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HOUSE BILL NO. 2035

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on January 29, 2019)

(Patron Prior to Substitute—Delegate Price)

A *BILL to amend and reenact §§ 32.1-162.9:1, 37.2-416, 37.2-506, and 63.2-1720, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to Department of Medical Assistance Services; Medicaid service providers; release of criminal history background information.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-162.9:1, 37.2-416, 37.2-506, and 63.2-1720, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted as follows:

§ 32.1-162.9:1. Employment for compensation of persons convicted of barrier crimes prohibited; criminal records check required; drug testing; suspension or revocation of license.

A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 shall not hire for compensated employment, persons who have been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

However, a home care organization or hospice may hire an applicant who has been convicted of one such offense punishable as a misdemeanor that does not involve abuse or neglect if five years have elapsed since the conviction.

Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or outside the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense is guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

Such home care organization or hospice shall, within 30 days of employment, obtain for any compensated employees an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. However, no employee shall be permitted to work in a position that involves direct contact with a patient until an original criminal record clearance or original criminal history record has been received, unless such person works under the direct supervision of another employee for whom a background check has been completed in accordance with the requirements of this section. The provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment because of convictions appearing on his criminal history record, the home care organization or hospice shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

B. *Notwithstanding any other provision of law, a licensed home care agency, a home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8, or any licensed hospice as defined in § 32.1-162.1 that provides services to individuals receiving services under the state plan for medical assistance services or any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history background check has been performed on an employee of the home care agency in accordance with this section and (ii) whether such person is eligible for employment.*

C. A licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8 shall establish policies for maintaining a drug-free workplace, which may include drug testing when the employer has cause to believe that the person has engaged in the use of illegal drugs and periodically during the course of employment. All positive results from drug testing administered pursuant to this section shall be reported to the health regulatory boards responsible for licensing, certifying, or registering the person to practice, if any.

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

E. A licensed home care organization or hospice shall notify and provide all students a copy of

HOUSE SUBSTITUTE

HB2035H1

60 the provisions of this section prior to or upon enrollment in a certified nurse aide program operated by
61 such home care organization or hospice.

62 **§ 37.2-416. Background checks required.**

63 A. As used in this section:

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

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

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

83 B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts
84 employment in any direct care position, (ii) any applicant for approval as a sponsored residential service
85 provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential
86 service provider, (iv) any person employed by a sponsored residential service provider to provide
87 services in the home, and (v) any person who enters into a shared living arrangement with a person
88 receiving medical assistance services pursuant to a waiver to submit to fingerprinting and provide
89 personal descriptive information to be forwarded through the Central Criminal Records Exchange to the
90 Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record
91 information regarding the applicant. Except as otherwise provided in subsection C, D, or F, no provider
92 licensed pursuant to this article shall:

93 1. Hire for compensated employment any person who has been convicted of (i) any offense set forth
94 in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth
95 in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the
96 application date for employment or (b) such person continues on probation or parole or has failed to pay
97 required court costs for such offense set forth in clause (iv) of the definition of barrier crime in
98 § 19.2-392.02;

99 2. Approve an applicant as a sponsored residential service provider if the applicant, any adult
100 residing in the home of the applicant, or any person employed by the applicant has been convicted of (i)
101 any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii)
102 any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five
103 years prior to the application date to be a sponsored residential service provider or (b) such applicant
104 continues on probation or parole or has failed to pay required court costs for such offense set forth in
105 clause (iv) of the definition of barrier crime in § 19.2-392.02; or

106 3. Permit to enter into a shared living arrangement with a person receiving medical assistance
107 services pursuant to a waiver any person who has been convicted of (i) any offense set forth in clause
108 (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause
109 (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to entering into a
110 shared living arrangement or (b) such person continues on probation or parole or has failed to pay
111 required court costs for such offense set forth in clause (iv) of the definition of barrier crime in
112 § 19.2-392.02.

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

121 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 any violation of § 18.2-51.3; a misdemeanor violation of § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the hiring provider 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, a provider may hire for compensated employment at adult substance abuse treatment facilities a person who has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the person was convicted under the laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring provider 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 hiring provider 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 screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the provider or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

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

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

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

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

J. Notwithstanding any other provision of law, a provider licensed pursuant to this article that provides services to individuals receiving services under the state plan for medical assistance services or any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history background check has been completed for a person described in subsection B for whom a criminal history background check is required and (ii) whether the person described in subsection B is eligible for employment, to provide sponsored residential services, to provide services in the home of a sponsored residential service provider, or to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver.

