

**OFFICE OF MENTAL RETARDATION AND
DEVELOPMENTAL DISABILITIES
EMERGENCY REGULATIONS
CRIMINAL HISTORY RECORD CHECKS
March 27, 2006**

- Section 633.5 is amended as follows:

633.5 Applicant backgrounds.

- (a) [Principles of compliance. (1)] The agency/facility, including the sponsoring agency for a family care home, shall establish and maintain written personnel policies/procedures relative to obtaining, reviewing, evaluating and verifying the backgrounds of and information supplied by applicants for employment or voluntary work either to deliver services at a facility or to deliver services operated, authorized or funded by OMRDD; [,] or applicants for certification as a family care provider [,]. Policies and procedures are subject to and must be consistent with any applicable collective bargaining agreement(s), provisions of the Civil Service Law, and/or other relevant laws. [At least, an applicant's last place of employment or related experience shall be verified.]
- [(2)] (b) In accordance with the agency's policies/procedures, the application process for employees, volunteers (see [glossary,] section 633.99 of this Part) [at a facility] or [potential] prospective family care providers shall include, but need not be limited to, the following requirements:
- [(i)] (1) A statement or summary of the applicant's history of employment or related experience. Every effort shall be made to obtain the following information either on a written application or during the interview process:
- [(a)] (i) any prior or current experience as an employee, volunteer, or certified provider with OMRDD; any other State agency; or any other provider of human services; and
- [(b)] (ii) any prior or current experience in direct care work relevant to the position for which an application is being made. [Child-caring experience should be specifically identified.]
- [(ii)] (2) Names, addresses, and where available, telephone numbers of references who can verify the applicant's history of employment or related experience, work record and qualifications.
- [(iii)] (3) Names, addresses, and telephone numbers of at least two personal

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references, other than relatives, who can attest to the applicant's character, reputation and personal qualifications.

- [(iv)] (4) A statement or summary of the applicant's education showing, at a minimum, the highest grade level or degree attained, any additional credits earned, and any relevant education or training regarding care of or services to individuals with developmental disabilities. At [least] a minimum the names and addresses of schools and other educational institutions that can verify that the applicant meets the minimum qualifications for the job for which application is being made shall be provided.
- [(v)] (5) Information indicating special skills or completed training/courses which might aid in the performance of duties of the position for which the application is being made. Such information shall include any relevant professional license held by the applicant.
- [(vi)] (6) A statement by the applicant, indicating whether or not he or she has ever been convicted of a misdemeanor or a felony in any jurisdiction, and whether there is any pending criminal charge against the applicant. The statement shall include a description of all convictions and pending criminal charges.
- [(vii)] (7) A statement by an applicant for a position for which driving is required, indicating [those convictions related to moving violations within the last three years; and] whether he or she has ever been convicted of a motor vehicle moving violation, including, but not limited to, alcohol and drug-related offenses. The statement must also indicate any suspension, revocation, [DWI, convictions,] or [any] occurrence involving harm to [persons] human beings or property while driving.
- (8) For applicants who will have regular and substantial unsupervised or unrestricted physical contact with people receiving services, the applicant shall provide information, statements and fingerprints as may be necessary for a criminal history record check to be conducted according to the requirements of section 633.22.
- [(viii)] (9) A statement that all information provided on the application is true.

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[(ix)] (10) An application form or other appropriate form that informs the applicant that [an untrue] a false answer to any question in the application process is grounds for immediate dismissal.

[(3)] (c) The names of applicants who will have the potential for regular and substantial contact with children and who are being considered for staff positions, as volunteers, or as family care providers shall be submitted to the [New York State Department of Social Services] Statewide Central Register of Child Abuse and Maltreatment to determine if the applicant is the subject of an indicated report of child abuse or maltreatment, if such submission is permitted by Section 424-a of the Social Services Law.

[(4)] (d) Personnel records shall:

(1) be maintained at a location of the agency's/facility's own choosing that ensures the confidentiality of such records [.];

(2) include application information as required by the agency/facility's policies and procedures and subdivision (b) of this section;

(3) include a copy or documented verification of an employee's, volunteer's or family care provider's academic credential and/or current certification or licensure, if such an academic credential, certification or licensure is a condition of employment or participation; and

(4) include documented confirmation of an applicant's last place of employment or related experience.

(e) The agency shall not dispose of personnel records prior to 6 years after the employee or volunteer separates from service or a family care provider no longer holds an operating certificate. Such disposal shall be performed in a manner that ensures the privacy and confidentiality of the information.

(1) Any other requirement in law or regulation to maintain records for a longer period of time shall be controlling.

(2) Any other requirement in law or regulation to dispose of records prior to the period of time specified in this subdivision shall be controlling.

! **Current subdivision 633.5(b), "Standards of certification," is deleted.**

! **A new section 633.22 is added to Part 633 as follows:**

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Section 633.22 Criminal history record checks.

(a) Applicability.

(1) This section is applicable to all current and prospective agencies (see section 633.99), sponsoring agencies (see section 633.99) or other providers of services that are certified, authorized (see section 633.99), approved or funded through contract by OMRDD. Applicable services include but are not limited to:

(i) facilities holding an operating certificate issued by OMRDD (e.g. residences, family care homes, day treatment, day training, sheltered workshops), home and community based waiver services, Medicaid Service Coordination, family support services, individual support services; and

(ii) providers of services which contract with and/or are approved by OMRDD.

(a) Providers of services which contract with OMRDD. For the purposes of this section only, “contracts with OMRDD” means an agreement to provide staff or services, and/or the actual provision of staff or services, on behalf of OMRDD, to persons served by OMRDD, in return for which OMRDD agrees to, or does, pay the contractor. This includes agreements in any form, either written or non-written, and includes but is not limited to a contract, voucher, purchase order or other document indicating an intention on the operator’s part to pay the contractor.

(b) Providers of services which are approved by OMRDD pursuant to subdivision (n) of this section (“approved providers”).

(2) However, this section does not apply to the following providers of services:

(i) OMRDD;

(ii) a hospital as defined in article 28 of the Public Health Law; and

(iii) a licensed professional under title 8 of the Education Law who does not have employees or volunteers (see section 633.99) who have or will have regular and substantial unsupervised or unrestricted physical contact with people receiving services.

