

CHAPTER 304

AN ACT concerning adult family care, supplementing Title 26 of the Revised Statutes, and amending P.L.1978, c.159 and P.L.1979, c.496.

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

C.26:2Y-1 Short title.

1. This act shall be known and may be cited as the "New Jersey Adult Family Care Act."

C.26:2Y-2 Findings, declarations relative to adult family care.

2. The Legislature finds and declares that:

- a. In the absence of appropriate housing with supportive services, many elders or people with physical disabilities are often subject to inappropriate, premature, or overextended institutionalization. This results in the overutilization of costly services and the negative impact of the institutional environment on the individual's emotional and physical well-being. A need exists to fill this gap in the housing continuum between independent living and institutionalization for those elders and physically disabled citizens who are in need of shelter and services to remain in the community.

- b. Adult family care has proven to be a successful and cost-effective means of fulfilling basic shelter and everyday service needs of elders and physically disabled adults, thereby enabling them to preserve their independence, choice and dignity in a secure environment.

- c. Therefore, it is the policy of this State to promote the health, safety and welfare of its elderly and physically disabled citizens by encouraging the development of adult family care homes for elders and physically disabled adults and to provide for the licensing of caregivers and regulation of such adult family care homes by the Department of Health and Senior Services.

C.26:2Y-3 Definitions relative to adult family care.

3. As used in this act:

"Activities of daily living" or "ADL" means functions and tasks for self-care which are performed either independently or with supervision or assistance, which include, but are not limited to, mobility, transferring, walking, grooming, bathing, dressing and undressing, eating and toileting.

"Adult family care" means a 24-hour per day living arrangement for persons who, because of age or physical disability, need assistance with activities of daily living, and for whom services designed to meet their individual needs are provided by licensed caregivers in approved adult family care homes.

"Adult family care caregiver" means a person licensed to provide care and services in the daily operation of an adult family care home, but does not include the owner or lessor of the building in which the adult family care home is situated unless the owner or lessor is also the provider of care and services in the adult family care home .

"Adult family care home" means a residence regulated by the department and housing no more than three clients, in which personal care and other supportive services are provided by an individual who has been licensed by the department as an adult family care caregiver. "Adult family care home" shall not include a rooming or boarding house used and operated under license of the Department of Community Affairs pursuant to P.L.1979, c.496 (C.55:13B-1 et seq.).

"Adult family care sponsor agency" means an entity licensed by the department to administer an adult family care program within a given area, which provides essential administrative and clerical support services to two or more caregivers, and which shall not be considered to be a health care facility as defined in section 2 of P.L.1971, c.136 (C.26:2H-2).

"Client" means an elder or person with physical disabilities enrolled in adult family care.

"Commissioner" means the Commissioner of Health and Senior Services.

"Department" means the Department of Health and Senior Services.

"Elder" means a person sixty years of age or older.

C.26:2Y-4 Licensing required for operation of adult family care home.

4. a. No person may operate an adult family care home unless the person is licensed as an adult family care caregiver in accordance with this act. A person may not be licensed as an adult family care caregiver unless that person owns or rents the home that is to be utilized as an adult

family care home, resides in that home on a full-time basis and has resided in the municipality in which the adult family care home is located for one year prior to the granting of an initial license.

b. Application for licensure as an adult family care caregiver shall be made upon forms prescribed by the department. The department shall charge a single, non-refundable fee for the filing of an application for the issuance of a license and a single, non-refundable fee for any renewal thereof, as it shall from time to time fix in rules or regulations, except that neither fee shall exceed \$200.

c. The department shall issue a license as an adult family care caregiver to an applicant if it finds that:

(1) the applicant and the adult family care home identified in the application are fit and adequate, in accordance with the qualifications and standards established by regulation of the commissioner;

(2) there is reasonable assurance that care will be provided to clients in the manner required by this act and any rules or regulations adopted pursuant thereto; and

(3) there are sufficient indicia of fiscal responsibility such that the applicant will be able to maintain residence at the adult family care home with minimal likelihood of eviction or mortgage foreclosure during the term of licensure.

