

26:2H-7.15

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2002 **CHAPTER:** 25

NJSA: 26:2H-7.15 (Requires certain background checks for assisted living residence administrators and applicants for certificate of need)

BILL NO: S674 (Substituted for A2023)

SPONSOR(S): Singer and others

DATE INTRODUCED: January 15, 2002

COMMITTEE: **ASSEMBLY:** Senior Issues
SENATE: Health, Human Services and Senior Citizens

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** May 6, 2002
SENATE: March 4, 2002

DATE OF APPROVAL: June 12, 2002

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (1st reprint enacted)
(Amendments during passage denoted by superscript numbers)

S674

[SPONSORS STATEMENT](#): (Begins on page 7 of original bill) Yes

COMMITTEE STATEMENT: [ASSEMBLY:](#) Yes

[SENATE:](#) Yes

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

A2023

[SPONSORS STATEMENT](#): (Begins on page 7 of original bill) Yes

COMMITTEE STATEMENT: [ASSEMBLY:](#) Yes
Identical to Senate Statement to S674

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

(continued)

VETO MESSAGE:

No

GOVERNOR'S PRESS RELEASE ON SIGNING:

No

FOLLOWING WERE PRINTED:

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No

REPORTS:

Yes

~~HEARINGS~~ New Jersey. Legislature. Assembly. Senior Issues Committee
S128 Committee meeting on Assembly Bill 2023, concerns background checks for assisted living administrators
2002 held March 18, 2002, Irvington, 2002

NEWSPAPER ARTICLES:

No

§§1-6,8 -
C.26:2H-7.15
to 26:2H-7.21
§7 - C.53:1-20.9c
§9 - Note to §§1-8

P.L. 2002, CHAPTER 25, *approved June 12, 2002*
Senate, No. 674 (*First Reprint*)

1 AN ACT concerning assisted living ¹[residences]¹ and supplementing
2 Titles 26 and 53 of the Revised Statutes.

3

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

6

7 1. As used in this act:

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

14 ¹"Assisted living program" means the provision of or arrangement
15 for meals and assisted living services, when needed, to the residents of
16 publicly subsidized housing, which because of any federal, State or
17 local housing laws, rules, regulation or requirements cannot become
18 licensed as an assisted living residence.¹

19 "Assisted living residence" means a ¹[housing project which is a]¹
20 facility licensed by the Department of Health and Senior Services to
21 provide apartment-style housing and congregate dining and to assure
22 that assisted living services are available when needed, for four or
23 more adult persons unrelated to the proprietor. Apartment units shall
24 offer, at a minimum, one unfurnished room, a private bathroom, a
25 kitchenette and a lockable door on the unit entrance.

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

28

29 2. Prior to approval of a certificate of need pursuant to section 7
30 of P.L.1971, c.136 (C.26:2H-7) for an assisted living residence ¹or
31 program¹, the commissioner shall evaluate the background of an
32 applicant for a certificate of need to ensure, at a minimum, that the
33 applicant is:

34 a. of good moral character;

35 b. economically capable of constructing or expanding, as
36 appropriate, and maintaining an assisted living residence ¹or program,
37 as applicable¹;

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SHH committee amendments adopted February 25, 2002.

1 c. capable of successfully providing assisted living services that
2 meet or surpass the licensing standards for assisted living residences
3 ¹or programs, as applicable¹, as set by the commissioner;

4 d. capable of demonstrating an acceptable track record, if
5 appropriate, of the applicant's past and current compliance with State
6 licensure requirements, applicable federal requirements and State
7 certificate of need requirements pursuant to section 7 of P.L.1971,
8 c.136 (C.26:2H-7); and

9 e. capable of demonstrating an acceptable track record of the
10 applicant's past and current compliance with State licensure or
11 applicable federal or State requirements for, and the financial success
12 of, any health care-related or other business activity that involves
13 construction, operation or management of the activity.

14
15 3. a. The commissioner shall not issue an assisted living
16 ¹[residence]¹ administrator certification, except on a conditional basis
17 as provided for in subsection d. of section 4 of this act, unless the
18 commissioner first determines, consistent with the requirements of this
19 act, that no criminal history record information exists on file in the
20 Federal Bureau of Investigation, Identification Division, or in the State
21 Bureau of Identification in the Division of State Police ¹in the
22 Department of Law and Public Safety¹, which would disqualify that
23 person from being certified.

24 b. An assisted living ¹[residence]¹ administrator certified by the
25 department prior to the effective date of this act, upon whom a
26 criminal history record background check has not been conducted
27 pursuant to this act, shall be required to undergo that criminal history
28 record background check as a condition of renewal of certification
29 following the effective date of this act.

30 c. An assisted living ¹[residence]¹ administrator, who is a licensed
31 nursing home administrator and has undergone a criminal history
32 record background check as a result of having obtained a nursing
33 home administrator's license, shall not be required to undergo a
34 criminal history record background check pursuant to this act.