(b) Definitions. The following definitions apply to terms as used in this section:

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- (1) Approved provider. A provider of services that contracts with OMRDD or an agency or provider of services, and which is approved by OMRDD pursuant to subdivision (n) of this section.
- (2) Authorized party. The party designated by an agency, sponsoring agency or provider of services who is authorized to request, receive and review a summary of criminal history record information in accordance with this section.
- (3) “Contracts with.” An agreement to provide staff or services, and/or the actual provision of staff or services, on behalf of a program operator, to persons with developmental disabilities served by the operator, in return for which the program operator agrees to, or does, pay the contractor. This includes agreements in any form, either written or non-written, and includes but is not limited to a contract, voucher, purchase order or other document indicating an intention on the operator’s part to pay the contractor.
- (4) Criminal history record information. A record of pending criminal charges, criminal convictions which are not vacated or reversed, and certificates filed pursuant to subdivision (2) of section 705 of the Correction Law, and which the Division of Criminal Justice Services is authorized to maintain pursuant to subdivision (6) of section 837 of the Executive Law. The term is equivalent to “criminal history information” as defined in subdivision (1) of section 845-b of the Executive Law.
- (5) Division of Criminal Justice Services (DCJS). A New York State Agency established by article 35 of the Executive Law.
- (6) Employee. For the purposes of this section only, any party who is:
 - (i) directly employed by the agency or provider of services or approved provider; or
 - (ii) used by the agency or provider of services or approved provider to provide services substantially similar to those that are or could be provided by someone who is directly employed by the agency or provider of services. Such parties shall be deemed to be employees of the agency or provider of services and shall include, but not be limited to, those who are employed by other entities on behalf of or for the benefit of the agency or provider of services.
- (7) “Natural person.” A human being, as distinguished from an “artificial person”

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created by law (e.g., a corporation).

- (8) Operator. For purposes of this section, “operator” includes any “natural person” with an ownership interest in a provider of services.
- (9) People receiving services. Persons with developmental disabilities who are receiving services certified, authorized, approved or funded by OMRDD.
- (10) Providers of services. This term shall have the same meaning as in subdivision (5) of section 1.03 of the Mental Hygiene Law as follows:

“Provider of services” means an individual, association, corporation, or public or private agency, other than an agency or department of the state, which provides services for the mentally disabled. It shall not include any part of a hospital as defined in article twenty-eight of the public health law which is not being operated for the purpose of providing services for the mentally disabled. No provider of services shall be subject to the regulation or control of the department or one of its offices except as such regulation or control is provided for by other provisions of this chapter.

The term, “services for the mentally disabled” is defined in subdivision (4) of section 1.03 of the Mental Hygiene Law as follows:

“Services for the mentally disabled” means examination, diagnosis, care, treatment, rehabilitation, or training of the mentally disabled.

- (11) Subject party. A party concerning whom an agency, sponsoring agency or provider of services is authorized/required to request a check of criminal history record information, including applicants for employment or voluntary work or certification as a family care provider, and parties age 18 years and older who are to reside in the family care home. A party becomes a “subject party” when he or she meets one of the criteria specified in paragraph (d)(2) of this section. A party is no longer a “subject party” when an event occurs as described in subdivision (1) of this section (e.g. separation from service), unless the party is also a “subject party” because of some other reason (e.g. an employee separates from service but continues to live in the home of a family care provider, or an employee leaves one employer and begins a similar position with a different employer).
- (12) Temporarily approved provisional employee or volunteer. A provisional employee or volunteer who has been temporarily approved by an agency or provider of services, for the period of time between a request for a criminal history record check and the receipt of the results by the authorized party.

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(c) General requirements.

- (1) Each agency, sponsoring agency and provider of services shall designate one or more authorized parties and shall submit the name, position and contact information for the authorized party or parties to OMRDD in the form and format required by OMRDD.
- (2) Each agency, sponsoring agency and provider of services shall develop written policies and procedures related to conducting criminal history record checks. Such policies and procedures shall include criteria for:
 - (i) determining whether particular employee or volunteer applicants are subject to a criminal history record check;
 - (ii) protecting the safety of persons receiving services when in the physical proximity of temporarily approved provisional employees and volunteers, which includes:
 - (a) establishing restrictions on the activities of temporarily approved provisional employees and volunteers; and
 - (b) providing oversight of temporarily approved provisional employees and volunteers;
 - (iii) providing notifications to OMRDD when a party ceases to be a “subject party;” and
 - (iv) evaluating and, if warranted, taking appropriate steps upon receipt of a notice about a conviction or pending criminal charge against a current employee, volunteer, family care provider or party living in the home of a family care provider subsequent to the initial criminal history record check.

(d) Determination of when a criminal history record check is required.

- (1) The authorized party shall determine whether a criminal history record check is required by this section for each potential subject party.
- (2) Criminal history record checks are required for the following parties:
 - (i) prospective employees and operators who will have regular and substantial unsupervised or unrestricted physical contact with people receiving services, according to the criteria established by policies and

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procedures. Unless the agency or provider of services has documented the grounds for determining that the party does not have such contact, the following employees and operators are presumed to have regular and substantial unsupervised or unrestricted physical contact:

- (a) a party providing direct care services to people in facilities and non-certified settings authorized, funded, or approved by OMRDD, including but not limited to:
 - (1) residential facilities (ICFs, CRs and IRAs);
 - (2) home and community-based waiver habilitation services (including residential habilitation, day habilitation, supported employment, and pre-vocational services);
 - (3) day treatment facilities;
 - (4) day training facilities;
 - (5) sheltered workshops;
 - (6) respite services;
 - (7) recreational services;
 - (8) authorized demonstration programs (e.g. NYS-Options for People Through Services (NYS-OPTS)); and
 - (9) any service similar to those specified in subclauses (1)-(8) of this clause.
- (b) a party providing line or onsite supervision of direct care staff;
- (c) a party providing transportation services, whether driving or accompanying people while they are being transported;
- (d) a job coach (or equivalent) providing supported employment services;
- (e) a clinician providing clinical services to people receiving services;
- (f) in a clinic treatment facility (“Article 16 clinic”), a clinic treatment coordinator, a medical director and an authorized party (see section

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679.99) providing services;

- (g) a service coordinator and a supervisor of a service coordinator, including a Medicaid Service Coordinator (MSC) and a MSC supervisor; and
- (h) a party whose work assignment location is at a certified site at least some of the time that persons are receiving services;
- (ii) family care providers and all parties 18 years of age or older who are to reside in the family care home (except for individuals receiving family care services) as follows:

 - (a) prospective family care providers along with adult household members who are to reside in the prospective family care home;
 - (b) prospective adult household members who are to reside in the home of a current family care provider (see OMRDD regulations for *Family Care Homes*, Part 687, for additional requirements); and
 - (c) current family care providers who are seeking recertification and adult household members who are to reside in the family care home when a criminal history record check has not previously been conducted concerning the subject party because of his or her status as a family care provider or household member;
- (iii) prospective volunteers who will have regular and substantial unsupervised or unrestricted physical contact with persons receiving services, as determined by the agency or provider of services according to criteria established by policies and procedures;
- (iv) employees, volunteers and operators who currently have a position or volunteer opportunity which does not involve regular and substantial unsupervised or unrestricted physical contact with persons receiving services, who will be assuming a position or volunteer opportunity which does involve such contact;
- (v) for an agency or other potential provider of services which applies to become certified, authorized, approved or funded through contract by OMRDD; all its current and potential operators, employees and volunteers who will have regular and substantial unsupervised or unrestricted physical contact with persons receiving services in the new program; and

