

3484

2009-2010 Regular Sessions

I N S E N A T E

March 20, 2009

Introduced by Sen. HUNTLEY -- (at request of the Office of Mental Health) -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law and the executive law, in relation to the review of criminal history information of certain persons rendering community based services to individuals with mental illness or mental retardation and developmental disabilities

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

1 Section 1. Subdivision (a) of section 31.35 of the mental hygiene law,
2 as amended by chapter 575 of the laws of 2004, is amended to read as
3 follows:
4 (a) Every provider of services who contracts with, RECEIVES FUNDS
5 FROM, or is LICENSED, CERTIFIED, approved or IS otherwise authorized by
6 the office to provide services, except (1) a department facility, (2) a
7 hospital as defined in article twenty-eight of the public health law, or
8 (3) a licensed professional under title eight of the education law who
9 does not have employees or volunteers who will have regular and substan-
10 tial unsupervised or unrestricted physical contact with the clients of
11 such provider, and every applicant to be such a provider of services
12 except (i) a department facility, (ii) a hospital as defined in article
13 twenty-eight of the public health law, or (iii) a licensed professional
14 under title eight of the education law who does not have employees or
15 volunteers who will have regular and substantial unsupervised or unre-
16 stricted physical contact with the clients of such provider, shall
17 request that the office check, and upon such request the office shall
18 request and shall be authorized to receive from the division of criminal
19 justice services criminal history information, as such phrase is defined
20 in paragraph (c) of subdivision one of section eight hundred
21 forty-five-b of the executive law, concerning each (A) prospective oper-
22 ator, employee or volunteer of such provider who will have regular and
23 substantial unsupervised or unrestricted physical contact with the
24 clients of such provider, OR (B) OTHER PERSON OVER THE AGE OF EIGHTEEN

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

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WHO IS TO RESIDE IN A FAMILY CARE HOME OR FAMILY BASED TREATMENT PROGRAM APPROVED BY THE OFFICE ON OR AFTER APRIL FIRST, TWO THOUSAND NINE, EXCEPT ANY PERSON RECEIVING FAMILY CARE OR FAMILY BASED TREATMENT SERVICES, WHO WILL HAVE REGULAR AND SUBSTANTIAL UNSUPERVISED OR UNRESTRICTED PHYSICAL CONTACT WITH THE CLIENTS OF SUCH PROVIDER. For purposes of this section, "operator" shall include any natural person with an ownership interest in the provider of services.

S 2. Paragraph (c) of subdivision 1, paragraphs (a), (b) and (c) of subdivision 3 and subdivisions 4, 5, 6, 7, 8, 9, 10, 11 and 12 of section 845-b of the executive law, as amended by chapter 769 of the laws of 2005, the closing paragraph of subparagraph (iii) of paragraph (c) of subdivision 3 as amended and paragraph (b-1) of subdivision 4 as added by chapter 673 of the laws of 2006 and subdivisions 4 and 5 as amended by chapter 331 of the laws of 2006, are amended to read as follows:

(c) "Criminal history information" means a record of pending criminal charges, criminal convictions which are not vacated or reversed, and certificates filed pursuant to subdivision two of section seven hundred five of the correction law, and which the division is authorized to maintain pursuant to subdivision six of section eight hundred thirty-seven of this article. For the purposes of [criminal history information checks authorized pursuant to article twenty-eight-E of the public health law] THIS SECTION, criminal history information shall also include information from the federal bureau of investigation as a result of a national criminal history record check.

(a) A provider authorized to request a check of criminal history information pursuant to subdivision two of this section shall designate one OR MORE authorized [person] PERSONS, who shall request a check of criminal history information on behalf of such provider pursuant to this section and review the results of such check. Only such authorized [person or his or her designee] PERSONS and the subject individual to whom such criminal history information relates shall have access to such information; provided, however, that criminal history information received by a provider may be disclosed to other persons who are directly participating in any decision in regard to such subject individual; and provided, further, that such other persons shall also be subject to the confidentiality requirements and all other provisions of this section[. In the case of requests made pursuant to article twenty-eight-E of the public health law], PROVIDED, HOWEVER, THAT WITH RESPECT TO INFORMATION OBTAINED FROM THE FEDERAL BUREAU OF INVESTIGATION AS A RESULT OF A NATIONAL CRIMINAL HISTORY RECORD CHECK only information authorized for disclosure under applicable federal laws shall be transmitted to the provider. Each provider shall specifically identify to the authorized agency in writing, in advance of disclosure, the authorized person and each other such agent or employee of the provider who is authorized to have access to the results of a check of criminal history information pursuant to this section. Any person who willfully permits the release of any confidential criminal history information contained in the report to persons not permitted by this section to receive such information shall be guilty of a misdemeanor.

