**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44‑7‑2905 SO AS TO MOVE THE DEFINITION OF A DIRECT CAREGIVER IN A DIRECT CARE ENTITY TO THIS SECTION; TO AMEND SECTION 44‑7‑2910, RELATING TO CRIMINAL RECORD CHECKS FOR DIRECT CAREGIVERS, SO AS TO SPECIFY THAT A DIRECT CARE ENTITY MUST HAVE A STATE AND A FEDERAL CRIMINAL RECORD CHECKS CONDUCTED ON A DIRECT CAREGIVER APPLICANT BEFORE THE APPLICANT IS EMPLOYED, TO DELETE THE DEFINITION OF A DIRECT CAREGIVER IN A DIRECT CARE ENTITY, AND TO DELETE PROVISIONS NO LONGER APPLICABLE TO THE PROCEDURES FOR OBTAINING THESE RECORD CHECKS; BY ADDING SECTION 44‑7‑2915 SO AS TO PROHIBIT A PERSON FROM APPLYING FOR, AND A DIRECT CARE ENTITY FROM, EMPLOYING A PERSON AS A DIRECT CAREGIVER WHO HAS BEEN CONVICTED OF CERTAIN CRIMES, TO ENUMERATE THESE CRIMES, TO REQUIRE A STATEMENT ON EMPLOYMENT APPLICATIONS AND IN CONTRACTS RECITING THIS PROHIBITION, AND TO PROVIDE CRIMINAL PENALTIES FOR SUCH A PERSON WHO APPLIES FOR EMPLOYMENT AS OR WHO CONTRACTS TO BE A DIRECT CAREGIVER; TO AMEND SECTION 44‑7‑4920, RELATING TO CRIMINAL RECORD CHECK PROCEDURES, SO AS TO FURTHER SPECIFY AND CONFORM THESE PROCEDURES TO THIS ACT; AND BY ADDING SECTION 44‑7‑2925 SO AS TO PROHIBIT A DIRECT CAREGIVER FROM TRANSPORTING CLIENTS OR PATIENTS WHILE EMPLOYED AS A DIRECT CAREGIVER IF THE CAREGIVER HAS HAD AN ALCOHOL RELATED DRIVING OFFENSE WITHIN TEN YEARS OF SEEKING EMPLOYMENT OR SUBSEQUENT TO BECOMING EMPLOYED.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 23, Chapter 7, Title 44 of the 1976 Code is amended by adding:

“Section 44‑7‑2905. For purposes of this article:

(1) ‘Direct care entity’ means:

(a) a nursing home, as defined in Section 44‑7‑130;

(b) a daycare facility for adults, as defined in Section 44‑7‑130;

(c) a home health agency, as defined in Section 44‑69‑20;

(d) a community residential care facility, as defined in Section 44‑7‑130;

(e) a residential program operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs;

(f) residential treatment facilities for children and adolescents;

(g) hospice programs;

(h) an in‑home care provider, as defined in Section 44‑7‑20(3).

(2) ‘Direct caregiver’ or ‘caregiver’ means:

(a) a registered nurse, licensed practical nurse, or certified nurse assistant;

(b) any other licensed professional employed by or contracting with a direct care entity who provides to patients or clients direct care or services and includes, but is not limited to, a physical, speech, occupational, or respiratory care therapist;

(c) a person who is not licensed but provides physical assistance or care to a patient or client served by a direct care entity;

(d) a person employed by or under contract with a direct care entity who works within any building housing patients or clients;

(e) a person employed by or under contract with a direct care entity whose duties include the possibility of patient or client contact.

For purposes of this article, a direct caregiver does not include a faculty member or student enrolled in an educational program, including clinical study in a direct care entity.”

