

26:2H-82 to 26:2H-87

LEGISLATIVE HISTORY CHECKLIST

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(Criminal history background checks)

NJSA: 26:2H-82 to 26:2H-87

LAWS OF: 1997 CHAPTER: 100

BILL NO: A995

SPONSOR(S): Moran and others

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Senior Issues

SENATE: Judiciary; Budget

AMENDED DURING PASSAGE: Yes

Fourth reprint enacted

DATE OF PASSAGE: ASSEMBLY: November 14, 1996

SENATE: March 24, 1997

DATE OF APPROVAL: May 12, 1996

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes Also attached statement adopted 2-8-96

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes 1-14-97, 1-27-97

FISCAL NOTE: Yes

VETO MESSAGE: No

MESSAGE ON SIGNING: ~~No~~ Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clippings--attached:

"Health aids will get more scrutiny," 5-13-97, Asbury Park Press.

"Whitman signs bill for health-care background checks," 5-13-97, The Atlantic City Press."

KBP:pp

[Fourth Reprint]
ASSEMBLY, No. 995

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen MORAN, CONNORS, Asselta, Assemblywomen Heck, Friscia, Assemblymen Gusciora, Blee, Holzapfel, Talarico, Wolfe, Senators Connors, Bubba, Inverso, Scott, Kosco, Matheussen and Sinagra

1 AN ACT concerning ⁴criminal history record background checks for
2 certain persons who care for⁴ the elderly and supplementing Title
3 26, Title 45, and Title 53 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. ⁴**[As used in]** For the purposes of ⁴ sections ⁴**[1] 2⁴** ¹**[to 5]**
9 through ⁴**[4¹** and section ¹**[13] 12¹ 6⁴** of ⁴**[this act]** P.L. , c.
10 **(C.)**(pending before the Legislature as this bill)⁴ :

11 "Facility" means any facility or institution, whether public or
12 private, offering health or health related services for the
13 institutionalized elderly, and which is subject to regulation, visitation,
14 inspection, or supervision by any government agency. Facilities
15 include, but are not limited to, nursing homes, rehabilitation centers,
16 residential health care facilities, ¹general hospitals.¹ special hospitals,
17 chronic disease hospitals, psychiatric hospitals, developmental
18 disabilities centers or facilities, day care facilities for the elderly,
19 medical day care centers, and licensed home health care agencies.

20 "Patient, resident or client" means any person, 60 years of age or
21 older, who is receiving treatment or care in any facility in all its
22 aspects, including, but not limited to, admission, retention,
23 confinement, commitment, period of residence, transfer, discharge and
24 any instances directly related to such status.

25

26 2. a. A facility for the institutionalized elderly, as defined in

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ASI committee amendments adopted January 29, 1996.

² Assembly floor amendments adopted February 8, 1996.

³ Senate SJU committee amendments adopted January 14, 1997.

⁴ Senate SBA committee amendments adopted January 27, 1997.

1 section 1 of P.L. , c. (C.) (pending before the Legislature as this
 2 bill) ⁴, shall not hire any ³unlicensed³ person serving in a
 3 ³[professional or non-professional]³ position which involves regular
 4 contact with a patient, resident or client as the case may be, except on
 5 a conditional basis as provided for in section 3 of P.L. , c. (C.)
 6 (pending before the Legislature as this bill), unless the Commissioner
 7 of Health first determines, consistent with the requirements of ⁴[this
 8 act] P.L. , c. (C.) (pending before the Legislature as
 9 this bill)⁴, that no criminal history record information exists on file in
 10 the Federal Bureau of Investigation, Identification Division, or in the
 11 State Bureau of Identification in the Division of State Police, which
 12 would disqualify that person from being employed or utilized in such
 13 capacity or position. A person shall be disqualified from employment
 14 under ⁴[this act] P.L. , c. (C.) (pending before the
 15 Legislature as this bill)⁴ if that person's criminal history record
 16 background check reveals a record of conviction of any of the
 17 following crimes and offenses:

- 18 (1) In New Jersey, any crime or disorderly persons offense:
 19 (a) involving danger to the person, meaning those crimes and
 20 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,
 21 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
 22 N.J.S.2C:15-1 et seq.; or
 23 (b) against the family, children or incompetents, meaning those
 24 crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et
 25 seq.; or
 26 (c) involving theft as set forth in chapter 20 of Title 2C of the New
 27 Jersey Statutes; or
 28 (d) involving any controlled dangerous substance or analog as set
 29 forth in chapter 35 of Title 2C of the New Jersey Statutes except
 30 paragraph (4) of subsection a. of N.J.S.2C:35-10.
 31 (2) In any other state or jurisdiction, of conduct which, if
 32 committed in New Jersey, would constitute any of the crimes or
 33 disorderly persons offenses described in paragraph (1) of this
 34 subsection.