35 d. A person shall be disqualified from certification if that person's
36 criminal history record background check reveals a record of
37 conviction of any of the following crimes and offenses:

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

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

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

46 (c) involving theft as set forth in chapter 20 of Title 2C of the New

1 Jersey Statutes; or

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

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

10 e. Notwithstanding the provisions of subsection a. of this section,
11 no person shall be disqualified from certification on the basis of any
12 conviction disclosed by a criminal history record background check
13 performed pursuant to this act if the person has affirmatively
14 demonstrated to the commissioner clear and convincing evidence of
15 the person's rehabilitation. In determining whether a person has
16 affirmatively demonstrated rehabilitation, the following factors shall be
17 considered:

18 (1) the nature and responsibility of the position which the
19 convicted person would hold, has held or currently holds, as the case
20 may be;

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

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

23 (4) the date of the offense;

24 (5) the age of the person when the offense was committed;

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

26 (7) any social conditions which may have contributed to the
27 offense; and

28 (8) any evidence of rehabilitation, including good conduct in prison
29 or in the community, counseling or psychiatric treatment received,
30 acquisition of additional academic or vocational schooling, successful
31 participation in correctional work-release programs, or the
32 recommendation of those who have had the person under their
33 supervision.

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

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

42 (2) revoke the person's current assisted living ¹[residence]¹
43 administrator certification and notify the person, and the person's
44 employer, if known, of that revocation.

45

46 4. a. An applicant for certification or a certified assisted living

1 ¹[residence]¹ administrator, who is required to undergo a criminal
2 history record background check pursuant to section 3 of this act, shall
3 submit to the commissioner that individual's name, address and
4 fingerprints taken on standard fingerprint cards by a State or municipal
5 law enforcement agency. The commissioner is authorized to exchange
6 fingerprint data with and receive criminal history record information
7 from the Federal Bureau of Investigation and the Division of State
8 Police ¹in the Department of Law and Public Safety¹ for use in making
9 the determinations required by this act.

10 b. Upon receipt of the criminal history record information for a
11 person from the Federal Bureau of Investigation or the Division of
12 State Police, the commissioner shall immediately notify, in writing, the
13 applicant, and the applicant's employer, if the applicant is conditionally
14 employed as provided in subsection d. of this section, or the
15 applicant's prospective employer, if known, or a certified assisted
16 living ¹[residence]¹ administrator who is required to undergo a
17 criminal history record background check pursuant to section 3 of this
18 act and that person's employer, as applicable, of the person's
19 qualification or disqualification for certification under this act. If the
20 person is disqualified, the conviction or convictions which constitute
21 the basis for the disqualification shall be identified in the notice to the
22 person, but shall not be identified in the notice to the person's
23 employer or prospective employer.

24 c. The person who is the subject of the background check shall
25 have 30 days from the date of the written notice of disqualification to
26 petition the commissioner for a hearing on the accuracy of the person's
27 criminal history record information or to establish the person's
28 rehabilitation under subsection e. of section 3 of this act. The
29 commissioner shall notify the person's employer or prospective
30 employer of the person's petition for a hearing within five days
31 following the receipt of the petition from the person. Upon the
32 issuance of a final decision upon a petition to the commissioner
33 pursuant to this subsection, the commissioner shall notify the person
34 and the person's employer or prospective employer as to whether the
35 person remains disqualified from certification under this act.

36 d. (1) An applicant for certification may be issued conditional
37 certification and may be employed as an assisted living ¹[residence]¹
38 administrator conditionally for a period not to exceed 60 days, pending
39 completion of a criminal history record background check required
40 under this act by the Division of State Police ¹[in the Department of
41 Law and Public Safety]¹ based upon an examination of its own files,
42 in accordance with section 7 of P.L. , c. (C.)(pending before
43 the Legislature as this bill), and for an additional period not to exceed
44 60 days pending completion of a criminal history record background
45 check by federal authorities as arranged for by the Division of State
46 Police pursuant to section 7 of P.L. , c. (C.)(pending before

1 the Legislature as this bill), if the person submits to the commissioner
2 a sworn statement attesting that the person has not been convicted of
3 any crime or disorderly persons offense as described in section 3 of
4 this act. A person who submits a false sworn statement shall be
5 disqualified from certification, and shall not have an opportunity to
6 establish rehabilitation pursuant to subsection e. of section 3 of this
7 act.

8 (2) A conditionally employed person or an employed certified
9 assisted living ¹[residence]¹ administrator, who disputes the accuracy
10 of the criminal history record information and who files a petition
11 requesting a hearing pursuant to subsection c. of this section, may
12 remain employed until the commissioner rules on the person's petition
13 but, pending the commissioner's ruling, the person shall not have
14 unsupervised contact with residents at the assisted living residence ¹or
15 program¹.

