

SENATE, No. 3740

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED MARCH 30, 2023

Sponsored by:

Senator KRISTIN M. CORRADO

District 40 (Bergen, Essex, Morris and Passaic)

SYNOPSIS

Codifies and revises background check and other requirements for certain individuals working with children.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the requirements for certain individuals to work
2 with children and supplementing Title 30 and Title 53 of the
3 Revised Statutes.

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

7
8 1. As used in this act:

9 “Behavioral assistance services” means concrete, outcome-
10 oriented interventions that are components of a written, detailed
11 plan of care prepared by a licensed behavioral healthcare
12 practitioner, and authorized by the contracted system administrator
13 or other agency designated by the Department of Human Services
14 or the Department of Children and Families, which includes an
15 evaluation of the identified behavior and recommendations for
16 specific interventions with definable outcomes and strategies with
17 the goal of restoring, rehabilitating, or maintaining the child’s,
18 youth’s, or young adult’s capacity to successfully function in the
19 community and diminish the need for a more intensive level of care.

20 “Child, youth, or young adult” means a Medicaid beneficiary
21 under 21 years of age, a NJ FamilyCare-Plan B or Plan C
22 beneficiary under 19 years of age, or an individual receiving
23 services under the Children’s System of Care who is not eligible for
24 Medicaid or NJ FamilyCare who is under 21 years of age.

25 “Children’s System of Care” means the Children’s System of
26 Care in the Department of Children and Families.

27 “Contracted system administrator” means an administrative
28 organization contracted by, and serving as an agent of, the
29 Department of Children and Families to provide utilization
30 management, care coordination, quality management, and
31 information management for the Children’s System of Care in its
32 administration of the locally managed system of care providing
33 mental and behavioral health services and supports to eligible
34 children, youth, and young adults.

35 “Department” means the Department of Human Services.

36 “Division” means the Division of Medical Assistance and Health
37 Services in the Department of Human Services.

38 “Intensive in-community mental health rehabilitation services”
39 means an array of mental health rehabilitation services delivered in
40 community-based settings, and not in provider offices or office
41 settings, which services: address symptom reduction and are
42 restorative and preventative in nature; target problem solving and
43 strengthening adaptive and coping skills to restore or maintain the
44 child’s, youth’s, or young adult’s ability to function in the
45 community; and are provided as part of an approved plan of care
46 and encompass a variety of mental health services, including, but
47 not limited to, group, individual, or family therapy, allied
48 behavioral therapies and modalities, clinical consultation and
49 evaluation, instruction in anger management, parenting skills,

1 problem solving and stress reduction techniques, psycho-
2 educational services, and counseling.

3
4 2. a. A behavioral assistance services program or an intensive
5 in-community mental health rehabilitation services program shall,
6 as a condition of securing or maintaining approval as a Medicaid
7 provider, ensure that a fingerprint-based criminal history record
8 background check is conducted on all current and prospective staff
9 members of the program who provide or will provide direct services
10 to children, youth, or young adults. The behavioral assistance
11 services program or intensive in-community mental health
12 rehabilitation services program may assume the cost of the
13 fingerprint-based criminal history record background check
14 required pursuant to this section, or may require that the staff
15 member or applicant assume the cost of the fingerprint-based
16 criminal history record background check.

17 b. The division is authorized to exchange fingerprint data with,
18 and to receive information from, the Division of State Police in the
19 Department of Law and Public Safety and the Federal Bureau of
20 Investigation.

21 c. A current staff member or applicant for employment with a
22 behavioral assistance services program or an intensive in-
23 community mental health rehabilitation services program shall be
24 permanently disqualified from employment at a behavioral
25 assistance services program or intensive in-community mental
26 health rehabilitation services program if the staff member or
27 applicant:

28 (1) refuses to consent to, or cooperate in, the securing of a
29 fingerprint-based criminal history record background check;

30 (2) knowingly makes a materially false statement in connection
31 with a criminal history record background check;

32 (3) is registered, or is required to be registered, on a State sex
33 offender registry or repository, or in the National Sex Offender
34 Registry established under the "Adam Walsh Child Protection and
35 Safety Act of 2006," 42 U.S.C. s.16901 et seq.; or

