S T A T E O F N E W Y O R K

4768

2011-2012 Regular Sessions

I N S E N A T E

April 20, 2011

Introduced by Sen. McDONALD -- 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, in relation to establishing a people with developmental disabilities and mental health worker registry

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

Section 1. The mental hygiene law is amended by adding a new section 16.34 to read as follows:

S 16.34 PEOPLE WITH DEVELOPMENTAL DISABILITIES REGISTRY.

1. EVERY PROVIDER OF SERVICES REQUIRED TO REQUEST CRIMINAL HISTORY INFORMATION CONCERNING CERTAIN PROSPECTIVE EMPLOYEES AND VOLUNTEERS PURSUANT TO THE PROVISIONS OF SECTION 16.33 OF THIS ARTICLE SHALL ALSO BE REQUIRED TO SUBMIT TO THE OFFICE A SUMMARY REPORT IN A FORM APPROVED BY THE OFFICE OF THE TERMINATION FOR CAUSE OF ANY EMPLOYEE OR VOLUNTEER WHO WAS SUBJECT TO A CRIMINAL HISTORY BACKGROUND CHECK UNDER SECTION 16.33 OF THIS ARTICLE AND WHO IS TERMINATED AS A RESULT OF A FINDING THAT SUCH EMPLOYEE OR VOLUNTEER ENGAGED IN BEHAVIOR THAT CONSTITUTED ABUSE OR NEGLECT OF A CLIENT.

2. IF SUCH EMPLOYEE OR VOLUNTEER VOLUNTARILY RESIGNS DURING THE PENDENCY OF AN INVESTIGATION OF AN INCIDENT INVOLVING NEGLECT OR ABUSE OF A CLIENT AND IF SUCH INVESTIGATION DETERMINES THAT SUCH EMPLOYEE OR VOLUNTEER ENGAGED IN BEHAVIOR THAT CONSTITUTED ABUSE OR NEGLECT OF A CLIENT WHICH WOULD HAVE RESULTED IN TERMINATION, SUCH PROVIDER SHALL FILE THE SUMMARY REPORT REQUIRED IN SUBDIVISION ONE OF THIS SECTION.

3. THE SUMMARY REPORT REQUIRED TO BE FILED UNDER SUBDIVISION ONE OF THIS SECTION SHALL BE SUBMITTED TO THE OFFICE WITHIN THIRTY DAYS OF THE TERMINATION OR, IF THE EMPLOYEE OR VOLUNTEER RESIGNS, THIRTY DAYS AFTER THE COMPLETION OF THE INVESTIGATION. THE SUMMARY REPORT SHALL INCLUDE THE NAME, HOME ADDRESS, SOCIAL SECURITY NUMBER OF THE EMPLOYEE OR VOLUN-

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

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TEER AND A BRIEF DESCRIPTION OF THE CONDUCT INVOLVED IN THE INCIDENT IN A FORM APPROVED BY THE OFFICE.

4. WHEN THE OFFICE RECEIVES A SUMMARY REPORT REGARDING AN EMPLOYEE OR VOLUNTEER, THE OFFICE SHALL MAINTAIN SUCH REPORT TOGETHER WITH THE CRIMINAL HISTORY INFORMATION PREVIOUSLY OBTAINED REGARDING SUCH EMPLOYEE OR VOLUNTEER.

5. IF THE OFFICE RECEIVES A REQUEST FOR CRIMINAL HISTORY INFORMATION FOR A PROSPECTIVE EMPLOYEE OR VOLUNTEER FOR WHOM THE OFFICE HAS PREVIOUSLY RECEIVED A SUMMARY REPORT, THE OFFICE SHALL FURNISH A COPY OF ANY SUMMARY REPORTS AND ANY WRITTEN RESPONSE FROM THE EMPLOYEE OR VOLUNTEER REFERRED TO IN SUBDIVISION EIGHT OF THIS SECTION TO: (A) THE PROVIDER THAT REQUESTED THE CRIMINAL HISTORY INFORMATION WITH RESPECT TO SUCH PROSPECTIVE EMPLOYEE OR VOLUNTEER AND (B) ANY OTHER PROVIDER THAT PREVIOUSLY REQUESTED CRIMINAL HISTORY INFORMATION PERTAINING TO SUCH EMPLOYEE OR VOLUNTEER EXCEPT IF SUCH PROVIDER HAS NOTIFIED THE OFFICE THAT SUCH EMPLOYEE OR VOLUNTEER IS NO LONGER SUBJECT TO A CHECK PURSUANT TO THE PROVISIONS OF SUBDIVISION EIGHT OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW.

