

SENATE BILL 2297

By Kyle

AN ACT to amend Tennessee Code Annotated, Title 33;
Title 34; Title 63; Title 68 and Title 71, relative to
the protection of elderly and disabled adults.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The title of this act is, and may be cited as, the “Elderly and Disabled Adults Protection Act of 2009.”

SECTION 2. Tennessee Code Annotated, Section 68-11-1001, is amended by deleting subsections (a) and (b) in their entireties, and by substituting instead the following:

(a) The department of health shall establish and maintain a registry containing the names of any persons who have been determined by Tennessee government agencies or any state or federal court or any administrative bodies to have abused, neglected, or misappropriated or exploited the property of vulnerable individuals.

(b) The names and information contained in this registry shall be available for public inspection as provided by this chapter.

SECTION 3. Tennessee Code Annotated, Section 68-11-1004(a), is amended by adding the following language as a new, appropriately designated definition:

() “Health care” means any physical or behavioral health care, treatment, service or procedure that is needed to diagnose or treat an individual's physical or mental condition, including preventive care; and, as it relates to long-term care, personal or medical care that is needed to assist with activities of daily living or to maintain or improve a person’s functional status, whether provided in an institution, a community-based residential alternative to institutional care, a community-based day or other setting, or the person’s home;

SECTION 4. Tennessee Code Annotated, Section 68-11-1004(a), is amended by adding the following language as new, appropriately designated definitions:

() “Health care-related services” means services provided directly to and in the presence of persons receiving health care services as defined herein that are necessary in order to assess, plan, coordinate, monitor or ensure the quality of such health care services, including care coordination functions performed by TennCare managed care organizations.

SECTION 5. Tennessee Code Annotated, Section 68-11-1004(a), is amended by adding the following language as a new, appropriately designated definition:

() “Misappropriation” means any taking, possession or use of the property of a vulnerable person the elements of which constitute any criminal offense involving such property, or which constitute a violation of a fiduciary duty of a caretaker of a vulnerable person, except as otherwise defined by a state agency or other investigative authority with responsibility to investigate such acts pursuant to any other provision of law or regulation;.

SECTION 6. Tennessee Code Annotated, Section 68-11-1004(a), is amended by adding the following language as a new, appropriately designated definition:

() “Property” means all interests of any type in real property, and any interests of any type in personal property whether in monies or financial instruments of any type, goods, furnishings, and similar property; provided, however, that for purposes of reporting to the registry established by this part, property shall only consist of funds paid by a governmental agency to an “adult” as defined in TCA Section 71-6-102, if the report of abuse, neglect, misappropriation or exploitation is investigated by the department of human services pursuant to Title 71, Chapter 6, Part 1 of the Tennessee Code Annotated.

SECTION 7. Tennessee Code Annotated, Section 68-11-1004(a)(2), is amended by deleting the subdivision in its entirety and substituting instead the following language:

() "Offense against a vulnerable person" means any act that constitutes abuse, neglect, or misappropriation or exploitation of the property of a vulnerable person even if such act does not constitute a criminal act, or any crime the elements of which constitute abuse, neglect, or misappropriation or exploitation of the property of a vulnerable person.

SECTION 8. Tennessee Code Annotated, Section 68-11-1004(a)(3), is amended by deleting the subdivision in its entirety and substituting instead the following language:

() "Vulnerable person" means anyone who:

(A) Is under eighteen (18) years of age; or

(B) Is eighteen (18) years of age or older and, by reason of advanced age or other physical or mental condition, is at risk of, or has been determined to have suffered from abuse, neglect, or misappropriation or exploitation of property, and is, or has been:

(i) The subject of any report of harm, abuse, neglect, or misappropriation or exploitation of property made to any state agency or investigative authority with responsibility to investigate those reports pursuant to title 37, chapter 1, parts 1 or 6, title 71, chapter 6, part 1, or pursuant to any other provision of law or regulation; or

(ii) Receiving protective services from a state agency pursuant to law; or

(iii) The victim of any criminal offense that constitutes abuse, neglect or misappropriation or exploitation of property; or

(iv) In the care of either a state agency, or in the care of an entity providing services under the provisions of a contract between that entity and a state agency; or

(v) Receiving health care or health care-related services:

a. From any agency licensed or regulated by a state agency; or

b. From any agency contracted with:

i. A state agency; or

ii. Another entity that is contracted with a state agency; or

c. Provided through state or federal funds.

SECTION 9. Tennessee Code Annotated, Section 68-11-1004(b)(1), is amended by deleting the subdivision in its entirety and substituting instead the following language:

(b) (1) Any state government agency that finds that an individual has committed abuse, neglect, or misappropriation or exploitation of the property of a vulnerable person shall, subject to completion of due process, immediately notify the department of health concerning such individual in accordance with subdivision (b)(2). The department of health shall include the name of an individual on the registry when it receives notification from an agency of Tennessee state government that the individual has been found by that agency, pursuant to that agency's procedures and definitions, to have committed abuse, neglect, or misappropriation or exploitation of the property of a vulnerable person.

SECTION 10. Tennessee Code Annotated, Section 68-11-1004(b), is amended by deleting subdivision (3) of subsection (b) in its entirety and by substituting instead the following:

(3) Notification shall include the individual's last known mailing address, and the agency's definition of abuse, neglect, or misappropriation or exploitation of property that it used in making the determination, and any other information that the department determines is necessary to adequately identify such individual for purposes of administrative hearings provided by this part, or to adequately identify such individual when inquiry to the registry is made.

SECTION 11. Tennessee Code Annotated, Section 68-11-1004, is amended by deleting subsection (d) in its entirety and by substituting instead the following:

(d) Upon receiving the notification set out in subsection (b) or (c), the department shall, in addition to entering the individual's name on the registry, also maintain and make available upon request, the name of the reporting agency and the applicable definition of abuse, neglect, or misappropriation or exploitation of property supplied by that agency. The individual's name, once entered on the registry, shall remain on the registry, except as provided in subsection (g), even if the individual meets the requirements of any criminal disposition, and regardless of any expunction that may be ordered by any court or that may take place by operation of law in connection with such criminal disposition; provided, however, that any expunction reported to the department shall result in the removal from the registry of everything regarding the criminal disposition, except the individual's name, and the department shall destroy any other documentation of the criminal disposition; provided, further, however, that if a person is reported by any state agency pursuant to the provisions of this part, the identification of such individual as a perpetrator of abuse, neglect, misappropriation or exploitation of a vulnerable person shall not be subject to removal based upon expunction of a criminal disposition.

SECTION 12. Tennessee Code Annotated, Section 68-11-1004(e), is amended by adding the language, “or any fact issue related to the correct identity of such individual” immediately following the language “hearing conclusions were made” in the second sentence.

SECTION 13. Tennessee Code Annotated, Section 68-11-1004(g), is amended by adding the following new subdivision (3):

(3) A state agency that has placed a person on the registry pursuant to this part may recommend to the department the removal of such person’s name if it finds that the placement of the person’s name on the registry was in error.

SECTION 14. Tennessee Code Annotated, Section 68-11-1006, is amended by deleting the section in its entirety and substituting instead the following language:

68-11-1006. Agencies or entities required to consult registry— Documentation — Monitoring —Civil Penalties. —

(a) Any:

- (1) State agency under title 33, 37, 68 or 71;
- (2) Entity licensed by a state agency as defined in subdivision (a)(1); or
- (3) Entity under the provisions of a contract between that entity and a state agency or under the provisions of a contract with another entity that has a contract with a state agency, that has a vulnerable person in its care or provides health care or health care related-services shall, before hiring as an employee or contracting with any person who will provide health care or health care-related services to, or who will have direct contact with an individual who is in the care of or receiving health care or health care-related services from the state agency or entity, or before allowing a volunteer to do so, determine whether the prospective employee, contractor, or volunteer is listed on the registry.

(b) Each state agency and entity, as defined in subdivision (a)(1) through (a)(3), shall document in its personnel files that it has complied with subdivision (a) for each person that the state agency or entity hires as an employee, contracts with, or uses as a volunteer who will provide health care or health care-related services to, or who will have direct contact with, an individual who is in the care of or receiving health care or health care-related services from the state agency or entity.

