

## CHAPTER 20

**AN ACT** requiring criminal history record background checks for certain providers of institutional and home health care services, and amending P.L.1997, c.100 and P.L.1947, c.262.

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

1. Section 2 of P.L.1997, c.100 (C.26:2H-83) is amended to read as follows:

C.26:2H-83 Background checks for nurse aide, personal care assistant certification.

2. a. The Department of Health and Senior Services shall not issue a nurse aide or personal care assistant certification to any applicant, except on a conditional basis as provided for in subsection d. of section 3 of P.L.1997, c.100 (C.26:2H-84), unless the Commissioner of Health and Senior Services first determines, consistent with the requirements of sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87), that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police, which would disqualify that person from being certified. A nurse aide or personal care assistant certified by the department prior to the effective date of P.L.2000, c.20 upon whom a criminal history record background check has not been conducted pursuant to sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87), shall be required to undergo that criminal history record background check as a condition of that individual's initial recertification following the effective date of P.L.2000, c.20.

In addition, a follow-up criminal history record background check of federal records shall be conducted at least once every two years as a condition of recertification for every certified nurse aide and personal care assistant; except that the commissioner, in lieu of conducting follow-up criminal history record background checks for purposes of recertification, may provide for an alternative means of determining whether a certified nurse aide or personal care assistant has been convicted of a crime or disorderly persons offense which would disqualify that person from certification, including, but not limited to, a match of a person's Social Security number or other identifying information with records of criminal proceedings in this and other states. If the commissioner elects to implement this alternative means of determining whether a certified nurse aide or personal care assistant has been convicted of a crime or disorderly persons offense which would disqualify that person from certification, the commissioner shall report to the Governor and the Legislature prior to its implementation on the projected costs and procedures to be followed with respect to its implementation and setting forth the rationale therefor.

A person shall be disqualified from certification if that person's criminal history record background check reveals a record of conviction of any of the following crimes and offenses:

- (1) In New Jersey, any crime or disorderly persons offense:
  - (a) involving danger to the person, meaning those crimes and disorderly persons offenses set forth in N.J.S.2C:11-1 et seq., 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 N.J.S.2C:15-1 et seq.; or
  - (b) against the family, children or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et seq.; or
  - (c) involving theft as set forth in chapter 20 of Title 2C of the New Jersey Statutes; or
  - (d) involving any controlled dangerous substance or controlled substance analog as set forth in chapter 35 of Title 2C of the New Jersey Statutes except paragraph (4) of subsection a. of N.J.S.2C:35-10.
- (2) In any other state or jurisdiction, of conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in paragraph (1) of this subsection.

b. Notwithstanding the provisions of subsection a. of this section, no person shall be disqualified from certification on the basis of any conviction disclosed by a criminal history record background check performed pursuant to sections 2 through 6 and section 14 of P.L.1997, c.100 (C.26:2H-83 through 87 and C.53:1-20.9a) if the person has affirmatively demonstrated to the Commissioner of Health and Senior Services clear and convincing evidence of the person's rehabilitation. In determining whether a person has affirmatively demonstrated rehabilitation, the following factors shall be considered:

- (1) the nature and responsibility of the position which the convicted person would

hold, has held or currently holds, as the case may be;

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

c. If a person subject to the provisions of sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87) refuses to consent to, or cooperate in, the securing of a criminal history record background check, the commissioner shall, as applicable:

- (1) not issue a nurse aide or personal care assistant certification and shall notify the applicant, and the applicant's employer if the applicant is conditionally employed as provided in subsection d. of section 3 of P.L.1997, c.100 (C.26:2H-84) or the applicant's prospective employer if known, of that denial; or
- (2) revoke the person's current nurse aide or personal care assistant certification and notify the person, and the person's employer, if known, of that revocation.

2. Section 3 of P.L.1997, c.100 (C.26:2H-84) is amended to read as follows:

C.26:2H-84 Qualification, disqualification for certification; petition for hearing.