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- (vi) for an agency or other provider of services which has a change in ownership interest, any “natural person” that will become an operator due to such change, if he or she will have regular and substantial unsupervised or unrestricted physical contact with persons receiving services.
- (3) Requirements related to criminal history record checks do not apply when a party is considered to be an employee of an agency or provider of services (see the definition of employee; subparagraph 633.22(b)(6)(ii)) through his or her employment by another entity which has a contract with the agency or provider of services, so long as:
 - (i) the contractor is itself an agency or provider of services which provides services that are certified, authorized (HCBS waiver services), or funded through contract by OMRDD as family support services, individual support services, or Medicaid service coordination and the contractor is complying with the requirements of this section with regard to the employees utilized under contract; or
 - (ii) the contractor has been approved by OMRDD pursuant to the provisions of subdivision (n) of this section. If an agency or provider of services contracts with an approved provider, the agency or provider of services shall develop and implement written policies and procedures to monitor whether the approved provider is in compliance with the requirements of this section. The requirement for policies and procedures applies regardless of whether the approved provider also contracts with OMRDD.
- (e) Requirements before submitting a request for a criminal history record check.
 - (1) The agency or provider of services shall inform the subject party in writing that:
 - (i) the agency or provider of services is required to request a check of his or her criminal history record information and review the results of such check; and
 - (ii) the subject party has the right to obtain, review and seek correction of his or her criminal history record information pursuant to regulations and procedures established by DCJS.
 - (2) The agency or provider of services shall obtain the signed, informed consent of the subject party in the form and format specified by OMRDD which indicates that the subject party has:

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- (i) been informed of the right and procedures necessary to obtain, review and seek correction of his or her criminal history record information;
 - (ii) been informed of the reason for the request for his or her criminal history record information;
 - (iii) consented to the request for a criminal history record check; and
 - (iv) supplied on the form a current mailing or home address.
- (3) A subject party may withdraw his or her application for employment, without prejudice, at any time before employment is offered or declined, regardless of whether the subject party or agency or provider of services has reviewed the summary of subject party's criminal history record information.
- (f) *Pending results/temporary approval of a subject party.*
- (1) The agency or provider of services may temporarily approve a subject party for employment or a volunteer opportunity on a provisional basis while the results of the criminal history record check are pending, so long as such party does not have unsupervised physical contact with persons receiving services. Temporary approval and the utilization of temporarily approved provisional employees and volunteers shall be in accordance with policies and procedures and the requirements of this section.
- (i) Policies and procedures shall address the need for all temporarily approved provisional employees and volunteers to be monitored. Such policies and procedures shall:
 - (a) address the need for an employee to monitor the activities of all temporarily approved provisional employees and volunteers given the nature of the environment (e.g. layout of the site), staffing patterns, employee responsibilities, and characteristics of people receiving services; and
 - (b) include procedures for the agency or provider of services to ensure that the employee given responsibility to monitor the activities of temporarily approved provisional employees and volunteers:
 - (1) was not subject to a criminal history record check or has had a criminal history record check determination

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issued from OMRDD;

- (2) has been trained in requirements concerning incidents and abuse (see section 633.8(a)(1)(iii)-(v) and Part 624);
 - (3) recognizes his or her obligations under Part 624, including the obligation to report incidents and abuse allegations, and that “the failure to exercise one’s duty to intercede on behalf of a person receiving services also constitutes abuse” (subdivision 624.4(c));
 - (4) is knowledgeable about the restrictions on the activities of temporarily approved provisional employees and volunteers established by this section; and
 - (5) knows whom to contact and in what manner, regarding concerns that may arise.
- (ii) In order to be approved, temporarily approved provisional employees and volunteers shall provide an attestation that they understand basic elements of what is considered abuse according to the definition in Part 624 and that they know whom to contact, and in what manner, if they have questions about incidents/abuse; and that they affirm that they will not engage in abusive practices or knowingly endanger the physical or emotional well-being of people receiving services.
- (iii) If the temporarily approved provisional employee or volunteer is in the physical proximity of people receiving services, an employee meeting the standards specified in subparagraph (i) of this paragraph shall be in reasonable physical proximity of the temporarily approved provisional employee or volunteer at all times.
- (iv) The temporarily approved provisional employee or volunteer shall not be assigned personal care activities which require privacy for people receiving services (e.g. bathing, dressing and toileting), unless an employee meeting the standards of subparagraph (i) of this paragraph is present in the same room with the temporarily approved provisional employee or volunteer at all times while personal care activities are occurring.
- (v) A temporarily approved provisional employee or volunteer shall not be assigned to work at a residential facility during the typical nighttime shift (e.g. 11 P.M. to 7 A.M.).

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- (vi) Temporary approval shall be denied if the agency or provider of services possesses written documentation, such as a statement provided by the subject party as part of the application process, that:
 - (a) the subject party has a pending felony charge, or a conviction or pending charge for one or more of the crimes specified in section 633.98; and/or
 - (b) the subject party has a pending misdemeanor charge or a conviction for any crime other than those specified in section 633.98, unless the agency or provider of services documents that temporary approval will not pose a risk of harm to persons receiving services.

- (vii) At any time after the agency or provider of services receives a determination that OMRDD is not issuing a denial or directing the agency or provider of services to issue a denial, the restrictions imposed during the period of temporary approval may be lifted. The agency or provider of services does not need to notify OMRDD regarding the end of temporary approval in this situation.

- (viii) When an agency or provider of services receives OMRDD notification of any result of the criminal history record check, except as specified in subparagraph (vii) of this paragraph:
 - (a) any temporary approval of the subject party shall be revoked immediately, or as soon as reasonably possible. However, revocation of the temporary approval shall not be delayed if such delay may compromise the safety of people receiving services; and
 - (b) when temporary approval is revoked, the agency or provider of services shall notify OMRDD, confirming the time when the notification was received and identifying the time when the temporary approval was revoked. OMRDD must also be notified if there was no temporary approval.

- (ix) “Approved providers” are not permitted to temporarily approve a subject party on a provisional basis.

- (2) A subject party who is applying to be a family care provider shall not be granted an initial operating certificate while the results of the criminal history record checks are pending for either the family care provider or any other party age 18

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years or older who is to reside in the family care home.

- (3) Sponsoring agencies and family care providers shall follow the requirements of OMRDD family care regulations (see section 687.8), while the results of the criminal history record check are pending for current or potential household members of a current family care home.

(g) Criminal history record check process.

- (1) The agency, sponsoring agency or provider of services shall be responsible for ensuring the submission of a request for a criminal history record check, including fingerprints, in the form, format and manner established by OMRDD, for all required subject parties (see subdivision (d) of this section).

(i) However, for subject parties who have had a previous criminal history record check and determination issued by OMRDD or the New York State Office of Mental Health (OMH), and whose criminal history is consistent with other requirements that may be established by OMRDD; the sponsoring agency, agency or provider of services may instead submit a request for expedited review in the form, format and manner required by OMRDD. If OMRDD finds that an expedited request is not warranted, OMRDD will inform the authorized party that a regular submission is required, including fingerprints, so that a new criminal history record check can be conducted.

(ii) Requests (whether regular or expedited) shall be submitted only by an authorized party.

(iii) All submissions to OMRDD shall include a form developed by OMRDD and completed by the authorized party as specified in section 845-b of the Executive Law. OMRDD shall maintain all completed forms pursuant to an agreement with DCJS.

