

1071

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

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

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 ASSEM-
BLY, 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 or is approved or IS
5 otherwise authorized by the office to provide services, except (1) a
6 department facility, (2) a hospital as defined in article twenty-eight
7 of the public health law, or (3) a licensed professional under title
8 eight of the education law who does not have employees or volunteers who
9 will have regular and substantial unsupervised or unrestricted physical
10 contact with the clients of such provider, and every applicant to be
11 such a provider of services except (i) a department facility, (ii) a
12 hospital as defined in article twenty-eight of the public health law, or
13 (iii) a licensed professional under title eight of the education law who
14 does not have employees or volunteers who will have regular and substan-
15 tial unsupervised or unrestricted physical contact with the clients of
16 such provider, shall request that the office check, and upon such
17 request the office shall request and shall be authorized to receive from
18 the division of criminal justice services criminal history information,
19 as such phrase is defined in paragraph (c) of subdivision one of section
20 eight hundred forty-five-b of the executive law, concerning each (A)
21 prospective operator, employee or volunteer of such provider who will
22 have regular and substantial unsupervised or unrestricted physical

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

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1 contact with the clients of such provider, OR (B) OTHER PERSON OVER THE
2 AGE OF EIGHTEEN WHO IS TO RESIDE IN A FAMILY CARE HOME OR FAMILY BASED
3 TREATMENT PROGRAM EXCEPT ANY PERSON RECEIVING FAMILY CARE OR FAMILY
4 BASED TREATMENT SERVICES, WHO WILL HAVE REGULAR AND SUBSTANTIAL UNSUPER-
5 VISED OR UNRESTRICTED PHYSICAL CONTACT WITH THE CLIENTS OF SUCH
6 PROVIDER. For purposes of this section, "operator" shall include any
7 natural person with an ownership interest in the provider of services.

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

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

26 (F) "SAFETY ASSESSMENT" SHALL MEAN A SAFETY REVIEW CONDUCTED BY AN
27 AUTHORIZED AGENCY OR PROSPECTIVE EMPLOYER WHICH SHALL INCLUDE, BUT NOT
28 BE LIMITED TO, A REVIEW OF THE DUTIES OF A SUBJECT INDIVIDUAL WITH A
29 CRIMINAL CONVICTION OR CHARGE, THE EXTENT TO WHICH SUCH INDIVIDUAL MAY
30 HAVE CONTACT WITH CLIENTS RECEIVING SERVICES, AND THE STATUS AND NATURE
31 OF THE CRIMINAL CHARGE OR CONVICTION.

32 (G) "SUMMARY OF THE CRIMINAL HISTORY INFORMATION" SHALL MEAN A COMPRE-
33 HENSIVE SYNOPSIS OF CRIMINAL HISTORY INFORMATION WHICH SHALL INCLUDE AN
34 INDIVIDUALIZED STATEMENT FOR EACH PENDING CRIMINAL CHARGE, CRIMINAL
35 CONVICTIONS WHICH HAVE NOT BEEN VACATED OR REVERSED, AND ANY OTHER
36 INFORMATION THE AUTHORIZED AGENCY TAKES INTO ACCOUNT WHEN DETERMINING
37 THE ELIGIBILITY OF AN APPLICATION.

38 (a) A provider authorized to request a check of criminal history
39 information pursuant to subdivision two of this section shall designate
40 one authorized person who shall request a check of criminal history
41 information on behalf of such provider pursuant to this section and
42 review the results of such check. Only such authorized person or his or
43 her designee and the subject individual to whom such criminal history
44 information relates shall have access to such information; provided,
45 however, that criminal history information received by a provider may be
46 disclosed to other persons who are directly participating in any deci-
47 sion in regard to such subject individual; and provided, further, that
48 such other persons shall also be subject to the confidentiality require-
49 ments and all other provisions of this section. [In the case of requests
50 made pursuant to article twenty-eight-E of the public health law,] WITH
51 RESPECT TO INFORMATION OBTAINED FROM THE FEDERAL BUREAU OF INVESTIGATION
52 AS A RESULT OF A NATIONAL CRIMINAL HISTORY RECORD CHECK only information
53 authorized for disclosure under applicable federal laws shall be trans-
54 mitted to the provider. Each provider shall specifically identify to the
55 authorized agency in writing, in advance of disclosure, the authorized
56 person and each other such agent or employee of the provider who is

1 authorized to have access to the results of a check of criminal history
2 information pursuant to this section. Any person who willfully permits
3 the release of any confidential criminal history information contained
4 in the report to persons not permitted by this section to receive such
5 information shall be guilty of a misdemeanor.