35 b. Notwithstanding the provisions of subsection a. of this section,
 36 no person shall be disqualified from employment under ⁴[this
 37 act] P.L. , c. (C.) (pending before the Legislature as this
 38 bill)⁴ on the basis of any conviction disclosed by a criminal history
 39 record background check performed pursuant to ⁴[this act] P.L. ,
 40 c. (C.) (pending before the Legislature as this bill)⁴ if the
 41 person has affirmatively demonstrated to the Commissioner of Health
 42 clear and convincing evidence of ⁴[his] the person's ⁴ rehabilitation.
 43 In determining whether a person has affirmatively demonstrated
 44 rehabilitation, the following factors shall be considered:

- 45 (1) the nature and responsibility of the position which the

1 convicted person would hold or has held, as the case may be;
2 (2) the nature and seriousness of the offense;
3 (3) the circumstances under which the offense occurred;
4 (4) the date of the offense;
5 (5) the age of the person when the offense was committed;
6 (6) whether the offense was an isolated or repeated incident;
7 (7) any social conditions which may have contributed to the
8 offense; and
9 (8) any evidence of rehabilitation, including good conduct in prison
10 or in the community, counseling or psychiatric treatment received,
11 acquisition of additional academic or vocational schooling, successful
12 participation in correctional work-release programs, or the
13 recommendation of those who have had the person under their
14 supervision.

15 c. If a person subject to the provisions of ⁴[this act] P.L. , c.
16 (C.) (pending before the Legislature as this bill)⁴ refuses to
17 consent to, or cooperate in, the securing of a criminal history record
18 background check, the commissioner shall direct the principal
19 administrator of the facility not to consider the person for
20 employment.

21
22 3. ³a.³ An applicant for employment at a facility shall submit to the
23 Commissioner of Health ⁴[his] the applicant's⁴ name, address and
24 fingerprints taken on standard fingerprint cards by a State or municipal
25 law enforcement agency. The commissioner is authorized to exchange
26 fingerprint data with and receive criminal history record information
27 from the Federal Bureau of Investigation and the Division of State
28 Police for use in making the determinations required by P.L. , c.
29 (C.) (pending before the Legislature as this bill).

30 ³b.³ Upon receipt of the criminal history record information for a
31 person from the Federal Bureau of Investigation or the Division of
32 State Police, the commissioner shall immediately notify the applicant
33 ⁴and the applicant's employer or prospective employer⁴ , in writing,
34 of the person's qualification or disqualification for employment under
35 ⁴[this act] P.L. , c. (C.) (pending before the Legislature
36 as this bill)⁴ . If the applicant is disqualified, the conviction or
37 convictions which constitute the basis for the disqualification shall be
38 identified ⁴[therein] in the notice to the applicant, but shall not be
39 identified in the notice to the applicant's employer or prospective
40 employer⁴ .

41 ³c.³ The applicant shall have 30 days from the date of the written
42 notice of disqualification to petition the commissioner for a hearing on
43 the accuracy of ⁴[his] the applicant's⁴ criminal history record
44 information or to establish ⁴[his] the applicant's⁴ rehabilitation under
45 subsection b. of section 2 of P.L. , c. (C.) (pending before
46 the Legislature as this bill). ⁴The commissioner shall notify the

1 applicant's employer or prospective employer of the applicant's
2 petition for a hearing within five days following the receipt of the
3 petition from the applicant.⁴

4 ³d.³ A facility may employ a person conditionally for a period not
5 to exceed 180 days, pending completion of a criminal history record
6 background check required under ⁴ [this act] P.L. ., c.
7 (C.)(pending before the Legislature as this bill)⁴ , if the person
8 submits to the commissioner a sworn statement attesting that ⁴[he]
9 the person⁴ has not been convicted of any crime or disorderly persons
10 offense as described in section 2 of P.L. , c. (C.) (pending
11 before the Legislature as this bill). ³A person who submits a false
12 sworn statement shall be disqualified from employment by any facility,
13 ⁴[agency or registry] home health care agency, nurses' registry,
14 employment agency, or temporary help agency⁴ , and shall not have
15 an opportunity to establish⁴[his]⁴ rehabilitation pursuant to
16 subsection⁴[c.]b.⁴ of section 2 of P.L. , c. (C.) (pending
17 before the Legislature as this bill).³ A conditionally employed person
18 who ³disputes the accuracy of the criminal history record information
19 and who³ files a petition requesting a hearing pursuant to ³[this act]
20 subsection c. of this section³ may remain employed at the facility until
21 the commissioner rules on the applicant's petition ³but, pending the
22 commissioner's ruling, the facility shall not permit the applicant to
23 have unsupervised contact with elderly patients, residents or clients,
24 as the case may be³.

