

(continued)

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FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Christie era ends with a flurry of bills to sign - Outdoing governor approves regulations for drones, disbands SPCA and more," The Times, January 16, 2018

"Chris Christie's final acts: Bills he made law and killed, from drones to circus animals," nj.com, January 15, 2018

"Highlights from a busy last day," Hunterdon County Democrat, January 18, 2018

RH/CL

P.L. 2017, CHAPTER 328, *approved January 16, 2018*
Senate, No. 3554 (*First Reprint*)

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

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.1999, c.358 (C.30:6D-63) is amended to
9 read as follows:

10 1. As used in this act:

11 a. "Commissioner" means the Commissioner of Human
12 Services.

13 b. "Community agency employee" means any individual 18
14 years of age or older who is employed by a public or private agency
15 under contract with or licensed by the department to provide
16 services to department clients who have developmental disabilities
17 or brain injuries and includes all personnel working or residing at
18 an agency who may come into direct contact with clients.

19 c. "Community agency head" means the person responsible for
20 the overall operation of the agency under contract with or licensed
21 by the department.

22 d. "Department" means the Department of Human Services.

23 e. "Community agency" means a public or private agency
24 under contract with or licensed by the department to provide
25 services to department clients who have developmental disabilities
26 or brain injuries.

27 f. "Community agency board" means the board of directors of
28 a community agency.

29 g. "Community care residence" means a private house or
30 apartment in which a person 18 years or older is under contract with
31 or licensed by the department to provide individuals with
32 developmental disabilities or persons with brain injury with care
33 and a level of training and supervision that is based upon the
34 documented needs of the individuals.

35 h. "Community care residence applicant" means a person age
36 18 or older who satisfactorily initiates and completes the

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

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted December 4, 2017.

1 application process in order to obtain a license to operate a
2 community care residence.

3 i. “Community care residence alternate” means a person 18
4 years of age or older who has been selected by the applicant to
5 provide care and supervision for individuals who require
6 supervision at the community care residence.

7 j. “Community care residence household member” means a
8 person 18 years of age or older who resides in a community care
9 residence, but does not include the individual who is receiving
10 services from the department.

11 ¹k. “Under contract” means a provider under a written
12 agreement with the department or a provider approved by the
13 department to provide disability services to individuals that are
14 eligible to receive services from the department.¹

15 (cf: P.L.2000, c.97, s.1)

16

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

19 2. a. **【The department shall not contract with any】** Any
20 community agency under contract with or licensed by the
21 Department of Human Services shall not pay or contract for any
22 employee or agency head for the provision of services unless it has
23 first been determined, consistent with the requirement and standards
24 of 【this act】 P.L.1999, c.358 (C.30:6D-63 et seq.), that no criminal
25 history record information exists on file in the Federal Bureau of
26 Investigation, Identification Division, or in the State Bureau of
27 Identification in the Division of State Police, which would
28 disqualify the community agency head or the community agency
29 employees from such employment. The determination shall be
30 made by the 【community agency board with regard to the agency
31 head and the determination shall be made by the agency head with
32 regard to all agency employees】¹**【State】 department**¹.

33 A community care residence shall not be qualified to house
34 individuals unless it has first been determined, consistent with the
35 requirement and standards of P.L.1999, c.358 (C.30:6D-63 et seq.),
36 that no criminal history record information exists on file in the
37 Federal Bureau of Investigation, Identification Division, or in the
38 State Bureau of Identification in the Division of State Police, which
39 would disqualify the community care residence applicant,
40 community care residence alternate, or community care residence
41 household member. The determination shall be made by the
42 **【State】 department**¹.

43 A criminal history record background check shall be conducted
44 at least once every two years for a community agency head,
45 community care residence applicant, community care residence
46 alternate, community care residence household member, and
47 community agency employees; except that the 【department】
48 **【State】 department**¹, in lieu of conducting criminal history record

1 background checks every two years, may determine whether an
2 individual has been convicted of a crime or disorderly persons
3 offense which would disqualify that person **from employment** by
4 an alternative means, including, but not limited to, a match of a
5 person's Social Security number or other identifying information
6 with records of criminal proceedings in this and other states. If the
7 **department** ¹**[State] department**¹ elects to implement an
8 alternative means of determining whether an individual has been
9 convicted of a crime or disorderly persons offense which would
10 disqualify that individual **from employment**, the **department**
11 ¹**[State] department**¹ shall report to the Governor and the
12 Legislature prior to its implementation on the projected costs and
13 procedures to be followed with respect to its implementation and
14 setting forth the rationale therefor.

15 ¹The department shall notify the community agency or the
16 community care residence if an individual has been determined
17 qualified or disqualified as provided pursuant to P.L.1999, c.358
18 (C.30:6D-63 et seq.). The department's determination of
19 qualification shall not require the community agency or community
20 care residence to employ the individual. The department's
21 determination of disqualification shall require the community
22 agency or community care residence to terminate employment or
23 not offer employment to the individual.¹

24 b. An individual shall be disqualified from employment under
25 **[this act]** P.L.1999, c.358 (C.30:6D-63 et seq.) or the community
26 care residence with whom the individual is associated ¹**[with]**¹
27 shall not be qualified to house individuals who receive department
28 services if that individual's criminal history record background
29 check reveals a record of conviction of any of the following crimes
30 and offenses:

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

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

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

39 (c) A crime or offense involving the manufacture,
40 transportation, sale, possession, or habitual use of a controlled
41 dangerous substance as defined in the "New Jersey Controlled
42 Dangerous Substances Act," P.L.1970, c.226 (C.24:21-1 et seq.).

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

47 c. If a prospective community agency employee or community
48 agency head refuses to consent to, or cooperate in, securing of a

1 criminal history record background check, the person shall not be
2 considered for employment. If a prospective community care
3 residence applicant, alternate, or household member refuses to
4 consent to, or cooperate in, securing of a criminal history record
5 background check, the community care residence shall not be
6 qualified to house individuals who receive department services.

7 d. If **[a current employee]** an individual who is required
8 pursuant to this section to undergo a criminal history ¹record¹
9 background check refuses to consent to, or cooperate in, the
10 securing of a criminal history record background check, the person
11 shall be immediately removed from **[his]** the person's position and
12 the person's employment shall be terminated or, if the individual is
13 affiliated with a community care residence, the community care
14 residence shall not be qualified to house individuals who receive
15 department services.

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

31 A community care residence shall not be qualified to house an
32 individual with developmental disabilities while a community care
33 residence applicant, alternate, or household member's criminal
34 history records ¹background¹ check is pending.

35 f. Notwithstanding the provisions of subsection b. of this
36 section to the contrary, no individual shall be disqualified from
37 employment or from being qualified as a community care residence
38 applicant, alternate, or household member on the basis of any
39 conviction disclosed by a criminal history record background check
40 performed pursuant to sections 2 through 7 of P.L.1999, c.358
41 (C.30:6D-64 through C.30:6D-69) if the individual has
42 affirmatively demonstrated to the **[community agency head, or the**
43 **community agency board if the individual is the community agency**
44 **head,]** ¹**[State]** department¹, clear and convincing evidence of the
45 individual's rehabilitation. In determining whether an individual has
46 affirmatively demonstrated rehabilitation, the following factors
47 shall be considered:

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

4 (2) the nature and seriousness of the offense;

5 (3) the circumstances under which the offense occurred;

6 (4) the date of the offense;

7 (5) the age of the individual when the offense was committed;

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

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

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

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

25 h. The individual shall have no longer than 14 days from the
26 date of the written notice of disqualification pursuant to section 4 of
27 P.L.1999, c. 358 (C.30:6D-66) to provide evidence of affirmatively
28 demonstrated rehabilitation to the ¹[State] department¹ as provided
29 pursuant to this section.