(c) No person who is listed on the registry may be hired or otherwise permitted to provide health care or health care-related services to, or have direct contact with, an individual who is in the care of or receiving health care or health care-related services from the state agency or entity as defined in subdivision (a)(1) through (a)(3).

(d) Each state agency, as defined in subdivision (a)(1), shall establish and maintain a monitoring process to determine whether entities, as defined in subdivision (a)(2) or (a)(3), that it licenses or contracts with comply with the requirements in subdivisions (a) through (c).

(e) If a state agency, as defined in subdivision (a)(1), determines that an entity, as defined in subdivision (a)(2) or (a)(3), that it licenses or contracts with, has failed to comply with the requirements in subdivision (a) through (c), the state agency may assess a civil penalty against such entity for each violation in an amount ranging from five hundred dollars (\$500) for an initial violation up to a maximum of five thousand dollars (\$5,000) for repeat violations. In no event will an entity be required to pay more than one civil penalty for a single violation.

(f) Any state agency, as defined in subdivision (a)(1), may terminate or not enter or renew a contract with an entity, as defined in subdivision (a)(2) and (a)(3), that fails to comply with subdivision (a) or (c).

SECTION 15. Tennessee Code Annotated, Section 68-11-1008, is amended by deleting the section in its entirety and substituting instead the following language:

68-11-1008. Immunity from liability. —

(a) Anyone who submits an allegation of abuse, neglect, or misappropriation or exploitation of property to the department for inclusion in the registry, or who testifies in any administrative or judicial proceeding arising from the allegation, shall be immune from any civil or criminal liability for making the report or for testifying, except for liability for perjury, unless the person acted in bad faith or with malicious purpose.

(b) A licensing authority that refuses to license a person listed on the registry established by this part, or that refuses to license an entity that employs or allows such a person to provide health care or health care-related services to, or have direct contact with, an individual who is in the care of or receiving health care or health care-related services from the entity, or a state agency that terminates or does not enter into or renew a contract with a person listed on the registry or an entity that employs or otherwise utilizes such a person, or a person or entity that declines to employ or otherwise utilize such a person, or that terminates the employment of such a person, shall be absolutely immune from suit by or on behalf of that person and from any liability for such actions based upon the person's listing on the registry.

SECTION 16. Tennessee Code Annotated, Title 68, Chapter 11, Part 10, is amended by adding the following language as a new, appropriately designated section:

68-11-10(). Education —Annual Report. —

(a) The department shall educate other state agencies regarding the requirements set forth in Section 68-11-1004(b) and Section 68-11-1006.

(b) The department shall prepare and submit an annual report to the Select Oversight Committee on Long-Term Care. The report shall provide information on

findings reported to the department and included in the registry, including the number of incidents by: type of abuse, neglect, or misappropriation of property; demographics of the vulnerable persons subject to the abuse, neglect, or misappropriation of property; location of the incident; source of the finding (which state agency); and the type of employer, including provider type if applicable.

SECTION 17. Tennessee Code Annotated, Section 33-2-1201, is hereby deleted in its entirety and substituted instead with the following language:

33-2-1201. Background check for department employees, contractors, and volunteers.

(a) To help the department determine the suitability of a person for employment, contracting, or volunteer services or employment and verify the accuracy of information submitted in support of an application to work for the department, the department shall conduct a background check on any person who applies to work for the department as an employee, contractor, or any volunteer, who will provide health care or health care-related services, as defined in TCA 68-11-2004, have direct contact with, or have or direct responsibility for, persons with mental illness, serious emotional disturbance, a developmental disability, or a substance abuse disorder.

(b) The department shall conduct a background check before a change of responsibilities for an employee, contractor, or volunteer that will include providing health care or health care-related services to, or having direct contact with, a person with mental illness, serious emotional disturbance, or developmental disabilities.

(c) The department shall conduct a background check every three (3) years on all current employees, contractors, and volunteers who provide health care or health care-related services to, or have direct contact with a person with mental illness, serious emotional disturbance, or developmental disabilities. Nothing in this subsection shall be interpreted as requiring an immediate background check on current employees,

contractors or volunteers upon the effective date of this act. A background check shall be completed within three (3) years of the effective date of this act for all current employees, contractors and volunteers.

(d) A background check shall include the following:

(1) A criminal background check, including fingerprinting through the Tennessee bureau of investigation;

(2) Verification that the person's name does not appear on the abuse registry maintained by the Department of Health pursuant to title 68, chapter 11, part 10;

(3) Verification that the person's name does not appear on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2; and

(4) Licensure verification through the department of health, if applicable.

(e) The department shall document in its personnel files that it has completed the background checks required by this section.

(f) Any person who applies for employment with, to be contractor with, or a volunteer with the department and will provide health care or health care-related services to, or have direct contact with a person with mental illness, serious emotional disturbance, or developmental disabilities shall:

(1) Provide past work history, work references, and personal references;

(2) Agree to the release and use of any and all information and investigative criminal, juvenile, personnel, or any other judicial, administrative or other records about the person from any source, including federal, state and local governments, necessary for the purpose of verifying whether the person has been charged with or convicted of a

criminal or juvenile offense, or who has been subject to any employment action, to either the department or its agent, or to any agency that contracts with the state of Tennessee, or to any law enforcement agency, or to any other legally authorized entity; and

(3)

(A) Supply a fingerprint sample and submit to a state and federal criminal history records check to be conducted by the Tennessee bureau of investigation and the federal bureau of investigation, or any other law enforcement agency; or

(B) Release any information required for a criminal background investigation by a professional background screening organization or criminal background check service or registry.

(g) The department shall not disclose criminal background check information obtained to a person who is not involved in evaluating a person's employment, contractor or volunteer status except as required or permitted by state or federal law.

(i) The department shall pay the costs for conducting background check required by this section, including any costs incurred by the Tennessee bureau of investigation, professional background screening organization, law enforcement agency, or other legally authorized entity. Payments of the costs to the Tennessee bureau of investigation shall be made in accordance with §§ 38-6-103 and 38-6-109. Nothing in this subsection shall be construed to prohibit the department from requiring a person seeking to be a contractor from paying such costs.

(j) Except as provided in subsection (k), any of the following shall disqualify a person from being an employee, contractor, or volunteer or changing

responsibilities to provide health care or health care-related services to, or have direct contact with a person with mental illness, serious emotional disturbance, or developmental disabilities:

(1) Conviction of an offense, or a lesser included offense, involving physical, sexual or emotional abuse, neglect, financial exploitation or misuse of funds, misappropriation of property, or theft from any person, or that constitutes conviction of an offense involving violence against any person, or conviction of an offense involving the manufacture, sale, possession or distribution of any drug, or a no contest plea to such offenses, and any pending warrants, indictments or presentments for such offenses;

(2) The entering of a plea of nolo contendere or when a jury verdict of guilty is rendered but adjudication of guilt is withheld, with respect to a crime that is reasonably related to the nature of the position sought or held by the person;

(3) The identification of the person on the department of health's abuse registry pursuant to title 68, chapter 11, part 10;

(4) The identification of the person on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2;

(5) Failure of the person to have the required license; or

(6) The refusal to cooperate with a background check, including but not limited to refusal to submit fingerprints.

(k) If a person has any of the disqualifiers listed in subdivision (k)(1), (2) or (3), the person may, at the discretion of the department, serve as an employee, contractor or volunteer if all of the following conditions are met:

(1) The offense is a misdemeanor;

(2) The offense did not occur within the past five (5) years;

(3) The offense is not related to physical or sexual or emotional abuse of another person;

(4) The offense does not involve violence against another person or the manufacture, sale or distribution of drugs;

(5) There is only one offense that is a disqualifying offense.

(l) Except as provided in section (k, if a person has any of the disqualifications listed in subsection (j), the department shall terminate the employment of, or terminate the contract with, or not allow such person to be a volunteer if the person provides health care or health care-related services to, or has direct contact with a person with mental illness, serious emotional disturbance, or developmental disabilities.

(m) If the department declines to employ or terminates a person based upon background information provided to the department under this section, the department shall be immune from suit by or on behalf of that person for the termination of or the refusal to employ that person.

SECTION 18. Tennessee Code Annotated, Section 33-2-1202, is hereby deleted in its entirety and substituted instead with the following language:

33-2-1202. Organizations to perform background checks on employees.