25 A person who is to be employed in any substitute capacity or
26 position, who is rehired annually, shall only be required to undergo a
27 criminal history record check upon initial employment. ⁴A person who
28 has been qualified for employment as a result of a criminal history
29 record background check pursuant to P.L. , c. (C.) (pending
30 before the Legislature as this bill) may use that qualification to obtain
31 employment with a simultaneous or subsequent employer without
32 having to undergo another check required by P.L. , c. (C.)
33 (pending before the Legislature as this bill) for a period of 12 months
34 from the date of the initial notice of qualification from the
35 commissioner. The person may request and the commissioner shall
36 send a notice of qualification upon request to simultaneous or
37 subsequent employers within 12 months following the date of the
38 initial qualification notice.⁴

39 Prospective and conditionally employed persons shall retain any
40 available right of review provided to applicants under Title 11A of the
41 New Jersey Statutes.

42

43 4. The prospective employer may assume the cost of all criminal
44 history record background checks conducted on prospective
45 employees pursuant to ⁴[this act] P.L. .c. (C.)(pending
46 before the Legislature as this bill)⁴; or the prospective employer may

1 require the prospective employee to pay the cost of the criminal
2 history record background checks.

3

4 5. In accordance with the "Administrative Procedure Act,"
5 P.L.1968, c.410 (C.52:14B-1 et seq.), the Commissioner of Health
6 shall adopt rules and regulations necessary to implement the provisions
7 of sections 1 ¹ **["to"]** through ¹ 4 ⁴ **and section 6**⁴ of P.L. , c. (C.)
8 (pending before the Legislature as this bill).

9

10 ¹ 6. Any employer subject to the provisions of sections 1 through
11 5 of P.L. , c. (C.) (pending before the Legislature as this bill)
12 who fails to comply with those provisions or any person submitting a
13 false sworn statement pursuant to section 3 of P.L. , c. (C.)
14 (pending before the Legislature as this bill) shall be subject to a fine of
15 not more than \$1,000.¹

16

17 ¹ **["6.] 7.**¹ a. A home health care agency, nurses' registry,
18 employment agency, or temporary help agency which is licensed or
19 regulated by the Division of Consumer Affairs in the Department of
20 Law and Public Safety, shall not hire a home health aide or other
21 health care employee ⁴ to serve in a position which involves regular
22 contact with a patient or client who is 60 years of age or older⁴ ,
23 except on a conditional basis as provided for in section ¹ **["7] 8**¹
24 of P.L. , c. (C.) (pending before the Legislature as this bill),
25 unless the director first determines, consistent with the requirements
26 of ⁴ **["this act] P.L. , c. (C.)** (pending before the Legislature
27 as this bill)⁴ , that no criminal history record information exists on file
28 in the Federal Bureau of Investigation, Identification Division, or in
29 the State Bureau of Identification in the Division of State Police,
30 which would disqualify that person from being employed or utilized in
31 such capacity or position. A person shall be disqualified from
32 employment under P.L. , c. (C.) (pending before the Legislature
33 as this bill) if that person's criminal history record background check
34 reveals a record of conviction of any of the following crimes and
35 offenses:

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

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

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

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

46 (d) involving any controlled dangerous substance or analog as set

1 forth in chapter 35 of Title 2C of the New Jersey Statutes except
2 paragraph (4) of subsection a. of N.J.S.2C:35-10.

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

7 b. Notwithstanding the provisions of subsection a. of this section,
8 no person shall be disqualified from employment under ⁴**[this act]**
9 P.L. , c. (C.)(pending before the Legislature as this bill)⁴
10 on the basis of any conviction disclosed by a criminal history record
11 background check performed pursuant to ⁴**[this act]** P.L. , c.
12 (C.)(pending before the Legislature as this bill)⁴ if the person
13 has affirmatively demonstrated to the Director of the Division of
14 Consumer Affairs clear and convincing evidence of ⁴**[his]** the
15 person's⁴ 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 or has held, as the case may be;

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

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

22 (4) the date of the offense;

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

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

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

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

33 c. If a person subject to the provisions of P.L. , c. (C.)
34 (pending before the Legislature as this bill) refuses to consent to, or
35 cooperate in, the securing of a criminal history record background
36 check, the director shall direct the home health care agency, nurses'
37 registry, employment agency, or temporary help agency not to
38 consider the person for employment.

39

40 ¹**[7.] 8.**¹ ³**a.**³ A home health aide or other health care employee
41 who is an applicant for employment with a home health care agency,
42 nurses' registry, employment agency, or temporary help agency which
43 is licensed or regulated by the Division of Consumer Affairs shall
44 submit to the Director of the Division of Consumer Affairs ⁴**[his]** the
45 applicant's⁴ name, address and fingerprints taken on standard
46 fingerprint cards by the State or municipal law enforcement agency.