30 i. The ¹[State] department¹ shall have no longer than 60 days
31 from the date of receipt of evidence of the individual's affirmatively
32 developed rehabilitation to make a determination on the
33 individual's qualification. The ¹[State] department¹ shall notify
34 the individual ¹and the community agency or community care
35 residence¹ in writing of the determination of the individual's
36 qualification or disqualification ¹no longer than 60 days from the
37 date of receipt of evidence of the individual's affirmatively
38 developed rehabilitation¹. The written notice may be transmitted
39 electronically if the individual authorizes the ¹[State] department¹
40 to transmit the information electronically.

41 (cf: P.L.2009, c.254, s.2)

42
43 3. Section 3 of P.L.1999, c.358 (C.30:6D-65) is amended to
44 read as follows:

45 3. An individual who is a current, or prospective, community
46 agency head, community agency employee, community care
47 residence applicant, community care residence alternate, or
48 community care residence household member shall submit to the

1 Commissioner of Human Services his or her name, address, and
2 fingerprints taken in accordance with procedures established by the
3 commissioner. The commissioner is authorized to exchange
4 fingerprint data with and receive criminal history record
5 information from the Federal Bureau of Investigation and the
6 Division of State Police for use in making the determinations
7 required by this act. The Division of State Police shall also
8 promptly notify the department in the event an individual who was
9 the subject of a criminal history record background check
10 conducted pursuant to sections 2 through 7 of P.L.1999, c.358
11 (C.30:6D-64 through C.30:6D-69), is convicted of a crime or
12 offense in this State after the date that the criminal history record
13 background check was performed. ¹**【Upon】** No later than 14 days
14 from¹ receipt of such notification, the **【community agency head, or**
15 **community agency board if the individual is the community agency**
16 **head,】** ¹**【State】** department¹ shall make a determination regarding
17 the employment or qualification of the individual ¹, and shall notify
18 the individual and the community agency or the community care
19 residence in writing of the determination. The written notice may be
20 transmitted electronically if the individual authorizes the
21 department to transmit the information electronically¹. No criminal
22 history record check shall be performed pursuant to this act unless
23 the **【applicant or employee】** individual shall have furnished his
24 written consent to the check. All **【applicants or current employees】**
25 individuals shall have their fingerprints taken on standard
26 fingerprint cards by a State or municipal law enforcement agency, a
27 personnel unit of the department ¹**【or State】** ¹, or a community
28 agency designated by the department.

29 (cf: P.L.2000, c.97, s.3)

30

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

33 4. ¹**【Upon】** No longer than 14 days from¹ receipt of the
34 criminal history record information from the Federal Bureau of
35 Investigation and the Division of State Police, **【written notice shall**
36 **be provided to the applicant or employee as follows:**

37 a. In the case of a community agency head, the community
38 agency board shall notify the person in writing of his qualification
39 or disqualification for employment under this act; and

40 b. In the case of a community agency applicant or employee,
41 the community agency head shall notify the person of his
42 qualification or disqualification for employment under this act. If
43 the applicant or employee is disqualified, the conviction or
44 convictions which constitute the basis for the disqualification shall
45 be identified in the written notice **【the** ¹**【State】** department¹ **shall**
46 notify the individual ¹and the community agency or the community
47 care residence¹ in writing of qualification or disqualification. If the

1 individual is disqualified, the ¹State¹ conviction or convictions
2 which constitute the basis for the disqualification shall be identified
3 in the written notice. The written notice may be transmitted
4 electronically if the individual authorizes the ¹[State] department¹
5 to transmit the information electronically.

6 (cf: P.L.2000, c.97, s.4)

7

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

10 5. ¹[a.]¹ The [applicant or employee] individual ¹[shall have
11 30 days from the date of receipt of the written notice of
12 disqualification as provided in section 4 of P.L.1999, c.358
13 (C.30:6D-66) to] may¹ petition for a hearing on the accuracy of the
14 criminal history record information ¹with the appropriate State or
15 federal agency or court¹. [In the case of a community agency head,
16 the petition shall be to the community agency board and the agency
17 board shall make the determination. The community agency board
18 shall provide notice to the community agency head that appeal of
19 the determination is to the New Jersey Superior Court. In the case
20 of a community agency applicant or employee, the petition shall be
21 to the community agency head and the agency head shall make the
22 determination. The community agency head]

23 ¹[b. The State shall have no longer than 60 days from the date
24 of receipt of the petition for a hearing on the accuracy of the
25 criminal history record information to make a determination. The
26 State shall provide notice that further appeal is to the New Jersey
27 Superior Court.]¹

28 (cf: P.L.2000, c.97, s.5)

29

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

32 6. The [community agency board] ¹[State] department¹ shall
33 maintain all criminal history record information submitted under
34 this act in accordance with rules and regulations which the
35 commissioner shall adopt to implement the provisions of this act.

36 (cf: P.L.2000, c.97, s.6)

37

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

40 7. In accordance with this act, the [community agency boards
41 and community agency heads] ¹[State] department¹ shall initiate a
42 criminal history record background check on all [applicants and
43 current employees] community agency heads, community agency
44 employees, community care residence applicants, community care
45 residence alternates, or community care residence household
46 members who have not had a criminal history record background
47 check completed in the previous two years from the date of

1 enactment of P.L. c. (C.)(pending before the Legislature as
2 this bill).

3 (cf: P.L.2000, c.97, s.7)

4

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

11 b. ¹【The department shall not provide the residence or the
12 ownership of the residence prior notice of the annual inspection, but
13 shall provide notice of any subsequent inspections.

14 c.】¹ If deficiencies are identified in the annual inspection, the
15 department shall require that a corrective action plan is developed
16 by the residence to explain the steps that will be taken to correct the
17 deficiencies. If the identified deficiencies pose a risk to the life and
18 safety of the residents, then the department shall conduct an on-site
19 subsequent inspection to verify that corrective action has been taken
20 by the ¹【residency】 residence¹ to correct the deficiencies.

21 ¹c. The department shall not provide the residence or the
22 ownership of the residence prior notice of any subsequent
23 inspection to verify that corrective action has been taken regarding
24 identified deficiencies that pose a risk to the life and safety of the
25 residents.¹

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

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

32

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

38

39 10. This act shall take effect immediately¹, except that the
40 provisions of section 2 of P.L.1999, c.358 (C.30.6D-64) shall not
41 apply to individuals who are: under contract or licensed by the
42 department to operate a community care residence; a community
43 care residence alternate; or a community care residence household
44 member, until the first day of the sixth month next following the
45 date of enactment¹.

S3554 [1R]

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Expands background check requirements for entities that provide services to individuals with certain disabilities and requires inspections of certain entities.

SENATE, No. 3554

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED NOVEMBER 30, 2017

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator KRISTIN CORRADO

District 40 (Bergen, Essex, Morris and Passaic)

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Co-Sponsored by:

Senators A.R.Bucco and Gordon

SYNOPSIS

Expands background check requirements for entities that provide services to individuals with certain disabilities and requires inspections of certain entities.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/19/2017)

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

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 1 of P.L.1999, c.358 (C.30:6D-63) is amended to
9 read as follows:

10 1. As used in this act:

11 a. "Commissioner" means the Commissioner of Human
12 Services.

