

Missouri Revised Statutes

Chapter 630

Department of Mental Health

Section 630.170

August 28, 2012

Disqualification for employment because of conviction--appeal process--criminal record review, procedure--registry maintained, when--appeals procedure.

630.170. 1. A person who is listed on the department of mental health disqualification registry pursuant to this section, who is listed on the department of social services or the department of health and senior services employee disqualification list pursuant to section 660.315, or who has been convicted of or pled guilty or nolo contendere to any crime pursuant to section 565.210, 565.212, or 565.214, or section 630.155 or 630.160 shall be disqualified from holding any position in any public or private facility, day program, residential facility, or specialized service operated, licensed, certified, accredited, in possession of deemed status, or funded by the department or in any mental health facility or mental health program in which people are admitted on a voluntary or involuntary basis or are civilly detained pursuant to chapter 632.

2. A person who has been convicted of or pled guilty or nolo contendere to any felony offense against persons as defined in chapter 565; any felony sexual offense as defined in chapter 566; any felony offense defined in section 568.020, 568.045, 568.050, 568.060, 569.020, 569.025, 569.030, 569.035, 569.040, 569.050, 569.070, or 569.160, or of an equivalent felony offense, or who has been convicted of or pled guilty or nolo contendere to any violation of subsection 3 of section 198.070, or has been convicted of or pled guilty or nolo contendere to any offense requiring registration under section 589.400, shall be disqualified from holding any direct-care position in any public or private facility, day program, residential facility or specialized service operated, licensed, certified, accredited, in possession of deemed status, or funded by the department or any mental health facility or mental health program in which people are admitted on a voluntary basis or are civilly detained pursuant to chapter 632.

3. A person who has received a suspended imposition of sentence or a suspended execution of sentence following a plea of guilty to any of the disqualifying crimes listed in subsection 1 or 2 of this section shall remain disqualified.

4. Any person disqualified pursuant to the provisions of subsection 1 or 2 of this section may seek an exception to the disqualification from the director of the department or the director's designee. The request shall be written and may not be made more than once every six months. The request may be granted by the director or designee if in the judgment of the director or designee a clear showing has been made by written submission only, that the person will not commit any additional acts for which the person had originally been disqualified for or any other acts that would be harmful to a patient, resident or client of a facility, program or service. The director or designee may grant an exception subject to any conditions deemed appropriate and failure to comply with such terms may result in the person again being disqualified. Any person placed on the disqualification registry prior to August 28, 2012, may be removed from the registry by the director or designee if in the judgment of the director or designee a clear showing has been made, by written submission only, that the person will not commit any additional acts for which the person had originally been disqualified for or any other acts that would be harmful to a patient, resident, or client of a facility, program, or service. Decisions by the director or designee pursuant to the provisions of this subsection shall not be subject to appeal. The right to request an exception pursuant to this subsection shall not apply to persons who are disqualified due to being listed on the department of social services or department of health and senior services employee disqualification list pursuant to section 660.315, nor to persons disqualified from employment due to any crime pursuant to the provisions of chapter 566 or section 565.020, 565.021, 568.020, 568.060, 569.025, or 569.070.

5. An applicant for a position in any public or private facility, day program, residential facility, or specialized service operated, licensed, certified, accredited, in possession of deemed status, or funded by the department or any mental health facility or mental health program in which people are admitted on a voluntary basis or are civilly detained pursuant to chapter 632 shall:

(1) Sign a consent form as required by section 43.540 to provide written consent for a criminal record review;

(2) Disclose the applicant's criminal history. For the purposes of this subdivision "criminal history" includes any suspended imposition of sentence, any suspended execution of sentence, or any period of probation or parole; and

(3) Disclose if the applicant is listed on the employee disqualification list as provided in section 660.315, or the department of mental health disqualification registry as provided for in this section.

6. Any person who has received a good cause waiver issued by the department of health and senior services or its predecessor under subsection 9 of section 660.317 shall not require an additional exception under this section in order to be employed in a long-term care facility licensed under chapter 198.