§ 37.2-506. Background checks required.

183 A. As used in this section:

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

187 "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse
188 or adult mental health treatment position to another such position within the same community services
189 board or (ii) new employment in an adult substance abuse or adult mental health treatment position in
190 another office or program of the same community services board if the person employed prior to July 1,
191 1999, had no convictions in the five years prior to the application date for employment. "Hire for
192 compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment
193 position to any mental health or developmental services direct care position within the same community
194 services board or (b) new employment in any mental health or developmental services direct care
195 position in another office or program of the same community services board for which the person has
196 previously worked in an adult substance abuse treatment position.

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

202 B. Every community services board shall require (i) any applicant who accepts employment in any
203 direct care position with the community services board, (ii) any applicant for approval as a sponsored
204 residential service provider, (iii) any adult living in the home of an applicant for approval as a
205 sponsored residential service provider, (iv) any person employed by a sponsored residential service
206 provider to provide services in the home, and (v) any person who enters into a shared living
207 arrangement with a person receiving medical assistance services pursuant to a waiver to submit to
208 fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal
209 Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national
210 criminal history record information regarding the applicant. Except as otherwise provided in subsection
211 C, D, or F, no community services board shall hire for compensated employment, approve as a
212 sponsored residential service provider, or permit to enter into a shared living arrangement with a person
213 receiving medical assistance services pursuant to a waiver persons who have been convicted of (a) any
214 offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (b) any
215 offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years
216 prior to the application date for employment, the application date to be a sponsored residential service
217 provider, or entering into a shared living arrangement or (2) such person continues on probation or
218 parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition
219 of barrier crime in § 19.2-392.02.

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

228 C. Notwithstanding the provisions of subsection B, the community services board may hire for
229 compensated employment at adult substance abuse or adult mental health treatment programs a person
230 who was convicted of any violation of § 18.2-51.3; a misdemeanor violation of § 18.2-56 or 18.2-56.1,
231 subsection A of § 18.2-57, or § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any
232 offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense
233 pursuant to subsection H1 or H2 of § 18.2-248; or any substantially similar offense under the laws of
234 another jurisdiction, if the hiring community services board determines, based upon a screening
235 assessment, that the criminal behavior was substantially related to the applicant's substance abuse or
236 mental illness and that the person has been successfully rehabilitated and is not a risk to individuals
237 receiving services based on his criminal history background and his substance abuse or mental illness
238 history.

239 D. Notwithstanding the provisions of subsection B, the community services board may hire for
240 compensated employment at adult substance abuse treatment programs a person who has been convicted
241 of not more than one offense under subsection C of § 18.2-57, or any substantially similar offense under
242 the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense was a
243 felony committed in Virginia, or the equivalent if the person was convicted under the laws of another
244 jurisdiction; (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 screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the community services board or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the board decides to pay the cost.

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

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

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

I. Notwithstanding any other provision of law, a community services board that provides services to individuals receiving services under the state plan for medical assistance services or any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history background check has been completed for a person described in subsection B for whom a criminal history background check is required and (ii) whether the person described in subsection B is eligible for employment, to provide sponsored residential services, to provide services in the home of a sponsored residential service provider, or to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver.

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

§ 63.2-1720. (For expiration date, see Acts 2017, cc. 189 and 751, as amended by Acts 2018, cc. 146 and 278) Assisted living facilities, adult day care centers, child-placing agencies, and independent foster homes; employment for compensation of persons or use of volunteers convicted of certain offenses prohibited; background check required; penalty.

A. No assisted living facility or adult day care center shall hire for compensated employment or continue to employ persons who have been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02. A child-placing agency or independent foster home licensed in accordance with the provisions of this chapter shall not hire for compensated employment or continue to employ persons who (i) have been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) are the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. All applicants for employment shall undergo background checks pursuant to subsection C.

B. A licensed assisted living facility or adult day care center may hire an applicant or continue to employ a person convicted of one misdemeanor barrier crime not involving abuse or neglect, or any

306 substantially similar offense under the laws of another jurisdiction, if five years have elapsed following
307 the conviction.

308 C. Background checks pursuant to subsection A require:

309 1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the
310 subject of any pending criminal charges within or outside the Commonwealth and, in the case of
311 licensed child-placing agencies and independent foster homes, whether or not the person has been the
312 subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

313 2. A criminal history records check through the Central Criminal Records Exchange pursuant to
314 § 19.2-389; and

315 3. In the case of licensed child-placing agencies and independent foster homes, a search of the
316 central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and
317 neglect.