13 b. "Community agency employee" means any individual 18
14 years of age or older who is employed by a public or private agency
15 under contract with or licensed by the department to provide
16 services to department clients who have developmental disabilities
17 or brain injuries and includes all personnel working or residing at
18 an agency who may come into direct contact with clients.

19 c. "Community agency head" means the person responsible for
20 the overall operation of the agency under contract with or licensed
21 by the department.

22 d. "Department" means the Department of Human Services.

23 e. "Community agency" means a public or private agency
24 under contract with or licensed by the department to provide
25 services to department clients who have developmental disabilities
26 or brain injuries.

27 f. "Community agency board" means the board of directors of
28 a community agency.

29 g. "Community care residence" means a private house or
30 apartment in which a person 18 years or older is under contract with
31 or licensed by the department to provide individuals with
32 developmental disabilities or persons with brain injury with care
33 and a level of training and supervision that is based upon the
34 documented needs of the individuals.

35 h. "Community care residence applicant" means a person age
36 18 or older who satisfactorily initiates and completes the
37 application process in order to obtain a license to operate a
38 community care residence.

39 i. "Community care residence alternate" means a person 18
40 years of age or older who has been selected by the applicant to
41 provide care and supervision for individuals who require
42 supervision at the community care residence.

43 j. "Community care residence household member" means a
44 person 18 years of age or older who resides in a community care

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

Matter underlined thus is new matter.

1 residence, but does not include the individual who is receiving
2 services from the department.

3 (cf: P.L.2000, c.97, s.1)

4

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

7 2. a. **【The department shall not contract with any】** Any
8 community agency under contract with or licensed by the
9 Department of Human Services shall not pay or contract for any
10 employee or agency head for the provision of services unless it has
11 first been determined, consistent with the requirement and standards
12 of 【this act】 P.L.1999, c.358 (C.30:6D-63 et seq.), that no criminal
13 history record information exists on file in the Federal Bureau of
14 Investigation, Identification Division, or in the State Bureau of
15 Identification in the Division of State Police, which would
16 disqualify the community agency head or the community agency
17 employees from such employment. The determination shall be
18 made by the 【community agency board with regard to the agency
19 head and the determination shall be made by the agency head with
20 regard to all agency employees】 State.

21 A community care residence shall not be qualified to house
22 individuals unless it has first been determined, consistent with the
23 requirement and standards of P.L.1999, c.358 (C.30:6D-63 et seq.),
24 that no criminal history record information exists on file in the
25 Federal Bureau of Investigation, Identification Division, or in the
26 State Bureau of Identification in the Division of State Police, which
27 would disqualify the community care residence applicant,
28 community care residence alternate, or community care residence
29 household member. The determination shall be made by the State.

30 A criminal history record background check shall be conducted
31 at least once every two years for a community agency head,
32 community care residence applicant, community care residence
33 alternate, community care residence household member, and
34 community agency employees; except that the 【department】 State ,
35 in lieu of conducting criminal history record background checks
36 every two years, may determine whether an individual has been
37 convicted of a crime or disorderly persons offense which would
38 disqualify that person 【from employment】 by an alternative means,
39 including, but not limited to, a match of a person's Social Security
40 number or other identifying information with records of criminal
41 proceedings in this and other states. If the 【department】 State
42 elects to implement an alternative means of determining whether an
43 individual has been convicted of a crime or disorderly persons
44 offense which would disqualify that individual 【from employment】,
45 the 【department】 State shall report to the Governor and the
46 Legislature prior to its implementation on the projected costs and

1 procedures to be followed with respect to its implementation and
2 setting forth the rationale therefor.

3 b. An individual shall be disqualified from employment under
4 **【this act】** P.L.1999, c.358 (C.30:6D-63 et seq.) or the community
5 care residence with whom the individual is associated with shall not
6 be qualified to house individuals who receive department services if
7 that individual's criminal history record background check reveals a
8 record of conviction of any of the following crimes and 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) A crime or offense involving the manufacture,
18 transportation, sale, possession, or habitual use of a controlled
19 dangerous substance as defined in the "New Jersey Controlled
20 Dangerous Substances Act," P.L.1970, c.226 (C.24:21-1 et seq.).

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

25 c. If a prospective community agency employee or community
26 agency head refuses to consent to, or cooperate in, securing of a
27 criminal history record background check, the person shall not be
28 considered for employment. If a prospective community care
29 residence applicant, alternate, or household member refuses to
30 consent to, or cooperate in, securing of a criminal history record
31 background check, the community care residence shall not be
32 qualified to house individuals who receive department services.

33 d. If **【a current employee】** an individual who is required
34 pursuant to this section to undergo a criminal history background
35 check refuses to consent to, or cooperate in, the securing of a
36 criminal history record background check, the person shall be
37 immediately removed from **【his】** the person's position and the
38 person's employment shall be terminated or, if the individual is
39 affiliated with a community care residence, the community care
40 residence shall not be qualified to house individuals who receive
41 department services.

42 e. Notwithstanding the provisions of subsection b. of this
43 section to the contrary, provisional employment of an individual is
44 authorized for a period not to exceed six months if the individual
45 submits to the appointing authority a sworn statement attesting that
46 the individual has not been convicted of any crime or disorderly
47 persons offense as described in this act, pending a determination
48 that no criminal history record background information which

1 would disqualify the individual exists on file in the State Bureau of
2 Identification in the Division of State Police or in the Federal
3 Bureau of Investigation, Identification Division. An individual who
4 is provisionally employed pursuant to this subsection shall perform
5 his duties under the supervision of a superior who acts in a
6 supervisory capacity over that individual until the determination
7 concerning the federal and State information is complete, where
8 possible.

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

13 f. Notwithstanding the provisions of subsection b. of this
14 section to the contrary, no individual shall be disqualified from
15 employment or from being qualified as a community care residence
16 applicant, alternate, or household member on the basis of any
17 conviction disclosed by a criminal history record background check
18 performed pursuant to sections 2 through 7 of P.L.1999, c.358
19 (C.30:6D-64 through C.30:6D-69) if the individual has
20 affirmatively demonstrated to the [community agency head, or the
21 community agency board if the individual is the community agency
22 head,] State, clear and convincing evidence of the individual's
23 rehabilitation. In determining whether an individual has
24 affirmatively demonstrated rehabilitation, the following factors
25 shall be considered:

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

29 (2) the nature and seriousness of the offense;

30 (3) the circumstances under which the offense occurred;

31 (4) the date of the offense;

32 (5) the age of the individual when the offense was committed;

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

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

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

42 g. A conviction of a crime or disorderly persons offense against
43 children as set forth in N.J.S.2C:24-4 adversely relates to a position
44 in a community agency that involves or would involve working
45 directly with a person under 18 years of age. Individuals convicted
46 of such crimes or disorderly persons offenses are permanently
47 disqualified from such employment at a community agency and

1 from being qualified to be a community care residence applicant,
2 alternate, or household member.

3 h. The individual shall have no longer than 14 days from the
4 date of the written notice of disqualification pursuant to section 4 of
5 P.L.1999, c. 358 (C.30:6D-66) to provide evidence of affirmatively
6 demonstrated rehabilitation to the State as provided pursuant to this
7 section.

8 i. The State shall have no longer than 60 days from the date of
9 receipt of evidence of the individual's affirmatively developed
10 rehabilitation to make a determination on the individual's
11 qualification. The State shall notify the individual in writing of the
12 determination of the individual's qualification or disqualification.
13 The written notice may be transmitted electronically if the
14 individual authorizes the State to transmit the information
15 electronically..

