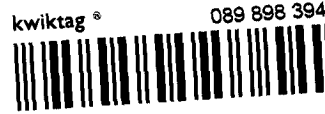


# ENROLLMENT(S)



(5)

# COUNCIL OF THE DISTRICT OF COLUMBIA

## NOTICE

### D.C. LAW 12-238

#### **"Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998"**

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 "the Act", the Council of the District of Columbia adopted Bill 12-628 on first and second readings, November 10, 1998 and December 1, 1998, respectively. Following the signature of the Mayor on December 22, 1998, pursuant to Section 404(e) of "the Act", the bill became Act 12-567 and it was published in the February 5, 1999 edition of the D.C. Register (Vol. 46, page 881). The Act was transmitted to Congress on February 10, 1999 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has expired, and the Act is now D.C. Law 12-238, effective April 20, 1999.



LINDA W. CROPP  
Chairman of the Council

#### Days Counted During the 30-day Congressional Review Period:

Feb. 10,11,12,22,23,24,25

Mar. 1,2,3,4,5,8,9,10,11,15,16,17,18,19,22,23,24,25

Apr. 12,13,14,15,19

AN ACT  
D.C. ACT 12-567

Codification  
District of  
Columbia  
Code  
1999 Supp.

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
DECEMBER 22, 1998

To require criminal background checks for persons who are not licensed health care professionals and who are employed by licensed health-care facilities or Medicaid providers.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998".

New  
Subchapter  
II,  
Chapter 13,  
Title 32

Sec. 2. Definitions.

New Section  
32-1351

For purposes of this act, the term:

(1) "Facility" means any entity required to be licensed pursuant to the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Code § 32-1301 *et seq.*) and any entity furnishing Medicaid services under a provider agreement with the District of Columbia in accordance with regulations promulgated under Title XIX of the Social Security Act, approved July 30, 1965 (Pub. L. 89-97; 42 U.S.C. § 1396 *et seq.*).

(2) "Licensed professional" means a person employed by a facility who is licensed by a professional board or commission. "Licensed professional" includes a person who functions in a complementary or assistant role to licensed nurses in providing direct patient care or carrying out common nursing tasks, such as a nurses aide, orderly, assistant technician, attendant, home-health aide, medication aide, geriatric aide, or other health aide; housekeeping staff; maintenance staff; administrative staff, and compensated contractors.

(3) "Medicaid services" means nursing facility services, home health-care services, inpatient hospital services and nursing facilities for individuals 65 years of age or older in an institution for mental disease, services in an intermediate care facility for the mentally retarded, home and community care for functionally disabled elderly individuals, and community supported living arrangement services as defined in Title XIX of the Social Security Act, approved July 30, 1965 (Pub. L. 89-97; 42 U.S.C. § 1396 *et seq.*).

**ENROLLED ORIGINAL**

**New Section  
32-1352**

**Sec. 3. Criminal background checks.**

(a) The requirements of this section shall not apply to persons licensed under the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 ( D.C. Law 6-99; D.C. Code § 2-3301.1 *et seq.*), or to a person who volunteers services to a facility and works under the direct supervision of a person licensed pursuant to the District of Columbia Health Occupations Revision Act of 1985.

(b) No facility shall offer to employ or contract with any person who is not a licensed professional until a criminal background check has been conducted for that person. Every facility shall inform each applicant for employment or a prospective contract worker that the facility is required to conduct a criminal background check before making an offer of employment to, or contracting with, a health-care aide who is not a licensed professional.

(c) All criminal records received by a facility for the purposes of employing a person who is not a licensed professional pursuant to this act shall be kept confidential and shall be used solely by the facility. The criminal records shall not be released or otherwise disclosed to any person except to:

- (1) The Mayor or the Mayor's designee during an official inspection or investigation of the facility;
- (2) The person whose background is being investigated;
- (3) Comply with an order of a court; or
- (4) Any person with the written consent of the person being investigated.

(d) All criminal records received by a facility shall be destroyed after one year from the end of employment of the person to whom the records relate.

(e) Except as provided in subsection (f) of this subsection, no facility shall employ or contract with any person who is not a licensed professional if that person has been convicted in the District of Columbia or in any other state or territory of the United States of any of the following offenses or their equivalent in another state or territory:

- (1) Murder, attempted murder, or manslaughter;
- (2) Arson;
- (3) Assault, battery, assault and battery, assault with a dangerous weapon, mayhem or threats to do bodily harm;
- (4) Burglary;
- (5) Robbery;
- (6) Kidnapping;
- (7) Theft, fraud, forgery, extortion or blackmail;
- (8) Illegal use or possession of a firearm;
- (9) Trespass or injury to property;
- (10) Rape, sexual assault, sexual battery, or sexual abuse;
- (11) Child abuse or cruelty to children; or
- (12) Unlawful distribution, possession, or possession with intent to distribute, a

**ENROLLED ORIGINAL**

controlled substance.