(b) A provider requesting a check of criminal history information pursuant to this section shall do so by completing a form established for such purpose by the authorized agency in consultation with the division. Such form shall include a sworn statement of the authorized person, OR A STATEMENT SUBSCRIBED TO BY THE AUTHORIZED PERSON CONTAINING AN AFFIRMATION OF SUCH PERSON THAT THE STATEMENTS THEREIN ARE TRUE UNDER

1 PENALTIES OF PERJURY, certifying OR AFFIRMING, AS APPLICABLE that: (i)
2 [the] EACH person for whose criminal history information a check is
3 requested [is] SHALL BE a subject individual for whom criminal history
4 information is available by law; (ii) FOR EACH CRIMINAL HISTORY CHECK
5 REQUESTED, the specific duties which qualify the provider to request a
6 check of criminal history information SHALL BE IDENTIFIED; (iii) the
7 results of [such] ANY criminal history information check MADE PURSUANT
8 TO THIS SECTION will be used by the provider solely for purposes author-
9 ized by law; and (iv) the provider and its agents and employees are
10 aware of and will abide by the confidentiality requirements and all
11 other provisions of this article.

12 (c) A provider authorized to request a criminal history information
13 check pursuant to this section may inquire of a subject individual in
14 the manner authorized by subdivision sixteen of section two hundred
15 ninety-six of this chapter. Prior to requesting such information, a
16 provider shall:

17 (i) inform the subject individual in writing that the provider is
18 authorized or, where applicable, required to request a check of his or
19 her criminal history information and review the results of such check
20 pursuant to this section;

21 (ii) inform the subject individual that he or she has the right to
22 obtain, review and seek correction of his or her criminal history infor-
23 mation under regulations and procedures established by the division AND
24 THE FEDERAL BUREAU OF INVESTIGATION;

25 (iii) obtain the signed, informed consent of the subject individual on
26 a form supplied by the authorized agency which indicates that such
27 person has:

28 A. been informed of the right and procedures necessary to obtain,
29 review and seek correction of his or her criminal history information;

30 B. been informed of the reason for the request for his or her criminal
31 history information;

32 C. BEEN INFORMED THAT THE CRIMINAL HISTORY INFORMATION SOUGHT WILL
33 INCLUDE BOTH A NEW YORK STATE AND A NATIONAL CRIMINAL HISTORY INFORMA-
34 TION CHECK;

35 D. consented to such request for a report[; and

36 D.] WITH RESPECT TO BOTH NEW YORK STATE AND NATIONAL CRIMINAL HISTORY
37 INFORMATION; AND

38 E. supplied on the form a current mailing or home address.

39 Upon receiving such written consent, the provider shall receive or
40 obtain [two sets of] THE fingerprints of such subject individual pursu-
41 ant to such regulations AND PROCEDURES as may be necessary to be estab-
42 lished by the authorized agency in consultation with the division, and
43 promptly transmit them to the authorized agency.

44 4. Procedures for criminal history information checks by authorized
45 agencies. (a) The authorized agency shall pay the processing fee imposed
46 pursuant to subdivision eight-a of section eight hundred thirty-seven of
47 this article, and [in the case of the authorized agency pursuant to
48 article twenty-eight-E of the public health law,] any fee imposed by the
49 federal bureau of investigation, and shall promptly submit the finger-
50 prints and the processing fee to the division for its full search and
51 retain processing, and [in the case of the authorized agency pursuant to
52 article twenty-eight-E of the public health law,] the division shall
53 immediately forward the fingerprints to the federal bureau of investi-
54 gation for a national criminal history record check. The authorized
55 agency may charge a provider a fee in AN amount no greater than the fee
56 established pursuant to law by the division for processing such a crimi-

nal history information check, in such amounts as may be established by the authorized agency and approved by the director of the division of the budget, and [in the case of the authorized agency pursuant to article twenty-eight-E of the public health law,] a fee no greater than any fee imposed by the federal bureau of investigation. Nothing in this section shall prohibit the authorized agency or provider from claiming the cost of such fees and related costs, including administrative costs, as a reimbursable cost under the medical assistance program, Medicare or other payor, to the extent permitted by state and federal law.

