§ 845-b. Requests for criminal history information. 1. Definitions. As used in this section:

(a) "Authorized agency" means a state agency authorized to check criminal history information pursuant to subdivision two of this section.

(b) "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.

(c) "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.

(d) "Subject individual" means a person for whom a provider is authorized to request a check of criminal history information pursuant to subdivision two of this section.

(e) "Provider" means a person or entity authorized to request a check of criminal history information pursuant to subdivision two of this section.

2. Where a provider is authorized or required to request a check of criminal history information by an authorized agency pursuant to section 16.33 or 31.35 of the mental hygiene law, article twenty-eight-E of the public health law or subdivision one of section three hundred seventy-eight-a of the social services law, such provider 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. Procedures for criminal history information check requests by providers. (a) A provider authorized 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 provider pursuant to this section and review the results of such check. Only such authorized person or his or her designee and the subject individual to whom such criminal history information relates shall have access to such information; provided, however, that criminal history information received by a provider may be disclosed to other persons who are directly participating in any decision in regard to such subject individual; 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-E of the public health law, only information authorized for disclosure under applicable federal laws shall be transmitted to the provider. Each provider shall specifically identify to the authorized agency in writing, in advance of disclosure, the authorized person and each other such agent or employee of the provider 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 provider requesting a check of criminal history information pursuant to this section shall do so by completing a form established for such purpose by the authorized agency 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 subject individual for whom criminal history information is available by law;

(ii) the specific duties which qualify the provider to request a check of criminal history information;

(iii) the results of such criminal history information check will be

used by the provider solely for purposes authorized by law; and

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

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

(i) inform the subject individual in writing that the provider is authorized or, where applicable, 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 subject individual 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 subject individual on a form supplied by the authorized agency which indicates that such person 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 provider shall receive or obtain two sets of fingerprints of such subject individual pursuant to such regulations as may be necessary to be established by the authorized agency in consultation with the division, and promptly transmit them to the authorized agency.

(d) A subject individual may withdraw his or her application for

employment pursuant to this section, without prejudice, at any time before employment is offered or declined, regardless of whether the subject individual or provider has reviewed such subject individual's criminal history information.

4. Procedures for criminal history information checks by authorized agencies. (a) The authorized agency shall pay the processing fee imposed pursuant to subdivision eight-a of section eight hundred thirty-seven of this article, and in the case of the authorized agency pursuant to article twenty-eight-E of the public health law, 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 in the case of the authorized agency pursuant to article twenty-eight-E of the public health law, the division shall immediately forward the fingerprints to the federal bureau of investigation for a national criminal history record check. The authorized agency may charge a provider a fee in amount no greater than the fee established pursuant to law by the division for processing such a criminal history information check, in such amounts as may be established by the authorized agency and approved by the director of the division of the budget, and in the case of the authorized agency pursuant to article twenty-eight-E of the public health law, a fee no greater than any fee imposed by the federal bureau of investigation. Nothing in this section shall prohibit the authorized agency or provider from claiming the cost of such fees and related costs, including administrative costs, as a reimbursable cost under the medical assistance program, Medicare or other payor, to the extent permitted by state and federal law.

(b) The division shall promptly provide requested state criminal history information to the authorized agency and, in accordance with article twenty-eight-E of the public health law, the department of health is authorized also to receive criminal history information from the federal bureau of investigation, after 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 provider 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 subject individual obtained pursuant to this section.

(b-1) The division shall promptly forward a set of the subject individual'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 authorized agency in the same form and manner as the criminal history report created and provided by the division pursuant to this section.

(c) Criminal history information provided by the division pursuant to this section shall be furnished only by mail or other method of secure and confidential delivery, addressed to the authorized agency. 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 authorized agency in a secure place.