- (2) OMRDD will review the regular or expedited submission to ascertain whether it contains all required elements. If the submission is incomplete or defective, OMRDD will notify the authorized party or his or her designee.

- (3) OMRDD shall request that DCJS provide criminal history record information concerning subject parties. However, if an expedited request is made in accordance with subparagraph 633.22(g)(1)(i), OMRDD may instead review its criminal history record check file. If the criminal history does not meet the criteria established for an expedited request, or if the relevant information is not in the

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criminal history record check file, OMRDD will require the agency to forward a regular submission.

- (4) OMRDD will review the criminal history record information obtained from DCJS or in the OMRDD criminal history record check file. Such review may include contacting any relevant entity of the criminal justice system for additional information.
- (5) If the criminal history record information does not contain any convictions, pending criminal charges or certificates of relief from civil disabilities, OMRDD will promptly notify the authorized party requesting the criminal history record check that OMRDD is not issuing a denial and is not directing the agency, sponsoring agency or provider of services to issue a denial.
- (6) If the criminal history record information includes a pending charge for a felony, or for endangering the welfare of an incompetent or physically disabled person pursuant to section 260.25 of the penal law, OMRDD will, and for other crimes may, notify the agency, sponsoring agency or provider of services that it is holding the application, renewal or employment in abeyance until the charge is finally resolved. The agency or provider of services shall revoke any temporary approval of the subject party as specified in subparagraph 633.22(f)(1)(viii).
- (7) Prior to making a determination to issue a denial or to direct the agency, sponsoring agency or provider of services to issue a denial, OMRDD shall afford the subject party an opportunity to explain, in writing, why the application should not be denied.
 - (i) OMRDD will send a notification to the subject party which includes the following:
 - (a) a statement that the subject party has the opportunity to explain, in writing, why the application should not be denied;
 - (b) a description of procedures established by DCJS for the subject party to obtain, review and seek correction of his or her criminal history record information; and that the subject party must inform OMRDD regarding the status of his or her request(s) to DCJS; and
 - (c) a statement that OMRDD will issue a denial or OMRDD will direct that the agency or provider of services issue a denial unless the subject party submits a response within 30 calendar days from the date the notification was mailed.

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- (ii) In order to be considered, the response by the subject party must include a written explanation and/or documentation of a request to DCJS. In addition, the original signed response must be mailed within 30 calendar days from the date of the notification, to the address specified in the notification, and in a manner that includes verification to OMRDD of the date of mailing (e.g. first class mail or certified mail).
- (iii) OMRDD will send notification of the pending potential denial to the authorized party. If the subject party is a temporarily approved provisional employee or volunteer, any temporary approval shall be revoked as specified in subparagraph 633.22(f)(1)(viii).
- (h) OMRDD determinations. After making its determination, OMRDD will promptly inform the authorized party of the determination and what actions shall or may be taken by the agency, sponsoring agency or provider of services. OMRDD will also forward a summary of the criminal history record information.
- (1) OMRDD may determine that it is not issuing a denial, or is not directing the agency, sponsoring agency or provider of services to issue a denial concerning the subject party; in which event the agency, sponsoring agency or provider of services shall review the summary of the criminal history record information.

 - (i) After its review of the summary; the agency, sponsoring agency or provider of services may make a decision with respect to the subject party based on the information in the summary. This may involve approval or denial of the opportunity for employment or volunteer activities involving regular and substantial unsupervised or unrestricted physical contact with people receiving services, or to be a family care provider or reside in the home of a family care provider.
 - (ii) In making decisions based on the criminal history record information or summary of the criminal history record information; the agency, sponsoring agency or provider of services shall proceed in a manner consistent with the provisions of article 23-A of the Correction Law, subdivisions 15 and 16 of section 296 of the Executive Law, and all other applicable laws.
 - (iii) OMRDD will not be forwarding a summary of the criminal history record information to approved providers, if it is not issuing a denial or directing the provider to issue a denial. Consequently, requirements to review the summary are not applicable to approved providers.

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- (2) OMRDD may issue a denial or direct the agency, sponsoring agency or provider of services to issue a denial concerning the subject party.
- (i) The agency, sponsoring agency or provider of services shall deny employment and volunteer opportunities involving regular and substantial unsupervised or unrestricted physical contact with people receiving services to subject parties when directed to do so by OMRDD. The agency, sponsoring agency or provider of services shall notify the subject party that his or her criminal history record information is the basis for the denial.
- (ii) OMRDD/sponsoring agencies shall deny an application to be a family care provider if OMRDD issues a denial or directs the sponsoring agency to issue a denial concerning an applicant or an adult household member.
- (iii) If OMRDD issues a denial or directs the sponsoring agency to issue a denial for a family care provider or adult household member, and a person is currently receiving family care services in the family care home:
- (a) The family care provider shall be notified regarding the issuance of the denial.
- (b) The sponsoring agency shall conduct a safety assessment of the service environment, and shall take all steps necessary to protect the health and safety of people receiving services. The safety assessment and steps shall be documented.
- (c) People receiving services shall be promptly relocated unless the family care provider and sponsoring agency document in writing that the relevant subject party is no longer residing in the family care home.

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- (iv) OMRDD may take other appropriate actions, based on its issuance of a denial, such as denying an operating certificate, denying authorization to be an HCBS waiver provider, or terminating a contract.
- (v) When OMRDD issues a denial or directs the agency, sponsoring agency or provider of services to issue a denial, the subject party shall be entitled to receive, upon written request, a copy of the summary of the criminal history record information provided by OMRDD to the agency, sponsoring agency or provider of services.

(i) Standards for OMRDD determinations.

- (1) Presumptive disqualifying crimes. OMRDD shall issue a denial, or direct the agency, sponsoring agency or provider of services to issue a denial, if the criminal history record information includes a conviction for one or more presumptive disqualifying crimes. However, OMRDD may determine, in its discretion, that it will not issue a denial or direct the agency, sponsoring agency or provider of services to issue a denial, if such determination will not in any way jeopardize the health, safety or welfare of the people receiving services.

Presumptive disqualifying crimes are specified in section 633.98 and are:

- (i) a felony conviction for a sex offense;
 - (ii) a felony conviction within the past ten years involving violence; or
 - (iii) a conviction for endangering the welfare of an incompetent or physically disabled person pursuant to section 260.25 of the Penal Law.
- (2) Other crimes. OMRDD may issue a denial or direct the agency, sponsoring agency or provider of services to issue a denial based on a conviction for a crime other than those specified in paragraph (1) of this subdivision.

(j) Documentation and confidentiality requirements.

- (1) Only the authorized party or his or her designee and the relevant subject party shall have access to criminal history record information or the summary of criminal history record information received by an agency, sponsoring agency or provider of services. However, criminal history record information or the summary may be disclosed by the authorized party to other parties who are directly participating in any decision in regard to such subject party.

