

ASSEMBLY BILL NO. 573—ASSEMBLYMEN HUMKE AND FREEMAN

MARCH 15, 1999

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions governing criminal histories of employees and independent contractors of certain health care facilities. (BDR 40-1539)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

~

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to health care facilities; requiring the periodic investigation of the criminal histories of employees and independent contractors of certain health care facilities; authorizing the retention of certain employees with criminal histories under certain circumstances; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 449.179 is hereby amended to read as follows:
2 449.179 1. Except as otherwise provided in subsection ~~4~~ 2, within
3 10 days after hiring an employee ~~or entering into a contract with an~~
4 ***independent contractor***, the administrator of, or the person licensed to
5 operate, an agency to provide nursing in the home, a facility for
6 intermediate care, a facility for skilled nursing or a residential facility for
7 groups shall:
8 (a) Obtain a written statement from the employee ***or independent***
9 ***contractor*** stating whether he has been convicted of any crime listed in
10 NRS 449.188;
11 (b) Obtain ~~a verbal~~ ***an oral*** and written confirmation of the
12 information contained in the written statement obtained pursuant to
13 paragraph (a);
14 (c) Obtain from the employee ***or independent contractor*** two sets of
15 fingerprints and a written authorization to forward the fingerprints to the
16 central repository for Nevada records of criminal history for submission to
17 the Federal Bureau of Investigation for its report; and

1 (d) Submit to the central repository for Nevada records of criminal
2 history the fingerprints obtained pursuant to paragraph (c).

3 2. The *administrator of, or the person licensed to operate, an agency*
4 *to provide nursing in the home, a facility for intermediate care, a facility*
5 *for skilled nursing or a residential facility for groups is not required to*
6 *obtain the information described in subsection 1 from an employee or*
7 *independent contractor who provides proof that an investigation of his*
8 *criminal history has been conducted by the central repository for Nevada*
9 *records of criminal history within the immediately preceding 6 months*
10 *and the investigation did not indicate that the employee or independent*
11 *contractor had been convicted of any crime set forth in NRS 449.188.*

12 3. The *administrator of, or the person licensed to operate, an agency*
13 *to provide nursing in the home, a facility for intermediate care, a facility*
14 *for skilled nursing or a residential facility for groups shall ensure that*
15 *the criminal history of each employee or independent contractor who*
16 *works at the agency or facility is investigated at least once every 5 years.*
17 *The administrator or person shall:*

18 (a) *If the agency or facility does not have the fingerprints of the*
19 *employee or independent contractor on file, obtain two sets of*
20 *fingerprints from the employee or independent contractor;*

21 (b) *Obtain written authorization from the employee or independent*
22 *contractor to forward the fingerprints on file or obtained pursuant to*
23 *paragraph (a) to the central repository for Nevada records of criminal*
24 *history for submission to the Federal Bureau of Investigation for its*
25 *report; and*

26 (c) *Submit the fingerprints to the central repository for Nevada*
27 *records of criminal history.*

28 4. *Upon receiving fingerprints submitted pursuant to this section, the*
29 *central repository for Nevada records of criminal history shall determine*
30 *whether the employee or independent contractor has been convicted of a*
31 *crime listed in NRS 449.188 and immediately inform the health division* ~~and~~
32 *and the administrator of, ~~and~~ or the person licensed to operate, the*
33 *agency or facility at which the person ~~is employed of whether or not~~*
34 *works whether the employee or independent contractor has been*
35 *convicted of such a crime.*

36 ~~3.1~~ 5. The central repository for Nevada records of criminal history
37 may impose a fee upon an agency or a facility that submits fingerprints
38 pursuant to this section for the reasonable cost of the investigation. The
39 agency or facility may recover from the employee *or independent*
40 *contractor* not more than one-half of the fee imposed by the central
41 repository. If the agency or facility requires the employee *or independent*

1 **contractor** to pay for any part of the fee imposed by the central repository,
2 it shall allow the employee **or independent contractor** to pay the amount
3 through periodic payments.

4 ~~{4.—The provisions of this section do not apply to an employee who has~~
5 ~~undergone an investigation of his criminal background as a condition to~~
6 ~~receiving a professional license in this state.}~~

7 **Sec. 2.** NRS 449.182 is hereby amended to read as follows:

8 449.182 Each agency to provide nursing in the home, facility for
9 intermediate care, facility for skilled nursing and residential facility for
10 groups shall maintain accurate records of the information concerning its
11 employees **and independent contractors** collected pursuant to NRS
12 449.179, and shall maintain a copy of the fingerprints submitted to the
13 central repository for Nevada records of criminal history and proof **that** it
14 submitted two sets of fingerprints to the central repository for its report.
15 These records must be made available for inspection by the health division
16 at any reasonable time and copies thereof must be furnished to the health
17 division upon request.