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

20 (a) receives notice from the commissioner that the applicant or
21 certified assisted living ¹[residence]¹ administrator has been
22 determined by the commissioner to be disqualified from certification
23 as an assisted living ¹[residence]¹ administrator pursuant to this act;
24 or

25 (b) terminates its employment of a conditionally employed
26 applicant for assisted living ¹[residence]¹ administrator or a certified
27 assisted living ¹[residence]¹ administrator because the person was
28 disqualified from employment at the assisted living residence ¹or
29 program¹ on the basis of a conviction of a crime or disorderly persons
30 offense as described in section 3 of this act after commencing
31 employment at the assisted living residence ¹or program¹;

32 shall be immune from liability for disclosing that disqualification or
33 termination in good faith to another licensed health care facility or
34 other entity that is qualified by statute or regulation to employ the
35 person as a certified administrator.

36 (2) A licensed health care facility or other entity which discloses
37 information pursuant to paragraph (1) of this subsection shall be
38 presumed to be acting in good faith unless it is shown by clear and
39 convincing evidence that the health care facility or other entity acted
40 with actual malice toward the person who is the subject of the
41 information.

42 f. (1) An assisted living residence ¹or program, as applicable¹,
43 upon receiving notice from the commissioner that a person employed
44 by it as an assisted living ¹[residence]¹ administrator, including a
45 conditionally employed person, has been convicted of a crime or
46 disorderly persons offense as described in section 3 of this act after

1 commencing employment at the assisted living residence ¹or program¹,
2 shall:

3 (a) immediately terminate the person's employment as an assisted
4 living ¹[residence]¹ administrator; and

5 (b) report information about the termination to the commissioner
6 in a manner prescribed by the commissioner, who shall thereupon
7 deem the person to be disqualified from certification as an assisted
8 living ¹[residence]¹ administrator, subject to the provisions of
9 subsection c. of this section.

10 (2) An assisted living residence ¹or program¹ shall be immune from
11 liability for any actions taken in good faith pursuant to paragraph (1)
12 of this subsection and shall be presumed to be acting in good faith
13 unless it is shown by clear and convincing evidence that the assisted
14 living residence ¹or program¹ acted with actual malice toward the
15 employee.

16

17 5. The applicant for certification as an assisted living ¹[residence]¹
18 administrator or a certified assisted living ¹[residence]¹ administrator,
19 as the case may be, shall assume the cost of the criminal history record
20 background check conducted pursuant to this act.

21

22 6. A person submitting a false sworn statement pursuant to section
23 4 of this act shall be subject to a fine of not more than \$1,000, which
24 may be assessed by the commissioner.

25

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

30 b. The Division of State Police shall promptly notify the
31 Department of Health and Senior Services in the event an applicant for
32 certification as an assisted living ¹[residence]¹ administrator or a
33 certified assisted living ¹[residence]¹ administrator, who was the
34 subject of a criminal history record background check conducted
35 pursuant to subsection a. of this section, is convicted of a crime or
36 offense in this State after the date the background check was
37 performed. Upon receipt of such notification, the department shall
38 make a determination regarding the employment of the applicant or
39 administrator.

40

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

45

46 9. This act shall take effect on the 90th day after the date of
47 enactment, except that the commissioner may take such anticipatory

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

3

4

5

6

7 Requires certain background checks for assisted living administrators
8 and applicants for certificate of need.

SENATE, No. 674

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED JANUARY 15, 2002

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Burlington, Mercer, Monmouth and Ocean)

SYNOPSIS

Requires certain background checks for assisted living residence administrators and applicants for certificate of need.

CURRENT VERSION OF TEXT

As introduced.



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

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. As used in this act:

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

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

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

23
24 2. Prior to approval of a certificate of need pursuant to section 7
25 of P.L.1971, c.136 (C.26:2H-7) for an assisted living residence, the
26 commissioner shall evaluate the background of an applicant for a
27 certificate of need to ensure, at a minimum, that the applicant is:

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

44
45 3. a. The commissioner shall not issue an assisted living residence
46 administrator certification, except on a conditional basis as provided

1 for in subsection d. of section 4 of this act, unless the commissioner
2 first determines, consistent with the requirements of this act, that no
3 criminal history record information exists on file in the Federal Bureau
4 of Investigation, Identification Division, or in the State Bureau of
5 Identification in the Division of State Police, which would disqualify
6 that person from being certified.

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

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

18 d. A person shall be disqualified from certification if that person's
19 criminal history record background check reveals a record of
20 conviction of any of the following crimes and offenses:

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

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

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

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

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

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

39 e. Notwithstanding the provisions of subsection a. of this section,
40 no person shall be disqualified from certification on the basis of any
41 conviction disclosed by a criminal history record background check
42 performed pursuant to this act if the person has affirmatively
43 demonstrated to the commissioner clear and convincing evidence of
44 the person's rehabilitation. In determining whether a person has
45 affirmatively demonstrated rehabilitation, the following factors shall be
46 considered:

1 (1) the nature and responsibility of the position which the
2 convicted person would hold, has held or currently holds, as the case
3 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 person 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 prison
12 or in the community, counseling or psychiatric treatment received,
13 acquisition of additional academic or vocational schooling, successful
14 participation in correctional work-release programs, or the
15 recommendation of those who have had the person under their
16 supervision.

