

Assembly Bill No. 20—Committee on
Health and Human Services

CHAPTER.....

AN ACT relating to care facilities; requiring a licensee or applicant for a license to operate a home for individual residential care to comply with certain provisions concerning the criminal history of the licensee or applicant and any employee or independent contractor of the home; revising provisions concerning crimes which constitute grounds for the revocation, denial or suspension of a license to operate such a home or certain other agencies and facilities or the termination of their employees or independent contractors; requiring such a home to file a surety bond with the Administrator of the Health Division of the Department of Health and Human Services or deposit with a bank or trust company certain obligations as a substitute for the surety bond; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill expands the applicability of certain statutory requirements that currently apply to certain agencies and facilities that are licensed by the Health Division of the Department of Health and Human Services.

Section 1 of this bill requires a home for individual residential care that submits a reapplication for licensure to the Health Division to include a statement that the home is in compliance with certain provisions concerning investigations of the criminal history of its employees and independent contractors. (NRS 449.060)

Section 2 of this bill requires such a home to file a surety bond with the Health Division. The required amount of the bond ranges from \$5,000 to \$50,000, depending on the number of persons who are employed by the home. The Administrator of the Health Division may exempt a home from this requirement based on undue hardship. (NRS 449.065) In lieu of a surety bond, **section 3** of this bill authorizes a home, with the approval of the Administrator, to deposit certain obligations with a bank or trust company. (NRS 449.067) **Section 9** of this bill authorizes payment from the surety bond or the substitute for the surety bond if a patient who is 60 years of age or older (NRS 449.063) sustains damage to his property as a result of any act or failure to act by the home. (NRS 427A.175)

Section 4 of this bill requires an applicant for a license to operate an agency to provide personal care services in the home or a home for individual residential care to submit to the Central Repository for Nevada Records of Criminal History two complete sets of the fingerprints of the applicant. (NRS 449.176) **Section 5** of this bill imposes a similar requirement on a home for individual residential care with respect to any person it hires or independent contractor with whom it contracts. (NRS 449.179)

Existing law sets forth certain crimes that are grounds for the denial, suspension or revocation of a license to operate certain facilities that are licensed by the Health Division. **Section 8** of this bill expands the list of crimes to include certain sexually related crimes, crimes involving domestic violence and other crimes involving the use or threat of use of force or violence against the victim and makes the provisions of the section applicable to a home for individual residential care. (NRS 449.188)



Section 7 of this bill requires that such a home terminate the employment or contract of any of its employees or independent contractors who are convicted of a crime specified in **section 8**. (NRS 449.185)

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

Section 1. NRS 449.060 is hereby amended to read as follows:

449.060 1. Each license issued pursuant to NRS 449.001 to 449.240, inclusive, expires on December 31 following its issuance and is renewable for 1 year upon reapplication and payment of all fees required pursuant to NRS 449.050 unless the Health Division finds, after an investigation, that the facility has not:

(a) Satisfactorily complied with the provisions of NRS 449.001 to 449.240, inclusive, or the standards and regulations adopted by the Board;

(b) Obtained the approval of the Director of the Department of Health and Human Services before undertaking a project, if such approval is required by NRS 439A.100; or

(c) Conformed to all applicable local zoning regulations.

2. Each reapplication for an agency to provide personal care services in the home, an agency to provide nursing in the home, a ~~residential~~ facility for intermediate care, a facility for skilled nursing, ~~or~~ a residential facility for groups *or a home for individual residential care* must include, without limitation, a statement that the facility, ~~or~~ agency *or home* is in compliance with the provisions of NRS 449.173 to 449.188, inclusive.

Sec. 2. NRS 449.065 is hereby amended to read as follows:

449.065 1. Except as otherwise provided in subsections 6 and 7 and NRS 449.067, each facility for intermediate care, facility for skilled nursing, residential facility for groups, *home for individual residential care*, agency to provide personal care services in the home and agency to provide nursing in the home shall, when applying for a license or renewing a license, file with the Administrator of the Health Division a surety bond:

(a) If the facility, ~~or~~ agency *or home* employs less than 7 employees, in the amount of \$5,000;

(b) If the facility, ~~or~~ agency *or home* employs at least 7 but not more than 25 employees, in the amount of \$25,000; or

(c) If the facility, ~~or~~ agency *or home* employs more than 25 employees, in the amount of \$50,000.