18 **Sec. 3.** NRS 449.185 is hereby amended to read as follows:

19 449.185 1. Upon receiving information from the central repository
20 for Nevada records of criminal history pursuant to NRS 449.179, or
21 evidence from any other source, that ~~{a person who is employed at}~~ **an**
22 **employee or independent contractor of** an agency to provide nursing in the
23 home, a facility for intermediate care, a facility for skilled nursing or a
24 residential facility for groups has been convicted of a crime listed in
25 paragraph (a) of subsection 1 of NRS 449.188, the administrator of, or the
26 person licensed to operate, the agency or facility shall **, except as otherwise**
27 **provided in subsection 4,** terminate the employment **or contract** of that
28 person after allowing him time to correct the information as required
29 pursuant to subsection 2.

30 2. If an employee **or independent contractor** believes that the
31 information provided by the central repository is incorrect, he may
32 immediately inform the agency or facility. An agency or facility that is so
33 informed shall give ~~{an}~~ **the** employee **or independent contractor** a
34 reasonable amount of time of not less than 30 days to correct the
35 information received from the central repository before terminating the
36 employment **or contract** of the person pursuant to subsection 1.

37 3. An agency or facility that has complied with NRS 449.179 may not
38 be held civilly or criminally liable based solely upon the ground that the
39 agency or facility allowed an employee **or independent contractor** to work:

40 (a) Before it received the information concerning the employee **or**
41 **independent contractor** from the central repository;

42 (b) During any period required pursuant to subsection 2 to allow the
43 employee **or independent contractor** to correct ~~{such}~~ **that** information;

(c) Based on the information received from the central repository, if the information received from the central repository was inaccurate; or

(d) Any combination thereof.

An agency or facility may be held liable for any other conduct determined to be negligent or unlawful.

4. The administrator of, or the person licensed to operate, the agency or facility is not required to terminate the employment or contract of a convicted person pursuant to subsection 1 if:

(a) The convicted person holds a license or certificate issued by the state board of nursing; and

(b) The state board of nursing was knowledgeable of the convicting at the time the license or certificate was issued or renewed.

Sec. 4. NRS 449.188 is hereby amended to read as follows:

449.188 1. In addition to the grounds listed in NRS 449.160, the health division may deny a license to operate a facility for intermediate care, facility for skilled nursing or residential facility for groups to an applicant or may suspend or revoke the license of a licensee to operate such a facility if:

(a) The applicant or licensee has been convicted of:

(1) Murder, voluntary manslaughter or mayhem;

(2) Assault with intent to kill or to commit sexual assault or mayhem;

(3) Sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure or any other sexually related crime;

(4) Abuse or neglect of a child or contributory delinquency;

(5) A violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in chapter 454 of NRS, within the past 7 years;

(6) **A violation of any provision of NRS 200.5099 or 200.50955;**

(7) Any offense involving fraud, theft, embezzlement, burglary, robbery, fraudulent conversion or misappropriation of property, within the immediately preceding 7 years; or

~~(7)~~ (8) Any other felony involving the use of a firearm or other deadly weapon, within the immediately preceding 7 years; or

(b) The licensee has , **except as otherwise provided in subsection 4 of NRS 449.185**, continued to employ a person who has been convicted of a crime listed in paragraph (a).

2. In addition to the grounds listed in NRS 449.160, the health division may deny a license to operate an agency to provide nursing in the home to an applicant or may suspend or revoke the license of a licensee to operate such an agency if , **except as otherwise provided in subsection 4 of NRS 449.185**, the licensee has continued to employ a person who has been convicted of a crime listed in paragraph (a) of subsection 1.

1 **Sec. 5.** Each employee or independent contractor of an agency to
2 provide nursing in the home, a facility for intermediate care, a facility for
3 skilled nursing or a residential facility for groups who:

4 1. Is working at such an agency or facility on July 1, 1999, shall, not
5 later than July 15, 1999, submit to the administrator of, or the person
6 licensed to operate, that agency or facility a statement, signed under penalty
7 of perjury, that indicates whether the person has been convicted of a
8 violation of any provision of NRS 200.50955 or 200.5099. The statement
9 must include the date and place of each such conviction.

10 2. Begins work at such an agency or facility after July 1, 1999, but
11 before January 1, 2000, and has had an investigation of his criminal history
12 conducted by the central repository for Nevada records of criminal history
13 within the immediately preceding 6 months, shall, not later than 10 days
14 after he begins work at the agency or facility, submit the statement required
15 by subsection 1 to the administrator of, or the person licensed to operate,
16 that agency or facility.

17 **Sec. 6.** This act becomes effective on July 1, 1999.