1 The director is authorized to exchange fingerprint data with and
2 receive criminal history record information from the Federal Bureau
3 of Investigation and the Division of State Police for use in making the
4 determinations required by P.L. , c. (C.) (pending before the
5 Legislature as this bill).

6 ³b.³ Upon receipt of the criminal history record information for a
7 person from the Federal Bureau of Investigation or the Division of
8 State Police, the director shall immediately notify the applicant ⁴and
9 the applicant's employer or prospective employer⁴ , in writing, of the
10 person's qualification or disqualification for employment under P.L. ,
11 c. (C.) (pending before the Legislature as this bill). If the
12 applicant is disqualified, the conviction or convictions which constitute
13 the basis for the disqualification shall be identified ⁴[therein] in the
14 notice to the applicant, but shall not be identified in the notice to the
15 applicant's employer or prospective employer⁴ .

16 ³c.³ The applicant shall have 30 days from the date of the written
17 notice of disqualification to petition the director for a hearing on the
18 accuracy of ⁴[his] the applicant's⁴ criminal history record information
19 or to establish ⁴[his] the applicant's⁴ rehabilitation under subsection
20 b. of section ¹[6] 7¹ of P.L. , c. (C.) (pending before the
21 Legislature as this bill). ⁴The director shall notify the applicant's
22 employer or prospective employer of the applicant's petition for a
23 hearing within five days following the receipt of the petition from the
24 applicant.⁴

25 ³d.³ A home health care agency, nurses' registry, employment
26 agency, or temporary help agency may employ a home health aide or
27 other health care employee conditionally for a period not to exceed
28 180 days, pending completion of a criminal history record background
29 check required under ⁴[this act] P.L. .c. (C.)(pending
30 before the legislature as this bill)⁴ , if the person submits to the
31 director a sworn statement attesting that ⁴[he] the person⁴ has not
32 been convicted of any crime or disorderly persons offense as described
33 in section ¹[6] 7¹ of P.L. , c. (C.) (pending before the
34 Legislature as this bill). ³A person who submits a false sworn
35 statement shall be disqualified from employment by any facility ⁴as
36 defined in section 1 of P.L. , c. (C.)(pending before the
37 Legislature as this bill)⁴ , agency or registry, and shall not have an
38 opportunity to establish rehabilitation pursuant to subsection b. of
39 section 7 of P.L. , c. (C.)(pending before the Legislature as this
40 bill). A conditionally employed person who disputes the accuracy of
41 the criminal history record information and who files a petition
42 requesting a hearing pursuant to subsection c. of this section may
43 remain employed by the employing agency or registry until the director
44 rules on the applicant's petition but, pending the director's ruling, the
45 employing agency or registry shall not permit the applicant to have
46 unsupervised contact with ⁴[elderly]⁴ patients or clients ⁴who are 60

1 years of age or older⁴ .³

2 A person who is to be employed in any substitute capacity or
3 position, who is rehired annually, shall only be required to undergo a
4 criminal history record check upon initial employment. ¹A home
5 health aide or other health care employee who has been qualified for
6 employment as a result of a criminal history record background check
7 pursuant to P.L. , c. (C.)(pending before the Legislature
8 as this bill) may use that qualification to obtain employment with a
9 simultaneous or subsequent employer without having to undergo
10 another check required by P.L. , c. (C.)(pending before
11 the Legislature as thi bill) for a period of 12 months from the date of
12 the initial notice of qualifiation from the director. The aide or
13 employee may request and the director shall send a notice of
14 qualification upon request to simultaneous or subsequent employers
15 within 12 months following the date of the initial qualification notice.¹

16
17 ¹**[8.]** ¹9.¹ The home health care agency, nurses' registry,
18 employment agency, or temporary help agency ²**[shall]** may² assume
19 the cost of all criminal history record background checks conducted
20 on prospective employees pursuant to P.L. , c. (C.) (pending
21 before the Legislature as this bill) ²; or it may require the prospective
22 employee to pay the cost of the criminal history record background
23 checks².

24
25 ²10. The Division of Consumer Affairs shall require that the Board
26 of Nursing issue biennial recertifications to home health aides only
27 upon receiving documented proof from a home health care agency or
28 health care service firm that the home health aide is currently
29 employed and regularly supervised by a registered professional nurse.²

30
31 ²11. The Division of Consumer Affairs shall require that a Board
32 of Nursing certificate issued to a home health aide contain the
33 following statement: "Valid only if certified home health aide is
34 employed by a home care services agency and is performing delegated
35 nursing regimen or nursing tasks delegated through the authority of a
36 duly licensed registered professional nurse."²

37
38 ¹**[9.]** ²**[10.1]** ²12.² In accordance with the "Administrative
39 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Director
40 of the Division of Consumer Affairs shall adopt rules and regulations
41 necessary to implement the provisions of sections ¹**[6]** ¹7¹ through 9
42 ⁴and section 13⁴ of P.L. , c. (C.) (pending before the
43 Legislature as this bill).