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

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

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

28

29 4. a. An applicant for certification or a certified assisted living
30 residence administrator, who is required to undergo a criminal history
31 record background check pursuant to section 3 of this act, shall submit
32 to the commissioner that individual's name, address and fingerprints
33 taken on standard fingerprint cards by a State or municipal law
34 enforcement agency. The commissioner is authorized to exchange
35 fingerprint data with and receive criminal history record information
36 from the Federal Bureau of Investigation and the Division of State
37 Police for use in making the determinations required by this act.

38 b. Upon receipt of the criminal history record information for a
39 person from the Federal Bureau of Investigation or the Division of
40 State Police, the commissioner shall immediately notify, in writing, the
41 applicant, and the applicant's employer, if the applicant is conditionally
42 employed as provided in subsection d. of this section, or the
43 applicant's prospective employer, if known, or a certified assisted
44 living residence administrator who is required to undergo a criminal
45 history record background check pursuant to section 3 of this act and
46 that person's employer, as applicable, of the person's qualification or

1 disqualification for certification under this act. If the person is
2 disqualified, the conviction or convictions which constitute the basis
3 for the disqualification shall be identified in the notice to the person,
4 but shall not be identified in the notice to the person's employer or
5 prospective employer.

6 c. The person who is the subject of the background check shall
7 have 30 days from the date of the written notice of disqualification to
8 petition the commissioner for a hearing on the accuracy of the person's
9 criminal history record information or to establish the person's
10 rehabilitation under subsection e. of section 3 of this act. The
11 commissioner shall notify the person's employer or prospective
12 employer of the person's petition for a hearing within five days
13 following the receipt of the petition from the person. Upon the
14 issuance of a final decision upon a petition to the commissioner
15 pursuant to this subsection, the commissioner shall notify the person
16 and the person's employer or prospective employer as to whether the
17 person remains disqualified from certification under this act.

18 d. (1) An applicant for certification may be issued conditional
19 certification and may be employed as an assisted living residence
20 administrator conditionally for a period not to exceed 60 days, pending
21 completion of a criminal history record background check required
22 under this act by the Division of State Police in the Department of
23 Law and Public Safety based upon an examination of its own files, in
24 accordance with section 7 of P.L. , c. (C.)(pending before the
25 Legislature as this bill), and for an additional period not to exceed 60
26 days pending completion of a criminal history record background
27 check by federal authorities as arranged for by the Division of State
28 Police pursuant to section 7 of P.L. , c. (C.)(pending before
29 the Legislature as this bill), if the person submits to the commissioner
30 a sworn statement attesting that the person has not been convicted of
31 any crime or disorderly persons offense as described in section 3 of
32 this act. A person who submits a false sworn statement shall be
33 disqualified from certification, and shall not have an opportunity to
34 establish rehabilitation pursuant to subsection e. of section 3 of this
35 act.

36 (2) A conditionally employed person or an employed certified
37 assisted living residence administrator, who disputes the accuracy of
38 the criminal history record information and who files a petition
39 requesting a hearing pursuant to subsection c. of this section, may
40 remain employed until the commissioner rules on the person's petition
41 but, pending the commissioner's ruling, the person shall not have
42 unsupervised contact with residents at the assisted living residence.

43 e. (1) A licensed assisted living residence that has received an
44 application from or conditionally employs an applicant for assisted
45 living residence administrator or employs a certified assisted living
46 residence administrator, and:

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

5 (b) terminates its employment of a conditionally employed
6 applicant for assisted living residence administrator or a certified
7 assisted living residence administrator because the person was
8 disqualified from employment at the assisted living residence on the
9 basis of a conviction of a crime or disorderly persons offense as
10 described in section 3 of this act after commencing employment at the
11 assisted living residence;
12 shall be immune from liability for disclosing that disqualification or
13 termination in good faith to another licensed health care facility or
14 other entity that is qualified by statute or regulation to employ the
15 person as a certified administrator.

16 (2) A licensed health care facility or other entity which discloses
17 information pursuant to paragraph (1) of this subsection shall be
18 presumed to be acting in good faith unless it is shown by clear and
19 convincing evidence that the health care facility or other entity acted
20 with actual malice toward the person who is the subject of the
21 information.

22 f. (1) An assisted living residence, upon receiving notice from the
23 commissioner that a person employed by it as an assisted living
24 residence administrator, including a conditionally employed person,
25 has been convicted of a crime or disorderly persons offense as
26 described in section 3 of this act after commencing employment at the
27 assisted living residence, shall:

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

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

35 (2) An assisted living residence shall be immune from liability for
36 any actions taken in good faith pursuant to paragraph (1) of this
37 subsection and shall be presumed to be acting in good faith unless it
38 is shown by clear and convincing evidence that the assisted living
39 residence acted with actual malice toward the employee.

40

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

1 6. A person submitting a false sworn statement pursuant to section
2 4 of this act shall be subject to a fine of not more than \$1,000, which
3 may be assessed by the commissioner.

