

26:2Y-1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2001 **CHAPTER:** 304
NJSA: 27:2Y-1 ("New Jersey Adult Family Care Act")
BILL NO: A849 (Substituted for S476)

SPONSOR(S): Thompson

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:** Appropriations
SENATE: Budget

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 28, 2001
SENATE: December 17, 2001

DATE OF APPROVAL: January 2, 2002

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (1st reprint enacted)

(Amendments during passage denoted by superscript numbers)

A849

SPONSORS STATEMENT: (Begins on page 11 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: Yes

S476

SPONSORS STATEMENT: (Begins on page 11 of original bill) Yes

Bill and Sponsors Statement identical to A849

ISS.)

COMMITTEE STATEMENT:	ASSEMBLY:	No
	SENATE:	Yes 6-25-2001(Women 12-13-2001(Budget)

FLOOR AMENDMENT STATEMENTS:	No
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LEGISLATIVE FISCAL ESTIMATE:	Yes
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VETO MESSAGE:	No
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GOVERNOR'S PRESS RELEASE ON SIGNING:	No
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FOLLOWING WERE PRINTED:

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REPORTS:	No
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HEARINGS:	No
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NEWSPAPER ARTICLES:	No
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ASSEMBLY, No. 849

STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

**Assemblyman SAMUEL D. THOMPSON
District 13 (Middlesex and Monmouth)**

Co-Sponsored by:

Assemblywoman Murphy, Assemblymen Bodine and Jones

SYNOPSIS

"New Jersey Alternate Family Care Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 9/22/2000)

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

4

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

7

8 1. (New section) This act shall be known and may be cited as the
9 "New Jersey Alternate Family Care Act."

10

11 2. (New section) The Legislature finds and declares that:

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

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

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

32

33 3. (New section) As used in this act:

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

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

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 "Alternate family care caregiver" means a person licensed to
2 provide care and services in the daily operation of an alternate family
3 care home, but does not include the owner or lessor of the building in
4 which the alternate family care home is situated unless the owner or
5 lessor is also the provider of care and services in the alternate family
6 care home.

7 "Alternate family care home" means a residence regulated by the
8 department and housing no more than three clients, in which personal
9 care and other supportive services are provided by an individual who
10 has been licensed by the department as an alternate family care
11 caregiver.

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

18 "Client" means an elder or person with physical disabilities enrolled
19 in alternate family care.

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

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

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

24

25 4. (New section) a. No person may operate an alternate family
26 care home unless the person is licensed as an alternate family care
27 caregiver in accordance with this act. A person may not be licensed
28 as an alternate family care caregiver unless that person owns or rents
29 the home that is to be utilized as an alternate family care home and
30 resides in that home on a full-time basis.

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

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

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

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

46 (3) there are sufficient indicia of fiscal responsibility such that the

1 applicant will be able to maintain residence at the alternate family care
2 home with minimal likelihood of eviction or mortgage foreclosure
3 during the term of licensure.

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

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

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

15

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

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

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

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

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

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

43 (d) involving any controlled dangerous substance or controlled
44 substance analog as set forth in chapter 35 of Title 2C of the New
45 Jersey Statutes except paragraph (4) of subsection a. of N.J.S.2C:35-
46 10; or

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

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

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

14 (1) the nature and seriousness of the offense;

15 (2) the circumstances under which the offense occurred;

16 (3) the date of the offense;

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

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

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

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

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

32 e. An applicant shall be responsible for the cost of a criminal
33 history record check conducted in accordance with subsection a. of
34 this section.

35
36 6. (New section) a. No person, firm, partnership, corporation,
37 limited liability company or association may operate, conduct or hold
38 itself out to the public as an alternate family care sponsor agency
39 unless it is duly licensed as an alternate family care sponsor agency in
40 accordance with the provisions of this act.

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

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

4
5 7. (New section) a. An alternate family care home shall be
6 regulated as a residential home and shall meet all State and local
7 building, sanitation, utility and fire code requirements applicable to
8 single family dwellings.

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

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

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

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

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

34
35 8. (New section) The commissioner shall by regulation establish
36 minimum standards to ensure the health, safety and well-being of each
37 client of the alternate family care home, including: requirements for
38 the physical site of the home and maintenance standards; rules
39 governing acceptance of clients; services that must be provided to all
40 clients and standards for these services; and components of quality
41 care, including, but not limited to, qualifications and training of
42 alternate family care caregivers, safety of the caregiving environment,
43 coordination of services and comprehensiveness of care.

44
45 9. (New section) a. A person, firm, partnership, corporation,
46 limited liability company or association that operates or conducts an

1 alternate family care home or alternate family care sponsor agency
2 without first obtaining the license required by this act, or that operates
3 an alternate family care home or alternate family care sponsor agency
4 after a revocation or suspension of that license, shall be liable to a
5 penalty of not more than \$2,500 as provided for by regulation for each
6 day of operation in violation hereof for the first offense and for any
7 subsequent offense.

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

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

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

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

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

45 g. In the event of closure of an alternate family care home, clients
46 who are relocated by the department may be entitled to benefits

1 pursuant to the "Relocation Assistance Act," P.L.1971, c.362 (C.20:4-
2 1 et seq.) or the "Relocation Assistance Law of 1967," P.L.1967, c.79
3 (C.52:31B-1 et seq.), and any regulations adopted pursuant thereto.

4
5 10. (New section) a. A client of an alternate family care home
6 may not be deprived of any civil or legal rights, benefits or privileges
7 guaranteed by law, the New Jersey Constitution, or the Constitution
8 of the United States solely by reason of status as a resident in the
9 home. In addition, each client has the right to:

10 (1) be treated as an adult, with respect, dignity, courtesy and
11 consideration, and to have individual needs for privacy recognized and
12 upheld;

13 (2) be informed of all client rights and house rules;

14 (3) make choices with respect to his care, services and lifestyle;

15 (4) be informed of his condition and the right to consent to or
16 refuse care and services;

17 (5) participate, to the fullest extent that the client is able, in
18 planning for his own care and services;

19 (6) receive appropriate care and services, as needed;

20 (7) a safe and secure environment;

21 (8) be free from abuse, exploitation and neglect;

22 (9) complete privacy when receiving care and services;

23 (10) associate and communicate privately with any person the
24 client chooses;

25 (11) send and receive personal mail unopened;

26 (12) participate in activities of social, religious and community
27 groups;

28 (13) have medical and personal information kept confidential;

29 (14) keep and use a reasonable amount of personal clothing and
30 belongings, and to have a reasonable amount of private, secure storage
31 space;

32 (15) manage his own money and financial affairs, unless legally
33 restricted from doing so;

34 (16) receive a written agreement regarding the care and services to
35 be provided, and the terms and conditions for termination of residency
36 from the home;

37 (17) be provided with a written statement of the rates to be
38 charged, and 30 days' written notice of any change in the rates;

39 (18) practice the religion of his choice, or to abstain from religious
40 practice;

41 (19) be free of discrimination in regard to race, color, national
42 origin, sex or religion; and

43 (20) make suggestions and complaints without fear of retaliation.

44 b. The alternate family care caregiver shall ensure that a written
45 notice of the rights set forth in this section is given to every client.

46 The caregiver shall also post this notice in the entry to, or other

1 equally prominent location in, the alternate family care home. This
2 notice shall also include the name, address and telephone number of
3 the Office of the Ombudsman for the Institutionalized Elderly.

4
5 11. Section 1 of P.L.1978, c.159 (C.40:55D-66.1) is amended to
6 read as follows:

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

15 (cf: P.L.1997, c.321, s.1)

16
17 12. Section 3 of P.L.1979, c.496 (C.55:13B-3) is amended to read
18 as follows:

19 3. As used in this act:

20 a. "Boarding house" means any building, together with any related
21 structure, accessory building, any land appurtenant thereto, and any
22 part thereof, which contains two or more units of dwelling space
23 arranged or intended for single room occupancy, exclusive of any such
24 unit occupied by an owner or operator, and wherein personal or
25 financial services are provided to the residents, including any
26 residential hotel or congregate living arrangement, but excluding any
27 hotel, motel or established guest house wherein a minimum of 85% of
28 the units of dwelling space are offered for limited tenure only, any
29 foster home as defined in section 1 of P.L.1962, c.137 (C.30:4C-26.1),
30 any community residence for the developmentally disabled and any
31 community residence for the mentally ill as defined in section 2 of
32 P.L.1977, c.448 (C.30:11B-2), any alternate family care home as
33 defined in section 3 of P.L. , c. (C.)(pending before the
34 Legislature as this bill), any dormitory owned or operated on behalf
35 of any nonprofit institution of primary, secondary or higher education
36 for the use of its students, any building arranged for single room
37 occupancy wherein the units of dwelling space are occupied
38 exclusively by students enrolled in a full-time course of study at an
39 institution of higher education approved by the New Jersey
40 Commission on Higher Education, any facility or living arrangement
41 operated by, or under contract with, any State department or agency,
42 upon the written authorization of the commissioner, and any
43 owner-occupied, one-family residential dwelling made available for
44 occupancy by not more than six guests, where the primary purpose of
45 the occupancy is to provide charitable assistance to the guests and
46 where the owner derives no income from the occupancy. A dwelling

1 shall be deemed "owner-occupied" within the meaning of this section
2 if it is owned or operated by a nonprofit religious or charitable
3 association or corporation and is used as the principal residence of a
4 minister or employee of that corporation or association. For any such
5 dwelling, however, fire detectors shall be required as determined by
6 the Department of Community Affairs.

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

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

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

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

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

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

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

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

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

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

46 l. "Dementia" means a chronic or persistent disorder of the mental

1 processes due to organic brain disease, for which no curative treatment
2 is available, and marked by memory disorders, changes in personality,
3 deterioration in personal care, impaired reasoning ability and
4 disorientation.

5 (cf: P.L.1997, c.260, s.1)

6

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

11

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

16

17

18

STATEMENT

19

20 This bill, which is designated the "New Jersey Alternate Family
21 Care Act," is intended to clarify the authority of the Department of
22 Health and Senior Services (DHSS) to regulate alternate family care
23 homes.

24 The bill defines "alternate family care home" as a residence
25 regulated by DHSS and housing no more than three elderly or
26 physically disabled clients who need assistance with activities of daily
27 living, in which personal care and other supportive services are
28 provided by a person licensed by DHSS as an alternate family care
29 caregiver.

30 Specifically, the bill:

31 C provides explicit statutory authority for DHSS to regulate alternate
32 family care homes, but not as health care facilities under the "Health
33 Care Facilities Planning Act," P.L.1971, c.136 (N.J.S.A.26:2H-1 et
34 seq.);

35 C deems these entities to be a permitted use in all residential districts
36 of a municipality pursuant to P.L.1978, c.159 (N.J.S.A.40:55D-
37 66.1); and

38 C exempts these homes from the regulatory authority of the
39 Department of Community Affairs over boarding houses pursuant
40 to the "Rooming and Boarding House Act of 1979," P.L.1979,
41 c.496 (N.J.S.A.55:13B-1 et al.).

42 The bill takes effect on the 90th day after enactment, except that
43 the Commissioner of Health and Senior Services may take such
44 anticipatory administrative action in advance as shall be necessary for
45 its implementation.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 849
STATE OF NEW JERSEY
209th LEGISLATURE

DATED: JUNE 25, 2001

SUMMARY

Synopsis: "New Jersey Alternate Family Care Act".
Type of Impact: None.
Agencies Affected: Department of Health and Senior Services (DHSS) and the Department of Community Affairs (DCA).