3. a. An applicant for certification, or a certified nurse aide or personal care assistant who is required to undergo a criminal history record background check pursuant to section 2 of P.L.1997, c.100 (C.26:2H-83), shall submit to the Commissioner of Health and Senior Services that individual's name, address and fingerprints taken on standard fingerprint cards by a State or municipal law enforcement agency. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation and the Division of State Police for use in making the determinations required by sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87).

b. Upon receipt of the criminal history record information for a person from the Federal Bureau of Investigation or the Division of State Police, the commissioner shall immediately notify, in writing, the applicant, and the applicant's employer if the applicant is conditionally employed as provided in subsection d. of this section or the applicant's prospective employer if known, or a certified nurse aide or personal care assistant who is required to undergo a criminal history record background check pursuant to section 2 of P.L.1997, c.100 (C.26:2H-83) and that person's employer, as applicable, of the person's qualification or disqualification for certification under sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87). If the person is disqualified, the conviction or convictions which constitute the basis for the disqualification shall be identified in the notice to the person, but shall not be identified in the notice to the person's employer or prospective employer.

c. The person who is the subject of the background check shall have 30 days from the date of the written notice of disqualification to petition the commissioner for a hearing on the accuracy of the person's criminal history record information or to establish the person's rehabilitation under subsection b. of section 2 of P.L.1997, c.100 (C.26:2H-83). The commissioner shall notify the person's employer or prospective employer of the person's petition for a hearing within five days following the receipt of the petition from the person. Upon the issuance of a final decision upon a petition to the commissioner pursuant to this subsection, the commissioner shall notify the person and the person's employer or prospective employer as to whether the person remains disqualified from certification under sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87).

d. An applicant for certification may be issued conditional certification and may be employed as a nurse aide or a personal care assistant conditionally for a period not to exceed 60 days,

pending completion of a criminal history record background check required under sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87) by the Division of State Police in the Department of Law and Public Safety based upon an examination of its own files in accordance with section 14 of P.L.1997, c.100 (C.53:1-20.9a), and for an additional period not to exceed 60 days pending completion of a criminal history record background check by federal authorities as arranged for by the Division of State Police pursuant to section 14 of P.L.1997, c.100 (C.53:1-20.9a), if the person submits to the commissioner a sworn statement attesting that the person has not been convicted of any crime or disorderly persons offense as described in section 2 of P.L.1997, c.100 (C.26:2H-83). A person who submits a false sworn statement shall be disqualified from certification as a nurse aide or a personal care assistant, as the case may be, and shall not have an opportunity to establish rehabilitation pursuant to subsection b. of section 2 of P.L.1997, c.100 (C.26:2H-83).

A conditionally employed person, or an employed person certified as a nurse aide or a personal care assistant, who disputes the accuracy of the criminal history record information and who files a petition requesting a hearing pursuant to subsection c. of this section may remain employed by that person's employer until the commissioner rules on the person's petition but, pending the commissioner's ruling, the employer shall not permit the person to have unsupervised contact with patients, residents or clients, as the case may be, who are 60 years of age or older.

e. (1) A licensed health care facility or other entity that has received an application from or conditionally employs an applicant for nurse aide or personal care assistant certification, or employs a certified nurse aide or personal care assistant, and:

(a) receives notice from the Commissioner of Health and Senior Services that the applicant or certified nurse aide or personal care assistant, as applicable, has been determined by the commissioner to be disqualified from certification as a nurse aide or personal care assistant pursuant to sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87); or

(b) terminates its employment of a conditionally employed applicant for nurse aide or personal care assistant certification or a certified nurse aide or personal care assistant because the person was disqualified from employment at the health care facility or other entity on the basis of a conviction of a crime or disorderly persons offense as described in section 2 of P.L.1997, c.100 (C.26:2H-83) after commencing employment at the health care facility or other entity;

shall be immune from liability for disclosing that disqualification or termination in good faith to another licensed health care facility or other entity that is qualified by statute or regulation to employ the person as a nurse aide or personal care assistant.

(2) A licensed health care facility or other entity which discloses information pursuant to paragraph (1) of this subsection shall be presumed to be acting in good faith unless it is shown by clear and convincing evidence that the health care facility or other entity acted with actual malice toward the person who is the subject of the information.

f. (1) A licensed health care facility or other entity, upon receiving notice from the Commissioner of Health and Senior Services that a person employed by it as a nurse aide or personal care assistant, including a conditionally employed person, has been convicted of a crime or disorderly persons offense as described in section 2 of P.L.1997, c.100 (C.26:2H-83) after commencing employment at the health care facility or other entity, shall:

(a) immediately terminate the person's employment as a nurse aide or personal care assistant; and

(b) report information about the termination to the Commissioner of Health and Senior Services in a manner prescribed by the commissioner, who shall thereupon deem the person to be disqualified from certification as a nurse aide or personal care assistant, subject to the provisions of paragraph (3) of this subsection.