(b) THE AUTHORIZED AGENCY IS AUTHORIZED TO RECEIVE CRIMINAL HISTORY INFORMATION FROM THE DIVISION AND THE FEDERAL BUREAU OF INVESTIGATION, AFTER THE RECEIPT OF A REQUEST PURSUANT TO THIS SECTION, IF SUCH REQUEST IS:

(I) MADE PURSUANT TO A REQUEST BY AN AUTHORIZED PERSON ON BEHALF OF A PROVIDER AUTHORIZED TO MAKE SUCH A REQUEST PURSUANT TO SUBDIVISION TWO OF THIS SECTION;

(II) ACCOMPANIED BY THE COMPLETED FORM DESCRIBED IN PARAGRAPH (B) OF SUBDIVISION THREE OF THIS SECTION; AND

(III) ACCOMPANIED BY FINGERPRINTS OF THE SUBJECT INDIVIDUAL OBTAINED PURSUANT TO THIS SECTION.

(C) The division shall promptly provide requested state criminal history information to the authorized agency and, [in accordance with article twenty-eight-E of the public health law, the department of health is authorized also to receive criminal history information from the federal bureau of investigation, after the receipt of a request pursuant to this section if such request is:

(i) made pursuant to a request by an authorized person on behalf of a provider authorized to make such a request pursuant to subdivision two of this section;

(ii) accompanied by the completed form described in this section; and

(iii) accompanied by fingerprints of the subject individual obtained pursuant to this section.

(b-1) The division] ALSO shall promptly forward a set of the subject individual's fingerprints to the federal bureau of investigation for the purpose of a nationwide criminal history record check to determine whether such applicant has been convicted of a criminal offense in any state or federal jurisdiction. The division shall forward the results of such nationwide search to the authorized agency in the same form and manner as the criminal history report created and provided by the division pursuant to this section.

[(c)] (D) Criminal history information provided by the division pursuant to this section shall be furnished only by mail or other method of secure and confidential delivery, addressed to the authorized agency. Such information and the envelope in which it is enclosed, if any, shall be prominently marked "confidential", and shall at all times be maintained by the authorized agency in a secure place.

5. After reviewing any criminal history information provided by the division concerning a subject individual, the authorized agency shall take the following actions:

(a) Where the criminal history information concerning a subject individual reveals a felony conviction at any time for a sex offense, a felony conviction FOR ANY CRIME within the past ten years involving violence, or a conviction for endangering the welfare of an incompetent or physically disabled person pursuant to section 260.25 of the penal law, OR ANY COMPARABLE OFFENSE IN ANY OTHER JURISDICTION; and in the case of criminal history information obtained pursuant to section twen-

ty-eight hundred ninety-nine-a of the public health law, where the criminal history information concerning a subject individual reveals a conviction at any time of any class A felony; a conviction within the past ten years of any class B or C felony, any class D or E felony defined in article one hundred twenty, one hundred thirty, one hundred fifty-five, one hundred sixty, one hundred seventy-eight or two hundred twenty of the penal law; or any crime defined in sections 260.32 or 260.34 of the penal law; or any comparable offense in any other jurisdiction[,]; the authorized agency shall deny or disapprove the application for or renewal of the operating certificate, contract, approval, employment of the subject individual or other authorization to provide services, or direct the provider to deny employment, as applicable, unless the authorized agency determines, in its discretion, that approval of the application or renewal or employment will not in any way jeopardize the health, safety or welfare of the beneficiaries of such services.

