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State OKs care jobs for former criminals

Article by: BRAD SCHRADE and GLENN HOWATT

Staff Tribune staff writers

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During the past six years, Minnesota has granted more than 15,000 waivers to people with criminal records seeking employment in nursing homes and other state-regulated care programs, state records show.

Under state law, people are automatically rejected for those jobs if background checks reveal they have committed any crime on a list of disqualifying offenses. But through a little-publicized appeals process allowed under the law, former criminals who request a second chance usually get their wish.

The most forgiving state agency among the two that grant waivers is the Health Department, which approved 75 percent of 10,000-plus appeals with little public scrutiny, records show.

More than 5,000 waivers went to people who wanted to work in nursing homes or home care agencies. Those applicants were convicted of misdemeanors to felonies, including assault, fraud, false imprisonment, forgery, robbery, theft and making terroristic threats, as well as drug and alcohol offenses, records show.

State regulators said they don't know how many of those ex-criminals actually went to work in nursing homes and other facilities because they don't track that information. They also don't follow how many of those individuals subsequently harmed their vulnerable clients or committed additional crimes.

But it's clear that not all ex-criminals changed their ways.

In some cases, workers who obtained or sought waivers later harmed their clients or were caught stealing money from people in their care, records show.

Others with criminal backgrounds went on to commit new crimes while they were registered as nursing aides. A Star Tribune analysis of more than 900 aides who registered since 2000 despite a criminal past showed that 44 of those people were later convicted of serious crimes that would disqualify them under the current standard.

The state was unable to say how many of those individuals may have received waivers, officially known as variances and set-asides.

'Not an office job'

Advocates for the elderly say the state's process of conducting criminal background checks can mislead family members because it suggests all caregivers have clean records. They say more information about worker criminal histories should be disclosed.

"This is not an office job," said Harbir Kaur, an abuse prevention expert with the ElderCare Rights Alliance of Minnesota. "If they are putting them on the floor working with the vulnerable adult, on what level [do] they feel comfortable that nothing is going to happen?"

In addition to nursing homes, former criminals can obtain waivers to work in a wide variety of care settings, including hospitals, assisted living facilities, group homes for the disabled and home care providers.

A 2011 federal inspector general's report found that 92 percent of nursing homes surveyed nationwide employ at least one person with a criminal conviction while almost half of all facilities have at least five workers with criminal records.

"There are a lot of criminals who end up trying to go to work in long-term care and that places those residents at risk," said Martin Kennedy, director of the Division of Continuing Care Providers with the federal Centers for Medicare and Medicaid Services in Baltimore. "Our elders are among our most vulnerable people."

A months-long investigation by the Star Tribune has exposed breakdowns across a regulatory system that is supposed to

protect elderly and disabled adults in Minnesota from abuse and neglect. The state has been repeatedly cited by federal regulators for its failure to properly investigate maltreatment complaints in nursing homes. In several cases, employers and state officials failed to flag suspicious workers who later mistreated their clients.

In 2008, the Health Department granted a waiver to a home health aide in Ramsey County who had been convicted of felony theft and was a suspect in other cases of theft or fraud. A year later, she was convicted of stealing \$1,575 from a terminal cancer patient at a group home where she worked.

In 2009, a woman previously convicted of prescription drug fraud stole \$900 while working at an assisted living center in Austin. She was supposed to be under direct supervision pending the outcome of her waiver appeal when she took residents' cash and rent payments. She later blamed the theft on her addiction to prescription drugs.

In some cases, facilities request waivers on behalf of their employees and some are allowed to continue working before the state has decided whether to grant an exemption.

State officials maintain they always put the safety of vulnerable adults in front of the competing goal to help ex-criminals find a productive place in society. While acknowledging the lack of recent reporting on the program, they say there appear to be very few cases involving waiver recipients who subsequently mistreated or victimized those in their care.

