

2759

2013-2014 Regular Sessions

I N   A S S E M B L Y

January 17, 2013

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

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-t to read as follows:  
3     S 461-T. 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  
24    HEALTH IN WRITING OF SUCH CONVICTION. THE DEPARTMENT OF HEALTH, AFTER

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

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

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

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

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

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

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

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

50 S 4. This act shall take effect immediately.