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- (i) The authorized party and any other party to whom such criminal history record information or summary of the criminal history record information is disclosed shall be subject to the confidentiality requirements and other provisions of this section and section 845-b of the Executive Law relating to access to the criminal history record information and the summary.
 - (ii) Any party who willfully permits the release of any confidential criminal history record information or the summary of the criminal history record information obtained from a criminal history record check pursuant to this section to parties not permitted by section 845-b of the Executive Law to receive such information shall be guilty of a misdemeanor.
- (2) Each agency, sponsoring agency and provider of services subject to the provisions of this Part shall establish, maintain, and keep current, the following records:
- (i) a current roster of employees and volunteers who are subject parties. The roster shall indicate the staffing assignment (employees only), the date that the criminal history record check was requested, and the date that the subject party was hired or assumed duties which involved regular and substantial unsupervised or unrestricted physical contact with people receiving services.
 - (ii) a current roster of family care providers and parties age 18 years and over who reside in each family care home, and whether the provider or party was the subject of a criminal history record check;
 - (iii) a list of parties whom have had a subject party change in status (e.g. separation from service) pursuant to subdivision (1) of this section within the past 12 months. The list shall indicate the date the criminal history record check was requested and the date OMRDD was notified that the party was no longer a subject party;
 - (iv) for each subject party concerning whom a request for a criminal history record check was submitted, a copy of their signed informed consent form, a copy of the form submitted by the authorized party to request the criminal history record check, the notification of a change in subject party status (if applicable), and the results of the criminal history record check and determination of OMRDD; unless the agency, sponsoring agency or provider of services has disposed of such records pursuant to paragraphs (3) or (4) of this subdivision;
 - (v) a record identifying whether such subject parties were:

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- (a) hired or assumed duties involving regular and substantial unsupervised or unrestricted physical contact with people receiving services; or
 - (b) certified or recertified as a family care provider; or
 - (c) approved or reapproved as a family care respite/substitute provider; or
 - (d) permitted to reside in the family care home or family care respite/substitute home.
 - (vi) for employees, the position held by the employee; and
 - (vii) any other information necessary to determine compliance with this section as may be specified by OMRDD.
- (3) The agency, sponsoring agency or provider of services shall maintain such information and shall not dispose of such information prior to six years after the party ceases to be a subject party (e.g. is no longer an employee, volunteer or family care provider), unless otherwise directed to do so by OMRDD.
- (4) If directed to do so by OMRDD, the agency, sponsoring agency or provider of services shall dispose of the summary of the criminal history record information and/or any other information related to criminal history record checks as directed.
- (5) Disposal of the summary of the criminal history record information and OMRDD determinations shall be performed in a manner that ensures the privacy and confidentiality of the information.
- (k) *Criminal charges or convictions subsequent to the initial criminal history record check.*
- (1) Upon receiving notification from DCJS that, subsequent to the initial check, there is a conviction or pending criminal charge against a current employee, volunteer, family care provider or party living in the home of a family care provider; OMRDD shall promptly notify the agency, sponsoring agency or provider of services of the conviction or pending charge.
 - (2) Upon receiving notification regarding the conviction or pending charge, or upon becoming aware of a conviction or pending charge subsequent to the initial criminal history record check, the agency, sponsoring agency or provider of services shall:

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- (i) conduct a safety assessment of the service environment and take all appropriate steps to protect the health and safety of the persons receiving services. The safety assessment and steps shall be documented; and
 - (ii) monitor the outcome of any pending charge, if the subject party continues to have regular and substantial unsupervised or unrestricted physical contact with people receiving services.

- (l) Required notifications. No later than 14 days after the event, the agency, sponsoring agency or provider of services shall notify OMRDD, in the form, format and manner required by OMRDD, when a party ceases to be a “subject party.” This occurs when:
 - (1) Someone who is an employee or volunteer, concerning whom a criminal history record check was requested is separated from agency or provider service or is permanently assigned to a position which does not involve regular and substantial unsupervised or unrestricted physical contact with persons receiving services. In the case of employees and volunteers who work seasonally (e.g. during summers only) or have a scheduled break in service of up to one year, the subject party shall not cease to be a subject party during the break in service; or
 - (2) Someone who was an applicant to be an employee or volunteer withdraws their application or is no longer being considered for the position for which the subject party applied, if a criminal history record check was requested concerning the applicant; or
 - (3) A family care provider or prospective family care provider is denied or relinquishes an operating certificate, if a criminal history record check was requested concerning the provider and/or a party who was to reside or resided in the family care home. The notification shall include the names and other identifying information of the provider and all parties living in the family care home concerning whom a criminal history record check was conducted; or
 - (4) A party who lives in the home of a family care provider moves out of the home, or does not move into the home, if a criminal history record check was conducted concerning the subject party.

- (m) The following applies if a potential employee who is subject to a criminal history record check from OMRDD is also subject to another criminal history record check from the New York State Office of Mental Health (OMH) at the same time because of other responsibilities of the potential employment with the same agency or provider of services.

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- (1) A determination made by OMRDD shall be considered an interim determination if:
 - (i) it occurs prior to the determination by OMH; and
 - (ii) the determination is not to issue a denial or direct the issuance of a denial.

- (2) If a determination made by OMH is that the subject party is denied (or equivalent); the agency, sponsoring agency, or provider of services shall notify OMRDD regarding the determination. OMRDD will then issue a final determination.

- (n) Approved providers of services (“approved providers”). Providers of services specified in this subdivision shall submit an application to OMRDD to become Approved providers@ for purposes related to the criminal history record check process.
 - (1) Providers of services shall submit an application for Approved provider@ status if:
 - (i) the provider contracts with (or will contract with) OMRDD or an agency which provides services certified by OMRDD or HCBS waiver services;
 - (ii) the provider supplies:
 - (a) transportation services that are provided by employees who have or will have regular and substantial unsupervised or unrestricted physical contact; and/or
 - (b) staff, other than the provider himself or herself, who have or will have regular and substantial unsupervised or unrestricted physical contact with people receiving services;
 - (iii) the provider of services is not a professional corporation or other entity whose function is the provision of services as opposed to the provision of staff; and
 - (iv) the provider itself does not provide any of the following services:
 - (a) residential or non-residential services certified by OMRDD;
 - (b) HCBS waiver services;
 - (c) family support services;

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- (d) individual support services; or
 - (e) Medicaid service coordination.
- (2) Application for approval shall be in the form and format specified by the commissioner, and shall include the provider's agreement to terms established by OMRDD for approval.
- (3) OMRDD may revoke approval upon a finding that the provider of services is not in compliance with the requirements of this section and/or is not in compliance with the terms established by OMRDD.
- (o) Contracting restrictions. Agencies providing certified services and HCBS waiver services may contract with providers of services only if the provider is:
- (1) an approved provider; or
 - (2) an agency providing services which are certified, authorized (HCBS waiver services), or funded through contract by OMRDD as family support services, individual support services, or Medicaid service coordination and the contractor is complying with the requirements of this section with regard to the employees utilized under contract; or
 - (3) a contractor that is not eligible for approved provider status, including but not limited to:
 - (i) a professional corporation or other entity whose function is the provision of services as opposed to the provision of staff; or
 - (ii) a contractor who is a sole party; or
 - (iii) a contractor who supplies transportation services or staff that does not have employees who have or will have regular and substantial unsupervised or unrestricted physical contact with people receiving services.
- (p) Annual criminal history record check statement.
- (1) Every agency and provider of services, including approved providers, shall submit an annual criminal history record check statement to OMRDD in the form and format specified by the commissioner which includes, but is not limited to, the following:

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- (i) the rosters of employees, volunteers, and family care providers (and adult household members) and information as specified in subparagraphs 633.22(j)(2)(i)-(iii);
 - (ii) a sworn statement of the chief executive officer that the agency or provider of services is in compliance with the provisions of this section and that the information provided is true; and
 - (iii) an acknowledgment by the chief executive officer that he or she may be guilty of a crime if the submission contains a false statement or false information (*Offering a false instrument for filing in the second or first degree*, sections 175.30 and 175.35 of the Penal Law).
- (2) Effective January 1, 2007, in lieu of the chief executive officer, the submission by an approved provider in accordance with paragraph (1) of this subdivision shall be executed by the party authorized and primarily responsible for the business affairs of the approved provider in the locality in which it operates as a provider of services in the OMRDD system. If the approved provider provides services in more than one distinct locality, each local organizational entity shall submit a separate statement.
- (3) Agencies and providers of services shall submit the initial statement and all subsequent statements by April 1 of each year.
- (4) OMRDD may take one or more of the following actions upon the agency's or provider of services' failure to timely file the annual criminal history record check statement or upon finding that a party employed by or volunteering with the agency (or family care provider or adult household member) is providing services in a manner that violates the provisions of this section:
- (i) an action to suspend, revoke or limit an operating certificate pursuant to the provisions of section 16.17 of the Mental Hygiene Law (MHL). Failure to timely file and the provision of services in violation of this section may be considered to present an imminent danger to the health and safety of people receiving services. In addition to the other actions, the commissioner may:

 - (a) institute a temporary suspension or limitation of the operating certificate pursuant to MHL section 16.17(b)(1);

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- (b) suspend or limit or cause to be suspended or limited the payment of any governmental funds throughout the period of the delinquency pursuant to MHL section 16.17(b)(1)(c); and/or
- (c) impose a fine pursuant to MHL section 16.17(g). Each utilization of a party to provide services in violation of this section shall constitute a separate finding that the holder of the operating certificate has “failed to comply with the terms of the operating certificate or with the provisions of any applicable statute, rule or regulation;” or
- (ii) an action to revoke a provider agreement authorizing the delivery of HCBS waiver services; or
- (iii) termination of a contract with the agency or provider of services, or imposition of financial penalties as may be specified in the contract; or
- (iv) revocation of “approved provider” status.
- (q) Agencies and providers of services shall comply with section 16.33 of the Mental Hygiene Law and section 845-b of the Executive Law.

- **A new section 633.98 is added as follows:**

Section 633.98 Criminal history record checks B List of presumptive disqualifying crimes

Following is a list of crimes which are considered presumptive disqualifying crimes for the purpose of OMRDD determinations made pursuant to section 633.22 of this Title. The name and section listed refers to crimes as specified in the New York State Penal Law.

- (a) Sex offenses - felonies, at any time:

| <u>Section</u> | <u>Crime</u> |
|-----------------|--|
| <u>130.25</u> | <u>Rape in the third degree.</u> |
| <u>130.30</u> | <u>Rape in the second degree.</u> |
| <u>130.35</u> | <u>Rape in the first degree.</u> |
| <u>130.40</u> | <u>Criminal sexual act in the third degree.</u> |
| <u>130.45</u> | <u>Criminal sexual act in the second degree.</u> |
| <u>130.50</u> | <u>Criminal sexual act in the first degree.</u> |
| <u>130.53</u> | <u>Persistent sexual abuse.</u> |
| <u>130.65</u> | <u>Sexual abuse in the first degree.</u> |
| <u>130.65-a</u> | <u>Aggravated sexual abuse in the fourth degree.</u> |
| <u>130.66</u> | <u>Aggravated sexual abuse in the third degree.</u> |

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- 130.67 Aggravated sexual abuse in the second degree.
130.70 Aggravated sexual abuse in the first degree.
130.75 Course of sexual conduct against a child in the first degree.
130.80 Course of sexual conduct against a child in the second degree.
130.85 Female genital mutilation.
130.90 Facilitating sex offense with a controlled substance.
- 230.05 Patronizing a prostitute in the second degree.
230.06 Patronizing a prostitute in the first degree.
230.25 Promoting prostitution in the third degree.
230.30 Promoting prostitution in the second degree.
230.32 Promoting prostitution in the first degree.
- 255.25 Incest.
- 263.05 Use of a child in a sexual performance.
263.10 Promoting an obscene sexual performance by a child.
263.11 Possessing an obscene sexual performance by a child.
263.15 Promoting a sexual performance by a child.
263.16 Possessing a sexual performance by a child.

Any other crime that is a felony sex offense as a result of changes in the Penal Law on or after April 1, 2005.

(b) Felonies involving violence, if within the past 10 years:

- | <u>Section</u> | <u>Crime</u> |
|----------------|--|
| <u>120.05</u> | <u>Assault in the second degree.</u> |
| <u>120.06</u> | <u>Gang assault in the second degree.</u> |
| <u>120.07</u> | <u>Gang assault in the first degree.</u> |
| <u>120.08</u> | <u>Assault on a peace officer, police officer, fireman or emergency medical services professional.</u> |
| <u>120.10</u> | <u>Assault in the first degree.</u> |
| <u>120.11</u> | <u>Aggravated assault on police officer or a peace officer.</u> |
| <u>120.12</u> | <u>Aggravated assault upon a person less than eleven years old.</u> |
| <u>120.25</u> | <u>Reckless endangerment in the first degree.</u> |
| <u>120.55</u> | <u>Stalking in the second degree.</u> |
| <u>120.60</u> | <u>Stalking in the first degree.</u> |
| <u>125.10</u> | <u>Criminally negligent homicide.</u> |
| <u>125.12</u> | <u> Vehicular manslaughter in the second degree.</u> |
| <u>125.13</u> | <u> Vehicular manslaughter in the first degree.</u> |
| <u>125.15</u> | <u> Manslaughter in the second degree.</u> |

