

1 **HEALTH CARE WORKERS - BACKGROUND**

2 **CHECKS**

3 1999 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Michael G. Waddoups**

6 AN ACT RELATING TO HEALTH; CLARIFYING WHEN A NATIONAL CRIMINAL
7 BACKGROUND CHECK IS REQUIRED FOR AN EMPLOYEE OF A HEALTH CARE
8 FACILITY; CLARIFYING WHEN THE CHILD ABUSE DATABASE FOR LICENSING AND
9 THE ELDER ABUSE DATABASE MAY BE USED TO SCREEN AN EMPLOYEE;
10 INCREASING THE NUMBER OF HEALTH DEPARTMENT WORKERS WHO MAY
11 ACCESS THE DATABASES; REQUIRING A BACKGROUND CHECK AT THE TIME OF
12 HIRE; AND MAKING TECHNICAL AND CONFORMING AMENDMENTS.

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

14 AMENDS:

15 **26-21-9.5**, as enacted by Chapter 169, Laws of Utah 1998

16 **62A-3-311.1**, as last amended by Chapter 169, Laws of Utah 1998

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

18 Section 1. Section **26-21-9.5** is amended to read:

19 **26-21-9.5. Criminal background check and substantiated findings of abuse or**
20 **neglect.**

21 (1) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a covered
22 health care facility, as defined in Subsection [(9)] (10), at the time of initial application for a
23 license and license renewal [for licensure] shall:

24 (a) submit the name and other identifying information of each person associated with the
25 facility who:

26 (i) provides direct care to a patient; and

27 (ii) has been the subject of a criminal background check within the preceding three-year

28 period by a public or private entity recognized by the department; and

29 (b) submit the name and other identifying information, which may include fingerprints,
30 of each person associated with the facility who:

31 (i) provides direct care to a patient; and

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

34 (2) (a) The department shall forward the information received under Subsection (1)(b) to
35 the Criminal Investigations and Technical Services Division of the Department of Public Safety
36 for processing to determine whether an individual has been convicted of any crime.

37 (b) If an individual has not [~~lived~~] had residency in Utah for the last five years, the
38 individual shall submit fingerprints for an FBI national criminal history record check. The
39 fingerprints shall be submitted to the FBI through the Criminal Investigations and Technical
40 Services Division. The individual or licensee is responsible for the cost of the fingerprinting and
41 national criminal history check.

42 (3) The department may determine whether:

43 (a) an individual whose name and other identifying information has been submitted
44 pursuant to Subsection (1) and who provides direct care to children has a substantiated finding of
45 child abuse or neglect by accessing in accordance with Subsection (4) the licensing part of the
46 management information system created in Section 62A-4a-116 if identification as a possible
47 perpetrator of child abuse or neglect is relevant to the employment activities of that individual; or

48 (b) an individual whose name and other identifying information has been submitted
49 pursuant to Subsection (1) and who provides direct care to disabled or elder adults has a
50 substantiated finding of abuse, neglect, or exploitation of a disabled or elder [~~abuse~~] adult by
51 accessing in accordance with Subsection (4) the database created in Section 62A-3-311.1 if
52 identification as a possible perpetrator of disabled or elder adult abuse, neglect, or exploitation is
53 relevant to the employment activities of that person.

54 (4) (a) The department shall:

55 (i) designate two persons within the department to access the licensing part of the
56 management information system and two persons to access the database described in Subsection
57 (3); and

58 (ii) adopt measures to:

59 (A) protect the security of the management information system and the database; and

60 (B) strictly limit access to the management information system and the database to those
61 designated under Subsection (4)(a)(i).

62 (b) Those designated under Subsection (4)(a)(i) shall receive training from the Department
63 of Human Services with respect to:

64 (i) accessing the management information system and the database;

65 (ii) maintaining strict security; and

66 (iii) the criminal provisions in Section 62A-4a-412 for the improper release of information.

67 (c) Those designated under Subsection (4)(a)(i):

68 (i) are the only ones in the department with the authority to access the management
69 information system and database; and

70 (ii) may only access the management information system and the database for the purpose
71 of licensing and in accordance with the provisions of Subsection (3).

72 (5) Within ten days of initially hiring an individual, a covered health care facility shall
73 submit the individual's information to the department in accordance with Subsection (1).

74 [~~(5)~~] (6) The department shall adopt rules defining the circumstances under which a person
75 who has been convicted of a criminal offense or has a substantiated report of child abuse or neglect
76 or disabled or elder adult abuse [~~or~~], neglect, or exploitation may provide direct care to a patient
77 in a covered health care facility, taking into account the nature of the criminal [~~offense~~] conviction
78 or substantiated finding and its relation to patient care.

79 [~~(6)~~] (7) The department may, in accordance with Section 26-1-6, assess reasonable fees
80 for a criminal background check processed pursuant to this section.

81 [~~(7)~~] (8) The department may inform the covered health care facility of the criminal
82 conviction or substantiated finding of child abuse or neglect of an individual associated with the
83 facility.

84 [~~(8)~~] (9) A covered health care facility is not civilly liable for submitting information to
85 the department as required by Subsection (1).

86 [~~(9)~~] (10) For purposes of this section, "covered health care facility" only includes:

87 (a) home health care agencies;

88 (b) hospices;

89 (c) nursing care facilities;

90 ~~[(d) residential health care facilities;]~~
91 ~~[(e)]~~ (d) assisted-living facilities;
92 ~~[(f)]~~ (e) small health care facilities; and
93 ~~[(g)]~~ (f) end stage renal disease facilities.

94 Section 2. Section **62A-3-311.1** is amended to read:

95 **62A-3-311.1. Statewide data base -- Restricted use and access.**

96 (1) The division shall maintain a data base for reports of disabled or elder adult abuse,
97 neglect, emotional or psychological abuse, or exploitation made pursuant to this part.

98 (2) The data base shall include:

99 (a) the names and identifying data of the abused, neglected, or exploited adult and the
100 reported abuser;

101 (b) information regarding whether or not the abuse, emotional or psychological abuse,
102 neglect, or exploitation was substantiated or unsubstantiated; and

103 (c) any other information that may be helpful in furthering the purposes of this part, as
104 determined by the division, subject to the restrictions of Subsection 62A-3-311(2).

105 (3) Information obtained from the data base may be used only for:

106 (a) compiling statistical summaries that do not include names or other identifying data;

107 (b) granting or denying licenses or other grants of privilege by the department where
108 identification as a possible adult abuser may be relevant to the privilege in question, in accordance
109 with Subsection (4);

110 (c) investigation and action by the Division of Occupational and Professional Licensing
111 regarding registration of a health care assistant under Title 58, Chapter 62, Health Care Assistant
112 Registration Act; and

113 (d) licensing purposes by the Bureau of ~~[Health Facility Licensure]~~ Licensing within the
114 Department of Health, as provided for in Section 26-21-9.5, in determining whether a person
115 associated with a covered health care facility who provides direct care to disabled or elder adults
116 has a substantiated finding of disabled or elder adult abuse, neglect, or exploitation if identification
117 as a possible perpetrator is relevant to the employment activities of that person.

118 (4) (a) A license or privilege may not be denied under Subsection (3) solely on the basis
119 of information in the data base.

120 (b) Before a license or privilege may be denied under Subsection (3), the department

121 taking the action shall conduct a review and provide the person making application for the license
122 or privilege with notice and an opportunity to be heard in accordance with Title 63, Chapter 46b,
123 Administrative Procedures Act.

Legislative Review Note
as of 2-2-99 10:09 AM

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

Office of Legislative Research and General Counsel