(a) As used in this section and § 38-6-109, “organization” means a facility or service licensed under chapter 2, part 4 of this title.

(b) The department shall promulgate rules and regulations necessary for obtaining background information and ensuring that organizations comply with the requirements of this section.

(c) Each organization shall conduct a criminal background check before hiring or contracting with any person who will provide health care or health care-related services to, have direct contact with, or have direct responsibility for a service recipient and any

person who applies to volunteer with an organization and who will have unsupervised access to a service recipient.

(1) Each organization shall conduct a background check before a change of responsibilities for an employee or contractor that will include providing health care or health care-related services to, having direct contact with, or having direct responsibility for a service recipient and before a change of responsibilities for a volunteer that will include unsupervised access to a service recipient.

(2) Each organization shall conduct a background check every three (3) years on all current employees and contractors who provide health care or health care-related services to, have direct contact with, or have direct responsibility for a service recipient, as well as all volunteers who have unsupervised access to a service recipient. Nothing in this subdivision shall be interpreted as requiring an immediate background check on current employees or contractors upon the effective date of this act. A background check shall be completed within three (3) years of the effective date this act for all current employees and contractors.

(3) The organization shall inform the employee or person that it will conduct a background check.

(d) A background check shall include the following:

(1) A criminal background check, including fingerprinting through the Tennessee bureau of investigation;

(2) Verification that the person's name does not appear on the abuse registry maintained by the Department of Health pursuant to title 68, chapter 11, part 10;

- (3) Verification that the person's name does not appear on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2; and
- (4) Licensure verification through the department of health, if applicable.

(e) Any person who applies for employment with or to be a contractor for an organization and who will provide health care or health care-related services to, have direct contact with, or have direct responsibility for a service recipient and any person who applies to volunteer with an organization and who will have unsupervised access to a service recipient, shall:

- (1) Provide past work history containing a continuous description of activities over the past five (5) years and work references;

- (2) Identify at least three (3) individuals as personal references, one (1) of whom shall have known the applicant or person for at least five (5) years;

- (3) Agree to the release and use of any and all information and investigative criminal, juvenile, personnel, or any other judicial, administrative or other records necessary for the purpose of verifying whether the person has been charged with or convicted of a criminal or juvenile offense, or who has been subject to any employment action, to either the organization or its agent, the department, or to any agency that contracts with the state of Tennessee, or to any law enforcement agency, or to any other legally authorized entity; and

(4)

(A) Supply fingerprint samples and submit to a state and federal criminal history records check to be conducted by the Tennessee bureau of investigation and the federal bureau of investigation, or any other law enforcement agency; or (B) Release any information required for a criminal background investigation by a professional background screening organization or criminal background check service or registry.

(5) The organization shall check past work and personal references prior to employment hiring, contracting with, or using a person as a volunteer. At a minimum the organization shall communicate directly with the most recent employer and each employer identified by the person as having employed the person for more than six (6) months in the past five (5) years. The organization shall communicate directly with at least two (2) of the personal references identified by the person.

(f) Each organization shall document in its personnel files that it has completed the background checks required by this section.

(g) An organization shall not disclose criminal background check information obtained to a person who is not involved in evaluating a person's employment, contractor or volunteer status except as required or permitted by state or federal law.

(h) The organization shall pay the costs for conducting any background check required by this section, including any cost incurred by the Tennessee

bureau of investigation, the federal bureau of investigation, a professional background screening organization, or law enforcement agency, or other legally authorized entity. Payments of the costs to the Tennessee bureau of investigation shall be made in accordance with §§ 38-6-103 and 38-6-109. Nothing in this subsection shall be construed to prohibit the organization from requiring the person who is seeking to be an employee, contractor, or volunteer from paying such costs to the organization.

(i) Except as provided in subsection (l), any of the following shall disqualify a person from being an organization or from being an employee or contractor or changing responsibilities to provide health care or health care-related services to, have direct contact with, or have direct responsibility for a service recipient, or from being a volunteer who has unsupervised access to a service recipient:

(1) Conviction of an offense, or a lesser included offense, involving physical, sexual or emotional abuse, neglect, financial exploitation or misuse of funds, misappropriation of property, or theft from any person, or that constitutes conviction of an offense involving violence against any person, or conviction of an offense involving the manufacture, sale, possession or distribution of any drug, or a no contest plea to such offenses, and any pending warrants, indictments or presentments for such offenses;

(2) The entering of a plea of nolo contendere or when a jury verdict of guilty is rendered but adjudication of guilt is withheld, with respect to a crime that is reasonably related to the nature of the position sought or held by the person;

(3) The identification of the person on the department of health's abuse registry pursuant to title 68, chapter 11, part 10;

(4) The identification of the person on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2;

(5) Failure of the person to have the required license; or

(6) The refusal to cooperate with a background check, including but not limited to refusal to submit fingerprints.

(j) If a person has any of the disqualifiers listed in subdivision (k) (1), (2) or (3), the person may, at the discretion of the department, be licensed by the department if all of the following conditions are met:

(1) The offense is a misdemeanor;

(2) The offense did not occur within the past five (5) years;

(3) The offense is not related to physical or sexual or emotional abuse of another person;

(4) The offense does not involve violence against another person or the manufacture, sale or distribution of drugs; and

(5) There is only one offense that is a disqualifying offense.

(k) If a person has any of the disqualifiers listed in subdivision (k) (1)(2) or (3), the person may, at the discretion of the organization, serve as an employee, contractor or volunteer if all of the conditions in subdivision (l) (1) through (5) are met.

(l) Except as provided in subsection (l), if a person has any of the disqualifications listed in subsection (k), the organization shall terminate the employment of or terminate the contract with such person if the person provides health care or health care-related services to, has direct contact with, or has direct responsibility for a service

recipient, and the organization shall not allow such person to be a volunteer who has unsupervised access to a service recipient.

(m) An organization that declines to employ or terminates a person based upon background information provided to the organization under this section shall be immune from suit by or on behalf of that person for the termination of or the refusal to employ that person.

(n) Prior to the issuance of a license for any residential setting in which an individual resides in the home of a trained caregiver other than the individual's family of origin (herein after "the residential setting"), the department shall ensure that a background check, as specified in subsection (c), is conducted on any person, other than a resident, sixteen (16) years of age or older who is or will be residing in the residential setting.

(1) The department shall ensure that before a person, other than a resident, sixteen (16) years of age or older moves into a residential setting, a background check is conducted on such person.

(2) The department shall ensure that a background check is conducted at least every three (3) years on each person, other than a resident, sixteen (16) years of age or older who is or will be residing in a residential setting. Nothing in this subdivision shall be interpreted as requiring an immediate background check on persons described above in this subdivision. A background check shall be completed within three (3) years of the effective date of this act for all such persons described in this subdivision.

(3) Any person, other than a resident, sixteen (16) years of age or older who is or will be residing in the residential setting, shall consent to the requirements in this subsection (p)

(4) The organization shall pay the costs for conducting any background check in accordance with subsection (j).

(5) If a person, other than a resident, residing in the residential setting has any of the disqualifications specified in subdivision (k) (1), (2), (3), (4) or (6), that person shall not reside in the residential setting.

(o) The department shall establish and maintain a monitoring process to determine whether organizations are complying with the requirements of this section.

(p) Any organization that fails to complete background checks or otherwise comply with the requirements of this section shall be subject to a civil monetary penalty for each violation in an amount ranging from five hundred dollars (\$500) for an initial violation up to a maximum of five thousand dollars (\$5,000) for repeat violations. In no event will an organization be required to pay more than one civil penalty for a single violation.

(q) The department may refuse to grant, or may restrict, suspend, revoke, or refuse to renew any license based upon the information provided to the department under this section or if the organization fails to comply with the requirements of this section.

(r) If the department refuses to grant or restricts, suspends, revokes, or refuses to renew a license based upon information provided to the department under this section or an organization's non-compliance with this section, the department shall be immune from suit by or on behalf of that organization for the refusal to grant or the decision to restrict, suspend, revoke, or refuse to renew a license.

SECTION 19. Tennessee Code Annotated, Section 63-1-116, is hereby deleted in its entirety and substituted instead with the following language:

63-1-116. Criminal background checks for health care providers.

