

ASSEMBLY, No. 995

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen MORAN and CONNORS

1 AN ACT concerning the elderly and supplementing Title 26, Title 45,
2 and Title 53 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. As used in sections 1 to 5 and section 13 of this act:

8 "Facility" means any facility or institution, whether public or
9 private, offering health or health related services for the
10 institutionalized elderly, and which is subject to regulation, visitation,
11 inspection, or supervision by any government agency. Facilities
12 include, but are not limited to, nursing homes, rehabilitation centers,
13 residential health care facilities, special hospitals, chronic disease
14 hospitals, psychiatric hospitals, developmental disabilities centers or
15 facilities, day care facilities for the elderly, medical day care centers,
16 and licensed home health care agencies.

17 "Patient, resident or client" means any person, 60 years of age or
18 older, who is receiving treatment or care in any facility in all its
19 aspects, including, but not limited to, admission, retention,
20 confinement, commitment, period of residence, transfer, discharge and
21 any instances directly related to such status.

22

23 2. a. A facility for the institutionalized elderly, as defined in
24 section 1 of P.L. , c. (C.) (pending before the Legislature as this
25 bill) shall not hire any person serving in a professional or
26 non-professional position which involves regular contact with a
27 patient, resident or client as the case may be, except on a conditional
28 basis as provided for in section 3 of P.L. , c. (C.) (pending
29 before the Legislature as this bill), unless the Commissioner of Health
30 first determines, consistent with the requirements of this act, that no
31 criminal history record information exists on file in the Federal Bureau
32 of Investigation, Identification Division, or in the State Bureau of
33 Identification in the Division of State Police, which would disqualify
34 that person from being employed or utilized in such capacity or
35 position. A person shall be disqualified from employment under this

1 act if that person's criminal history record background check reveals
2 a record of conviction of any of the following crimes and offenses:

- 3 (1) In New Jersey, any crime or disorderly persons offense:
4 (a) involving danger to the person, meaning those crimes and
5 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,
6 N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq. or
7 N.J.S.2C:15-1 et seq.; or
8 (b) against the family, children or incompetents, meaning those
9 crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et
10 seq.; or
11 (c) involving theft as set forth in chapter 20 of Title 2C of the New
12 Jersey Statutes; or
13 (d) involving any controlled dangerous substance or analog as set
14 forth in chapter 35 of Title 2C of the New Jersey Statutes except
15 paragraph (4) of subsection a. of N.J.S.2C:35-10.

16 (2) In any other state or jurisdiction, of conduct which, if
17 committed in New Jersey, would constitute any of the crimes or
18 disorderly persons offenses described in paragraph (1) of this
19 subsection.

20 b. Notwithstanding the provisions of subsection a. of this section,
21 no person shall be disqualified from employment under this act on the
22 basis of any conviction disclosed by a criminal history record
23 background check performed pursuant to this act if the person has
24 affirmatively demonstrated to the Commissioner of Health clear and
25 convincing evidence of his rehabilitation. In determining whether a
26 person has affirmatively demonstrated rehabilitation, the following
27 factors shall be considered:

- 28 (1) the nature and responsibility of the position which the
29 convicted person would hold or has held, as the case may be;
30 (2) the nature and seriousness of the offense;
31 (3) the circumstances under which the offense occurred;
32 (4) the date of the offense;
33 (5) the age of the person when the offense was committed;
34 (6) whether the offense was an isolated or repeated incident;
35 (7) any social conditions which may have contributed to the
36 offense; and
37 (8) any evidence of rehabilitation, including good conduct in prison
38 or in the community, counseling or psychiatric treatment received,
39 acquisition of additional academic or vocational schooling, successful
40 participation in correctional work-release programs, or the
41 recommendation of those who have had the person under their
42 supervision.

43 c. If a person subject to the provisions of this act refuses to
44 consent to, or cooperate in, the securing of a criminal history record
45 background check, the commissioner shall direct the principal

1 administrator of the facility not to consider the person for
2 employment.

