

## CHAPTER 328

**AN ACT** concerning background checks and licensing of certain entities, amending P.L.1999, c.358, and supplementing Title 30 of the Revised Statutes.

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

1. Section 1 of P.L.1999, c.358 (C.30:6D-63) is amended to read as follows:

C.30:6D-63 Definitions relative to criminal history background checks for community agency employees.

1. As used in this act:
  - a. "Commissioner" means the Commissioner of Human Services.
  - b. "Community agency employee" means any individual 18 years of age or older who is employed by a public or private agency under contract with or licensed by the department to provide services to department clients who have developmental disabilities or brain injuries and includes all personnel working or residing at an agency who may come into direct contact with clients.
  - c. "Community agency head" means the person responsible for the overall operation of the agency under contract with or licensed by the department.
  - d. "Department" means the Department of Human Services.
  - e. "Community agency" means a public or private agency under contract with or licensed by the department to provide services to department clients who have developmental disabilities or brain injuries.
  - f. "Community agency board" means the board of directors of a community agency.
  - g. "Community care residence" means a private house or apartment in which a person 18 years or older is under contract with or licensed by the department to provide individuals with developmental disabilities or persons with brain injury with care and a level of training and supervision that is based upon the documented needs of the individuals.
  - h. "Community care residence applicant" means a person age 18 or older who satisfactorily initiates and completes the application process in order to obtain a license to operate a community care residence.
  - i. "Community care residence alternate" means a person 18 years of age or older who has been selected by the applicant to provide care and supervision for individuals who require supervision at the community care residence.
  - j. "Community care residence household member" means a person 18 years of age or older who resides in a community care residence, but does not include the individual who is receiving services from the department.
  - k. "Under contract" means a provider under a written agreement with the department or a provider approved by the department to provide disability services to individuals that are eligible to receive services from the department.

2. Section 2 of P.L.1999, c.358 (C.30:6D-64) is amended to read as follows:

C.30:6D-64 Contract with community agency.

2. a. Any community agency under contract with or licensed by the Department of Human Services shall not pay or contract for any employee or agency head for the provision of services unless it has first been determined, consistent with the requirement and standards of P.L.1999, c.358 (C.30:6D-63 et seq.), 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 the community agency

head or the community agency employees from such employment. The determination shall be made by the department.

A community care residence shall not be qualified to house individuals unless it has first been determined, consistent with the requirements and standards of P.L.1999, c.358 (C.30:6D-63 et seq.), 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 the community care residence applicant, community care residence alternate, or community care residence household member. The determination shall be made by the department.

A criminal history record background check shall be conducted at least once every two years for a community agency head, community care residence applicant, community care residence alternate, community care residence household member, and community agency employees; except that the department, in lieu of conducting criminal history record background checks every two years, may determine whether an individual has been convicted of a crime or disorderly persons offense which would disqualify that person by an alternative means, 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 department elects to implement an alternative means of determining whether an individual has been convicted of a crime or disorderly persons offense which would disqualify that individual, the department 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. The department shall notify the community agency or the community care residence if an individual has been determined qualified or disqualified as provided pursuant to P.L.1999, c.358 (C.30:6D-63 et seq.). The department's determination of qualification shall not require the community agency or community care residence to employ the individual. The department's determination of disqualification shall require the community agency or community care residence to terminate employment or not offer employment to the individual.

b. An individual shall be disqualified from employment under P.L.1999, c.358 (C.30:6D-63 et seq.) or the community care residence with whom the individual is associated shall not be qualified to house individuals who receive department services if that individual'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) A crime or offense involving the manufacture, transportation, sale, possession, or habitual use of a controlled dangerous substance as defined in the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c.226 (C.24:21-1 et seq.).

(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.

c. If a prospective community agency employee or community agency head refuses to consent to, or cooperate in, securing of a criminal history record background check, the person shall not be considered for employment. If a prospective community care residence applicant, alternate, or household member refuses to consent to, or cooperate in, securing of

a criminal history record background check, the community care residence shall not be qualified to house individuals who receive department services.

d. If an individual who is required pursuant to this section to undergo a criminal history record background check refuses to consent to, or cooperate in, the securing of a criminal history record background check, the person shall be immediately removed from the person's position and the person's employment shall be terminated or, if the individual is affiliated with a community care residence, the community care residence shall not be qualified to house individuals who receive department services.

e. Notwithstanding the provisions of subsection b. of this section to the contrary, provisional employment of an individual is authorized for a period not to exceed six months if the individual submits to the appointing authority a sworn statement attesting that the individual has not been convicted of any crime or disorderly persons offense as described in this act, pending a determination that no criminal history record background information which would disqualify the individual exists on file in the State Bureau of Identification in the Division of State Police or in the Federal Bureau of Investigation, Identification Division. An individual who is provisionally employed pursuant to this subsection shall perform his duties under the supervision of a superior who acts in a supervisory capacity over that individual until the determination concerning the federal and State information is complete, where possible.