6 (b) A provider requesting a check of criminal history information
7 pursuant to this section shall do so by completing a form established
8 for such purpose by the authorized agency in consultation with the divi-
9 sion. Such form shall include a sworn statement of the authorized
10 person, OR A STATEMENT SUBSCRIBED TO BY THE AUTHORIZED PERSON CONTAINING
11 AN AFFIRMATION OF SUCH PERSON THAT THE STATEMENTS THEREIN ARE TRUE UNDER
12 PENALTIES OF PERJURY, certifying OR AFFIRMING, AS APPLICABLE that: (i)
13 [the] EACH person for whose criminal history information a check is
14 requested is a subject individual for whom criminal history information
15 is available by law; (ii) FOR EACH CRIMINAL HISTORY CHECK REQUESTED, the
16 specific duties which qualify the provider to request a check of crimi-
17 nal history information SHALL BE IDENTIFIED; (iii) the results of [such]
18 ANY criminal history information check MADE PURSUANT TO THIS SECTION
19 will be used by the provider solely for purposes authorized by law; and
20 (iv) the provider and its agents and employees are aware of and will
21 abide by the confidentiality requirements and all other provisions of
22 this article.

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

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

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

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

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

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

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

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

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

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

50 Upon receiving such written consent, the provider shall receive or
51 obtain [two sets of] THE fingerprints of such subject individual pursu-
52 ant to such regulations as may be necessary to be established by the
53 authorized agency in consultation with the division, and promptly trans-
54 mit them to the authorized agency.

55 4. Procedures for criminal history information checks by authorized
56 agencies. (a) The authorized agency shall pay the processing fee imposed

1 pursuant to subdivision eight-a of section eight hundred thirty-seven of
2 this article, and [in the case of the authorized agency pursuant to
3 article twenty-eight-E of the public health law,] any fee imposed by the
4 federal bureau of investigation, and shall promptly submit the finger-
5 prints and the processing fee to the division for its full search and
6 retain processing, and [in the case of the authorized agency pursuant to
7 article twenty-eight-E of the public health law,] the division shall
8 immediately forward the fingerprints to the federal bureau of investi-
9 gation for a national criminal history record check. The authorized
10 agency may charge a provider a fee in AN amount no greater than the fee
11 established pursuant to law by the division for processing such a crimi-
12 nal history information check, in such amounts as may be established by
13 the authorized agency and approved by the director of the division of
14 the budget, and [in the case of the authorized agency pursuant to arti-
15 cle twenty-eight-E of the public health law,] a fee no greater than any
16 fee imposed by the federal bureau of investigation. Nothing in this
17 section shall prohibit the authorized agency or provider from claiming
18 the cost of such fees and related costs, including administrative costs,
19 as a reimbursable cost under the medical assistance program, Medicare or
20 other payor, to the extent permitted by state and federal law.

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

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

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

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

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

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

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

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

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

52 [(c)] (D) Criminal history information provided by the division pursu-
53 ant to this section shall be furnished only by mail or other method of
54 secure and confidential delivery, addressed to the authorized agency.
55 Such information and the envelope in which it is enclosed, if any, shall

1 be prominently marked "confidential", and shall at all times be main-
2 tained by the authorized agency in a secure place.