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	\$0	\$0	\$0
State Revenue	Possible Small Revenue Loss--See Comments Below		

- ! As the legislation merely clarifies that the Department of Health and Senior Services (DHSS) has the authority to regulate alternate family care homes, there is no additional administrative cost to the DHSS.
- ! As the fee charged an alternate family care caregiver applicant would be reduced from \$250 to \$200, DHSS fee income may decline by \$5,000 for every 100 applicants who apply for licensure.

BILL DESCRIPTION

Assembly Bill No. 849 of 2000, the "New Jersey Alternate Family Care Act," is intended to clarify the authority of DHSS to regulate alternate family care homes. Specifically, the bill defines "alternate family care homes" to mean "a residence regulated by the [DHSS] 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 [DHSS] as an alternate family care caregiver." In addition, the licensing fee charged an applicant would be reduced from \$250 to \$200.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

There is no additional cost associated with the legislation as the legislation is intended to clarify DHSS' authority with respect to the regulation of alternate family care homes. As the licensing fee DHSS may charge an applicant would be reduced from \$250 to \$200, fee revenues may be reduced by \$5,000 for every 100 alternate family care caregivers who seek a license. It is not known how many persons will seek to be licensed as an alternate family care caregiver.

Section: *Human Services*

Analyst: *Jay Hershberg*
Principal Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 849

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 25, 2001

The Assembly Appropriations Committee reports favorably Assembly Bill No. 849, with committee amendments.

Assembly Bill No. 849, as amended, is the "New Jersey Adult Family Care Act," and is intended to clarify the authority of the Department of Health and Senior Services (DHSS) to regulate adult family care homes.

The bill defines "adult family care home" as a residence regulated by DHSS and housing no more than three elderly or physically disabled clients who need assistance with activities of daily living, in which personal care and other supportive services are provided by a person licensed by DHSS as an adult family care caregiver.

The bill:

- C provides explicit statutory authority for DHSS to regulate adult family care homes, but not as health care facilities under the "Health Care Facilities Planning Act," P.L.1971, c.136 (N.J.S.A.26:2H-1 et seq.);
- C deems these entities to be a permitted use in all residential districts of a municipality pursuant to P.L.1978, c.159 (N.J.S.A.40:55D-66.1); and
- C exempts these homes from most of the regulatory authority of the Department of Community Affairs over boarding houses pursuant to the "Rooming and Boarding House Act of 1979," P.L.1979, c.496 (N.J.S.A.55:13B-1 et al.).

The bill takes 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 its implementation.

FISCAL IMPACT:

No fiscal information has been made available on this legislation.

COMMITTEE AMENDMENTS:

The amendments changed the designation from "alternative family care" to "adult family care; provide that a caregiver must notify health

and safety agencies after licensing for their planning purposes; provide that a caregiver must operate under contract with a sponsor agency for the first three years of the bill's effect; allow the commissioner to require compliance with fire code requirements, if appropriate; and shift the cost of criminal history record checks from the applicant to the department.

[First Reprint]

ASSEMBLY, No. 849

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblyman SAMUEL D. THOMPSON

District 13 (Middlesex and Monmouth)

Co-Sponsored by:

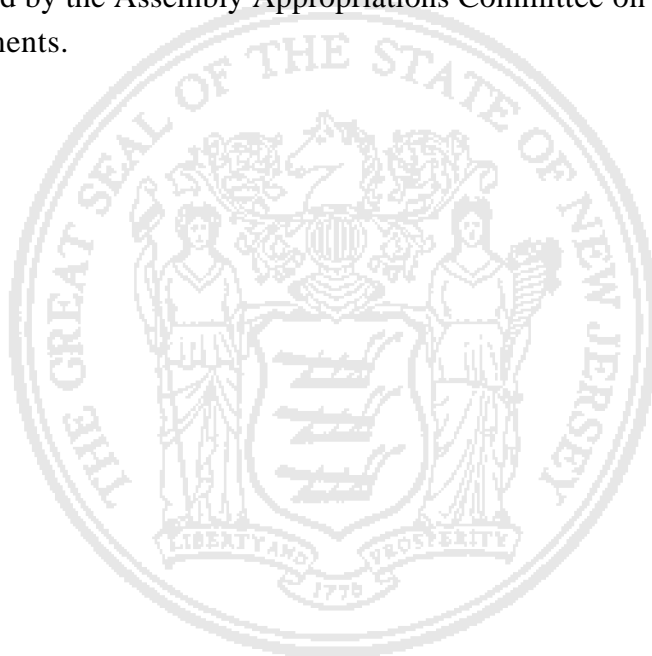
**Assemblywoman Murphy, Assemblymen Bodine, Jones and Senator
Singer**

SYNOPSIS

"New Jersey Adult Family Care Act."

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on June 25, 2001,
with amendments.



(Sponsorship Updated As Of: 12/18/2001)

1 AN ACT concerning ¹[alternate] adult¹ family care, supplementing
2 Title 26 of the Revised Statutes, and amending P.L.1978, c.159 and
3 P.L.1979, c.496.

4

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

7

8 1. (New section) This act shall be known and may be cited as the
9 "New Jersey ¹[Alternate] Adult¹ Family Care Act."

10

11 2. (New section) The Legislature finds and declares that:

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

21 b. ¹[Alternate] Adult¹ family care has proven to be a successful
22 and cost-effective means of fulfilling basic shelter and everyday service
23 needs of elders and physically disabled adults, thereby enabling them
24 to preserve their independence, choice and dignity in a secure
25 environment.

26 c. Therefore, it is the policy of this State to promote the health,
27 safety and welfare of its elderly and physically disabled citizens by
28 encouraging the development of ¹[alternate] adult¹ family care homes
29 for elders and physically disabled adults and to provide for the
30 licensing of caregivers and regulation of such ¹[alternate] adult¹
31 family care homes by the Department of Health and Senior Services.

32

33 3. (New section) As used in this act:

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

39 "¹[Alternate] Adult¹ family care" means a 24-hour per day living
40 arrangement for persons who, because of age or physical disability,
41 need assistance with activities of daily living, and for whom services

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted June 25, 2001.

1 designed to meet their individual needs are provided by licensed
2 caregivers in approved ¹[alternate] adult¹ family care homes.

3 ¹[Alternate] Adult¹ family care caregiver" means a person
4 licensed to provide care and services in the daily operation of an
5 ¹[alternate] adult¹ family care home, but does not include the owner
6 or lessor of the building in which the ¹[alternate] adult¹ family care
7 home is situated unless the owner or lessor is also the provider of care
8 and services in the ¹[alternate] adult¹ family care home .

9 ¹[Alternate] Adult¹ family care home" means a residence
10 regulated by the department and housing no more than three clients,
11 in which personal care and other supportive services are provided by
12 an individual who has been licensed by the department as an
13 ¹[alternate] adult¹ family care caregiver. ¹ "Adult family care home"
14 shall not include a rooming or boarding house used and operated under
15 license of the Department of Community Affairs pursuant to P.L.1979,
16 c.496 (C.55:13B-1 et seq.).¹

17 ¹[Alternate] Adult¹ family care sponsor agency" means an entity
18 licensed by the department to administer an ¹[alternate] adult¹ family
19 care program within a given area, which provides essential
20 administrative and clerical support services to two or more caregivers,
21 and which shall not be considered to be a health care facility as defined
22 in section 2 of P.L.1971, c.136 (C.26:2H-2).

23 "Client" means an elder or person with physical disabilities enrolled
24 in ¹[alternate] adult¹ family care.

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

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

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

29

30 4. (New section) a. No person may operate an ¹[alternate]
31 adult¹ family care home unless the person is licensed as an
32 ¹[alternate] adult¹ family care caregiver in accordance with this act.
33 A person may not be licensed as an ¹[alternate] adult¹ family care
34 caregiver unless that person owns or rents the home that is to be
35 utilized as an ¹[alternate] adult¹ family care home ¹[and].¹ resides
36 in that home on a full-time basis ¹and has resided in the municipality
37 in which the adult family care home is located for one year prior to the
38 granting of an initial license¹.

39 b. Application for licensure as an ¹[alternate] adult¹ family care
40 caregiver shall be made upon forms prescribed by the department. The
41 department shall charge a single, non-refundable fee for the filing of
42 an application for the issuance of a license and a single, non-refundable
43 fee for any renewal thereof, as it shall from time to time fix in rules or
44 regulations, except that neither fee shall exceed \$200.

45 c. The department shall issue a license as an ¹[alternate] adult¹

1 family care caregiver to an applicant if it finds that:

2 (1) the applicant and the ¹[alternate] adult¹ family care home
3 identified in the application are fit and adequate, in accordance with
4 the qualifications and standards established by regulation of the
5 commissioner;

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

9 (3) there are sufficient indicia of fiscal responsibility such that the
10 applicant will be able to maintain residence at the ¹[alternate] adult¹
11 family care home with minimal likelihood of eviction or mortgage
12 foreclosure during the term of licensure.

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

16 d. An ¹[alternate] adult¹ family care caregiver license shall specify
17 both the name of the licensee and the location of the particular home
18 in which clients will be housed. An ¹[alternate] adult¹ family care
19 caregiver's license is not transferable and shall apply only to the
20 location and person indicated on the license.

21 e. Upon issuance of a license to an ¹[alternate] adult¹ family care
22 caregiver, the department shall provide a copy of the license to the
23 municipality in which the ¹[alternate] adult¹ family care home is
24 located.

25 ¹f. Upon receipt of a license as an adult family care caregiver, the
26 caregiver shall provide notification of the license to the police
27 department, fire department and ambulance corps that serve the
28 municipality in which the adult family care home is located for their
29 planning purposes.

30 g. For three years following the date of this act, a licensed
31 caregiver shall operate under a contractual agreement with an adult
32 family care sponsor agency to provide services to individuals enrolled
33 in adult family care. At the end of this three year period, the
34 department may extend this requirement, at its discretion, by
35 regulation.¹

36
37 5. (New section) a. The department shall establish a program to
38 check the criminal history record background of any applicant for
39 licensure as an ¹[alternate] adult¹ family care caregiver as well as any
40 person who may act as a substitute caregiver, as defined by regulation
41 of the commissioner, and any non-client 18 years of age or above who
42 resides in the ¹[alternate] adult¹ family care home. The criminal
43 history record background check shall include the exchange of
44 fingerprint data with, and the receipt of criminal history record
45 information from, the Federal Bureau of Investigation and the Division
46 of State Police.

1 b. A person shall be disqualified from being licensed as an
2 ¹[alternate] adult¹ family care caregiver or acting as a substitute
3 caregiver if the check of his criminal history record background reveals
4 a conviction for any of the following crimes or offenses, and a home
5 shall be disqualified from being approved as an ¹[alternate] adult¹
6 family care home if the criminal history record background check of
7 any non-client 18 years of age or older who resides in the home
8 reveals a conviction for any of the following crimes or offenses:

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

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

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

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

19 (d) involving any controlled dangerous substance or controlled
20 substance analog as set forth in chapter 35 of Title 2C of the New
21 Jersey Statutes except paragraph (4) of subsection a. of N.J.S.2C:35-
22 10; or

23 (e) any other crime or disorderly persons offense substantially
24 related to the qualifications or duties of an ¹[alternate] adult¹ family
25 care caregiver.

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

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

36 (1) the nature and seriousness of the offense;

37 (2) the circumstances under which the offense occurred;

38 (3) the date of the offense;

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

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

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

43 (7) any evidence of rehabilitation, including good conduct in prison
44 or in the community, counseling or psychiatric treatment received,
45 acquisition of additional academic or vocational schooling, successful
46 participation in correctional work-release programs, or the

1 recommendation of those who have had the person under their
2 supervision.

