§ 19.20 Review of criminal history information concerning certain prospective employees and volunteers.

* Every provider of services who contracts with or is approved or otherwise authorized by the office to provide services, except (1) a department facility, (2) a hospital as defined in article twenty-eight of the public health law, or (3) a licensed professional under title eight of the education law who does not have employees or volunteers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider, shall request that the office request and receive from the division of criminal justice services criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, concerning each prospective employee or volunteer of such provider who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider.

* NB Effective until November 3, 2023

* Every provider of services who contracts with or is approved or otherwise authorized by the office to provide services, except (1) a department facility, (2) a hospital as defined in article twenty-eight of the public health law, or (3) a licensed professional under title eight of the education law who does not have employees or volunteers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider, shall request that the office request and receive from the division of criminal justice services criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, concerning each prospective employee or volunteer of such provider who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider. Provided, however, a provider of services approved or otherwise authorized under article thirty-six of this chapter shall comply with the requirements of subdivision (a) of section 36.06 of such article to satisfy the requirements of this section, and provided further that a provider who complies with the requirements of subdivision (b) of section 36.06 of such article, shall be deemed to have satisfied the requirements of this section.

* NB Effective November 3, 2023

(a) Prior to requesting the office to obtain a criminal history information concerning any prospective employee or volunteer, a provider shall:

(1) inform the prospective employee or volunteer in writing that the provider is required to request his or her criminal history information and review such information pursuant to this section; and

(2) obtain the signed informed consent of the prospective employee or volunteer on a form supplied by the division of criminal justice services which indicates that such person has:

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

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

(iii) consented to such request; and

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

Upon receiving such written consent, the provider shall obtain two sets of fingerprints of such prospective employee or volunteer and provide such fingerprints to the office pursuant to regulations established by the division of criminal justice services.

(b) A provider requesting criminal history information pursuant to this section shall also complete a form developed for such purpose by the division of criminal justice services. Such form shall include a sworn statement of the person designated by such provider to request, receive and review criminal history information pursuant to paragraph one of subdivision (g) of this section certifying that:

(1) such criminal history information will be used by the provider solely for purposes authorized by this section;

(2) the provider and its staff are aware of and will abide by the confidentiality requirements and all other provisions of this section; and

(3) the persons designated by the provider to receive criminal history information pursuant to paragraph one of subdivision (g) of this section shall upon receipt immediately mark such criminal history information "confidential," and shall at all times maintain such criminal history information in a secure place.

(c) Upon receipt of the fingerprints and sworn statement required by subdivisions (a) and (b) of this section, the office shall promptly

submit the fingerprints to the division of criminal justice services. The division of criminal justice services shall promptly forward a set of the applicant'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 other than New York or in a federal jurisdiction.

(d) The division of criminal justice services shall promptly provide the requested criminal history information, if any, to the office. Criminal history information provided by the division of criminal justice services pursuant to this section shall be furnished only by mail or other method of secure and confidential delivery, addressed to the office. 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 office in a secure place.

(e) After receiving any criminal history information provided by the division of criminal justice services concerning a prospective employee or volunteer, the office shall review the information to determine whether such prospective employee or volunteer has been convicted of a criminal offense in any state other than New York or in a federal jurisdiction. If the record does not include such information, the office shall forward a summary of the New York criminal history information to the provider who shall proceed pursuant to subdivision (g) of this section. For the purposes of this section, "summary of the criminal history information" shall mean a comprehensive synopsis of criminal history information which shall include an individualized statement for each pending charge and each criminal conviction which has not been vacated, reversed or sealed.

(f) Where the criminal history information received by the office includes a criminal offense in any state other than New York or in a federal jurisdiction, the office shall consider whether to approve or disapprove the prospective employee based on the criminal history information in accordance with the provisions of article twenty-three-A of the correction law and subdivisions fifteen and sixteen of section two hundred ninety-six of the executive law and notify the provider of its determination, provided, however, that a reasonable time before making a determination pursuant to this subdivision, the office shall provide the prospective employee or volunteer with a copy of the

criminal history information and a copy of article twenty-three-A of the correction law, and inform such prospective employee or volunteer of his or her right to seek correction of any incorrect information contained in such criminal history information pursuant to the regulations and procedures established by the division of criminal justice services.

(g) Where the provider receives a summary of the criminal history information from the office pursuant to subdivision (e) of this section, the provider shall consider the information in accordance with the provisions of article twenty-three-A of the correction law and subdivisions fifteen and sixteen of section two hundred ninety-six of the executive law.

(1) A provider shall designate one or two persons in its employ who shall be authorized to request, receive and review the summary of the criminal history information, and only such persons and the prospective employee or volunteer to which the criminal history information relates shall have access to such information; provided, however, that the summary of the criminal history information may be disclosed to other personnel authorized by the provider who are empowered to make decisions concerning prospective employees or volunteers and provided further that such other personnel shall also be subject to the confidentiality requirements and all other provisions of this section. A provider shall notify the office of each person authorized to have access to criminal history information pursuant to this section.

(2) Upon receipt of the summary of criminal history information pursuant to this section, a provider shall provide the prospective employee or volunteer with a copy of such summary of the criminal history information and a copy of article twenty-three-A of the correction law, and inform such prospective employee or volunteer of his or her right to seek correction of any incorrect information contained in such criminal history information pursuant to the regulations and procedures established by the division of criminal justice services.

(h) A prospective employee or volunteer may withdraw from the application process, without prejudice, at any time regardless of whether he or she, the office or the provider has reviewed his or her criminal history information. Where a prospective employee or volunteer withdraws from the application process, any fingerprints and criminal history information concerning such prospective employee or volunteer

received by the office or the provider shall, within ninety days, be returned to such prospective employee or volunteer.

(i) The commissioner of the division of criminal justice services shall promulgate all rules and regulations necessary to implement the provisions of this section, which shall include convenient procedures for prospective employees and volunteers 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.

(j) 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.