2. A bond filed pursuant to this section must be executed by the facility, ~~or~~ agency *or home* as principal and by a surety



company as surety. The bond must be payable to the Aging Services Division of the Department of Health and Human Services and must be conditioned to provide indemnification to an older patient who the Specialist for the Rights of Elderly Persons determines has suffered property damage as a result of any act or failure to act by the facility , ~~for~~ agency *or home* to protect the property of the older patient.

3. Except when a surety is released, the surety bond must cover the period of the initial license to operate or the period of the renewal, as appropriate.

4. A surety on any bond filed pursuant to this section may be released after the surety gives 30 days' written notice to the Administrator of the Health Division, but the release does not discharge or otherwise affect any claim filed by an older patient for property damaged as a result of any act or failure to act by the facility , ~~for~~ agency *or home* to protect the property of the older patient alleged to have occurred while the bond was in effect.

5. A license is suspended by operation of law when the facility , ~~for~~ agency *or home* is no longer covered by a surety bond as required by this section or by a substitute for the surety bond pursuant to NRS 449.067. The Administrator of the Health Division shall give the facility , ~~for~~ agency *or home* at least 20 days' written notice before the release of the surety or the substitute for the surety, to the effect that the license will be suspended by operation of law until another surety bond or substitute for the surety bond is filed in the same manner and amount as the bond or substitute being terminated.

6. The Administrator of the Health Division may exempt a residential facility for groups *or a home for individual residential care* from the requirement of filing a surety bond pursuant to this section if the Administrator determines that the requirement would result in undue hardship to the residential facility for groups ~~for~~ *or home for individual residential care*.

7. The requirement of filing a surety bond set forth in this section does not apply to a facility for intermediate care, facility for skilled nursing, residential facility for groups, *home for individual residential care*, agency to provide personal care services in the home or agency to provide nursing in the home that is operated and maintained by the State of Nevada or an agency thereof.

Sec. 3. NRS 449.067 is hereby amended to read as follows:

449.067 1. As a substitute for the surety bond required pursuant to NRS 449.065, a facility for intermediate care, a facility for skilled nursing, a residential facility for groups, *a home for*



individual residential care, an agency to provide personal care services in the home and an agency to provide nursing in the home may deposit with any bank or trust company authorized to do business in this State, upon approval from the Administrator of the Health Division:

(a) An obligation of a bank, savings and loan association, thrift company or credit union licensed to do business in this State;

(b) Bills, bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States; or

(c) Any obligation of this State or any city, county, town, township, school district or other instrumentality of this State, or guaranteed by this State, in an aggregate amount, based upon principal amount or market value, whichever is lower.

2. The obligations of a bank, savings and loan association, thrift company or credit union must be held to secure the same obligation as would the surety bond required by NRS 449.065. With the approval of the Administrator of the Health Division, the depositor may substitute other suitable obligations for those deposited, which must be assigned to the Aging Services Division of the Department of Health and Human Services and are negotiable only upon approval by the Administrator of the Aging Services Division.

3. Any interest or dividends earned on the deposit accrue to the account of the depositor.

4. The deposit must be an amount at least equal to the surety bond required by NRS 449.065 and must state that the amount may not be withdrawn except by direct and sole order of the Administrator of the Aging Services Division.

Sec. 4. NRS 449.176 is hereby amended to read as follows:

449.176 1. Each applicant for a license to operate a facility for intermediate care, facility for skilled nursing, ~~for~~ residential facility for groups, *agency to provide personal care services in the home or home for individual residential care* shall submit to the Central Repository for Nevada Records of Criminal History two complete sets of fingerprints for submission to the Federal Bureau of Investigation for its report.

2. The Central Repository for Nevada Records of Criminal History shall determine whether the applicant has been convicted of a crime listed in paragraph (a) of subsection 1 of NRS 449.188 and immediately inform the administrator of the facility, *agency or home*, if any, and the Health Division of whether the applicant has been convicted of such a crime.