All licenses issued by the department shall be effective for up to two years from the date of issuance unless revoked in accordance with the provisions of this act.

d. An adult family care caregiver license shall specify both the name of the licensee and the location of the particular home in which clients will be housed. An adult family care caregiver's license is not transferable and shall apply only to the location and person indicated on the license.

e. Upon issuance of a license to an adult family care caregiver, the department shall provide a copy of the license to the municipality in which the adult family care home is located.

f. Upon receipt of a license as an adult family care caregiver, the caregiver shall provide notification of the license to the police department, fire department and ambulance corps that serve the municipality in which the adult family care home is located for their planning purposes.

g. For three years following the date of this act, a licensed caregiver shall operate under a contractual agreement with an adult family care sponsor agency to provide services to individuals enrolled in adult family care. At the end of this three-year period, the department may extend this requirement, at its discretion, by regulation.

C.26:2Y-5 Criminal history record background check for applicants for licensure as adult family caregiver.

5. a. The department shall establish a program to check the criminal history record background of any applicant for licensure as an adult family care caregiver as well as any person who may act as a substitute caregiver, as defined by regulation of the commissioner, and any non-client 18 years of age or above who resides in the adult family care home. The criminal history record background check shall include the exchange of fingerprint data with, and the receipt of criminal history record information from, the Federal Bureau of Investigation and the Division of State Police.

b. A person shall be disqualified from being licensed as an adult family care caregiver or acting as a substitute caregiver if the check of his criminal history record background reveals a conviction for any of the following crimes or offenses, and a home shall be disqualified from being approved as an adult family care home if the criminal history record background check of any non-client 18 years of age or older who resides in the home reveals a conviction for any of the following crimes or 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; or

(e) any other crime or disorderly persons offense substantially related to the qualifications or duties of an adult family care caregiver.

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

c. Notwithstanding the provisions of subsection b. of this section to the contrary, an applicant shall not be denied a license when the person found to have a conviction as specified in subsection b. of this section affirmatively provides evidence satisfactory to the department of the person's rehabilitation. In determining the person's rehabilitation, the department shall consider the following factors, as applicable:

(1) the nature and seriousness of the offense;

(2) the circumstances under which the offense occurred;

(3) the date of the offense;

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

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

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

(7) 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.

d. Upon receipt of the criminal history record and a determination that an applicant should be disqualified from acting as a caregiver or that a home should be disqualified as an adult family care home, the department shall so notify the applicant in writing. The notice shall specify the convictions upon which the disqualification is based.

C.26:2Y-6 Licensure required for adult family care sponsor agency.

6. a. No person, firm, partnership, corporation, limited liability company or association may operate, conduct or hold itself out to the public as an adult family care sponsor agency unless it is duly licensed as an adult family care sponsor agency in accordance with the provisions of this act.

b. Application for a license as an adult family care sponsor agency shall be made upon forms prescribed by the department. The department shall charge a single, non-refundable fee for the filing of an application for the issuance of a license and a single, non-refundable fee for any renewal thereof, as it shall from time to time establish by regulations, except that neither of these fees shall exceed \$4,000.

c. An applicant for licensure as an adult family care sponsor agency shall comply with all procedures and meet all standards and requirements established by regulation of the commissioner.

C.26:2Y-7 Regulation of family care home.

7. a. An adult family care home shall be regulated as a residential home and shall meet all State and local building, sanitation, utility and fire code requirements applicable to single family dwellings ; provided however, that the commissioner may require compliance with fire code requirements applicable to boarding houses and residential health care facilities if so warranted by the capabilities of the residents.

b. The department shall be responsible for inspecting the physical plant of each adult family care home initially and on an annual basis. In addition to any licensing fee required under this act, the department may charge an annual, non-refundable fee for inspection of any adult family care home, as shall be established from time to time by regulation of the commissioner.

c. The department's staff shall be permitted access to enter and inspect an adult family care home at any time. The department's staff shall be permitted access to the clients of the adult family care home in order to interview them privately and to inspect client records.

d. The department shall be responsible for providing to the adult family care caregiver a report of the most recent inspection of the home, written in clear, concise language readily comprehensible to the average person.

e. The adult family care caregiver shall post the inspection report in the entry to, or other equally prominent location in, the home and shall, upon request, provide a copy of the report to each client of, or person applying for admission to, the home, or the legal representative, guardian or conservator of the client or prospective client.

f. The Office of The Ombudsman for the Institutionalized Elderly shall have jurisdiction to take all actions authorized pursuant to P.L.1977, c.239 (C.52:27G-1 et seq.) with respect to adult family care homes.

C.26:2Y-8 Regulations to establish minimum standards.

8. The commissioner shall by regulation establish minimum standards to ensure the health, safety and well-being of each client of the adult family care home, including: requirements for the physical site of the home and maintenance standards; rules governing acceptance of clients; services that must be provided to all clients and standards for these services; and components of quality care, including, but not limited to, qualifications and training of adult family care caregivers, safety of the caregiving environment, coordination of services and comprehensiveness of care.

