

# 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.