(b) Where the criminal history information concerning a subject individual reveals a conviction for a crime other than one set forth in paragraph (a) of this subdivision, the authorized agency may deny the application or renewal, or direct the provider to deny employment of the subject individual, [or approve or] disapprove the [prospective employee's] SUBJECT INDIVIDUAL'S eligibility for employment by the provider, OR VOLUNTEER SERVICE WITH A PROVIDER OF SERVICE WHO CONTRACTS WITH, RECEIVES FUNDS FROM, OR IS LICENSED, CERTIFIED, APPROVED OR IS OTHERWISE AUTHORIZED BY THE OFFICE OF MENTAL HEALTH OR THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES, consistent with article twenty-three-A of the correction law.

(c) Where the criminal history information concerning a subject individual reveals a charge for any felony, ANY CRIME IDENTIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION, OR FOR ANY COMPARABLE OFFENSE IN ANOTHER JURISDICTION, the authorized agency shall, and for any misdemeanor, OR ANY COMPARABLE OFFENSE IN ANOTHER JURISDICTION, the authorized agency may hold the application, renewal or employment in abeyance until the charge is finally resolved[.], PROVIDED, HOWEVER, IF THE CRIMINAL HISTORY INFORMATION CONCERNING A SUBJECT INDIVIDUAL REVEALS A CHARGE FOR ANY CRIME NOT IDENTIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION, OR A COMPARABLE OFFENSE IN ANOTHER JURISDICTION, WHICH IS MORE THAN TEN YEARS OLD AND WHERE INFORMATION NECESSARY TO RESOLVE THE CHARGE IS NOT READILY AVAILABLE TO THE AUTHORIZED AGENCY, THE AUTHORIZED AGENCY MAY EITHER:

(I) HOLD THE APPLICATION, RENEWAL, OR EMPLOYMENT IN ABEYANCE UNTIL THE CHARGE IS FINALLY RESOLVED; OR

(II) ADVISE THE PROVIDER OF SERVICES THAT IT MAY ACT ON ITS OWN DISCRETION, IF SUCH PROVIDER PERFORMS A SAFETY ASSESSMENT AND DETERMINES, CONSISTENT WITH ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW, THAT APPROVAL OF THE APPLICATION WILL NOT POSE AN UNREASONABLE RISK TO THE HEALTH, SAFETY OR WELFARE OF THE BENEFICIARIES OF SUCH SERVICES.

(d) WHERE THE SUBJECT INDIVIDUAL IS A NATURAL PERSON OPERATOR OF A FAMILY CARE HOME OR FAMILY BASED TREATMENT PROVIDER, OR A PERSON OVER THE AGE OF EIGHTEEN WHO IS TO RESIDE, OR RESIDES, IN A FAMILY CARE HOME OR FAMILY BASED TREATMENT PROVIDER:

(I) IF THE CRIMINAL HISTORY INFORMATION CONCERNING SUCH SUBJECT INDIVIDUAL REVEALS A CONVICTION FOR ANY CRIME IDENTIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION, THE AUTHORIZED AGENCY SHALL PROMPTLY ADVISE THE AUTHORIZED PERSON OF THE FAMILY CARE HOME OR FAMILY BASED TREATMENT PROVIDER THAT IT SHALL NOT PERMIT, OR MUST CEASE AND DESIST FROM PERMITTING, SUCH PERSON FROM OPERATING, RESIDING OR CONTINUING TO RESIDE IN

1 THE FAMILY CARE HOME OR WITH THE FAMILY BASED TREATMENT PROVIDER, UNLESS
2 THE AUTHORIZED AGENCY DETERMINES THAT THE SUBJECT INDIVIDUAL WILL NOT IN
3 ANY WAY JEOPARDIZE THE HEALTH, SAFETY, OR WELFARE OF THE CLIENT OR
4 CLIENTS OF THE FAMILY CARE HOME OR FAMILY BASED TREATMENT PROVIDER.
5 FAILURE TO COMPLY WITH THIS DIRECTIVE SHALL, AS APPLICABLE, CONSTITUTE
6 GROUNDS FOR DENIAL OF AN OPERATING CERTIFICATE OR REMOVAL OF THE OPERAT-
7 ING CERTIFICATE OF THE FAMILY CARE HOME OR FAMILY BASED TREATMENT
8 PROGRAM IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE SIXTEEN OR THIRTY-
9 ONE OF THE MENTAL HYGIENE LAW; OR