"I believe it's working," said Stella French, a Health Department manager whose office helps determine who gets waivers. "I believe we have a thorough process, that we have checks and balances that minimizes the risk to vulnerable adults. ... If there's any question, we go with not setting that person aside."

Some pass on waiver recipients

For years, public officials have debated whether to create a national system of conducting background checks for health care workers. The concern is that someone convicted of crimes in one state won't show up on the radar of regulators in other states where they may seek work.

Minnesota is one of 32 states that do not automatically look beyond their borders when conducting background checks of nursing home workers. Ten states routinely conduct FBI and statewide checks, while eight states don't require any background checks of prospective workers, according to the 2011 federal inspector general's report.

The federal report recommends creation of a national background check system as well as standards for determining disqualifying crimes. Minnesota is taking initial steps that would allow the state to eventually conduct national background checks on all applicants.

Nursing home operators in Minnesota support a national system because they believe in-state checks aren't enough, said Patti Cullen, president/CEO of Care Providers of Minnesota, a trade group that represents more than 600 providers, including nursing homes, assisted living facilities and home care agencies. Cullen said her group contracted with a private firm to supplement the state's checks.

"Some facilities want an extra layer of comfort in who they hire," Cullen said.

Tom Pollock, a nursing home administrator who is part of Cullen's trade group, said he won't hire waiver recipients.

"If you're willing to write a bad check, from our standpoint you're willing to steal from the bank," said Pollock, administrator of Park River Estates Care Center in Coon Rapids. "If you're willing to do that and you have all these vulnerable adults, we just don't want to take the chance."

To obtain a waiver, former criminals are asked to document how they've changed, explain why they no longer pose a risk and are allowed to provide references, according to officials with the Minnesota Department of Human Services, which conducts background checks for its agency and the state Health Department.

Each time ex-criminals change jobs they must seek another waiver, which can make the total numbers seem inflated, officials said. Some people received multiple waivers. Regulators are creating an online system that will make it possible to track who is working at all state-regulated facilities.

"If there is any kind of risk to the client, we don't set aside the disqualification," said Anne Barry, deputy commissioner of the Department of Human Services. "We don't grant the variance. I'm confident in that process."

No review since '04

The agency has not surveyed the harm done by waiver recipients since 2004, when it reviewed records relating to 13,753 waivers obtained by individuals since 1991 from either the Health or Human Services departments. The report showed that 23 people were subsequently found to have abused or neglected vulnerable individuals in their care in various state-regulated programs.

Department of Human Services Inspector General Jerry Kerber, who oversees the background check system, said the report was criticized because the agency conducted the review itself. One omission is the report's failure to address complaints involving former criminals that were not substantiated by investigators. Elder abuse often involves victims with dementia and other conditions that can make it difficult to prove misconduct despite evidence of wrongdoing.

In response to the newspaper's questions, the agency recently reviewed a portion of recent waiver recipients and found no instances of proven misconduct.

Kerber said the agency probably needs to take another look at how the system is working.

"I think what we'll do is review whether or not we should be doing these reports," Kerber said. "With the Dayton administration, there very clearly is an emphasis on public accountability and light shining on government services so the public can evaluate whether or not we're doing our jobs. These are certainly appropriate questions that you're asking."

Some lawmakers and government officials think the state should make it easier for some people with criminal convictions to get jobs at state-regulated facilities. A 2008 state report recommended eliminating 31 criminal acts, including 11 felonies, from a list of crimes that warrant disqualification for jobs at state-regulated facilities.

"I'm all about safety of the people, but I'm also about giving people a chance to work," said Rep. Jim Abeler, R-Anoka, chairman of the House committee that controls spending by the Health and Human Services departments. "We are a state that believes in rehabilitation. So that's the tension. If you believe people can get better, how do you help them get a job and move on with their life? Some people are on the fearful side of that."

brad.schrade@startribune.com 612-673-4777 howatt@startribune.com • 612-673-7192

violated

This is the final installment of our "Violated" series, which has examined how well the state and others protect those who can no longer care for themselves.

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