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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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision (a) of section 31.35 of the mental hygiene law, as amended by chapter 575 of the laws of 2004, is amended to read as follows:

(a) Every provider of services who contracts with or is approved or IS otherwise authorized by the office to provide services, except (1) a department facility, (2) a hospital as defined in article twenty-eight of the public health law, or (3) a licensed professional under title eight of the education law who does not have employees or volunteers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider, and every applicant to be such a provider of services except (i) a department facility, (ii) a hospital as defined in article twenty-eight of the public health law, or (iii) a licensed professional under title eight of the education law who does not have employees or volunteers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider, shall request that the office check, and upon such request the office shall request and shall be authorized to receive from the division of criminal justice services criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, concerning each (A) prospective operator, employee or volunteer of such provider who will 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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contact with the clients of such provider, OR (B) OTHER PERSON OVER THE AGE OF EIGHTEEN WHO IS TO RESIDE IN A FAMILY CARE HOME OR FAMILY BASED TREATMENT PROGRAM 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, 7 and 8 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 and two new paragraphs (f) and (g) are added to subdivision 1 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.

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

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

(a) A provider authorized to request a check of criminal history information pursuant to subdivision two of this section shall designate one authorized person 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 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,] 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 PENALTIES OF PERJURY, certifying OR AFFIRMING, AS APPLICABLE that: (i) [the] EACH person for whose criminal history information a check is requested is a subject individual for whom criminal history information is available by law; (ii) FOR EACH CRIMINAL HISTORY CHECK REQUESTED, the specific duties which qualify the provider to request a check of criminal history information SHALL BE IDENTIFIED; (iii) the results of [such] ANY criminal history information check MADE PURSUANT TO THIS SECTION will be used by the provider solely for purposes authorized by law; and (iv) the provider and its agents and employees are aware of and will abide by the confidentiality requirements and all other provisions of this article.

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

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

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

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

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

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

C. BEEN INFORMED THAT THE CRIMINAL HISTORY INFORMATION SOUGHT WILL INCLUDE BOTH A NEW YORK STATE AND A NATIONAL CRIMINAL HISTORY INFORMATION CHECK;

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

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

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

Upon receiving such written consent, the provider shall receive or obtain [two sets of] THE fingerprints of such subject individual pursuant to such regulations as may be necessary to be established by the authorized agency in consultation with the division, and promptly transmit them to the authorized agency.

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

pursuant to subdivision eight-a of section eight hundred thirty-seven of this article, and [in the case of the authorized agency pursuant to article twenty-eight-E of the public health law,] any fee imposed by the federal bureau of investigation, and shall promptly submit the fingerprints and the processing fee to the division for its full search and retain processing, and [in the case of the authorized agency pursuant to article twenty-eight-E of the public health law,] the division shall immediately forward the fingerprints to the federal bureau of investigation for a national criminal history record check. The authorized agency may charge a provider a fee in AN amount no greater than the fee established pursuant to law by the division for processing such a criminal 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 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 twenty-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 eligibility for employment by the provider, OR VOLUNTEER SERVICE WITH A PROVIDER OF SERVICE WHO CONTRACTS WITH, IS 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 THREE 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; PROVIDED, HOWEVER, THAT WHEN THE AUTHORIZED AGENCY HOLDS THE APPLICATION, RENEWAL, OR EMPLOYMENT IN ABEYANCE PURSUANT TO THIS SUBPARAGRAPH, SUCH AGENCY SHALL CONTACT THE ARRESTING LAW ENFORCEMENT AGENCY, DISTRICT ATTORNEY OR COURT IN THE COUNTY WHERE SUCH CHARGE IS PENDING AND MAKE REASONABLE EFFORTS TO DETERMINE WHETHER SUCH CHARGE HAS BEEN 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, IN A MANNER 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 PROMPTLY CEASE AND DESIST FROM PERMITTING, SUCH PERSON FROM OPERATING, RESIDING OR CONTINUING TO RESIDE IN THE FAMILY CARE HOME OR WITH THE FAMILY BASED TREATMENT PROVIDER, UNLESS THE AUTHORIZED AGENCY DETERMINES THAT THE SUBJECT INDIVIDUAL WILL NOT IN ANY WAY JEOPARDIZE THE HEALTH, SAFETY, OR WELFARE OF THE CLIENT OR CLIENTS OF THE FAMILY CARE HOME OR FAMILY BASED TREATMENT PROVIDER. FAILURE TO COMPLY WITH THIS DIRECTIVE SHALL, AS APPLICABLE, CONSTITUTE GROUNDS FOR DENIAL OF AN OPERATING CERTIFICATE OR REMOVAL OF THE OPERATING CERTIFICATE OF THE FAMILY CARE HOME OR FAMILY BASED TREATMENT PROGRAM IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE SIXTEEN OR THIRTY-ONE OF THE MENTAL HYGIENE LAW; OR

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

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

(IV) IF THE CRIMINAL HISTORY INFORMATION CONCERNING SUCH SUBJECT INDIVIDUAL REVEALS AN OUTSTANDING CHARGE FOR ANY CRIME OTHER THAN ONE IDENTIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION, THE AUTHORIZED AGENCY MAY, AS APPLICABLE, HOLD THE APPLICATION FOR AN OPERATING CERTIFICATE IN ABEYANCE OR REQUIRE A SAFETY ASSESSMENT OF THE FAMILY CARE HOME OR FAMILY BASED TREATMENT PROVIDER TO BE PERFORMED, AND MAY DIRECT THE FAMILY CARE HOME OR FAMILY CARE TREATMENT PROVIDER OF ANY ACTIONS THAT MUST BE TAKEN TO ENSURE THAT THE SUBJECT INDIVIDUAL WILL NOT JEOPARDIZE THE HEALTH, SAFETY, OR WELFARE OF THE CLIENT OR CLIENTS OF THE FAMILY CARE HOME OR FAMILY BASED TREATMENT PROVIDER. FAILURE TO PROMPTLY IMPLEMENT SUCH ACTIONS BY THE FAMILY CARE HOME OR FAMILY BASED TREATMENT PROVIDER, IF DIRECTED TO DO SO, SHALL CONSTITUTE GROUNDS FOR REMOVAL OF ITS OPERATING CERTIFICATE IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE SIXTEEN OR THIRTY-ONE OF THE MENTAL HYGIENE LAW.

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

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

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

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

[(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 INDI-

CATES 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.

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 confidential and shall not be available for public inspection; provided, however, nothing in this subdivision shall prevent an authorized agency or provider from disclosing criminal history information at any administrative or judicial proceeding relating to the denial or revocation of an application, employment, license or registration. 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 OR VOLUNTEER SERVICE of the subject individual, the subject of the criminal history information check conducted pursuant to this section shall be entitled to receive, upon written request, a copy of the summary of the criminal history information provided by the authorized agency to the provider.

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

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