16 (cf: P.L.2009, c.254, s.2)

17

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

20 3. An individual who is a current, or prospective, community
21 agency head, community agency employee, community care
22 residence applicant, community care residence alternate, or
23 community care residence household member shall submit to the
24 Commissioner of Human Services his or her name, address, and
25 fingerprints taken in accordance with procedures established by the
26 commissioner. The commissioner is authorized to exchange
27 fingerprint data with and receive criminal history record
28 information from the Federal Bureau of Investigation and the
29 Division of State Police for use in making the determinations
30 required by this act. The Division of State Police shall also
31 promptly notify the department in the event an individual who was
32 the subject of a criminal history record background check
33 conducted pursuant to sections 2 through 7 of P.L.1999, c.358
34 (C.30:6D-64 through C.30:6D-69), is convicted of a crime or
35 offense in this State after the date that the criminal history record
36 background check was performed. Upon receipt of such
37 notification, the [community agency head, or community agency
38 board if the individual is the community agency head,] State shall
39 make a determination regarding the employment or qualification of
40 the individual. No criminal history record check shall be performed
41 pursuant to this act unless the [applicant or employee] individual
42 shall have furnished his written consent to the check. All
43 [applicants or current employees] individuals shall have their
44 fingerprints taken on standard fingerprint cards by a State or
45 municipal law enforcement agency, a personnel unit of the
46 department or State or a community agency designated by the
47 department.

48 (cf: P.L.2000, c.97, s.3)

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

3 4. Upon receipt of the criminal history record information
4 from the Federal Bureau of Investigation and the Division of State
5 Police, **【**written notice shall be provided to the applicant or
6 employee as follows:

7 a. In the case of a community agency head, the community
8 agency board shall notify the person in writing of his qualification
9 or disqualification for employment under this act; and

10 b. In the case of a community agency applicant or employee,
11 the community agency head shall notify the person of his
12 qualification or disqualification for employment under this act. If
13 the applicant or employee is disqualified, the conviction or
14 convictions which constitute the basis for the disqualification shall
15 be identified in the written notice**】** the State shall notify the
16 individual in writing of qualification or disqualification. If the
17 individual is disqualified, the conviction or convictions which
18 constitute the basis for the disqualification shall be identified in the
19 written notice. The written notice may be transmitted electronically
20 if the individual authorizes the State to transmit the information
21 electronically.

22 (cf: P.L.2000, c.97, s.4)

23

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

26 5. a. The **【**applicant or employee**】** individual shall have 30
27 days from the date of receipt of the written notice of
28 disqualification as provided in section 4 of P.L.1999, c.358
29 (C.30:6D-66) to petition for a hearing on the accuracy of the
30 criminal history record information. **【**In the case of a community
31 agency head, the petition shall be to the community agency board
32 and the agency board shall make the determination. The
33 community agency board shall provide notice to the community
34 agency head that appeal of the determination is to the New Jersey
35 Superior Court. In the case of a community agency applicant or
36 employee, the petition shall be to the community agency head and
37 the agency head shall make the determination. The community
38 agency head**】**

39 b. The State shall have no longer than 60 days from the date of
40 receipt of the petition for a hearing on the accuracy of the criminal
41 history record information to make a determination. The State shall
42 provide notice that further appeal is to the New Jersey Superior
43 Court.

44 (cf: P.L.2000, c.97, s.5)

45

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

1 6. The **【community agency board】** State shall maintain all
2 criminal history record information submitted under this act in
3 accordance with rules and regulations which the commissioner shall
4 adopt to implement the provisions of this act.

5 (cf: P.L.2000, c.97, s.6)

6

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

9 7. In accordance with this act, the **【community agency boards**
10 **and community agency heads】** State shall initiate a criminal history
11 record background check on all **【applicants and current employees】**
12 community agency heads, community agency employees,
13 community care residence applicants, community care residence
14 alternates, or community care residence household members who
15 have not had a criminal history record background check completed
16 in the previous two years from the date of enactment of P.L. c.
17 (C.)(pending before the Legislature as this bill).

18 (cf: P.L.2000, c.97, s.7)

19

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

26 b. The department shall not provide the residence or the
27 ownership of the residence prior notice of the annual inspection, but
28 shall provide notice of any subsequent inspections.

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

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

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

42

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

1 10. This act shall take effect immediately.

2

3

4

STATEMENT

5

6 This bill would expand the current federal and State background
7 check requirement for agencies who serve individuals with
8 developmental disabilities. The bill expressly requires federal and
9 State background checks for individuals who operate agencies that
10 serve individuals with brain injuries, community care residences,
11 any household members of the community care residences, and any
12 alternates for the community care residences. The bill establishes a
13 timeline for challenging the findings of these background checks for
14 both the individuals and the State. Additionally, the bill shifts the
15 onus of responsibility for reviewing the background checks from
16 the agency to the State.

17 Furthermore, the bill clarifies in statute that all residences for
18 individuals with developmental disabilities which are licensed by
19 the Department of Human Services or the Department of Children
20 and Families are required to have an un-announced annual
21 inspection. If deficiencies are identified during this inspection that
22 would endanger the life or safety of the residents, this bill would
23 require a follow-up on-site inspection to ascertain if the corrective
24 plan to address the deficiencies was implemented.

25 These changes were proposed as a result of recommendations
26 included in an audit report issued by the Office of the State Auditor
27 following its audit of licensed residential programs serving
28 individuals with developmental disabilities.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 3554

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 4, 2017

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3554, with committee amendments.

As amended, this bill expands the current federal and State background check requirement for agencies who serve individuals with developmental disabilities. The bill requires federal and State background checks for individuals who operate or are employed by agencies that serve individuals with brain injuries, community care residences, any household members of the community care residences, and any alternates for the community care residences. The bill establishes a timeline for challenging the findings of these background checks for both the individuals and the State. The bill also shifts the responsibility for reviewing the background checks from the agency to the Department of Human Services.

The bill clarifies that all residences for individuals with developmental disabilities which are licensed by the Department of Human Services or the Department of Children and Families are required to have an annual inspection. If deficiencies are identified during this inspection that would endanger the life or safety of the residents, the bill requires an unannounced follow-up, on-site inspection to ascertain if the corrective plan to address the deficiencies has been implemented.

These changes were proposed as a result of recommendations included in an audit report issued by the Office of the State Auditor following its audit of licensed residential programs serving individuals with developmental disabilities.

COMMITTEE AMENDMENTS:

The amendments add a definition of “under contract,” and clarify that the Department of Human Services is responsible for conducting the background checks.

The amendments modify the time frames within which the State is required to provide the results of background checks and fingerprint checks to the community agencies and community care residences. The amendments clarify the time frames within which the State is required to provide the results of background checks and fingerprint checks to the community agencies and community care residences.

The amendments remove the requirement that the annual inspections of residences for individuals with developmental disabilities be unannounced, and instead provide that only those inspections that are subsequent to the annual inspection and are verifying certain deficiencies (that could affect the life and safety of the residents) are to be unannounced.

The amendments modify the effective date to provide that the department has six months to conduct background checks of current community care residence applicants, household members, and alternates.