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- 125.20 Manslaughter in the first degree.
125.25 Murder in the second degree.
125.27 Murder in the first degree.
- 135.10 Unlawful imprisonment in the first degree.
135.20 Kidnapping in the second degree.
135.25 Kidnapping in the first degree.
- 140.25 Burglary in the second degree.
140.30 Burglary in the first degree.
- 150.15 Arson in the second degree.
150.20 Arson in the first degree.
- 160.05 Robbery in the third degree.
160.10 Robbery in the second degree.
160.15 Robbery in the first degree.
- 215.12 Tampering with a witness in the second degree.
215.13 Tampering with a witness in the first degree.
215.16 Intimidating a victim or witness in the second degree.
215.17 Intimidating a victim or witness in the first degree.
- 240.06 Riot in the first degree.
240.55 Falsely reporting an incident in the second degree.
240.60 Falsely reporting an incident in the first degree.
240.61 Placing a false bomb or hazardous substance in the second degree.
240.62 Placing a false bomb or hazardous substance in the first degree.
240.63 Placing a false bomb or hazardous substance in sports stadium or arena, mass transportation facility, or enclosed shopping mall.
- 260.32 Endangering the welfare of a vulnerable elderly person in the second degree.
260.34 Endangering the welfare of a vulnerable elderly person in the first degree.
- 265.02 Criminal possession of a weapon in the third degree.
265.03 Criminal possession of a weapon in the second degree.
265.04 Criminal possession of a dangerous weapon in the first degree.
265.08 Criminal use of a firearm in the second degree.
265.09 Criminal use of a firearm in the first degree.
265.12 Criminal sale of firearm in the second degree.
265.13 Criminal sale of firearm in the first degree.
265.14 Criminal sale of a firearm with the aid of minor.
265.16 Criminal sale of firearm to a minor.

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- 490.10 Soliciting or providing support for an act of terrorism in the second degree.
- 490.15 Soliciting or providing support for an act of terrorism in the first degree.
- 490.20 Making a terroristic threat.
- 490.25 Crime of terrorism.
- 490.30 Hindering prosecution of terrorism in the second degree.
- 490.35 Hindering prosecution of terrorism in the first degree.
- 490.37 Criminal possession of a chemical weapon or biological weapon in the third degree.

- 490.40 Criminal possession of a chemical weapon or biological weapon in the second degree.
- 490.45 Criminal possession of a chemical weapon or biological weapon in the first degree.
- 490.47 Criminal use of a chemical weapon or biological weapon in the third degree.
- 490.50 Criminal use of a chemical weapon or biological weapon in the second degree.
- 490.55 Criminal use of a chemical weapon or biological weapon in the first degree.

Any other crime that is a felony involving violence as a result of changes in the Penal Law on or after April 1, 2005.

Note: Felonies involving violence that are also felony sex offenses are listed in subdivision (a) of this section and are not listed in this subdivision (b).

- (c) Section 260.25 - Endangering the welfare of an incompetent or physically disabled person, at any time.

- (d) With the exception of a conviction for an attempt of a class E felony, a felony conviction for the attempt to commit any presumptive disqualifying crime set forth in subdivisions (a) and (b) of this section, is also a presumptive disqualifying crime. The same time frames apply to such convictions for attempts as for the specified crime.

- (e) Hate crimes. A conviction for one of the crimes identified in this subdivision (e) as a result of the application of section 485.05 of the Penal Law, which transforms the crime into a presumptive disqualifying crime. Such crime is categorized as a crime involving violence and treated as if specified in subdivision (b) of this section. The following crimes are presumptive disqualifying crimes when the Division of Criminal Justice Services identifies them as a hate crime:

| <u>Section</u> | <u>Crime</u> |
|----------------|--|
| <u>120.00</u> | <u>Assault in the third degree.</u> |
| <u>120.20</u> | <u>Reckless endangerment in the second degree.</u> |

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150.05 Arson in the fourth degree.
150.10 Arson in the third degree.

- (f) Former Penal Law offenses. Crimes that were felony sex offenses or crimes involving violence under the Penal Law prior to its recodification. The list of crimes specified in this subdivision (f) is not intended to be all inclusive:

| <u>Section</u> | <u>Crime</u> |
|----------------|--|
| <u>70</u> | <u>Abduction.</u> |
| <u>221</u> | <u>Arson in the first degree.</u> |
| <u>222</u> | <u>Arson in the second degree.</u> |
| <u>240</u> | <u>Assault in the first degree.</u> |
| <u>242</u> | <u>Assault in the second degree.</u> |
| <u>402</u> | <u>Burglary in the first degree.</u> |
| <u>403</u> | <u>Burglary in the second degree.</u> |
| <u>480</u> | <u>Abandonment of children.</u> |
| <u>481</u> | <u>Abandonment of children under 14 years of age.</u> |
| <u>483-a</u> | <u>Carnal abuse of a child.</u> |
| <u>483-b</u> | <u>Carnal abuse of a child, 10 years of age and less than 16.</u> |
| <u>484-c</u> | <u>Employment of children in drug traffic.</u> |
| <u>690</u> | <u>Sodomy, crime against nature.</u> |
| <u>1042</u> | <u>Homicide.</u> |
| <u>1044</u> | <u>Murder in the first degree.</u> |
| <u>1046</u> | <u>Murder in the second degree.</u> |
| <u>1049</u> | <u>Non-negligent manslaughter.</u> |
| <u>1050</u> | <u>Manslaughter in the first degree.</u> |
| <u>1052</u> | <u>Manslaughter in the second degree.</u> |
| <u>1053</u> | <u>Vehicular homicide.</u> |
| <u>1110</u> | <u>Incest.</u> |
| <u>1250</u> | <u>Kidnapping.</u> |
| <u>1400</u> | <u>Maiming.</u> |
| <u>1760</u> | <u>Willfully poisoning food.</u> |
| <u>1895</u> | <u>Endangering life by maliciously placing explosives near building.</u> |
| <u>2010</u> | <u>Rape, in the first and second degree (felony).</u> |
| <u>2124</u> | <u>Robbery in the first degree.</u> |
| <u>2126</u> | <u>Robbery in the second degree.</u> |

- **Section 633.99 is amended as follows:**

- (k) *Agency, sponsoring.* The administrator of one or more family care homes. In the case of family homes operated under State auspice, the [B/] DDSO is considered to be the

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sponsoring agency.

(ag) *Consent, informed.*

(1)- (4) are unchanged.

(5) This definition does not apply to informed consent obtained by a subject party (see section 633.22) related to criminal history record checks, as such consent is required pursuant to section 633.22.

(bs) *Officer, chief executive.* Someone designated by the governing body (see glossary) with overall and ultimate responsibility for the operation of [one or more classes of facility] services certified, authorized, approved or funded through contract by OMRDD, or his other designee for specific responsibilities and/or equipment as specified in written agency/facility policy, including but not limited to requirements related to criminal history record checks. In a [developmental center] DDSO, this party is referred to as the “director.”

(do) *Volunteer.* For the purposes of this Part, someone who applies to and is accepted by an agency [OMRDD-operated or certified facility] to participate, under the supervision of [the facility] agency staff or management, in activities with or for the benefit of the persons [served by the facility] receiving services operated, certified, authorized, approved or funded through contract by OMRDD, and for which he or she receives no salary or remuneration [for such activities].

● **Paragraph 635-10.5(d)(1) is amended by the addition of a new subparagraph (iv) as follows:**

(iv) Effective April 1, 2005, costs incurred as a result of requests for criminal history record checks under section 16.33 of the Mental Hygiene Law and section 845-b of the Executive Law shall be allowable costs and shall be considered part of the fee.