Sec. 5. NRS 449.179 is hereby amended to read as follows:

449.179 1. Except as otherwise provided in subsection 2, within 10 days after hiring an employee or entering into a contract with an independent contractor, the administrator of, or the person licensed to operate, an agency to provide personal care services in the home, an agency to provide nursing in the home, a facility for intermediate care, a facility for skilled nursing , ~~for~~ a residential facility for groups *or a home for individual residential care* shall:

(a) Obtain a written statement from the employee or independent contractor stating whether he has been convicted of any crime listed in NRS 449.188;

(b) Obtain an oral and written confirmation of the information contained in the written statement obtained pursuant to paragraph (a);

(c) Obtain from the employee or independent contractor two sets of fingerprints and a written authorization to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report; and

(d) Submit to the Central Repository for Nevada Records of Criminal History the fingerprints obtained pursuant to paragraph (c).

2. The administrator of, or the person licensed to operate, an agency to provide personal care services in the home, an agency to provide nursing in the home, a facility for intermediate care, a facility for skilled nursing , ~~for~~ a residential facility for groups *or a home for individual residential care* is not required to obtain the information described in subsection 1 from an employee or independent contractor who provides proof that an investigation of his criminal history has been conducted by the Central Repository for Nevada Records of Criminal History within the immediately preceding 6 months and the investigation did not indicate that the employee or independent contractor had been convicted of any crime set forth in NRS 449.188.

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

(a) If the agency , ~~for~~ facility *or home* does not have the fingerprints of the employee or independent contractor on file,



obtain two sets of fingerprints from the employee or independent contractor;

(b) Obtain written authorization from the employee or independent contractor to forward the fingerprints on file or obtained pursuant to paragraph (a) to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report; and

(c) Submit the fingerprints to the Central Repository for Nevada Records of Criminal History.

4. Upon receiving fingerprints submitted pursuant to this section, the Central Repository for Nevada Records of Criminal History shall determine whether the employee or independent contractor has been convicted of a crime listed in NRS 449.188 and immediately inform the Health Division and the administrator of, or the person licensed to operate, the agency, ~~for~~ facility *or home* at which the person works whether the employee or independent contractor has been convicted of such a crime.

5. The Central Repository for Nevada Records of Criminal History may impose a fee upon an agency, ~~for~~ a facility *or a home* that submits fingerprints pursuant to this section for the reasonable cost of the investigation. The agency, ~~for~~ facility *or home* may recover from the employee or independent contractor not more than one-half of the fee imposed by the Central Repository. If the agency, ~~for~~ facility *or home* requires the employee or independent contractor to pay for any part of the fee imposed by the Central Repository, it shall allow the employee or independent contractor to pay the amount through periodic payments.

Sec. 6. NRS 449.182 is hereby amended to read as follows:

449.182 Each agency to provide personal care services in the home, agency to provide nursing in the home, facility for intermediate care, facility for skilled nursing, ~~and~~ residential facility for groups *and home for individual residential care* shall maintain accurate records of the information concerning its employees and independent contractors collected pursuant to NRS 449.179 ~~and~~ and shall maintain a copy of the fingerprints submitted to the Central Repository for Nevada Records of Criminal History and proof that it submitted two sets of fingerprints to the Central Repository for its report. These records must be made available for inspection by the Health Division at any reasonable time, and copies thereof must be furnished to the Health Division upon request.



Sec. 7. NRS 449.185 is hereby amended to read as follows:

449.185 1. Upon receiving information from the Central Repository for Nevada Records of Criminal History pursuant to NRS 449.179, or evidence from any other source, that an employee or independent contractor of an agency to provide personal care services in the home, an agency to provide nursing in the home, a facility for intermediate care, a facility for skilled nursing, ~~or~~ a residential facility for groups *or home for individual residential care* has been convicted of a crime listed in paragraph (a) of subsection 1 of NRS 449.188, the administrator of, or the person licensed to operate, the agency, ~~or~~ facility *or home* shall terminate the employment or contract of that person after allowing him time to correct the information as required pursuant to subsection 2.

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

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

(a) Before it received the information concerning the employee or independent contractor from the Central Repository;

(b) During any period required pursuant to subsection 2 to allow the employee or independent contractor to correct 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 *or home* may be held liable for any other conduct determined to be negligent or unlawful.

