STATE OF NEW YORK

4757

2021-2022 Regular Sessions

IN SENATE

February 10, 2021

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:

Section 1. The public health law is amended by adding a new article 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.

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

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

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

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

LBD09227-01-1

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

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

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

§ 2899-c. Requests for criminal history information concerning prospective residents. 1. A nursing home shall request that the department check, and upon such request the department shall check its permanent record according to this section for a determination on a prospective resident. If a permanent record does not exist for the prospective resident, the department shall be authorized to request and receive criminal history information concerning the prospective resident from the division of criminal justice services in accordance with the provisions of section eight hundred forty-five-e of the executive law. Access to and the use of such information shall be governed by the provisions of such section. The division of criminal justice services is authorized to submit fingerprints to the federal bureau of investigation for a national criminal history record check.

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

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

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

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

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

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

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

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

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

§ 845-e. Requests for criminal history information; prospective nursing home residents. 1. As used in this section:

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

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

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

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

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

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

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

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

(i) the person for whose criminal history information a check is requested is a prospective resident for whom criminal history information is available by law;

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

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

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

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

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

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

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

(B) been informed of the reason for the request for his or her criminal history information;

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

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

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

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

before residence is provided, regardless of whether the prospective resident or nursing home has reviewed such prospective resident's criminal history information.

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

(b) The division shall provide requested state criminal history information to the department of health, which is also authorized also to receive criminal history information from the federal bureau of investigation, within thirty days of the receipt of a request pursuant to this section if such request is:

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

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

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

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

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

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

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

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

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

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

(d) Where the department of health provides criminal history information concerning a prospective resident to a nursing home, the nursing home shall notify the prospective resident of its receipt of such information.

6. Any criminal history information provided by the division, and any summary of the criminal history information provided by the department of health to a nursing home pursuant to this section is confidential and shall not be available for public inspection. The subject of the criminal history information check conducted pursuant to this section shall be entitled to receive, upon written request, a copy of the summary of the criminal history information provided by the department of health to the nursing home.

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

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

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

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