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4 3. An applicant for employment at a facility shall submit to the
5 Commissioner of Health his name, address and fingerprints taken on
6 standard fingerprint cards by a State or municipal law enforcement
7 agency. The commissioner is authorized to exchange fingerprint data
8 with and receive criminal history record information from the Federal
9 Bureau of Investigation and the Division of State Police for use in
10 making the determinations required by P.L. , c. (C.) (pending
11 before the Legislature as this bill).

12 Upon receipt of the criminal history record information for a person
13 from the Federal Bureau of Investigation or the Division of State
14 Police, the commissioner shall immediately notify the applicant, in
15 writing, of the person's qualification or disqualification for
16 employment under this act. If the applicant is disqualified, the
17 conviction or convictions which constitute the basis for the
18 disqualification shall be identified therein.

19 The applicant shall have 30 days from the date of the written notice
20 of disqualification to petition the commissioner for a hearing on the
21 accuracy of his criminal history record information or to establish his
22 rehabilitation under subsection b. of section 2 of P.L. , c. (C.)
23 (pending before the Legislature as this bill).

24 A facility may employ a person conditionally for a period not to
25 exceed 180 days, pending completion of a criminal history record
26 background check required under this act, if the person submits to the
27 commissioner a sworn statement attesting that he has not been
28 convicted of any crime or disorderly persons offense as described in
29 section 2 of P.L. , c. (C.) (pending before the Legislature as this
30 bill). A conditionally employed person who files a petition requesting
31 a hearing pursuant to this act may remain employed at the facility until
32 the commissioner rules on the applicant's petition. A person who is
33 to be employed in any substitute capacity or position, who is rehired
34 annually, shall only be required to undergo a criminal history record
35 check upon initial employment.

36 Prospective and conditionally employed persons shall retain any
37 available right of review provided to applicants under Title 11A of the
38 New Jersey Statutes.

39
40 4. The prospective employer may assume the cost of all criminal
41 history record background checks conducted on prospective
42 employees pursuant to this act; or the prospective employer may
43 require the prospective employee to pay the cost of the criminal
44 history record background checks.

45
46 5. In accordance with the "Administrative Procedure Act,"

1 P.L.1968, c.410 (C.52:14B-1 et seq.), the Commissioner of Health
2 shall adopt rules and regulations necessary to implement the provisions
3 of sections 1 to 4 of P.L. , c. (C.) (pending before the
4 Legislature as this bill).

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6 6. a. A home health care agency, nurses' registry, employment
7 agency, or temporary help agency which is licensed or regulated by the
8 Division of Consumer Affairs in the Department of Law and Public
9 Safety, shall not hire a home health aide or other health care employee,
10 except on a conditional basis as provided for in section 7 of P.L. , c.
11 (C.) (pending before the Legislature as this bill), unless the director
12 first determines, consistent with the requirements of this act, that no
13 criminal history record information exists on file in the Federal Bureau
14 of Investigation, Identification Division, or in the State Bureau of
15 Identification in the Division of State Police, which would disqualify
16 that person from being employed or utilized in such capacity or
17 position. A person shall be disqualified from employment under
18 P.L. , c. (C.) (pending before the Legislature as this bill) if that
19 person's criminal history record background check reveals a record of
20 conviction of any of the following crimes and offenses:

21 (1) In New Jersey, any crime or disorderly persons offense:

22 (a) involving danger to the person, meaning those crimes and
23 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,
24 N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq. or
25 N.J.S.2C:15-1 et seq.; or

26 (b) against the family, children or incompetents, meaning those
27 crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et
28 seq.; or

29 (c) involving theft as set forth in chapter 20 of Title 2C of the New
30 Jersey Statutes; or

31 (d) involving any controlled dangerous substance or analog as set
32 forth in chapter 35 of Title 2C of the New Jersey Statutes except
33 paragraph (4) of subsection a. of N.J.S.2C:35-10.

