

STATE OF NEW YORK

6040

2019-2020 Regular Sessions

IN ASSEMBLY

February 26, 2019

Introduced by M. of A. LAWRENCE -- 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-u to read as follows:

3 § 461-u. 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 mainte-
18 nance 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 § 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-u 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 § 3. Subdivision 10 of section 2899-a of the public health law, as
25 amended by section 5 of part C of chapter 57 of the laws of 2018, is
26 amended to read as 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, a hospice program under arti-
33 cle forty of this chapter, or an adult home, enriched housing program or
34 residence for adults licensed under article seven of the social services
35 law, or an assisted living facility licensed under article forty-six-B
36 of this chapter, or a health home, or any subcontractor of such health
37 home, who contracts with or is approved or otherwise authorized by the
38 department to provide health home services to all enrollees enrolled
39 pursuant to a diagnosis of a developmental disability as defined in
40 subdivision twenty-two of section 1.03 of the mental hygiene law and
41 enrollees who are under twenty-one years of age under section three
42 hundred sixty-five-1 of the social services law, or any entity that
43 provides home and community based services to enrollees who are under
44 twenty-one years of age under a demonstration program pursuant to
45 section eleven hundred fifteen of the federal social security act may
46 temporarily approve a prospective employee while the results of the
47 criminal history information check and the determination are pending,
48 upon the condition that the provider conducts appropriate direct obser-
49 vation and evaluation of the temporary employee, while he or she is
50 temporarily employed, and the care recipient; provided, however, that
51 for a health home, or any subcontractor of a health home, who contracts
52 with or is approved or otherwise authorized by the department to provide
53 health home services to all enrollees enrolled pursuant to a diagnosis
54 of developmental disability as defined in subdivision twenty-two of
55 section 1.03 of the mental hygiene law and enrollees who are under twen-
56 ty-one years of age under section three hundred sixty-five-1 of the

1 social services law, or any entity that provides home and community
2 based services to enrollees who are under twenty-one years of age under
3 a demonstration program pursuant to section eleven hundred fifteen of
4 the federal social security act, direct observation and evaluation of
5 temporary employees shall not be required until April first, two thou-
6 sand nineteen. The results of such observations shall be documented in
7 the temporary employee's personnel file and shall be maintained. For
8 purposes of providing such appropriate direct observation and evalu-
9 ation, the provider shall utilize an individual employed by such provid-
10 er with a minimum of one year's experience working in an agency certi-
11 fied, licensed or approved under article thirty-six of this chapter or
12 an adult home, enriched housing program or residence for adults licensed
13 under article seven of the social services law, a health home, or any
14 subcontractor of such health home, who contracts with or is approved or
15 otherwise authorized by the department to provide health home services
16 to those enrolled pursuant to a diagnosis of a developmental disability
17 as defined in subdivision twenty-two of section 1.03 of the mental
18 hygiene law and enrollees who are under twenty-one years of age under
19 section three hundred sixty-five-1 of the social services law, or any
20 entity that provides home and community based services to enrollees who
21 are under twenty-one years of age under a demonstration program pursuant
22 to section eleven hundred fifteen of the federal social security act. If
23 the temporary employee is working under contract with another provider
24 certified, licensed or approved under article thirty-six or article
25 forty-six-B of this chapter, such contract provider's appropriate direct
26 observation and evaluation of the temporary employee, shall be consid-
27 ered sufficient for the purposes of complying with this subdivision.

28 § 4. This act shall take effect immediately.