11 (relating to crimes and offenses) or a similar offense under
12 Federal law or the law of any other jurisdiction:

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

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

18 Chapter 25 (relating to criminal homicide).

19 Chapter 26 (relating to crimes against unborn child).

20 Section 2702 (relating to aggravated assault).

21 Section 2713 (relating to neglect of care-dependent
22 person).

23 Section 2716 (relating to weapons of mass
24 destruction).

25 Section 2717 (relating to terrorism).

26 Section 2901 (relating to kidnapping).

27 [Section 2902 (relating to unlawful restraint).]

28 Section 3121 (relating to rape).

29 Section 3122.1 (relating to statutory sexual
30 assault).

1 Section 3123 (relating to involuntary deviate sexual
2 intercourse).

3 Section 3124.1 (relating to sexual assault).

4 Section 3125 (relating to aggravated indecent
5 assault).

6 Section 3126 (relating to indecent assault).

7 [Section 3127 (relating to indecent exposure).

8 Section 3301 (relating to arson and related
9 offenses).

10 Section 3502 (relating to burglary).

11 Section 3701 (relating to robbery).

12 A felony offense under Chapter 39 (relating to theft
13 and related offenses) or two or more misdemeanors under
14 Chapter 39.

15 Section 4101 (relating to forgery).

16 Section 4114 (relating to securing execution of
17 documents by deception).]

18 Section 3212 (relating to infanticide).

19 Section 4117 (relating to insurance fraud).

20 [Section 4302 (relating to incest).]

21 Section 4303 (relating to concealing death of child).

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

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

26 [Section 4952 (relating to intimidation of witnesses
27 or victims).

28 Section 4953 (relating to retaliation against witness
29 or victim).]

30 Section 5510 (relating to abuse of corpse).

1 [A felony offense under section 5902(b) (relating to
2 prostitution and related offenses).

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

5 Section 6301 (relating to corruption of minors).]

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

7 Section 6319 (relating to solicitation of minors to
8 traffic drugs).

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

11 (b) Ten year prohibition.--A facility shall not hire or
12 engage an applicant, administrator or operator who may have
13 direct contact with a recipient or retain an employee,
14 administrator or operator who has or may have direct contact
15 with a recipient if the person's criminal history record
16 information indicates the person has been convicted of any of
17 the following offenses within the past 10 years:

18 (1) Any of the following offenses under 18 Pa.C.S.:

19 Section 2902 (relating to unlawful restraint).

20 Section 2910 (relating to luring a child into motor
21 vehicle or structure).

22 Section 3127 (relating to indecent exposure).

23 Section 3301 (relating to arson and related
24 offenses).

25 Section 3502 (relating to burglary).

26 Section 3701 (relating to robbery).

27 Section 4101 (relating to forgery).

28 Section 4106 (relating to access device fraud).

29 Section 4114 (relating to securing execution of
30 documents by deception).

1 Section 4120 (relating to identity theft).

2 Section 4302 (relating to incest).

3 Section 4952 (relating to intimidation of witnesses
4 or victims).

5 Section 4953 (relating to retaliation against
6 witness, victim or party).

7 A felony offense under Chapter 39 (relating to theft
8 and related offenses).

9 Two or more misdemeanors under Chapter 39 arising out
10 of separate occurrences.

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

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

16 [(c) Immunity.--An administrator or a facility shall not be
17 held civilly liable for any action directly related to good
18 faith compliance with this section.]

19 (d) Restoration of eligibility.--A person subject to a ban
20 under subsections (a) or (b) may be hired or engaged by a
21 facility if the person can demonstrate a minimum five-year
22 aggregate work history in care-dependent services without
23 criminal conviction. Care-dependent services include health
24 care, child care, mental health care, care of older adults or of
25 persons with intellectual disabilities or physical disabilities.

26 (e) Right to appeal.--A person may challenge the decision of
27 the department involving the Federal criminal history record by
28 filing an appeal with the department in accordance with 2
29 Pa.C.S. (relating to administrative law and procedure).

30 (f) Ongoing disclosure.--Employees, administrators and

1 operators who have direct contact with recipients shall file a
2 written disclosure annually with the facility indicating whether
3 or not they have been convicted of any of the offenses
4 enumerated in subsections (a) or (b). If an employee,
5 administrator or operator who has a direct contact with
6 recipients is convicted of one of the offenses enumerated in
7 subsections (a) or (b), the employee, administrator or operator
8 shall file the disclosure within 72 hours following the
9 conviction. The following shall apply:

10 (1) The disclosure shall be made on a form developed by
11 the department and posted for downloading on the department's
12 publicly accessible Internet website and published in the
13 Pennsylvania Bulletin.

14 (2) The disclosure form shall contain a list of the
15 offenses enumerated in subsections (a) and (b) and a space
16 for the person completing the form to indicate whether or not
17 the person has been convicted of the offense.