10 (II) IF THE CRIMINAL HISTORY INFORMATION CONCERNING SUCH SUBJECT INDI-
11 VIDUAL REVEALS A CONVICTION FOR ANY CRIME OTHER THAN ONE IDENTIFIED IN
12 PARAGRAPH (A) OF THIS SUBDIVISION, THE AUTHORIZED AGENCY MAY PROMPTLY
13 ADVISE THE AUTHORIZED PERSON OF THE FAMILY CARE HOME OR FAMILY BASED
14 TREATMENT PROVIDER IT SHALL NOT PERMIT, OR MUST CEASE AND DESIST FROM
15 PERMITTING, SUCH PERSON FROM OPERATING, RESIDING OR CONTINUING TO RESIDE
16 IN THE FAMILY CARE HOME OR WITH THE FAMILY BASED TREATMENT PROVIDER IF,
17 AFTER PERFORMING A SAFETY ASSESSMENT THE AUTHORIZED AGENCY DETERMINES
18 THAT THE SUBJECT INDIVIDUAL WILL NOT JEOPARDIZE THE HEALTH, SAFETY, OR
19 WELFARE OF THE CLIENT OR CLIENTS OF THE FAMILY CARE HOME OR FAMILY BASED
20 TREATMENT PROVIDER. FAILURE TO COMPLY WITH THIS DIRECTIVE SHALL, AS
21 APPLICABLE, CONSTITUTE GROUNDS FOR DENIAL OF AN OPERATING CERTIFICATE,
22 OR REMOVAL OF THE OPERATING CERTIFICATE OF THE FAMILY CARE HOME OR FAMI-
23 LY BASED TREATMENT PROVIDER IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE
24 SIXTEEN OR THIRTY-ONE OF THE MENTAL HYGIENE LAW; OR

25 (III) IF THE CRIMINAL HISTORY INFORMATION CONCERNING SUCH SUBJECT
26 INDIVIDUAL REVEALS AN OUTSTANDING CHARGE FOR ANY CRIME IDENTIFIED IN
27 PARAGRAPH (A) OF THIS SUBDIVISION, THE AUTHORIZED AGENCY SHALL, AS
28 APPLICABLE, HOLD THE APPLICATION FOR AN OPERATING CERTIFICATE IN ABEY-
29 ANCE UNTIL THE CHARGE IS RESOLVED, OR REQUIRE A SAFETY ASSESSMENT OF THE
30 FAMILY CARE HOME OR FAMILY BASED TREATMENT PROVIDER TO BE PERFORMED, AND
31 SHALL DIRECT THE FAMILY CARE HOME OR FAMILY BASED TREATMENT PROVIDER OF
32 ANY ACTIONS THAT MUST BE TAKEN TO ENSURE THAT THE SUBJECT INDIVIDUAL
33 WILL NOT IN ANY WAY JEOPARDIZE THE HEALTH, SAFETY, OR WELFARE OF THE
34 CLIENT OR CLIENTS OF THE FAMILY CARE HOME OR FAMILY BASED TREATMENT
35 PROVIDER. FAILURE TO PROMPTLY IMPLEMENT SUCH ACTIONS BY THE FAMILY CARE
36 HOME OR FAMILY BASED TREATMENT PROVIDER SHALL CONSTITUTE GROUNDS FOR
37 REMOVAL OF ITS OPERATING CERTIFICATE IN ACCORDANCE WITH THE PROVISIONS
38 OF ARTICLE SIXTEEN OR THIRTY-ONE OF THE MENTAL HYGIENE LAW; OR