FISCAL IMPACT:

The Office of Legislative Services estimates the bill will result in increased State expenditures of approximately \$725,000 in the first year of enactment to perform background checks on individuals who were not previously required to have these background checks and to hire additional staff for increased responsibilities pursuant to changes proposed in the bill. The costs may total \$550,000 in the second year to maintain the increased staff, and may total \$600,000 in the third year to support the staff and pay for the biennial federal verification process. In subsequent years, costs may increase slightly due to inflation in wages and increases in population.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 3554 STATE OF NEW JERSEY 217th LEGISLATURE

DATED: DECEMBER 19, 2017

SUMMARY

- Synopsis:** Expands background check requirements for entities that provide services to individuals with certain disabilities and requires inspections of certain entities.
- Type of Impact:** Expenditure increase, General Fund
- Agencies Affected:** Department of Human Services and Department of Children and Families

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	\$725,000	\$550,000	\$600,000

- The Office of Legislative Services (OLS) estimates that this bill will result in expenditures of about \$725,000 in the first year; \$550,000 in the next year; and \$600,000 in the third year.
- In the first year of enactment, the costs will include \$175,000 to perform background checks on individuals who were not previously required to have these checks. Additionally the bill will result in the need to hire additional staff for increased responsibilities which the OLS estimates will cost about \$550,000 per year.
- In the second year after enactment, the costs should decrease to about \$550,000 per year to maintain the needed staff. The staff costs should remain consistent, but may increase slightly for increased population into the future.
- In the third year, and biennially thereafter, the bill should result in an additional \$50,000 expenditure to pay for the federal verification background checks for individuals who are newly required to have these checks. This cost will be in addition to the \$550,000 cost to maintain staff.

BILL DESCRIPTION

This bill would expand the current federal and State background check requirement for agencies who serve individuals with developmental disabilities. The bill expressly requires federal and State background checks for individuals who operate and are employed by agencies that serve individuals with brain injuries, community care residences, any household members of the community care residences, and any alternates for the community care residences. The bill establishes a timeline for both State notification of the findings of the background checks and for the individuals to challenge the findings of these background checks. Additionally, the bill shifts the onus of responsibility for reviewing the background checks from the agency to the State.

Furthermore, the bill clarifies in statute that all residences for individuals with developmental disabilities which are licensed by the Department of Human Services or the Department of Children and Families are required to have an annual inspection. If deficiencies are identified during this inspection that would endanger the life or safety of the residents, this bill would require an unannounced follow-up on-site inspection to ascertain if the corrective plan to address the deficiencies was implemented.

These changes were proposed as a result of recommendations included in an audit report issued by the Office of the State Auditor (OSA) following its audit of licensed residential programs serving individuals with developmental disabilities.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that this bill will result in increased expenditures of about \$725,000 in the first year of enactment to perform background checks on individuals who were not previously required to have these checks and to hire additional staff for increased responsibilities pursuant to changes proposed in the bill. The OLS estimates that costs will be about \$550,000 in the second year to maintain the increased staff and \$600,000 in the third year to fund the staff and pay for the biennial federal verification process. In subsequent years, costs may increase slightly, reflecting inflation in wages and increases in population.

There are two components to the costs of this bill; an increased number of background checks and an increase of staff dedicated to reviewing challenges to those background checks and to performing the unannounced follow up inspections required pursuant to this bill.

Currently State and federal background checks are conducted on all community agency heads and employees. According to the Department of Human Services, the Central Fingerprinting Unit (CFU) in the Department of Human Services processed 20,805 new hire fingerprints for Division of Developmental Disabilities (DDD) community providers, and processed 8,848 biennial federal verification checks for DDD community providers in 2016. This bill continues the requirement for a background check, but shifts the responsibility for reviewing the background check from the provider agency to the State.

These reviews occur when an individual appeals the results either because the individual asserts that the check is in error or the individual claims sufficient rehabilitation. Currently, if the background check reveals a violation of a State crime, the agency is provided that information and can determine if the individual has been rehabilitated and can be employed. If the background check reveals a violation of a federal crime, the State determines if the individual has been rehabilitated and can be employed. This bill will require the State to determine rehabilitation for both State and federal violations within established timeframes. The determination of the rehabilitation can be quite intensive and require back and forth between the State and the individual and may necessitate the hiring of several more staff. The OLS estimates that the increase in the number of appeals will necessitate the hiring of at least three new full-time professional staff members with benefits at a cost of \$300,000 and three new clerical staff members at a cost of \$150,000 to review the information for State background check appeals, a total of about \$450,000 per year.

The bill will also result in an increase in federal and State background checks for individuals who are associated with community care residences. Community care residences owners and household members over the age of 18 are currently subject to State background checks, but not federal background checks. Alternates for community care residences (individuals who act as a substitute for the owner in the owner's absence) are not subject to either federal or State background checks. This bill will require all of these populations to be subject to federal and State background checks at initial application and then verification every two years thereafter. The cost for a State and federal background check will equal \$62 per person for the initial check and \$17.50 for verification per person every two years. The federal and State verification check will need to be performed on the entire current population of owners, household members and alternates of community care residences because many of these individuals' former background checks were completed under an older system that is not compatible to the current system. According to the OSA audit, there are approximately 452 people who are currently owners, and 1,463 people who are listed as alternates of community care residences who will need to have a background check performed in the first year after enactment. Additionally, for the purposes of this estimate, OLS assumes two household members for each of the 452 residences, for a total of approximately 2,800 people who will need to receive a background check. This will cost approximately \$175,000 ($\$62 \times 2,800$ people) in the first year.¹ The cost to perform the federal verification check every two years on these individuals will equal about \$50,000 biennially.

Additionally, this bill will result in an increase in the number of inspectors needed to perform subsequent unannounced inspections on facilities which have received a corrective action plan due to identified deficiencies which pose a risk to the life and safety of the residences. This estimate assumes the department will need to hire one full-time staff person with benefits at a cost of \$100,000 to perform these tasks. The estimate of one new full-time staff assumes that the department can also cross-train current staff to perform some of these inspections by using resources already allocated by the department to conduct unannounced visits as required by the "Stephen Komminos' Law", P.L. 2017, c.238.

In total, the OLS estimates that this bill will result in increased expenditures of about \$725,000 in the first year; \$550,000 in the next year; and \$600,000 in the third year.

¹ "Department of Human Services, Licensed Residential Programs Serving Individuals with Developmental Disabilities" Office of the State Auditor, October 2017 <http://www.njleg.state.nj.us/legislativepub/auditor/544816.pdf>.

Section: Human Services

*Analyst: Robin Ford
Lead Fiscal Analyst*

*Approved: Frank W. Haines III
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 (C.52:13B-6 et seq.).

ASSEMBLY, No. 5210

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED NOVEMBER 30, 2017

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman JAMEL C. HOLLEY

District 20 (Union)

SYNOPSIS

Expands background check requirements for entities that provide services to individuals with certain disabilities and requires inspections of certain entities.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/5/2017)

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

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 1 of P.L.1999, c.358 (C.30:6D-63) is amended to read
9 as follows:

10 1. As used in this act:

11 a. "Commissioner" means the Commissioner of Human
12 Services.

13 b. "Community agency employee" means any individual 18
14 years of age or older who is employed by a public or private agency
15 under contract with or licensed by the department to provide
16 services to department clients who have developmental disabilities
17 or brain injuries and includes all personnel working or residing at
18 an agency who may come into direct contact with clients.

19 c. "Community agency head" means the person responsible for
20 the overall operation of the agency under contract with or licensed
21 by the department.

22 d. "Department" means the Department of Human Services.

