

MEMORANDUM

A.2971 (Jensen)/S.5822 (Gallivan)

An act to amend the social services law and the public health law, in relation to criminal history records of maintenance employees in adult residential health and assisted living facilities.

LeadingAge New York opposes this amendment to social services law and public health law, in relation to criminal history records of maintenance employees in adult residential health and assisted living facilities.

LeadingAge New York appreciates the consumer protections that have resulted from the institution of a criminal history record check process for various sectors of the health care field. We object, however, to the new requirement that this bill would establish if passed. Recently, the State enacted legislation requiring the review of criminal history records for prospective direct care employees. The legislation authorized adult care facilities and assisted living residences to utilize the comprehensive criminal background check system already in place at the Department of Health.

While this legislation resulted in direct benefits to the residents residing in New York’s adult care facilities and assisted living residences, it is an undertaking that the State needs to fund annually. The 2015-16 budget allocated \$1.3 million to reimburse providers for fingerprint fees (\$104 per prospective employee) collected per for the criminal history record check conducted by the FBI and DCJS. This legislation does not contain a mechanism to increase the funding available for facilities to conduct background checks on maintenance workers. Providers cannot bear the brunt of any additional unfunded mandates. Increasing costs for the providers will in turn increase costs for consumers, pushing this level of care out of reach for low-income seniors.

In addition, the enacted legislation and existing criminal history check statute is specifically limited to employees that provide direct care or supervision to patients or residents. It is important to recognize that employees who come into direct contact with residents or who have access to their property and belongings are in the most likely position to take advantage of or harm patients and residents. Extending the criminal history record check requirement to employees that do not have direct contact is in most instances unnecessary and requires significant resources to effectively implement.

Lastly, the term “maintenance employee” is meant to include beauticians, security, janitorial, laundry, recreational and grounds-keeping services. It also includes those employed through temporary employment, a staffing agency. This is an overly broad use of both the terms “maintenance” and “employee,” which is confusing and problematic. Beauticians, for example, may be present in a facility once a week. Recreational services could be broadly construed to include those with a limited or one time engagement with a facility. The complications of complying with this requirement for very periodic services would serve to discourage the facility to engage in such arrangements, which benefit residents. The requirements would also likely discourage people from engaging in such employment with the facility, given the multiple steps that would need to be taken to engage in very part-time employment for an organization.

For these reasons, LeadingAge New York opposes A.2971 (Jensen)/S.5822 (Gallivan) and urges that it be rejected.

LeadingAge New York represents nearly 600 not-for-profit and public long-term care providers, including nursing homes, home care agencies, senior housing, retirement communities, assisted living, adult care facilities, adult day health care and managed long term care.