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

6 (a) Where the criminal history information concerning a subject indi-
7 vidual reveals a felony conviction at any time for a sex offense, a
8 felony conviction within the past ten years involving violence, or a
9 conviction for endangering the welfare of an incompetent or physically
10 disabled person pursuant to section 260.25 of the penal law, OR ANY
11 COMPARABLE OFFENSE IN ANY OTHER JURISDICTION; and in the case of crimi-
12 nal history information obtained pursuant to section twenty-eight
13 hundred ninety-nine-a of the public health law, where the criminal
14 history information concerning a subject individual reveals a conviction
15 at any time of any class A felony; a conviction within the past ten
16 years of any class B or C felony, any class D or E felony defined in
17 article one hundred twenty, one hundred thirty, one hundred fifty-five,
18 one hundred sixty, one hundred seventy-eight or two hundred twenty of
19 the penal law; or any crime defined in sections 260.32 or 260.34 of the
20 penal law; or any comparable offense in any other jurisdiction[,]; the
21 authorized agency shall deny or disapprove the application for or
22 renewal of the operating certificate, contract, approval, employment of
23 the subject individual or other authorization to provide services, or
24 direct the provider to deny employment, as applicable, unless the
25 authorized agency determines, in its discretion, that approval of the
26 application or renewal or employment will not in any way jeopardize the
27 health, safety or welfare of the beneficiaries of such services.

28 (b) Where the criminal history information concerning a subject indi-
29 vidual reveals a conviction for a crime other than one set forth in
30 paragraph (a) of this subdivision, the authorized agency may deny the
31 application or renewal, or direct the provider to deny employment of the
32 subject individual, or approve or disapprove the prospective employee's
33 eligibility for employment by the provider, OR VOLUNTEER SERVICE WITH A
34 PROVIDER OF SERVICE WHO CONTRACTS WITH, IS APPROVED OR IS OTHERWISE
35 AUTHORIZED BY THE OFFICE OF MENTAL HEALTH OR THE OFFICE OF MENTAL RETAR-
36 DATION AND DEVELOPMENTAL DISABILITIES, consistent with article twenty-
37 three-A of the correction law.

38 (c) Where the criminal history information concerning a subject indi-
39 vidual reveals a charge for any felony, ANY CRIME IDENTIFIED IN PARA-
40 GRAPH (A) OF THIS SUBDIVISION, OR FOR ANY COMPARABLE OFFENSE IN ANOTHER
41 JURISDICTION, the authorized agency shall, and for any misdemeanor, OR
42 ANY COMPARABLE OFFENSE IN ANOTHER JURISDICTION, the authorized agency
43 may hold the application, renewal or employment in abeyance until the
44 charge is finally resolved, PROVIDED, HOWEVER, IF THE CRIMINAL HISTORY
45 INFORMATION CONCERNING A SUBJECT INDIVIDUAL REVEALS A CHARGE FOR ANY
46 CRIME NOT IDENTIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION, OR A COMPARA-
47 BLE OFFENSE IN ANOTHER JURISDICTION, WHICH IS MORE THAN THREE YEARS OLD
48 AND WHERE INFORMATION NECESSARY TO RESOLVE THE CHARGE IS NOT READILY
49 AVAILABLE TO THE AUTHORIZED AGENCY, THE AUTHORIZED AGENCY MAY EITHER:

50 (I) HOLD THE APPLICATION, RENEWAL, OR EMPLOYMENT IN ABEYANCE UNTIL THE
51 CHARGE IS FINALLY RESOLVED; PROVIDED, HOWEVER, THAT WHEN THE AUTHORIZED
52 AGENCY HOLDS THE APPLICATION, RENEWAL, OR EMPLOYMENT IN ABEYANCE PURSU-
53 ANT TO THIS SUBPARAGRAPH, SUCH AGENCY SHALL CONTACT THE ARRESTING LAW
54 ENFORCEMENT AGENCY, DISTRICT ATTORNEY OR COURT IN THE COUNTY WHERE SUCH
55 CHARGE IS PENDING AND MAKE REASONABLE EFFORTS TO DETERMINE WHETHER SUCH
56 CHARGE HAS BEEN RESOLVED; OR

1 (II) ADVISE THE PROVIDER OF SERVICES THAT IT MAY ACT ON ITS OWN
2 DISCRETION, IF SUCH PROVIDER PERFORMS A SAFETY ASSESSMENT AND DETER-
3 MINES, IN A MANNER CONSISTENT WITH ARTICLE TWENTY-THREE-A OF THE
4 CORRECTION LAW, THAT APPROVAL OF THE APPLICATION WILL NOT POSE AN UNREA-
5 SONABLE RISK TO THE HEALTH, SAFETY OR WELFARE OF THE BENEFICIARIES OF
6 SUCH SERVICES.