(f) The Mayor may, by rulemaking, provide that a person who is not a licensed professional who seeks employment with a facility, having been convicted of certain crimes or placed on the Nurse Aide Abuse Registry, may be employed in a health-care facility after a specified period of time during which the person has not been convicted of any crime or committed any other prohibited behavior.

(g) Except as provided in subsection (f) of this section, no facility shall employ or contract with any person who is not a licensed professional if that person's name appears on the Nurse Aide Abuse Registry maintained pursuant to regulations promulgated by the Mayor.

(h) At the request of a facility, accompanied by the payment of a fee as determined by the Mayor, the Mayor or the Mayor's designee, or any other authorized entity shall conduct a criminal background check of any person who is not a licensed professional seeking employment with, or employed by, the facility or an entity contracting with the facility.

(i) Except as provided in subsection (a) of this section, a facility may also opt to conduct a criminal background check on any employee or volunteer who provides services at the facility.

**Sec. 4. Penalties for unauthorized released of criminal information.**

**New Section  
32-1353**

(a) Any person releasing or disclosing any information in violation of section 3(c) shall be guilty of a misdemeanor, and shall be punishable by the payment of a fine not greater than \$300, a term of imprisonment not greater than 30 days, or both.

(b) Civil fines, penalties, and fees may be imposed as sanctions for any violation of this act or the rules issued pursuant to this act, pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Code § 6-2701 *et seq.*).

(c) No facility shall be subject to civil liability that in good faith relies on a criminal background check to terminate, or to refuse to offer employment to, any individual.

**Sec. 5. The Mayor may issue rules to implement this act, including procedures for additional enforcement actions for violation of this act and the setting of fees in accordance with the provisions of Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code § 1-1501 *et seq.*).**

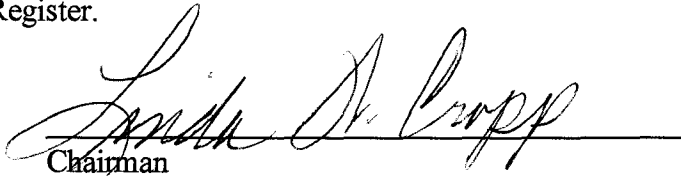
**New Section  
32-1354**

**Sec. 6. Fiscal impact statement.**

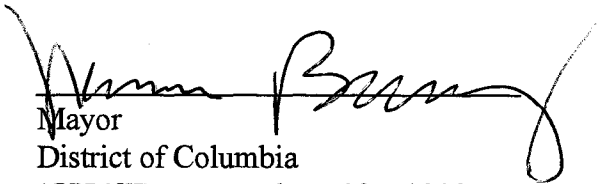
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)).

**ENROLLED ORIGINAL**

Sec. 7. This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia

APPROVED: December 22, 1998



COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD TWELVE

RECORD OF OFFICIAL COUNCIL VOTE

Docket No.

B12-628

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FIRST READING, 11-10-98

VOICE VOTE RECORDED VOTE ON REQUEST

APPROVED

ABSENT

AMBROSE, MASON AND THOMAS

ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Schwartz				
Allen					Evans					Smith, Jr.				
Ambrose					Jarvis					Thomas, Sr.				
Brazil					Mason									
Catania					Patterson									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

*[Signature]*  
Secretary to the Council

*[Signature]* 8, 1998  
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FINAL READING, 12-01-98

VOICE VOTE RECORDED VOTE ON REQUEST

APPROVED

ABSENT

ALL PRESENT

ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Schwartz				
Allen					Evans					Smith, Jr.				
Ambrose					Jarvis					Thomas, Sr.				
Brazil					Mason									
Catania					Patterson									

X - Indicates Vote

AB - Absent

NV - Present not voting

CERTIFICATION RECORD

*[Signature]*  
Secretary to the Council

*[Signature]* 8, 1998  
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

VOICE VOTE RECORDED VOTE ON REQUEST

ABSENT

ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Schwartz				
Allen					Evans					Smith, Jr.				
Ambrose					Jarvis					Thomas, Sr.				
Brazil					Mason									
Catania					Patterson									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date