4
5 7. a. The Commissioner of Health and Senior Services is authorized
6 to exchange fingerprint data with, and to receive information from, the
7 Division of State Police in the Department of Law and Public Safety
8 and the Federal Bureau of Investigation.

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

18
19 8. The Commissioner of Health and Senior Services, pursuant to
20 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
21 seq.) shall adopt rules and regulations to effectuate the purposes of
22 this act.

23
24 9. This act shall take effect on the 90th day after the date of
25 enactment, except that the commissioner may take such anticipatory
26 administrative action in advance as shall be necessary for the
27 implementation of the act.

28
29
30 STATEMENT

31
32 This bill requires the Commissioner of Health and Senior Services
33 to implement some of the same safeguards that are required in the full
34 review process of an application for a certificate of need, before
35 approving a certificate of need for assisted living residences, which,
36 under current regulations, are subject to an expedited review process.

37 Specifically, this bill provides that prior to approval of a certificate
38 of need for an assisted living residence, the commissioner shall
39 evaluate the background of an applicant for a certificate to ensure, at
40 a minimum, that the applicant is:

- 41 C of good moral character;
42 C economically capable of constructing or expanding, as appropriate,
43 and maintaining an assisted living residence;
44 C capable of successfully providing assisted living residence services
45 that meet or surpass the licensing standards for assisted living
46 residences, as set by the commissioner;

1 C capable of demonstrating an acceptable track record, if appropriate,
2 of the applicant's past and current compliance with State licensure
3 requirements, applicable federal requirements and State certificate
4 of need requirements pursuant to section N.J.S.A.26:2H-7; and

5 C capable of demonstrating an acceptable track record of the
6 applicant's past and current compliance with State licensure or
7 applicable federal or State requirements for, and the financial
8 success of, any health care-related or other business activity that
9 involves construction, operation or management of the activity.

10 In addition, the bill requires State and federal criminal history
11 record background checks for assisted living residence administrators.
12 Specifically, the Department of Health and Senior Services shall not
13 issue an assisted living residence administrator certification, unless the
14 commissioner determines that no criminal history record information
15 exists that would disqualify that person from being certified as an
16 assisted living residence administrator.

17 For those assisted living residence administrators certified by the
18 department prior to the effective date of this bill, who have not
19 undergone a criminal history record background check, the
20 background check shall be required as a condition of renewal of
21 certification following the effective date of the bill. In addition, an
22 assisted living residence administrator, who is a licensed nursing home
23 administrator and has undergone a criminal history record background
24 check as a result of having obtained a nursing home administrator's
25 license, shall not be required to undergo an additional criminal history
26 record background check.

27 The bill permits an applicant who is disqualified as a result of the
28 background check to affirmatively demonstrate, by clear and
29 convincing evidence, that the person has been rehabilitated.

30 In addition, the bill: permits an applicant for certification as an
31 assisted living residence administrator to be issued a conditional
32 certification and be employed for a period not exceeding 60 days,
33 pending completion of the background check; and provides immunity
34 from liability for an assisted living residence disclosing, in good faith,
35 disqualification or termination of employment to another licensed
36 health care facility.

37 Lastly, the cost of the criminal history record background check
38 shall be assumed by the applicant for certification as an assisted living
39 residence administrator.

40 The bill has a delayed effective date of 90 days and permits the
41 commissioner to begin rulemaking prior to that date.

ASSEMBLY SENIOR ISSUES COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 674

STATE OF NEW JERSEY

DATED: MARCH 18, 2002

The Assembly Senior Issues Committee reports favorably Senate Bill No. 674(1R).

This bill requires the Commissioner of Health and Senior Services to implement some of the same safeguards that are required in the full review process of an application for a certificate of need, before approving a certificate of need for assisted living residences or programs, which, under current regulations, are subject to an expedited review process.

Specifically, this bill provides that prior to approval of a certificate of need for an assisted living residence or program, the commissioner shall evaluate the background of an applicant for a certificate to ensure, at a minimum, that the applicant is:

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

In addition, the bill requires State and federal criminal history record background checks for assisted living administrators. Specifically, the Department of Health and Senior Services shall not issue an assisted living administrator certification, unless the commissioner determines that no criminal history record information exists that would disqualify that person from being certified as an assisted living administrator.

For those assisted living administrators certified by the department prior to the effective date of this bill, who have not undergone a criminal history record background check, the background check shall be required as a condition of renewal of certification following the effective date of the bill. An assisted living administrator, who is a licensed nursing home administrator and has undergone a criminal history record background check as a result of having obtained a nursing home administrator's license, shall not be required to undergo an additional criminal history record background check.

The bill permits an applicant who is disqualified as a result of the background check to affirmatively demonstrate, by clear and convincing evidence, that the person has been rehabilitated.

In addition, the bill: permits an applicant for certification as an assisted living administrator to be issued a conditional certification and be employed for a period not exceeding 60 days, pending completion of the background check; and provides immunity from liability for an assisted living residence or program disclosing, in good faith, disqualification or termination of employment to another licensed health care facility.

