

STATE OF NEW YORK

4428

2019-2020 Regular Sessions

IN SENATE

March 11, 2019

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the executive law, in relation to the review of criminal history information concerning prospective residents of nursing homes

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The public health law is amended by adding a new article
2 28-F to read as follows:

ARTICLE 28-F

REVIEW OF CRIMINAL HISTORY INFORMATION OF PROSPECTIVE RESIDENTS OF NURSING HOMES

Section 2899-b. Definitions.

2899-c. Requests for criminal history information concerning prospective residents.

9 § 2899-b. Definitions. As used in this article, the following words
10 and phrases shall have the following meanings:

11 1. "Criminal history information" shall mean a record of pending crim-
12 inal charges, criminal convictions which have not been vacated or
13 reversed, information from the federal bureau of investigation as a
14 result of a national criminal history record check, and certificates
15 filed pursuant to subdivision two of section seven hundred five of the
16 correction law and which the division of criminal justice services is
17 required to maintain pursuant to subdivision six of section eight
18 hundred thirty-seven of the executive law.

19 2. "Determination" shall mean the decision made by the department
20 after reviewing criminal history information to approve or disapprove a
21 prospective resident's eligibility for residence at a nursing home. All
22 such determinations shall be made in accordance with section eight
23 hundred forty-five-c of the executive law.

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

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1 3. "Nursing home" shall mean a nursing home as defined in section
2 twenty-eight hundred one of this chapter.

3 4. "Permanent record" shall mean a permanent, written record of a
4 determination and the criminal history information maintained by the
5 department for a period not to exceed ten years.

6 5. "Prospective resident" shall mean any individual, not currently a
7 resident, who files an application for residence in a nursing home and
8 the nursing home has a reasonable expectation to accept such individual
9 as a resident.

10 § 2899-c. Requests for criminal history information concerning
11 prospective residents. 1. A nursing home shall request that the depart-
12 ment check, and upon such request the department shall check its perma-
13 nent record according to this section for a determination on a prospec-
14 tive resident. If a permanent record does not exist for the prospective
15 resident, the department shall be authorized to request and receive
16 criminal history information concerning the prospective resident from
17 the division of criminal justice services in accordance with the
18 provisions of section eight hundred forty-five-c of the executive law.
19 Access to and the use of such information shall be governed by the
20 provisions of such section. The division of criminal justice services is
21 authorized to submit fingerprints to the federal bureau of investigation
22 for a national criminal history record check.

23 2. To the extent permitted by law, a nursing home shall request and
24 receive from a prospective resident a sworn statement disclosing any
25 prior finding as a sex offender, as defined in section one hundred
26 sixty-eight-a of the correction law, or any criminal conviction the
27 sentence for which expired within the previous five years. Nursing homes
28 shall evaluate such statements in all residence decisions, including any
29 temporary approvals allowed under section eight hundred forty-five-c of
30 the executive law and the provisions of this section. The failure or
31 refusal of any prospective resident to provide any consent, information
32 or fingerprints necessary for a determination of such prospective resi-
33 dent's criminal history shall result in the denial of eligibility for
34 residence at the nursing home.

35 3. No person who has been fingerprinted pursuant to this article and
36 whose fingerprints remain on file with the division of criminal justice
37 services shall be required to undergo fingerprinting for purposes of a
38 new state check required by this article.

39 4. The commissioner shall promulgate all rules and regulations neces-
40 sary to implement the provisions of this article, which shall include
41 convenient procedures for prospective residents to verify the accuracy
42 of their criminal history information and, to the extent authorized by
43 law, to have access to relevant documents related thereto.

44 5. The department may accept digital fingerprint images or any other
45 acceptable technological devices used to obtain and/or transmit finger-
46 print images for the purposes of this article, as provided for in the
47 rules and regulations established by the commissioner pursuant to subdi-
48 vision four of this section. To the extent funds are available therefor,
49 grants to assist and facilitate the purchase of technology shall be
50 available to nursing homes which demonstrate the need for financial
51 assistance as determined by the department.

52 6. The department promptly shall make all determinations and actions
53 required by section eight hundred forty-five-c of the executive law upon
54 receipt of the information from the division of criminal justice
55 services and the federal bureau of investigation. The department shall
56 create a permanent record, update the information in accordance with

1 section eight hundred forty-five-c of the executive law and make such
2 records available to nursing homes pursuant to this section.

3 7. The department shall allow all nursing homes access to any determi-
4 nation made upon a prospective resident at such time as such prospective
5 resident presents himself or herself to such nursing home for residence.
6 In the event that the prospective resident has a permanent record
7 already on file with the department, this information promptly shall be
8 made available to the nursing home which may provide residence to such
9 prospective resident.