23 e. "Community agency" means a public or private agency
24 under contract with or licensed by the department to provide
25 services to department clients who have developmental disabilities
26 or brain injuries.

27 f. "Community agency board" means the board of directors of
28 a community agency.

29 g. "Community care residence" means a private house or
30 apartment in which a person 18 years or older is under contract with
31 or licensed by the department to provide individuals with
32 developmental disabilities or persons with brain injury with care
33 and a level of training and supervision that is based upon the
34 documented needs of the individuals.

35 h. "Community care residence applicant" means a person age
36 18 or older who satisfactorily initiates and completes the
37 application process in order to obtain a license to operate a
38 community care residence.

39 i. "Community care residence alternate" means a person 18
40 years of age or older who has been selected by the applicant to
41 provide care and supervision for individuals who require
42 supervision at the community care residence.

43 j. "Community care residence household member" means a
44 person 18 years of age or older who resides in a community care

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

Matter underlined thus is new matter.

1 residence, but does not include the individual who is receiving
2 services from the department.

3 (cf: P.L.2000, c.97, s.1)
4

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

7 2. a. **【The department shall not contract with any】** Any
8 community agency under contract with or licensed by the
9 Department of Human Services shall not pay or contract for any
10 employee or agency head for the provision of services unless it has
11 first been determined, consistent with the requirement and standards
12 of 【this act】 P.L.1999, c.358 (C.30:6D-63 et seq.), that no criminal
13 history record information exists on file in the Federal Bureau of
14 Investigation, Identification Division, or in the State Bureau of
15 Identification in the Division of State Police, which would
16 disqualify the community agency head or the community agency
17 employees from such employment. The determination shall be
18 made by the 【community agency board with regard to the agency
19 head and the determination shall be made by the agency head with
20 regard to all agency employees】 State.

21 A community care residence shall not be qualified to house
22 individuals unless it has first been determined, consistent with the
23 requirement and standards of P.L.1999, c.358 (C.30:6D-63 et seq.),
24 that no criminal history record information exists on file in the
25 Federal Bureau of Investigation, Identification Division, or in the
26 State Bureau of Identification in the Division of State Police, which
27 would disqualify the community care residence applicant,
28 community care residence alternate, or community care residence
29 household member. The determination shall be made by the State.

30 A criminal history record background check shall be conducted
31 at least once every two years for a community agency head,
32 community care residence applicant, community care residence
33 alternate, community care residence household member, and
34 community agency employees; except that the 【department】 State ,
35 in lieu of conducting criminal history record background checks
36 every two years, may determine whether an individual has been
37 convicted of a crime or disorderly persons offense which would
38 disqualify that person 【from employment】 by an alternative means,
39 including, but not limited to, a match of a person's Social Security
40 number or other identifying information with records of criminal
41 proceedings in this and other states. If the 【department】 State
42 elects to implement an alternative means of determining whether an
43 individual has been convicted of a crime or disorderly persons
44 offense which would disqualify that individual 【from employment】,
45 the 【department】 State shall report to the Governor and the
46 Legislature prior to its implementation on the projected costs and

1 procedures to be followed with respect to its implementation and
2 setting forth the rationale therefor.

3 b. An individual shall be disqualified from employment under
4 **【this act】** P.L.1999, c.358 (C.30:6D-63 et seq.) or the community
5 care residence with whom the individual is associated with shall not
6 be qualified to house individuals who receive department services if
7 that individual's criminal history record background check reveals a
8 record of conviction of any of the following crimes and 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) A crime or offense involving the manufacture,
18 transportation, sale, possession, or habitual use of a controlled
19 dangerous substance as defined in the "New Jersey Controlled
20 Dangerous Substances Act," P.L.1970, c.226 (C.24:21-1 et seq.).

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

25 c. If a prospective community agency employee or community
26 agency head refuses to consent to, or cooperate in, securing of a
27 criminal history record background check, the person shall not be
28 considered for employment. If a prospective community care
29 residence applicant, alternate, or household member refuses to
30 consent to, or cooperate in, securing of a criminal history record
31 background check, the community care residence shall not be
32 qualified to house individuals who receive department services.

33 d. If **【a current employee】** an individual who is required
34 pursuant to this section to undergo a criminal history background
35 check refuses to consent to, or cooperate in, the securing of a
36 criminal history record background check, the person shall be
37 immediately removed from **【his】** the person's position and the
38 person's employment shall be terminated or, if the individual is
39 affiliated with a community care residence, the community care
40 residence shall not be qualified to house individuals who receive
41 department services.

42 e. Notwithstanding the provisions of subsection b. of this
43 section to the contrary, provisional employment of an individual is
44 authorized for a period not to exceed six months if the individual
45 submits to the appointing authority a sworn statement attesting that
46 the individual has not been convicted of any crime or disorderly
47 persons offense as described in this act, pending a determination
48 that no criminal history record background information which

1 would disqualify the individual exists on file in the State Bureau of
2 Identification in the Division of State Police or in the Federal
3 Bureau of Investigation, Identification Division. An individual who
4 is provisionally employed pursuant to this subsection shall perform
5 his duties under the supervision of a superior who acts in a
6 supervisory capacity over that individual until the determination
7 concerning the federal and State information is complete, where
8 possible.

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

13 f. Notwithstanding the provisions of subsection b. of this
14 section to the contrary, no individual shall be disqualified from
15 employment or from being qualified as a community care residence
16 applicant, alternate, or household member on the basis of any
17 conviction disclosed by a criminal history record background check
18 performed pursuant to sections 2 through 7 of P.L.1999, c.358
19 (C.30:6D-64 through C.30:6D-69) if the individual has
20 affirmatively demonstrated to the [community agency head, or the
21 community agency board if the individual is the community agency
22 head,] State, clear and convincing evidence of the individual's
23 rehabilitation. In determining whether an individual has
24 affirmatively demonstrated rehabilitation, the following factors
25 shall be considered:

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

29 (2) the nature and seriousness of the offense;

30 (3) the circumstances under which the offense occurred;

31 (4) the date of the offense;

32 (5) the age of the individual when the offense was committed;

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

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

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

42 g. A conviction of a crime or disorderly persons offense against
43 children as set forth in N.J.S.2C:24-4 adversely relates to a position
44 in a community agency that involves or would involve working
45 directly with a person under 18 years of age. Individuals convicted
46 of such crimes or disorderly persons offenses are permanently
47 disqualified from such employment at a community agency and

1 from being qualified to be a community care residence applicant,
2 alternate, or household member.

3 h. The individual shall have no longer than 14 days from the
4 date of the written notice of disqualification pursuant to section 4 of
5 P.L.1999, c. 358 (C.30:6D-66) to provide evidence of affirmatively
6 demonstrated rehabilitation to the State as provided pursuant to this
7 section.

8 i. The State shall have no longer than 60 days from the date of
9 receipt of evidence of the individual's affirmatively developed
10 rehabilitation to make a determination on the individual's
11 qualification. The State shall notify the individual in writing of the
12 determination of the individual's qualification or disqualification.
13 The written notice may be transmitted electronically if the
14 individual authorizes the State to transmit the information
15 electronically.