44
45 ¹**[10.]** ²**[11.1]** ²13.² Any employer subject to the provisions of
46 ¹sections 7 through ⁴**[10]** ¹9 and section ⁴12 ⁴ of ¹ P.L. , c.

1 (C.) (pending before the Legislature as this bill) who fails to
2 comply with ¹~~['its] those~~¹ provisions or any person submitting a false
3 sworn statement pursuant to ¹~~['sections 3 or 7] section 8~~¹ of P.L. ,
4 c. (C.) (pending before the Legislature as this bill) shall be subject
5 to a fine of not more than \$1,000.

6
7 ¹~~['11.]~~²~~['12.]~~¹ ~~14.~~² The Division of State Police in the Department
8 of Law and Public Safety shall conduct a criminal history record
9 background check including a name and fingerprint identification
10 check of each prospective employee of a facility as defined in section
11 1 of P.L. , c. (C.) (pending before the Legislature as this bill) or
12 of a home health care agency, nurses' registry, employment agency, or
13 temporary help agency licensed or regulated by the Director of the
14 Division of Consumer Affairs. The requirement of a criminal history
15 record background check shall apply only to a prospective employee
16 who is or would be serving in a position which involves regular
17 contact with a patient, resident or client as the case may be, who is 60
18 years of age or older.

19 For the purpose of conducting the criminal history record
20 background check, the Division of State Police shall examine its own
21 files and arrange for a similar examination by federal authorities. The
22 division shall immediately forward the information obtained as a result
23 of conducting the check to the Commissioner of Health, in the case of
24 a facility, and to the Director of the Division of Consumer Affairs, in
25 the case of a home health care agency, nurses' registry, employment
26 agency, or temporary help agency.

27
28 ¹~~['12.]~~²~~['13.]~~¹ ~~15.~~² This act shall take effect on the first day of the
29 sixth month after enactment.

30

31

32

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34 _____
35 Requires criminal history record checks of certain persons applying for
jobs to provide care for the elderly.

1 a facility, and to the Director of the Division of Consumer Affairs, in
2 the case of a home health care agency, nurses' registry, employment
3 agency, or temporary help agency.

4

5 12. This act shall take effect on the first day of the sixth month
6 after enactment.

7

8

9

STATEMENT

10

11 This bill bars persons who have been convicted of certain disorderly
12 persons offenses or crimes from employment with certain facilities,
13 home health care agencies, nurses' registries, employment agencies, or
14 temporary help agencies which employ persons who serve the elderly.
15 The bill defines facility to mean any facility or institution, whether
16 public or private, offering health or health related services for the
17 institutionalized elderly, and which is subject to regulation, visitation,
18 inspection, or supervision by any government agency. Facility
19 includes, but is not limited to, nursing homes, rehabilitation centers,
20 residential health care facilities, special hospitals, chronic disease
21 hospitals, psychiatric hospitals, developmental disabilities centers or
22 facilities, day care facilities for the elderly, medical day care centers
23 and licensed home health care agencies.

24 Under the provisions of this bill, no person could: (1) be hired in a
25 professional or non-professional capacity by a facility, whether public
26 or private, offering health related services for the institutionalized
27 elderly; or (2) provide any home health care services to the elderly,
28 until the Commissioner of Health, in the case of a facility, and the
29 Director of the Division of Consumer Affairs in the Department of
30 Law and Public Safety, in the case of home health care agencies,
31 nurses' registries, employment agencies, or temporary help agencies,
32 determines that the person has not been convicted of any of the crimes
33 or offenses set forth in the bill.

34 These crimes or offenses include serious drug offenses as well as
35 homicide, assault, kidnapping, robbery or theft. Criminal history
36 record background checks would be initiated by local police
37 departments through the Department of Health or the Division of
38 Consumer Affairs and completed by the State Police and the Federal
39 Bureau of Investigation upon payment of the necessary fees.

40 The applicant would have 30 days from the date of a
41 disqualification notice to petition the Commissioner of Health or the
42 Director of the Division of Consumer Affairs, as the case may be, for
43 a hearing on the accuracy of the criminal records or to demonstrate his
44 rehabilitation. Conditional employment for up to 180 days would be
45 allowed during an applicant's background check if the applicant attests

1 that he has not been convicted of any of the disqualifying offenses or
2 crimes.

3

4

5

6

7 Requires criminal history record checks of certain persons applying for
8 jobs to provide care for the elderly.

ASSEMBLY SENIOR ISSUES, TOURISM & GAMING
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 995

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 29, 1996

The Assembly Senior Issues, Tourism and Gaming Committee reports favorably and with committee amendments Assembly Bill No. 995.