● **Subdivision 679.6(g) is amended by the addition of a new paragraph (3) as follows:**

(3) Effective April 1, 2005, costs incurred as a result of requests for criminal history record checks under section 16.33 of the Mental Hygiene Law and section 845-b of the Executive Law shall be allowable costs and shall be considered part of the fee.

Note: Rest of subdivision is renumbered accordingly.

● **Paragraph 680.12(d)(8) is amended by the addition of a new subparagraph (xii) as follows:**

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(xii) Effective April 1, 2005, costs incurred as a result of requests for criminal history record checks under section 16.33 of the Mental Hygiene Law and section 845-b of the Executive Law shall be allowable costs and shall be considered part of the rate.

- **Paragraph 681.14(f)(2) is amended by the addition of a new subparagraph (v) as follows:**

(v) Effective April 1, 2005, costs incurred as a result of requests for criminal history record checks under section 16.33 of the Mental Hygiene Law and section 845-b of the Executive Law shall be allowable costs and shall be considered part of the rate.

- **Subdivisions 687.4(b) and (c) are amended as follows:**

(b) Certification.

- (1) Application for an operating certificate shall be made upon the forms and in the format prescribed by OMRDD.
- (2) Application shall be made by the [person] party or parties [or entity] responsible for operation of the family care home.
- (3) Operating certificates shall be issued only to natural persons age 21 or older, and corporations for profit shall not be formed under the Business Corporation Law for any such purpose.
- (4) Applications shall be in writing, shall be verified and shall contain such information as is required by OMRDD. The application process shall reflect the requirements of sections 633.5 and 633.22.
- (5) The application process shall include a request by the sponsoring agency that OMRDD conduct a criminal history record check, for the family care provider and all parties age 18 years and older who are to reside in the family care home (except for individuals receiving family care services). (See section 633.22 for requirements and procedures.)
- (6) The application process shall include a request by the sponsoring agency to the Statewide Central Register of Child Abuse and Maltreatment whether the family care provider and all parties age 18 years and older (except for individuals receiving family care services) who are to reside in the family care home are the subject of an indicated report of child abuse or maltreatment.

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- [(5)] (7) No operating certificate shall be issued by the commissioner unless there is satisfaction as to:
- (i) the need for the family care home;
 - (ii) the character, competence and standing in the community of the [person] party or parties [and/or entity] responsible for operating the family care home;
 - (iii) the adequacy of the financial resources of the applicant and the stability of sources of future revenues;
 - (iv) the adequacy of the premises, equipment and applicant to provide the services which would be authorized by the operating certificate.
 - (v) the adequacy of arrangements made with other providers of services for the provision of health, habilitation, day programs, education, sheltered workshop, transportation or other services as may be necessary and appropriate to meet the needs of [clients] individuals who will reside in the family care home; [and]
 - (vi) the review of any criminal history record information received concerning the family care provider and all parties age 18 years and older who are to reside in the family care home, except for individuals receiving family care services; and
 - (vii) such other matter as the commissioner shall deem pertinent in the public interest.

Note: The rest of the subdivision is renumbered accordingly.

- (c) Recertification.

(1) No operating certificate shall be renewed by the commissioner unless there is satisfaction as to:

Note: Subparagraphs (i) and (ii) are unchanged.

- (iii) the adequacy of arrangements made with other providers of services for the provision of health, habilitation, day programs, education, sheltered workshop, transportation or other services as may be necessary and appropriate to meet the needs of [clients] individuals who will reside in the family care home; [and]

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- (iv) the review of any criminal history record information received from a criminal history record check, if one had not been previously conducted, concerning:
 - (a) the family care provider; and
 - (b) all parties age 18 years or older residing in the family care home (except for individuals receiving family care services); and
- (v) such other matters as the commissioner shall deem pertinent in the public interest.

● **Section 687.8 is amended by adding new subdivisions (p) - (t) as follows:**

- (p) The following procedures and requirements apply when any party who is 18 years of age or older (except for an individual receiving family care services) begins to reside in the family care home, and when a current resident (except for an individual receiving family care services) reaches the age of 18 years:
 - (1) The family care provider shall request that the sponsoring agency request a criminal history record check pursuant to section 633.22 prior to or when such party begins to reside in the family care home or reaches the age of 18 years.
 - (2) The family care provider shall ensure the provision, to the sponsoring agency, of information and fingerprints from the subject party, in the form, format and manner specified by OMRDD, or the information necessary for an expedited submission.
 - (3) The family care provider shall obtain a sworn statement from such subject party, indicating whether he or she has ever been convicted of a misdemeanor or felony, or whether there is any pending criminal charge against such subject party, and shall forward the statement to the sponsoring agency and the DDSO.
 - (4) The family care provider shall ensure the provision of all required statements/information/fingerprints no later than five business days after the subject party becomes a resident or attains the age of 18 years.
 - (5) If the statement includes a conviction for a misdemeanor or felony, or a pending criminal charge, the sponsoring agency shall evaluate whether the safety of any people receiving family care services could be compromised by the party's continued residency and shall take appropriate steps to protect the safety of the person receiving services.

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- (6) The sponsoring agency shall request that OMRDD conduct a criminal history record check (see section 633.22 for applicable requirements and procedures);
- (7) If OMRDD issues a denial or directs the sponsoring agency to issue a denial for a current family care provider or current adult household member, or if the potential household member begins to reside in the family care home, the sponsoring agency shall follow the requirements of section 633.22(h)(2)(iii). If OMRDD issues a denial or directs the sponsoring agency to issue a denial for a potential household member, family care provider shall not permit the subject party to reside in the family care home.
- (8) If a criminal history record check was conducted concerning a party (other than the family care provider) and the party does not move into the family care home or permanently moves out of the family care home, the family care provider shall notify the sponsoring agency and the DDSO in writing within 72 hours of the occurrence. The sponsoring agency shall notify OMRDD within 14 days of the occurrence, in the form, format and manner required by OMRDD.
- (q) The family care provider shall notify the sponsoring agency and OMRDD of the identity and ages of all residents of the family care home, and shall notify the sponsoring agency and OMRDD when any changes occur in the residents of the family care home within 72 hours after the change.
- (r) The family care provider shall notify the sponsoring agency and OMRDD when the provider or any resident of the family care home has been placed under arrest or is charged with a crime within 72 hours of the event.
- (s) For the purposes of this section, college students who attend college but reside part of the year at the family care home shall be considered to reside in the family care home.
- (t) Respite/substitute providers - criminal history record checks. The same requirements related to criminal history record checks established by this Part and section 633.22 for family care providers and family care household members are applicable to family care respite/substitute providers and, if respite is provided in the home of the respite/substitute provider, for adult household members. Sponsoring agencies shall deny an application to be a family care respite/substitute provider if OMRDD directs the sponsoring agency to issue a denial based on the results of any criminal history record check.
- **Paragraph 690.7(d)(5) is amended by the addition of a new subparagraph (viii) as follows:**
 - (viii) Effective April 1, 2005, costs incurred as a result of requests for criminal history record checks under section 16.33 of the Mental

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Hygiene Law and section 845-b of the Executive Law shall be allowable costs and shall be considered part of the fee.