



General Assembly

Substitute Bill No. 5259

February Session, 2018



AN ACT CONCERNING CRIMINAL OFFENSES THAT DISQUALIFY AN INDIVIDUAL FROM OBTAINING EMPLOYMENT OR VOLUNTEERING AT A LONG-TERM CARE FACILITY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-491c of the 2018 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2018*):

4 (a) As used in this section:

5 (1) "Criminal history and patient abuse background search" or
6 "background search" means (A) a review of the registry of nurse's
7 aides maintained by the Department of Public Health pursuant to
8 section 20-102bb, (B) checks of state and national criminal history
9 records conducted in accordance with section 29-17a, and (C) a review
10 of any other registry specified by the Department of Public Health
11 which the department deems necessary for the administration of a
12 background search program.

13 (2) "Direct access" means physical access to a patient or resident of a
14 long-term care facility that affords an individual with the opportunity
15 to commit abuse or neglect against or misappropriate the property of a
16 patient or resident.

17 (3) "Disqualifying offense" means a conviction of any crime
18 described in 42 USC 1320a-7(a)(1), (2), (3) or (4) or a substantiated

19 finding of neglect, abuse or misappropriation of property by a state or
20 federal agency pursuant to an investigation conducted in accordance
21 with 42 USC 1395i-3(g)(1)(C) or 42 USC 1396r(g)(1)(C). "Disqualifying
22 offense" includes, but is not limited to, a conviction under section 53a-
23 54a, 53a-54b, 53a-54c, 53a-54d, 53a-55, 53a-55a, 53a-59, 53a-59a, 53a-70,
24 53a-70a, 53a-70c, 53a-71, 53a-72a, 53a-72b, 53a-100aa, 53a-101, 53a-102,
25 53a-111, 53a-122, 53a-123 or 53a-134.

26 (4) "Long-term care facility" means any facility, agency or provider
27 that is a nursing home, as defined in section 19a-521, a residential care
28 home, as defined in section 19a-521, a home health agency, as defined
29 in section 19a-490, an assisted living services agency, as defined in
30 section 19a-490, an intermediate care facility for individuals with
31 intellectual disabilities, as defined in 42 USC 1396d(d), a chronic
32 disease hospital, as defined in section 19a-550, or an agency providing
33 hospice care which is licensed to provide such care by the Department
34 of Public Health or certified to provide such care pursuant to 42 USC
35 1395x.

36 (b) (1) On or before July 1, 2012, the Department of Public Health
37 shall create and implement a criminal history and patient abuse
38 background search program, within available appropriations, in order
39 to facilitate the performance, processing and analysis of the criminal
40 history and patient abuse background search of individuals who have
41 direct access.

42 (2) The Department of Public Health shall develop a plan to
43 implement the criminal history and patient abuse background search
44 program, in accordance with this section. In developing such plan, the
45 department shall (A) consult with the Commissioners of Emergency
46 Services and Public Protection, Developmental Services, Mental Health
47 and Addiction Services, Social Services and Consumer Protection, or
48 their designees, the State Long-Term Care Ombudsman, or a designee,
49 the chairperson of the Board of Pardons and Paroles, or a designee, a
50 representative of each category of long-term care facility and
51 representatives from any other agency or organization the

52 Commissioner of Public Health deems appropriate, (B) evaluate factors
53 including, but not limited to, the administrative and fiscal impact of
54 components of the program on state agencies and long-term care
55 facilities, background check procedures currently used by long-term
56 care facilities, federal requirements pursuant to Section 6201 of the
57 Patient Protection and Affordable Care Act, P.L. 111-148, as amended
58 from time to time, and the effect of full and provisional pardons on
59 employment, and (C) outline (i) an integrated process with the
60 Department of Emergency Services and Public Protection to cross-
61 check and periodically update criminal information collected in
62 criminal databases, (ii) a process by which individuals with
63 disqualifying offenses can apply for a waiver, and (iii) the structure of
64 an Internet-based portal to streamline the criminal history and patient
65 abuse background search program. The Department of Public Health
66 shall submit such plan, including a recommendation as to whether
67 homemaker-companion agencies should be included in the scope of
68 the background search program, to the joint standing committees of
69 the General Assembly having cognizance of matters relating to aging,
70 appropriations and the budgets of state agencies, and public health, in
71 accordance with the provisions of section 11-4a, not later than
72 February 1, 2012.

73 (c) (1) Except as provided in subdivision (2) of this subsection, each
74 long-term care facility, prior to extending an offer of employment to, or
75 entering into a contract for, the provision of long-term care services
76 with any individual who will have direct access, or prior to allowing
77 any individual to begin volunteering at such long-term care facility
78 when the long-term care facility reasonably expects such volunteer will
79 regularly perform duties that are substantially similar to those of an
80 employee with direct access, shall require that such individual submit
81 to a background search. The Department of Public Health shall
82 prescribe the manner by which (A) long-term care facilities perform
83 the review of (i) the registry of nurse's aides maintained by the
84 department pursuant to section 20-102bb, and (ii) any other registry
85 specified by the department, including requiring long-term care

86 facilities to report the results of such review to the department, and (B)
87 individuals submit to state and national criminal history records
88 checks, including requiring the Department of Emergency Services and
89 Public Protection to report the results of such checks to the Department
90 of Public Health.

