

TITLE 44. CHARITABLE AND CURATIVE INSTITUTIONS
SUBTITLE I. HEALTH RELATED INSTITUTIONS
CHAPTER 5. HEALTH-CARE AND COMMUNITY RESIDENCE FACILITY, HOSPICE
AND HOME CARE LICENSURE
SUBCHAPTER II. UNLICENSED PERSONNEL CRIMINAL BACKGROUND CHECK

§ 44-551. Definitions [Formerly § 32-1351]

(1) "Facility" means any entity required to be licensed pursuant to subchapter I of this chapter or Chapter 1 of this title, and any entity furnishing Medicaid services under a provider agreement with the District of Columbia in accordance with regulations promulgated under title XIX of the Social Security Act, approved July 30, 1965 (Pub. L. 89-97; 42 U.S.C. § 1396 et seq.).

(2) "Licensed professional" means a person employed by a facility who is licensed by a professional board or commission. "Licensed professional" does not include a person who functions in a complementary or assistant role to licensed nurses in providing direct patient care or carrying out common nursing tasks, such as a nurses aide, orderly, assistant technician, attendant, home-health aide, medication aide, geriatric aide, or other health aide; housekeeping staff; maintenance staff; administrative staff, and compensated contractors.

(3) "Medicaid services" means nursing facility services, home health-care services, inpatient hospital services and nursing facilities for individuals 65 years of age or older in an institution for mental disease, services in an intermediate care facility for the mentally retarded, home and community care for functionally disabled elderly individuals, and community supported living arrangement services as defined in title XIX of the Social Security Act, approved July 30, 1965 (Pub. L. 89-97; 42 U.S.C. § 1396 et seq.).

HISTORY: 1981 Ed., § 32-1351; Apr. 20, 1999, D.C. Law 12-238, § 2, 46 DCR 881; Apr. 12, 2000, D.C. Law 13-91, § 148(a), 47 DCR 520; June 24, 2000, D.C. Law 13-127, § 1403, 47 DCR 2647.

NOTES:

EFFECT OF AMENDMENTS. --D.C. Law 13-91 substituted "does not include" for "includes" in the second sentence of (2).

D.C. Law 13-127 inserted "or the Assisted Living Residence Regulatory Act of 2000, passed by the Council on second reading February 1, 2000" in (1). D.C. Law 14-40 amended this section as follows:

(1) Paragraph (1) is redesignated as paragraph (1C).

(2) New paragraphs (1A) and (1B) are added to read as follows:

"(1A) "Contract worker" means a compensated contractor for whom it is foreseeable he or she will come in direct contact with patients.

"(1B) "Criminal background check" means an investigation into a person's criminal history to determine whether, within the 7 years preceding the background check, the person has been convicted in the District of Columbia, or in any other state or territory of the United States where such person has worked or resided, of any of the offenses enumerated in section 3(e) or their equivalent in another state or territory."

(3) Paragraph (2) is repealed.

(4) New paragraphs (4), (5), (6), and (7) are added to read as follows:

"(4) "Nurse Aide Abuse Registry" means a record, maintained by the District of

Columbia in accordance with section 4211 of the Omnibus Budget Reconciliation Act of 1987, approved December 22, 1987 (101 Stat. 1330-182; 42 U.S.C. § 1396r), and 29 DCMR § 3250-3254, containing names of individuals who worked as nurse aides and were determined to have abused or neglected, or misappropriated the property of, a nursing home resident.

"(5) "Person" means an individual.

"(6) "Private agency" means an entity or person that offers customer assistance in the use of criminal background checks for employment purposes.

"(7) "Unlicensed person" means a person not licensed pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.01 et seq.), who functions in a complementary or assistance role to licensed health care professionals in providing direct patient care or in performing common nursing tasks. The term "unlicensed person" includes nurse aides, orderlies, assistant technicians, attendants, home health aides, personal care aides, medication aides, geriatric aides, or other health aides. The term "unlicensed person" also includes housekeeping, maintenance, and administrative staff for whom it is foreseeable that the prospective employee or contract worker will come in direct contact with patients."

Section 4(b) of D.C. Law 14-40 provides that the act shall expire after 225 days of its having taken effect.

Section 16(k) of D.C. Law 14-51 amended (3) by adding the phrase "mental health rehabilitation" before the phrase "services in an intermediate care facility for the mentally retarded,".

Section 19(b) of D.C. Law 14-51 provides that the act shall expire after 225 days of its having taken effect.