36 (4) is found by a criminal history record background check to
37 have a record of conviction for any of the following crimes and
38 offenses:

39 (a) a crime against a child, including endangering the welfare of
40 a child and child pornography pursuant to N.J.S.2C:24-4, and child
41 molestation as set forth in N.J.S.2C:14-1 et seq.;

42 (b) abuse, abandonment, or neglect of a child pursuant to
43 R.S.9:6-3;

44 (c) endangering the welfare of an incompetent person pursuant
45 to N.J.S.2C:24-7;

46 (d) sexual assault, criminal sexual contact, or lewdness pursuant
47 to N.J.S.2C:14-2 through N.J.S.2C:14-4;

48 (e) murder pursuant to N.J.S.2C:11-3 or manslaughter pursuant
49 to N.J.S.2C:11-4;

- 1 (f) stalking pursuant to P.L.1992, c.209 (C.2C:12-10);
- 2 (g) kidnapping and related offenses including criminal restraint;
- 3 false imprisonment; interference with custody; criminal coercion; or
- 4 enticing a child into a motor vehicle, structure, or isolated area
- 5 pursuant to N.J.S.2C:13-1 through C.2C:13-6;
- 6 (h) arson pursuant to N.J.S.2C:17-1, or causing or risking
- 7 widespread injury or damage which would constitute a crime of the
- 8 second degree pursuant to N.J.S.2C:17-2;
- 9 (i) terroristic threats pursuant to N.J.S.2C:12-3;
- 10 (j) aggravated assault, which would constitute a crime of the
- 11 second or third degree pursuant to subsection b. of N.J.S.2C:12-1;
- 12 (k) robbery, which would constitute a crime of the first degree
- 13 pursuant to N.J.S.2C:15-1;
- 14 (l) burglary, which would constitute a crime of the second
- 15 degree pursuant to N.J.S.2C:18-2;
- 16 (m) domestic violence pursuant to P.L.1991, c.261 (C.2C:25-17
- 17 et seq.);
- 18 (n) any drug related offense committed within the preceding
- 19 five-year period; or
- 20 (o) an attempt or conspiracy to commit any of the crimes or
- 21 offenses listed in subparagraphs (a) through (n) of this paragraph.
- 22 d. For the purposes of subsection c. of this section, a person
- 23 shall be deemed to have a disqualifying record of conviction if the
- 24 person has been convicted in New Jersey of any of the crimes listed
- 25 in subsection c. of this section, or if the person has been convicted
- 26 in any other state or jurisdiction of conduct which, if committed in
- 27 New Jersey, would constitute any of the crimes or disorderly
- 28 persons offenses described in that subsection.
- 29 e. Notwithstanding the provisions of this section to the
- 30 contrary, a person shall not be disqualified from employment under
- 31 this section on the basis of any conviction disclosed by a criminal
- 32 history record background check without an opportunity to
- 33 challenge the accuracy of the disqualifying criminal history record
- 34 pursuant to the provisions of section 6 of P.L. , c. (C.)
- 35 (pending before the Legislature as this bill).
- 36 f. For crimes and offenses other than those cited in subsection
- 37 c. or subsection d. of this section, an applicant for employment with
- 38 or a staff member of a behavioral assistance services program or an
- 39 intensive in-community mental health rehabilitation services
- 40 program may be eligible for employment at the program if the
- 41 division determines that the person has affirmatively demonstrated
- 42 to the division clear and convincing evidence of the person's
- 43 rehabilitation pursuant to subsection g. of this section.
- 44 g. In determining whether a person has affirmatively
- 45 demonstrated rehabilitation, the following factors shall be
- 46 considered:
- 47 (1) the nature and responsibility of the position at the behavioral
- 48 assistance services program or intensive in-community mental

1 health rehabilitation services program which the convicted person
2 would hold, has held, or currently holds, as the case may be;

- 3 (2) the nature and seriousness of the offense;
- 4 (3) the circumstances under which the offense occurred;
- 5 (4) the date of the offense;
- 6 (5) the age of the person when the offense was committed;
- 7 (6) whether the offense was an isolated or repeated incident;
- 8 (7) any social conditions which may have contributed to the
9 offense; and

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

16 h. The division shall make the final determination regarding
17 the employment of an applicant or staff member with a criminal
18 conviction.