3 d. Upon receipt of the criminal history record and a determination
4 that an applicant should be disqualified from acting as a caregiver or
5 that a home should be disqualified as an ¹[alternate] adult¹ family care
6 home, the department shall so notify the applicant in writing. The
7 notice shall specify the convictions upon which the disqualification is
8 based.

9 ¹[e. An applicant shall be responsible for the cost of a criminal
10 history record check conducted in accordance with subsection a. of
11 this section.¹

12

13 6. (New section) a. No person, firm, partnership, corporation,
14 limited liability company or association may operate, conduct or hold
15 itself out to the public as an ¹[alternate] adult¹ family care sponsor
16 agency unless it is duly licensed as an ¹[alternate] adult¹ family care
17 sponsor agency in accordance with the provisions of this act.

18 b. Application for a license as an ¹[alternate] adult¹ family care
19 sponsor agency shall be made upon forms prescribed by the
20 department. The department shall charge a single, non-refundable fee
21 for the filing of an application for the issuance of a license and a
22 single, non-refundable fee for any renewal thereof, as it shall from time
23 to time establish by regulations, except that neither of these fees shall
24 exceed \$4,000.

25 c. An applicant for licensure as an ¹[alternate] adult¹ family care
26 sponsor agency shall comply with all procedures and meet all
27 standards and requirements established by regulation of the
28 commissioner.

29

30 7. (New section) a. An ¹[alternate] adult¹ family care home shall
31 be regulated as a residential home and shall meet all State and local
32 building, sanitation, utility and fire code requirements applicable to
33 single family dwellings ¹; provided however, that the commissioner
34 may require compliance with fire code requirements applicable to
35 boarding houses and residential health care facilities if so warranted by
36 the capabilities of the residents¹.

37 b. The department shall be responsible for inspecting the physical
38 plant of each ¹[alternate] adult¹ family care home initially and on an
39 annual basis. In addition to any licensing fee required under this act,
40 the department may charge an annual, non-refundable fee for
41 inspection of any ¹[alternate] adult¹ family care home, as shall be
42 established from time to time by regulation of the commissioner.

43 c. The department's staff shall be permitted access to enter and
44 inspect an ¹[alternate] adult¹ family care home at any time. The
45 department's staff shall be permitted access to the clients of the

- 1 ¹[alternate] adult¹ family care home in order to interview them
2 privately and to inspect client records.
- 3 d. The department shall be responsible for providing to the
4 ¹[alternate] adult¹ family care caregiver a report of the most recent
5 inspection of the home, written in clear, concise language readily
6 comprehensible to the average person.
- 7 e. The ¹[alternate] adult¹ family care caregiver shall post the
8 inspection report in the entry to, or other equally prominent location
9 in, the home and shall, upon request, provide a copy of the report to
10 each client of, or person applying for admission to, the home, or the
11 legal representative, guardian or conservator of the client or
12 prospective client.
- 13 f. The Office of The Ombudsman for the Institutionalized Elderly
14 shall have jurisdiction to take all actions authorized pursuant to
15 P.L.1977, c.239 (C.52:27G-1 et seq.) with respect to ¹[alternate]
16 adult¹ family care homes.
- 17
- 18 8. (New section) The commissioner shall by regulation establish
19 minimum standards to ensure the health, safety and well-being of each
20 client of the ¹[alternate] adult¹ family care home, including:
21 requirements for the physical site of the home and maintenance
22 standards; rules governing acceptance of clients; services that must be
23 provided to all clients and standards for these services; and
24 components of quality care, including, but not limited to, qualifications
25 and training of ¹[alternate] adult¹ family care caregivers, safety of the
26 caregiving environment, coordination of services and
27 comprehensiveness of care.
- 28
- 29 9. (New section) a. A person, firm, partnership, corporation,
30 limited liability company or association that operates or conducts an
31 ¹[alternate] adult¹ family care home or ¹[alternate] adult¹ family
32 care sponsor agency without first obtaining the license required by this
33 act, or that operates an ¹[alternate] adult¹ family care home or
34 ¹[alternate] adult¹ family care sponsor agency after a revocation or
35 suspension of that license, shall be liable to a penalty of not more than
36 \$2,500 as provided for by regulation for each day of operation in
37 violation hereof for the first offense and for any subsequent offense.
- 38 b. A person, firm, partnership, corporation, limited liability
39 company or association that, except in cases of an emergency,
40 maintains more clients in an ¹[alternate] adult¹ family care home than
41 it is licensed to maintain, shall be subject to penalty, in an amount
42 equal to the daily charge collected from those clients plus \$25 for each
43 day multiplied by the number of clients maintained over the authorized
44 limit.
- 45 c. In addition to the authority granted to the department by this act

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

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

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

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

30 g. In the event of closure of an ¹[alternate] adult¹ family care
31 home, clients who are relocated by the department may be entitled to
32 benefits pursuant to the "Relocation Assistance Act," P.L.1971, c.362
33 (C.20:4-1 et seq.) or the "Relocation Assistance Law of 1967,"
34 P.L.1967, c.79 (C.52:31B-1 et seq.), and any regulations adopted
35 pursuant thereto.

36
37 10. (New section) a. A client of an ¹[alternate] adult¹ family
38 care home may not be deprived of any civil or legal rights, benefits or
39 privileges guaranteed by law, the New Jersey Constitution, or the
40 Constitution of the United States solely by reason of status as a
41 resident in the home. In addition, each client has the right to:

42 (1) be treated as an adult, with respect, dignity, courtesy and
43 consideration, and to have individual needs for privacy recognized and
44 upheld;

45 (2) be informed of all client rights and house rules;

46 (3) make choices with respect to his care, services and lifestyle;

- 1 (4) be informed of his condition and the right to consent to or
2 refuse care and services;
- 3 (5) participate, to the fullest extent that the client is able, in
4 planning for his own care and services;
- 5 (6) receive appropriate care and services, as needed;
- 6 (7) a safe and secure environment;
- 7 (8) be free from abuse, exploitation and neglect;
- 8 (9) complete privacy when receiving care and services;
- 9 (10) associate and communicate privately with any person the
10 client chooses;
- 11 (11) send and receive personal mail unopened;
- 12 (12) participate in activities of social, religious and community
13 groups;
- 14 (13) have medical and personal information kept confidential;
- 15 (14) keep and use a reasonable amount of personal clothing and
16 belongings, and to have a reasonable amount of private, secure storage
17 space;
- 18 (15) manage his own money and financial affairs, unless legally
19 restricted from doing so;
- 20 (16) receive a written agreement regarding the care and services to
21 be provided, and the terms and conditions for termination of residency
22 from the home;
- 23 (17) be provided with a written statement of the rates to be
24 charged, and 30 days' written notice of any change in the rates;
- 25 (18) practice the religion of his choice, or to abstain from religious
26 practice;
- 27 (19) be free of discrimination in regard to race, color, national
28 origin, sex or religion; and
- 29 (20) make suggestions and complaints without fear of retaliation.
- 30 b. The ¹[alternate] adult¹ family care caregiver shall ensure that
31 a written notice of the rights set forth in this section is given to every
32 client. The caregiver shall also post this notice in the entry to, or
33 other equally prominent location in, the ¹[alternate] adult¹ family
34 care home. This notice shall also include the name, address and
35 telephone number of the Office of the Ombudsman for the
36 Institutionalized Elderly.

37

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

40 1. Community residences for the developmentally disabled,
41 community shelters for victims of domestic violence, community
42 residences for the terminally ill [and], community residences for
43 persons with head injuries, and ¹[alternate] adult¹ family care homes
44 for elderly persons and physically disabled adults shall be a permitted
45 use in all residential districts of a municipality, and the requirements
46 therefor shall be the same as for single family dwelling units located

1 within such districts.

2 (cf: P.L.1997, c.321, s.1)

3

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

6 3. As used in this act:

7 a. "Boarding house" means any building, together with any related
8 structure, accessory building, any land appurtenant thereto, and any
9 part thereof, which contains two or more units of dwelling space
10 arranged or intended for single room occupancy, exclusive of any such
11 unit occupied by an owner or operator, and wherein personal or
12 financial services are provided to the residents, including any
13 residential hotel or congregate living arrangement, but excluding any
14 hotel, motel or established guest house wherein a minimum of 85% of
15 the units of dwelling space are offered for limited tenure only, any
16 foster home as defined in section 1 of P.L.1962, c.137 (C.30:4C-26.1),
17 any community residence for the developmentally disabled and any
18 community residence for the mentally ill as defined in section 2 of
19 P.L.1977, c.448 (C.30:11B-2), any ¹[alternate] adult¹ family care
20 home as defined in section 3 of P.L. , c. (C.)(pending before the
21 Legislature as this bill). any dormitory owned or operated on behalf
22 of any nonprofit institution of primary, secondary or higher education
23 for the use of its students, any building arranged for single room
24 occupancy wherein the units of dwelling space are occupied
25 exclusively by students enrolled in a full-time course of study at an
26 institution of higher education approved by the New Jersey
27 Commission on Higher Education, any facility or living arrangement
28 operated by, or under contract with, any State department or agency,
29 upon the written authorization of the commissioner, and any
30 owner-occupied, one-family residential dwelling made available for
31 occupancy by not more than six guests, where the primary purpose of
32 the occupancy is to provide charitable assistance to the guests and
33 where the owner derives no income from the occupancy. A dwelling
34 shall be deemed "owner-occupied" within the meaning of this section
35 if it is owned or operated by a nonprofit religious or charitable
36 association or corporation and is used as the principal residence of a
37 minister or employee of that corporation or association. For any such
38 dwelling, however, fire detectors shall be required as determined by
39 the Department of Community Affairs.

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

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

1 services with a resident's personal funds.

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

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

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

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

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

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

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

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

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

38 (cf: P.L.1997, c.260, s.1)

39

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

44

45 14. This act shall take effect on the 90th day after enactment,
46 except that the Commissioner of Health and Senior Services may take

- 1 such anticipatory administrative action in advance as shall be necessary
- 2 for the implementation of the act.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 849

STATE OF NEW JERSEY

DATED: DECEMBER 13, 2001

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 849 (1R).

This bill, the "New Jersey Adult Family Care Act," is intended to clarify the authority of the Department of Health and Senior Services (DHSS) to regulate adult family care homes.

The bill defines "adult family care home" as a residence regulated by DHSS and housing no more than three elderly or physically disabled clients who need assistance with activities of daily living, in which personal care and other supportive services are provided by a person licensed by DHSS as an adult family care caregiver. The bill establishes standards for such licensure.

The bill:

- C provides explicit statutory authority for DHSS to regulate adult family care homes, but not as health care facilities under the "Health Care Facilities Planning Act," P.L.1971, c.136 (N.J.S.A.26:2H-1 et seq.);
- C deems these entities to be a permitted use in all residential districts of a municipality pursuant to P.L.1978, c.159 (N.J.S.A.40:55D-66.1); and
- C exempts these homes from most of the regulatory authority of the Department of Community Affairs over boarding houses pursuant to the "Rooming and Boarding House Act of 1979," P.L.1979, c.496 (N.J.S.A.55:13B-1 et al.).

The bill takes 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 its implementation.

The provisions of the bill are identical to those of Senate Bill No. 476 Sca, which the committee also reports this day.

FISCAL IMPACT:

It is likely that there will be additional costs to the Department of Health and Senior Services as a result of the performance of criminal history background checks on applicants for licensure as a caregiver. The Office of Legislative Services notes that the cost to DHSS of such

a check in other instances is currently about \$60. Thus for every 100 applicants for a license as a caregiver, the State cost will be roughly \$6,000.

With respect to revenues, because the licensing fee DHSS may charge an applicant would be reduced from \$250 to \$200, fee revenues may be reduced by \$5,000 for every 100 adult family care caregivers who seek a license. It is not known how many persons will seek to be licensed as an adult family care caregiver.