34 (2) In any other state or jurisdiction, of conduct which, if
35 committed in New Jersey, would constitute any of the crimes or
36 disorderly persons offenses described in paragraph (1) of this
37 subsection.

38 b. Notwithstanding the provisions of subsection a. of this section,
39 no person shall be disqualified from employment under this act on the
40 basis of any conviction disclosed by a criminal history record
41 background check performed pursuant to this act if the person has
42 affirmatively demonstrated to the Director of the Division of
43 Consumer Affairs clear and convincing evidence of his rehabilitation.
44 In determining whether a person has affirmatively demonstrated
45 rehabilitation, the following factors shall be considered:

46 (1) the nature and responsibility of the position which the

1 convicted person would hold or has held, as the case may be;
2 (2) the nature and seriousness of the offense;
3 (3) the circumstances under which the offense occurred;
4 (4) the date of the offense;
5 (5) the age of the person when the offense was committed;
6 (6) whether the offense was an isolated or repeated incident;
7 (7) any social conditions which may have contributed to the
8 offense; and
9 (8) any evidence of rehabilitation, including good conduct in prison
10 or in the community, counseling or psychiatric treatment received,
11 acquisition of additional academic or vocational schooling, successful
12 participation in correctional work-release programs, or the
13 recommendation of those who have had the person under their
14 supervision.

15 c. If a person subject to the provisions of P.L. , c. (C.)
16 (pending before the Legislature as this bill) refuses to consent to, or
17 cooperate in, the securing of a criminal history record background
18 check, the director shall direct the home health care agency, nurses'
19 registry, employment agency, or temporary help agency not to
20 consider the person for employment.

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22 7. A home health aide or other health care employee who is an
23 applicant for employment with a home health care agency, nurses'
24 registry, employment agency, or temporary help agency which is
25 licensed or regulated by the Division of Consumer Affairs shall submit
26 to the Director of the Division of Consumer Affairs his name, address
27 and fingerprints taken on standard fingerprint cards by the State or
28 municipal law enforcement agency. The director is authorized to
29 exchange fingerprint data with and receive criminal history record
30 information from the Federal Bureau of Investigation and the Division
31 of State Police for use in making the determinations required by
32 P.L. , c. (C.) (pending before the Legislature as this bill).

33 Upon receipt of the criminal history record information for a person
34 from the Federal Bureau of Investigation or the Division of State
35 Police, the director shall immediately notify the applicant, in writing,
36 of the person's qualification or disqualification for employment under
37 P.L. , c. (C.) (pending before the Legislature as this bill). If the
38 applicant is disqualified, the conviction or convictions which constitute
39 the basis for the disqualification shall be identified therein.

40 The applicant shall have 30 days from the date of the written notice
41 of disqualification to petition the director for a hearing on the accuracy
42 of his criminal history record information or to establish his
43 rehabilitation under subsection b. of section 6 of P.L. , c. (C.)
44 (pending before the Legislature as this bill).

45 A home health care agency, nurses' registry, employment agency,
46 or temporary help agency may employ a home health aide or other

1 health care employee conditionally for a period not to exceed 180
2 days, pending completion of a criminal history record background
3 check required under this act, if the person submits to the director a
4 sworn statement attesting that he has not been convicted of any crime
5 or disorderly persons offense as described in section 6 of P.L. , c.
6 (C.) (pending before the Legislature as this bill). A person who is
7 to be employed in any substitute capacity or position, who is rehired
8 annually, shall only be required to undergo a criminal history record
9 check upon initial employment.

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11 8. The home health care agency, nurses' registry, employment
12 agency, or temporary help agency shall assume the cost of all criminal
13 history record background checks conducted on prospective
14 employees pursuant to P.L. , c. (C.) (pending before the
15 Legislature as this bill).

