STATE OF NEW YORK

9593

IN ASSEMBLY

March 17, 2022

Introduced by M. of A. PAULIN, DICKENS, ENGLEBRIGHT, GALEF, GOTTFRIED, GRIFFIN, THIELE, DeSTEFANO, McDONOUGH, MIKULIN, MONTESANO -- read once and referred to the Committee on Children and Families

AN ACT to amend the social services law, in relation to including legally-exempt providers in criminal history review and background clearances of child care providers

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

Section 1. Subdivisions 2, 3, 3-a, 7 and 10 of section 390-b of the social services law, subdivisions 2, 3 and 3-a as added by section 9, subdivision 7 as amended by section 11 and subdivision 10 as amended by section 12 of part H of chapter 56 of the laws of 2019 and paragraphs (a), (b) and (c) of subdivision 3-a as amended by chapter 92 of the laws of 2021, are amended and a new subdivision 1-b is added to read as follows:

1-b. For purposes of this section, the term "legally-exempt provider" means a program in a facility, other than a residence, in which child care is provided on a regular basis and is not required to be licensed by or registered with the office or licensed by the city of New York. Legally-exempt providers include, but are not limited to:

(a) nursery schools and programs for pre-school-aged children operated by non-profit agencies or organizations or private proprietary agencies which provide services for three or less hours per day;

(b) child care programs caring for not more than six school-age children during non-school hours. For purposes of this subparagraph, "school-aged children" means children under thirteen years of age who are enrolled in kindergarten or a higher grade;

(c) child care programs caring for toddlers from eighteen months to thirty-six months of age for three or less hours per day; and

(d) child care programs caring for infants up to eighteen months of age for three or less hours per day.

2. In relation to any child day care program [~~and~~], any enrolled legally-exempt provider**, and any legally-exempt provider**:

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

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(a) the clearances required pursuant to paragraphs (a), (c), (d) and (g) of subdivision one of this section shall be conducted for:

(i) every prospective volunteer with the potential for unsupervised contact with children in care;

(ii) every applicant to become an enrolled legally-exempt provider;

(iii) every prospective employee, director or operator of such a program or provider; and

(iv) every individual eighteen years of age and over residing or who begins to reside in a home where services are or will be provided in a family or group family setting; and

(v) every individual eighteen years of age and over residing or who begins to reside in a home where services are or will be provided who are not related in any way to all children receiving services as or will be provided by an enrolled legally exempt provider **or a legally-exempt provider**;

(b) notwithstanding any other provision of law to the contrary, prior to October first, two thousand twenty, all clearances listed in subdivision one of this section that have not previously been conducted pursuant to paragraph (a) of this subdivision and for which on-going criminal history results are not already provided, shall be conducted in accordance with a schedule developed by the office of children and family services, for all:

(i) existing volunteers with the potential for unsupervised contact with children in care;

(ii) existing caregivers for an enrolled legally exempt provider;

(iii) existing employees, directors and operators of any such program or provider; and

(iv) every individual eighteen years of age and over residing or who begins to reside in a home where services are or will be provided in a family or group family setting; and

(v) every individual eighteen years of age and over residing or who begins to reside in a home where services are or will be provided who are not related in any way to all children receiving services as or will be provided by an enrolled legally exempt provider **or a legally-exempt provider**;

(c) notwithstanding any other provision of law to the contrary, the clearances required pursuant to this section other than those for which on-going criminal history results are provided, shall be conducted for a person listed in subparagraphs (i), (ii), (iii) and (iv) of paragraph (b) of this subdivision at least once every five years in accordance with a schedule developed by the office of children and family services.

3. (a) Notwithstanding any other provision of law to the contrary, in relation to the clearances required pursuant to this section, an individual or a program or provider shall be deemed ineligible, as such term is defined in paragraph (b) of this subdivision, if such individual:

(i) refuses to consent to such clearance;

(ii) knowingly makes a materially false statement in connection with such a clearance;

(iii) is registered, or is required to be registered, on a state sex offender registry or repository or the national sex offender registry established under the Adam Walsh child protection and safety act of 2006 (42 U.S.C. 16901 et seq.); or

(iv) has been convicted of a crime enumerated in subparagraph (E) or clauses (i) through (viii) of subparagraph (D) of paragraph (1) of subdivision (C) of 42 U.S.C. 9858f.

(b) For purpose of this subdivision, the term "ineligible" shall mean:

(i) the individual who engaged in conduct listed in paragraph (a) of this subdivision shall not be permitted to:

(1) operate, direct, be the caregiver for, or be employed by a child day care program [~~or~~], an enrolled legally-exempt provider **or a legally-exempt provider**; or

(2) be a volunteer with the potential for unsupervised contact with children in a child day care program [~~or~~], with an enrolled legally-exempt provider **or a legally-exempt provider**; or

(3) be an enrolled legally exempt provider **or a legally-exempt provider**; or

(ii) in relation to child day care programs [~~or~~], any enrolled legally-exempt providers **or any legally-exempt providers**, where child care is, or is proposed to be provided, to a child in a home setting where such child does not reside, such program or provider shall not be eligible to operate or to be enrolled to serve children receiving child care subsidies pursuant to title five-C of this article, if an individual over the age of eighteen who is not related in any way to all children for whom child care services are or will be provided, resides in the household where child care is, or is proposed to be provided, engaged in conduct listed in paragraph (a) of this subdivision.