39 (IV) IF THE CRIMINAL HISTORY INFORMATION CONCERNING SUCH SUBJECT INDI-
40 VIDUAL REVEALS AN OUTSTANDING CHARGE FOR ANY CRIME OTHER THAN ONE IDEN-
41 TIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION, THE AUTHORIZED AGENCY MAY,
42 AS APPLICABLE, HOLD THE APPLICATION FOR AN OPERATING CERTIFICATE IN
43 ABEYANCE OR REQUIRE A SAFETY ASSESSMENT OF THE FAMILY CARE HOME OR FAMI-
44 LY BASED TREATMENT PROVIDER TO BE PERFORMED, AND MAY DIRECT THE FAMILY
45 CARE HOME OR FAMILY CARE TREATMENT PROVIDER OF ANY ACTIONS THAT MUST BE
46 TAKEN TO ENSURE THAT THE SUBJECT INDIVIDUAL WILL NOT JEOPARDIZE THE
47 HEALTH, SAFETY, OR WELFARE OF THE CLIENT OR CLIENTS OF THE FAMILY CARE
48 HOME OR FAMILY BASED TREATMENT PROVIDER. FAILURE TO PROMPTLY IMPLEMENT
49 SUCH ACTIONS BY THE FAMILY CARE HOME OR FAMILY BASED TREATMENT PROVIDER,
50 IF DIRECTED TO DO SO, SHALL CONSTITUTE GROUNDS FOR REMOVAL OF ITS OPER-
51 ATING CERTIFICATE IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE SIXTEEN
52 OR THIRTY-ONE OF THE MENTAL HYGIENE LAW.

53 (E) Prior to making a determination to deny an application [or
54 renewal,] or directing [an employer] A PROVIDER to deny employment OR
55 VOLUNTEER SERVICE, the authorized agency shall afford the subject indi-
56 vidual an opportunity to explain, in writing, why the application should

not be denied. IN ITS DISCRETION, THE AUTHORIZED AGENCY MAY ALSO DIRECTLY CONTACT A SUBJECT INDIVIDUAL FOR ADDITIONAL INFORMATION IN THE EVENT HIS OR HER CRIMINAL HISTORY INFORMATION REQUIRES CLARIFICATION.

[(e)] (F) Upon receipt of criminal history information from the division, the authorized agency may request, and is [entitled] AUTHORIZED to receive, information pertaining to any crime identified in such criminal history information from any state or local law enforcement agency, district attorney, parole officer, probation officer or court for the purposes of determining whether any ground relating to such crime exists for denying an application, renewal, or employment, AND PROVIDED FURTHER, THAT WITH RESPECT TO CRIMES COMMITTED IN THE STATE OF NEW YORK, SUCH AUTHORIZED AGENCY IS ENTITLED TO RECEIVE SUCH INFORMATION.

[(f)] (G) The authorized agency shall thereafter promptly notify the provider concerning whether its check has revealed any criminal history information, and if so, what actions shall or may be taken by the authorized agency and the provider. SUCH NOTIFICATION SHALL INCLUDE A WRITTEN SUMMARY BY THE AUTHORIZED AGENCY OF THE CRIMINAL HISTORY INFORMATION PROVIDED BY THE DIVISION AND/OR THE FEDERAL BUREAU OF INVESTIGATION. THE WRITTEN SUMMARY SHALL INCLUDE A NOTATION OF ANY OUTSTANDING CHARGES, IF ANY, ABOUT WHICH THE AUTHORIZED AGENCY IS AWAITING FURTHER INFORMATION CONCERNING THE FINAL DISPOSITION OF SUCH CHARGES. THE AUTHORIZED AGENCY SHALL SUPPLEMENT SUCH NOTIFICATION WHEN THE AUTHORIZED AGENCY RECEIVES INFORMATION FROM THE DIVISION RELATING TO A SUBJECT INDIVIDUAL AS PART OF THE SEARCH AND RETAIN PROCESSING CONDUCTED BY SUCH DIVISION OR WHEN THE AUTHORIZED AGENCY RECEIVES INFORMATION RELATIVE TO THE FINAL DISPOSITION OF AN OUTSTANDING CHARGE.

[(g) Where the authorized agency denies the application for or renewal of an operating certificate, contract, approval or other authorization to provide services, or directs a provider to deny employment of the subject individual on account of the subject individual's criminal history information, the notification by the authorized agency shall include a summary of the criminal history information provided by the division.]

(h) IN THE EVENT THAT THE INFORMATION OBTAINED BY THE AUTHORIZED AGENCY FROM THE DIVISION AND/OR THE FEDERAL BUREAU OF INVESTIGATION INDICATES THAT EITHER ENTITY HAS NO CRIMINAL HISTORY INFORMATION WITH RESPECT TO THE SUBJECT INDIVIDUAL, THE AUTHORIZED AGENCY SHALL NOTIFY THE PROVIDER THAT SUCH INDIVIDUAL HAS NO CRIMINAL HISTORY INFORMATION RECORD.