Lastly, the cost of the criminal history record background check shall be assumed by the applicant for certification as an assisted living administrator.

The bill has a delayed effective date of 90 days and permits the commissioner to begin rulemaking prior to that date.

This bill is identical to A-2023 Aca (Stanley/Eagler) which the committee also reported favorably on this date.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 674

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 25, 2002

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 674.

As amended by committee, this bill requires the Commissioner of Health and Senior Services to implement some of the same safeguards that are required in the full review process of an application for a certificate of need, before approving a certificate of need for assisted living residences or programs, which, under current regulations, are subject to an expedited review process.

Specifically, this bill provides that prior to approval of a certificate of need for an assisted living residence or program, the commissioner shall evaluate the background of an applicant for a certificate to ensure, at a minimum, that the applicant is:

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

In addition, the bill requires State and federal criminal history record background checks for assisted living administrators. Specifically, the Department of Health and Senior Services shall not issue an assisted living administrator certification, unless the

commissioner determines that no criminal history record information exists that would disqualify that person from being certified as an assisted living administrator.

For those assisted living administrators certified by the department prior to the effective date of this bill, who have not undergone a criminal history record background check, the background check shall be required as a condition of renewal of certification following the effective date of the bill. An assisted living administrator, who is a licensed nursing home administrator and has undergone a criminal history record background check as a result of having obtained a nursing home administrator's license, shall not be required to undergo an additional criminal history record background check.

The bill permits an applicant who is disqualified as a result of the background check to affirmatively demonstrate, by clear and convincing evidence, that the person has been rehabilitated.

In addition, the bill: permits an applicant for certification as an assisted living administrator to be issued a conditional certification and be employed for a period not exceeding 60 days, pending completion of the background check; and provides immunity from liability for an assisted living residence or program disclosing, in good faith, disqualification or termination of employment to another licensed health care facility.

Lastly, the cost of the criminal history record background check shall be assumed by the applicant for certification as an assisted living administrator.

The bill has a delayed effective date of 90 days and permits the commissioner to begin rulemaking prior to that date.

The committee amended the bill to provide that the bill's requirements also apply to assisted living programs. Amendments add a definition of "assisted living program" and delete the word "residence" whenever reference is made to the assisted living administrator, so that the term is applicable to administrators of residences and programs.

ASSEMBLY, No. 2023

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED MARCH 4, 2002

Sponsored by:

Assemblyman CRAIG A. STANLEY

District 28 (Essex)

Assemblyman PETER C. EAGLER

District 34 (Essex and Passaic)

SYNOPSIS

Requires certain background checks for assisted living administrators and applicants for certificate of need.

CURRENT VERSION OF TEXT

As introduced.



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

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. As used in this act:

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

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

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

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

28
29 2. Prior to approval of a certificate of need pursuant to section 7
30 of P.L.1971, c.136 (C.26:2H-7) for an assisted living residence or
31 program, the commissioner shall evaluate the background of an
32 applicant for a certificate of need to ensure, at a minimum, that the
33 applicant is:

34 a. of good moral character;

35 b. economically capable of constructing or expanding, as
36 appropriate, and maintaining an assisted living residence or program,
37 as applicable;

38 c. capable of successfully providing assisted living services that
39 meet or surpass the licensing standards for assisted living residences
40 or programs, as applicable, as set by the commissioner;

41 d. capable of demonstrating an acceptable track record, if
42 appropriate, of the applicant's past and current compliance with State
43 licensure requirements, applicable federal requirements and State
44 certificate of need requirements pursuant to section 7 of P.L.1971,
45 c.136 (C.26:2H-7); and

1 e. capable of demonstrating an acceptable track record of the
2 applicant's past and current compliance with State licensure or
3 applicable federal or State requirements for, and the financial success
4 of, any health care-related or other business activity that involves
5 construction, operation or management of the activity.

6
7 3. a. The commissioner shall not issue an assisted living
8 administrator certification, except on a conditional basis as provided
9 for in subsection d. of section 4 of this act, unless the commissioner
10 first determines, consistent with the requirements of this act, that no
11 criminal history record information exists on file in the Federal Bureau
12 of Investigation, Identification Division, or in the State Bureau of
13 Identification in the Division of State Police in the Department of Law
14 and Public Safety, which would disqualify that person from being
15 certified.

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

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

27 d. A person shall be disqualified from certification if that person's
28 criminal history record background check reveals a record of
29 conviction of any of the following crimes and offenses:

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

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

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

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

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

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

1 subsection.

