

HEALTH LAW UPDATE

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

Add Registry Checks To Your Checklist: New Tennessee Requirement

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Effective October 1, 2010, all healthcare professionals and facilities licensed in the State of Tennessee must perform a "registry check"¹ prior to employing or contracting with any person involved in direct patient care² for whom a background check has not been completed.³ A "registry check" includes the following: (1) a state-by-state look in any state where the person has lived for the past seven years of the national sex offender public registry Web site; (2) the adult abuse registry for any state where the person has lived for the past seven years (if the state(s) maintain(s) such registry(ies)); and (3) the Tennessee Department of Health's elder abuse registry. The Tennessee Department of Health has posted links to these registries on its Web site at: <http://health.state.tn.us/PublicChapter1084.htm>.

In addition, healthcare practices or facilities may contract with an entity to perform such registry checks and may rely upon written documentation from that entity that the person who will be involved in direct patient care is not listed on any of these registries.⁴ If the healthcare practice or facility complies with this requirement (by either conducting its own registry checks or contracting with an entity to conduct them), it will not be subject to civil or criminal liability solely based upon the information provided through a registry check.⁵ If the person is listed on any of these registries, the healthcare practice or facility may not employ or contract with the person to provide direct patient care. Penalties for non-compliance with this requirement

¹ This new registry check requirement was promulgated pursuant to House Bill 2284, which passed on June 3, 2010 and was signed by Governor Bredesen on June 23, 2010 as Public Chapter No. 1084. The new statute amends Tennessee Code Annotated, Title 33, Title 34, Title 63, Title 68, and Title 71 and applies to, among others, any healthcare facility licensed under Title 68 of the Tennessee Code Annotated, and any healthcare professional licensed under any chapter of Title 63 or under Chapters 24 and 140 of Title 68. *See* Pub. Chapter 1084 (2010); available at <http://state.tn.us/sos/acts/106/pub/pc1084.pdf>.

² The term "direct patient care" is not defined. The new statute says that the "registry check" requirement is not intended to apply to "contracted, external staff who provide such services as cleaning services, maintenance of office or medical equipment or other services where direct patient contact is not intended." *Id.* *See also* Tenn. Code Ann. § 63-1-149(d); Tenn. Code Ann. § 68-11-271(d). Unfortunately, this language, by focusing on "contracted, external staff," leaves some uncertainty as to the application of the statute to *internal* staff, e.g., W-2 employees, who provide cleaning services, maintenance of office or medical equipment or other services where direct patient contact is not intended.

³ *See* Pub. Chapter 1084 (2010); available at <http://state.tn.us/sos/acts/106/pub/pc1084.pdf>. As a practical matter, many healthcare providers already conduct background checks, at least of certain classes of employees, in order to gauge malpractice and other liability risks.

⁴ *Id.* *See also* Tenn. Code Ann. § 63-1-149(c); Tenn. Code Ann. § 68-11-271(e).

⁵ This immunity shall extend to a claim related to the facility's refusal to employ or contract with a person based on information obtained from a registry check. *Id.*

include a Class B misdemeanor for a healthcare practice⁶ and potential licensure revocation for a healthcare facility.⁷

In addition, more stringent requirements⁸ are imposed on organizations that contract with the Tennessee Department of Intellectual and Developmental Disabilities and provide intellectual disabilities services for residential services, day services or supported employment services.⁹ Such organizations are required to complete a criminal background check prior to employing any person who will be in a position that involves providing direct care to a service recipient.¹⁰ If a current employee of such organization has a change of responsibilities that includes direct care to a service recipient, then the organization shall have a criminal background check completed prior to such change. The organization shall inform the employee that it will conduct a background check, and the employee must make specified disclosures.¹¹

If you have any questions about this *Health Law Update*, please do not hesitate to contact any of the attorneys in our Healthcare Practice Group shown below.

⁶ See Tenn. Code Ann. § 63-1-123. This section contains general penalties for all violations of Tennessee Code Annotated, Title 63, Chapter 1.

⁷ See Tenn. Code Ann. § 68-11-207(a)(1). This section contains general penalties for all violations of Tennessee Code Annotated, Title 68, Chapter 11, Part 2.

⁸ Penalties for violation of any provision of Title 33 include revocation or restriction of a license as well as potential civil monetary penalties. See Tenn. Code Ann. § 33-2-407(a)-(b).

⁹ See Pub. Chapter No. 1084, which amended Tenn. Code Ann. § 33-2-1202 by adding a new subsection (e).

¹⁰ *Id.* § 33-2-1202(e)(1).

¹¹ The employee shall:

- Provide past work history containing a continuous description of activities over the past five (5) years;
- Identify at least three (3) individuals as personal references, one (1) of whom shall have known the applicant for at least five (5) years;
- Release all investigative records to the organization for examination for the purpose of verifying the accuracy of criminal violation information contained on an application to work for the organization; and
- Either supply fingerprint samples to be submitted for a criminal history records check to be conducted by the Tennessee Bureau of Investigation or the Federal Bureau of Investigation or release information for a criminal background investigation by a state licensed private investigation company. *Id.*

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