A community care residence shall not be qualified to house an individual with developmental disabilities while a community care residence applicant, alternate, or household member's criminal history records background check is pending.

f. Notwithstanding the provisions of subsection b. of this section to the contrary, no individual shall be disqualified from employment or from being qualified as a community care residence applicant, alternate, or household member on the basis of any conviction disclosed by a criminal history record background check performed pursuant to sections 2 through 7 of P.L.1999, c.358 (C.30:6D-64 through C.30:6D-69) if the individual has affirmatively demonstrated to the department, clear and convincing evidence of the individual's rehabilitation. In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:

(1) the nature and responsibility of the position which the convicted individual 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 individual 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 individual under their supervision.

g. A conviction of a crime or disorderly persons offense against children as set forth in N.J.S.2C:24-4 adversely relates to a position in a community agency that involves or would involve working directly with a person under 18 years of age. Individuals convicted of such crimes or disorderly persons offenses are permanently disqualified from such employment at a community agency and from being qualified to be a community care residence applicant, alternate, or household member.

h. The individual shall have no longer than 14 days from the date of the written notice of disqualification pursuant to section 4 of P.L.1999, c. 358 (C.30:6D-66) to provide evidence

of affirmatively demonstrated rehabilitation to the department as provided pursuant to this section.

i. The department shall have no longer than 60 days from the date of receipt of evidence of the individual's affirmatively developed rehabilitation to make a determination on the individual's qualification. The department shall notify the individual and the community agency or community care residence in writing of the determination of the individual's qualification or disqualification no longer than 60 days from the date of receipt of evidence of the individual's affirmatively developed rehabilitation. The written notice may be transmitted electronically if the individual authorizes the department to transmit the information electronically.

3. Section 3 of P.L.1999, c.358 (C.30:6D-65) is amended to read as follows:

C.30:6D-65 Authorization to exchange data.

3. An individual who is a current, or prospective, community agency head, community agency employee, community care residence applicant, community care residence alternate, or community care residence household member shall submit to the Commissioner of Human Services his or her name, address, and fingerprints taken in accordance with procedures established by the commissioner. 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 this act. The Division of State Police shall also promptly notify the department in the event an individual who was the subject of a criminal history record background check conducted pursuant to sections 2 through 7 of P.L.1999, c.358 (C.30:6D-64 through C.30:6D-69), is convicted of a crime or offense in this State after the date that the criminal history record background check was performed. No later than 14 days from receipt of such notification, the department shall make a determination regarding the employment or qualification of the individual, and shall notify the individual and the community agency or the community care residence in writing of the determination. The written notice may be transmitted electronically if the individual authorizes the department to transmit the information electronically. No criminal history record check shall be performed pursuant to this act unless the individual shall have furnished his written consent to the check. All individuals shall have their fingerprints taken on standard fingerprint cards by a State or municipal law enforcement agency, a personnel unit of the department, or a community agency designated by the department.

4. Section 4 of P.L.1999, c.358 (C.30:6D-66) is amended to read as follows:

C.30:6D-66 Written notice to applicant, employer of record information.

4. No longer than 14 days from receipt of the criminal history record information from the Federal Bureau of Investigation and the Division of State Police, the department shall notify the individual and the community agency or the community care residence in writing of qualification or disqualification. If the individual is disqualified, the State conviction or convictions which constitute the basis for the disqualification shall be identified in the written notice. The written notice may be transmitted electronically if the individual authorizes the department to transmit the information electronically.

5. Section 5 of P.L.1999, c.358 (C.30:6D-67) is amended to read as follows:

C.30:6D-67 Petition for hearing.

5. The individual may petition for a hearing on the accuracy of the criminal history record information with the appropriate State or federal agency or court.

6. Section 6 of P.L.1999, c.358 (C.30:6D-68) is amended to read as follows:

C.30:6D-68 Maintenance of information.

6. The department shall maintain all criminal history record information submitted under this act in accordance with rules and regulations which the commissioner shall adopt to implement the provisions of this act.

7. Section 7 of P.L.1999, c.358 (C.30:6D-69) is amended to read as follows:

C.30:6D-69 Initiation of background check.

7. In accordance with this act, the department shall initiate a criminal history record background check on all community agency heads, community agency employees, community care residence applicants, community care residence alternates, or community care residence household members who have not had a criminal history record background check completed in the previous two years from the date of enactment of P.L.2017, c.328 (C.30:11B-4.3 et al.)

C.30:11B-4.3 On-site inspection prior to issuance of license, corrective action plan.

8. a. The department that is responsible for licensing the residences as provided in section 4 of P.L.1977, c.448 (C.30:11B-4) shall require that all residences are subject to an on-site inspection prior to the issuance of an initial license, and an on-site annual inspection shall be performed at a minimum of one time per year in each year the residence is licensed.

b. If deficiencies are identified in the annual inspection, the department shall require that a corrective action plan is developed by the residence to explain the steps that will be taken to correct the deficiencies. If the identified deficiencies pose a risk to the life and safety of the residents, then the department shall conduct an on-site subsequent inspection to verify that corrective action has been taken by the residence to correct the deficiencies.

c. The department shall not provide the residence or the ownership of the residence prior notice of any subsequent inspection to verify that corrective action has been taken regarding identified deficiencies that pose a risk to the life and safety of the residents.

d. The department shall identify the type of deficiencies that pose a risk to the life and safety of the residents and require a subsequent on-site inspection.

e. The department may adopt a system to address multiple inspections which may be necessary to address multiple deficiencies noted in the annual inspection.

C.30:11B-4.4 Rules, regulations.

9. The Commissioners of Children and Families and Human Services, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations as the commissioners determine necessary to effectuate the purposes of this act.

10. This act shall take effect immediately, except that the provisions of section 2 of P.L.1999, c.358 (C.30:6D-64) shall not apply to individuals who are: under contract or licensed by the department to operate a community care residence; a community care residence alternate; or a community care residence household member, until the first day of the sixth month next following the date of enactment.

Approved January 16, 2018.