6. THE OFFICE SHALL PROVIDE THE SUMMARY REPORT TO THE AUTHORIZED PERSON AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW.

7. THE SUMMARY REPORT PROVIDED BY THE OFFICE TO A PROVIDER SHALL BE SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF SUBDIVISION SEVEN OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW.

8. THE OFFICE SHALL PROVIDE EACH EMPLOYEE OR VOLUNTEER ABOUT WHOM THE OFFICE RECEIVES A SUMMARY REPORT HEREUNDER WITH WRITTEN NOTIFICATION THAT SUCH EMPLOYEE OR VOLUNTEER HAS THE RIGHT TO OBTAIN AND REVIEW THE SUMMARY REPORT AND SUBMIT A BRIEF WRITTEN STATEMENT IN RESPONSE TO THE SUMMARY REPORT PURSUANT TO REGULATIONS AND PROCEDURES ESTABLISHED BY THE OFFICE. IF THE OFFICE RECEIVES SUCH WRITTEN STATEMENT, THE OFFICE SHALL TRANSMIT SUCH WRITTEN STATEMENT TO ANY PROVIDER TOGETHER WITH THE SUMMARY REPORT PROVIDED PURSUANT TO THIS SECTION.

9. THE PROVISIONS OF SUBDIVISION NINE OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW REGARDING LIMITATIONS OF CIVIL AND CRIMINAL LIABILITY AND LIMITATIONS UPON ACTIONS FOR DAMAGES SHALL APPLY WITH RESPECT TO THE SUMMARY REPORTS DISCLOSED BY THE OFFICE TO PROVIDERS TO THE SAME EXTENT AND IN THE SAME MANNER THAT SUCH PROVISIONS APPLY TO CRIMINAL HISTORY INFORMATION PROVIDED UNDER SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW.

S 2. The mental hygiene law is amended by adding a new section 31.36 to read as follows:

S 31.36 MENTAL HEALTH REGISTRY.

1. EVERY PROVIDER OF SERVICES REQUIRED TO REQUEST CRIMINAL HISTORY INFORMATION CONCERNING CERTAIN PROSPECTIVE EMPLOYEES AND VOLUNTEERS PURSUANT TO THE PROVISIONS OF SECTION 31.35 OF THIS ARTICLE SHALL ALSO BE REQUIRED TO SUBMIT TO THE OFFICE OF MENTAL HEALTH, HEREINAFTER REFERRED TO AS THE OFFICE, A SUMMARY REPORT IN A FORM APPROVED BY THE OFFICE OF THE TERMINATION FOR CAUSE OF ANY EMPLOYEE OR VOLUNTEER WHO WAS SUBJECT TO A CRIMINAL HISTORY BACKGROUND CHECK UNDER SECTION 31.35 OF THIS ARTICLE AND WHO IS TERMINATED AS A RESULT OF A FINDING THAT SUCH EMPLOYEE OR VOLUNTEER ENGAGED IN BEHAVIOR THAT CONSTITUTED ABUSE OR NEGLECT OF A CLIENT.

2. IF SUCH EMPLOYEE OR VOLUNTEER VOLUNTARILY RESIGNS DURING THE PENDENCY OF AN INVESTIGATION OF AN INCIDENT INVOLVING NEGLECT OR ABUSE OF A CLIENT AND IF SUCH INVESTIGATION DETERMINES THAT SUCH EMPLOYEE OR VOLUNTEER ENGAGED IN BEHAVIOR THAT CONSTITUTED ABUSE OR NEGLECT OF A

CLIENT WHICH WOULD HAVE RESULTED IN TERMINATION, SUCH PROVIDER SHALL FILE THE SUMMARY REPORT REQUIRED IN SUBDIVISION ONE OF THIS SECTION.