18 (3) Persons required to submit the disclosure form under
19 this subsection shall be informed that failure to accurately
20 report any conviction for an offense enumerated under
21 subsections (a) or (b) may be subject to criminal prosecution
22 under 18 Pa.C.S. § 4904 (relating to unsworn falsification to
23 authorities).

24 (4) If a person required to submit a disclosure form
25 under this section refuses to do so, the facility shall
26 require the person to immediately submit a current report of
27 criminal history record information required under section
28 502.

29 (5) The following penalties shall apply:

30 (i) A person who discloses a conviction for an

1 offense enumerated under subsections (a) or (b) shall be
2 terminated.

3 (ii) A person who willfully fails to disclose a
4 conviction for an offense enumerated under subsections
5 (a) or (b) shall be terminated and may be subject to
6 criminal prosecution under 18 Pa.C.S. § 4904.

7 Section 5. Sections 504 and 506 of the act, added December
8 18, 1996 (P.L.1125, No.169), are amended to read:

9 Section 504. Regulations.

10 The department, in consultation with the Department of Health
11 and the Department of [Public Welfare] Human Services, shall
12 promulgate the regulations necessary to carry out this chapter.

13 Section 506. Provisional employees for limited periods.

14 (a) Conditions.--Notwithstanding section 502,
15 [administrators] facilities may employ applicants on a
16 provisional basis for a single period not to exceed 30 days [or,
17 for applicants under section 502(a)(2), a period of 90 days,] if
18 all of the following conditions are met:

19 (1) The applicant has applied for [the information] a
20 criminal history report required under section 502 and [the
21 applicant] provides a copy of the [appropriate] completed
22 request forms to the [administrator] facility.

23 (2) The [administrator] facility has no knowledge [of
24 information pertaining to] about the applicant which would
25 disqualify [him] the applicant from employment [pursuant to
26 section 503, subject to] under 18 Pa.C.S. § 4911 (relating to
27 tampering with public records or information).

28 (3) The applicant swears or affirms in writing that [he]
29 the applicant is not disqualified from employment under
30 section 503.

1 (4) If the information obtained under section 502
2 reveals that the applicant is disqualified from employment
3 under section 503, the applicant shall be immediately
4 dismissed by the [administrator] facility.

5 [(5) The department shall develop guidelines regarding
6 the supervision of applicants. For a home health care agency,
7 supervision shall include random direct supervision by an
8 employee who has been employed by the facility for a period
9 of one year.]

10 (b) Guidelines.--The department shall develop guidelines
11 regarding the supervision of applicants subject to this section.
12 Supervision shall include random direct supervision by an
13 employee who has been employed by the facility for a period of
14 at least one year.

15 Section 6. The act is amended by adding a chapter to read:

16 CHAPTER 6

17 HOME CARE WORKERS

18 Section 601. Registry of home care workers.

19 (a) Registry.--The department shall establish a publicly
20 accessible Internet website registry that the public may use to
21 search all home care workers in this Commonwealth who have
22 registered with and have been approved by the department to be
23 listed on the registry.

24 (b) Requirement.--An individual seeking approval of the
25 department for listing on the registry shall submit to the
26 department the same information required to be submitted by
27 applicants, employees, administrators and operators under
28 section 502, together with any other information required by the
29 department, on a form and in a manner prescribed by the
30 department. The following shall apply:

1 (1) Only individuals otherwise authorized under Chapter
2 5 for employment as a caregiver in a facility or as a home
3 care worker may be listed on the registry.

4 (2) Requesters and those listed on the registry shall be
5 subject to the provisions of section 503.

6 (c) Fees.--The department may charge an individual to be
7 listed on the registry a fee of up to \$50 to cover the expense
8 of providing the information on the registry. The following
9 shall apply:

10 (1) The department shall post the fee on its publicly
11 accessible Internet website and have it printed on the form
12 to be completed by the requester.

13 (2) The department shall not change the fee more than
14 once in a calendar year.

15 (3) The department may waive all or a portion of the fee
16 in order to encourage participation in the registry.

17 (d) Accessibility.--The registry shall be publicly
18 accessible by individuals and facilities seeking to employ home
19 care workers. The registry shall be organized by the department
20 to allow consumers and facilities to search by the following:

21 (1) Geography.

22 (2) Availability for employment.

23 (3) Training.

24 (4) Education.

25 (5) Experience.

26 (6) Access to transportation.

27 (7) Any other factor determined by the department.

28 Section 7. Sections 705(b)(2) and 708 of the act, added June
29 9, 1997 (P.L.160, No.13), are amended to read:

30 Section 705. Confidentiality of and access to confidential

1 reports.

2 * * *

3 (b) Exceptions.--A report under this chapter shall be made
4 available to all of the following:

5 * * *

6 (2) An employee of the Department of Health or the
7 Department of [Public Welfare] Human Services in the course
8 of official duties.

9 * * *

10 Section 708. Regulations.

11 The Department of Aging, the Department of Health and the
12 Department of [Public Welfare] Human Services shall promulgate
13 the regulations necessary to carry out this chapter.

14 Section 8. This act shall take effect in 60 days.