7. Any public or private residential facility, day program, or specialized service operated, licensed, certified, accredited, in possession of deemed status, or funded by the department or any mental health facility or mental health program in which people are admitted on a voluntary basis or are civilly detained pursuant to chapter 632 shall, not later than two working days after hiring any person for a full-time, part-time, or temporary position that will have contact with clients, residents, or patients:

(1) Request a criminal background check as provided in section 43.540;

(2) Make an inquiry to the department of social services and department of health and senior services to determine whether the person is listed on the employee disqualification list as provided in section 660.315; and

(3) Make an inquiry to the department of mental health to determine whether the person is listed on the disqualification registry as provided in this section.

8. An applicant who knowingly fails to disclose his or her criminal history as required in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class A misdemeanor if the provider hires a person to hold a direct-care position knowing that such person has been disqualified pursuant to the provisions of subsection 2 of this section. A provider is guilty of a class A misdemeanor if the provider hires a person to hold any position knowing that such person has been disqualified pursuant to the provisions of subsection 1 of this section.

9. Any public or private residential facility, day program, or specialized service operated, licensed, certified, accredited, in possession of deemed status or funded by the department or any mental health facility or mental health program in which people are admitted on a voluntary basis or are civilly detained pursuant to chapter 632 that declines to employ or discharges a person who is disqualified pursuant to the provisions of subsection 1 or 2 of this section shall be immune from suit by that person or anyone else acting for or in behalf of that person for the failure to employ or for the discharge of the person due to disqualification.

10. Any employer who is required to discharge an employee because the employee was placed on a disqualification registry maintained by the department of mental health after the date of hire shall not be charged for unemployment insurance benefits based on wages paid to the employee for work prior to the date of discharge pursuant to section 288.100.

11. The department shall maintain a disqualification registry and place on the registry the names of any persons who have been finally determined by the department to be disqualified based upon administrative substantiations made against them for abuse or neglect pursuant to department rule or regulation. Such list shall reflect that the person is barred from holding any position in any public

or private facility, day program, residential facility, or specialized service operated, licensed, certified, accredited, in possession of deemed status, or funded by the department, or any mental health facility or mental health program in which persons are admitted on a voluntary basis or are civilly detained pursuant to chapter 632. The length of time the person's name shall appear on the disqualification registry shall be determined by the director or the director's designee, based upon the criteria contained in subsection 13 of this section.

12. Persons notified that their name will be placed on the disqualification registry may appeal such determination pursuant to department rule or regulation. If the person appeals, the hearing tribunal shall not modify the length of time the person's name shall appear on the disqualification registry if the hearing tribunal upholds all of the administrative substantiations made by the director or the director's designee. If the hearing tribunal overturns part of the administrative substantiations made by the director or the director's designee, the hearing tribunal may consider modifying the length of time the person's name shall appear on the disqualification registry based upon testimony and evidence received during the hearing.

13. The length of time the person's name shall appear on the disqualification registry shall be determined by the director or the director's designee based upon the following:

- (1) Whether the person acted recklessly or knowingly, as defined in chapter 562;
- (2) The degree of actual or potential injury or harm to the patient, resident, or client;
- (3) The degree of actual or potential danger to the health, safety, or welfare of the patient, resident, or client;
- (4) The degree of misappropriation or conversion of patient, resident, or client funds or property;
- (5) Whether the person has previously been listed on the department's disqualification registry;
- (6) Any mitigating circumstances; and
- (7) Any aggravating circumstances.

14. The department shall provide the disqualification registry maintained pursuant to this section to other state and federal agencies upon request. The department may provide the disqualification registry maintained pursuant to this section to any public or private facility, day program, residential facility, or specialized service operated, licensed, certified, accredited, in possession of deemed status, or

funded by the department or to any mental health facility or mental health program in which people are admitted on a voluntary or involuntary basis or are civilly detained pursuant to chapter 632. The department may also provide the disqualification registry to a recognized school of nursing, medicine, or other health profession for the purpose of determining whether students scheduled to participate in clinical rotations are included in the employee disqualification registry.

(L. 1980 H.B. 1724, A.L. 1982 H.B. 1565, A.L. 1996 S.B. 884 & 841, A.L. 1998 S.B. 870, A.L. 2001 S.B. 48, A.L. 2003 S.B. 184, A.L. 2008 S.B. 1081, A.L. 2012 H.B. 1318)

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