C.26:2Y-9 Violations, penalties.

9. a. A person, firm, partnership, corporation, limited liability company or association that operates or conducts an adult family care home or adult family care sponsor agency without first obtaining the license required by this act, or that operates an adult family care home or adult family care sponsor agency after a revocation or suspension of that license, shall be liable to a penalty of not more than \$2,500 as provided for by regulation for each day of operation in violation hereof for the first offense and for any subsequent offense.

b. A person, firm, partnership, corporation, limited liability company or association that, except in cases of an emergency, maintains more clients in an adult family care home than it is licensed to maintain, shall be subject to penalty, in an amount equal to the daily charge collected from those clients plus \$25 for each day multiplied by the number of clients maintained over the authorized limit.

c. In addition to the authority granted to the department by this act or any other law, the department, after serving an applicant or licensee with specific charges in writing, may: assess penalties and collect the same within the limitations imposed by this act; deny a license; grant probationary or provisional status to a licensee; relocate clients; or revoke or suspend any and all licenses granted under authority of this act to a person, firm, partnership, corporation, limited liability company or association violating or failing to comply with the provisions of this act, or the rules and regulations adopted pursuant thereto.

d. A person, firm, partnership, corporation, limited liability company or association that violates any rule or regulation adopted in accordance with this act as the same pertains to the care of clients or physical plant standards shall be subject to a monetary penalty of not more than \$2,500 as provided for by regulation for each day in violation of the rule or regulation.

e. Notice of the assessment of penalties, revocation, suspension, placement on probationary or provisional license status, relocation of clients or denial of a license, together with a specification of charges, shall be served on the applicant or licensee, personally or sent by certified mail to the address of record. The notice shall set forth the particular reasons for the administrative action being undertaken.

f. The commissioner or his designee shall arrange for prompt and fair hearings on all contested cases, render written decisions stating conclusions and reasons therefor upon each matter so heard, and may enter orders of denial, suspension, placement on probationary or provisional license status, relocation of clients or revocation, consistent with the circumstances in each case, and may assess penalties and collect the same within the limitations imposed by this act.

g. In the event of closure of an adult family care home, clients who are relocated by the

department may be entitled to benefits pursuant to the "Relocation Assistance Act," P.L.1971, c.362 (C.20:4-1 et seq.) or the "Relocation Assistance Law of 1967," P.L.1967, c.79 (C.52:31B-1 et seq.), and any regulations adopted pursuant thereto.

C.26:2Y-10 Rights of client of adult family care home.

10. a. A client of an adult family care home may not be deprived of any civil or legal rights, benefits or privileges guaranteed by law, the New Jersey Constitution, or the Constitution of the United States solely by reason of status as a resident in the home. In addition, each client has the right to:

- (1) be treated as an adult, with respect, dignity, courtesy and consideration, and to have individual needs for privacy recognized and upheld;
- (2) be informed of all client rights and house rules;
- (3) make choices with respect to his care, services and lifestyle;
- (4) be informed of his condition and the right to consent to or refuse care and services;
- (5) participate, to the fullest extent that the client is able, in planning for his own care and services;
- (6) receive appropriate care and services, as needed;
- (7) a safe and secure environment;
- (8) be free from abuse, exploitation and neglect;
- (9) complete privacy when receiving care and services;
- (10) associate and communicate privately with any person the client chooses;
- (11) send and receive personal mail unopened;
- (12) participate in activities of social, religious and community groups;
- (13) have medical and personal information kept confidential;
- (14) keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space;
- (15) manage his own money and financial affairs, unless legally restricted from doing so;
- (16) receive a written agreement regarding the care and services to be provided, and the terms and conditions for termination of residency from the home;
- (17) be provided with a written statement of the rates to be charged, and 30 days' written notice of any change in the rates;
- (18) practice the religion of his choice, or to abstain from religious practice;
- (19) be free of discrimination in regard to race, color, national origin, sex or religion; and
- (20) make suggestions and complaints without fear of retaliation.

b. The adult family care caregiver shall ensure that a written notice of the rights set forth in this section is given to every client. The caregiver shall also post this notice in the entry to, or other equally prominent location in, the adult family care home. This notice shall also include the name, address and telephone number of the Office of the Ombudsman for the Institutionalized Elderly.