19 i. If a behavioral assistance services program or an intensive
20 in-community mental health rehabilitation services program has
21 knowledge that a staff member has criminal charges pending
22 against the staff member, the owner or sponsor of the program shall
23 promptly notify the division to determine whether any action
24 concerning the staff member is necessary in order to ensure the
25 safety of the children, youth, and young adults who attend the
26 program.

27 j. A staff member shall not be left alone as the only adult
28 caring for a child, youth, or young adult at a behavioral assistance
29 services program or an intensive in-community mental health
30 rehabilitation services program until the staff member has
31 successfully completed the fingerprint-based criminal history record
32 background check required pursuant to this section.

33

34 3. a. A behavioral assistance services program or intensive in-
35 community mental health rehabilitation services program that has
36 received an application from a person seeking employment with the
37 program or that currently employs a staff member shall be immune
38 from liability for acting upon or disclosing information about the
39 applicant or employee's disqualification from employment with the
40 program or termination of employment with the program to another
41 behavioral assistance services program or intensive in-community
42 mental health rehabilitation services program seeking to employ
43 that person if the program has:

- 44 (1) received notice from the division that the applicant or staff
45 member, as applicable, has been determined by the division to be
46 disqualified from employment in a behavioral assistance services
47 program or an intensive in-community mental health rehabilitation
48 services program pursuant to section 2 of this act; or

1 (2) terminated the employment of a staff member because the
2 person was disqualified from employment at the program on the
3 basis of a conviction of a crime pursuant to section 2 of this act
4 after commencing employment at the program.

5 b. A behavioral assistance services program or intensive in-
6 community mental health rehabilitation services program which
7 acts upon or discloses information pursuant to subsection a. of this
8 section shall be presumed to be acting in good faith unless it is
9 shown by clear and convincing evidence that the program acted
10 with actual malice toward the person who is the subject of the
11 information.

12

13 4. a. A behavioral assistance services program or intensive in-
14 community mental health rehabilitation services program shall, as a
15 condition of securing or maintaining approval as a Medicaid
16 provider, ensure and maintain documentation that each employee
17 has a valid driver's license if the employee's job functions include
18 the operation of a vehicle used in the transportation of children,
19 youth, or young adults, or their family members or caregivers.

20 b. A behavioral assistance services program or intensive in-
21 community mental health rehabilitation services program shall, as a
22 condition of securing or maintaining approval as a Medicaid
23 provider, ensure and maintain documentation that each employee
24 has attained the minimum educational and other training and
25 certification requirements for the staff member's role within the
26 program.

27

28 5. Each behavioral assistance services program and intensive
29 in-community mental health rehabilitation services program shall
30 annually certify to the division, no later than March 1 of each year,
31 that the program is in full compliance with the requirements of this
32 act. The division shall conduct periodic reviews of the records of
33 behavioral assistance services programs and intensive in-
34 community mental health rehabilitation services programs to
35 determine compliance with the requirements of this act. A
36 behavioral assistance services program or intensive in-community
37 mental health rehabilitation services program that submits a false
38 certification pursuant to this section shall be liable to a civil penalty
39 of up to \$10,000, which penalty shall be collected by the division in
40 summary proceedings before a court of competent jurisdiction
41 pursuant to the provisions of the "Penalty Enforcement Law of
42 1999, P.L.1999, c.274 (C.2A:58-10 et seq.).

43

44 6. a. The Assistant Commissioner of the Division of Medical
45 Assistance and Health Services in the Department of Human
46 Services is authorized to exchange fingerprint data with, and to
47 receive information from, the Division of State Police in the
48 Department of Law and Public Safety and the Federal Bureau of
49 Investigation.

1 each staff member who transports children, youth, young adults, or
2 their family members or caregivers as part of the staff member's job
3 functions, has a valid driver's license, and that staff members meet
4 the minimum educational and other requirements for their roles
5 within the program. Programs may assume the cost of the
6 fingerprint-based criminal history record background check or may
7 require that the staff member or applicant assume the cost of the
8 background check.