(I) Where the authorized agency directs a provider to deny employment OR VOLUNTEER SERVICE based on criminal history information, the provider must notify the subject individual that such information is the basis of the denial. WHERE THE AUTHORIZED AGENCY DENIES THE ISSUANCE OF AN OPERATING CERTIFICATE, CONTRACT, APPROVAL OR OTHER AUTHORIZATION TO PROVIDE SERVICES BASED ON CRIMINAL HISTORY INFORMATION, THE AUTHORIZED AGENCY MUST NOTIFY THE SUBJECT INDIVIDUAL THAT SUCH INFORMATION IS THE BASIS OF THE DENIAL.

6. [Upon request from an employee who has already been cleared for employment by an authorized agency and who subsequently leaves a particular employer and applies for employment with another, the authorizing agency shall adhere to its previous authorization when the criminal history information is unchanged and the circumstances of employment are substantially similar for the purposes of this section.

7.] Any criminal history information provided by the division, and any summary of the criminal history information provided by the authorized agency to [an employer] A PROVIDER pursuant to this section is confiden-

1 tial and shall not be available for public inspection; provided, howev-
2 er, nothing in this subdivision shall prevent an authorized agency or
3 provider from disclosing criminal history information at any administra-
4 tive or judicial proceeding relating to the denial or revocation of an
5 application, employment, license or registration. Where the authorized
6 agency denies the application for or renewal of an operating certifi-
7 cate, contract, approval or other authorization to provide services, or
8 directs a provider to deny employment OR VOLUNTEER SERVICE of the
9 subject individual, the subject of the criminal history information
10 check conducted pursuant to this section shall be entitled to receive,
11 upon written request, a copy of the summary of the criminal history
12 information provided by the authorized agency to the provider, IF ANY
13 SUCH SUMMARY WAS SO PROVIDED.

14 [8.] 7. A provider shall advise the authorized agency when a subject
15 individual is no longer subject to such check. The authorized agency
16 shall inform the division when a subject individual is no longer subject
17 to such check so that the division may terminate its retain processing
18 with regard to such individual. At least once a year, the authorized
19 agency shall be required to conduct a validation of the records main-
20 tained by the division, including information obtained from the federal
21 bureau of investigation [pursuant to article twenty-eight-E of the
22 public health law] and provide such results to the authorized agency for
23 purposes of updating the permanent record of such criminal history
24 information results.

25 [9.] 8. Provided that an authorized agency or a provider reasonably
26 and in good faith complies with the provisions of this section, there
27 shall be no criminal or civil liability on the part of and no cause of
28 action for damages shall accrue against any authorized agency, provider
29 or employee thereof on account of, arising out of or relating to crimi-
30 nal history information pursuant to this section, or any act or omission
31 relating to criminal history information pursuant to this section.

32 [10.] 9. Fingerprints received by the division pursuant to this
33 section shall be used only to assist the division in providing criminal
34 history information to authorized agencies under this section.

35 [11.] 10. An authorized agency or provider authorized to request crim-
36 inal history information pursuant to this section may temporarily
37 approve an applicant while the results of the criminal history informa-
38 tion check are pending, so long as such person does not have unsuper-
39 vised physical contact with clients, as shall be defined by the author-
40 ized agency pursuant to regulation; provided however, that providers
41 subject to the provisions of subdivision ten of section twenty-eight
42 hundred ninety-nine-a of the public health law shall be subject to the
43 supervision requirements provided therein. [Such regulation shall recog-
44 nize the differences in the staffing patterns of various service models
45 and the supervision required to ensure the safety of clients.

46 12.] 11. The authorized agency in consultation with the commissioner
47 shall promulgate any rules and regulations necessary to implement the
48 provisions of this section, which shall include convenient procedures
49 for persons to promptly verify the accuracy of their NEW YORK STATE
50 criminal history information and, to the extent authorized by law, to
51 have access to relevant documents related thereto.

52 S 3. This act shall take effect on the one hundred eightieth day after
53 it shall have become a law.