91 (2) No long-term care facility shall be required to comply with the
92 provisions of this subsection if the individual provides evidence to the
93 long-term care facility that such individual submitted to a background
94 search conducted pursuant to subdivision (1) of this subsection not
95 more than three years immediately preceding the date such individual
96 applies for employment, seeks to enter into a contract or begins
97 volunteering with the long-term care facility and that the prior
98 background search confirmed that the individual did not have a
99 disqualifying offense.

100 (d) (1) The Department of Public Health shall review all reports
101 provided to the department pursuant to subsection (c) of this section. If
102 any such report contains evidence indicating that an individual has a
103 disqualifying offense, the department shall provide notice to the
104 individual and the long-term care facility indicating the disqualifying
105 offense and providing the individual with the opportunity to file a
106 request for a waiver pursuant to subdivisions (2) and (3) of this
107 subsection.

108 (2) An individual may file a written request for a waiver with the
109 department not later than thirty days after the date the department
110 mails notice to the individual pursuant to subdivision (1) of this
111 subsection. The department shall mail a written determination
112 indicating whether the department shall grant a waiver pursuant to
113 subdivision (3) of this subsection not later than fifteen business days
114 after the department receives the written request from the individual,
115 except that said time period shall not apply to any request for a waiver
116 in which an individual challenges the accuracy of the information
117 obtained from the background search.

118 (3) The department may grant a waiver from the provisions of
119 subsection (e) of this section to an individual who identifies mitigating
120 circumstances surrounding the disqualifying offense, including (A)
121 inaccuracy in the information obtained from the background search,
122 (B) lack of a relationship between the disqualifying offense and the
123 position for which the individual has applied, (C) evidence that the
124 individual has pursued or achieved rehabilitation with regard to the
125 disqualifying offense, or (D) that substantial time has elapsed since
126 committing the disqualifying offense. The department and its
127 employees shall be immune from liability, civil or criminal, that might
128 otherwise be incurred or imposed, for good faith conduct in granting
129 waivers pursuant to this subdivision.

130 (4) After completing a review pursuant to subdivision (1) of this
131 subsection, the department shall notify in writing the long-term care
132 facility to which the individual has applied for employment or with
133 which the individual seeks to enter into a contract or volunteer (A) of
134 any disqualifying offense and any information the individual provided
135 to the department regarding mitigating circumstances surrounding
136 such offense, or of the lack of a disqualifying offense, and (B) whether
137 the department granted a waiver pursuant to subdivision (3) of this
138 subsection.

139 (e) Notwithstanding the provisions of section 46a-80, no long-term
140 care facility shall employ an individual required to submit to a
141 background search, contract with any such individual to provide long-
142 term care services or allow such individual to volunteer if the long-
143 term care facility receives notice from the department that the
144 individual has a disqualifying offense in the individual's background
145 search and the department has not granted a waiver pursuant to
146 subdivision (3) of subsection (d) of this section. A long-term care
147 facility may, but is not obligated to, employ, enter into a contract with
148 or allow to volunteer an individual who was granted a waiver
149 pursuant to said subdivision (3).

150 (f) (1) Except as provided in subdivision (2) of this subsection, a

151 long-term care facility shall not employ, enter into a contract with or
152 allow to volunteer any individual required to submit to a background
153 search until the long-term care facility receives notice from the
154 Department of Public Health pursuant to subdivision (4) of subsection
155 (d) of this section.

156 (2) A long-term care facility may employ, enter into a contract with
157 or allow to volunteer an individual required to submit to a background
158 search on a conditional basis before the long-term care facility receives
159 notice from the department that such individual does not have a
160 disqualifying offense, provided: (A) The employment or contractual or
161 volunteer period on a conditional basis shall last not more than sixty
162 days, except the sixty-day time period may be extended by the
163 department to allow for the filing and consideration of written request
164 for a waiver of a disqualifying offense filed by an individual pursuant
165 to subsection (d) of this section, (B) the long-term care facility has
166 begun the review required under subsection (c) of this section and the
167 individual has submitted to checks pursuant to subsection (c) of this
168 section, (C) the individual is subject to direct, on-site supervision
169 during the course of such conditional employment or contractual or
170 volunteer period, and (D) the individual, in a signed statement (i)
171 affirms that the individual has not committed a disqualifying offense,
172 and (ii) acknowledges that a disqualifying offense reported in the
173 background search required by subsection (c) of this section shall
174 constitute good cause for termination and a long-term care facility may
175 terminate the individual if a disqualifying offense is reported in said
176 background search.

177 (g) Notwithstanding the provisions of subsection (b) of this section,
178 the department may phase in implementation of the criminal history
179 and patient abuse background search program by category of long-
180 term care facility. No long-term care facility shall be required to
181 comply with the provisions of subsections (c), (e) and (f) of this section
182 until the date notice is published by the Commissioner of Public
183 Health in the Connecticut Law Journal indicating that the

184 commissioner is implementing the criminal history and patient abuse
185 background search program for the category of such long-term care
186 facility.

187 (h) The department shall adopt regulations, in accordance with the
188 provisions of chapter 54, to implement the provisions of this section.
189 The department may implement policies and procedures consistent
190 with the provisions of this section while in the process of adopting
191 such policies and procedures as regulation, provided notice of
192 intention to adopt regulations is [printed in the Connecticut Law
193 Journal] posted on the eRegulations System not later than twenty days
194 after the date of implementation. Such policies and procedures shall be
195 valid until the time final regulations are effective.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2018</i>	19a-491c

JUD *Joint Favorable*