2 e. Notwithstanding the provisions of subsection a. of this section,
3 no person shall be disqualified from certification on the basis of any
4 conviction disclosed by a criminal history record background check
5 performed pursuant to this act if the person has affirmatively
6 demonstrated to the commissioner clear and convincing evidence of
7 the person's rehabilitation. In determining whether a person has
8 affirmatively demonstrated rehabilitation, the following factors shall be
9 considered:

10 (1) the nature and responsibility of the position which the
11 convicted person would hold, has held or currently holds, as the case
12 may be;

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

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

15 (4) the date of the offense;

16 (5) the age of the person when the offense was committed;

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

18 (7) any social conditions which may have contributed to the
19 offense; and

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

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

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

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

37

38 4. a. An applicant for certification or a certified assisted living
39 administrator, who is required to undergo a criminal history record
40 background check pursuant to section 3 of this act, shall submit to the
41 commissioner that individual's name, address and fingerprints taken on
42 standard fingerprint cards by a State or municipal law enforcement
43 agency. The commissioner is authorized to exchange fingerprint data
44 with and receive criminal history record information from the Federal
45 Bureau of Investigation and the Division of State Police in the
46 Department of Law and Public Safety for use in making the

1 determinations required by this act.

2 b. Upon receipt of the criminal history record information for a
3 person from the Federal Bureau of Investigation or the Division of
4 State Police, the commissioner shall immediately notify, in writing, the
5 applicant, and the applicant's employer, if the applicant is conditionally
6 employed as provided in subsection d. of this section, or the
7 applicant's prospective employer, if known, or a certified assisted
8 living administrator who is required to undergo a criminal history
9 record background check pursuant to section 3 of this act and that
10 person's employer, as applicable, of the person's qualification or
11 disqualification for certification under this act. If the person is
12 disqualified, the conviction or convictions which constitute the basis
13 for the disqualification shall be identified in the notice to the person,
14 but shall not be identified in the notice to the person's employer or
15 prospective employer.

16 c. The person who is the subject of the background check shall
17 have 30 days from the date of the written notice of disqualification to
18 petition the commissioner for a hearing on the accuracy of the person's
19 criminal history record information or to establish the person's
20 rehabilitation under subsection e. of section 3 of this act. The
21 commissioner shall notify the person's employer or prospective
22 employer of the person's petition for a hearing within five days
23 following the receipt of the petition from the person. Upon the
24 issuance of a final decision upon a petition to the commissioner
25 pursuant to this subsection, the commissioner shall notify the person
26 and the person's employer or prospective employer as to whether the
27 person remains disqualified from certification under this act.

28 d. (1) An applicant for certification may be issued conditional
29 certification and may be employed as an assisted living administrator
30 conditionally for a period not to exceed 60 days, pending completion
31 of a criminal history record background check required under this act
32 by the Division of State Police based upon an examination of its own
33 files, in accordance with section 7 of P.L. , c. (C.)(pending
34 before the Legislature as this bill), and for an additional period not to
35 exceed 60 days pending completion of a criminal history record
36 background check by federal authorities as arranged for by the
37 Division of State Police pursuant to section 7 of P.L. , c.
38 (C.)(pending before the Legislature as this bill), if the person
39 submits to the commissioner a sworn statement attesting that the
40 person has not been convicted of any crime or disorderly persons
41 offense as described in section 3 of this act. A person who submits a
42 false sworn statement shall be disqualified from certification, and shall
43 not have an opportunity to establish rehabilitation pursuant to
44 subsection e. of section 3 of this act.

45 (2) A conditionally employed person or an employed certified
46 assisted living administrator, who disputes the accuracy of the criminal

1 history record information and who files a petition requesting a
2 hearing pursuant to subsection c. of this section, may remain employed
3 until the commissioner rules on the person's petition but, pending the
4 commissioner's ruling, the person shall not have unsupervised contact
5 with residents at the assisted living residence or program.

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

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

14 (b) terminates its employment of a conditionally employed
15 applicant for assisted living administrator or a certified assisted living
16 administrator because the person was disqualified from employment at
17 the assisted living residence or program on the basis of a conviction of
18 a crime or disorderly persons offense as described in section 3 of this
19 act after commencing employment at the assisted living residence or
20 program; shall be immune from liability for disclosing that
21 disqualification or termination in good faith to another licensed health
22 care facility or other entity that is qualified by statute or regulation to
23 employ the person as a certified administrator.

24 (2) A licensed health care facility or other entity which discloses
25 information pursuant to paragraph (1) of this subsection shall be
26 presumed to be acting in good faith unless it is shown by clear and
27 convincing evidence that the health care facility or other entity acted
28 with actual malice toward the person who is the subject of the
29 information.

30 f. (1) An assisted living residence or program, as applicable, upon
31 receiving notice from the commissioner that a person employed by it
32 as an assisted living administrator, including a conditionally employed
33 person, has been convicted of a crime or disorderly persons offense as
34 described in section 3 of this act after commencing employment at the
35 assisted living residence or program, shall:

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

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

43 (2) An assisted living residence or program shall be immune from
44 liability for any actions taken in good faith pursuant to paragraph (1)
45 of this subsection and shall be presumed to be acting in good faith
46 unless it is shown by clear and convincing evidence that the assisted

1 living residence or program acted with actual malice toward the
2 employee.

3

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

8

9 6. A person submitting a false sworn statement pursuant to section
10 4 of this act shall be subject to a fine of not more than \$1,000, which
11 may be assessed by the commissioner.

