S T A T E O F N E W Y O R K

2331

2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. REILICH -- read once and referred to the Committee on Health

AN ACT to amend the social services law and the public health law, in relation to criminal history records of maintenance employees in adult residential health and assisted living facilities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The social services law is amended by adding a new section 461-s to read as follows:

S 461-S. ACCESS TO CRIMINAL HISTORY RECORDS. 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "MAINTENANCE EMPLOYEE" SHALL MEAN ANY INDIVIDUAL TO BE EMPLOYED OR USED BY A PROVIDER, INCLUDING THOSE PERSONS EMPLOYED THROUGH A TEMPORARY EMPLOYMENT OR STAFFING AGENCY, AND WHO PROVIDE SUPPORTIVE MAINTENANCE SERVICES TO SUCH FACILITY, INCLUDED, BUT NOT LIMITED TO BEAUTICIAN, SECURITY, JANITORIAL, LAUNDRY, RECREATIONAL AND GROUNDSKEEPING SERVICES. SUCH TERM SHALL NOT INCLUDE VOLUNTEERS.

(B) "PROVIDER" SHALL MEAN AN ASSISTED LIVING FACILITY, RESIDENTIAL HEALTH CARE FACILITY, SKILLED NURSING FACILITY OR ANY OTHER TYPE OF FACILITY THAT PROVIDES RESIDENTIAL OR INSTITUTIONAL CARE TO THE ELDERLY OR DISABLED.

2. SUBJECT TO THE RULES AND REGULATIONS OF THE DIVISION OF CRIMINAL JUSTICE SERVICES, THE DEPARTMENT OF HEALTH SHALL HAVE ACCESS TO CRIMINAL HISTORY RECORDS MAINTAINED BY SUCH DIVISION PERTAINING TO ANY MAINTENANCE EMPLOYEE OR SUCH PERSONS AS THE DEPARTMENT OF HEALTH AT ANY TIME DEEMS NECESSARY TO DETERMINE THEIR CRIMINAL HISTORIES.

3. EVERY COURT IN WHICH A MAINTENANCE EMPLOYEE OF A PROVIDER IS CONVICTED OF A CRIME WHILE PERFORMING THEIR INTENDED DUTIES AT SUCH FACILITY SHALL, WITHIN SEVEN DAYS AFTER EITHER THE ENTRY OF A PLEA OF GUILTY, OR THE VERDICT OF THE COURT OR A JURY, NOTIFY THE DEPARTMENT OF HEALTH IN WRITING OF SUCH CONVICTION. THE DEPARTMENT OF HEALTH, AFTER

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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RECEIPT OF SUCH NOTIFICATION OR AT ANY TIME THE DEPARTMENT OF HEALTH BECOMES AWARE OF THE CONVICTION OF SUCH MAINTENANCE WORKER, SHALL HAVE THE AUTHORITY, GRANTED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, TO HAVE ACCESS TO THE CRIMINAL HISTORY RECORDS OF SUCH INDIVIDUAL.

4. ANY REQUEST FOR CRIMINAL HISTORY RECORDS MADE PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL BE ACCOMPANIED BY THE FINGERPRINTS OF THE PERSON WHO IS THE SUBJECT OF SUCH REQUEST.

S 2. Subdivisions 3 and 5 of section 2899 of the public health law, as amended by chapter 331 of the laws of 2006, are amended to read as follows:

3. "Employee" shall mean any person to be employed or used by a provider, including those persons employed by a temporary employment agency, to provide direct care or supervision to patients or residents OR AN INDIVIDUAL WHO SERVES AS A MAINTENANCE EMPLOYEE AS DEFINED IN SECTION FOUR HUNDRED SIXTY-ONE-S OF THE SOCIAL SERVICES LAW. Persons licensed pursuant to title eight of the education law or article twenty-eight-D of this chapter are excluded from the meaning of employee under this article. Such term shall not include volunteers.

5. "Prospective employee" shall mean any individual, INCLUDING A POTENTIAL MAINTENANCE EMPLOYEE, not currently an employee, who files an application for employment as an employee with a provider and the provider has a reasonable expectation to hire such individual as an employee.

S 3. Subdivision 10 of section 2899-a of the public health law, as amended by chapter 331 of the laws of 2006, is amended to read as follows:

10. Notwithstanding subdivision eleven of section eight hundred forty-five-b of the executive law, a certified home health agency, licensed home care services agency or long term home health care program certified, licensed or approved under article thirty-six of this chapter or a home care services agency exempt from certification or licensure under article thirty-six of this chapter, OR AN ASSISTED LIVING FACILITY LICENSED UNDER ARTICLE FORTY-SIX-B OF THIS CHAPTER may temporarily approve a prospective employee while the results of the criminal history information check and the determination are pending, upon the condition that the provider conducts appropriate direct observation and evaluation of the temporary employee, while he or she is temporarily employed, and the care recipient. The results of such observations shall be documented in the temporary employee's personnel file and shall be maintained. For purposes of providing such appropriate direct observation and evaluation, the provider shall utilize an individual employed by such provider with a minimum of one year's experience working in an agency certified, licensed or approved under article thirty-six of this chapter. If the temporary employee is working under contract with another provider certified, licensed or approved under article thirty-six of this chapter OR ARTICLE FORTY-SIX-B OF THIS CHAPTER, such contract provider's appropriate direct observation and evaluation of the temporary employee, shall be considered sufficient for the purposes of complying with this subdivision.

S 4. This act shall take effect immediately.