

§ 2899-a. Requests for criminal history information concerning prospective employees. 1. A provider shall request that the department check, and upon such request the department shall check its permanent record according to this section for a determination on a prospective employee. If a permanent record does not exist for the prospective employee, the department shall be authorized to request and receive criminal history information concerning the prospective employee from the division of criminal justice services in accordance with the provisions of section eight hundred forty-five-b of the executive law. Access to and the use of such information shall be governed by the provisions of such section. The division of criminal justice services is authorized to submit fingerprints to the federal bureau of investigation for a national criminal history record check.

2. To the extent permitted by law, a provider shall request from a prospective employee a sworn statement disclosing any prior finding of patient or resident abuse, or a criminal conviction in this state or any other jurisdiction. Providers shall evaluate such statements in all hiring decisions, including any temporary approvals allowed under subdivision eleven of section eight hundred forty-five-b of the executive law and subdivision ten of this section.

3. No person who has been fingerprinted pursuant to this article and whose fingerprints remain on file with the division of criminal justice services shall be required to undergo fingerprinting for purposes of a new state check required by this article.

4. The commissioner shall promulgate all rules and regulations necessary to implement the provisions of this article, which shall include convenient procedures for prospective employees 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.

5. Nothing in this article shall be construed or interpreted to in any way diminish the integrity of any collective bargaining agreement negotiated on or before April first, two thousand five between an

employer and any certified or authorized collective bargaining agent for employees, or to diminish rights which accrue to such employees pursuant to such agreements.

6. The department may accept digital fingerprint images or any other acceptable technological devices used to obtain and/or transmit fingerprint images for the purposes of this article, as provided for in the rules and regulations created by the commissioner pursuant to subdivision four of this section. To the extent funds are available therefor, grants to assist and facilitate the purchase of technology shall be made available to providers who demonstrate the need for financial assistance as determined by the department.

7. The department promptly shall make all determinations and actions required by subdivision five of section eight hundred forty-five-b of the executive law upon receipt of the information from the division of criminal justice services and the federal bureau of investigation, provided that when rendering a determination to propose denial of employment eligibility, the department shall provide the individual who is the subject of the criminal history information check with a copy of such criminal history information and a copy of article twenty-three-A of the correction law and inform such individual 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. The department shall create a permanent record, update the information in accordance with section eight hundred forty-five-b of the executive law and make only records or information received from the division of criminal justice services available to providers pursuant to this section.

8. The department shall allow all providers access to any determination made upon a prospective employee at such time as such prospective employee presents himself or herself to such provider for employment. In the event that the prospective employee has a permanent record already on file with the department, this information promptly shall be made available to the provider who intends to hire such prospective employee.

9. * (a) In the event that funds are appropriated in any given fiscal year for the reimbursement for the costs of providing such criminal history information, reimbursement shall be made available in an equitable and direct manner for the projected cost of the fee established pursuant to law by the division of criminal justice services for processing a criminal history information check, the fee imposed by the federal bureau of investigation for a national criminal history check, and costs associated with obtaining the fingerprints to all providers licensed, but not certified under article thirty-six of this chapter, providers certified under article forty of this chapter, and all adult care facilities licensed under article seven of the social services law, including those that are subject to this article and are unable to access direct reimbursement from state and/or federal funded health programs.

* NB Effective until March 31, 2029

* (a) In the event that funds are appropriated in any given fiscal year for the reimbursement for the costs of providing such criminal history information, reimbursement shall be made available in an equitable and direct manner for the projected cost of the fee established pursuant to law by the division of criminal justice services for processing a criminal history information check, the fee imposed by the federal bureau of investigation for a national criminal history check, and costs associated with obtaining the fingerprints to all providers licensed, but not certified under article thirty-six of this chapter, and all adult care facilities licensed under article seven of the social services law, including those that are subject to this article and are unable to access direct reimbursement from state and/or federal funded health programs.

