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HOUSE BILL NO. 1491

House Amendments in [] — February 6, 2017

A BILL to amend and reenact §§ 37.2-416 and 37.2-506 of the Code of Virginia, relating to background checks; exceptions; sponsored living and shared residential service providers.

Patron Prior to Engrossment—Delegate Hope

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-416 and 37.2-506 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-416. Background checks required.

A. As used in this section:

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"Hire for compensated employment" does not include (i) a promotion from one adult substance abuse or adult mental health treatment position to another such position within the same licensee licensed pursuant to this article or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program licensed pursuant to this article if the person employed prior to July 1, 1999, in a licensed program had no convictions in the five years prior to the application date for employment. "Hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or developmental services direct care position within the same licensee licensed pursuant to this article or (b) new employment in any mental health or developmental services direct care position in another office or program of the same licensee licensed pursuant to this article for which the person has previously worked in an adult substance abuse treatment position.

"Shared living" means an arrangement in which the Commonwealth's program of medical assistance pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and providing companionship, support, and other limited, basic assistance to a person with intellectual or developmental disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal responsibility.

B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts employment in any direct care position, (ii) any applicant for approval as a sponsored residential service provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service provider, (iv) any person employed by a sponsored residential service provider to provide services in the home, and (v) any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in subsection C, D, or F, no provider licensed pursuant to this article shall (a) hire for compensated employment persons who have been convicted of any offense listed in subsection B of § 37.2-314; (b) approve an applicant as a sponsored residential service provider if the applicant, any adult residing in the home of the applicant, or any person employed by the applicant has been convicted of an offense listed in subsection B of § 37.2-314; or (c) permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver any person who has been convicted of an offense listed in subsection B of § 37.2-314.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the requesting authorized officer or director of a provider licensed pursuant to this article. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the authorized officer or director of a provider licensed pursuant to this article shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment at adult substance abuse or adult mental health treatment facilities a person who was convicted of a misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56; (ii) reckless handling of a

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59 firearm, as set out in § 18.2-56.1; or (iii) assault and battery, as set out in subsection A of § 18.2-57; or
60 any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects,
61 as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60; (c) breaking and entering a dwelling house
62 with intent to commit other misdemeanor, as set out in § 18.2-92; or (d) possession of burglarious tools,
63 as set out in § 18.2-94; or any felony violation relating to the distribution of drugs, as set out in Article
64 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections H1 and H2
65 of § 18.2-248; or an equivalent offense in another state, if the hiring provider determines, based upon a
66 screening assessment, that the criminal behavior was substantially related to the applicant's substance
67 abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to
68 individuals receiving services based on his criminal history background and his substance abuse or
69 mental illness history.

70 D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment
71 at adult substance abuse treatment facilities a person who has been convicted of not more than one
72 offense of assault and battery of a law-enforcement officer under § 18.2-57, or an equivalent offense in
73 another state, if (i) the person has been granted a simple pardon if the offense was a felony committed
74 in Virginia, or the equivalent if the offense was committed in another state; (ii) more than 10 years have
75 elapsed since the conviction; and (iii) the hiring provider determines, based upon a screening assessment,
76 that the criminal behavior was substantially related to the applicant's substance abuse and that the person
77 has been successfully rehabilitated and is not a risk to individuals receiving services based on his
78 criminal history background and his substance abuse history.

79 E. The hiring provider and a screening contractor designated by the Department shall screen
80 applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have
81 been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal
82 history backgrounds and substance abuse or mental illness histories. To be eligible for such screening,
83 the applicant shall have completed all prison or jail terms, shall not be under probation or parole
84 supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court
85 costs for any prior convictions, and shall have been free of parole or probation for at least five years for
86 all convictions. In addition to any supplementary information the provider or screening contractor may
87 require or the applicant may wish to present, the applicant shall provide to the screening contractor a
88 statement from his most recent probation or parole officer, if any, outlining his period of supervision
89 and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The
90 cost of this screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

91 F. Notwithstanding the provisions of subsection B, a provider may (i) hire for compensated
92 employment, (ii) *approve as a sponsored residential service provider*, or (iii) *permit to enter into a*
93 *shared living arrangement* persons who have been convicted of not more than one misdemeanor offense
94 under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person
95 committed the offense while employed in a direct care position. *A provider may also approve a person*
96 *as a sponsored residential service provider if (a) any adult living in the home of an applicant or (b) any*
97 *person employed by the applicant to provide services in the home in which sponsored residential*
98 *services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or*
99 *18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed the offense*
100 *while employed in a direct care position.*

101 G. Providers licensed pursuant to this article also shall require, as a condition of employment,
102 approval as a sponsored residential service provider, or permission to enter into a shared living
103 arrangement with a person receiving medical assistance services pursuant to a waiver, written consent
104 and personal information necessary to obtain a search of the registry of founded complaints of child
105 abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

106 H. The cost of obtaining the criminal history record and search of the child abuse and neglect
107 registry record shall be borne by the applicant, unless the provider licensed pursuant to this article
108 decides to pay the cost.