(2) A licensed health care facility or other entity shall be immune from liability for any actions taken in good faith pursuant to paragraph (1) of this subsection and shall be presumed to be acting in good faith unless it is shown by clear and convincing evidence that the health care facility or other entity acted with actual malice toward the employee.

(3) The person terminated from employment pursuant to paragraph (1) of this subsection shall have 30 days from the date of the termination to petition the commissioner for

a hearing on the accuracy of the information about the conviction reported to the commissioner or to establish why the person should not be terminated from employment, and disqualified from certification, as a nurse aide or personal care assistant. The commissioner shall notify the person's employer of the person's petition for a hearing within five days following the receipt of the petition from the person. Upon the issuance of a final decision upon a petition to the commissioner pursuant to this paragraph, the commissioner shall notify the person and the person's employer as to whether:

(a) the person is to be reinstated in his employment as a nurse aide or personal care assistant and retain his certification; or

(b) the person's termination from employment as a nurse aide or personal care assistant stands and the person remains disqualified from certification.

g. The commissioner shall provide for a registry of all persons who have successfully completed all training and competency evaluation requirements for certification as a nurse aide or personal care assistant and shall provide for the inclusion in the registry of information about the disqualification of any person from certification pursuant to sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87); for which purposes, the commissioner may use an existing registry established pursuant to statute or regulation, subject to the requirements of federal law. The registry shall include the specific documented findings constituting the basis for that disqualification, except that the information shall indicate that the person was convicted of a crime or disorderly persons offense as described in section 2 of P.L.1997, c.100 (C.26:2H-83), but shall not identify the conviction or convictions which constitute the basis for the disqualification.

3. Section 4 of P.L.1997, c.100 (C.26:2H-85) is amended to read as follows:

C.26:2H-85 Assumption of cost of background checks.

4. The Department of Health and Senior Services shall assume the cost of the criminal history record background check conducted on an applicant for nurse aide or personal care assistant certification, or a certified nurse aide or personal care assistant, as the case may be, pursuant to sections 2 through 6 and section 14 of P.L.1997,c.100 (C.26:2H-83 through 87 and C.53:1-20.9a).

4. Section 2 of P.L.1947, c.262 (C.45:11-24) is amended to read as follows:

C.45:11-24 The board; appointment; terms; qualifications; duties; compensation.

2. a. The board; appointment; terms. In addition to the members appointed to represent the interests of the public pursuant to P.L.1971, c.60 as amended by P.L.1977, c.285 (C.45:1-2.2) the New Jersey Board of Nursing shall consist of 10 members, six of whom shall be registered professional nurses, two of whom shall be licensed practical nurses, one of whom shall be an advanced practice nurse, and one of whom shall be an additional public member, all to be appointed by the Governor. Appointments to the board shall be for terms of five years or for the unexpired portion of a term in the case of a vacancy for any cause within a term, and until a successor shall be appointed and qualified. In making appointments the Governor shall give due consideration to, but shall not be bound by, recommendations submitted by the various nurses' professional associations of this State. Upon notice and hearing, the Governor may remove from office any member of the board for neglect of duty, incompetency, unprofessional or dishonorable conduct.

b. Qualifications for appointment. The advanced practice nurse member shall be a resident of this State, shall be a graduate of an accredited advanced practice nurse program, shall have had at least five years' experience in professional nursing, shall at the time of appointment be actively working as an advanced practice nurse, and, except for the member first appointed, shall hold a certification as an advanced practice nurse pursuant to P.L.1991, c.377 (C.45:11-45 et al.). Each registered professional nurse member of the board shall be a citizen of the United States and a resident of this State; shall be a graduate of an accredited school of nursing within the United States; shall be a registered nurse in this State; shall have had at least five years'

experience in professional nursing following graduation from an accredited school of nursing; and shall at the time of appointment be actively engaged in nursing or work relating thereto. The licensed practical nurse members of the board shall be citizens of the United States and residents of this State; shall hold a valid license to practice practical nursing in this State; shall have had at least three years' experience in practical nursing; and shall at the time of appointment be actively engaged in practical nursing or work related thereto.

c. Oath or affirmation of office. Within 30 days after receipt of the commission, each appointee shall take, subscribe and file in the office of the Secretary of State the oath or affirmation prescribed by law.