* NB Effective March 31, 2029

(b) Residential health care facilities licensed pursuant to article twenty-eight of this chapter and certified home health care agencies and long-term home health care programs certified or approved pursuant to article thirty-six of this chapter or a health home, or any subcontractor of such health home, who contracts with or is approved or otherwise authorized by the department to provide health home services, including enrollees who are under twenty-one years of age, under section

three hundred sixty-five-1 of the social services law, except for a health home, or any subcontractor of such health home, who contracts with or is approved or otherwise authorized by the department to provide health home services to all those enrolled pursuant to a diagnosis of a developmental disability as defined in subdivision twenty-two of section 1.03 of the mental hygiene law; or any entity that provides home and community based services to enrollees who are under twenty-one years of age under a demonstration program pursuant to section eleven hundred fifteen of the federal social security act, may, subject to the availability of federal financial participation, claim as reimbursable costs under the medical assistance program, costs reflecting the fee established pursuant to law by the division of criminal justice services for processing a criminal history information check, the fee imposed by the federal bureau of investigation for a national criminal history check, and costs associated with obtaining the fingerprints, provided, however, that for the purposes of determining rates of payment pursuant to article twenty-eight of this chapter for residential health care facilities, such reimbursable fees and costs shall be reflected as timely as practicable in such rates within the applicable rate period.

10. Notwithstanding subdivision eleven of section eight hundred forty-five-b of the executive law, a certified home health agency, licensed home care services agency or long term home health care program certified, licensed or approved under article thirty-six of this chapter or a home care services agency exempt from certification or licensure under article thirty-six of this chapter, a hospice program under article forty of this chapter, or an adult home, enriched housing program or residence for adults licensed under article seven of the social services law, or a health home, or any subcontractor of such health home, who contracts with or is approved or otherwise authorized by the department to provide health home services, including enrollees who are under twenty-one years of age, under section three hundred sixty-five-1 of the social services law, except for a health home, or any subcontractor of such health home, who contracts with or is approved or otherwise authorized by the department to provide health home services to all those enrolled pursuant to a diagnosis of a developmental disability as defined in subdivision twenty-two of section

1.03 of the mental hygiene law; or any entity that provides home and community based services to enrollees who are under twenty-one years of age under a demonstration program pursuant to section eleven hundred fifteen of the federal social security act may temporarily approve a prospective employee while the results of the criminal history information check and the determination are pending, upon the condition that the provider conducts appropriate direct observation and evaluation of the temporary employee, while he or she is temporarily employed, and the care recipient; provided, however, that for a health home, or any subcontractor of a health home, who contracts with or is approved or otherwise authorized by the department to provide health home services, including enrollees who are under twenty-one years of age, under section three hundred sixty-five-1 of the social services law, except for a health home, or any subcontractor of such health home, who contracts with or is approved or otherwise authorized by the department to provide health home services to all those enrolled pursuant to a diagnosis of a developmental disability as defined in subdivision twenty-two of section 1.03 of the mental hygiene law; or any entity that provides home and community based services to enrollees who are under twenty-one years of age under a demonstration program pursuant to section eleven hundred fifteen of the federal social security act, direct observation and evaluation of temporary employees shall not be required until July first, two thousand nineteen. The results of such observations shall be documented in the temporary employee's personnel file and shall be maintained. For purposes of providing such appropriate direct observation and evaluation, the provider shall utilize an individual employed by such provider with a minimum of one year's experience working in an agency certified, licensed or approved under article thirty-six of this chapter or an adult home, enriched housing program or residence for adults licensed under article seven of the social services law, a health home, or any subcontractor of such health home, who contracts with or is approved or otherwise authorized by the department to provide health home services, including enrollees who are under twenty-one years of age, under section three hundred sixty-five-1 of the social services law, except for a health home, or any subcontractor of such health home, who contracts with or is approved or otherwise authorized by the department to provide health home services to all

those enrolled pursuant to a diagnosis of a developmental disability as defined in subdivision twenty-two of section 1.03 of the mental hygiene law; or any entity that provides home and community based services to enrollees who are under twenty-one years of age under a demonstration program pursuant to section eleven hundred fifteen of the federal social security act. If the temporary employee is working under contract with another provider certified, licensed or approved under article thirty-six of this chapter, such contract provider's appropriate direct observation and evaluation of the temporary employee, shall be considered sufficient for the purposes of complying with this subdivision.

11. No provider shall seek, directly or indirectly, to obtain from a prospective employee, temporary employee or employee compensation in any form for the payment of the fee or any facility costs associated with obtaining the criminal history information check required by this article.

12. This article shall be deemed to supersede and apply in lieu of any local laws or laws of any political subdivision of the state or any regulations of the department requiring a criminal history record check to the extent provided for in this article.