SECTION 2. Section 44‑7‑2910 of the 1976 Code, as last amended by Act 18 of 2011, is further amended to read:

“Section 44‑7‑2910. (A)~~(1)~~ A direct care entity employing or contracting with a direct caregiver shall conduct ~~a~~ state and federal criminal record ~~check as provided in this section~~ checks pursuant to this article prior to employing or contracting with the direct caregiver. ~~A direct care entity may consider all information revealed by a criminal record check as a factor in evaluating a direct caregiver’s application to be employed by or contract with the entity.~~

~~(2)~~(B) An employment agency may not ~~furnish~~ provide direct caregiver employees to a direct care entity without conducting ~~a~~ state and federal criminal record ~~check~~ checks on each employee pursuant to this article prior to providing the employee to the direct care entity. ~~An employee~~ A direct caregiver who works in multiple direct care settings must have ~~a~~ criminal record ~~check~~ checks on file at the location of the employment agency, the home office of ~~his~~ the caregiver’s employer, or at the ~~individual’s~~ caregiver’s primary place of employment.

~~(B)~~ ~~For purposes of this article:~~

~~(1)~~ ~~‘Direct care entity’ means:~~

~~(a)~~ ~~a nursing home, as defined in Section 44‑7‑130;~~

~~(b)~~ ~~a daycare facility for adults, as defined in Section 44‑7‑130;~~

~~(c)~~ ~~a home health agency, as defined in Section 44‑69‑20;~~

~~(d)~~ ~~a community residential care facility, as defined in Section 44‑7‑130;~~

~~(e)~~ ~~a residential program operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs;~~

~~(f)~~ ~~residential treatment facilities for children and adolescents;~~

~~(g)~~ ~~hospice programs.~~

~~(h)~~ ~~an in‑home care provider, as defined in Section 44‑7‑20(3).~~

~~(2)~~ ~~‘Direct caregiver’ or ‘caregiver’ means:~~

~~(a)~~ ~~a registered nurse, licensed practical nurse, or certified nurse assistant;~~

~~(b)~~ ~~any~~ ~~other licensed professional employed by or contracting with a direct care entity who provides to patients or clients direct care or services and includes, but is not limited to, a physical, speech, occupational, or respiratory care therapist;~~

~~(c)~~ ~~a person who is not licensed but provides physical assistance or care to a patient or client served by a direct care entity;~~

~~(d)~~ ~~a person employed by or under contract with a direct care entity who works within any building housing patients or clients;~~

~~(e)~~ ~~a person employed by or under contract with by a direct care entity whose duties include the possibility of patient or client contact.~~

~~For purposes of this article, a direct caregiver does not include a faculty member or student enrolled in an educational program, including clinical study in a direct care entity.~~

~~(C)(1)~~  ~~A direct caregiver applicant shall provide verification of residency for the twelve months preceding the date of the employment application. The direct care entity shall conduct a state criminal record check if the applicant has resided in South Carolina during that twelve‑month period and can verify residency through:~~

~~(a)~~ ~~a driver’s license or identification card issued by the State of South Carolina;~~

~~(b)~~ ~~rent, mortgage, or utility receipts in the applicant’s name for a home within South Carolina;~~

~~(c)~~ ~~pay stubs in the applicant’s name from a business located in South Carolina; or~~

~~(d)~~ ~~bank records in the applicant’s name showing a deposit or checking account held in a South Carolina branch office of a bank.~~

~~(2)~~ ~~A direct care entity unable to verify South Carolina residency for a direct care applicant for the preceding twelve months shall conduct a state criminal record check on the applicant prior to employment and shall commence a federal criminal record check after employment. However, if the direct care entity can verify residency in another state for the preceding twelve months, the direct care entity may conduct only a state criminal record check in the applicant’s resident state or jurisdiction where the applicant previously resided.~~”

SECTION 3. Article 23, Chapter 7, Title 44 of the 1976 Code is amended by adding:

“Section 44‑7‑2915. (A) A direct care entity, and an employment agency that provides direct caregiver employees to a direct care entity, may consider all information revealed by the criminal record checks required by Section 44‑7‑2910 as a factor in evaluating a direct caregiver applicant for employment or for contracting with or for providing to a direct care entity. However, a direct care entity may not employ or contract with a caregiver, and an employment agency may not provide to a direct care entity a caregiver, who is registered on, or required to register on, the sex offender registry pursuant to Section 23‑3‑430 or who has been convicted of or pled guilty or nolo contendere to:

(1) a crime listed in Chapter 3, Title 16, Offenses Against the Person;