109 I. A person who complies in good faith with the provisions of this section shall not be liable for any
110 civil damages for any act or omission in the performance of duties under this section unless the act or
111 omission was the result of gross negligence or willful misconduct.

112 § 37.2-506. Background checks required.

113 A. As used in this section:

114 "Direct care position" means any position that includes responsibility for (i) treatment, case
115 management, health, safety, development, or well-being of an individual receiving services or (ii)
116 immediately supervising a person in a position with this responsibility.

117 "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse
118 or adult mental health treatment position to another such position within the same community services
119 board or (ii) new employment in an adult substance abuse or adult mental health treatment position in
120 another office or program of the same community services board if the person employed prior to July 1,

1999, had no convictions in the five years prior to the application date for employment. "Hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or developmental services direct care position within the same community services board or (b) new employment in any mental health or developmental services direct care position in another office or program of the same community services board for which the person has previously worked in an adult substance abuse treatment position.

"Shared living" means an arrangement in which the Commonwealth's program of medical assistance pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and providing companionship, support, and other limited, basic assistance to a person with intellectual or developmental disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal responsibility.

B. Every community services board shall require (i) any applicant who accepts employment in any direct care position with the community services board, (ii) any applicant for approval as a sponsored residential service provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service provider, (iv) any person employed by a sponsored residential service provider to provide services in the home, and (v) any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in subsection C, D, or F, no community services board shall hire for compensated employment, approve as a sponsored residential service provider, or permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver persons who have been convicted of any offense listed in subsection B of § 37.2-314.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the requesting executive director or personnel director of the community services board. If any applicant is denied employment because of information appearing on his criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the executive director or personnel director of any community services board shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment at adult substance abuse or adult mental health treatment programs a person who was convicted of a misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56; (ii) reckless handling of a firearm, as set out in § 18.2-56.1; (iii) assault and battery, as set out in subsection A of § 18.2-57; or (iv) assault and battery against a family or household member, as set out in subsection A of § 18.2-57.2; or any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects, as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set out in § 18.2-92; or (d) possession of burglarious tools, as set out in § 18.2-94; or any felony violation relating to the distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsection H1 or H2 of § 18.2-248; or an equivalent offense in another state, if the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment at adult substance abuse treatment programs a person who has been convicted of not more than one offense of assault and battery of a law-enforcement officer under § 18.2-57, or an equivalent offense in another state, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the offense was committed in another state; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse history.

E. The community services board and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such

182 screening, the applicant shall have completed all prison or jail terms, shall not be under probation or
183 parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution,
184 and court costs for any prior convictions, and shall have been free of parole or probation for at least
185 five years for all convictions. In addition to any supplementary information the community services
186 board or screening contractor may require or the applicant may wish to present, the applicant shall
187 provide to the screening contractor a statement from his most recent probation or parole officer, if any,
188 outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in
189 connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless
190 the board decides to pay the cost.

191 F. Notwithstanding the provisions of subsection B, a community services board may (i) hire for
192 compensated employment, (ii) *approve as a sponsored residential service provider, or (iii) permit to*
193 *enter into a shared living arrangement* persons who have been convicted of not more than one
194 misdemeanor offense under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction,
195 unless the person committed the offense while employed in a direct care position. A [~~provider~~
196 *community services board*] *may also approve a person as a sponsored residential service provider if*
197 *(a) any adult living in the home of an applicant or (b) any person employed by the applicant to provide*
198 *services in the home in which sponsored residential services are provided has been convicted of not*
199 *more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following*
200 *the conviction, unless the person committed the offense while employed in a direct care position.*

201 G. Community services boards also shall require, as a condition of employment, approval as a
202 sponsored residential service provider, or permission to enter into a shared living arrangement with a
203 person receiving medical assistance services pursuant to a waiver, written consent and personal
204 information necessary to obtain a search of the registry of founded complaints of child abuse and
205 neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

206 H. The cost of obtaining the criminal history record and search of the child abuse and neglect
207 registry record shall be borne by the applicant, unless the community services board decides to pay the
208 cost.

209 I. A person who complies in good faith with the provisions of this section shall not be liable for any
210 civil damages for any act or omission in the performance of duties under this section unless the act or
211 omission was the result of gross negligence or willful misconduct.