(a) Each board, council, committee or other governmental entity created pursuant to title 63 or title 68 that is attached to the department is authorized to promulgate all rules and regulations necessary for obtaining criminal background information from applicants and from facilities and professionals regulated by that board, council, committee, or other governmental entity (herein after referred to as “regulated entities”), and ensuring that regulated entities comply with the requirements of this section.

(b) Each board, council, committee, or other governmental entity shall ensure that a background check, as specified in subsection (d), is conducted on an applicant prior to the issuance of any licenses, certificates, registrations or other authorizations required to practice any of the health related professions regulated by that board, council, committee or other governmental entity.

(1) Each board, council, committee or other governmental entity shall ensure that a background check that meets the requirements of subsection (d) is conducted every three (3) years for each regulated entity.

(c) Each regulated entity shall conduct a background check before hiring or contracting with a person who will provide health care or health care-related services to, will have direct contact with, an individual who is receiving health care or health care-related services from the regulated entity, or before allowing a volunteer to have unsupervised access to an individual who is receiving health care or health care-related services from the regulated entity.

(1) Each regulated entity shall conduct a background check before a change of responsibilities for an employee or contractor that will include providing health care or health care-related services to, having direct contact with, an individual who is receiving health care or health care-related services from the regulated entity and before a change of responsibilities for a volunteer that will

include unsupervised access to an individual who is receiving health care or health care-related services from the regulated entity.

(2) Each regulated entity shall conduct a background check every three (3) years on all employees and contractors who provide health care or health care-related services to, have direct contact with, an individual who is receiving health care or health care-related services from the regulated entity, as well as all volunteers who have unsupervised access to an individual who is receiving health care or health care-related services from the regulated entity. Nothing in this subdivision shall be interpreted as requiring an immediate background check on current employees, contractors or volunteers upon the effective date of this act. A background check shall be completed within three (3) years of the effective date of this act for all current employees, contractors and volunteers.

(d) A background check shall include the following:

(1) A criminal background check, including fingerprinting through the Tennessee bureau of investigation;

(2) Verification that the person's name does not appear on the abuse registry maintained by the Department of Health pursuant to title 68, chapter 11, part 10;

(3) Verification that the person's name does not appear on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2; and

(4) Licensure verification through the department of health, if applicable.

(e) Each applicant and regulated entity, and any person who applies for employment with or to be a contractor for a regulated entity and who will provide health care or health care-related services to, have direct contact with, an individual who is receiving health care or health care-related services from the

regulated entity and any person who applies to volunteer with a regulated entity and who will have unsupervised access to an individual who is receiving health care or health care-related services from the regulated entity shall:

(1) Provide past work history, work references, and personal references;

(2) Agree to the release and use of any and all information and investigative criminal, juvenile, personnel, or any other judicial, administrative or other records necessary for the purpose of verifying whether the person has been charged with or convicted of a criminal or juvenile offense, or who has been subject to any employment action, , to the regulated entity or its agent, to the board, the division or its agent, to any agency that contracts with the state, to any law enforcement agency, or to any other legally authorized entity; and

(3)(A) Supply a fingerprint sample and submit to a state and federal criminal history records check to be conducted by the Tennessee bureau of investigation and the federal bureau of investigation, or any other law enforcement agency; and

(4) Release any information required for a criminal background investigation by a professional background screening organization or criminal background check service or registry.

(f) Each regulated entity shall check past work and personal references in accordance with applicable rules and regulations.

(g) Each regulated entity shall document in its personnel files that it has completed the background checks required by this section.

(h) A regulated entity shall not disclose criminal background check information obtained to a person who is not involved in evaluating a person's employment, contractor or volunteer status except as required or permitted by state or federal law.

(i) The regulated entity shall pay the costs for conducting any background check required by this section, including any costs incurred by the Tennessee bureau of investigation, professional background screening organization, law enforcement agency, or other legally authorized entity. Payments of costs to the Tennessee bureau of investigation shall be made in accordance with §§ 38-6-103 and 38-6-109. Nothing in this subsection shall be construed to prohibit the organization from requiring the person who is seeking to be an employee, contractor, or volunteer from paying such costs to the organization. The costs of conducting criminal background checks by nursing homes shall be an allowable cost under the state Medicaid program, if paid for by the nursing home, subject to § 71-5-1414.

(j) Except as provided in subsection (k), any of the following shall disqualify a person from being a regulated entity, from being an employee or contractor or changing responsibilities to provide health care or health care-related services to, have direct contact with, an individual who is receiving health care or health care-related services from the regulated entity, or from being a volunteer who has unsupervised access to an individual who is receiving health care or health care-related services from the regulated entity:

(1) Conviction of an offense, or a lesser included offense, involving physical, sexual or emotional abuse, neglect, financial exploitation or misuse of funds, misappropriation of property, or theft from any person, or that constitutes conviction of an offense involving violence against any person, or conviction of an offense involving the manufacture, sale, possession or distribution of any drug, or a no contest plea to such offenses, and any pending warrants, indictments or presentments for such offenses;

(2) The entering of a plea of nolo contendere or when a jury verdict of guilty is rendered but adjudication of guilt is withheld, with respect to a crime that is reasonably related to the nature of the position sought or held by the person;

(3) The identification of the person on the department of health's abuse registry pursuant to title 68, chapter 11, part 10;

(4) The identification of the person on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2;

(5) Failure of the person to have the required license; or

(6) The refusal to cooperate with a background check, including but not limited to refusal to submit fingerprints.

(k) If a person has any of the disqualifiers listed in subdivision (j) (1)(2) or (3), the person may, at the discretion of the licensing authority, be authorized to practice by the licensing authority, if all of the following conditions are met:

(1) The offense is a misdemeanor;

(2) The offense did not occur within the past five (5) years;

(3) The offense is not related to physical or sexual or emotional abuse of another person;

(4) The offense does not involve violence against another person or the manufacture, sale or distribution of drugs; and

(5) There is only one offense that is a disqualifying offense.

If a person has any of the disqualifiers listed in subdivision (j) (1)(2) or (3), the person may, at the discretion of the regulated entity, serve as an employee, contractor or volunteer if all of the conditions in (1) through (5) are met.

(l) Except as provided in subsection (k), if a person has any of the disqualifications listed in subsection (j), a regulated entity shall terminate the employment of or terminate the contract with such person if the person provides health care or health care-related services to, or has direct contact with an individual who is receiving health care or health care-related services from the regulated entity, and the employing agency shall not allow such person to be

a volunteer who has unsupervised access to an individual who is receiving health care or health care-related services from the regulated entity.

(m) Prior to the issuance of a license for any residential setting in which an individual resides in the home of a trained caregiver other than the individual's family of origin (herein after "the residential setting"), the department shall ensure that a background check, as specified in subsection (c), is conducted on any person, other than a resident, sixteen (16) years of age or older who is or will be residing in the residential setting.

(1) The department shall ensure that before a person, other than a resident, sixteen (16) years of age or older moves into a residential setting, a background check is conducted on such person.

(2) The department shall ensure that a background check is conducted at least every three (3) years on each person, other than a resident, sixteen (16) years of age or older who is or will be residing in a residential setting. Nothing in this subdivision shall be interpreted as requiring an immediate background check on such persons currently residing in a residential setting upon the effective date of this act. A background check shall be completed within three (3) years of the effective date of this act for such persons currently residing in a residential setting.

(3) Any person, other than a resident, sixteen (16) years of age or older who is or will be residing in the residential setting, shall consent to the requirements in this subsection (m).

(4) The regulated entity shall pay the costs for conducting any background check in accordance with subsection (i).

(5) If a person, other than a resident, residing in the residential setting has any of the disqualifications specified in subdivision (j) (1),(2),(3), (4) or (6), that person shall not reside in the residential setting.

(n) The department, board, council, or committee or other governmental entity shall establish and maintain a monitoring process to determine whether regulated entities are complying with the requirements of this section.

(o) A regulated entity that declines to employ or terminates a person based upon background information provided to the regulated entity under this section shall be immune from suit by or on behalf of that person for the termination of or the refusal to employ that person.

(p) Any regulated entity that fails to complete background checks or otherwise comply with the requirements of this section shall be subject to a civil monetary penalty for each violation in an amount ranging from five hundred dollars (\$500) for an initial violation up to a maximum of five thousand dollars (\$5,000) for repeat violations. In no event will a regulated entity be required to pay more than one civil penalty for a single violation.