(2) a crime listed in Chapter 15, Title 16, Offenses Against Morality and Decency;

(3) the crime of contributing to the delinquency of a minor, as provided for in Section 16‑17‑490;

(4) the offenses enumerated in Section 16‑1‑10(D);

(5) the felonies classified in Section 16‑1‑10(A); except that this prohibition does not apply to Section 56‑5‑2930 and Section 56‑5‑2933 offenses, the Class F felonies of driving under the influence and driving with an unlawful alcohol concentration, if the conviction occurred at least ten years before applying for employment with or contracting with a direct care entity as a direct caregiver or with an employment agency seeking employment as a direct caregiver;

(6) a criminal offense similar in nature to the crimes enumerated in this subsection committed in another jurisdiction or under federal law.

(B) A person who has been convicted of a crime enumerated in subsection (A) who applies for employment as a direct caregiver with a direct care entity or with an employment agency that provides direct caregivers to direct care entities or who contracts with or is employed by a direct care entity as a direct caregiver or who provides caregiver services at a direct care entity is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(C) Application forms for employment as a direct caregiver with a direct care entity or with an employment agency that provides direct caregivers to direct care entities and contracts with direct care entities to provide direct caregiver services must include a statement in large bold type indicating that a person who has been convicted of a crime enumerated in subsection (A) who applies for employment as a direct caregiver with a direct care entity or with an employment agency that provides direct caregivers to direct care entities or who contracts with or is employed by a direct care entity as a direct caregiver or who provides caregiver services at a direct care entity is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(D) Unless otherwise required by law, this section does not apply to volunteers in a direct care entity. For purposes of this section, ‘volunteer’ means a person who:

(1) provides services without compensation relating to the operation of a direct care entity; and

(2) is in the presence of an operator, employee, or direct caregiver when providing direct care to a patient or client.

(E) Unless otherwise required by law, this section applies to:

(1) an employee who provides care to a patient or client without the direct personal supervision of a person who has undergone the fingerprint review; and

(2) any other employee at an entity who has direct access to a patient or client outside the immediate presence of a person who has undergone the fingerprint review required pursuant to this article.”

SECTION 4. Section 44‑7‑2920 of the 1976 Code, as last amended by Act 264 of 2004, is further amended to read:

“Section 44‑7‑2920. State criminal record checks required pursuant to this article must be conducted by the State Law Enforcement Division or by a private business, organization, or association which conducts background checks if that entity utilizes current criminal records obtained from the State Law Enforcement Division ~~or~~, and federal criminal record checks must be conducted by the Federal Bureau of Investigation to determine any criminal record. An applicant shall submit with the employment application one complete set of the applicant’s fingerprints on forms specified or furnished by the State Law Enforcement Division. Fingerprint cards submitted to the State Law Enforcement Division pursuant to this section must be used to facilitate ~~a national~~ the federal criminal ~~records check, as required by this section~~ record checks. The criminal record ~~check is~~ checks are not required to be repeated as long as the person remains employed by or continues to contract with a direct care entity or continues to be provided by an employment agency as a direct caregiver to direct care entities; however, if a person is not employed by or is not under contract with or is not provided by an employment agency as a direct caregiver to a direct care entity for one year or longer ~~with a direct care entity~~, the criminal record ~~check~~ checks must be repeated before resuming employment or contracting with or being provided by an employment agency as a direct caregiver to a direct care entity. The fee charged ~~by the Federal Bureau of Investigation~~, if any, for ~~the~~ obtaining fingerprint ~~review~~ cards or for criminal record checks must be paid by the individual direct caregiver ~~or~~, the direct care entity, or the employment agency.”

SECTION 5. Article 23, Chapter 7, Title 44 of the 1976 Code is amended by adding:

“Section 44‑7‑2925. A direct caregiver must not provide transportation to a patient or client while in the official course of his duties as a direct caregiver at a direct care entity if the person has been convicted of or pled guilty or nolo contendere to a violation of Section 56‑5‑2930 or Section 56‑5‑2933 within ten years before applying for employment as a direct caregiver or subsequent to becoming employed as a direct caregiver.”

SECTION 6. This act takes effect July 1, 2012.

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