3. THE SUMMARY REPORT REQUIRED TO BE FILED UNDER SUBDIVISION ONE OF THIS SECTION SHALL BE SUBMITTED TO THE OFFICE WITHIN THIRTY DAYS OF THE TERMINATION OR, IF THE EMPLOYEE OR VOLUNTEER RESIGNS, THIRTY DAYS AFTER THE COMPLETION OF THE INVESTIGATION. THE SUMMARY REPORT SHALL INCLUDE THE NAME, HOME ADDRESS, SOCIAL SECURITY NUMBER OF THE EMPLOYEE OR VOLUNTEER AND A BRIEF DESCRIPTION OF THE CONDUCT INVOLVED IN THE INCIDENT IN A FORM APPROVED BY THE OFFICE.

4. WHEN THE OFFICE RECEIVES A SUMMARY REPORT REGARDING AN EMPLOYEE OR VOLUNTEER, THE OFFICE SHALL MAINTAIN SUCH REPORT TOGETHER WITH THE CRIMINAL HISTORY INFORMATION PREVIOUSLY OBTAINED REGARDING SUCH EMPLOYEE OR VOLUNTEER.

5. IF THE OFFICE RECEIVES A REQUEST FOR CRIMINAL HISTORY INFORMATION FOR A PROSPECTIVE EMPLOYEE OR VOLUNTEER FOR WHOM THE OFFICE HAS PREVIOUSLY RECEIVED A SUMMARY REPORT, THE OFFICE SHALL FURNISH A COPY OF ANY SUMMARY REPORTS AND ANY WRITTEN RESPONSE FROM THE EMPLOYEE OR VOLUNTEER REFERRED TO IN SUBDIVISION EIGHT OF THIS SECTION TO: (A) THE PROVIDER THAT REQUESTED THE CRIMINAL HISTORY INFORMATION WITH RESPECT TO SUCH PROSPECTIVE EMPLOYEE OR VOLUNTEER AND (B) ANY OTHER PROVIDER THAT PREVIOUSLY REQUESTED CRIMINAL HISTORY INFORMATION PERTAINING TO SUCH EMPLOYEE OR VOLUNTEER EXCEPT IF SUCH PROVIDER HAS NOTIFIED THE OFFICE THAT SUCH EMPLOYEE OR VOLUNTEER IS NO LONGER SUBJECT TO A CHECK PURSUANT TO THE PROVISIONS OF SUBDIVISION EIGHT OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW.

6. THE OFFICE SHALL PROVIDE THE SUMMARY REPORT TO THE AUTHORIZED PERSON AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW.

7. THE SUMMARY REPORT PROVIDED BY THE OFFICE TO A PROVIDER SHALL BE SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF SUBDIVISION SEVEN OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW.

8. THE OFFICE SHALL PROVIDE EACH EMPLOYEE OR VOLUNTEER ABOUT WHOM THE OFFICE RECEIVES A SUMMARY REPORT HEREUNDER WITH WRITTEN NOTIFICATION THAT SUCH EMPLOYEE OR VOLUNTEER HAS THE RIGHT TO OBTAIN AND REVIEW THE SUMMARY REPORT AND SUBMIT A BRIEF WRITTEN STATEMENT IN RESPONSE TO THE SUMMARY REPORT PURSUANT TO REGULATIONS AND PROCEDURES ESTABLISHED BY THE OFFICE. IF THE OFFICE RECEIVES SUCH WRITTEN STATEMENT, THE OFFICE SHALL TRANSMIT SUCH WRITTEN STATEMENT TO ANY PROVIDER TOGETHER WITH THE SUMMARY REPORT PROVIDED PURSUANT TO THIS SECTION.

9. THE PROVISIONS OF SUBDIVISION NINE OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW REGARDING LIMITATIONS OF CIVIL AND CRIMINAL LIABILITY AND LIMITATIONS UPON ACTIONS FOR DAMAGES SHALL APPLY WITH RESPECT TO THE SUMMARY REPORTS DISCLOSED BY THE OFFICE TO PROVIDERS TO THE SAME EXTENT AND IN THE SAME MANNER THAT SUCH PROVISIONS APPLY TO CRIMINAL HISTORY INFORMATION PROVIDED UNDER SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided, however, that effective immediately the commissioner of developmental disabilities and the commissioner of mental health may adopt, amend, suspend or repeal rules or regulations and take other actions prior to and in preparation for the timely implementation of this act on its effective date.