Sec. 8. 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 *or home for individual residential care* to an applicant or may suspend or revoke the license of a licensee to operate such a facility *or home* 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 ~~[(1)]~~ or indecent exposure , or any other sexually related crime ~~[(1)]~~ *that is punished as a felony*;
 - (4) *Prostitution, solicitation, lewdness or indecent exposure, or any other sexually related crime that is punished as a misdemeanor, within the immediately preceding 7 years*;
 - (5) *A crime involving domestic violence that is punished as a felony*;
 - (6) *A crime involving domestic violence that is punished as a misdemeanor, within the immediately preceding 7 years*;
 - (7) Abuse or neglect of a child or contributory delinquency;
 - ~~[(5)]~~ (8) 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)]~~ *immediately preceding 7 years*;
 - ~~[(6)]~~ (9) Abuse, neglect, exploitation or isolation of older persons or vulnerable persons, including, without limitation, a violation of any provision of NRS 200.5091 to 200.50995, inclusive, or a law of any other jurisdiction that prohibits the same or similar conduct;
 - ~~[(7)]~~ (10) A violation of any provision of law relating to the State Plan for Medicaid or a law of any other jurisdiction that prohibits the same or similar conduct, within the immediately preceding 7 years;
 - ~~[(8)]~~ (11) A violation of any provision of NRS 422.450 to 422.590, inclusive;
 - ~~[(9)]~~ (12) A criminal offense under the laws governing Medicaid or Medicare, within the immediately preceding 7 years;
 - ~~[(10)]~~ (13) Any offense involving fraud, theft, embezzlement, burglary, robbery, fraudulent conversion or misappropriation of property, within the immediately preceding 7 years; ~~[(or)]~~
 - ~~[(11)]~~ (14) Any other felony involving *the use or threatened use of force or violence against the victim or* the use of a firearm or other deadly weapon ~~[(1)]~~; or
 - (15) *An attempt or conspiracy to commit any of the offenses listed in this paragraph*, within the immediately preceding 7 years;
- or



(b) The licensee has, in violation 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 personal care services in the home or 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 the licensee has, in violation of NRS 449.185, continued to employ a person who has been convicted of a crime listed in paragraph (a) of subsection 1.

3. As used in this section:

(a) *“Domestic violence” means an act described in NRS 33.018.*

(b) “Medicaid” has the meaning ascribed to it in NRS 439B.120.

~~[(b)]~~ (c) “Medicare” has the meaning ascribed to it in NRS 439B.130.

Sec. 9. NRS 427A.175 is hereby amended to read as follows:

427A.175 1. Within 1 year after an older patient sustains damage to his property as a result of any act or failure to act by a facility for intermediate care, a facility for skilled nursing, a residential facility for groups, *a home for individual residential care*, an agency to provide personal care services in the home, an intermediary service organization or an agency to provide nursing in the home in protecting the property, the older patient may file a verified complaint with the Division setting forth the details of the damage.

2. Upon receiving a verified complaint pursuant to subsection 1, the Administrator shall investigate the complaint and attempt to settle the matter through arbitration, mediation or negotiation.

3. If a settlement is not reached pursuant to subsection 2, the facility, *home*, agency, organization or older patient may request a hearing before the Specialist for the Rights of Elderly Persons. If requested, the Specialist for the Rights of Elderly Persons shall conduct a hearing to determine whether the facility, *home*, agency or organization is liable for damages to the patient. If the Specialist for the Rights of Elderly Persons determines that the facility, *home*, agency or organization is liable for damages to the patient, he shall order the amount of the surety bond pursuant to NRS 449.065 or the substitute for the surety bond necessary to pay for the damages pursuant to NRS 449.067 to be released to the Division. The Division shall pay any such amount to the older patient or the estate of the older patient.



4. The Division shall create a separate account for money to be collected and distributed pursuant to this section.

5. As used in this section:

(a) “Agency to provide nursing in the home” has the meaning ascribed to it in NRS 449.0015;

(b) “Agency to provide personal care services in the home” has the meaning ascribed to it in NRS 449.0021;

(c) “Facility for intermediate care” has the meaning ascribed to it in NRS 449.0038;

(d) “Facility for skilled nursing” has the meaning ascribed to it in NRS 449.0039;

(e) *“Home for individual residential care” has the meaning ascribed to it in NRS 449.0105;*

(f) “Intermediary service organization” has the meaning ascribed to it in NRS 426.218;

~~(f)~~ (g) “Older patient” has the meaning ascribed to it in NRS 449.063; and

~~(g)~~ (h) “Residential facility for groups” has the meaning ascribed to it in NRS 449.017.

Sec. 10. This act becomes effective on January 1, 2010.