d. Duties and powers. The board shall have the following duties and powers: (1) It shall hold annual meetings and such other meetings as it may deem necessary at such times and places as the board shall prescribe and a majority of the board including one officer shall constitute a quorum. (2) It shall elect from its members and prescribe the duties of a president and secretary-treasurer, each of whom shall serve for one year and until a successor is elected. (3) It shall appoint and prescribe the duties of an executive secretary to the board who need not be a member thereof but who shall be a citizen of the United States, a graduate of a college or university with a major in nursing education, a registered nurse of this State with at least five years' experience in teaching or administration or both in an accredited school of professional nursing, or have equivalent qualifications as determined by the board. The executive secretary shall hold office during the will and pleasure of the board. (4) It shall employ and prescribe the duties of such persons as in its judgment shall be necessary for the proper performance and execution of the duties and powers of the board. (5) It shall determine and pay reasonable compensation and necessary expenses of the executive secretary and all employees of the board. (6) It shall pay to each member of the board the compensation hereinafter provided. (7) It shall have a common seal, keep an official record of all its meetings, and through its secretary-treasurer report annually to the Governor the work of the board. (8) It shall examine applicants for a license or renewals thereof, issue, renew, revoke and suspend licenses, as hereinafter provided. (9) It shall in its discretion investigate and prosecute all violations of provisions of this act. (10) It shall keep an official record which shall show the name, age, nativity and permanent place of residence of each applicant and licensee and such further information concerning each applicant and licensee as the board shall deem advisable. The record shall show also whether the applicant was examined, licensed or rejected under this and any prior act. Copies of any of the entries of the record or of any certificate issued by the board may be authenticated by any member of the board under its seal and when so authenticated shall be evidence in all courts of this State of the same weight and force as the original thereof. For authenticating a copy of any entry or entries contained in its record the board shall be paid a fee of \$3.00, but such authentication, if made at the request of any public agency of this or any other jurisdiction, may be without fee. (11) In its discretion it may publish at such times as it shall determine a list of nurses licensed under this act, a list of schools of nursing accredited or approved under this act, and such other information as it shall deem advisable. (12) It shall prescribe standards and curricula for schools of nursing and evaluate and approve courses for affiliation. (13) It shall hear and determine applications for accreditation of schools of professional nursing, conduct investigations before and after accreditation of such schools and institutions with which they are affiliated, and issue, suspend or revoke certificates of accreditation as hereinafter provided. (14) It shall approve schools of practical nursing which shall conform to the standards, curricula, and requirements prescribed by the board, and suspend or revoke approval for violations thereof; provided, that this power shall not extend to schools operated by any board of education in this State. (15) It may consult with the Medical Society of New Jersey and the New Jersey Hospital Association with respect to any matter relating to the administration of this act and shall consult with those associations with respect to standards and curricula and any change thereof for schools of nursing. (16) It shall issue subpoenas for the attendance of witnesses and production of documents at any hearing before the board authorized by this act and any member of the board shall administer an oath or affirmation to persons appearing to give testimony at such hearings. (17) It may conduct any investigations, studies of nursing and nursing education and related matters, and prepare and issue such

publications as in the judgment of the board will advance the profession of nursing and its service to the public. (18) It shall perform all other functions which are provided in this act to be performed by it or which in the judgment of the board are necessary or proper for the administration of this act. (19) It shall from time to time prescribe rules and regulations not inconsistent with this act. (20) It shall prescribe standards and curricula for homemaker-home health aide education and training programs which a homemaker-home health aide shall complete in order to work in this State. (21) It shall review applications to provide homemaker-home health aide training programs and shall issue, suspend or revoke program approval. (22) It shall establish and maintain a registry of all individuals who have successfully completed a homemaker-home health aide training and competency evaluation program. The board shall provide for the inclusion in the registry of information about the disqualification of any person from certification as a homemaker-home health aide pursuant to sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9), including the specific documented findings constituting the basis for that disqualification; except that the information shall indicate that the person was convicted of a crime or disorderly persons offense as described in section 7 of P.L.1997, c.100 (C.45:11-24.3), but shall not identify the conviction or convictions which constitute the basis for the disqualification. (23) It shall prescribe standards and requirements for a competency evaluation program resulting in certification of the homemaker-home health aide, and the renewal, revocation, and suspension of that certification. (24) It shall review applications for homemaker home-health aide certification and shall issue, suspend, revoke, or fail to renew certifications and conduct investigations pursuant to the provisions of P.L.1978, c.73 (C.45:1-14 et seq.). (25) It shall require that nursing school curricula include, and shall prescribe standards for, the training of registered professional nurses in the supervision of, and the delegation of nursing tasks to, unlicensed assistive personnel, and shall further prescribe standards establishing the criteria for determining those tasks which registered professional nurses may delegate to unlicensed assistive personnel working under their supervision and the type of supervision required with respect to those personnel. (26) It shall prescribe standards and requirements for unlicensed assistive personnel, including initial education and continuing education and a competency evaluation program, which these personnel shall satisfy in order to work in this State. As used in this paragraph and in paragraph (25) of this subsection, "unlicensed assistive personnel" means any unlicensed or uncertified personnel employed by a licensed health care facility that perform nursing tasks which do not require the skill or judgment of a registered professional nurse and which are assigned to them by, and carried out under the supervision of, a registered professional nurse.(27) It may require licensees to meet continuing education requirements as a condition of relicensure.