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

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

26 (II) IF THE CRIMINAL HISTORY INFORMATION CONCERNING SUCH SUBJECT INDI-
27 VIDUAL REVEALS A CONVICTION FOR ANY CRIME OTHER THAN ONE IDENTIFIED IN
28 PARAGRAPH (A) OF THIS SUBDIVISION, THE AUTHORIZED AGENCY MAY PROMPTLY
29 ADVISE THE AUTHORIZED PERSON OF THE FAMILY CARE HOME OR FAMILY BASED
30 TREATMENT PROVIDER IT SHALL NOT PERMIT, OR MUST PROMPTLY CEASE AND
31 DESIST FROM PERMITTING, SUCH PERSON FROM OPERATING, RESIDING OR CONTINU-
32 ING TO RESIDE IN THE FAMILY CARE HOME OR WITH THE FAMILY BASED TREATMENT
33 PROVIDER IF, AFTER PERFORMING A SAFETY ASSESSMENT THE AUTHORIZED AGENCY
34 DETERMINES THAT THE SUBJECT INDIVIDUAL WILL JEOPARDIZE THE HEALTH, SAFE-
35 TY, OR WELFARE OF THE CLIENT OR CLIENTS OF THE FAMILY CARE HOME OR FAMI-
36 LY BASED TREATMENT PROVIDER. FAILURE TO COMPLY WITH THIS DIRECTIVE
37 SHALL, AS APPLICABLE, CONSTITUTE GROUNDS FOR DENIAL OF AN OPERATING
38 CERTIFICATE, OR REMOVAL OF THE OPERATING CERTIFICATE OF THE FAMILY CARE
39 HOME OR FAMILY BASED TREATMENT PROVIDER IN ACCORDANCE WITH THE
40 PROVISIONS OF ARTICLE SIXTEEN OR THIRTY-ONE OF THE MENTAL HYGIENE LAW;
41 OR

42 (III) IF THE CRIMINAL HISTORY INFORMATION CONCERNING SUCH SUBJECT
43 INDIVIDUAL REVEALS AN OUTSTANDING CHARGE FOR ANY CRIME IDENTIFIED IN
44 PARAGRAPH (A) OF THIS SUBDIVISION, THE AUTHORIZED AGENCY SHALL, AS
45 APPLICABLE, HOLD THE APPLICATION FOR AN OPERATING CERTIFICATE IN ABEY-
46 ANCE UNTIL THE CHARGE IS RESOLVED, OR REQUIRE A SAFETY ASSESSMENT OF THE
47 FAMILY CARE HOME OR FAMILY BASED TREATMENT PROVIDER TO BE PERFORMED, AND
48 SHALL DIRECT THE FAMILY CARE HOME OR FAMILY BASED TREATMENT PROVIDER OF
49 ANY ACTIONS THAT MUST BE TAKEN TO ENSURE THAT THE SUBJECT INDIVIDUAL
50 WILL NOT IN ANY WAY JEOPARDIZE THE HEALTH, SAFETY, OR WELFARE OF THE
51 CLIENT OR CLIENTS OF THE FAMILY CARE HOME OR FAMILY BASED TREATMENT
52 PROVIDER. FAILURE TO PROMPTLY IMPLEMENT SUCH ACTIONS BY THE FAMILY CARE
53 HOME OR FAMILY BASED TREATMENT PROVIDER SHALL CONSTITUTE GROUNDS FOR
54 REMOVAL OF ITS OPERATING CERTIFICATE IN ACCORDANCE WITH THE PROVISIONS
55 OF ARTICLE SIXTEEN OR THIRTY-ONE OF THE MENTAL HYGIENE LAW; OR