This bill bars persons who have been convicted of certain disorderly persons offenses or crimes from employment with certain facilities, home health care agencies, nurses' registries, employment agencies, or temporary help agencies which employ persons who serve the elderly. The bill defines facility to mean any facility or institution, whether public or private, offering health or health related services for the institutionalized elderly, and which is subject to regulation, visitation, inspection, or supervision by any government agency. Facility includes, but is not limited to, nursing homes, rehabilitation centers, residential health care facilities, general hospitals, special hospitals, chronic disease hospitals, psychiatric hospitals, developmental disabilities centers or facilities, day care facilities for the elderly, medical day care centers and licensed home health care agencies.

Under the provisions of this bill, no person could: (1) be hired in a professional or non-professional capacity by a facility, whether public or private, offering health related services for the institutionalized elderly; or (2) provide any home health care services to the elderly, until the Commissioner of Health, in the case of a facility, and the Director of the Division of Consumer Affairs in the Department of Law and Public Safety, in the case of home health care agencies, nurses' registries, employment agencies, or temporary help agencies, determines that the person has not been convicted of any of the crimes or offenses set forth in the bill.

These crimes or offenses include serious drug offenses as well as homicide, assault, kidnaping, robbery or theft. Criminal history record background checks would be initiated by the Department of Health or the Division of Consumer Affairs and completed by the State Police and the Federal Bureau of Investigation upon payment of the necessary fees.

The applicant would have 30 days from the date of a disqualification notice to petition the Commissioner of Health or the Director of the Division of Consumer Affairs, as the case may be, for a hearing on the accuracy of the criminal records or to demonstrate his rehabilitation. Conditional employment for up to 180 days would be allowed during an applicant's background check if the applicant attests that he has not been convicted of any of the disqualifying offenses or crimes.

This bill was pre-filed for introduction in the 1996 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

COMMITTEE AMENDMENTS

The committee amended the bill to include general hospitals in the definition of a "facility" to which the provisions of the bill apply. The committee amended the bill to provide two penalty sections, one applicable to facilities, the other applicable to home health care agencies, nurses' registries or employment agencies. The bill had contained one penalty section referring to two sections in different titles of the statutes. The committee also amended the bill to reconcile crossreferences to certain sections within the bill.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

[Second Reprint]

ASSEMBLY, No. 995

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 14, 1997

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 995 (2R).

This bill would bar persons who have been convicted of certain crimes and disorderly persons offenses facilities, home health care agencies, nurses' registries, employment agencies, or temporary help agencies which employ persons who serve the elderly. The bills define "facility" to mean any facility to mean any facility or institution, whether public or private, offering health or health related services for the institutionalized elderly, and which is subject to regulation, visitation, inspection, or supervision by any government agency. Facility includes, but is not limited to, nursing homes, rehabilitation centers, residential health care facilities, general hospitals, special hospitals, chronic disease hospitals, psychiatric hospitals, developmental disabilities centers or facilities, day care facilities for the elderly, medical day care centers and licensed home health care agencies.

Under the provisions of this bill, no person could: (1) be hired by a facility, whether public or private, offering health related services for the institutionalized elderly; or (2) provide any home health care services to the elderly, until the Commissioner of Health, in the case of a facility, and the Director of the Division of Consumer Affairs in the Department of Law and Public Safety, in the case of home health care agencies, nurses' registries, employment agencies, or temporary help agencies, determines that the person has not been convicted of any of the crimes or offenses set forth in the bill.

The criminal offenses listed in the bill include homicide, assault, kidnaping, robbery, theft and serious drug offenses. Criminal history record background checks would be initiated by the Department of Health or the Division of Consumer Affairs and completed by the State Police and the Federal Bureau of Investigation upon payment of the necessary fees.

The applicant would have 30 days from the date of a disqualification notice to petition the Commissioner of Health or the

Director of the Division of Consumer Affairs, as the case may be, for a hearing on the accuracy of the criminal records or to demonstrate his rehabilitation. Conditional employment for up to 180 days would be allowed during an applicant's background check if the applicant submits a sworn statement that he has not been convicted of any of the disqualifying offenses or crimes.

The committee amendments clarified that a person such as a nurse or doctor already licensed by the State could be hired by the facilities covered by the bill without undergoing a criminal history background check. The amendments also clarified if a person submits a false statement in connection with an employment application he would be disqualified and would not have an opportunity for rehabilitation. In addition, the amendments clarify that if a conditionally employed person disputes the accuracy of his criminal history information and request a hearing , that employee would not be permitted to have unsupervised contact with a patient or client pending the outcome of his appeal.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[Third Reprint]

ASSEMBLY, No. 995

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 27, 1997

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 995 (3R) with amendments.

Assembly Bill No. 995 (3R), as amended, bars persons who have been convicted of certain disorderly persons offenses or crimes from employment with certain facilities, home health care agencies, nurses' registries, employment agencies, or temporary help agencies. The bill defines facility to mean any facility or institution, whether public or private, offering health or health related services for the institutionalized elderly, and which is subject to regulation, visitation, inspection, or supervision by any government agency.