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17 9. In accordance with the "Administrative Procedure Act,"
18 P.L.1968, c.410 (C.52:14B-1 et seq.), the Director of the Division of
19 Consumer Affairs shall adopt rules and regulations necessary to
20 implement the provisions of sections 6 through 9 of P.L. , c.
21 (C.) (pending before the Legislature as this bill).

22
23 10. Any employer subject to the provisions of P.L. , c.
24 (C.) (pending before the Legislature as this bill) who fails to
25 comply with its provisions or any person submitting a false sworn
26 statement pursuant to sections 3 or 7 of P.L. , c. (C.) (pending
27 before the Legislature as this bill) shall be subject to a fine of not more
28 than \$1,000.

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30 11. The Division of State Police in the Department of Law and
31 Public Safety shall conduct a criminal history record background check
32 including a name and fingerprint identification check of each
33 prospective employee of a facility as defined in section 1 of P.L. , c.
34 (C.) (pending before the Legislature as this bill) or of a home
35 health care agency, nurses' registry, employment agency, or temporary
36 help agency licensed or regulated by the Director of the Division of
37 Consumer Affairs. The requirement of a criminal history record
38 background check shall apply only to a prospective employee who is
39 or would be serving in a position which involves regular contact with
40 a patient, resident or client as the case may be, who is 60 years of age
41 or older.

42 For the purpose of conducting the criminal history record
43 background check, the Division of State Police shall examine its own
44 files and arrange for a similar examination by federal authorities. The
45 division shall immediately forward the information obtained as a result
46 of conducting the check to the Commissioner of Health, in the case of

1 a facility, and to the Director of the Division of Consumer Affairs, in
2 the case of a home health care agency, nurses' registry, employment
3 agency, or temporary help agency.

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5 12. This act shall take effect on the first day of the sixth month
6 after enactment.

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9 STATEMENT

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11 This bill bars persons who have been convicted of certain disorderly
12 persons offenses or crimes from employment with certain facilities,
13 home health care agencies, nurses' registries, employment agencies, or
14 temporary help agencies which employ persons who serve the elderly.
15 The bill defines facility to mean any facility or institution, whether
16 public or private, offering health or health related services for the
17 institutionalized elderly, and which is subject to regulation, visitation,
18 inspection, or supervision by any government agency. Facility
19 includes, but is not limited to, nursing homes, rehabilitation centers,
20 residential health care facilities, special hospitals, chronic disease
21 hospitals, psychiatric hospitals, developmental disabilities centers or
22 facilities, day care facilities for the elderly, medical day care centers
23 and licensed home health care agencies.

24 Under the provisions of this bill, no person could: (1) be hired in a
25 professional or non-professional capacity by a facility, whether public
26 or private, offering health related services for the institutionalized
27 elderly; or (2) provide any home health care services to the elderly,
28 until the Commissioner of Health, in the case of a facility, and the
29 Director of the Division of Consumer Affairs in the Department of
30 Law and Public Safety, in the case of home health care agencies,
31 nurses' registries, employment agencies, or temporary help agencies,
32 determines that the person has not been convicted of any of the crimes
33 or offenses set forth in the bill.

34 These crimes or offenses include serious drug offenses as well as
35 homicide, assault, kidnapping, robbery or theft. Criminal history
36 record background checks would be initiated by local police
37 departments through the Department of Health or the Division of
38 Consumer Affairs and completed by the State Police and the Federal
39 Bureau of Investigation upon payment of the necessary fees.

40 The applicant would have 30 days from the date of a
41 disqualification notice to petition the Commissioner of Health or the
42 Director of the Division of Consumer Affairs, as the case may be, for
43 a hearing on the accuracy of the criminal records or to demonstrate his
44 rehabilitation. Conditional employment for up to 180 days would be
45 allowed during an applicant's background check if the applicant attests

1 that he has not been convicted of any of the disqualifying offenses or
2 crimes.

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7 Requires criminal history record checks of certain persons applying for
8 jobs to provide care for the elderly.