SENATE, No. 476

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Burlington, Monmouth and Ocean)

SYNOPSIS

"New Jersey Alternate Family Care Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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

4

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

7

8 1. (New section) This act shall be known and may be cited as the
9 "New Jersey Alternate Family Care Act."

10

11 2. (New section) The Legislature finds and declares that:

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

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

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

32

33 3. (New section) As used in this act:

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

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

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 "Alternate family care caregiver" means a person licensed to
2 provide care and services in the daily operation of an alternate family
3 care home, but does not include the owner or lessor of the building in
4 which the alternate family care home is situated unless the owner or
5 lessor is also the provider of care and services in the alternate family
6 care home.

7 "Alternate family care home" means a residence regulated by the
8 department and housing no more than three clients, in which personal
9 care and other supportive services are provided by an individual who
10 has been licensed by the department as an alternate family care
11 caregiver.

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

18 "Client" means an elder or person with physical disabilities enrolled
19 in alternate family care.

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

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

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

24

25 4. (New section) a. No person may operate an alternate family
26 care home unless the person is licensed as an alternate family care
27 caregiver in accordance with this act. A person may not be licensed
28 as an alternate family care caregiver unless that person owns or rents
29 the home that is to be utilized as an alternate family care home and
30 resides in that home on a full-time basis.

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

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

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

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

46 (3) there are sufficient indicia of fiscal responsibility such that the

1 applicant will be able to maintain residence at the alternate family care
2 home with minimal likelihood of eviction or mortgage foreclosure
3 during the term of licensure.

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

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

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

15

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

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

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

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

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

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

43 (d) involving any controlled dangerous substance or controlled
44 substance analog as set forth in chapter 35 of Title 2C of the New
45 Jersey Statutes except paragraph (4) of subsection a. of N.J.S.2C:35-
46 10; or

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

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

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

14 (1) the nature and seriousness of the offense;

15 (2) the circumstances under which the offense occurred;

16 (3) the date of the offense;

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

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

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

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

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

32 e. An applicant shall be responsible for the cost of a criminal
33 history record check conducted in accordance with subsection a. of
34 this section.

35
36 6. (New section) a. No person, firm, partnership, corporation,
37 limited liability company or association may operate, conduct or hold
38 itself out to the public as an alternate family care sponsor agency
39 unless it is duly licensed as an alternate family care sponsor agency in
40 accordance with the provisions of this act.

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

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

4
5 7. (New section) a. An alternate family care home shall be
6 regulated as a residential home and shall meet all State and local
7 building, sanitation, utility and fire code requirements applicable to
8 single family dwellings.

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

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

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

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

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

34
35 8. (New section) The commissioner shall by regulation establish
36 minimum standards to ensure the health, safety and well-being of each
37 client of the alternate family care home, including: requirements for
38 the physical site of the home and maintenance standards; rules
39 governing acceptance of clients; services that must be provided to all
40 clients and standards for these services; and components of quality
41 care, including, but not limited to, qualifications and training of
42 alternate family care caregivers, safety of the caregiving environment,
43 coordination of services and comprehensiveness of care.

44
45 9. (New section) a. A person, firm, partnership, corporation,
46 limited liability company or association that operates or conducts an

1 alternate family care home or alternate family care sponsor agency
2 without first obtaining the license required by this act, or that operates
3 an alternate family care home or alternate family care sponsor agency
4 after a revocation or suspension of that license, shall be liable to a
5 penalty of not more than \$2,500 as provided for by regulation for each
6 day of operation in violation hereof for the first offense and for any
7 subsequent offense.

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

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

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

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

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

45 g. In the event of closure of an alternate family care home, clients
46 who are relocated by the department may be entitled to benefits

1 pursuant to the "Relocation Assistance Act," P.L.1971, c.362 (C.20:4-
2 1 et seq.) or the "Relocation Assistance Law of 1967," P.L.1967, c.79
3 (C.52:31B-1 et seq.), and any regulations adopted pursuant thereto.

4
5 10. (New section) a. A client of an alternate family care home
6 may not be deprived of any civil or legal rights, benefits or privileges
7 guaranteed by law, the New Jersey Constitution, or the Constitution
8 of the United States solely by reason of status as a resident in the
9 home. In addition, each client has the right to:

10 (1) be treated as an adult, with respect, dignity, courtesy and
11 consideration, and to have individual needs for privacy recognized and
12 upheld;

13 (2) be informed of all client rights and house rules;

14 (3) make choices with respect to his care, services and lifestyle;

15 (4) be informed of his condition and the right to consent to or
16 refuse care and services;

17 (5) participate, to the fullest extent that the client is able, in
18 planning for his own care and services;

19 (6) receive appropriate care and services, as needed;

20 (7) a safe and secure environment;

21 (8) be free from abuse, exploitation and neglect;

22 (9) complete privacy when receiving care and services;

23 (10) associate and communicate privately with any person the client
24 chooses;

25 (11) send and receive personal mail unopened;

26 (12) participate in activities of social, religious and community
27 groups;

28 (13) have medical and personal information kept confidential;

29 (14) keep and use a reasonable amount of personal clothing and
30 belongings, and to have a reasonable amount of private, secure storage
31 space;

32 (15) manage his own money and financial affairs, unless legally
33 restricted from doing so;

34 (16) receive a written agreement regarding the care and services to
35 be provided, and the terms and conditions for termination of residency
36 from the home;

37 (17) be provided with a written statement of the rates to be
38 charged, and 30 days' written notice of any change in the rates;

39 (18) practice the religion of his choice, or to abstain from religious
40 practice;

41 (19) be free of discrimination in regard to race, color, national
42 origin, sex or religion; and

43 (20) make suggestions and complaints without fear of retaliation.

44 b. The alternate family care caregiver shall ensure that a written
45 notice of the rights set forth in this section is given to every client.
46 The caregiver shall also post this notice in the entry to, or other

1 equally prominent location in, the alternate family care home. This
2 notice shall also include the name, address and telephone number of
3 the Office of the Ombudsman for the Institutionalized Elderly.

4
5 11. Section 1 of P.L.1978, c.159 (C.40:55D-66.1) is amended to
6 read as follows:

7 1. Community residences for the developmentally disabled,
8 community shelters for victims of domestic violence, community
9 residences for the terminally ill ~~[and]~~, community residences for
10 persons with head injuries, and alternate family care homes for elderly
11 persons and physically disabled adults shall be a permitted use in all
12 residential districts of a municipality, and the requirements therefor
13 shall be the same as for single family dwelling units located within such
14 districts.

15 (cf: P.L.1997, c.321, s.1)

16
17 12. Section 3 of P.L.1979, c.496 (C.55:13B-3) is amended to read
18 as follows:

19 3. As used in this act:

20 a. "Boarding house" means any building, together with any related
21 structure, accessory building, any land appurtenant thereto, and any
22 part thereof, which contains two or more units of dwelling space
23 arranged or intended for single room occupancy, exclusive of any such
24 unit occupied by an owner or operator, and wherein personal or
25 financial services are provided to the residents, including any
26 residential hotel or congregate living arrangement, but excluding any
27 hotel, motel or established guest house wherein a minimum of 85% of
28 the units of dwelling space are offered for limited tenure only, any
29 foster home as defined in section 1 of P.L.1962, c.137 (C.30:4C-26.1),
30 any community residence for the developmentally disabled and any
31 community residence for the mentally ill as defined in section 2 of
32 P.L.1977, c.448 (C.30:11B-2), any alternate family care home as
33 defined in section 3 of P.L. , c. (C.)(pending before the
34 Legislature as this bill), any dormitory owned or operated on behalf
35 of any nonprofit institution of primary, secondary or higher education
36 for the use of its students, any building arranged for single room
37 occupancy wherein the units of dwelling space are occupied
38 exclusively by students enrolled in a full-time course of study at an
39 institution of higher education approved by the New Jersey
40 Commission on Higher Education, any facility or living arrangement
41 operated by, or under contract with, any State department or agency,
42 upon the written authorization of the commissioner, and any
43 owner-occupied, one-family residential dwelling made available for
44 occupancy by not more than six guests, where the primary purpose of
45 the occupancy is to provide charitable assistance to the guests and
46 where the owner derives no income from the occupancy. A dwelling

1 shall be deemed "owner-occupied" within the meaning of this section
2 if it is owned or operated by a nonprofit religious or charitable
3 association or corporation and is used as the principal residence of a
4 minister or employee of that corporation or association. For any such
5 dwelling, however, fire detectors shall be required as determined by
6 the Department of Community Affairs.

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

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

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

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

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

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

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

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

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

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

46 l. "Dementia" means a chronic or persistent disorder of the mental

1 processes due to organic brain disease, for which no curative treatment
2 is available, and marked by memory disorders, changes in personality,
3 deterioration in personal care, impaired reasoning ability and
4 disorientation.

5 (cf: P.L.1997, c.260, s.1)

6

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

11

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

16

17

18 STATEMENT

19

20 This bill, which is designated the "New Jersey Alternate Family
21 Care Act," is intended to clarify the authority of the Department of
22 Health and Senior Services (DHSS) to regulate alternate family care
23 homes.

24 The bill defines "alternate family care home" as a residence
25 regulated by DHSS and housing no more than three elderly or
26 physically disabled clients who need assistance with activities of daily
27 living, in which personal care and other supportive services are
28 provided by a person licensed by DHSS as an alternate family care
29 caregiver.

30 Specifically, the bill:

31 C provides explicit statutory authority for DHSS to regulate alternate
32 family care homes, but not as health care facilities under the "Health
33 Care Facilities Planning Act," P.L.1971, c.136 (N.J.S.A.26:2H-1 et
34 seq.);

35 C deems these entities to be a permitted use in all residential districts
36 of a municipality pursuant to P.L.1978, c.159 (N.J.S.A.40:55D-
37 66.1); and

38 C exempts these homes from the regulatory authority of the
39 Department of Community Affairs over boarding houses pursuant
40 to the "Rooming and Boarding House Act of 1979," P.L.1979,
41 c.496 (N.J.S.A.55:13B-1 et al.).

42 The bill takes effect on the 90th day after enactment, except that
43 the Commissioner of Health and Senior Services may take such
44 anticipatory administrative action in advance as shall be necessary for
45 its implementation.

SENATE, No. 476

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Burlington, Monmouth and Ocean)

SYNOPSIS

"New Jersey Alternate Family Care Act."

CURRENT VERSION OF TEXT

As reported by the Senate Women's Issues, Children and Family Services Committee with technical review.



S476 SINGER

2

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2 the Revised Statutes and amending P.L.1978, c.159 and P.L.1979,
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5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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11 2. (New section) The Legislature finds and declares that:

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

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

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

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33 3. (New section) As used in this act:

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

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40 for persons who, because of age or physical disability, need assistance
41 with activities of daily living, and for whom services designed to meet
42 their individual needs are provided by licensed caregivers in approved
43 alternate family care homes.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 "Alternate family care caregiver" means a person licensed to
2 provide care and services in the daily operation of an alternate family
3 care home, but does not include the owner or lessor of the building in
4 which the alternate family care home is situated unless the owner or
5 lessor is also the provider of care and services in the alternate family
6 care home.

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8 department and housing no more than three clients, in which personal
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19 in alternate family care.

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21 Services.

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

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36 regulations, except that neither fee shall exceed \$200.

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

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

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

46 (3) there are sufficient indicia of fiscal responsibility such that the

1 applicant will be able to maintain residence at the alternate family care
2 home with minimal likelihood of eviction or mortgage foreclosure
3 during the term of licensure.