(q) The provisions of this section shall also apply to any company, organization, or agency that provides or arranges for the supply of direct care staff to any nursing home licensed in the state of Tennessee. The company, organization, or agency shall be responsible for initiating a criminal background check on any person hired by that entity for the purposes of working in a nursing home, and shall be required to report the results of the criminal background check to any nursing home in which the organization arranges for that individual to work, upon such a request by a nursing home.

(r) A board, council, or committee or other governmental entity may deny an application for, restrict, place conditions on, suspend, revoke, or refuse to renew a license or authorization to practice based on the information provided to it under this section or if the regulated entity fails to conduct background checks or otherwise fails to comply with the requirements of this section.

(s) Any board, council, or committee or other governmental entity that denies an application, restricts, places conditions on, suspends, revokes, or refuses to renew a license or

authorization to practice based upon information provided to it under this section or non-compliance with this section shall be immune from suit by or on behalf of that regulated entity for the denial, restriction, condition, suspension, revocation, or refusal to renew.

(t) Initial rules promulgated pursuant to this section may be promulgated as public necessity rules pursuant to § 4-5-209(a)(4).

SECTION 20. Tennessee Code Annotated, Section 68-11-256, is hereby deleted in its entirety.

SECTION 21. Tennessee Code Annotated, Section 71-2-111, is hereby deleted in its entirety and substituted instead with the following language:

71-2-111. Background check of employees, contractors and volunteers.

(a) As used in this section “employing entity” means any person or organization that is paid by the commission to provide health care (as defined in TCA 68-11-1004(a)) or health care-related services to or to have direct responsibility for the safety and care of individuals in their home, including contractors, subcontractors and grantees.

(b) The commission shall promulgate rules and regulations necessary for ensuring that employing entities comply with the requirements of this section. The commission is expressly authorized to promulgate such rules as public necessity rules pursuant to § 4-5-209(a)(4) to provide an immediate effective date.

(c) The commission shall require each employing entity to conduct a background check before hiring or contracting with a person who will provide health care or health care-related services to, will have direct contact with, or will have direct responsibility for the safety and care of an individual or before allowing a volunteer to have unsupervised access to an individual who is the care of the employing entity or receiving health care or health care-related services from the employing entity.

(d) Each employing entity shall conduct a background check before a change of responsibilities for an employee or contractor that will include providing health care or health care-related services to, having direct contact with, or having direct responsibility for the safety or care of an individual who is in the care of or receiving health care or health care-related services from the employing entity and before a change of responsibilities for a volunteer that will include unsupervised access to an individual who is in the care of or receiving health care or health care-related services from the employing entity.

(e) Each employing entity shall conduct a background check every three (3) years on all current employees and contractors who provide health care or health care-related services to, have direct contact with, or have direct responsibility for the safety or care of an individual who is in the care of or receiving health care or health care-related services from the employing entity, as well as all volunteers who have unsupervised access to an individual who is in the care of or receiving health care or health care-related services from the employing entity. Nothing in this subsection shall be interpreted as requiring an immediate background check on current employees, or contractors upon the effective date of this act. A background check shall be completed within three (3) years of the effective date of this act for all current employees and contractors.

(f) A background check shall include the following:

(1) A criminal background check, including fingerprinting through the Tennessee bureau of investigation;

(2) Verification that the person's name does not appear on the abuse registry maintained by the Department of Health pursuant to title 68, chapter 11, part 10;

(3) Verification that the person's name does not appear on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2; and

(4) Licensure verification through the department of health, if applicable.

(g) Any person who applies for employment with or to be a contractor for an employing entity and will provide health care or health care-related services to, have direct contact with, or be directly responsible for the care and safety of an individual who is in the care of or receiving health care or health care-related services from the employing entity and any person who applies to volunteer with an employing entity and who will have unsupervised access to an individual who is in the care of or receiving health care or health care-related services from the employing entity shall consent to the following:

(1) Provide past work history, work references, and personal references;

(2) Agree to the release and use of any and all information and investigative criminal, juvenile, personnel, or any other judicial, administrative or other records necessary for the purpose of verifying whether the person has been charged with or convicted of a criminal or juvenile offense, or who has been subject to any employment action, , to either the employing entity or its agent, the department, or to any agency that contracts with the state of Tennessee, or to any law enforcement agency, or to any other legally authorized entity; and

(3) (A) Supply a fingerprint sample and submit to a state and federal criminal history records check to be conducted by the Tennessee bureau of investigation and the federal bureau of investigation; or

(B) Release any information required for a criminal background investigation by a professional background screening organization or criminal background check service or registry.

(h) Each employing entity shall check past work and personal references in accordance with applicable rules and regulations.

(i) Each employing entity shall document in its personnel files that it has completed the background checks required by this section.

(j) An employing entity shall not disclose criminal background check information obtained to a person who is not involved in evaluating a person's employment, contractor or volunteer status except as required or permitted by state or federal law.

(k) The employing entity shall pay the costs for conducting any background check required by this section, including any cost incurred by the Tennessee bureau of investigation, the federal bureau of investigation, a professional background screening organization, law enforcement agency, or other legally authorized entity. Payment of the costs to the Tennessee bureau of investigation shall be made in accordance with §§ 38-6-103 and 38-6-109. Nothing in this subsection shall be construed to prohibit the organization from requiring the person who is seeking to be an employee, contractor, or volunteer from paying such costs to the organization.

(l) Except as provided in subsection (m), any of the following shall disqualify a person from being an employee or contractor or changing responsibilities to provide health care or health care-related services to, have direct contact with, or being directly responsible for safety and care of an individual who is in the care of or receiving health care or health-care related services from the employing entity, or from being a volunteer who has unsupervised access to an individual who is in the care of or receiving health care or health care-related services from the employing entity:

(1) Conviction of an offense, or a lesser included offense, involving physical, sexual or emotional abuse, neglect, financial exploitation or misuse of funds, misappropriation of property, or theft from any person, or that constitutes conviction of an offense involving violence against any person, or conviction of an offense involving the manufacture, sale, possession or distribution of any drug, or a no contest plea to such offenses, and any pending warrants, indictments or presentments for such offenses;

(2) The entering of a plea of nolo contendere or when a jury verdict of guilty is rendered but adjudication of guilt is withheld, with respect to a crime that is reasonably related to the nature of the position sought or held by the person;

(3) The identification of the person on the department of health's abuse registry pursuant to title 68, chapter 11, part 10;

(4) The identification of the person on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2;

(5) Failure of the person to have the required license; or

(6) The refusal to cooperate with a background check, including but not limited to refusal to submit fingerprints.

(m) If a person has any of the disqualifiers listed in subdivision (l) (1) (2) or (3), the person may, at the discretion of the employing entity, serve as an employee, contractor or volunteer if all of the following conditions are met:

(1) The offense is a misdemeanor;

(2) The offense did not occur within the past five (5) years;

(3) The offense is not related to physical or sexual or emotional abuse of another person;

(4) The offense does not involve violence against another person or the manufacture, sale or distribution of drugs; and

(5) There is only one offense that is a disqualifying offense.

(n) Except as provided in subsection (m), if a person has any of the disqualifications listed in subsection (l), an employing agency shall terminate the employment of or terminate the contract with such person if the person provides health care or health care-related services to, has direct contact with, or has direct responsibility for the care or safety of an individual who is in the care of or receiving health care or health care-related services from the employing entity,

and the employing agency shall not allow such person to be a volunteer who has unsupervised access to an individual who is in the care of or receiving health care or health care-related services from the employing entity.

(o) The commission shall establish and maintain a monitoring process to determine whether employing entities are complying with the requirements of this section.

(p) An employing entity that declines to employ or terminates a person based upon background information provided to the employing entity under this section shall be immune from suit by or on behalf of that person for the termination of or the refusal to employ that person.

(q) Any employing entity that fails to complete background checks or otherwise comply with the requirements of this section shall be subject to a civil monetary penalty for each violation in an amount ranging from five hundred dollars (\$500) for an initial violation up to a maximum of five thousand dollars (\$5,000) for repeat violations. In no event will an employing entity be required to pay more than one civil penalty for a single violation.

(r) The commission or any other state agency may terminate or not enter or renew a contract with an employing entity that fails to comply with the requirements of this section.