Under the provisions of this bill, a person could not: (1) be hired by a facility for a position which involves regular contact with patients or clients 60 years of age or older; or (2) provide any home health care services to such elderly individuals, until the Commissioner of Health (in the case of a facility) or the Director of the Division of Consumer Affairs in the Department of Law and Public Safety (in the case of home health care agencies, nurses' registries, employment agencies, or temporary help agencies) determines that the person has not been convicted of any of the crimes or offenses set forth in the bill.

These crimes or offenses include serious drug offenses as well as homicide, assault, kidnaping, robbery or theft. Criminal history record background checks would be initiated by the Department of Health or the Division of Consumer Affairs and completed by the State Police and the Federal Bureau of Investigation upon payment of the necessary fees by either the prospective employer or the prospective employee.

The applicant would have 30 days from the date of a disqualification notice to petition the Commissioner of Health or the Director of the Division of Consumer Affairs, as the case may be, for a hearing on the accuracy of the criminal records or to demonstrate rehabilitation. Conditional employment for up to 180 days would be allowed during an applicant's background check if the applicant attests that he or she has not been convicted of any of the disqualifying offenses or crimes. An employer who fails to comply with the

provisions of this bill, or a person who falsely attests that he or she has not been convicted of any disqualifying offense in order to obtain conditional employment, would be subject to a fine of \$1,000.

As amended and reported, this bill is identical to Senate Bill No. 206 (SCS) (Connors/Bubba) as amended by this committee on January 27, 1997.

COMMITTEE AMENDMENTS

The committee amended the bill to require the Commissioner of Health or the Director of the Division of Consumer Affairs to send notices to an applicant's employer concerning the results of the criminal history record background check on the applicant and the applicant's petition for a hearing. In addition, the committee amended the bill to require that a person would need to have only one criminal history record background check to obtain employment with a simultaneous or subsequent employer within one year following an initial qualification. The remainder of the amendments are technical in nature to correct citations in the bill and to clarify the sponsor's intent.

FISCAL IMPACT

In a fiscal estimate in this bill, the Office of Legislative Services (OLS) noted that, based on similar legislation in a previous legislative session, the Department of Health had estimated its costs at \$394,000, \$292,000 and \$306,000, respectively, over the three fiscal years following enactment, primarily for the cost of five employees to handle the department's activities related to the criminal history record background checks.

There would appear to be no additional direct cost to the State for criminal history record background checks since the State already conducts background checks for persons seeking employment at the State's psychiatric hospitals and developmental centers. The estimate states that the Department of Human Services has in the past absorbed any additional costs associated with conducting background checks for its various employees within its ongoing budget. The bill permits the cost of the criminal history background check to be borne by either the employer or employee. If an employer assumes the cost of a background check, the employer may seek to pass these costs on to the payers of health care costs, including Medicaid. The extent to which payers of health care, including Medicaid, would reimburse employers for such costs cannot be determined.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 995

with Assembly Floor Amendments
(Proposed By Assemblyman Moran)

ADOPTED: FEBRUARY 8, 1996

These floor amendments allow the home health care agency, nurses' registry, employment agency, or temporary help agency to either assume the cost of all criminal history record background checks conducted on prospective employees or require the prospective employee to pay the cost of the criminal history record background check. Section 4 of this bill allows a facility for the institutionalized elderly this option.

The amendments also authorizes the Division of Consumer Affairs to require that the Board of Nursing issue biennial recertifications to home health aides only upon receiving documented proof from a home health care agency or health care service firm that the home health aide is currently employed and regularly supervised by a registered professional nurse. Additionally, the division shall require that a Board of Nursing certificate issued to a home health aide contain the following statement: "Valid only if certified home health aide is employed by a home care services agency and is performing delegated nursing regimen or nursing tasks delegated through the authority of a duly licensed registered professional nurse."

LEGISLATIVE FISCAL ESTIMATE TO

[Second Reprint]
ASSEMBLY, No. 995

STATE OF NEW JERSEY

DATED: May 17, 1996

Assembly Bill No. 995(2R) of 1996 bars persons who have been convicted of certain disorderly persons offenses or crimes such as serious drug offenses, homicide, assault, kidnaping, robbery or theft from employment with certain facilities, home health agencies, nurses' registries, employment agencies, or temporary help agencies which employ persons who serve persons 60 years of age or older. Facility includes, but is not limited to, public or private nursing homes, rehabilitation centers, residential health care facilities, general hospitals, special hospitals, chronic disease hospitals, psychiatric hospitals, developmental centers or facilities, day care centers for the elderly, medical day care centers and licensed home health care agencies.