EMERGENCY LEGISLATION. --For temporary amendment of section, see § 2(a) of the Health-Care Facility Unlicensed Personnel Criminal Background Check Technical Amendments Emergency Act of 1999 (D.C. Act 13-201, December 1, 1999, 46 DCR 10452).

EMERGENCY LEGISLATION. --For temporary amendment of section, see § 2(a) of the Health-Care Facility Unlicensed Personnel Criminal Background Check Emergency Amendment Act of 2001 (D.C. Act 14-102, July 23, 2001, 48 DCR 7143).

For temporary amendment of section, see § 16(k) of the Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary amendment of this section, see § 16(k) of the Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

LEGISLATIVE HISTORY OF LAW 12-238. --Law 12-238, the "Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998," was introduced in Council and assigned Bill No. 12-628. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 22, 1998, it was assigned Act No. 12-567 and transmitted to both Houses of Congress for its review. D.C. Law 12-238 became effective on April 20, 1999. Law 12-277, the "TANF-Related Medicaid Managed Care Temporary Amendment Act of 1999," was introduced in Council and assigned Bill No. 12-900. The Bill was adopted on first and second readings on December 15, 1998, and January 5, 1999, respectively. Signed by the Mayor

on January 27, 1999, it was assigned Act No. 12-629 and transmitted to both Houses of Congress for its review. D.C. Law 12-277 became effective on April 27, 1999. Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000. Law 13-127, the "Assisted Living Residence Regulatory Act of 2000," was introduced in Council and assigned Bill No. 13-107. The Bill was adopted on first and second readings on January 4, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 22, 2000, it was assigned Act No. 13-297 and transmitted to both Houses of Congress for its review. D.C. Law 13-127 became effective on June 24, 2000. Law 14-40, the "Health-Care Facility Unlicensed Personnel Criminal Background Check Temporary Amendment Act of 2001," was introduced in Council and assigned Bill No. 14-267. The Bill was adopted on first and second readings on June 26, 2001, and July 10, 2001, respectively. Signed by the Mayor on July 18, 2001, it was assigned Act No. 14-105 and transmitted to both Houses of Congress for its review. D.C. Law 14-40 became effective on October 13, 2001.

§ 44-552. Criminal background checks [Formerly § 32-1352]

- (a) The requirements of this section shall not apply to persons licensed under Chapter 12 of Title 3, or to a person who volunteers services to a facility and works under the direct supervision of a person licensed pursuant to Chapter 12 of Title 3.
- (b) No facility shall offer to employ or contract with any person who is not a licensed professional until a criminal background check has been conducted for that person. Every facility shall inform each applicant for employment or a prospective contract worker that the facility is required to conduct a criminal background check before making an offer of employment to, or contracting with, a person who is not a licensed professional.
- (c) All criminal records received by a facility for the purposes of employing a person who is not a licensed professional pursuant to this subchapter shall be kept confidential and shall be used solely by the facility. The criminal records shall not be released or otherwise disclosed to any person except to:
 - (1) The Mayor or the Mayor's designee during an official inspection or investigation of the facility;
 - (2) The person whose background is being investigated;
 - (3) Comply with an order of a court; or
 - (4) Any person with the written consent of the person being investigated.

(d) All criminal records received by a facility shall be destroyed after one year from the end of employment of the person to whom the records relate.

(e) Except as provided in subsection (f) of this subsection, no facility shall employ or contract with any person who is not a licensed professional if that

person has been convicted in the District of Columbia or in any other state or territory of the United States of any of the following offenses or their equivalent in another state or territory:

- (1) Murder, attempted murder, or manslaughter;
- (2) Arson;
- (3) Assault, battery, assault and battery, assault with a dangerous weapon, mayhem or threats to do bodily harm;
- (4) Burglary;
- (5) Robbery;
- (6) Kidnapping;
- (7) Theft, fraud, forgery, extortion or blackmail;
- (8) Illegal use or possession of a firearm;
- (9) Trespass or injury to property;
- (10) Rape, sexual assault, sexual battery, or sexual abuse;
- (11) Child abuse or cruelty to children; or
- (12) Unlawful distribution, possession, or possession with intent to distribute, a controlled substance.

(f) The Mayor may, by rulemaking, provide that a person who is not a licensed professional who seeks employment with a facility, having been convicted of certain crimes or placed on the Nurse Aide Abuse Registry, may be employed in a health-care facility after a specified period of time during which the person has not been convicted of any crime or committed any other prohibited behavior.