10 8. The application fee for residence in a nursing home shall include
11 an additional sum of money sufficient to pay for the projected cost of
12 the fee established by law by the division of criminal justice services
13 for processing a criminal history information check, the fee imposed by
14 the federal bureau of investigation for a national criminal history
15 check, and costs associated with obtaining fingerprints.

16 § 2. The executive law is amended by adding a new section 845-c to
17 read as follows:

18 § 845-c. Requests for criminal history information; prospective nurs-
19 ing home residents. 1. As used in this section:

20 (a) "Authorized person" means the one individual designated by a
21 provider who is authorized to request, receive and review criminal
22 history information pursuant to this section, except that where the
23 number of applications received by a provider is so great that one
24 person cannot reasonably perform the functions of the authorized person,
25 a provider may designate one or more additional persons to serve as
26 authorized persons pursuant to this section.

27 (b) "Criminal history information" means a record of pending criminal
28 charges, criminal convictions which are not vacated or reversed, and
29 certificates filed pursuant to subdivision two of section seven hundred
30 five of the correction law, and which the division is authorized to
31 maintain pursuant to subdivision six of section eight hundred thirty-
32 seven of this article. For the purposes of criminal history information
33 checks authorized pursuant to article twenty-eight-E of the public
34 health law, criminal history information shall also include information
35 from the federal bureau of investigation as a result of a national crim-
36 inal history record check.

37 (c) "Nursing home" means a nursing home as defined in section twenty-
38 eight hundred one of the public health law.

39 (d) "Prospective resident" means any individual, not currently a resi-
40 dent, who files an application for residence in a nursing home and the
41 nursing home has a reasonable expectation to accept such individual as a
42 resident.

43 2. Where a nursing home is required to request a check of criminal
44 history information by the department of health pursuant to article
45 twenty-eight-F of the public health law, such nursing home shall proceed
46 pursuant to the provisions of this section and in a manner consistent
47 with the provisions of article twenty-three-A of the correction law,
48 subdivisions fifteen and sixteen of section two hundred ninety-six of
49 this chapter and all other applicable laws.

50 3. (a) A nursing home required to request a check of criminal history
51 information pursuant to subdivision two of this section shall designate
52 one authorized person who shall request a check of criminal history
53 information on behalf of such nursing home pursuant to this section and
54 review the results of such check. Only such authorized person or his or
55 her designee and the prospective resident to whom such criminal history
56 information relates shall have access to such information; provided,

1 however, that criminal history information received by a nursing home
2 may be disclosed to other persons who are directly participating in any
3 decision in regard to such prospective resident; and provided, further,
4 that such other persons shall also be subject to the confidentiality
5 requirements and all other provisions of this section. In the case of
6 requests made pursuant to article twenty-eight-F of the public health
7 law, only information authorized for disclosure under applicable federal
8 laws shall be transmitted to the nursing home. Each nursing home shall
9 specifically identify to the department of health in writing, in advance
10 of disclosure, the authorized person and each other such agent or
11 employee of the nursing home who is authorized to have access to the
12 results of a check of criminal history information pursuant to this
13 section. Any person who willfully permits the release of any confiden-
14 tial criminal history information contained in the report to persons not
15 permitted by this section to receive such information shall be guilty of
16 a misdemeanor.

17 (b) A nursing home requesting a check of criminal history information
18 pursuant to this section shall do so by completing a form established
19 for such purpose by the department of health in consultation with the
20 division. Such form shall include a sworn statement of the authorized
21 person certifying that:

22 (i) the person for whose criminal history information a check is
23 requested is a prospective resident for whom criminal history informa-
24 tion is available by law;

25 (ii) the results of such criminal history information check will be
26 used by the nursing home solely for purposes authorized by law; and

27 (iii) the nursing home and its agents and employees are aware of and
28 will abide by the confidentiality requirements and all other provisions
29 of this article.

30 (c) A nursing home required to request a criminal history information
31 check pursuant to this section shall inquire of a prospective resident
32 in the manner authorized by subdivision sixteen of section two hundred
33 ninety-six of this chapter. Prior to requesting such information, a
34 nursing home shall:

35 (i) inform the prospective resident in writing that the nursing home
36 is required to request a check of his or her criminal history informa-
37 tion and review the results of such check pursuant to this section;

38 (ii) inform the prospective resident that he or she has the right to
39 obtain, review and seek correction of his or her criminal history infor-
40 mation under regulations and procedures established by the division;

41 (iii) obtain the signed, informed consent of the prospective resident
42 on a form supplied by the department of health which indicates that such
43 prospective resident has:

44 (A) been informed of the right and procedures necessary to obtain,
45 review and seek correction of his or her criminal history information;

46 (B) been informed of the reason for the request for his or her crimi-
47 nal history information;

48 (C) consented to such request for a report; and

49 (D) supplied on the form a current mailing or home address.

50 Upon receiving such written consent, the nursing home shall receive or
51 obtain two sets of fingerprints of such prospective resident pursuant to
52 such regulations as may be necessary to be established by the department
53 of health in consultation with the division, and promptly transmit them
54 to such department.