SECTION 22. Tennessee Code Annotated, Section 71-2-403, is hereby deleted in its entirety and substituted instead with the following language:

71-2-403. Background checks required of persons having access to adults — Review of vulnerable persons registry — Verification — Exclusion from access to adults — Appeals.

(a) The department shall promulgate rules and regulations necessary for obtaining background information concerning department staff and staff of, contractors with, and volunteers in adult day care centers subject to this section, and for ensuring that adult day care centers comply with the requirements of this section.

(b) The department shall ensure that a background check as specified in subsections (e) and (f) is conducted for an applicant for an adult day care center licensee prior to the issuance of a license.

(c) The department shall conduct a background check prior to hiring department licensing staff and social counselors and supervisors who provide direct services to adults in the department's adult day care licensing program or in the adult protective services program.

(1) The department shall ensure that a background check that meets the requirements of subsections (e) and (f) is conducted every three (3) years for all department licensing staff and social counselors and supervisors who provide direct services to adults either in the department's adult day care licensing program or in the adult protective services program. Nothing in this subsection shall be interpreted as requiring an immediate background check on such staff, counselors and supervisors upon the effective date of this act. A background check shall be completed within three (3) years of the effective date of this act for all current staff, counselors and supervisors.

(d) (1) Each adult day care center shall require that a background check that meets the requirements of subsections (e) and (f) is conducted:

(i) For all new employees;

(ii) Before hiring or contracting with a person who will provide health care (as defined in TCA 68-11-1004(a)) or health care-related services to, or will have direct contract with or access to adults in the care of the adult day care center;

(iii) Before utilizing volunteers subject to this section who are counted in the staff/adult participant ratio, or before allowing a volunteer who is subject to this section unsupervised access to an adult participant in adult day care centers; or

(iv) Before a change of responsibilities for an employee or contractor that will include providing health care or health care-related services to, having direct contact

with or access to an adult participant and before a change of responsibilities for a volunteer that will include them in the staff/adult participant ratio, or include unsupervised access to an adult participant; and

(v) For all persons whom the adult day care center has reasonable cause at any other time to suspect has a disqualifying condition;

(2) With respect to volunteers, this section applies only to those volunteers who serve as volunteers for more than thirty-six (36) hours in any one (1) calendar year.

(3) Each adult day care shall conduct a background check every three (3) years on all persons described in subsection (d) currently providing any services in or for the adult day care center. Nothing in this subsection shall be interpreted as requiring an immediate background check on current employees, contractors or volunteers upon the effective date of this act. A background check shall be completed within three (3) years of the effective date of this act for all current employees, contractors and volunteers.

(e) A background check shall include the following:

(1) A criminal background check, including fingerprinting through the Tennessee bureau of investigation;

(2) Verification that the person's name does not appear on the abuse registry maintained by the Department of Health pursuant to title 68, chapter 11, part 10;

(3) Verification that the person's name does not appear on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2; and

(4) Licensure verification through the department of health, if applicable.

(f) Any:

(1) Applicant for a license to operate an adult day care center;

(2) Person who applies for a position as either department adult day care licensing staff or as a counselor or supervisor who will provide direct services to adults either in the department's adult day care licensing or adult protective services program; and

(3) Persons described in subsection (d) shall consent to the following:

(i) Provide past work history, work references, and personal references;

(ii) Agree to the release and use of any and all information and investigative criminal, juvenile, personnel or other judicial, administrative or any other records necessary for the purpose of verifying whether the person has been charged with or convicted of a criminal or juvenile offense, or who has been subject to any employment action, to either the employing entity or its agent, the department, to any agency that contracts with the state of Tennessee, to any law enforcement agency, or to any other legally authorized entity; and

(iii) To supply a fingerprint sample and submit to a state and federal criminal history records check to be conducted by the Tennessee bureau of investigation and the federal bureau of investigation, or any other law enforcement agency;

(g) Each adult day care center shall check past work and personal references in accordance with applicable rules and regulations.

(h) Each adult day care center and the department shall document in its personnel files that it has completed the background checks required by this section.

(i) Neither an adult day care center nor the department shall disclose criminal background check information to a person who is not involved in evaluating a person's employment, contractor or volunteer status or who is not conducting any authorized investigation by any government agency, except as required or permitted by state or federal law.

(j) Costs of background checks.

(1) The adult day care center may require that the costs of the background check be a part of the application process by a prospective employee or volunteer, or it may pay the costs and recover the costs of the fingerprint criminal background checks from the prospective employee following employment.

(2) The adult day care center, and not the department, shall be responsible for all of the costs of the fingerprint criminal background checks conducted by the Tennessee bureau of investigation and the federal bureau of investigation for its employees or volunteers subject to this section. Payments of the costs to the Tennessee bureau of investigation shall be made in accordance with §§ 38-6-103 and 38-6-109.

(k) The Tennessee bureau of investigation shall make any reports of positive matches pursuant to this section in the same manner as provided for any of the processes authorized by § 71-3-507.

(l) Persons seeking any position or relationship with, or having access to adults, in an adult day care center, or any position with the department providing direct services in the adult day care center, or any position with the department providing direct services in the adult day care or adult protective services programs for which a background check is required by this section shall be disqualified from those positions, relationships or access if a background check, or any exclusionary criteria described in subdivisions (1)-(6) are determined by a background check required by this section or in any other manner.

(1) Conviction of an offense, or a lesser included offense, involving the physical, sexual or emotional abuse, neglect, financial exploitation or misuse of funds, misappropriation of property, or theft from any person, or that constitutes conviction of an offense involving violence against any person, or conviction of an offense involving the manufacture, sale, possession or distribution of any drug, or a no contest plea to such offenses, conviction of a crime that is

reasonably related to the nature of the position sought or held by the person, and any pending warrants, indictments or presentments for such offenses;

(2) The entering of a plea of nolo contendere or when a jury verdict of guilty is rendered but adjudication of guilt is withheld, with respect to a crime that is reasonably related to the nature of the position sought or held by the person;

(3) The identification of any the person on the department of health's vulnerable persons abuse registry pursuant to title 68, chapter 11, part 10;

(4) The identification of the person on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2;

(5) Failure of the person to have the required license; or

(6) The refusal to cooperate with a background check, including but not limited to refusal to submit fingerprints, shall disqualify such person from employment with, or from having any access whatsoever, to adults in an adult day care center as defined by this part, or with the department.

(l) If any of the disqualifiers listed in subdivisions (1) (2) or (3) is applicable, the person may, at the discretion of the department, be employed or volunteer in, contract with or may be a licensee for an adult day care center, or may serve as an employee of the department in adult day care or adult protective services programs if all of the following conditions are met:

(1) The offense is a misdemeanor;

(2) The offense did not occur within the past five (5) years;

(3) The offense is not related to physical or sexual or emotional abuse of another person;

(4) The offense does not involve violence against another person or the manufacture, sale or distribution of drugs; and

(5) There is only one offense that is a disqualifying offense.

(m) Except as provided in subsection (m), if any person who applies for a position as either department adult day care licensing staff or as a social counselor or supervisor who will provide direct services to adults either in the department's adult day care licensing or adult protective services programs; and who has any of the disqualifications described in subsection (l) the department shall decline to employ the person or shall terminate the person's employment.

(n) If the department declines to employ or terminates a person based upon background information provided to the department under this section, the department shall be immune from suit by or on behalf of that person for the termination of or the refusal to employ that person.

(o) If a person has any of the disqualifications listed in subsection (l), an adult day care center shall terminate the employment of or terminate the contract with such person if the person provides health care or health care-related services to, has direct contact with an adult participant, and the adult day care shall not allow such person to be a volunteer who is included in the staff/adult participant ratio or has unsupervised access to an adult participant.

(p) An adult day care center that declines to employ, use, or terminates the employment of, a person or declines to enter, or terminates, any contract with any person or entity based upon background or exclusionary information provided to the adult day care center under this section shall be immune from suit by or on behalf of that person for the termination of employment or other status with the adult day care or the refusal to employ that person or for declining to contract, or for terminating a contract with such person or entity.

(q) The department shall establish and maintain a monitoring process to determine whether adult day care centers are complying with the requirements of this section. The department may require that any person subject to the provisions of this part, or that any person who has access to any adult in the adult day care program or in the adult protective services

program to undergo a background check at any time it determines that there is reasonable cause to do so.