16 (cf: P.L.2009, c.254, s.2)

17

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

20 3. An individual who is a current, or prospective, community
21 agency head, community agency employee, community care
22 residence applicant, community care residence alternate, or
23 community care residence household member shall submit to the
24 Commissioner of Human Services his or her name, address, and
25 fingerprints taken in accordance with procedures established by the
26 commissioner. The commissioner is authorized to exchange
27 fingerprint data with and receive criminal history record
28 information from the Federal Bureau of Investigation and the
29 Division of State Police for use in making the determinations
30 required by this act. The Division of State Police shall also
31 promptly notify the department in the event an individual who was
32 the subject of a criminal history record background check
33 conducted pursuant to sections 2 through 7 of P.L.1999, c.358
34 (C.30:6D-64 through C.30:6D-69), is convicted of a crime or
35 offense in this State after the date that the criminal history record
36 background check was performed. Upon receipt of such
37 notification, the [community agency head, or community agency
38 board if the individual is the community agency head,] State shall
39 make a determination regarding the employment or qualification of
40 the individual. No criminal history record check shall be performed
41 pursuant to this act unless the [applicant or employee] individual
42 shall have furnished his written consent to the check. All
43 [applicants or current employees] individuals shall have their
44 fingerprints taken on standard fingerprint cards by a State or
45 municipal law enforcement agency, a personnel unit of the
46 department or State or a community agency designated by the
47 department.

48 (cf: P.L.2000, c.97, s.3)

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

3 4. Upon receipt of the criminal history record information
4 from the Federal Bureau of Investigation and the Division of State
5 Police, **【**written notice shall be provided to the applicant or
6 employee as follows:

7 a. In the case of a community agency head, the community
8 agency board shall notify the person in writing of his qualification
9 or disqualification for employment under this act; and

10 b. In the case of a community agency applicant or employee,
11 the community agency head shall notify the person of his
12 qualification or disqualification for employment under this act. If
13 the applicant or employee is disqualified, the conviction or
14 convictions which constitute the basis for the disqualification shall
15 be identified in the written notice**】** the State shall notify the
16 individual in writing of qualification or disqualification. If the
17 individual is disqualified, the conviction or convictions which
18 constitute the basis for the disqualification shall be identified in the
19 written notice. The written notice may be transmitted electronically
20 if the individual authorizes the State to transmit the information
21 electronically.

22 (cf: P.L.2000, c.97, s.4)

23

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

26 5. a. The **【**applicant or employee**】** individual shall have 30
27 days from the date of receipt of the written notice of
28 disqualification as provided in section 4 of P.L.1999, c.358
29 (C.30:6D-66) to petition for a hearing on the accuracy of the
30 criminal history record information. **【**In the case of a community
31 agency head, the petition shall be to the community agency board
32 and the agency board shall make the determination. The
33 community agency board shall provide notice to the community
34 agency head that appeal of the determination is to the New Jersey
35 Superior Court. In the case of a community agency applicant or
36 employee, the petition shall be to the community agency head and
37 the agency head shall make the determination. The community
38 agency head**】**

39 b. The State shall have no longer than 60 days from the date of
40 receipt of the petition for a hearing on the accuracy of the criminal
41 history record information to make a determination. The State shall
42 provide notice that further appeal is to the New Jersey Superior
43 Court.

44 (cf: P.L.2000, c.97, s.5)

45

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

1 6. The **【community agency board】** State shall maintain all
2 criminal history record information submitted under this act in
3 accordance with rules and regulations which the commissioner shall
4 adopt to implement the provisions of this act.

5 (cf: P.L.2000, c.97, s.6)

6

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

9 7. In accordance with this act, the **【community agency boards**
10 **and community agency heads】** State shall initiate a criminal history
11 record background check on all **【applicants and current employees】**
12 community agency heads, community agency employees,
13 community care residence applicants, community care residence
14 alternates, or community care residence household members who
15 have not had a criminal history record background check completed
16 in the previous two years from the date of enactment of P.L. c.
17 (C.)(pending before the Legislature as this bill).

18 (cf: P.L.2000, c.97, s.7)

19

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

26 b. The department shall not provide the residence or the
27 ownership of the residence prior notice of the annual inspection, but
28 shall provide notice of any subsequent inspections.

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

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

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

42

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

1 10. This act shall take effect immediately.

2

3

4

STATEMENT

5

6 This bill would expand the current federal and State background
7 check requirement for agencies who serve individuals with
8 developmental disabilities. The bill expressly requires federal and
9 State background checks for individuals who operate agencies that
10 serve individuals with brain injuries, community care residences,
11 any household members of the community care residences, and any
12 alternates for the community care residences. The bill establishes a
13 timeline for challenging the findings of these background checks for
14 both the individuals and the State. Additionally, the bill shifts the
15 onus of responsibility for reviewing the background checks from
16 the agency to the State.

17 Furthermore, the bill clarifies in statute that all residences for
18 individuals with developmental disabilities which are licensed by
19 the Department of Human Services or the Department of Children
20 and Families are required to have an un-announced annual
21 inspection. If deficiencies are identified during this inspection that
22 would endanger the life or safety of the residents, this bill would
23 require a follow-up on-site inspection to ascertain if the corrective
24 plan to address the deficiencies was implemented.

25 These changes were proposed as a result of recommendations
26 included in an audit report issued by the Office of the State Auditor
27 following its audit of licensed residential programs serving
28 individuals with developmental disabilities.

ASSEMBLY HUMAN SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5210

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 4, 2017

The Assembly Human Services committee reports favorably and with amendments Assembly Bill No. 5210.

As amended, this bill would expand the current federal and State background check requirement for agencies who serve individuals with developmental disabilities. The bill expressly requires federal and State background checks for individuals who operate or are employed by agencies that serve individuals with brain injuries, community care residences, any household members of the community care residences, and any alternates for the community care residences. The bill establishes a timeline for challenging the findings of these background checks for both the individuals and the State. Additionally, the bill shifts the onus of responsibility for reviewing the background checks from the agency to the Department of Human Services.

Furthermore, the bill clarifies in statute that all residences for individuals with developmental disabilities which are licensed by the Department of Human Services or the Department of Children and Families are required to have an annual inspection. If deficiencies are identified during this inspection that would endanger the life or safety of the residents, this bill would require an unannounced follow-up on-site inspection to ascertain if the corrective plan to address the deficiencies was implemented.

These changes were proposed as a result of recommendations included in an audit report issued by the Office of the State Auditor following its audit of licensed residential programs serving individuals with developmental disabilities.

COMMITTEE AMENDMENTS:

The committee amended the bill to add a definition of “under contract” and to clarify that the Department of Human Services, and not the State generally, is responsible for conducting the background checks. The amendments also modify the time frames within which the State is required to provide the results of background checks and fingerprint checks to the community agencies and community care residences. Furthermore, the amendments remove the requirement that the annual inspections be unannounced. Rather, only those inspections which are verifying that deficiencies (that could affect the life and

safety of the residents) were corrected are required to be unannounced. Finally, the amendments modify the effective date to ensure that the department has six months to conduct background checks of current community care residence applicants, household members, and alternates.

FISCAL IMPACT:

The OLS estimates that this bill will result in increased expenditures of approximately \$725,000 in the first year of enactment to perform background checks on individuals who were not previously required to have these background checks and to hire additional staff for increased responsibilities pursuant to changes proposed in the bill. The costs will most likely be approximately \$550,000 in the second year to maintain the increased staff and \$600,000 in the third year to support the staff and pay for the biennial federal verification process. In subsequent years, costs may increase slightly reflecting inflation in wages and increases in population into the future.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 5210

STATE OF NEW JERSEY

DATED: DECEMBER 18, 2017

The Assembly Appropriations Committee reports favorably Assembly Bill No. 5210 (1R).