11. Section 1 of P.L.1978, c.159 (C.40:55D-66.1) is amended to read as follows:

C.40:55D-66.1 Community residences, shelters, adult family care homes; permitted use in residential districts.

1. Community residences for the developmentally disabled, community shelters for victims of domestic violence, community residences for the terminally ill, community residences for persons with head injuries, and adult family care homes for elderly persons and physically disabled adults shall be a permitted use in all residential districts of a municipality, and the requirements therefor shall be the same as for single family dwelling units located within such districts.

12. Section 3 of P.L.1979, c.496 (C.55:13B-3) is amended to read as follows:

C.55:13B-3 Terms defined.

3. As used in this act:

a. "Boarding house" means any building, together with any related structure, accessory building, any land appurtenant thereto, and any part thereof, which contains two or more units of dwelling space arranged or intended for single room occupancy, exclusive of any such unit occupied by an owner or operator, and wherein personal or financial services are provided to the residents, including any residential hotel or congregate living arrangement, but excluding any hotel, motel or established guest house wherein a minimum of 85% of the units of dwelling space are offered for limited tenure only, any foster home as defined in section 1 of P.L.1962, c.137 (C.30:4C-26.1), any community residence for the developmentally disabled and any community residence for the mentally ill as defined in section 2 of P.L.1977, c.448 (C.30:11B-2), any adult family care home as defined in section 3 of P.L.2001, c.304 (C.26:2Y-3), any dormitory owned or operated on behalf of any nonprofit institution of primary, secondary or higher education for the use of its students, any building arranged for single room occupancy wherein the units of dwelling space are occupied exclusively by students enrolled in a full-time course of study at an institution of higher education approved by the New Jersey Commission on Higher Education, any facility or living arrangement operated by, or under contract with, any State department or agency, upon the written authorization of the commissioner, and any owner-occupied, one-family residential dwelling made available for occupancy by not more than six guests, where the primary purpose of the occupancy is to provide charitable assistance to the guests and where the owner derives no income from the occupancy. A dwelling shall be deemed "owner-occupied" within the meaning of this section if it is owned or operated by a nonprofit religious or charitable association or corporation and is used as the principal residence of a minister or employee of that corporation or association. For any such dwelling, however, fire detectors shall be required as determined by the Department of Community Affairs.

b. "Commissioner" means the Commissioner of the Department of Community Affairs.

c. "Financial services" means any assistance permitted or required by the commissioner to be furnished by an owner or operator to a resident in the management of personal financial matters, including, but not limited to, the cashing of checks, holding of personal funds for safekeeping in any manner or assistance in the purchase of goods or services with a resident's personal funds.

d. "Limited tenure" means residence at a rooming or boarding house on a temporary basis, for a period lasting no more than 90 days, when a resident either maintains a primary residence at a location other than the rooming or boarding house or intends to establish a primary residence at such a location and does so within 90 days after taking up original residence at the rooming or boarding house.

e. "Operator" means any individual who is responsible for the daily operation of a rooming or boarding house.

f. "Owner" means any person who owns, purports to own, or exercises control of any rooming or boarding house.

g. "Personal services" means any services permitted or required to be furnished by an owner or operator to a resident, other than shelter, including, but not limited to, meals or other food services, and assistance in dressing, bathing or attending to other personal needs.

h. "Rooming house" means a boarding house wherein no personal or financial services are provided to the residents.

i. "Single room occupancy" means an arrangement of dwelling space which does not provide a private, secure dwelling space arranged for independent living, which contains both the sanitary and cooking facilities required in dwelling spaces pursuant to the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.), and which is not used for limited tenure occupancy in a hotel, motel or established guest house, regardless of the number of individuals occupying any room or rooms.

j. "Unit of dwelling space" means any room, rooms, suite, or portion thereof, whether furnished or unfurnished, which is occupied or intended, arranged or designed to be occupied for sleeping or dwelling purposes by one or more persons.

k. "Alzheimer's disease and related disorders" means a form of dementia characterized by a general loss of intellectual abilities of sufficient severity to interfere with social or occupational functioning.

1. "Dementia" means a chronic or persistent disorder of the mental processes due to organic brain disease, for which no curative treatment is available, and marked by memory disorders, changes in personality, deterioration in personal care, impaired reasoning ability and disorientation.

C.26:2Y-11 Rules, regulations.

13. The Commissioner of Health and Senior Services, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of this act.

14. This act shall take effect on the 90th day after enactment, except that the Commissioner of Health and Senior Services may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

Approved January 2, 2002.