318 D. Any person making a materially false statement regarding the sworn statement or affirmation
319 provided pursuant to subdivision C 1 is guilty of a Class 1 misdemeanor.

320 E. A licensed assisted living facility, licensed adult day care center, licensed child-placing agency, or
321 licensed independent foster home shall obtain for any compensated employees within 30 days of
322 employment (i) an original criminal record clearance with respect to convictions for any offense set forth
323 in clause (i) of the definition of barrier crime in § 19.2-392.02 or an original criminal history record
324 from the Central Criminal Records Exchange and (ii) in the case of licensed child-placing agencies and
325 independent foster homes, (a) an original criminal record clearance with respect to any barrier crime as
326 defined in § 19.2-392.02 or an original criminal history record from the Central Criminal Records
327 Exchange and (b) a copy of the information from the central registry for any compensated employee
328 within 30 days of employment. However, no employee shall be permitted to work in a position that
329 involves direct contact with a person or child receiving services until an original criminal record
330 clearance or original criminal history record has been received, unless such person works under the
331 direct supervision of another employee for whom a background check has been completed in accordance
332 with the requirements of this section. If an applicant is denied employment because of information from
333 the central registry or convictions appearing on his criminal history record, the licensed assisted living
334 facility, adult day care center, child-placing agency, or independent foster home shall provide a copy of
335 the information obtained from the central registry or the Central Criminal Records Exchange or both to
336 the applicant.

337 F. No volunteer who (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is
338 the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth shall
339 be permitted to serve in a licensed child-placing agency or independent foster home. Any person
340 desiring to volunteer at a licensed child-placing agency or independent foster home shall provide the
341 agency or home with a sworn statement or affirmation pursuant to subdivision C 1. Such licensed
342 child-placing agency or independent foster home shall obtain for any volunteers, within 30 days of
343 commencement of volunteer service, a copy of (a) the information from the central registry and (b) an
344 original criminal record clearance with respect to any barrier crime as defined in § 19.2-392.02 or an
345 original criminal history record from the Central Criminal Records Exchange. Any person making a
346 materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision
347 C 1 is guilty of a Class 1 misdemeanor. If a volunteer is denied service because of information from the
348 central registry or convictions appearing on his criminal history record, such licensed child-placing
349 agency or independent foster home shall provide a copy of the information obtained from the central
350 registry or the Central Criminal Records Exchange or both to the volunteer. The provisions of this
351 subsection shall apply only to volunteers who will be alone with any child in the performance of their
352 duties and shall not apply to a parent-volunteer of a child attending a licensed child-placing agency or
353 independent foster home, whether or not such parent-volunteer will be alone with any child in the
354 performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children
355 that includes the parent-volunteer's own child in a program that operates no more than four hours per
356 day, provided that the parent-volunteer works under the direct supervision of a person who has received
357 a clearance pursuant to this section.

358 G. No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult day
359 care center without the permission or under the supervision of a person who has received a clearance
360 pursuant to this section.

361 H. Further dissemination of the background check information is prohibited other than to the
362 Commissioner's representative or a federal or state authority or court as may be required to comply with
363 an express requirement of law for such further dissemination.

364 I. *Notwithstanding any other provision of law, a licensed adult day care center that provides services*
365 *to individuals receiving services under the state plan for medical assistance services or any waiver*
366 *thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history*
367 *background check has been completed for an employee in accordance with this section and (ii) whether*

such employee is eligible for employment.

J. A licensed assisted living facility shall notify and provide all students a copy of the provisions of this article prior to or upon enrollment in a certified nurse aide program operated by such assisted living facility.

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

§ 63.2-1720. (For effective date, see Acts 2017, cc. 189 and 751, as amended by Acts 2018, cc. 146 and 278) Assisted living facilities and adult day care centers; employment for compensation of persons or use of volunteers convicted of certain offenses prohibited; background check required; penalty.

A. No assisted living facility or adult day care center shall hire for compensated employment or continue to employ persons who have been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02. A child-placing agency or independent foster home licensed in accordance with the provisions of this chapter shall not hire for compensated employment or continue to employ persons who (i) have been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) are the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. All applicants for employment shall undergo background checks pursuant to subsection C.

