§ 19.20-a Review of criminal history information concerning prospective providers, operators and individuals seeking to be credentialed by the office.

* The office shall be authorized to 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 applicant to be a provider of services or operator of such provider 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, and for every individual seeking to be credentialed by the office to provide substance use disorder services pursuant to section 19.07 of this article. For purposes of this section, "operator" shall include any natural person with an ownership interest in the provider of services.

* NB Effective until November 3, 2023

* The office shall be authorized to 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 applicant to be a provider of services or operator of such provider 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, and for every individual seeking to be credentialed by the office to provide substance use disorder services pursuant to section 19.07 of this article. For purposes of this section, "operator" shall include any natural person with an ownership interest in the provider of services. Provided, however, an applicant to be a provider of services or operator of such provider 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 criminal history information concerning any prospective provider, operator or individual seeking to be credentialed, the office shall:

(1) inform the prospective provider, operator or individual seeking to be credentialed in writing that the office is required to request his or her criminal history information from the division of criminal justice services and review such information pursuant to this section; and

(2) obtain the signed informed consent of the prospective provider, operator or individual seeking to be credentialed 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 office may obtain two sets of fingerprints of such prospective provider, operator or individual seeking to be credentialed pursuant to regulations established by the division of criminal justice services.

(b) The office shall designate one or two persons in its employ who shall be authorized to request, receive and review criminal history information, and only such persons and the prospective provider, operator or individual seeking to be credentialed to which the criminal history information relates shall have access to such information; provided, however, that criminal history information may be disclosed to other personnel authorized by the office who are empowered to make decisions concerning prospective providers, operators or individuals seeking to be credentialed and provided further that such other personnel shall also be subject to the confidentiality requirements and all other provisions of this section. The office shall notify the division of criminal justice services of each person authorized to have access to criminal history information pursuant to this section.

(c) The office shall request criminal history information pursuant to this section by completing a form developed for such purpose by the division of criminal justice services. Such form shall include a sworn statement of the persons designated by the office to request, receive and review criminal history information pursuant to subdivision (b) of this section certifying that:

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

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

(3) the person designated by the office to receive criminal history information pursuant to subdivision (b) 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.

(d) Upon receipt of the fingerprints and sworn statement required by subdivisions (a) and (c) of this section, the division of criminal justice services shall promptly forward a set of the individual's fingerprints to the federal bureau of investigation for the purpose of a nationwide criminal history record check to determine whether such individual has been convicted of a criminal offense in any state other than New York or in a federal jurisdiction.

(e) The division of criminal justice services shall promptly provide the requested criminal history information 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.

(f) Upon receipt of criminal history information pursuant to this section and before making a determination, the office shall provide the prospective provider, operator or individual seeking to be credentialed with a copy of such criminal history information and a copy of article twenty-three-A of the correction law and inform such prospective provider, operator or individual seeking to be credentialed 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) Criminal history information obtained pursuant to this section shall be considered by the office 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.

(h) A prospective provider, operator or individual seeking to be credentialed may withdraw from the application process, without prejudice, at any time regardless of whether or not he or she or the office has reviewed his or her criminal history information. Where a prospective provider, operator or individual seeking to be credentialed withdraws from the application process, any fingerprints and criminal history information concerning such prospective provider, operator or individual seeking to be credentialed received by the office shall, within ninety days, be returned to such prospective provider, operator or individual seeking to be credentialed by the person designated for receipt of criminal history information pursuant to subdivision (b) of this section.

(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 providers, operators or individuals seeking to be credentialed 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.