(r) Any adult day care center that fails to complete background checks or otherwise comply with the requirements of this section shall be subject to a civil monetary penalty for each violation in an amount ranging from five hundred dollars (\$500) for an initial violation up to a maximum of five thousand dollars (\$5,000) for repeat violations. In no event will an adult day care center be required to pay more than one civil penalty for a single violation.

(s) The department may refuse to grant, or may restrict, suspend, revoke, or refuse to renew any license if the adult day care center based upon information provided to the department under this section or if the adult day care center fails to comply with the requirements of this section.

(t) If the department refuses to grant or restricts, suspends, revokes, or refuses to renew a license based upon information provided to it under this section or for non-compliance with this section, the department shall be immune from suit by or on behalf of that adult day care center for the refusal to grant or the decision to restrict, suspend, revoke, or refuse to renew a license.

(u) Except as otherwise provided in subdivision (a)(2) and in subsection (c), and except where the context or intent would otherwise render the language inapplicable to persons employed in or otherwise have access to adults in an adult day care center, or to the department's adult day care licensing or adult protective services program programs, the procedures, requirements, and any other statutory provisions involving the requirements for criminal history disclosure forms, the methodology for obtaining and reporting the fingerprint-based criminal history of a person, the exclusions of persons with a criminal history, the appeals processes, the department's authority to allow by rule of the department for exemptions from a verified exclusionary background, permissive background check procedures and any other

consistent procedures, shall be the same for persons subject to the provisions of this section as those provided in § 71-3-507 for persons having access to children in child care agencies licensed by the department of human services pursuant to chapter 3, part 5 of this title.

SECTION 23. Tennessee Code Annotated, Section 71, Chapter 5, Part 1, is hereby amended by adding a new appropriately designated section containing the following language:

71-5-() Background checks.

(a) As used in this section “employing entity” means any person or organization that provides health care as defined in TCA 68-11-1004(a) or health care-related services paid for by the TennCare program.

(b) Each employing entity shall conduct a background check before hiring or contracting with a person who will provide health care or health care-related services to, or will have direct contact with, an individual who is receiving health care or health care-related services from the employing entity, or before allowing a volunteer to have unsupervised access to an individual who is receiving health care or health care-related services from the employing entity.

(c) Each employing entity shall conduct a background check before a change of responsibilities for an employee or contractor that will include providing health care or health care-related services to, or having direct contact with, an individual who is receiving health care or health care-related services from the employing entity and before a change of responsibilities for a volunteer that will include unsupervised access to an individual who is receiving health care or health care-related services from the employing entity.

(d) Each employing entity shall conduct a background check every three (3) years on all current employees and contractors who provide health care or health care-related services to, have direct contact with, an individual who is receiving health care or health care-related services from the employing entity, as well as all volunteers who have unsupervised

access to an individual who is receiving health care or health care-related services from the employing entity. Nothing in this subsection shall be interpreted as requiring an immediate background check on current employees or contractors upon the effective date of this act. A background check shall be completed within three (3) years of the effective date of this act for all current employees and contractors.

(e) A background check shall include the following:

(1) A criminal background check, including fingerprinting through the Tennessee bureau of investigation;

(2) Verification that the person's name does not appear on the abuse registry maintained by the Department of Health pursuant to title 68, chapter 11, part 10;

(3) Verification that the person's name does not appear on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2; and

(4) Licensure verification through the department of health, if applicable.

(f) Any person who applies for employment with or to be a contractor for an employing entity and will provide health care or health care-related services to, have direct contact with, an individual who is receiving health care or health care-related services from the employing entity and any person who applies to volunteer with an employing entity and who will have unsupervised access to an individual who is receiving health care or health care-related services from the employing entity shall consent to the following:

(1) Provide past work history, work references, and personal references;

(2) Agree to the release and use of any and all information and investigative criminal, juvenile, personnel, or any other judicial, administrative or other records necessary for the purpose of verifying whether the person has been charged with or convicted of a criminal or juvenile offense, or who has been subject to any employment action, , to either the employing

entity or its agent, the department, or to any agency that contracts with the state of Tennessee, or to any law enforcement agency, or to any other legally authorized entity; and

(3) (A) Supply a fingerprint sample and submit to a state and federal criminal history records check to be conducted by the Tennessee bureau of investigation and the federal bureau of investigation; or (B) Release any information required for a criminal background investigation by a professional background screening organization or criminal background check service or registry.

(g) Each employing entity shall check past work and personal references in accordance with applicable rules and regulations

(h) Each employing entity shall document in its personnel files that it has completed the background checks required by this section.

(i) An employing entity shall not disclose criminal background check information obtained to a person who is not involved in evaluating a person's employment, contractor or volunteer status except as required or permitted by state or federal law.

(j) The employing entity shall pay the costs for conducting any background check required by this section, including any costs incurred by the Tennessee bureau of investigation, the federal bureau of investigation, a professional background screening organization, law enforcement agency, or other legally authorized entity. Payments of the costs to the Tennessee bureau of investigation shall be made in accordance with §§ 38-6-103 and 38-6-109. Nothing in this subsection shall be construed to prohibit the employing entity from requiring the person who is seeking to be an employee, contractor, or volunteer from paying such costs to the employing entity.

(k) Except as provided in subsection (l), any of the following shall disqualify a person from being an employee or contractor or changing responsibilities to provide health care or health care-related services to, have direct contact with, an individual who is receiving health

care or health care-related services from the employing entity, or from being a volunteer who has unsupervised access to an individual who is receiving health care or health care-related services from the employing entity:

(1) Conviction of an offense, or a lesser included offense, involving physical, sexual or emotional abuse, neglect, financial exploitation or misuse of funds, misappropriation of property, or theft from any person, or that constitutes conviction of an offense involving violence against any person, or conviction of an offense involving the manufacture, sale, possession or distribution of any drug, or a no contest plea to such offenses, and any pending warrants, indictments or presentments for such offenses;

(2) The entering of a plea of nolo contendere or when a jury verdict of guilty is rendered but adjudication of guilt is withheld, with respect to a crime that is reasonably related to the nature of the position sought or held by the person;

(3) The identification of the person on the department of health's abuse registry pursuant to title 68, chapter 11, part 10;

(4) The identification of the person on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2;

(5) Failure of the person to have the required license; or

(6) The refusal to cooperate with a background check, including but not limited to refusal to submit fingerprints.

(l) If a person has any of the disqualifiers listed in subdivision (k) (1)(2) or (3), the person may, at the discretion of the employing entity, serve as an employee, contractor or volunteer if all of the following conditions are met:

(1) The offense is a misdemeanor;

(2) The offense did not occur within the past five (5) years;

(3) The offense is not related to physical or sexual or emotional abuse of another person;

(4) The offense does not involve violence against another person or the manufacture, sale or distribution of drugs; and

(5) There is only one offense that is a disqualifying offense.

(m) Except as provided in subsection (l), if a person has any of the disqualifications listed in subsection (k), an employing agency shall terminate the employment of or terminate the contract with such person if the person provides health care or health care-related services to, has direct contact with an individual who is receiving health care or health care-related services from the employing entity, and the employing agency shall not allow such person to be a volunteer who has unsupervised access to an individual who is receiving health care or health care-related services from the employing entity.

(n) The bureau of TennCare shall establish and maintain a monitoring process to determine whether employing entities are complying with the requirements of this section.

(o) An employing entity that declines to employ or terminates a person based upon background information provided to the employing entity under this section shall be immune from suit by or on behalf of that person for the termination of or the refusal to employ that person.

(p) Any employing entity that fails to complete background checks or otherwise comply with the requirements of this section shall be subject to a civil monetary penalty for each violation in an amount ranging from five hundred dollars (\$500) for an initial violation up to a maximum of five thousand dollars (\$5,000) for repeat violations. In no event will an employing entity be required to pay more than one civil penalty for a single violation.

(q) The bureau of TennCare may terminate or not enter or renew a contract with an employing entity that fails to comply with the requirements of this section.

(r) If the bureau of TennCare terminates or does not enter or renew a contract with an employing entity for failure to comply with this section, the bureau of TennCare shall be immune from suit by or on behalf of that employing entity for the termination or refusal to enter or renew a contract with that employing entity.