3-a. (a) In relation to child day care programs [~~and~~], any enrolled legally-exempt provider **or any legally-exempt provider**, when a clearance conducted pursuant to this section reveals that any existing operator, director, caregiver, or person over the age of eighteen who is not related in any way to all children for whom child care services are or will be provided, that resides in a home where child care is provided in a home setting where the child does not reside has been convicted of a crime other than one set forth in subparagraph (iv) of paragraph (a) of subdivision three of this section, and unless such crime is eligible for expungement pursuant to section 160.50 of the criminal procedure law, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program, and may deny, limit, suspend, revoke or reject such program's license or registration or terminate or reject such program's enrollment, as applicable, unless the office of children and family services, determines in its discretion, that continued operation by the child day care program or enrolled legally-exempt provider **or legally-exempt provider** will not in any way jeopardize the health, safety or welfare of the children cared for in the program or by the provider.

(b) In relation to child day care programs [~~and~~], any enrolled legally-exempt provider **or any legally-exempt provider**, when a clearance conducted pursuant to this section reveals that any existing employee or volunteer with the potential for unsupervised contact with children has been convicted of a crime other than one set forth in subparagraph (iv) of paragraph (a) of subdivision three of this section, and unless such crime is eligible for expungement pursuant to section 160.50 of the criminal procedure law, the office of children of family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The office of children and family services may direct the program or provider to terminate the employee or volunteer based on such a conviction, consistent with article twenty-three-A of the correction law.

(c) (i) In relation to any child day care programs [~~and~~], any enrolled legally-exempt providers **or any legally-exempt providers**, where a clear-

ance conducted pursuant to this section reveals a conviction for a crime other than one set forth in subparagraph (iv) of paragraph (a) of subdivision three of this section, and unless such crime is eligible for expungement pursuant to section 160.50 of the criminal procedure law, for any prospective employee or volunteer, the office of children and family services may direct that such person not be hired, as applicable, based on such a conviction, consistent with article twenty-three-A of the correction law.

(ii) In relation to any child day care program [~~and~~], any enrolled legally-exempt provider **or any legally-exempt provider**, when a clearance conducted pursuant to this section reveals a conviction for a crime other than one set forth in subparagraph (iv) of paragraph (a) of subdivision three of this section, and unless such crime is eligible for expungement pursuant to section 160.50 of the criminal procedure law, for any prospective caregiver seeking enrollment, or applicant to be a director or operator, the office of children and family services may deny the application or enrollment, consistent with article twenty-three-A of the correction law.

(d) (i) Where a clearance conducted pursuant to this section reveals that an applicant to be the operator or director of a child day care program, or applicant to be a caregiver, or anyone who is not related in any way to all children for whom child care services will be provided, resides in the home over the age of eighteen where child day care is proposed to be provided to children in a home-based setting has been charged with a crime, the office of children and family services shall hold the application in abeyance until the charge is finally resolved.

(ii) Where a clearance conducted pursuant to this section reveals that the current operator or director of a child day care program, or any person over the age of eighteen who is not related in any way to all children for whom child care services will be provided, that resides in a home where child day care is provided has been charged with a crime, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of children in the program. The office of children and family services may suspend a license or registration or terminate enrollment based on such a charge when necessary to protect the health and safety of children in the program.

(iii) Where a clearance conducted pursuant to this section reveals that an existing caregiver, volunteer or an existing employee of an enrolled legally-exempt provider **or a legally-exempt provider** or any person over the age of eighteen that resides in a home where the child care is provided by an enrolled legally-exempt provider **or a legally-exempt provider** in a home setting where the child does not reside, has been charged with a crime, the office of children and family services shall take one or more of the following steps:

(A) Conduct a safety assessment; or

(B) Take all appropriate steps to protect the health and safety of children in the program.

(iv) Where a clearance conducted pursuant to this section reveals that an applicant to be an employee or volunteer with the potential for unsupervised contact with children of a child day care program [~~or~~], enrolled legally-exempt provider **or a legally-exempt provider** has been charged with a crime, the office shall hold the application in abeyance until the charge is finally resolved.

(v) Where a clearance conducted pursuant to this section reveals that a current employee, or current volunteer with the potential for unsuper-

vised contact with children of a child day care program has been charged with a crime, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program.

7. Where the office of children and family services or its designee denies or directs a child day care or an enrolled legally-exempt provider to deny an application based on the criminal history record; (a) the provider must notify the applicant that such record is the basis of the denial; and (b) the office of children and family services shall also notify as the case may be, such current or prospective operator, director, employee, assistant, legally exempt provider, **legally-exempt provider, or** volunteer with the potential for unsupervised contact with children or other person eighteen years of age or older, who resides in the home where care is provided, other than the child's home, that the criminal record check was the basis for the denial of clearance and shall provide such individual with a copy of the results of the national criminal record check upon which such denial was based together with a written statement setting forth the reasons for such denial, as well as a copy of article twenty-three-A of the correction law and inform such individual of his or her right to seek correction of any incorrect information contained in such national record check provided by the federal bureau of investigation.

10. A child day care [~~or~~], enrolled legally-exempt provider **or legally-exempt provider** shall advise the office of children and family services when an individual who is subject to criminal history record review in accordance with subdivision one or two of this section is no longer subject to such review. The office of children and family services shall inform the division of criminal justice services when an individual who is subject to criminal history review is no longer subject to such review so that the division of criminal justice services may terminate its retain processing with regard to such person. At least once a year, the office of children and family services will be required to conduct a validation of the records maintained by the division of criminal justice services.

§ 2. This act shall take effect immediately.