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

(a) Where the criminal history information concerning a subject individual reveals a felony conviction at any time for a sex offense, a felony conviction within the past ten years involving violence, or a conviction pursuant to section 260.00, 260.25, 260.32 or 260.34 of the penal law, and in the case of criminal history information obtained pursuant to section twenty-eight hundred ninety-nine-a of the public health law, where the criminal history information concerning a subject individual reveals a conviction at any time of any class A felony; a conviction within the past ten years of any class B or C felony, any class D or E felony defined in article one hundred twenty, one hundred thirty, one hundred fifty-five, one hundred sixty, one hundred seventy-eight or two hundred twenty of the penal law; or any crime defined in section 260.32 or 260.34 of the penal law; or any comparable offense in any other jurisdiction, the authorized agency shall deny or disapprove the application for or renewal of the operating certificate, contract, approval, employment of the subject individual or other

authorization to provide services, or direct the provider to deny employment, as applicable, unless the authorized agency determines, in its discretion, that approval of the application or renewal or employment will not in any way jeopardize the health, safety or welfare of the beneficiaries of such services.

(b) Where the criminal history information concerning a subject individual reveals a conviction for a crime other than one set forth in paragraph (a) of this subdivision, the authorized agency may deny the application or renewal, or direct the provider to deny employment of the subject individual, or approve or disapprove the prospective employee's eligibility for employment by the provider, consistent with article twenty-three-A of the correction law.

(c) Where the criminal history information concerning a subject individual reveals a charge for any felony, the authorized agency shall, and for any misdemeanor, the authorized agency may hold the application, renewal or employment in abeyance until the charge is finally resolved.

(d) Prior to making a determination to deny an application or renewal, or directing an employer to deny employment, the authorized agency shall afford the subject individual an opportunity to explain, in writing, why the application should not be denied.

(e) Upon receipt of criminal history information from the division, the authorized agency may request, and is entitled to receive, information pertaining to any crime identified in such criminal history information from any state or local law enforcement agency, district attorney, parole officer, probation officer or court for the purposes of determining whether any ground relating to such crime exists for denying an application, renewal, or employment.

(f) The authorized agency shall thereafter promptly notify the provider concerning whether its check has revealed any criminal history information, and if so, what actions shall or may be taken by the authorized agency and the provider.

(g) Where the authorized agency denies the application for or renewal of an operating certificate, contract, approval or other authorization to provide services, or directs a provider to deny employment of the subject individual on account of the subject individual's criminal history information, the notification by the authorized agency shall include a summary of the criminal history information provided by the

division.

(h) Where the authorized agency directs a provider to deny employment based on criminal history information, the provider must notify the subject individual that such information is the basis of the denial.

6. Upon request from an employee who has already been cleared for employment by an authorized agency and who subsequently leaves a particular employer and applies for employment with another, the authorizing agency shall adhere to its previous authorization when the criminal history information is unchanged and the circumstances of employment are substantially similar for the purposes of this section.

7. Any criminal history information provided by the division, and any summary of the criminal history information provided by the authorized agency to an employer pursuant to this section is confidential and shall not be available for public inspection; provided, however, nothing in this subdivision shall prevent an authorized agency or provider from disclosing criminal history information at any administrative or judicial proceeding relating to the denial or revocation of an application, employment, license or registration. Where the authorized agency denies the application for or renewal of an operating certificate, contract, approval or other authorization to provide services, or directs a provider to deny employment of the subject individual, 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 authorized agency to the provider.

8. A provider shall advise the authorized agency when a subject individual is no longer subject to such check. The authorized agency shall inform the division when a subject individual is no longer subject to such check so that the division may terminate its retain processing with regard to such individual. At least once a year, the authorized agency shall be required to conduct a validation of the records maintained by the division, including information obtained from the federal bureau of investigation pursuant to article twenty-eight-E of the public health law and provide such results to the authorized agency

for purposes of updating the permanent record of such criminal history information results.

9. Provided that an authorized agency or a provider 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 any authorized agency, provider 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.

10. Fingerprints received by the division pursuant to this section shall be used only to assist the division in providing criminal history information to authorized agencies under this section.

11. An authorized agency or provider authorized to request criminal history information pursuant to this section may temporarily approve an applicant while the results of the criminal history information check are pending, so long as such person does not have unsupervised physical contact with clients, as shall be defined by the authorized agency pursuant to regulation; provided however, that providers subject to the provisions of subdivision ten of section twenty-eight hundred ninety-nine-a of the public health law shall be subject to the supervision requirements provided therein. Such regulation shall recognize the differences in the staffing patterns of various service models and the supervision required to ensure the safety of clients.

12. The authorized agency 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.