SECTION 24. Tennessee Code Annotated, Section 34-7-101, is hereby deleted in its entirety and substituted instead with the following language:

34-7-101. Short title. This chapter shall be known and may be cited as the “Public Guardianship for Adults Law.”

SECTION 25. Tennessee Code Annotated, Section 34-7-102, is hereby deleted in its entirety and substituted instead with the following language:

34-7-102. Legislative intent — Construction

(a) The general assembly recognizes that many elderly and persons with disabilities aged eighteen (18) and older in the state are unable to meet essential requirements for their physical and behavioral health or to manage essential aspects of their financial resources. The general assembly finds that private conservatorship is inadequate where there are no willing and responsible family members or friends to serve as conservator and where the elderly or disabled person does not have adequate resources for the compensation of a private conservator, or to pay legal and court costs. The general assembly intends through this chapter to establish a statewide public conservatorship program to aid elderly and disabled persons who have no family member or friend who is willing and able to serve as conservator, with particular attention to vulnerable persons referred for public guardianship assistance by Adult Protective Services.

(b) The general assembly intends to promote the general welfare by establishing a public guardianship system that permits the elderly and disabled to determinatively participate as fully as possible in all decisions that affect them, that assists such persons to regain or

develop their capacities to the maximum extent possible, and that accomplishes such objectives through the use of the least intrusive alternatives. This chapter shall be liberally construed to accomplish these purposes. It is the intent of the general assembly that nothing contained in this chapter will affect the powers of the court under chapters 1, 2 and 3 of this title, nor create additional powers not contained in chapters 1, 2 and 3 of this title. The district public guardian shall not serve in more than one (1) capacity in any one (1) proceeding under chapters 1, 2 and 3 of this title.

SECTION 26. Tennessee Code Annotated, Section 34-7-103, is hereby deleted in its entirety and substituted instead with the following language:

34-7-103. Creation and administration of statewide program.

(a) A statewide program to provide guardianship for the elderly and disabled is created and will be administered by the commission on aging, which shall adopt policies and may promulgate rules to govern the operation of district public guardians within each development district, and implement the law. The commission shall provide a coordinator to monitor program development and operation, and shall contract with the grantee agencies in each of the nine (9) development districts which are the planning and service areas designated by the commission. Each grantee agency in the nine (9) development districts shall hire staff to serve as district public guardian in the planning and service area.

(b) The state of Tennessee recognizes the Code of Ethics for Guardians adopted by the National Guardianship Association and adopts these guiding principles as the foundation for the statewide guardianship program.

SECTION 27. Tennessee Code Annotated, Section 34-7-104, is hereby deleted in its entirety and substituted instead with the following language:

34-7-104. Powers and duties of district public guardian. —

(a) The duties and powers of the district public guardian are as follows:

(1) To serve as conservator for elderly and disabled persons who have no family members or other person, bank or corporation willing and able to serve as conservator;

(2) The district public guardian does not have any power or authority beyond that set forth for a conservator in chapters 1, 2 and 3 of this title; and

(3) To provide for the least intrusive alternatives, the district public guardian may accept power of attorney.

(b) The district public guardian may employ sufficient staff to carry out the duties of the office. The district public guardian shall ensure that a background check, as specified in §71-2-111, is conducted for all staff, contractors and volunteers. Any person with a disqualifier as described in 71-2-111(l) is ineligible to serve as a guardian or volunteer. All guardians and volunteers with fiduciary responsibility shall submit to a credit report check.

(c) Within 15 months of employment as a public guardian shall file an application to become certified by the National Guardianship Association. Within two years of employment as a guardian, each public guardian shall complete all requirements and register as a certified public guardian. All current public guardians must complete certification and register within 15 months of the effective date of this legislation.

(d) The district public guardian may delegate to staff members the powers and duties of the office of district public guardian except as otherwise limited by law. The district public guardian retains ultimate responsibility for the discharge of required duties and responsibilities.

(e) (1) A district public guardian may accept the services of volunteer persons and organizations, and raise money to supplement operating costs.

(2) The commission on aging, in consultation with the departments of human services and health, may develop and implement a statewide program to recruit, train, assign, supervise and evaluate volunteer persons to assist district public guardians in maintaining the independence and dignity of their elderly wards. In developing and implementing this statewide

program, the commission on aging shall solicit input and resources from interested organizations, including, but not necessarily limited to, community senior citizen centers, churches and synagogues having senior projects and programs under the auspices of the American Association of Retired Persons. Each volunteer shall possess demonstrated personal characteristics of honesty, integrity, compassion and caring for the elderly. The background of each volunteer shall be subject to appropriate inquiry and investigation. Volunteers shall receive no salary but may be reimbursed by the commission on aging for travel and other expenses incurred directly as a result of the performance of volunteer services.

(f) If the disabled person qualifies for SSI benefits, no charge will be made against the disabled person's estate for court costs or fees of any kind. Under no circumstances may court costs be assessed to the public guardianship program.

(g) If the disabled person does not qualify for SSI benefits, costs and compensation of the district public guardian shall be determined under §§ 34-1-112 and 34-1-114.

(h) (1) All funds received on behalf of a disabled person by the district public guardianship program shall be handled under a computerized accounting package approved by the commission on aging, and shall be audited annually by the state.

(2) All other assets received by the district public guardian shall be handled in accordance with state laws, rules and court regulation or regulations as to disposition of property and record keeping.

(3) Upon termination of the conservatorship, all assets remaining in the estate shall be paid over to the disabled person or to the disabled person's legal representative.

(i) While performing conservatorship duties, the district public conservator shall continue to seek a family member, friend, other person, bank or corporation qualified and willing to serve as conservator. If such an individual, bank or corporation is located, the district public

conservator shall submit a motion to the court for appointment of the qualified and willing successor conservator.

(j) A person appointed successor district public guardian immediately succeeds to all rights, duties, responsibilities and powers of the preceding district public guardian.

(k) When the position of district public guardian is vacant, subordinate personnel employed under subsection (c) shall continue to act as if the position of district public guardian were filled.

(l) A district public guardian shall be required to post bond in individual cases in accordance with § 34-1-105. The commission on aging shall arrange out of the program budget to purchase a statewide bond that shall ensure the fiduciary responsibilities of the district public guardian in all court appointed cases for indigent wards.

(m) The district public guardian shall adhere to all state laws that are applicable to conservatorship.

(n) (1) The public guardian shall keep and maintain proper financial and service delivery records on all matters in which the public guardian serves as guardian.

(2) The public guardian shall file with the court an Initial Guardianship Plan for each ward that includes provisions for needed medical, behavioral and support services and type of residential setting best suited for the welfare of the ward, based on his or her abilities, needs and resources. The Initial Guardianship Plan shall be filed with the court within 60 days after guardianship is appointed by the court.

(3) The public guardian shall file with the court an annual report for each ward that includes the current location of the ward, the ward's condition, the ward's medical, behavioral and support services needs, whether there are any changes expected in the upcoming year, and the ward's ability to be restored to capacity.

(4) The commission on aging shall conduct an annual review of a random sample of records to verify that Initial Guardianship Plans and annual reports have been completed and properly filed with the court and an annual review of a random sample of public guardian and volunteer records to ensure written verification of appropriate background checks and certification is present. The commissioner shall provide a written report of the annual reviews to the Select Oversight Committee on Long-Term Care.

(o) A public guardian shall ensure that each of the guardian's wards is personally visited by a public guardian at least once each calendar quarter. To ensure the capacity to respond to each wards needs and ensure all medical, behavioral and support service needs are met for each ward, the district public guardian shall submit certification to the court when maximum caseload has been attained, and the court shall not assign additional wards while maximum caseload is maintained. Maximum caseload shall be certified by the commission on aging upon review of verifying documentation submitted by the district public guardian and the grantee agency director. A caseload cap shall be reviewed every thirty (30) days to determine the necessity of continuing the cap. The district public guardian must notify the court and the commission when caseloads have been reduced to less than maximum load.

SECTION 28. Tennessee Code Annotated, Section 34-7-105, is hereby deleted in its entirety and substituted instead with the following language:

34-7-105. Costs of public guardianship. - Costs of public guardianship for the elderly and disabled will be met by annual appropriation to the commission on aging.

SECTION 29. This act shall take effect on July 1, 2009, the public welfare requiring it.