9 The Division of Medical Assistance and Health Services
10 (DMAHS) in the Department of Human Services will be authorized
11 to exchange fingerprint data with, and to receive information from,
12 the Division of State Police in the Department of Law and Public
13 Safety and the Federal Bureau of Investigation.

14 A current staff member or person applying for employment with
15 a program will be permanently disqualified from employment with
16 a program if the staff member or person:

17 1) refuses to consent to, or cooperate in, the securing of a
18 fingerprint-based criminal history record background check;

19 2) knowingly makes a materially false statement in connection
20 with a criminal history record background check;

21 3) is registered, or is required to be registered, on a State sex
22 offender registry or repository, or in the National Sex Offender
23 Registry established under the "Adam Walsh Child Protection and
24 Safety Act of 2006," 42 U.S.C. s.16901 et seq.; or

25 4) is found by a criminal history record background check to
26 have a record of conviction for attempting to commit, conspiring to
27 commit, or committing certain enumerated crimes and offenses,
28 including: certain sexual offenses; abuse, abandonment, or neglect
29 of a child; endangering the welfare of an incompetent person;
30 murder or manslaughter; stalking; kidnapping and related offenses;
31 arson or causing or risking widespread injury or damage; terroristic
32 threats; certain aggravated assault offenses; first degree robbery;
33 second degree burglary; domestic violence; and certain drug related
34 offenses.

35 A person will similarly be disqualified from employment with a
36 program if the person is convicted of any equivalent offense in any
37 other state or jurisdiction.

38 The bill prohibits staff members from being left alone as the only
39 adult caring for a child, youth, or young adult at a program until the
40 staff member has successfully completed the fingerprint-based
41 criminal history record background check. A person found to have
42 a disqualifying conviction will have the opportunity to challenge
43 the accuracy of the disqualifying criminal history record.

44 For convictions for crimes and offenses other than those
45 expressly enumerated in the bill, the person may be eligible for
46 employment at a program if the DMAHS determines that the person
47 has affirmatively demonstrated clear and convincing evidence of the
48 person's rehabilitation. In determining whether a person has

S3740 CORRADO

1 affirmatively demonstrated rehabilitation, the following factors will
2 be considered:

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

19 The DMAHS will make the final determination regarding the
20 employment of an applicant or staff member with a criminal
21 conviction. If a program has knowledge that a staff member has
22 pending criminal charges, the owner or sponsor of the program will
23 be required to promptly notify the DMAHS to determine whether
24 any action concerning the staff member is necessary in order to
25 ensure the safety of the children, youth, and young adults who
26 attend the program.

27 A program that has received an employment application or
28 currently employs a staff member will be immune from liability for
29 acting upon or disclosing information about the person's
30 disqualification from or termination of employment to another
31 program seeking to employ that person if the program has either: 1)
32 received notice from the DMAHS that the applicant or staff member
33 is disqualified from employment in a program; or 2) terminated the
34 person's employment based on a disqualifying conviction. A
35 program that acts upon or discloses information under these
36 circumstances will be presumed to be acting in good faith unless it
37 is shown by clear and convincing evidence that the program acted
38 with actual malice toward the person who is the subject of the
39 information.

40 Program will be required, as a condition of securing or
41 maintaining approval as a Medicaid provider, to ensure and
42 maintain documentation that: 1) each employee has a valid driver's
43 license if the employee's job functions include the operation of a
44 vehicle used in the transportation of children, youth, or young
45 adults, or their family members or caregivers; and 2) each employee
46 has attained the minimum educational and other training and
47 certification requirements for the staff member's role within the
48 program.

S3740 CORRADO

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1 Each program will be required to annually certify to the
2 DMAHS, no later than March 1 of each year, that the program is in
3 full compliance with the requirements of the bill. The DMAHS will
4 be required to conduct periodic reviews of the records of programs
5 to determine compliance. A program that submits a false
6 certification will be liable to a civil penalty of up to \$10,000.