1 (IV) IF THE CRIMINAL HISTORY INFORMATION CONCERNING SUCH SUBJECT INDI-
2 VIDUAL REVEALS AN OUTSTANDING CHARGE FOR ANY CRIME OTHER THAN ONE IDEN-
3 TIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION, THE AUTHORIZED AGENCY MAY,
4 AS APPLICABLE, HOLD THE APPLICATION FOR AN OPERATING CERTIFICATE IN
5 ABEYANCE OR REQUIRE A SAFETY ASSESSMENT OF THE FAMILY CARE HOME OR FAMI-
6 LY BASED TREATMENT PROVIDER TO BE PERFORMED, AND MAY DIRECT THE FAMILY
7 CARE HOME OR FAMILY CARE TREATMENT PROVIDER OF ANY ACTIONS THAT MUST BE
8 TAKEN TO ENSURE THAT THE SUBJECT INDIVIDUAL WILL NOT JEOPARDIZE THE
9 HEALTH, SAFETY, OR WELFARE OF THE CLIENT OR CLIENTS OF THE FAMILY CARE
10 HOME OR FAMILY BASED TREATMENT PROVIDER. FAILURE TO PROMPTLY IMPLEMENT
11 SUCH ACTIONS BY THE FAMILY CARE HOME OR FAMILY BASED TREATMENT PROVIDER,
12 IF DIRECTED TO DO SO, SHALL CONSTITUTE GROUNDS FOR REMOVAL OF ITS OPER-
13 ATING CERTIFICATE IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE SIXTEEN
14 OR THIRTY-ONE OF THE MENTAL HYGIENE LAW.

15 (E) Prior to making a determination to deny an application or renewal,
16 or directing an employer to deny employment, the authorized agency shall
17 [afford] NOTIFY the subject individual THAT HE OR SHE HAS THE RIGHT TO
18 an opportunity to explain, in writing, why the application should not be
19 denied. SUCH NOTIFICATION SHALL BE IN WRITING AND:

20 (I) INCLUDE A SUMMARY OF THE CRIMINAL HISTORY INFORMATION;

21 (II) INCLUDE A COPY OF ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW;
22 AND

23 (III) INFORM THE SUBJECT INDIVIDUAL HOW TO OBTAIN AND SEEK CORRECTION
24 OF HIS OR HER CRIMINAL HISTORY INFORMATION.

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

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

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

55 (h) IN THE EVENT THAT THE INFORMATION OBTAINED BY THE AUTHORIZED AGEN-
56 CY FROM THE DIVISION AND/OR THE FEDERAL BUREAU OF INVESTIGATION INDI-

1 CATES THAT EITHER ENTITY HAS NO CRIMINAL HISTORY INFORMATION WITH
2 RESPECT TO THE SUBJECT INDIVIDUAL, THE AUTHORIZED AGENCY SHALL NOTIFY
3 THE PROVIDER THAT SUCH INDIVIDUAL HAS NO CRIMINAL HISTORY INFORMATION
4 RECORD.

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

13 7. Any criminal history information provided by the division, and any
14 summary of the criminal history information provided by the authorized
15 agency to [an employer] A PROVIDER pursuant to this section is confiden-
16 tial and shall not be available for public inspection; provided, howev-
17 er, nothing in this subdivision shall prevent an authorized agency or
18 provider from disclosing criminal history information at any administra-
19 tive or judicial proceeding relating to the denial or revocation of an
20 application, employment, license or registration. Where the authorized
21 agency denies the application for or renewal of an operating certif-
22 icate, contract, approval or other authorization to provide services, or
23 directs a provider to deny employment OR VOLUNTEER SERVICE of the
24 subject individual, the subject of the criminal history information
25 check conducted pursuant to this section shall be entitled to receive,
26 upon written request, a copy of the summary of the criminal history
27 information provided by the authorized agency to the provider.

28 8. A provider shall advise the authorized agency when a subject indi-
29 vidual is no longer subject to such check. The authorized agency shall
30 inform the division when a subject individual is no longer subject to
31 such check so that the division may terminate its retain processing with
32 regard to such individual. At least once a year, the authorized agency
33 shall be required to conduct a validation of the records maintained by
34 the division, including information obtained from the federal bureau of
35 investigation [pursuant to article twenty-eight-E of the public health
36 law] and provide such results to the authorized agency for purposes of
37 updating the permanent record of such criminal history information
38 results.

39 S 3. This act shall take effect on the one hundred eightieth day after
40 it shall have become a law; provided, however, that section one of this
41 act and the amendments to paragraphs (b) and (d) of subdivision 5 of
42 section 845-b of the executive law made by section two of this act shall
43 apply to family care homes and family based treatment programs issued an
44 initial operating certificate, or a renewal of an existing operating
45 certificate, on or after the effective date of this act.