e. Compensation. Each member of the board shall receive \$15.00 per day for each day in which such member is actually engaged in the discharge of duties and traveling and other expenses necessarily incurred in the discharge of duties.

5. Section 7 of P.L.1997, c.100 (C.45:11-24.3) is amended to read as follows:

C.45:11-24.3 Background checks for homemaker-home health aide certification applicant.

7. a. The New Jersey Board of Nursing in the Division of Consumer Affairs in the Department of Law and Public Safety shall not issue a homemaker-home health aide certification to any applicant, except on a conditional basis as provided for in subsection d. of section 8 of P.L.1997, c.100 (C.45:11-24.4), unless the board first determines, consistent with the requirements of sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9), that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police, which would disqualify that person from being certified. A homemaker-home health aide certified by the board prior to the effective date of P.L.2000, c.20 and upon whom a criminal history record background check has not been conducted pursuant to sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9), shall be required to undergo that criminal history record background check as a condition of that individual's initial recertification following the effective date of P.L.2000, c.20.

In addition, a follow-up criminal history record background check of federal records shall

be conducted at least once every two years as a condition of recertification for every certified homemaker-home health aide; except that the board, in lieu of conducting follow-up criminal history record background checks for purposes of recertification, may provide for an alternative means of determining whether a certified homemaker-home health aide has been convicted of a crime or disorderly persons offense which would disqualify that person from certification, including, but not limited to, a match of a person's Social Security number or other identifying information with records of criminal proceedings in this and other states. If the board elects to implement this alternative means of determining whether a certified homemaker-home health aide has been convicted of a crime or disorderly persons offense which would disqualify that person from certification, the board shall report to the Governor and the Legislature prior to its implementation on the projected costs and procedures to be followed with respect to its implementation and setting forth the rationale therefor.

A person shall be disqualified from certification if that person's criminal history record background check reveals a record of conviction of any of the following crimes and offenses:

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

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

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

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

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

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

b. Notwithstanding the provisions of subsection a. of this section, no person shall be disqualified from certification on the basis of any conviction disclosed by a criminal history record background check performed pursuant to sections 7 through 13 and section 14 of P.L.1997, c.100 (C.45:11-24.3 through 24.9 and C.53:1-20.9a) if the person has affirmatively demonstrated to the New Jersey Board of Nursing in the Division of Consumer Affairs clear and convincing evidence of the person's rehabilitation. In determining whether a person has affirmatively demonstrated rehabilitation, the following factors shall be considered:

(1) the nature and responsibility of the position which the convicted person would hold, has held or currently holds, as the case may be;

(2) the nature and seriousness of the offense;

(3) the circumstances under which the offense occurred;

(4) the date of the offense;

(5) the age of the person when the offense was committed;

(6) whether the offense was an isolated or repeated incident;

(7) any social conditions which may have contributed to the offense; and

(8) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the person under their supervision.

c. If a person subject to the provisions of sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9) refuses to consent to, or cooperate in, the securing of a criminal history record background check, the New Jersey Board of Nursing shall, as applicable:

(1) not issue a homemaker-home health aide certification and shall notify the applicant, and the applicant's employer if the applicant is conditionally employed as provided in subsection d. of section 8 of P.L.1997, c.100 (C.45:11-24.4) or the applicant's prospective employer if known, of that denial; or

(2) revoke the person's current homemaker-home health aide certification and notify the person, and the person's employer, if known, of that revocation.

