

## CHAPTER 25

AN ACT concerning assisted living and supplementing Titles 26 and 53 of the Revised Statutes.

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

C.26:2H-7.15 Definitions relative to assisted living.

1. As used in this act:

"Assisted living" means a coordinated array of supportive personal and health services, available 24 hours per day, which promote resident self-direction and participation in decisions that emphasize independence, individuality, privacy, dignity and homelike surroundings to residents who have been assessed to need these services, including residents who require formal long-term care.

"Assisted living program" means the provision of or arrangement for meals and assisted living services, when needed, to the residents of publicly subsidized housing, which because of any federal, State or local housing laws, rules, regulation or requirements cannot become licensed as an assisted living residence.

"Assisted living residence" means a facility licensed by the Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed, for four or more adult persons unrelated to the proprietor. Apartment units shall offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

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

C.26:2H-7.16 Evaluation of applicant prior to approval of certificate of need.

2. Prior to approval of a certificate of need pursuant to section 7 of P.L.1971, c.136 (C.26:2H-7) for an assisted living residence or program, the commissioner shall evaluate the background of an applicant for a certificate of need to ensure, at a minimum, that the applicant is:

- a. of good moral character;
- b. economically capable of constructing or expanding, as appropriate, and maintaining an assisted living residence or program, as applicable;
- c. capable of successfully providing assisted living services that meet or surpass the licensing standards for assisted living residences or programs, as applicable, as set by the commissioner;
- d. capable of demonstrating an acceptable track record, if appropriate, of the applicant's past and current compliance with State licensure requirements, applicable federal requirements and State certificate of need requirements pursuant to section 7 of P.L.1971, c.136 (C.26:2H-7); and
- e. capable of demonstrating an acceptable track record of the applicant's past and current compliance with State licensure or applicable federal or State requirements for, and the financial success of, any health care-related or other business activity that involves construction, operation or management of the activity.

C.26:2H-7.17 Issuance of assisted living administrator certification; criminal history record check.

3. a. The commissioner shall not issue an assisted living administrator certification, except on a conditional basis as provided for in subsection d. of section 4 of this act, unless the commissioner first determines, consistent with the requirements of this act, 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 in the Department of Law and Public Safety, which would disqualify that person from being certified.

b. An assisted living administrator certified by the department prior to the effective date of this act, upon whom a criminal history record background check has not been conducted pursuant to this act, shall be required to undergo that criminal history record background check as a condition of renewal of certification following the effective date of this act.

c. An assisted living administrator, who is a licensed nursing home administrator and has undergone a criminal history record background check as a result of having obtained a nursing home administrator's license, shall not be required to undergo a criminal history record background check pursuant to this act.

d. 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.

e. 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 this act if the person has affirmatively demonstrated to the commissioner 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.

f. If a person subject to the provisions of this act refuses to consent to, or cooperate in, the securing of a criminal history record background check, the commissioner shall, as applicable:

(1) not issue an assisted living administrator certification and shall notify the applicant, and the applicant's employer, if the applicant is conditionally employed as provided in subsection d. of section 4 of this act or the applicant's prospective employer, if known, of that denial; or

(2) revoke the person's current assisted living administrator certification and notify the person, and the person's employer, if known, of that revocation.

C.26:2H-7.18 Information provided for criminal history record background check; procedure.

4. a. An applicant for certification or a certified assisted living administrator, who is required to undergo a criminal history record background check pursuant to section 3 of this act, shall submit to the commissioner 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 in the Department of Law and Public Safety for use in making the determinations required by this act.

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 assisted living administrator who is required to undergo a criminal history record background check pursuant to section 3 of this act and that person's employer, as

applicable, of the person's qualification or disqualification for certification under this act. 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 e. of section 3 of this act. 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 this act.

d. (1) An applicant for certification may be issued conditional certification and may be employed as an assisted living administrator conditionally for a period not to exceed 60 days, pending completion of a criminal history record background check required under this act by the Division of State Police based upon an examination of its own files, in accordance with section 7 of P.L.2002, c.25 (C.53:1-20.9c), 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 7 of P.L.2002, c.25 (C.53:1-20.9c), 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 3 of this act. A person who submits a false sworn statement shall be disqualified from certification, and shall not have an opportunity to establish rehabilitation pursuant to subsection e. of section 3 of this act.

(2) A conditionally employed person or an employed certified assisted living administrator, 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 until the commissioner rules on the person's petition but, pending the commissioner's ruling, the person shall not have unsupervised contact with residents at the assisted living residence or program.

e. (1) A licensed assisted living residence or program, as applicable, that has received an application from or conditionally employs an applicant for assisted living administrator or employs a certified assisted living administrator, and:

(a) receives notice from the commissioner that the applicant or certified assisted living administrator has been determined by the commissioner to be disqualified from certification as an assisted living administrator pursuant to this act; or

(b) terminates its employment of a conditionally employed applicant for assisted living administrator or a certified assisted living administrator because the person was disqualified from employment at the assisted living residence or program on the basis of a conviction of a crime or disorderly persons offense as described in section 3 of this act after commencing employment at the assisted living residence or program;

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 certified administrator.

(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) An assisted living residence or program, as applicable, upon receiving notice from the commissioner that a person employed by it as an assisted living administrator, including a conditionally employed person, has been convicted of a crime or disorderly persons offense as described in section 3 of this act after commencing employment at the assisted living residence or program, shall:

(a) immediately terminate the person's employment as an assisted living administrator; and

(b) report information about the termination to the commissioner in a manner prescribed by the commissioner, who shall thereupon deem the person to be disqualified from certification as an assisted living administrator, subject to the provisions of subsection c. of this section.

(2) An assisted living residence or program 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 assisted living residence or program acted with actual malice toward the employee.

C.26:2H-7.19 Applicant to assume cost of criminal history record background check.

5. The applicant for certification as an assisted living administrator or a certified assisted living administrator, as the case may be, shall assume the cost of the criminal history record background check conducted pursuant to this act.

C.26:2H-7.20 Fine for false sworn statement.

6. A person submitting a false sworn statement pursuant to section 4 of this act shall be subject to a fine of not more than \$1,000, which may be assessed by the commissioner.

C.53:1-20.9c Authorization for exchange of fingerprint data, information on assisted living administrator.

7. a. The Commissioner of Health and Senior Services is authorized to exchange fingerprint data with, and to receive information from, the Division of State Police in the Department of Law and Public Safety and the Federal Bureau of Investigation.

b. The Division of State Police shall promptly notify the Department of Health and Senior Services in the event an applicant for certification as an assisted living administrator or a certified assisted living administrator, who was the subject of a criminal history record background check conducted pursuant to subsection a. of this section, is convicted of a crime or offense in this State after the date the background check was performed. Upon receipt of such notification, the department shall make a determination regarding the employment of the applicant or administrator.

C.26:2H-7.21 Rules, regulations.

8. 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.

9. This act shall take effect on the 90th day after the date of enactment, except that the commissioner may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

Approved June 12, 2002.