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I N   S E N A T E

April 6, 2016

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Introduced by Sen. SERINO -- (at request of the Office for the Aging) --  
read twice and ordered printed, and when printed to be committed to  
the Committee on Aging

AN ACT to amend the elder law and the executive law, in relation to the  
review of criminal history information by the state office for the  
aging of prospective volunteers and paid employees

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

1     Section 1. The elder law is amended by adding a new section 224 to  
2     read as follows:  
3     S 224. REVIEW OF CRIMINAL HISTORY INFORMATION CONCERNING PROSPECTIVE  
4     VOLUNTEERS AND EMPLOYEES. 1. THE OFFICE FOR THE AGING SHALL BE AUTHOR-  
5     IZED TO RECEIVE FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES CRIMINAL  
6     HISTORY INFORMATION, AS SUCH TERM IS DEFINED IN PARAGRAPH (C) OF SUBDI-  
7     VISION ONE OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW,  
8     AND INFORMATION FROM THE FEDERAL BUREAU OF INVESTIGATION RESULTING FROM  
9     A NATIONAL CRIMINAL HISTORY RECORD CHECK, ON EACH PROSPECTIVE EMPLOYEE  
10    OR VOLUNTEER WHOSE DUTIES WILL INVOLVE THE PROVISION OF DIRECT SERVICES  
11    TO OLDER ADULTS THROUGH PROGRAMS ADMINISTERED BY THE OFFICE, INCLUDING  
12    BUT NOT LIMITED TO COORDINATORS AND VOLUNTEERS PROVIDING DIRECT SERVICES  
13    UNDER THE LONG TERM CARE OMBUDSMAN PROGRAM.  
14    2. ACCESS TO AND THE USE OF CRIMINAL HISTORY INFORMATION SHALL BE  
15    GOVERNED BY THE PROVISIONS OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE  
16    EXECUTIVE LAW.  
17    S 2. Paragraph (c) of subdivision 1 of section 845-b of the executive  
18    law, as amended by chapter 769 of the laws 2005, is amended to read as  
19    follows:  
20    (c) "Criminal history information" means a record of pending criminal  
21    charges, criminal convictions which are not vacated or reversed, and  
22    certificates filed pursuant to subdivision two of section seven hundred  
23    five of the correction law, and which the division is authorized to  
24    maintain pursuant to subdivision six of section eight hundred thirty-  
25    seven of this article. For the purposes of criminal history information  
26    checks authorized pursuant to article twenty-eight-E of the public

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

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1 health law OR SECTION TWO HUNDRED TWENTY-FOUR OF THE ELDER LAW, criminal  
2 history information shall also include information from the federal  
3 bureau of investigation as a result of a national criminal history  
4 record check.

5 S 3. Subdivision 2 of section 845-b of the executive law, as amended  
6 by section 5 of part F of chapter 501 of the laws of 2012, is amended to  
7 read as follows:

8 2. Where a provider is authorized or required to request a check of  
9 criminal history information by an authorized agency pursuant to section  
10 16.33 or 31.35 of the mental hygiene law, article twenty-eight-E of the  
11 public health law [or], subdivision one of section three hundred seven-  
12 ty-eight-a of the social services law, OR SECTION TWO HUNDRED  
13 TWENTY-FOUR OF THE ELDER LAW, such provider shall proceed pursuant to  
14 the provisions of this section and in a manner consistent with the  
15 provisions of article twenty-three-A of the correction law, subdivisions  
16 fifteen and sixteen of section two hundred ninety-six of this chapter  
17 and all other applicable laws.

18 S 4. Paragraph (a) of subdivision 3 of section 845-b of the executive  
19 law, as amended by chapter 769 of the laws of 2005, is amended to read  
20 as follows:

21 (a) A provider authorized to request a check of criminal history  
22 information pursuant to subdivision two of this section shall designate  
23 one authorized person who shall request a check of criminal history  
24 information on behalf of such provider pursuant to this section and  
25 review the results of such check. Only such authorized person or his or  
26 her designee and the subject individual to whom such criminal history  
27 information relates shall have access to such information; provided,  
28 however, that criminal history information received by a provider may be  
29 disclosed to other persons who are directly participating in any deci-  
30 sion in regard to such subject individual; and provided, further, that  
31 such other persons shall also be subject to the confidentiality require-  
32 ments and all other provisions of this section. In the case of requests  
33 made pursuant to article twenty-eight-E of the public health law OR  
34 SECTION TWO HUNDRED TWENTY-FOUR OF THE ELDER LAW, only information  
35 authorized for disclosure under applicable federal laws shall be trans-  
36 mitted to the provider. Each provider shall specifically identify to the  
37 authorized agency in writing, in advance of disclosure, the authorized  
38 person and each other such agent or employee of the provider who is  
39 authorized to have access to the results of a check of criminal history  
40 information pursuant to this section. Any person who willfully permits  
41 the release of any confidential criminal history information contained  
42 in the report to persons not permitted by this section to receive such  
43 information shall be guilty of a misdemeanor.

44 S 5. Paragraphs (a) and (b) of subdivision 4 of section 845-b of the  
45 executive law, as amended by chapter 331 of the laws of 2006, are  
46 amended to read as follows:

47 (a) The authorized agency shall pay the processing fee imposed pursu-  
48 ant to subdivision eight-a of section eight hundred thirty-seven of this  
49 article, and in the case of the authorized agency pursuant to article  
50 twenty-eight-E of the public health law OR SECTION TWO HUNDRED  
51 TWENTY-FOUR OF THE ELDER LAW, any fee imposed by the federal bureau of  
52 investigation, and shall promptly submit the fingerprints and the proc-  
53 essing fee to the division for its full search and retain processing,  
54 and in the case of the authorized agency pursuant to article twenty-  
55 eight-E of the public health law OR SECTION TWO HUNDRED TWENTY-FOUR OF  
56 THE ELDER LAW, the division shall immediately forward the fingerprints

1 to the federal bureau of investigation for a national criminal history  
2 record check. The authorized agency may charge a provider a fee in  
3 amount no greater than the fee established pursuant to law by the divi-  
4 sion for processing such a criminal history information check, in such  
5 amounts as may be established by the authorized agency and approved by  
6 the director of the division of the budget, and in the case of the  
7 authorized agency pursuant to article twenty-eight-E of the public  
8 health law OR SECTION TWO HUNDRED TWENTY-FOUR OF THE ELDER LAW, a fee no  
9 greater than any fee imposed by the federal bureau of investigation.  
10 Nothing in this section shall prohibit the authorized agency or provider  
11 from claiming the cost of such fees and related costs, including admin-  
12 istrative costs, as a reimbursable cost under the medical assistance  
13 program, Medicare or other payor, to the extent permitted by state and  
14 federal law.

15 (b) The division shall promptly provide requested state criminal  
16 history information to the authorized agency and, in accordance with  
17 article twenty-eight-E of the public health law AND SECTION TWO HUNDRED  
18 TWENTY-FOUR OF THE ELDER LAW, the department of health [is] AND THE NEW  
19 YORK STATE OFFICE FOR THE AGING, RESPECTIVELY, ARE authorized also to  
20 receive criminal history information from the federal bureau of investi-  
21 gation, after the receipt of a request pursuant to this section if such  
22 request is:

23 (i) made pursuant to a request by an authorized person on behalf of a  
24 provider authorized to make such a request pursuant to subdivision two  
25 of this section;

26 (ii) accompanied by the completed form described in this section; and

27 (iii) accompanied by fingerprints of the subject individual obtained  
28 pursuant to this section.

29 S 6. Subdivision 8 of section 845-b of the executive law, as amended  
30 by chapter 769 of the laws of 2005, is amended to read as follows:

31 8. A provider shall advise the authorized agency when a subject indi-  
32 vidual is no longer subject to such check. The authorized agency shall  
33 inform the division when a subject individual is no longer subject to  
34 such check so that the division may terminate its retain processing with  
35 regard to such individual. At least once a year, the authorized agency  
36 shall be required to conduct a validation of the records maintained by  
37 the division, including information obtained from the federal bureau of  
38 investigation pursuant to article twenty-eight-E of the public health  
39 law OR SECTION TWO HUNDRED TWENTY-FOUR OF THE ELDER LAW, and provide  
40 such results to the authorized agency for purposes of updating the  
41 permanent record of such criminal history information results.

42 S 7. This act shall take effect immediately.