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

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

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

15

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

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

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

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

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

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

43 (d) involving any controlled dangerous substance or controlled
44 substance analog as set forth in chapter 35 of Title 2C of the New
45 Jersey Statutes except paragraph (4) of subsection a. of N.J.S.2C:35-
46 10; or

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

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

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

14 (1) the nature and seriousness of the offense;

15 (2) the circumstances under which the offense occurred;

16 (3) the date of the offense;

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

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

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

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

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

32 e. An applicant shall be responsible for the cost of a criminal
33 history record check conducted in accordance with subsection a. of
34 this section.

35
36 6. (New section) a. No person, firm, partnership, corporation,
37 limited liability company or association may operate, conduct or hold
38 itself out to the public as an alternate family care sponsor agency
39 unless it is duly licensed as an alternate family care sponsor agency in
40 accordance with the provisions of this act.

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

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

4
5 7. (New section) a. An alternate family care home shall be
6 regulated as a residential home and shall meet all State and local
7 building, sanitation, utility and fire code requirements applicable to
8 single family dwellings.

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

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

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

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

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

34
35 8. (New section) The commissioner shall by regulation establish
36 minimum standards to ensure the health, safety and well-being of each
37 client of the alternate family care home, including: requirements for
38 the physical site of the home and maintenance standards; rules
39 governing acceptance of clients; services that must be provided to all
40 clients and standards for these services; and components of quality
41 care, including, but not limited to, qualifications and training of
42 alternate family care caregivers, safety of the caregiving environment,
43 coordination of services and comprehensiveness of care.

44
45 9. (New section) a. A person, firm, partnership, corporation,
46 limited liability company or association that operates or conducts an

1 alternate family care home or alternate family care sponsor agency
2 without first obtaining the license required by this act, or that operates
3 an alternate family care home or alternate family care sponsor agency
4 after a revocation or suspension of that license, shall be liable to a
5 penalty of not more than \$2,500 as provided for by regulation for each
6 day of operation in violation hereof for the first offense and for any
7 subsequent offense.

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

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

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

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

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

45 g. In the event of closure of an alternate family care home, clients
46 who are relocated by the department may be entitled to benefits

1 pursuant to the "Relocation Assistance Act," P.L.1971, c.362 (C.20:4-
2 1 et seq.) or the "Relocation Assistance Law of 1967," P.L.1967, c.79
3 (C.52:31B-1 et seq.), and any regulations adopted pursuant thereto.

4
5 10. (New section) a. A client of an alternate family care home
6 may not be deprived of any civil or legal rights, benefits or privileges
7 guaranteed by law, the New Jersey Constitution, or the Constitution
8 of the United States solely by reason of status as a resident in the
9 home. In addition, each client has the right to:

10 (1) be treated as an adult, with respect, dignity, courtesy and
11 consideration, and to have individual needs for privacy recognized and
12 upheld;

13 (2) be informed of all client rights and house rules;

14 (3) make choices with respect to his care, services and lifestyle;

15 (4) be informed of his condition and the right to consent to or
16 refuse care and services;

17 (5) participate, to the fullest extent that the client is able, in
18 planning for his own care and services;

19 (6) receive appropriate care and services, as needed;

20 (7) a safe and secure environment;

21 (8) be free from abuse, exploitation and neglect;

22 (9) complete privacy when receiving care and services;

23 (10) associate and communicate privately with any person the
24 client chooses;

25 (11) send and receive personal mail unopened;

26 (12) participate in activities of social, religious and community
27 groups;

28 (13) have medical and personal information kept confidential;

29 (14) keep and use a reasonable amount of personal clothing and
30 belongings, and to have a reasonable amount of private, secure storage
31 space;

32 (15) manage his own money and financial affairs, unless legally
33 restricted from doing so;

34 (16) receive a written agreement regarding the care and services to
35 be provided, and the terms and conditions for termination of residency
36 from the home;

37 (17) be provided with a written statement of the rates to be
38 charged, and 30 days' written notice of any change in the rates;

39 (18) practice the religion of his choice, or to abstain from religious
40 practice;

41 (19) be free of discrimination in regard to race, color, national
42 origin, sex or religion; and

43 (20) make suggestions and complaints without fear of retaliation.

44 b. The alternate family care caregiver shall ensure that a written
45 notice of the rights set forth in this section is given to every client.
46 The caregiver shall also post this notice in the entry to, or other

S476 SINGER

1 equally prominent location in, the alternate family care home. This
2 notice shall also include the name, address and telephone number of
3 the Office of the Ombudsman for the Institutionalized Elderly.

4
5 11. Section 1 of P.L.1978, c.159 (C.40:55D-66.1) is amended to
6 read as follows:

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

15 (cf: P.L.1997, c.321, s.1)

16
17 12. Section 3 of P.L.1979, c.496 (C.55:13B-3) is amended to read
18 as follows:

19 3. As used in this act:

20 a. "Boarding house" means any building, together with any related
21 structure, accessory building, any land appurtenant thereto, and any
22 part thereof, which contains two or more units of dwelling space
23 arranged or intended for single room occupancy, exclusive of any such
24 unit occupied by an owner or operator, and wherein personal or
25 financial services are provided to the residents, including any
26 residential hotel or congregate living arrangement, but excluding any
27 hotel, motel or established guest house wherein a minimum of 85% of
28 the units of dwelling space are offered for limited tenure only, any
29 foster home as defined in section 1 of P.L.1962, c.137 (C.30:4C-26.1),
30 any community residence for the developmentally disabled and any
31 community residence for the mentally ill as defined in section 2 of
32 P.L.1977, c.448 (C.30:11B-2), any alternate family care home as
33 defined in section 3 of P.L. , c. (C.)(pending before the
34 Legislature as this bill), any dormitory owned or operated on behalf
35 of any nonprofit institution of primary, secondary or higher education
36 for the use of its students, any building arranged for single room
37 occupancy wherein the units of dwelling space are occupied
38 exclusively by students enrolled in a full-time course of study at an
39 institution of higher education approved by the New Jersey
40 Commission on Higher Education, any facility or living arrangement
41 operated by, or under contract with, any State department or agency,
42 upon the written authorization of the commissioner, and any
43 owner-occupied, one-family residential dwelling made available for
44 occupancy by not more than six guests, where the primary purpose of
45 the occupancy is to provide charitable assistance to the guests and
46 where the owner derives no income from the occupancy. A dwelling

1 shall be deemed "owner-occupied" within the meaning of this section
2 if it is owned or operated by a nonprofit religious or charitable
3 association or corporation and is used as the principal residence of a
4 minister or employee of that corporation or association. For any such
5 dwelling, however, fire detectors shall be required as determined by
6 the Department of Community Affairs.

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

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

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

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

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

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

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

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

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

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

46 l. "Dementia" means a chronic or persistent disorder of the mental

1 processes due to organic brain disease, for which no curative treatment
2 is available, and marked by memory disorders, changes in personality,
3 deterioration in personal care, impaired reasoning ability and
4 disorientation.

5 (cf: P.L.1997, c.260, s.1)

6

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

11

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

SENATE WOMENS ISSUES, CHILDREN AND FAMILY
SERVICES COMMITTEE

STATEMENT TO

SENATE, No. 476

STATE OF NEW JERSEY

DATED: JUNE 25, 2001

The Senate Womens Issues, Children and Family Services Committee reports favorably Senate Bill No. 476.

This bill, which is designated the "New Jersey Alternate Family Care Act," is intended to clarify the authority of the Department of Health and Senior Services (DHSS) to regulate alternate family care homes.

The bill defines "alternate family care home" as a residence regulated by DHSS and housing no more than three elderly or physically disabled clients who need assistance with activities of daily living, in which personal care and other supportive services are provided by a person licensed by DHSS as an alternate family care caregiver.

Specifically, the bill:

- C provides explicit statutory authority for DHSS to regulate alternate family care homes, but not as health care facilities under the "Health Care Facilities Planning Act," N.J.S.A.26:2H-1 et seq.;
- C deems these entities to be a permitted use in all residential districts of a municipality pursuant to N.J.S.A.40:55D-66.1; and
- C exempts these homes from the regulatory authority of the Department of Community Affairs over boarding houses pursuant to the "Rooming and Boarding House Act of 1979," N.J.S.A.55:13B-1 et al.

The bill takes 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 its implementation.

This bill was prefiled for introduction in the 2000-2001 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

This bill is identical to Assembly Bill No. 849 (Thompson) which is pending before the General Assembly.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 476
STATE OF NEW JERSEY
209th LEGISLATURE

DATED: JULY 18, 2001

SUMMARY

Synopsis: "New Jersey Alternate Family Care Act".
Type of Impact: None.
Agencies Affected: Department of Health and Senior Services (DHSS) and the Department of Community Affairs (DCA).

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	\$0	\$0	\$0
State Revenue	Possible Small Revenue Loss--See Comments Below		

- ! As the legislation merely clarifies that the Department of Health and Senior Services (DHSS) has the authority to regulate alternate family care homes, there is no additional administrative cost to the DHSS.
- ! As the fee charged an alternate family care caregiver applicant would be reduced from \$250 to \$200, DHSS fee income may decline by \$5,000 for every 100 applicants who apply for licensure.

BILL DESCRIPTION

Senate Bill No. 476 of 2000, the "New Jersey Alternate Family Care Act," is intended to clarify the authority of DHSS to regulate alternate family care homes. Specifically, the bill defines "alternate family care homes" to mean "a residence regulated by the [DHSS] 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 [DHSS] as an alternate family care caregiver." In addition, the licensing fee charged an applicant would be reduced from \$250 to \$200.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

There is no additional cost associated with the legislation as the legislation is intended to clarify DHSS' authority with respect to the regulation of alternate family care homes. As the licensing fee DHSS may charge an applicant would be reduced from \$250 to \$200, fee revenues may be reduced by \$5,000 for every 100 alternate family care caregivers who seek a license. It is not known how many persons will seek to be licensed as an alternate family care caregiver.

Section: *Human Services*

Analyst: *Jay Hershberg*
Principal Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 476

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 13, 2001

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 476.

This bill, the "New Jersey Adult Family Care Act," is intended to clarify the authority of the Department of Health and Senior Services (DHSS) to regulate adult family care homes.

The bill defines "adult family care home" as a residence regulated by DHSS and housing no more than three elderly or physically disabled clients who need assistance with activities of daily living, in which personal care and other supportive services are provided by a person licensed by DHSS as an adult family care caregiver. The bill establishes standards for such licensure.

The bill:

- C provides explicit statutory authority for DHSS to regulate adult family care homes, but not as health care facilities under the "Health Care Facilities Planning Act," P.L.1971, c.136 (N.J.S.A.26:2H-1 et seq.);
- C deems these entities to be a permitted use in all residential districts of a municipality pursuant to P.L.1978, c.159 (N.J.S.A.40:55D-66.1); and
- C exempts these homes from most of the regulatory authority of the Department of Community Affairs over boarding houses pursuant to the "Rooming and Boarding House Act of 1979," P.L.1979, c.496 (N.J.S.A.55:13B-1 et al.).

The bill takes 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 its implementation.

The provisions of the bill as amended are identical to those of Assembly Bill No. 849 (1R), which the committee also reports this day.

COMMITTEE AMENDMENTS:

Committee amendments to this bill: (1) change the designation from "alternate family care" to "adult family care"; (2) add, as a requirement for licensure as an adult family care caregiver, that the

license applicant must have resided for at least one year in the municipality in which the adult family care home is located; (3) require that upon licensure, a caregiver must notify local health and safety agencies for their planning purposes; (4) provide that, for the three years after enactment of the legislation, a caregiver must operate under contract with a sponsor agency to provide services to the caregiver's adult family care clients; (5) authorize the commissioner to require compliance with fire code requirements, if appropriate; and (6) shift the cost of criminal history record checks of applicants for licensure as a caregiver from the applicant to the department.