6. Section 8 of P.L.1997, c.100 (C.45:11-24.4) is amended to read as follows:

C.45:11-24.4 Qualification, disqualification for certification; petition for hearing.

8. a. An applicant for homemaker-home health aide certification, or a certified person who is required to undergo a criminal history record background check pursuant to section 7 of P.L.1997, c.100 (C.45:11-24.3), shall submit to the New Jersey Board of Nursing that individual's name, address and fingerprints taken on standard fingerprint cards by a State or municipal law enforcement agency. The board is authorized to exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation and the Division of State Police for use in making the determinations required by sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9).

b. Upon receipt of the criminal history record information for a person from the Federal Bureau of Investigation or the Division of State Police, the New Jersey Board of Nursing shall immediately notify, in writing, the applicant, and the applicant's employer if the applicant is conditionally employed as provided in subsection d. of this section or the applicant's prospective employer, if known, or the certified person who is required to undergo a criminal history record background check pursuant to section 7 of P.L.1997, c.100 (C.45:11-24.3) and that person's employer, as applicable, of the person's qualification or disqualification for homemaker-home health aide certification under sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9). If the person is disqualified, the conviction or convictions which constitute the basis for the disqualification shall be identified in the notice to the person, but shall not be identified in the notice to the person's employer or prospective employer.

c. The person who is the subject of the background check shall have 30 days from the date of the written notice of disqualification to petition the New Jersey Board of Nursing for a hearing on the accuracy of the person's criminal history record information or to establish the person's rehabilitation under subsection b. of section 7 of P.L.1997, c.100 (C.45:11-24.3). The board shall notify the person's employer or prospective employer of the person's petition for a hearing within five days following the receipt of the petition from the person. Upon the issuance of a final decision upon a petition to the board pursuant to this subsection, the board shall notify the person and the person's employer or prospective employer as to whether the person remains disqualified from certification under sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9).

d. An applicant for certification may be issued conditional certification and may be employed as a homemaker-home health aide conditionally for a period not to exceed 60 days, pending completion of a criminal history record background check required under sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9) by the Division of State Police in the Department of Law and Public Safety based upon an examination of its own files in accordance with section 14 of P.L.1997, c.100 (C.53:1-20.9a), and for an additional period not to exceed 60 days pending completion of a criminal history record background check by federal authorities as arranged for by the Division of State Police pursuant to section 14 of P.L.1997, c.100 (C.53:1-20.9a), if the person submits to the New Jersey Board of Nursing a sworn statement attesting that the person has not been convicted of any crime or disorderly persons offense as described in section 7 of P.L.1997, c.100 (C.45:11-24.3). A person who submits a false sworn statement shall be disqualified from certification as a homemaker-home health aide and shall not have an opportunity to establish rehabilitation pursuant to subsection b. of section 7 of P.L.1997, c.100 (C.45:11-24.3).

A conditionally employed person, or an employed person certified as a homemaker-home health aide, who disputes the accuracy of the criminal history record information and who files a petition requesting a hearing pursuant to subsection c. of this section may remain employed by that person's employer until the board rules on the person's petition but, pending the board's ruling, the employer shall not permit the person to have unsupervised contact with patients or clients who are 60 years of age or older.

e. (1) A home care services agency that has received an application from or conditionally employed an applicant for homemaker-home health aide certification, or has employed a certified homemaker-home health aide, and

(a) receives notice from the board that the applicant or certified homemaker-home health



aide, as applicable, has been determined by the board to be disqualified from certification as a homemaker-home health aide pursuant to sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9); or

(b) terminates its employment of a conditionally employed applicant for homemaker-home health aide certification or a certified homemaker-home health aide because the person was disqualified from employment at the home care services agency on the basis of a conviction of a crime or disorderly persons offense as described in section 7 of P.L.1997, c.100 (C.45:11-24.3) after commencing employment at the home care services agency;

shall be immune from liability for disclosing that disqualification or termination in good faith to another home care services agency.