This bill expands the federal and State background check requirement for agencies that serve individuals with developmental disabilities. The bill requires federal and State background checks for individuals who operate or are employed by agencies that serve individuals with brain injuries, community care residences, any household members of the community care residences, and any alternates for the community care residences. The Department of Human Services is the entity responsible for conducting and reviewing the background checks.

The bill also modifies the timeframes within which the State is required to provide the results of background checks and fingerprint checks to the community agencies and community care residences, as well as establishes a timeline to challenge the findings of these background checks.

Finally, the bill clarifies that all residences for individuals with developmental disabilities that are licensed by the Department of Human Services or the Department of Children and Families are required to have an annual inspection. If deficiencies are identified during the inspection that endanger the life or safety of the residents, this bill requires an unannounced follow-up on-site inspection to ascertain if the corrective plan to address the deficiencies was implemented.

FISCAL IMPACT:

The OLS estimates that this bill will result in increased expenditures of approximately \$725,000 in the first year of enactment, to perform background checks on individuals who were not previously required to have these background checks and to hire additional staff for increased responsibilities pursuant to changes proposed in the bill. The costs will most likely be approximately \$550,000 in the second year to maintain the increased staff and \$600,000 in the third year to support the staff and pay for the biennial federal verification process. In subsequent years, costs may increase slightly, reflecting inflation in wages and increases in population into the future.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 5210

STATE OF NEW JERSEY 217th LEGISLATURE

DATED: DECEMBER 19, 2017

SUMMARY

- Synopsis:** Expands background check requirements for entities that provide services to individuals with certain disabilities and requires inspections of certain entities.
- Type of Impact:** Expenditure increase, General Fund
- Agencies Affected:** Department of Human Services and Department of Children and Families

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	\$725,000	\$550,000	\$600,000

- The Office of Legislative Services (OLS) estimates that this bill will result in expenditures of about \$725,000 in the first year; \$550,000 in the next year; and \$600,000 in the third year.
- In the first year of enactment, the costs will include \$175,000 to perform background checks on individuals who were not previously required to have these checks. Additionally the bill will result in the need to hire additional staff for increased responsibilities, which the OLS estimates will cost about \$550,000 per year.
- In the second year after enactment, the costs should decrease to about \$550,000 per year to maintain the needed staff. The staff costs should remain consistent, but may increase slightly for increased population into the future.
- In the third year, and biennially thereafter, the bill should result in an additional \$50,000 expenditure to pay for the federal verification background checks for individuals who are newly required to have these checks. This cost will be in addition to the \$550,000 cost to maintain staff.

BILL DESCRIPTION

This bill would expand the current federal and State background check requirement for agencies who serve individuals with developmental disabilities. The bill expressly requires federal and State background checks for individuals who operate and are employed by agencies that serve individuals with brain injuries, community care residences, any household members of the community care residences, and any alternates for the community care residences. The bill establishes a timeline for both State notification of the findings of the background checks and for the individuals to challenge the findings of these background checks. Additionally, the bill shifts the onus of responsibility for reviewing the background checks from the agency to the State.

Furthermore, the bill clarifies in statute that all residences for individuals with developmental disabilities which are licensed by the Department of Human Services or the Department of Children and Families are required to have an annual inspection. If deficiencies are identified during this inspection that would endanger the life or safety of the residents, this bill would require an unannounced follow-up on-site inspection to ascertain if the corrective plan to address the deficiencies was implemented.

These changes were proposed as a result of recommendations included in an audit report issued by the Office of the State Auditor (OSA) following its audit of licensed residential programs serving individuals with developmental disabilities.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that this bill will result in increased expenditures of about \$725,000 in the first year of enactment to perform checks on individuals who were not previously required to have these checks and to hire additional staff for increased responsibilities pursuant to changes proposed in the bill. The OLS estimates that the costs will be about \$550,000 in the second year to maintain the increased staff and \$600,000 in the third year to fund staff and pay for the biennial federal verification process. In subsequent years, costs may increase slightly, reflecting inflation in wages and increases in population.

There are two components to the costs of this bill; an increased number of background checks and an increase of staff dedicated to reviewing challenges to those background checks and to performing the unannounced follow up inspections required pursuant to this bill.

Currently State and federal background checks are conducted on all community agency heads and employees. According to the Department of Human Services, the Central Fingerprinting Unit (CFU) in the Department of Human Services processed 20,805 new hire fingerprints for Division of Developmental Disabilities (DDD) community providers, and processed 8,848 biennial federal verification checks for DDD community providers in 2016. This bill continues the requirement for a background check, but shifts the responsibility for reviewing the background check from the provider agency to the State.

These reviews occur when an individual appeals the results either because the individual asserts that the check is in error or the individual claims sufficient rehabilitation. Currently, if the background check reveals a violation of a State crime, the agency is provided that information and can determine if the individual has been rehabilitated and can be employed. If the background check reveals a violation of a federal crime, the State determines if the individual has been rehabilitated and can be employed. This bill will require the State to determine rehabilitation for both State and federal violations within established timeframes. The determination of the rehabilitation can be quite intensive and require back and forth communication between the State and the individual and may necessitate the hiring of several more staff. The OLS estimates that the increase in the number of appeals will necessitate the hiring of at least three new full-time professional staff members with benefits at a cost of \$300,000 and three new clerical staff members at a cost of \$150,000 to review the information for State background check appeals, a total of about \$450,000 per year.

The bill will also result in an increase in federal and State background checks for individuals who are associated with community care residences. Community care residences owners and household members over the age of 18 are currently subject to State background checks, but not federal background checks. Alternates for community care residences (individuals who act as a substitute for the owner in the owner's absence) are not subject to either federal or State background checks. This bill will require all of these populations to be subject to federal and State background checks at initial application and then verification every two years thereafter. The cost for a State and federal background check will equal \$62 per person for the initial check and \$17.50 for verification per person every two years. The federal and State verification check will need to be performed on the entire current population of owners, household members and alternates of community care residences because many of these individuals' former background checks were completed under an older system that is not compatible to the current system. According to the OSA audit, there are approximately 452 people who are currently owners, and 1,463 people who are listed as alternates of community care residences who will need to have a background check performed in the first year after enactment. Additionally, for the purposes of this estimate, OLS assumes two household members for each of the 452 residences, for a total of approximately 2,800 people who will need to receive a background check. This will cost approximately \$175,000 ($\$62 \times 2,800$ people) in the first year.¹ The cost to perform the federal verification check every two years on these individuals will equal about \$50,000 biennially.

Additionally, this bill will result in an increase in the number of inspectors needed to perform subsequent unannounced inspections on facilities which have received a corrective action plan due to identified deficiencies which pose a risk to the life and safety of the residences. This estimate assumes the department will need to hire one full-time staff person with benefits at a cost of \$100,000 to perform these tasks. The estimate of one new full-time staff assumes that the department can also cross-train current staff to perform some of these inspections by using resources already allocated by the department to conduct unannounced visits as required by the "Stephen Komminos' Law", P.L. 2017, c.238.

In total, the OLS estimates that this bill will result in increased expenditures of about \$725,000 in the first year; \$550,000 in the next year; and \$600,000 in the third year.

¹ "Department of Human Services, Licensed Residential Programs Serving Individuals with Developmental Disabilities" Office of the State Auditor, October 2017 <http://www.njleg.state.nj.us/legislativepub/auditor/544816.pdf>.

Section: Human Services

*Analyst: Robin Ford
Lead Fiscal Analyst*

*Approved: Frank W. Haines III
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 (C.52:13B-6 et seq.).