FISCAL IMPACT:

It is likely that there will be additional costs to the Department of Health and Senior Services as a result of the performance of criminal history background checks on applicants for licensure as a caregiver. The Office of Legislative Services notes that the cost to DHSS of such a check in other instances is currently about \$60. Thus for every 100 applicants for a license as a caregiver, the State cost will be roughly \$6,000.

With respect to revenues, because the licensing fee DHSS may charge an applicant would be reduced from \$250 to \$200, fee revenues may be reduced by \$5,000 for every 100 adult family care caregivers who seek a license. It is not known how many persons will seek to be licensed as an adult family care caregiver.

[First Reprint]

SENATE, No. 476

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Burlington, Monmouth and Ocean)

SYNOPSIS

"New Jersey Adult Family Care Act."

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on December 13, 2001, with amendments.



1 AN ACT concerning ¹[alternate] adult¹ family care, supplementing
2 Title 26 of the Revised Statutes, and amending P.L.1978, c.159 and
3 P.L.1979, c.496.

4

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

7

8 1. (New section) This act shall be known and may be cited as the
9 "New Jersey ¹[Alternate] Adult¹ Family Care Act."

10

11 2. (New section) The Legislature finds and declares that:

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

21 b. ¹[Alternate] Adult¹ family care has proven to be a successful
22 and cost-effective means of fulfilling basic shelter and everyday service
23 needs of elders and physically disabled adults, thereby enabling them
24 to preserve their independence, choice and dignity in a secure
25 environment.

26 c. Therefore, it is the policy of this State to promote the health,
27 safety and welfare of its elderly and physically disabled citizens by
28 encouraging the development of ¹[alternate] adult¹ family care homes
29 for elders and physically disabled adults and to provide for the
30 licensing of caregivers and regulation of such ¹[alternate] adult¹
31 family care homes by the Department of Health and Senior Services.

32

33 3. (New section) As used in this act:

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

39 "¹[Alternate] Adult¹ family care" means a 24-hour per day living
40 arrangement for persons who, because of age or physical disability,
41 need assistance with activities of daily living, and for whom services

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted December 13, 2001.

1 designed to meet their individual needs are provided by licensed
2 caregivers in approved ¹[alternate] adult¹ family care homes.

3 ¹[Alternate] Adult¹ family care caregiver" means a person
4 licensed to provide care and services in the daily operation of an
5 ¹[alternate] adult¹ family care home, but does not include the owner
6 or lessor of the building in which the ¹[alternate] adult¹ family care
7 home is situated unless the owner or lessor is also the provider of care
8 and services in the ¹[alternate] adult¹ family care home.

9 ¹[Alternate] Adult¹ family care home" means a residence
10 regulated by the department and housing no more than three clients,
11 in which personal care and other supportive services are provided by
12 an individual who has been licensed by the department as an
13 ¹[alternate] adult¹ family care caregiver. ¹"Adult family care home"
14 shall not include a rooming or boarding house used and operated under
15 license of the Department of Community Affairs pursuant to P.L.1979,
16 c.496 (C.55:13B-1 et seq.).¹

17 ¹[Alternate] Adult¹ family care sponsor agency" means an entity
18 licensed by the department to administer an ¹[alternate] adult¹ family
19 care program within a given area, which provides essential
20 administrative and clerical support services to two or more caregivers,
21 and which shall not be considered to be a health care facility as defined
22 in section 2 of P.L.1971, c.136 (C.26:2H-2).

23 "Client" means an elder or person with physical disabilities enrolled
24 in ¹[alternate] adult¹ family care.

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

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

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

29

30 4. (New section) a. No person may operate an ¹[alternate] adult¹
31 family care home unless the person is licensed as an ¹[alternate] adult¹
32 family care caregiver in accordance with this act. A person may not
33 be licensed as an ¹[alternate] adult¹ family care caregiver unless that
34 person owns or rents the home that is to be utilized as an ¹[alternate]
35 adult¹ family care home ¹[and],¹ resides in that home on a full-time
36 basis ¹and has resided in the municipality in which the adult family care
37 home is located for one year prior to the granting of an initial license¹.

38 b. Application for licensure as an ¹[alternate] adult¹ family care
39 caregiver shall be made upon forms prescribed by the department. The
40 department shall charge a single, non-refundable fee for the filing of
41 an application for the issuance of a license and a single, non-refundable
42 fee for any renewal thereof, as it shall from time to time fix in rules or
43 regulations, except that neither fee shall exceed \$200.

44 c. The department shall issue a license as an ¹[alternate] adult¹
45 family care caregiver to an applicant if it finds that:

1 (1) the applicant and the ¹[alternate] adult¹ family care home
2 identified in the application are fit and adequate, in accordance with
3 the qualifications and standards established by regulation of the
4 commissioner;

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

8 (3) there are sufficient indicia of fiscal responsibility such that the
9 applicant will be able to maintain residence at the ¹[alternate] adult¹
10 family care home with minimal likelihood of eviction or mortgage
11 foreclosure during the term of licensure.

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

15 d. An ¹[alternate] adult¹ family care caregiver license shall specify
16 both the name of the licensee and the location of the particular home
17 in which clients will be housed. An ¹[alternate] adult¹ family care
18 caregiver's license is not transferable and shall apply only to the
19 location and person indicated on the license.

20 e. Upon issuance of a license to an ¹[alternate] adult¹ family care
21 caregiver, the department shall provide a copy of the license to the
22 municipality in which the ¹[alternate] adult¹ family care home is
23 located.

24 ¹f. Upon receipt of a license as an adult family care caregiver, the
25 caregiver shall provide notification of the license to the police
26 department, fire department and ambulance corps that serve the
27 municipality in which the adult family care home is located for their
28 planning purposes.

29 g. For three years following the date of this act, a licensed
30 caregiver shall operate under a contractual agreement with an adult
31 family care sponsor agency to provide services to individuals enrolled
32 in adult family care. At the end of this three year period, the
33 department may extend this requirement, at its discretion, by
34 regulation.¹

35

36 5. (New section) a. The department shall establish a program to
37 check the criminal history record background of any applicant for
38 licensure as an ¹[alternate] adult¹ family care caregiver as well as any
39 person who may act as a substitute caregiver, as defined by regulation
40 of the commissioner, and any non-client 18 years of age or above who
41 resides in the ¹[alternate] adult¹ family care home. The criminal
42 history record background check shall include the exchange of
43 fingerprint data with, and the receipt of criminal history record
44 information from, the Federal Bureau of Investigation and the Division
45 of State Police.

1 b. A person shall be disqualified from being licensed as an
2 ¹[alternate] adult¹ family care caregiver or acting as a substitute
3 caregiver if the check of his criminal history record background reveals
4 a conviction for any of the following crimes or offenses, and a home
5 shall be disqualified from being approved as an ¹[alternate] adult¹
6 family care home if the criminal history record background check of
7 any non-client 18 years of age or older who resides in the home
8 reveals a conviction for any of the following crimes or offenses:

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

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

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

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

19 (d) involving any controlled dangerous substance or controlled
20 substance analog as set forth in chapter 35 of Title 2C of the New
21 Jersey Statutes except paragraph (4) of subsection a. of N.J.S.2C:35-
22 10; or

23 (e) any other crime or disorderly persons offense substantially
24 related to the qualifications or duties of an ¹[alternate] adult¹ family
25 care caregiver.

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

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

36 (1) the nature and seriousness of the offense;

37 (2) the circumstances under which the offense occurred;

38 (3) the date of the offense;

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

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

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

43 (7) any evidence of rehabilitation, including good conduct in prison
44 or in the community, counseling or psychiatric treatment received,
45 acquisition of additional academic or vocational schooling, successful
46 participation in correctional work-release programs, or the

1 recommendation of those who have had the person under their
2 supervision.

3 d. Upon receipt of the criminal history record and a determination
4 that an applicant should be disqualified from acting as a caregiver or
5 that a home should be disqualified as an ¹[alternate] adult¹ family care
6 home, the department shall so notify the applicant in writing. The
7 notice shall specify the convictions upon which the disqualification is
8 based.

9 ¹[e. An applicant shall be responsible for the cost of a criminal
10 history record check conducted in accordance with subsection a. of
11 this section.]¹

12

13 6. (New section) a. No person, firm, partnership, corporation,
14 limited liability company or association may operate, conduct or hold
15 itself out to the public as an ¹[alternate] adult¹ family care sponsor
16 agency unless it is duly licensed as an ¹[alternate] adult¹ family care
17 sponsor agency in accordance with the provisions of this act.

18 b. Application for a license as an ¹[alternate] adult¹ family care
19 sponsor agency shall be made upon forms prescribed by the
20 department. The department shall charge a single, non-refundable fee
21 for the filing of an application for the issuance of a license and a
22 single, non-refundable fee for any renewal thereof, as it shall from time
23 to time establish by regulations, except that neither of these fees shall
24 exceed \$4,000.

25 c. An applicant for licensure as an ¹[alternate] adult¹ family care
26 sponsor agency shall comply with all procedures and meet all
27 standards and requirements established by regulation of the
28 commissioner.

29

30 7. (New section) a. An ¹[alternate] adult¹ family care home shall
31 be regulated as a residential home and shall meet all State and local
32 building, sanitation, utility and fire code requirements applicable to
33 single family dwellings¹; provided however, that the commissioner may
34 require compliance with fire code requirements applicable to boarding
35 houses and residential health care facilities if so warranted by the
36 capabilities of the residents¹.

37 b. The department shall be responsible for inspecting the physical
38 plant of each ¹[alternate] adult¹ family care home initially and on an
39 annual basis. In addition to any licensing fee required under this act,
40 the department may charge an annual, non-refundable fee for
41 inspection of any ¹[alternate] adult¹ family care home, as shall be
42 established from time to time by regulation of the commissioner.

43 c. The department's staff shall be permitted access to enter and
44 inspect an ¹[alternate] adult¹ family care home at any time. The
45 department's staff shall be permitted access to the clients of the

- 1 ¹[alternate] adult¹ family care home in order to interview them
2 privately and to inspect client records.
- 3 d. The department shall be responsible for providing to the
4 ¹[alternate] adult¹ family care caregiver a report of the most recent
5 inspection of the home, written in clear, concise language readily
6 comprehensible to the average person.
- 7 e. The ¹[alternate] adult¹ family care caregiver shall post the
8 inspection report in the entry to, or other equally prominent location
9 in, the home and shall, upon request, provide a copy of the report to
10 each client of, or person applying for admission to, the home, or the
11 legal representative, guardian or conservator of the client or
12 prospective client.
- 13 f. The Office of The Ombudsman for the Institutionalized Elderly
14 shall have jurisdiction to take all actions authorized pursuant to
15 P.L.1977, c.239 (C.52:27G-1 et seq.) with respect to ¹[alternate]
16 adult¹ family care homes.
- 17
- 18 8. (New section) The commissioner shall by regulation establish
19 minimum standards to ensure the health, safety and well-being of each
20 client of the ¹[alternate] adult¹ family care home, including:
21 requirements for the physical site of the home and maintenance
22 standards; rules governing acceptance of clients; services that must be
23 provided to all clients and standards for these services; and
24 components of quality care, including, but not limited to, qualifications
25 and training of ¹[alternate] adult¹ family care caregivers, safety of the
26 caregiving environment, coordination of services and
27 comprehensiveness of care.
- 28
- 29 9. (New section) a. A person, firm, partnership, corporation,
30 limited liability company or association that operates or conducts an
31 ¹[alternate] adult¹ family care home or ¹[alternate] adult¹ family care
32 sponsor agency without first obtaining the license required by this act,
33 or that operates an ¹[alternate] adult¹ family care home or
34 ¹[alternate] adult¹ family care sponsor agency after a revocation or
35 suspension of that license, shall be liable to a penalty of not more than
36 \$2,500 as provided for by regulation for each day of operation in
37 violation hereof for the first offense and for any subsequent offense.
- 38 b. A person, firm, partnership, corporation, limited liability
39 company or association that, except in cases of an emergency,
40 maintains more clients in an ¹[alternate] adult¹ family care home than
41 it is licensed to maintain, shall be subject to penalty, in an amount
42 equal to the daily charge collected from those clients plus \$25 for each
43 day multiplied by the number of clients maintained over the authorized
44 limit.

