

A new Part 702 is added to Title 14, NYCRR, to read as follows:

Part 702 USE OF SOCIAL SECURITY NUMBERS

Sec.

702.1 Background and Intent

702.2 Applicability

702.3 Legal authority

702.4 Definitions

702.5 Verification of Identity

702.6 Confidentiality

702.7 Severability

§ 702.1 Background and Intent

(a) The Protection of People with Special Needs Act (the “Act”), enacted as Chapter 501 of the Laws of 2012, seeks to prevent persons responsible for egregious or repeated acts of abuse or neglect of a vulnerable person from being engaged as employees, administrators, consultants, interns, volunteers or contractors, and from obtaining licenses, certificates or other approvals, for positions where they have the potential for regular and substantial contact with vulnerable persons or other individuals whom the Act seeks to protect.

(b) To accomplish this goal, the Act provides that all custodians who have been found by a preponderance of the evidence, after an opportunity for a fair hearing, to have engaged in an act of abuse or neglect of sufficient severity or with sufficient frequency, shall be placed on the register of substantiated category one cases of abuse or neglect, also known as the “staff exclusion list.”

(c) This regulation outlines the procedures for obtaining and using social security numbers to assist in verifying the identity of subjects of reports in the vulnerable persons central register (“VPCR”); individuals placed on the staff exclusion list and those individuals who must be screened against the staff exclusion list.

§ 702.2 Applicability

This regulation applies to all facilities and provider agencies as defined in subdivision (4) of section 488 of the Social Services Law and to all other entities that must screen individuals against the staff exclusion list pursuant to subdivision (2) of section 495 of the Social Services Law.

§ 702.3 Legal authority

(a) The Act provides for the creation of a Justice Center for the Protection of Persons with Special Needs (“Justice Center”).

(b) Section 492 of the Social Services Law mandates that the Justice Center establish a VPCR in which findings of whether alleged acts of abuse or neglect are substantiated or unsubstantiated shall be entered.

(c) Section 492 of the Social Services Law mandates that upon accepting a report of a reportable incident, an investigation must be initiated that includes the determination of whether the subject of the report is currently the subject of an open or substantiated report in the VPCR.

(d) Sections 493, 494 and 495 of the Social Services Law provide for the creation of a register of substantiated category one cases of abuse or neglect (“the staff exclusion list”), and describe the circumstances and due process requirements for placing a custodian on that register.

(e) Section 495 of the Social Services Law provides that a custodian placed on the staff exclusion list is subject to termination of employment from a facility or provider agency, provided that for state entities bound by collective bargaining, action established by collective bargaining shall govern.

(f) Subdivision (2) of section 495 of the Social Services Law requires a screening agency, as defined in this Part, to check the staff exclusion list before determining whether to hire or otherwise allow any person as an employee, administrator, consultant, intern, volunteer or contractor who will have the potential for regular and substantial contact with a service recipient or other applicable individual and before approving an applicant for a license, certificate, permit or other approval to provide care to a service recipient or other applicable individual.

(g) Paragraph (e) of subdivision (1) of section 96 of the Public Officers Law permits a state agency to disclose personal information incident to a “routine use,” which means any use of such record or personal information relevant to the purpose for which it was collected, and which use is necessary to the statutory duties of the agency that collected or obtained the record or personal information, or necessary for that agency to operate a program specifically authorized by law.

(h) Paragraph (c) of subdivision (1) one of section 94 of the Public Officers Law permits a state agency to obtain the social security number of an individual for purposes of a quasi-judicial determination.

(i) Paragraph (b) of subdivision (3) of section 399ddd of the General Business Law permits firms, partnerships, associations or corporations to require an individual to disclose or furnish his or her social security account number, when required by state or local law or regulation.

§ 702.4 Definition

Whenever used in this Part:

(a) “Custodian” shall mean a director, operator, employee or volunteer of a facility or provider agency as defined in subdivision (4) of section 488 of the Social Services Law; or a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to a facility or provider agency pursuant to contract or other arrangement that permits such person to have regular and substantial contact with individuals who are cared for by such a facility or provider agency.

(b) “Delegate investigatory entity” shall have the same meaning as expressed in subdivision (7) of section 488 of the Social Services Law.

(c) “Facility” or “provider agency” shall have the same meaning as expressed in subdivision (4) of section 488 of the Social Services Law.

(d) “Screening agency” shall mean a facility or provider agency as defined in subdivision (4) of section 488 of the Social Services Law; any other provider of services to vulnerable persons in programs licensed, certified or funded by any state oversight agency; and any other provider agency or licensing agency as defined in subdivision (3) or (4) of section 424-a of the Social Services Law.

(e) “Service recipient” shall mean an individual who resides or is an inpatient in a residential facility or who receives services from a facility or provider agency as defined in subdivision (4) of section 488 of the Social Services Law.

(f) “Staff exclusion list” shall mean the register of substantiated category one cases of abuse or neglect, pursuant to sections 493 and 495 of the Social Services Law.

(g) “State oversight agency” shall mean the state agency that operates, licenses or certifies an applicable facility or provider agency; provided however that such term shall only include the following entities: the office of mental health, the office for people with developmental disabilities, the office of alcoholism and substance abuse services, the office of children and family services, the department of health and the state education department.

(h) “Vulnerable person” shall have the same meaning as expressed in subdivision 15 of section 488 of the social services law.

§ 702.5 Verification of Identity

(a) The Justice Center or a delegate investigatory entity responsible for investigating a reportable incident pursuant to paragraph (c) of subdivision (3) of section 492 of the Social Services Law shall be authorized to obtain the social security number of any custodian who is being investigated as a subject of a reportable incident, by consent from the custodian under investigation or from the applicable facility or provider agency, for purposes of verifying the custodian’s identity as the subject of any open or substantiated report in the VPCR and, where applicable, as an individual included on the staff exclusion list.

(b) Any person applying for a position for which such person must be screened against the staff exclusion list pursuant to subdivision (2) of section 495 of the Social Services Law shall provide the applicable screening agency with his or her social security number for submission to the Justice Center for the purpose of verifying the person’s identity to determine whether the individual is included on the staff exclusion list.

(c) An individual’s failure to provide his or her social security number when requested pursuant to this section, after receiving notice of the reason for such request, may preclude the individual from being considered or approved for any such position.

§ 702.6 Confidentiality

The Justice Center shall promulgate policies and procedures regarding corrective actions or penalties for failure to comply with the use, confidentiality and non-disclosure requirements of Sections 89, 94, 95, 96 and 96-a of the Public Officer's Law.

§ 702.7 Severability

If any provision of this Part or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Part that can be given effect without the invalid provision or applications, and to this end the provisions of this Part are declared to be severable.