§ 31.35 Review of criminal history information concerning certain prospective employees.

* (a) Every provider of services who contracts with or is approved or otherwise authorized by the office of mental health 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, and every applicant to be such a provider of services except (i) a department facility, (ii) a hospital as defined in article twenty-eight of the public health law, or (iii) 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 justice center for the protection of people with special needs check, and upon such request such justice center shall request and 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 prospective operator, employee or volunteer of such provider who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider. 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

* (a) Every provider of services who contracts with or is approved or otherwise authorized by the office of mental health 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, and every applicant to be such a provider of services except (i) a department facility, (ii) a hospital as defined in article twenty-eight of the public health law, or (iii) 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 justice center for the protection of people with special needs check, and upon such request such justice center shall request and 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 prospective operator, employee or volunteer of such provider who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider. 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 provider of services approved or otherwise authorized, under article thirty-six of this title 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 an applicant or 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

(b) Access to and the use of such information shall be governed by the provisions of section eight hundred forty-five-b of the executive law.