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

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

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

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

31 g. In the event of closure of an ¹[alternate] adult¹ family care
32 home, clients who are relocated by the department may be entitled to
33 benefits pursuant to the "Relocation Assistance Act," P.L.1971, c.362
34 (C.20:4-1 et seq.) or the "Relocation Assistance Law of 1967,"
35 P.L.1967, c.79 (C.52:31B-1 et seq.), and any regulations adopted
36 pursuant thereto.

37

38 10. (New section) a. A client of an ¹[alternate] adult¹ family care
39 home may not be deprived of any civil or legal rights, benefits or
40 privileges guaranteed by law, the New Jersey Constitution, or the
41 Constitution of the United States solely by reason of status as a
42 resident in the home. In addition, each client has the right to:

43 (1) be treated as an adult, with respect, dignity, courtesy and
44 consideration, and to have individual needs for privacy recognized and
45 upheld;

46 (2) be informed of all client rights and house rules;

- 1 (3) make choices with respect to his care, services and lifestyle;
 - 2 (4) be informed of his condition and the right to consent to or
 - 3 refuse care and services;
 - 4 (5) participate, to the fullest extent that the client is able, in
 - 5 planning for his own care and services;
 - 6 (6) receive appropriate care and services, as needed;
 - 7 (7) a safe and secure environment;
 - 8 (8) be free from abuse, exploitation and neglect;
 - 9 (9) complete privacy when receiving care and services;
 - 10 (10) associate and communicate privately with any person the
 - 11 client chooses;
 - 12 (11) send and receive personal mail unopened;
 - 13 (12) participate in activities of social, religious and community
 - 14 groups;
 - 15 (13) have medical and personal information kept confidential;
 - 16 (14) keep and use a reasonable amount of personal clothing and
 - 17 belongings, and to have a reasonable amount of private, secure storage
 - 18 space;
 - 19 (15) manage his own money and financial affairs, unless legally
 - 20 restricted from doing so;
 - 21 (16) receive a written agreement regarding the care and services to
 - 22 be provided, and the terms and conditions for termination of residency
 - 23 from the home;
 - 24 (17) be provided with a written statement of the rates to be
 - 25 charged, and 30 days' written notice of any change in the rates;
 - 26 (18) practice the religion of his choice, or to abstain from religious
 - 27 practice;
 - 28 (19) be free of discrimination in regard to race, color, national
 - 29 origin, sex or religion; and
 - 30 (20) make suggestions and complaints without fear of retaliation.
- 31 b. The ¹[alternate] adult¹ family care caregiver shall ensure that
- 32 a written notice of the rights set forth in this section is given to every
- 33 client. The caregiver shall also post this notice in the entry to, or
- 34 other equally prominent location in, the ¹[alternate] adult¹ family care
- 35 home. This notice shall also include the name, address and telephone
- 36 number of the Office of the Ombudsman for the Institutionalized
- 37 Elderly.
- 38
- 39 11. Section 1 of P.L.1978, c.159 (C.40:55D-66.1) is amended to
- 40 read as follows:
- 41 1. Community residences for the developmentally disabled,
- 42 community shelters for victims of domestic violence, community
- 43 residences for the terminally ill [and], community residences for
- 44 persons with head injuries, and ¹[alternate] adult¹ family care homes
- 45 for elderly persons and physically disabled adults shall be a permitted
- 46 use in all residential districts of a municipality, and the requirements

1 therefor shall be the same as for single family dwelling units located
2 within such districts.

3 (cf: P.L.1997, c.321, s.1)

4

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

7 3. As used in this act:

8 a. "Boarding house" means any building, together with any related
9 structure, accessory building, any land appurtenant thereto, and any
10 part thereof, which contains two or more units of dwelling space
11 arranged or intended for single room occupancy, exclusive of any such
12 unit occupied by an owner or operator, and wherein personal or
13 financial services are provided to the residents, including any
14 residential hotel or congregate living arrangement, but excluding any
15 hotel, motel or established guest house wherein a minimum of 85% of
16 the units of dwelling space are offered for limited tenure only, any
17 foster home as defined in section 1 of P.L.1962, c.137 (C.30:4C-26.1),
18 any community residence for the developmentally disabled and any
19 community residence for the mentally ill as defined in section 2 of
20 P.L.1977, c.448 (C.30:11B-2), any ¹[alternate] adult¹ family care
21 home as defined in section 3 of P.L. , c. (C.)(pending before the
22 Legislature as this bill), any dormitory owned or operated on behalf
23 of any nonprofit institution of primary, secondary or higher education
24 for the use of its students, any building arranged for single room
25 occupancy wherein the units of dwelling space are occupied
26 exclusively by students enrolled in a full-time course of study at an
27 institution of higher education approved by the New Jersey
28 Commission on Higher Education, any facility or living arrangement
29 operated by, or under contract with, any State department or agency,
30 upon the written authorization of the commissioner, and any
31 owner-occupied, one-family residential dwelling made available for
32 occupancy by not more than six guests, where the primary purpose of
33 the occupancy is to provide charitable assistance to the guests and
34 where the owner derives no income from the occupancy. A dwelling
35 shall be deemed "owner-occupied" within the meaning of this section
36 if it is owned or operated by a nonprofit religious or charitable
37 association or corporation and is used as the principal residence of a
38 minister or employee of that corporation or association. For any such
39 dwelling, however, fire detectors shall be required as determined by
40 the Department of Community Affairs.

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

43 c. "Financial services" means any assistance permitted or required
44 by the commissioner to be furnished by an owner or operator to a
45 resident in the management of personal financial matters, including,
46 but not limited to, the cashing of checks, holding of personal funds for

1 safekeeping in any manner or assistance in the purchase of goods or
2 services with a resident's personal funds.

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

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

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

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

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

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

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

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

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

39 (cf: P.L.1997, c.260, s.1)

40

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

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

P.L. 2001, CHAPTER 304, *approved January 2, 2002*
Assembly, No. 849 (*First Reprint*)

1 AN ACT concerning ¹[alternate] adult¹ family care, supplementing
2 Title 26 of the Revised Statutes, and amending P.L.1978, c.159 and
3 P.L.1979, c.496.

4

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

7

8 1. (New section) This act shall be known and may be cited as the
9 "New Jersey ¹[Alternate] Adult¹ Family Care Act."

10

11 2. (New section) The Legislature finds and declares that:

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

21 b. ¹[Alternate] Adult¹ family care has proven to be a successful
22 and cost-effective means of fulfilling basic shelter and everyday service
23 needs of elders and physically disabled adults, thereby enabling them
24 to preserve their independence, choice and dignity in a secure
25 environment.

26 c. Therefore, it is the policy of this State to promote the health,
27 safety and welfare of its elderly and physically disabled citizens by
28 encouraging the development of ¹[alternate] adult¹ family care homes
29 for elders and physically disabled adults and to provide for the
30 licensing of caregivers and regulation of such ¹[alternate] adult¹
31 family care homes by the Department of Health and Senior Services.

32

33 3. (New section) As used in this act:

34 "Activities of daily living" or "ADL" means functions and tasks for
35 self-care which are performed either independently or with supervision

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted June 25, 2001.

1 or assistance, which include, but are not limited to, mobility,
2 transferring, walking, grooming, bathing, dressing and undressing,
3 eating and toileting.

4 "1[Alternate] Adult¹ family care" means a 24-hour per day living
5 arrangement for persons who, because of age or physical disability,
6 need assistance with activities of daily living, and for whom services
7 designed to meet their individual needs are provided by licensed
8 caregivers in approved 1[alternate] adult¹ family care homes.

9 "1[Alternate] Adult¹ family care caregiver" means a person
10 licensed to provide care and services in the daily operation of an
11 1[alternate] adult¹ family care home, but does not include the owner
12 or lessor of the building in which the 1[alternate] adult¹ family care
13 home is situated unless the owner or lessor is also the provider of care
14 and services in the 1[alternate] adult¹ family care home .

15 "1[Alternate] Adult¹ family care home" means a residence
16 regulated by the department and housing no more than three clients,
17 in which personal care and other supportive services are provided by
18 an individual who has been licensed by the department as an
19 1[alternate] adult¹ family care caregiver. 1 "Adult family care home"
20 shall not include a rooming or boarding house used and operated under
21 license of the Department of Community Affairs pursuant to P.L.1979,
22 c.496 (C.55:13B-1 et seq.).¹

23 "1[Alternate] Adult¹ family care sponsor agency" means an entity
24 licensed by the department to administer an 1[alternate] adult¹ family
25 care program within a given area, which provides essential
26 administrative and clerical support services to two or more caregivers,
27 and which shall not be considered to be a health care facility as defined
28 in section 2 of P.L.1971, c.136 (C.26:2H-2).

29 "Client" means an elder or person with physical disabilities enrolled
30 in 1[alternate] adult¹ family care.

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

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

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

35

36 4. (New section) a. No person may operate an 1[alternate]
37 adult¹ family care home unless the person is licensed as an
38 1[alternate] adult¹ family care caregiver in accordance with this act.
39 A person may not be licensed as an 1[alternate] adult¹ family care
40 caregiver unless that person owns or rents the home that is to be
41 utilized as an 1[alternate] adult¹ family care home 1[and],¹ resides
42 in that home on a full-time basis 1and has resided in the municipality
43 in which the adult family care home is located for one year prior to the
44 granting of an initial license¹.

45 b. Application for licensure as an 1[alternate] adult¹ family care

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

6 c. The department shall issue a license as an ¹[alternate] adult¹
7 family care caregiver to an applicant if it finds that:

8 (1) the applicant and the ¹[alternate] adult¹ family care home
9 identified in the application are fit and adequate, in accordance with
10 the qualifications and standards established by regulation of the
11 commissioner;

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

15 (3) there are sufficient indicia of fiscal responsibility such that the
16 applicant will be able to maintain residence at the ¹[alternate] adult¹
17 family care home with minimal likelihood of eviction or mortgage
18 foreclosure during the term of licensure.

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

22 d. An ¹[alternate] adult¹ family care caregiver license shall specify
23 both the name of the licensee and the location of the particular home
24 in which clients will be housed. An ¹[alternate] adult¹ family care
25 caregiver's license is not transferable and shall apply only to the
26 location and person indicated on the license.

27 e. Upon issuance of a license to an ¹[alternate] adult¹ family care
28 caregiver, the department shall provide a copy of the license to the
29 municipality in which the ¹[alternate] adult¹ family care home is
30 located.

31 ¹f. Upon receipt of a license as an adult family care caregiver, the
32 caregiver shall provide notification of the license to the police
33 department, fire department and ambulance corps that serve the
34 municipality in which the adult family care home is located for their
35 planning purposes.