(2) A home care services agency which discloses information pursuant to paragraph (1) of this subsection shall be presumed to be acting in good faith unless it is shown by clear and convincing evidence that the home care services agency acted with actual malice toward the person who is the subject of the information.

f. (1) A home care services agency, upon receiving notice from the board that a person employed by it as a homemaker-home health aide, including a conditionally employed person, has been convicted of a crime or disorderly persons offense as described in section 7 of P.L.1997, c.100 (C.45:11-24.3) after commencing employment at the home health care agency or other entity, shall:

(a) immediately terminate the person's employment as a homemaker-home health aide; and

(b) report information about the conviction and termination to the board in a manner prescribed by the board, which shall thereupon deem the person to be disqualified from certification as a homemaker-home health aide, subject to the provisions of paragraph (3) of this subsection.

(2) A home care services agency shall be immune from liability for any actions taken in good faith pursuant to paragraph (1) of this subsection and shall be presumed to be acting in good faith unless it is shown by clear and convincing evidence that the home care services agency acted with actual malice toward the employee.

(3) The person terminated from employment pursuant to paragraph (1) of this subsection shall have 30 days from the date of the termination to petition the board for a hearing on the accuracy of the information about the conviction reported to the board or to establish why the person should not be terminated from employment, and disqualified from certification, as a homemaker-home health aide. The board shall notify the person's employer of the person's petition for a hearing within five days following the receipt of the petition from the person. Upon the issuance of a final decision upon a petition to the board pursuant to this paragraph, the board shall notify the person and the person's employer as to whether:

(a) the person is to be reinstated in his employment as a homemaker-home health aide and retain his certification; or

(b) the person's termination from employment as a homemaker-home health aide stands and the person remains disqualified from certification.

7. Section 9 of P.L.1997, c.100 (C.45:11-24.5) is amended to read as follows:

C.45:11-24.5 Assumption of cost of background checks.

9. The Department of Law and Public Safety shall assume the cost of the criminal history record background check conducted on an applicant for homemaker-home health aide certification pursuant to sections 7 through 13 and section 14 of P.L.1997, c.100 (C.45:11-24.3 through 24.9 and C.53:1-20.9a), or a certified homemaker-home health aide who is required to undergo a criminal history record background check pursuant to section 7 of P.L.1997, c.100 (C.45:11-24.3), as applicable.

8. Section 14 of P.L.1997, c.100 (C.53:1-20.9a) is amended to read as follows:

C.53:1-20.9a Applicant background check for nurse aide, personal care assistant, homemaker-home health aide certification.

14. a. In accordance with the provisions of sections 2 through 6 and sections 7 through 13

of P.L.1997, c.100 (C.26:2H-83 through 87 and C.45:11-24.3 through 24.9), the Division of State Police in the Department of Law and Public Safety shall conduct a criminal history record background check, including a name and fingerprint identification check, of:

(1) each applicant for nurse aide or personal care assistant certification submitted to the Department of Health and Senior Services and of each applicant for homemaker-home health aide certification submitted to the New Jersey Board of Nursing in the Division of Consumer Affairs; and

(2) each nurse aide or personal care assistant certified by the Department of Health and Senior Services and each homemaker-home health aide certified by the New Jersey Board of Nursing, as required pursuant to P.L.1997, c.100 (C.26:2H-83 et al.).

b. For the purpose of conducting a criminal history record background check pursuant to subsection a. of this section, the Division of State Police shall examine its own files and arrange for a similar examination by federal authorities. The division shall immediately forward the information obtained as a result of conducting the check to the Commissioner of Health and Senior Services, in the case of an applicant for nurse aide or personal care assistant certification, and to the New Jersey Board of Nursing in the Division of Consumer Affairs in the Department of Law and Public Safety, in the case of an applicant for homemaker-home health aide certification.

9. The Director of the Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the Commissioner of Health and Senior Services, shall report to the Governor and the Legislature no later than one year after the effective date of this act on the feasibility and cost of implementing a criminal history record background check requirement for all persons employed by home health agencies licensed by the Department of Health and Senior Services or by health care service firms, employment agencies or registries, temporary help service firms or personnel consultants regulated by the Division of Consumer Affairs, who are assigned to provide health care services in a home-based or other community setting and are not required to undergo a criminal history record background check pursuant to P.L.1997, c.100 (C.26:2H-83 et al.). The report shall include a detailed plan for implementation of a criminal history record background check requirement.

10. The Legislature shall annually appropriate from the General Fund to the Department of Health and Senior Services and the Department of Law and Public Safety such funds as the State Treasurer recommends to effectuate the purposes of this act.

11. This act shall take effect on the 90th day after enactment.

Approved May 3, 2000.