Under the provisions of the bill, no person could: (1) be hired in a professional or non-professional capacity by a facility offering health related services for the institutionalized elderly; or (2) provide any home health services to the elderly until the Commissioner of Health (DOH) or the Director of the Division of Consumer Affairs in the Department of Law and Public Safety (DLPS), as appropriate, determines that the person has not been convicted of any of the crimes and offenses specified in the bill. Certain due process rights are offered the applicant in case of disqualification. Conditional employment for up to 180 days would be allowed, if the applicant attests that he has not been convicted of any disqualifying offenses or crimes. Employers failing to comply with the provisions of the legislation are subject to a fine of up to \$1,000. Also, a home health aide must be regularly supervised by a registered professional nurse.

The cost of criminal history background checks may be assumed by a prospective employer or the prospective employee.

DOH, DLPS and the Office of Management and Budget have not provided any fiscal information on the legislation. However, on similar legislation, Assembly Bill No. 837 of 1994, DOH estimated its costs at \$394,000, \$292,000 and \$306,000, respectively, over the next three fiscal years, primarily for the cost of five employees.

As the cost of the criminal history background check is to be borne by either the employer or employee, there is no direct cost to the State, particularly since the State already conducts background checks for persons seeking employment at the State's psychiatric hospitals and developmental centers. If an employer assumes the cost of a

background check, the employer may seek to pass these costs on to the payers of health care costs, including Medicaid. The extent to which payers of health care, including Medicaid, would reimburse employers for such costs cannot be determined.

As the Department of Human Services has absorbed any additional costs associated with conducting background checks for its various employees within its ongoing budget, it is not unreasonable to expect any additional costs associated with these background checks to be absorbed within DOH's budget, particularly if DOH coordinates these activities with those conducted by DHS.

The 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.

7/4/04
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OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

TRENTON, NJ 08625

CONTACT: Pete McDonough
(609)777-2600

RELEASE: Mon., May 12, 1997

Gov. Whitman today signed legislation that will ensure that New Jersey senior citizens receive high-quality and honest health care. The legislation requires criminal history record checks of certain persons applying for jobs to provide care for the elderly.

“This legislation will protect New Jersey’s senior citizens from falling prey to criminals in health care facilities or in home-based health care situations,” said Gov. Whitman.

The legislation prohibits facilities for the institutionalized elderly and agencies that provide home-based care from hiring persons who have been convicted of crimes including theft, drug offenses, assault, sex offenses and neglect. The legislation will apply in the hiring of persons who have regular contact with patients or clients 60 years of age or older.

The Department of Health and Senior Services and the Division of Consumer Affairs will be responsible for administration of the law.

The law will take effect in six months. During that time period, sponsors of this legislation will be developing additional legislation to ensure its efficient implementation.

A-995 was sponsored by Assembly Members Jeffrey Moran and Christopher Connors (R-Atlantic/Burlington/Ocean).

7/4/97
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OFFICE OF THE GOVERNOR NEWS RELEASE

CN-004

CONTACT: PETE MCDONOUGH
609 777-2600

TRENTON, NJ 08625

RELEASE: TUESDAY,
May 13, 1997

Stating that senior citizens are one of New Jersey's greatest treasures, Gov. Christie Whitman today spoke and presented awards to outstanding senior citizens at the annual Cape May County Senior Citizen Jamboree in Wildwood.

"We want to keep senior citizens right here in New Jersey," Whitman said. "That's why we are doing a lot to make this state a better place for all our older residents."

Whitman said yesterday she signed legislation that will ensure that New Jersey senior citizens receive high-quality and honest health care by preventing anyone with a criminal record from providing home-based or institutional care to senior citizens.

"So," she said, "if a background check on an applicant reveals a conviction for theft, drug offenses, sex offenses, assault, or endangering the welfare of children or the elderly, that applicant will be barred from any job that involves regular contact with patients or clients who are 60 years of age or older."

Whitman said programs assisting senior citizens include the Homestead Rebate Program and the New Jersey EASE program, which will provide seniors with easier access to services at the local level.

She said the EASE program "is truly a revolutionary way of providing seniors with information and help. Whatever service they need -- getting a ride, finding a nursing home for a loved one, seeking a job, taking a college course, receiving home-delivered meals, getting protective services, or just hearing a friendly voice on the other end of the line -- it will be as close as the nearest telephone."

The EASE program is currently operational in Ocean County and soon will become operational in Atlantic County. Eventually, the state hopes to have EASE programs operating in all of the state's 21 counties.

Gov. Whitman presented Outstanding Citizen Awards to Florence Robinson, 78, of Ocean City, and Roland Alexenberg, 73, of Woodbine, for their contributions to their communities. She also presented awards to the Coast Guard's Chief Petty Officers Association and the Chief Petty Officers Association Auxiliary for their outstanding contributions to the people of Cape May County.