

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services

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

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

- 1 Section 1. The social services law is amended by adding a new section  
2 461-s to read as follows:  
3 S 461-S. ACCESS TO CRIMINAL HISTORY RECORDS. 1. FOR THE PURPOSES OF  
4 THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:  
5 (A) "MAINTENANCE EMPLOYEE" SHALL MEAN ANY INDIVIDUAL TO BE EMPLOYED OR  
6 USED BY A PROVIDER, INCLUDING THOSE PERSONS EMPLOYED THROUGH A TEMPORARY  
7 EMPLOYMENT OR STAFFING AGENCY, AND WHO PROVIDE SUPPORTIVE MAINTENANCE  
8 SERVICES TO SUCH FACILITY, INCLUDED, BUT NOT LIMITED TO BEAUTICIAN,  
9 SECURITY, JANITORIAL, LAUNDRY, RECREATIONAL AND GROUNDSKEEPING SERVICES.  
10 SUCH TERM SHALL NOT INCLUDE VOLUNTEERS.  
11 (B) "PROVIDER" SHALL MEAN AN ASSISTED LIVING FACILITY, RESIDENTIAL  
12 HEALTH CARE FACILITY, SKILLED NURSING FACILITY OR ANY OTHER TYPE OF  
13 FACILITY THAT PROVIDES RESIDENTIAL OR INSTITUTIONAL CARE TO THE ELDERLY  
14 OR DISABLED.  
15 2. SUBJECT TO THE RULES AND REGULATIONS OF THE DIVISION OF CRIMINAL  
16 JUSTICE SERVICES, THE DEPARTMENT OF HEALTH SHALL HAVE ACCESS TO CRIMINAL  
17 HISTORY RECORDS MAINTAINED BY SUCH DIVISION PERTAINING TO ANY MAINTENANCE  
18 EMPLOYEE OR SUCH PERSONS AS THE DEPARTMENT OF HEALTH AT ANY TIME  
19 DEEMS NECESSARY TO DETERMINE THEIR CRIMINAL HISTORIES.  
20 3. EVERY COURT IN WHICH A MAINTENANCE EMPLOYEE OF A PROVIDER IS  
21 CONVICTED OF A CRIME WHILE PERFORMING THEIR INTENDED DUTIES AT SUCH  
22 FACILITY SHALL, WITHIN SEVEN DAYS AFTER EITHER THE ENTRY OF A PLEA OF  
23 GUILTY, OR THE VERDICT OF THE COURT OR A JURY, NOTIFY THE DEPARTMENT OF

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

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

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

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

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

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

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

28 10. Notwithstanding subdivision eleven of section eight hundred  
29 forty-five-b of the executive law, a certified home health agency,  
30 licensed home care services agency or long term home health care program  
31 certified, licensed or approved under article thirty-six of this chapter  
32 or a home care services agency exempt from certification or licensure  
33 under article thirty-six of this chapter, OR AN ASSISTED LIVING FACILITY  
34 LICENSED UNDER ARTICLE FORTY-SIX-B OF THIS CHAPTER may temporarily  
35 approve a prospective employee while the results of the criminal history  
36 information check and the determination are pending, upon the condition  
37 that the provider conducts appropriate direct observation and evaluation  
38 of the temporary employee, while he or she is temporarily employed, and  
39 the care recipient. The results of such observations shall be documented  
40 in the temporary employee's personnel file and shall be maintained. For  
41 purposes of providing such appropriate direct observation and evalu-  
42 ation, the provider shall utilize an individual employed by such provid-  
43 er with a minimum of one year's experience working in an agency certi-  
44 fied, licensed or approved under article thirty-six of this chapter. If  
45 the temporary employee is working under contract with another provider  
46 certified, licensed or approved under article thirty-six of this chapter  
47 OR ARTICLE FORTY-SIX-B OF THIS CHAPTER, such contract provider's appro-  
48 priate direct observation and evaluation of the temporary employee,  
49 shall be considered sufficient for the purposes of complying with this  
50 subdivision.

51 S 4. This act shall take effect immediately.