(g) Except as provided in subsection (f) of this section, no facility shall employ or contract with any person who is not a licensed professional if that person's name appears on the Nurse Aide Abuse Registry maintained pursuant to regulations promulgated by the Mayor.

(h) At the request of a facility, accompanied by the payment of a fee as determined by the Mayor, the Mayor or the Mayor's designee, or any other authorized entity shall conduct a criminal background check of any person who is not a licensed professional seeking employment with, or employed by, the facility or an entity contracting with the facility.

(i) Except as provided in subsection (a) of this section, a facility may also opt to conduct a criminal background check on any employee or volunteer who provides services at the facility.

HISTORY: 1981 Ed., § 32-1352; Apr. 20, 1999, D.C. Law 12-238, § 3, 46 DCR 881; Apr. 12, 2000, D.C. Law 13-91, § 148(b), 47 DCR 520.

NOTES:

EFFECT OF AMENDMENTS. --D.C. Law 13-91 substituted "person" for "health-care aide" in the second sentence of (b). Section 2(b) of D.C. Law 14-40 amended this section as follows:

(1) Subsection (a) is amended by striking the phrase "apply to persons licensed" and inserting the phrase "apply to persons employed on or before the effective date of the Health-Care Facility Unlicensed Personnel Criminal Background Check Emergency Amendment Act of 2001, passed on an emergency basis on June 26, 2001 (Enrolled version of Bill 14-266), persons licensed" in its place.

(2) Subsection (b) is amended to read as follows:

"(b) No facility shall employ or contract with any unlicensed person until a criminal background check has been conducted for that person. Each facility shall inform each prospective employee or contract worker that the facility is required to conduct a criminal background check before employing or contracting with an unlicensed person."

(3) Subsection (e) is amended as follows:

(A) Strike the lead-in language and insert the following language in its place:

"No facility shall employ or contract with any unlicensed person if, within the 7 years preceding a criminal background check conducted pursuant to this section, that person has been convicted in the District of Columbia, or in any other state or territory of the United States where such person has worked or resided, of any of the following offenses or their equivalent in another state or territory:"

(B) Paragraph (9) is repealed.

(C) Paragraph (12) is amended by striking the phrase "distribution, possession, or possession with intent" and inserting the phrase "distribution or possession with intent" in its place.

(4) Subsection (f) is repealed.

(5) Subsection (g) is amended by striking the phrase "Except as provided in subsection (f) of this section, no facility shall employ or contract with any person who is not a licensed professional" and inserting the phrase "No facility shall employ or contract with any unlicensed person" in its place.

(6) Subsection (h) is amended to read as follows:

"(h) Each facility may obtain a criminal background check from the Metropolitan Police Department, the U.S. Department of Justice, or from a private agency. The facility shall pay the fee that is established and charged by the entity that provides the criminal background check results. Nothing in this subsection shall preclude the facility from seeking reimbursement of the fee paid for the criminal background check from the applicant for employment or contract work."

Section 4(b) of D.C. Law 14-40 provides that the act shall expire after 225 days of its having taken effect.

EMERGENCY LEGISLATION. --For temporary amendment of section, see § 2(b) of the Health-Care Facility Unlicensed Personnel Criminal Background Check Technical Amendments Emergency Act of 1999 (D.C. Act 13-201, December 1, 1999, 46 DCR 10452).

EMERGENCY LEGISLATION. --For temporary amendment of section, see § 2(b) of the Health-Care Facility Unlicensed Personnel Criminal Background Check Emergency Amendment Act of 2001 (D.C. Act 14-102, July 23, 2001, 48 DCR

7143).

LEGISLATIVE HISTORY OF LAW 12-238. --See note to § 44-551. See note to § 44-551. See note to § 44-551.

§ 44-553. Penalties for unauthorized released of criminal information [Formerly § 32-1353]

- (a) Any person releasing or disclosing any information in violation of § 44-552(c) shall be guilty of a misdemeanor, and shall be punishable by the payment of a fine not greater than \$300, a term of imprisonment not greater than 30 days, or both.
- (b) Civil fines, penalties, and fees may be imposed as sanctions for any violation of this subchapter or the rules issued pursuant to this subchapter, pursuant to Chapter 18 of Title 2.
- (c) No facility shall be subject to civil liability that in good faith relies on a criminal background check to terminate, or to refuse to offer employment to, any individual.

HISTORY: 1981 Ed., § 32-1353; Apr. 20, 1999, D.C. Law 12-238, § 4, 46 DCR 881.

NOTES:

LEGISLATIVE HISTORY OF LAW 12-238. --See note to § 44-551.