55 (d) A prospective resident may withdraw his or her application for
56 residence pursuant to this section, without prejudice, at any time

1 before residence is provided, regardless of whether the prospective
2 resident or nursing home has reviewed such prospective resident's crimi-
3 nal history information.

4 4. (a) The department of health shall pay the processing fee imposed
5 pursuant to subdivision eight-a of section eight hundred thirty-seven of
6 this article, and any fee imposed by the federal bureau of investi-
7 gation, and shall promptly submit the fingerprints and the processing
8 fee to the division for its full search and retain processing, and the
9 division shall immediately forward the fingerprints to the federal
10 bureau of investigation for a national criminal history record check.
11 The department of health shall charge a nursing home a fee, payable from
12 the application fee of the appropriate prospective resident, equal to
13 the fee established by law by the division for processing a criminal
14 history information check and the fee imposed by the federal bureau of
15 investigation for a national criminal history check.

16 (b) The division shall provide requested state criminal history infor-
17 mation to the department of health, which is also authorized also to
18 receive criminal history information from the federal bureau of investi-
19 gation, within thirty days of the receipt of a request pursuant to this
20 section if such request is:

21 (i) made pursuant to a request by an authorized person on behalf of a
22 nursing home authorized to make such a request pursuant to subdivision
23 two of this section;

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

25 (iii) accompanied by fingerprints of the prospective resident obtained
26 pursuant to this section.

27 (c) The division shall promptly forward a set of the prospective resi-
28 dent's fingerprints to the federal bureau of investigation for the
29 purpose of a nationwide criminal history record check to determine
30 whether such applicant has been convicted of a criminal offense in any
31 state or federal jurisdiction. The division shall forward the results of
32 such nationwide search to the department of health in the same form and
33 manner as the criminal history report created and provided by the divi-
34 sion pursuant to this section.

35 (d) Criminal history information provided by the division pursuant to
36 this section shall be furnished only by certified mail or hand delivery,
37 addressed to the department of health. Such information and the envelope
38 in which it is enclosed, if any, shall be prominently marked "confiden-
39 tial", and shall at all times be maintained by the department of health
40 in a secure place.

41 5. After reviewing any criminal history information provided by the
42 division concerning a subject individual, the department of health shall
43 take the following actions:

44 (a) Where the criminal history information concerning a prospective
45 resident reveals a conviction at any time for a sex offense defined in
46 subdivision two or three of section one hundred sixty-eight-a of the
47 correction law, unless the department of health determines, in its
48 discretion, that approval of the application will not in any way jeop-
49 ardize the health, safety or welfare of the residents and staff of the
50 nursing home.

51 (b) Where the criminal history information concerning a prospective
52 resident reveals a conviction for a crime other than one set forth in
53 paragraph (a) of this subdivision, and the sentence for such crime was
54 completed less than five years prior to the application, the department
55 of health shall inform the nursing home of such conviction, unless the
56 department of health determines, in its discretion, that approval of the

1 application will not in any way jeopardize the health, safety or welfare
2 of the residents and staff of the nursing home.

3 (c) Where the criminal history information concerning a prospective
4 resident reveals a conviction for a crime other than one set for in
5 paragraph (a) or (b) of this subdivision, the department of health shall
6 not disclose such information to the nursing home.

7 (d) Where the department of health provides criminal history informa-
8 tion concerning a prospective resident to a nursing home, the nursing
9 home shall notify the prospective resident of its receipt of such infor-
10 mation.

11 6. Any criminal history information provided by the division, and any
12 summary of the criminal history information provided by the department
13 of health to a nursing home pursuant to this section is confidential and
14 shall not be available for public inspection. The subject of the crimi-
15 nal history information check conducted pursuant to this section shall
16 be entitled to receive, upon written request, a copy of the summary of
17 the criminal history information provided by the department of health to
18 the nursing home.

19 7. Provided that the department of health or a nursing home reasonably
20 and in good faith complies with the provisions of this section, there
21 shall be no criminal or civil liability on the part of and no cause of
22 action for damages shall accrue against the department of health, any
23 nursing home or employee thereof on account of, arising out of or relat-
24 ing to criminal history information pursuant to this section, or any act
25 or omission relating to criminal history information pursuant to this
26 section.

27 8. Fingerprints received by the division pursuant to this section
28 shall be used only to assist the division in providing criminal history
29 information to the department of health under this section.

30 9. The department of health in consultation with the commissioner
31 shall promulgate any rules and regulations necessary to implement the
32 provisions of this section, which shall include convenient procedures
33 for persons to promptly verify the accuracy of their criminal history
34 information and, to the extent authorized by law, to have access to
35 relevant documents related thereto.

36 § 3. This act shall take effect on the first of September next
37 succeeding the date on which it shall have become a law.