

# STATE OF NEW YORK

5822

2023-2024 Regular Sessions

## IN SENATE

March 17, 2023

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed 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-v to read as follows:

3 § 461-v. 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-v 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 7 of part RRR of chapter 58 of the laws of 2020, 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, including enrollees who are  
39 under twenty-one years of age, under section three hundred sixty-five-1  
40 of the social services law, except for a health home, or any subcontrac-  
41 tor of such health home, who contracts with or is approved or otherwise  
42 authorized by the department to provide health home services to all  
43 those enrolled pursuant to a diagnosis of a developmental disability as  
44 defined in subdivision twenty-two of section 1.03 of the mental hygiene  
45 law; or any entity that provides home and community based services to  
46 enrollees who are under twenty-one years of age under a demonstration  
47 program pursuant to section eleven hundred fifteen of the federal social  
48 security act may temporarily approve a prospective employee while the  
49 results of the criminal history information check and the determination  
50 are pending, upon the condition that the provider conducts appropriate  
51 direct observation and evaluation of the temporary employee, while he or  
52 she is temporarily employed, and the care recipient; provided, however,  
53 that for a health home, or any subcontractor of a health home, who  
54 contracts with or is approved or otherwise authorized by the department  
55 to provide health home services, including enrollees who are under twen-  
56 ty-one years of age, under section three hundred sixty-five-1 of the

1 social services law, except for a health home, or any subcontractor of  
2 such health home, who contracts with or is approved or otherwise author-  
3 ized by the department to provide health home services to all those  
4 enrolled pursuant to a diagnosis of a developmental disability as  
5 defined in subdivision twenty-two of section 1.03 of the mental hygiene  
6 law; or any entity that provides home and community based services to  
7 enrollees who are under twenty-one years of age under a demonstration  
8 program pursuant to section eleven hundred fifteen of the federal social  
9 security act, direct observation and evaluation of temporary employees  
10 shall not be required until July first, two thousand nineteen. The  
11 results of such observations shall be documented in the temporary  
12 employee's personnel file and shall be maintained. For purposes of  
13 providing such appropriate direct observation and evaluation, the  
14 provider shall utilize an individual employed by such provider with a  
15 minimum of one year's experience working in an agency certified,  
16 licensed or approved under article thirty-six of this chapter or an  
17 adult home, enriched housing program or residence for adults licensed  
18 under article seven of the social services law, a health home, or any  
19 subcontractor of such health home, who contracts with or is approved or  
20 otherwise authorized by the department to provide health home services,  
21 including enrollees who are under twenty-one years of age, under section  
22 three hundred sixty-five-1 of the social services law, except for a  
23 health home, or any subcontractor of such health home, who contracts  
24 with or is approved or otherwise authorized by the department to provide  
25 health home services to all those enrolled pursuant to a diagnosis of a  
26 developmental disability as defined in subdivision twenty-two of section  
27 1.03 of the mental hygiene law; or any entity that provides home and  
28 community based services to enrollees who are under twenty-one years of  
29 age under a demonstration program pursuant to section eleven hundred  
30 fifteen of the federal social security act. If the temporary employee is  
31 working under contract with another provider certified, licensed or  
32 approved under article thirty-six or article forty-six-B of this chap-  
33 ter, such contract provider's appropriate direct observation and evalu-  
34 ation of the temporary employee, shall be considered sufficient for the  
35 purposes of complying with this subdivision.

36 § 4. This act shall take effect immediately.