12

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

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

26

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

31

32 9. This act shall take effect on the 120th day after the date of
33 enactment, except that the commissioner may take such anticipatory
34 administrative action in advance as shall be necessary for the
35 implementation of the act.

36

37

38

STATEMENT

39

40 This bill requires the Commissioner of Health and Senior Services
41 to implement some of the same safeguards that are required in the full
42 review process of an application for a certificate of need, before
43 approving a certificate of need for assisted living residences or
44 programs, which, under current regulations, are subject to an
45 expedited review process.

1 Specifically, this bill provides that prior to approval of a certificate
2 of need for an assisted living residence or program, the commissioner
3 shall evaluate the background of an applicant for a certificate to
4 ensure, at a minimum, that the applicant is:

- 5 C of good moral character;
- 6 C economically capable of constructing or expanding, as appropriate,
7 and maintaining an assisted living residence or program;
- 8 C capable of successfully providing assisted living residence or
9 program services that meet or surpass the licensing standards for
10 assisted living residences or programs, as set by the commissioner;
- 11 C capable of demonstrating an acceptable track record, if appropriate,
12 of the applicant's past and current compliance with State licensure
13 requirements, applicable federal requirements and State certificate
14 of need requirements pursuant to section N.J.S.A.26:2H-7; and
- 15 C capable of demonstrating an acceptable track record of the
16 applicant's past and current compliance with State licensure or
17 applicable federal or State requirements for, and the financial
18 success of, any health care-related or other business activity that
19 involves construction, operation or management of the activity.

20 In addition, the bill requires State and federal criminal history
21 record background checks for assisted living administrators.
22 Specifically, the Department of Health and Senior Services shall not
23 issue an assisted living administrator certification, unless the
24 commissioner determines that no criminal history record information
25 exists that would disqualify that person from being certified as an
26 assisted living administrator.

27 For those assisted living administrators certified by the department
28 prior to the effective date of this bill, who have not undergone a
29 criminal history record background check, the background check shall
30 be required as a condition of renewal of certification following the
31 effective date of the bill. An assisted living administrator, who is a
32 licensed nursing home administrator and has undergone a criminal
33 history record background check as a result of having obtained a
34 nursing home administrator's license, shall not be required to undergo
35 an additional criminal history record background check.

36 The bill permits an applicant who is disqualified as a result of the
37 background check to affirmatively demonstrate, by clear and
38 convincing evidence, that the person has been rehabilitated.

39 In addition, the bill: permits an applicant for certification as an
40 assisted living administrator to be issued a conditional certification and
41 be employed for a period not exceeding 60 days, pending completion
42 of the background check; and provides immunity from liability for an
43 assisted living residence or program disclosing, in good faith,
44 disqualification or termination of employment to another licensed
45 health care facility.

1 Lastly, the cost of the criminal history record background check
2 shall be assumed by the applicant for certification as an assisted living
3 administrator.

4 The bill has a delayed effective date of 120 days and permits the
5 commissioner to begin rulemaking prior to that date.

ASSEMBLY SENIOR ISSUES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2023

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 18, 2002

The Assembly Senior Issues Committee reports favorably and with committee amendments Assembly Bill No. 2023.

As amended by the committee, this bill requires the Commissioner of Health and Senior Services to implement some of the same safeguards that are required in the full review process of an application for a certificate of need, before approving a certificate of need for assisted living residences or programs, which, under current regulations, are subject to an expedited review process.

Specifically, this bill provides that prior to approval of a certificate of need for an assisted living residence or program, the commissioner shall evaluate the background of an applicant for a certificate to ensure, at a minimum, that the applicant is:

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

In addition, the bill requires State and federal criminal history record background checks for assisted living administrators. Specifically, the Department of Health and Senior Services shall not issue an assisted living administrator certification, unless the commissioner determines that no criminal history record information exists that would disqualify that person from being certified as an assisted living administrator.

For those assisted living administrators certified by the department prior to the effective date of this bill, who have not undergone a criminal history record background check, the background check shall be required as a condition of renewal of certification following the effective date of the bill. An assisted living administrator, who is a licensed nursing home administrator and has undergone a criminal history record background check as a result of having obtained a nursing home administrator's license, shall not be required to undergo an additional criminal history record background check.

The bill permits an applicant who is disqualified as a result of the background check to affirmatively demonstrate, by clear and convincing evidence, that the person has been rehabilitated.

In addition, the bill: permits an applicant for certification as an assisted living administrator to be issued a conditional certification and be employed for a period not exceeding 60 days, pending completion of the background check; and provides immunity from liability for an assisted living residence or program disclosing, in good faith, disqualification or termination of employment to another licensed health care facility.

Lastly, the cost of the criminal history record background check shall be assumed by the applicant for certification as an assisted living administrator.

The bill has a delayed effective date of 90 days and permits the commissioner to begin rulemaking prior to that date.

COMMITTEE AMENDMENT:

The amendment changes the bill's effective date from 120 to 90 days.

As amended, this bill is identical to S-674 (1R) (Singer/Allen), which the committee also reported favorably on this date.