STATE OF NEW YORK

7682--A

2021-2022 Regular Sessions

IN ASSEMBLY

May 19, 2021

Introduced by M. of A. FERNANDEZ -- (at request of the Justice Center for the Protection of People with Special Needs) -- read once and referred to the Committee on Mental Health -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to the requirement to check the justice center's register of substantiated category one cases of abuse or neglect

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

Section 1. Subdivisions 2 and 3 of section 495 of the social services law, as added by section 1 of part B of chapter 501 of the laws of 2012, are amended to read as follows:

2. [~~All~~] **The following providers of services shall check the register of substantiated category one cases of abuse or neglect before determining whether to hire or otherwise allow any person as an employee, administrator, consultant, intern, volunteer, or contractor who will have the potential for regular and substantial contact with a service recipient or other individual served by such provider, or before approving an applicant for a license, certificate permit, or other approval to provide care to a service recipient or other individual served by such provider:**

(a) all facility and provider agencies[~~, other providers of services to vulnerable persons in programs licensed, certified or funded by any state oversight agency~~]**;**

(b) providers and programs operated, licensed or certified by the office of addiction services and supports, the office of mental health, the office for people with developmental disabilities, and the office of children and family services, except for such providers otherwise required to perform such check under paragraph (c) of this subdivision, overnight, summer day and traveling summer day camps for children

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

LBD09603-04-1

subject to the provisions of article thirteen-B of the public health law, except for a state or local governmental official who receives an application for a permit to operate a camp that is subject to the provisions of article thirteen-B of the public health law, and any provider defined in paragraph (a) of subdivision six of section twenty-eight hundred ninety-nine of the public health law; and [~~other~~]

(c) providers and programs funded by the office of addiction services and supports, the office of mental health, the office for people with developmental disabilities, or programs or providers funded by the office of children and family services not otherwise required to perform such check in accordance with section four hundred twenty-four-a of this chapter, and provider and licensing agencies as defined in subdivision three or four of section four hundred twenty-four-a of this chapter [~~shall check the register of substantiated category one cases of abuse or neglect before determining whether to hire or otherwise allow any person as an employee, administrator, consultant, intern, volunteer or contractor who will have the potential for regular and substantial contact with a service recipient or before approving an applicant for a license, certificate, permit or other approval to provide care to a service recipient~~]. (For state entities bound by collective bargaining, such action established by collective bargaining shall govern.)

2-a. A provider or program required to perform a check of the register of substantiated category one cases of abuse or neglect may make subsequent inquiries of such register for an individual subject to such initial inquiry, provided that any such subsequent inquiries may be made only once in any six-month period. (For state entities bound by collective bargaining, such action established by collective bargaining shall govern.)

3. If a person is listed on the register of substantiated category one cases of abuse or neglect, a [~~facility or~~] provider [~~agency and all other providers of services to vulnerable persons in programs licensed or certified by any state oversight agency~~] or program described in paragraphs (a) and (b) of subdivision two of this section shall not hire such a person to have regular and substantial contact with [~~a service recipient~~] an individual served in or by any such facility or program. Other providers [~~or licensing agencies as defined in subdivision three or four of section four hundred twenty-four-a of this chapter~~] or programs described in paragraph (c) of subdivision two of this section shall determine whether to hire or allow such a person to have regular or substantial contact with [~~a service recipient~~] an individual served in or by such program or provider in accordance with the provisions of subdivision five of section four hundred twenty-four-a of this chapter or any other relevant guidance from a state agency with regulatory authority over such provider or program, as may be applicable.

§ 2. Subdivisions 5 and 7 of section 424-a of the social services law, subdivision 5 as amended and subdivision 7 as added by section 8 of part D of chapter 501 of the laws of 2012, are amended to read as follows:

5. (a) The office of children and family services, after consultation with the justice center for the protection of people with special needs, the office of mental health, the office for people with developmental disabilities, the office of alcoholism and substance abuse services, the department of health, and the state education department shall develop guidelines to be utilized by a provider agency, as defined by subdivision three of this section, and a licensing agency, as defined by subdivision four of this section, in evaluating persons about whom inquiries are made to the office pursuant to this section who are the subjects of

indicated reports of child abuse and maltreatment, as defined by subdivision four of section four hundred twelve of this chapter **or are on the register of substantiated category one cases of abuse or neglect as defined by section four hundred ninety-five of this chapter**.

(b) The guidelines developed pursuant to subdivision one of this section shall not supersede similar guidelines developed by local governmental agencies prior to January first, nineteen hundred eighty-six.

7. Any facility, provider agency, or program that is required to conduct an inquiry pursuant to section four hundred ninety-five of this chapter **before determining whether to hire or otherwise allow any person as an employee, administrator, consultant, intern, volunteer or contractor who will have the potential for regular and substantial contact with a service recipient** shall first conduct the inquiry required under such section. If the result of the inquiry under section four hundred ninety-five of this chapter is that the person about whom the inquiry is made is on the register of substantiated category one cases of abuse or neglect and [~~the~~] **such** facility or provider agency is required to deny the application in accordance with article eleven of this chapter, the facility or provider agency shall not be required to make an inquiry of the office under this section.

§ 3. This act shall take effect immediately; provided however that section one of this act shall take effect one year after it shall have become a law and shall apply to any person who is a prospective employee, administrator, consultant, intern, volunteer, or contractor considered for any position in which they would have regular and substantial contact with persons to whom they would be providing care, on or after such date.