36 g. For three years following the date of this act, a licensed
37 caregiver shall operate under a contractual agreement with an adult
38 family care sponsor agency to provide services to individuals enrolled
39 in adult family care. At the end of this three year period, the
40 department may extend this requirement, at its discretion, by
41 regulation.¹

42

43 5. (New section) a. The department shall establish a program to
44 check the criminal history record background of any applicant for
45 licensure as an ¹[alternate] adult¹ family care caregiver as well as any
46 person who may act as a substitute caregiver, as defined by regulation

1 of the commissioner, and any non-client 18 years of age or above who
2 resides in the ¹[alternate] adult¹ family care home. The criminal
3 history record background check shall include the exchange of
4 fingerprint data with, and the receipt of criminal history record
5 information from, the Federal Bureau of Investigation and the Division
6 of State Police.

7 b. A person shall be disqualified from being licensed as an
8 ¹[alternate] adult¹ family care caregiver or acting as a substitute
9 caregiver if the check of his criminal history record background reveals
10 a conviction for any of the following crimes or offenses, and a home
11 shall be disqualified from being approved as an ¹[alternate] adult¹
12 family care home if the criminal history record background check of
13 any non-client 18 years of age or older who resides in the home
14 reveals a conviction for any of the following crimes or offenses:

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

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

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

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

25 (d) involving any controlled dangerous substance or controlled
26 substance analog as set forth in chapter 35 of Title 2C of the New
27 Jersey Statutes except paragraph (4) of subsection a. of N.J.S.2C:35-
28 10; or

29 (e) any other crime or disorderly persons offense substantially
30 related to the qualifications or duties of an ¹[alternate] adult¹ family
31 care caregiver.

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

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

42 (1) the nature and seriousness of the offense;

43 (2) the circumstances under which the offense occurred;

44 (3) the date of the offense;

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

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

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

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

9 d. Upon receipt of the criminal history record and a determination
10 that an applicant should be disqualified from acting as a caregiver or
11 that a home should be disqualified as an ¹[alternate] adult¹ family care
12 home, the department shall so notify the applicant in writing. The
13 notice shall specify the convictions upon which the disqualification is
14 based.

15 ¹[e. An applicant shall be responsible for the cost of a criminal
16 history record check conducted in accordance with subsection a. of
17 this section.¹

18

19 6. (New section) a. No person, firm, partnership, corporation,
20 limited liability company or association may operate, conduct or hold
21 itself out to the public as an ¹[alternate] adult¹ family care sponsor
22 agency unless it is duly licensed as an ¹[alternate] adult¹ family care
23 sponsor agency in accordance with the provisions of this act.

24 b. Application for a license as an ¹[alternate] adult¹ family care
25 sponsor agency shall be made upon forms prescribed by the
26 department. The department shall charge a single, non-refundable fee
27 for the filing of an application for the issuance of a license and a
28 single, non-refundable fee for any renewal thereof, as it shall from time
29 to time establish by regulations, except that neither of these fees shall
30 exceed \$4,000.

31 c. An applicant for licensure as an ¹[alternate] adult¹ family care
32 sponsor agency shall comply with all procedures and meet all
33 standards and requirements established by regulation of the
34 commissioner.

35

36 7. (New section) a. An ¹[alternate] adult¹ family care home shall
37 be regulated as a residential home and shall meet all State and local
38 building, sanitation, utility and fire code requirements applicable to
39 single family dwellings ¹; provided however, that the commissioner
40 may require compliance with fire code requirements applicable to
41 boarding houses and residential health care facilities if so warranted by
42 the capabilities of the residents¹.

43 b. The department shall be responsible for inspecting the physical
44 plant of each ¹[alternate] adult¹ family care home initially and on an
45 annual basis. In addition to any licensing fee required under this act,
46 the department may charge an annual, non-refundable fee for

1 inspection of any ¹[alternate] adult¹ family care home, as shall be
2 established from time to time by regulation of the commissioner.

3 c. The department's staff shall be permitted access to enter and
4 inspect an ¹[alternate] adult¹ family care home at any time. The
5 department's staff shall be permitted access to the clients of the
6 ¹[alternate] adult¹ family care home in order to interview them
7 privately and to inspect client records.

8 d. The department shall be responsible for providing to the
9 ¹[alternate] adult¹ family care caregiver a report of the most recent
10 inspection of the home, written in clear, concise language readily
11 comprehensible to the average person.

12 e. The ¹[alternate] adult¹ family care caregiver shall post the
13 inspection report in the entry to, or other equally prominent location
14 in, the home and shall, upon request, provide a copy of the report to
15 each client of, or person applying for admission to, the home, or the
16 legal representative, guardian or conservator of the client or
17 prospective client.

18 f. The Office of The Ombudsman for the Institutionalized Elderly
19 shall have jurisdiction to take all actions authorized pursuant to
20 P.L.1977, c.239 (C.52:27G-1 et seq.) with respect to ¹[alternate]
21 adult¹ family care homes.

22

23 8. (New section) The commissioner shall by regulation establish
24 minimum standards to ensure the health, safety and well-being of each
25 client of the ¹[alternate] adult¹ family care home, including:
26 requirements for the physical site of the home and maintenance
27 standards; rules governing acceptance of clients; services that must be
28 provided to all clients and standards for these services; and
29 components of quality care, including, but not limited to, qualifications
30 and training of ¹[alternate] adult¹ family care caregivers, safety of the
31 caregiving environment, coordination of services and
32 comprehensiveness of care.

33

34 9. (New section) a. A person, firm, partnership, corporation,
35 limited liability company or association that operates or conducts an
36 ¹[alternate] adult¹ family care home or ¹[alternate] adult¹ family
37 care sponsor agency without first obtaining the license required by this
38 act, or that operates an ¹[alternate] adult¹ family care home or
39 ¹[alternate] adult¹ family care sponsor agency after a revocation or
40 suspension of that license, shall be liable to a penalty of not more than
41 \$2,500 as provided for by regulation for each day of operation in
42 violation hereof for the first offense and for any subsequent offense.

43 b. A person, firm, partnership, corporation, limited liability
44 company or association that, except in cases of an emergency,
45 maintains more clients in an ¹[alternate] adult¹ family care home than

1 it is licensed to maintain, shall be subject to penalty, in an amount
2 equal to the daily charge collected from those clients plus \$25 for each
3 day multiplied by the number of clients maintained over the authorized
4 limit.

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

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

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

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

35 g. In the event of closure of an ¹[alternate] adult¹ family care
36 home, clients who are relocated by the department may be entitled to
37 benefits pursuant to the "Relocation Assistance Act," P.L.1971, c.362
38 (C.20:4-1 et seq.) or the "Relocation Assistance Law of 1967,"
39 P.L.1967, c.79 (C.52:31B-1 et seq.), and any regulations adopted
40 pursuant thereto.

41
42 10. (New section) a. A client of an ¹[alternate] adult¹ family
43 care home may not be deprived of any civil or legal rights, benefits or
44 privileges guaranteed by law, the New Jersey Constitution, or the
45 Constitution of the United States solely by reason of status as a
46 resident in the home. In addition, each client has the right to:

- 1 (1) be treated as an adult, with respect, dignity, courtesy and
- 2 consideration, and to have individual needs for privacy recognized and
- 3 upheld;
- 4 (2) be informed of all client rights and house rules;
- 5 (3) make choices with respect to his care, services and lifestyle;
- 6 (4) be informed of his condition and the right to consent to or
- 7 refuse care and services;
- 8 (5) participate, to the fullest extent that the client is able, in
- 9 planning for his own care and services;
- 10 (6) receive appropriate care and services, as needed;
- 11 (7) a safe and secure environment;
- 12 (8) be free from abuse, exploitation and neglect;
- 13 (9) complete privacy when receiving care and services;
- 14 (10) associate and communicate privately with any person the
- 15 client chooses;
- 16 (11) send and receive personal mail unopened;
- 17 (12) participate in activities of social, religious and community
- 18 groups;
- 19 (13) have medical and personal information kept confidential;
- 20 (14) keep and use a reasonable amount of personal clothing and
- 21 belongings, and to have a reasonable amount of private, secure storage
- 22 space;
- 23 (15) manage his own money and financial affairs, unless legally
- 24 restricted from doing so;
- 25 (16) receive a written agreement regarding the care and services to
- 26 be provided, and the terms and conditions for termination of residency
- 27 from the home;
- 28 (17) be provided with a written statement of the rates to be
- 29 charged, and 30 days' written notice of any change in the rates;
- 30 (18) practice the religion of his choice, or to abstain from religious
- 31 practice;
- 32 (19) be free of discrimination in regard to race, color, national
- 33 origin, sex or religion; and
- 34 (20) make suggestions and complaints without fear of retaliation.
- 35 b. The ¹[alternate] adult¹ family care caregiver shall ensure that
- 36 a written notice of the rights set forth in this section is given to every
- 37 client. The caregiver shall also post this notice in the entry to, or
- 38 other equally prominent location in, the ¹[alternate] adult¹ family
- 39 care home. This notice shall also include the name, address and
- 40 telephone number of the Office of the Ombudsman for the
- 41 Institutionalized Elderly.

42

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

45 1. Community residences for the developmentally disabled,
46 community shelters for victims of domestic violence, community

1 residences for the terminally ill [and], community residences for
2 persons with head injuries, and ¹[alternate] adult¹ family care homes
3 for elderly persons and physically disabled adults shall be a permitted
4 use in all residential districts of a municipality, and the requirements
5 therefor shall be the same as for single family dwelling units located
6 within such districts.

7 (cf: P.L.1997, c.321, s.1)

8

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

11 3. As used in this act:

12 a. "Boarding house" means any building, together with any related
13 structure, accessory building, any land appurtenant thereto, and any
14 part thereof, which contains two or more units of dwelling space
15 arranged or intended for single room occupancy, exclusive of any such
16 unit occupied by an owner or operator, and wherein personal or
17 financial services are provided to the residents, including any
18 residential hotel or congregate living arrangement, but excluding any
19 hotel, motel or established guest house wherein a minimum of 85% of
20 the units of dwelling space are offered for limited tenure only, any
21 foster home as defined in section 1 of P.L.1962, c.137 (C.30:4C-26.1),
22 any community residence for the developmentally disabled and any
23 community residence for the mentally ill as defined in section 2 of
24 P.L.1977, c.448 (C.30:11B-2), any ¹[alternate] adult¹ family care
25 home as defined in section 3 of P.L. , c. (C.)(pending before the
26 Legislature as this bill), any dormitory owned or operated on behalf
27 of any nonprofit institution of primary, secondary or higher education
28 for the use of its students, any building arranged for single room
29 occupancy wherein the units of dwelling space are occupied
30 exclusively by students enrolled in a full-time course of study at an
31 institution of higher education approved by the New Jersey
32 Commission on Higher Education, any facility or living arrangement
33 operated by, or under contract with, any State department or agency,
34 upon the written authorization of the commissioner, and any
35 owner-occupied, one-family residential dwelling made available for
36 occupancy by not more than six guests, where the primary purpose of
37 the occupancy is to provide charitable assistance to the guests and
38 where the owner derives no income from the occupancy. A dwelling
39 shall be deemed "owner-occupied" within the meaning of this section
40 if it is owned or operated by a nonprofit religious or charitable
41 association or corporation and is used as the principal residence of a
42 minister or employee of that corporation or association. For any such
43 dwelling, however, fire detectors shall be required as determined by
44 the Department of Community Affairs.

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

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

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

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

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

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

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

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

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

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

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

43 (cf: P.L.1997, c.260, s.1)

44

45 13. The Commissioner of Health and Senior Services, pursuant to
46 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

1 seq.), shall adopt rules and regulations to effectuate the purposes of
2 this act.

3

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

8

9

10

11

12 "New Jersey Adult Family Care Act."

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.