

BACKGROUND CHECK OF HOME HEALTH**PROFESSIONALS**

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

AN ACT RELATING TO HEALTH; REQUIRING A CRIMINAL BACKGROUND CHECK OF A DIRECT CARE EMPLOYEE OF A HOME HEALTH AGENCY; ESTABLISHING, BY RULE, RESTRICTIONS ON EMPLOYEES WITH A CRIMINAL CONVICTION; EXTENDING IMMUNITY TO HOME HEALTH CARE AGENCIES WITH RESPECT TO THE SUBMISSION OF INFORMATION TO THE DEPARTMENT; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

26-21-6, as last amended by Chapter 209, Laws of Utah 1997

ENACTS:

26-21-9.5, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26-21-6** is amended to read:

26-21-6. Duties of department.

(1) The department shall:

(a) enforce rules established pursuant to this chapter;

(b) authorize an agent of the department to conduct inspections of health-care facilities pursuant to this chapter;

(c) collect information authorized by the committee that may be necessary to ensure that adequate health-care facilities are available to the public;

(d) collect and credit fees for licenses as free revenue;

(e) collect and credit fees for conducting plan reviews as dedicated credits;

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(f) designate an executive secretary from within the department to assist the committee in carrying out its powers and responsibilities; [and]

(g) establish reasonable standards for criminal background checks by public and private entities;

(h) recognize those public and private entities which meet the standards established in Subsection (1)(f); and

~~[(g)]~~ (i) provide necessary administrative and staff support to the committee.

(2) The department may:

(a) exercise all incidental powers necessary to carry out the purposes of this chapter;

(b) review architectural plans and specifications of proposed health-care facilities or renovations of health-care facilities to ensure that the plans and specifications conform to rules established by the committee; and

(c) make rules as necessary to implement the provisions of this chapter, except as authority is specifically delegated to the committee.

Section 2. Section **26-21-9.5** is enacted to read:

26-21-9.5. Additional licensing requirements for home health agencies.

(1) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a home health care agency at the time of initial application and renewal for licensure shall:

(a) submit the name of each employee who:

(i) provides direct care to a patient; and

(ii) has been the subject of a criminal background check since July 1, 1998, by a public or private entity recognized by the department; and

(b) submit the name and other identifying information, which may include fingerprints, of each employee who:

(i) provides direct care to a patient; and

(ii) has not been the subject of a criminal background check in accordance with Subsection (1)(a).

(2) (a) The department shall forward the information received under Subsection (1)(b) to the Law Enforcement and Technical Services Division of the Department of Public Safety for processing to determine whether the employee has been convicted of any crime.

(b) If the employee has not resided in Utah for the last two consecutive years, or if there

1 is a justifiable reason to believe that the employee may have a criminal record in another state, the
2 department may:

3 (i) require the employee to submit fingerprints; and

4 (ii) instruct the Utah Bureau of Criminal Identification to forward the employee's
5 fingerprints for an FBI national criminal history record check.

6 (3) (a) The department shall record the name of each person who has been:

7 (i) employed by a home health agency; and

8 (ii) the subject of a criminal background check since July 1, 1998.

9 (b) The department may disclose the name of a person recorded in accordance with
10 Subsection (3)(a) at the request of a home health agency:

11 (i) to screen a potential employee; or

12 (ii) for purposes of complying with Subsection (1).

13 (4) The commission shall adopt rules defining the circumstances under which a person
14 who has been convicted of a criminal offense may provide direct care to a patient, taking into
15 account the nature of the criminal offense and its relation to patient care.

16 (5) The department may, in accordance with Section 26-1-6, assess reasonable fees for:

17 (a) a criminal background check processed pursuant to Subsection (2); and

18 (b) providing the name of a person recorded in accordance with Subsection (3)(a).

19 (6) A home health care agency may not be civilly liable for submitting information to the
20 department as required by Subsection (1).

21 **Section 3. Effective date.**

22 This act takes effect on July 1, 1998.

Legislative Review Note

as of 1-29-98 11:56 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel