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I N A S S E M B L Y

January 20, 2012

Introduced by M. of A. MILLMAN, DINOWITZ, CASTRO, CRESPO, JAFFEE, ORTIZ, STEVENSON, TITONE, ENGLEBRIGHT, GALEF, GOTTFRIED, HEASTIE, MARKEY, REILLY -- Multi-Sponsored by -- M. of A. ARROYO, HOOPER, MAGEE, McENEANY, J. RIVERA, P. RIVERA, SCHIMEL, SWEENEY, WEISENBERG, WRIGHT, ZEBROWSKI -- read once and referred to the Committee on Aging

AN ACT to amend the public health law and the executive law, in relation to reporting of abuses of persons receiving care in residential health care facilities; and to repeal paragraph (e) of subdivision 6 of section 2803-d of the public health law relating to the confidentiality of information relating to such abuses

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

1 Section 1. Paragraph (c) of subdivision 6 of section 2803-d of the
2 public health law, as amended by chapter 414 of the laws of 1986, is
3 amended to read as follows:
4 (c) All information relating to any allegation which the commissioner
5 has determined would not be sustained shall be expunged [one hundred
6 twenty days] FIVE YEARS following notification of such determination to
7 the person who made the report pursuant to this section, unless a
8 proceeding pertaining to such allegation is pending pursuant to article
9 seventy-eight of the civil practice law and rules. Whenever information
10 is expunged, the commissioner shall notify any official notified pursu-
11 ant to paragraph (a) of this subdivision that the information has been
12 expunged.
13 S 2. Paragraph (e) of subdivision 6 of section 2803-d of the public
14 health law is REPEALED and a new paragraph (e) is added to read as
15 follows:
16 (E) (I) ALL INFORMATION RELATING TO ANY ALLEGATION THAT THE COMMIS-
17 SIONER HAS DETERMINED WOULD NOT BE SUSTAINED, SHALL BE SEALED ONE
18 HUNDRED TWENTY DAYS FOLLOWING NOTIFICATION OF SUCH DETERMINATION TO THE
19 PERSON WHO MADE THE REPORT. SUCH REPORTS MAY BE UNSEALED AND MADE AVAIL-
20 ABLE ONLY TO (A) THE SUBJECT OF THE REPORT; OR (B) A DISTRICT ATTORNEY,
21 AN ASSISTANT DISTRICT ATTORNEY, THE ATTORNEY GENERAL, AN ASSISTANT
22 ATTORNEY GENERAL, AN INVESTIGATOR EMPLOYED IN THE OFFICE OF A DISTRICT

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

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1 ATTORNEY OR THE ATTORNEY GENERAL, OR TO A POLICE OFFICER BY THE DIVISION
2 OF STATE POLICE, BY A CITY, COUNTY, TOWN OR VILLAGE POLICE DEPARTMENT OR
3 BY A COUNTY SHERIFF'S OFFICE WHEN SUCH OFFICIAL REPRESENTS THAT THE
4 REPORT IS NECESSARY TO CONDUCT AN ACTIVE INVESTIGATION OR PROSECUTION
5 RELATED TO ALLEGATIONS OF PHYSICAL ABUSE, MISTREATMENT OR NEGLECT, OR
6 THE FAILURE TO REPORT SUCH AN INCIDENT.

7 (II) PERSONS GIVEN ACCESS TO REPORTS PURSUANT TO SUBPARAGRAPH (I) OF
8 THIS PARAGRAPH SHALL NOT REDISCLOSE SUCH REPORTS EXCEPT AS NECESSARY TO
9 CONDUCT SUCH APPROPRIATE INVESTIGATION OR PROSECUTION AND SHALL REQUEST
10 OF THE COURT THAT ANY COPIES OF SUCH REPORTS PRODUCED IN ANY COURT
11 PROCEEDING BE REDACTED TO REMOVE THE NAMES OF THE SUBJECTS AND OTHER
12 PERSONS NAMED IN THE REPORTS OR THAT THE COURT ISSUE AN ORDER PROTECTING
13 THE NAMES OF THE SUBJECTS AND OTHER PERSONS NAMED IN THE REPORTS FROM
14 PUBLIC DISCLOSURE.

15 S 3. Paragraph (f) of subdivision 6 of section 2803-d of the public
16 health law, as amended by chapter 340 of the laws of 1980, is amended to
17 read as follows:

18 (f) [Information] ANY REPORT OF PHYSICAL ABUSE, MISTREATMENT OR
19 NEGLECT, RECORD OF THE INVESTIGATION OF SUCH REPORT AND ALL OTHER INFOR-
20 MATION RELATED TO SUCH REPORT SHALL BE CONFIDENTIAL AND SHALL BE EXEMPT
21 FROM DISCLOSURE UNDER ARTICLE SIX OF THE PUBLIC OFFICERS LAW, PROVIDED
22 HOWEVER THAT INFORMATION relating to a report made pursuant to this
23 section shall be disclosed under any of the following conditions:

24 (i) pursuant to article six of the public officers law after expunge-
25 ment or amendment, if any, is made in accordance with a hearing
26 conducted pursuant to this section, or at least forty-five days after a
27 written determination is made by the commissioner concerning such
28 report, whichever is later; provided, however, that the identity of the
29 person who made the report, the victim, or any other person named,
30 except a person who the commissioner has determined committed an act of
31 physical abuse, neglect or mistreatment, shall not be disclosed unless
32 such person authorizes such disclosure;

33 (ii) as may be required by the penal law or any lawful order or
34 warrant issued pursuant to the criminal procedure law; or

35 (iii) to a person who has requested a hearing pursuant to this
36 section, information relating to the determination upon which the hear-
37 ing is to be conducted; provided, however, that the identity of the
38 person who made the report or any other person who provided information
39 in an investigation of the report shall not be disclosed unless such
40 person authorizes such disclosure[.]; OR

41 (IV) TO A PROSECUTOR, INCLUDING THE ATTORNEY GENERAL, WHEN SUCH
42 REQUEST IS MADE IN CONNECTION WITH AND NECESSARY TO THE FURTHERANCE OF A
43 CRIMINAL INVESTIGATION RELATED TO THE ALLEGATIONS OF PHYSICAL ABUSE,
44 NEGLECT OR MISTREATMENT, OR FAILURE TO REPORT SUCH ACTS. A PROSECUTOR
45 WHO OBTAINS SUCH RECORDS SHALL MAINTAIN THEM AS CONFIDENTIAL AND SHALL
46 NOT DISCLOSE THEM EXCEPT IN CONNECTION WITH GRAND JURY OR JUDICIAL
47 PROCEEDINGS.

48 S 4. Subdivision 16 of section 296 of the executive law, as separately
49 amended by section 3 of part N and section 14 of part AAA of chapter 56
50 of the laws of 2009, is amended to read as follows:

51 16. It shall be an unlawful discriminatory practice, unless specif-
52 ically required or permitted by statute, for any person, agency, bureau,
53 corporation or association, including the state and any political subdi-
54 vision thereof, to make any inquiry about, whether in any form of appli-
55 cation or otherwise, or to act upon adversely to the individual
56 involved, (A) any arrest or criminal accusation of such individual not

1 then pending against that individual which was followed by a termination
2 of that criminal action or proceeding in favor of such individual, as
3 defined in subdivision two of section 160.50 of the criminal procedure
4 law, or by a youthful offender adjudication, as defined in subdivision
5 one of section 720.35 of the criminal procedure law, or by a conviction
6 for a violation sealed pursuant to section 160.55 of the criminal proce-
7 dure law or (B) by a conviction which is sealed pursuant to section
8 160.58 of the criminal procedure law OR (C) ANY REPORT MADE UNDER
9 SECTION TWENTY-EIGHT HUNDRED-THREE-D OF THE PUBLIC HEALTH LAW WHERE A
10 DETERMINATION HAS BEEN MADE THAT THE ALLEGATION WOULD NOT BE SUSTAINED,
11 in connection with the licensing, employment or providing of credit or
12 insurance to such individual; provided, further, that no person shall be
13 required to divulge information pertaining to any arrest or criminal
14 accusation of such individual not then pending against that individual
15 which was followed by a termination of that criminal action or proceed-
16 ing in favor of such individual, as defined in subdivision two of
17 section 160.50 of the criminal procedure law, or by a youthful offender
18 adjudication, as defined in subdivision one of section 720.35 of the
19 criminal procedure law, or by a conviction for a violation sealed pursu-
20 ant to section 160.55 of the criminal procedure law, or by a conviction
21 which is sealed pursuant to section 160.58 of the criminal procedure
22 law. The provisions of this subdivision shall not apply to the licensing
23 activities of governmental bodies in relation to the regulation of guns,
24 firearms and other deadly weapons or in relation to an application for
25 employment as a police officer or peace officer as those terms are
26 defined in subdivisions thirty-three and thirty-four of section 1.20 of
27 the criminal procedure law; provided further that the provisions of this
28 subdivision shall not apply to an application for employment or member-
29 ship in any law enforcement agency with respect to any arrest or crimi-
30 nal accusation which was followed by a youthful offender adjudication,
31 as defined in subdivision one of section 720.35 of the criminal proce-
32 dure law, or by a conviction for a violation sealed pursuant to section
33 160.55 of the criminal procedure law, or by a conviction which is sealed
34 pursuant to section 160.58 of the criminal procedure law.
35 S 5. This act shall take effect on the one hundred eightieth day after
36 it shall have become a law.