B. A licensed assisted living facility or adult day care center may hire an applicant or continue to employ a person convicted of one misdemeanor barrier crime not involving abuse or neglect, or any substantially similar offense under the laws of another jurisdiction, if five years have elapsed following the conviction.

C. Background checks pursuant to subsection A require:

1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and, in the case of licensed child-placing agencies, independent foster homes, and family day systems, registered family day homes, and family day homes approved by family day systems, whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. A criminal history records check through the Central Criminal Records Exchange pursuant to § 19.2-389; and

3. In the case of licensed child-placing agencies, independent foster homes, and family day systems, registered family day homes, and family day homes approved by family day systems, a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

D. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision C 1 is guilty of a Class 1 misdemeanor.

E. A licensed assisted living facility, licensed adult day care center, licensed child-placing agency, licensed independent foster home, licensed family day system, registered family day home, or family day home approved by a family day system shall obtain for any compensated employees within 30 days of employment (i) an original criminal record clearance with respect to convictions for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 or an original criminal history record from the Central Criminal Records Exchange and (ii) in the case of licensed child-placing agencies, independent foster homes, and family day systems, registered family day homes, and family day homes approved by family day systems, (a) an original criminal record clearance with respect to any barrier crime as defined in § 19.2-392.02 or an original criminal history record from the Central Criminal Records Exchange and (b) a copy of the information from the central registry for any compensated employee within 30 days of employment. However, no employee shall be permitted to work in a position that involves direct contact with a person or child receiving services until an original criminal record clearance or original criminal history record has been received, unless such person works under the direct supervision of another employee for whom a background check has been completed in accordance with the requirements of this section. If an applicant is denied employment because of information from the central registry or convictions appearing on his criminal history record, the licensed assisted living facility, adult day care center, child-placing agency, independent foster home, or family day system, registered family day home, or family day home approved by a family day system shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

F. No volunteer who (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth shall be permitted to serve in a licensed child-placing agency, independent foster home, or family day system, registered family day home, or family day home approved by a family day system. Any person desiring to volunteer at a licensed child-placing agency, independent foster home, or family day system,

429 registered family day home, or family day home approved by a family day system shall provide the
430 agency, system, or home with a sworn statement or affirmation pursuant to subdivision C 1. Such
431 licensed child-placing agency, independent foster home, or family day system, registered family day
432 home, or family day home approved by a family day system shall obtain for any volunteers, within 30
433 days of commencement of volunteer service, a copy of (a) the information from the central registry and
434 (b) an original criminal record clearance with respect to any barrier crime as defined in § 19.2-392.02 or
435 an original criminal history record from the Central Criminal Records Exchange. Any person making a
436 materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision
437 C 1 is guilty of a Class 1 misdemeanor. If a volunteer is denied service because of information from the
438 central registry or convictions appearing on his criminal history record, such licensed child-placing
439 agency, independent foster home, or family day system, registered family day home, or family day home
440 approved by a family day system shall provide a copy of the information obtained from the central
441 registry or the Central Criminal Records Exchange or both to the volunteer. The provisions of this
442 subsection shall apply only to volunteers who will be alone with any child in the performance of their
443 duties and shall not apply to a parent-volunteer of a child attending a licensed child-placing agency,
444 independent foster home, or family day system, registered family day home, or family day home
445 approved by a family day system, whether or not such parent-volunteer will be alone with any child in
446 the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of
447 children that includes the parent-volunteer's own child in a program that operates no more than four
448 hours per day, provided that the parent-volunteer works under the direct supervision of a person who
449 has received a clearance pursuant to this section.

450 G. No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult day
451 care center without the permission or under the supervision of a person who has received a clearance
452 pursuant to this section.

453 H. Further dissemination of the background check information is prohibited other than to the
454 Commissioner's representative or a federal or state authority or court as may be required to comply with
455 an express requirement of law for such further dissemination.

456 I. *Notwithstanding any other provision of law, a licensed adult day care center that provides services*
457 *to individuals receiving services under the state plan for medical assistance services or any waiver*
458 *thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history*
459 *background check has been completed for an employee in accordance with this section and (ii) whether*
460 *such employee is eligible for employment.*

461 J. A licensed assisted living facility shall notify and provide all students a copy of the provisions of
462 this article prior to or upon enrollment in a certified nurse aide program operated by such assisted living
463 facility.

464 J. K. A person who complies in good faith with the provisions of this section shall not be liable for
465 any civil damages for any act or omission in the performance of duties under this section unless the act
466 or omission was the result of gross negligence or willful misconduct.