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HOUSE BILL NO. 1540

Offered January 10, 2020

A BILL to amend and reenact §§ 37.2-314 and 37.2-416 of the Code of Virginia, relating to behavioral health service providers; barrier crimes; exceptions.

Patron—Collins

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-314 and 37.2-416 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-314. Background check required.

A. As a condition of employment, the Department shall require any applicant who (i) accepts a position of employment at a state facility and was not employed by that state facility prior to July 1, 1996, or (ii) accepts a position with the Department that receives, monitors, or disburses funds of the Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to fingerprinting and provide personal descriptive information to be forwarded along with the applicant's fingerprints 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.

B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated employment persons who have been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment or (b) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

C. Notwithstanding the provisions of subsection B, the Department may hire for compensated employment persons who have been convicted of any misdemeanor violation of subsections A or A1 of § 18.2-56.1; any misdemeanor violation of subsection A of § 18.2-57 or 18.2-57.2; any violation of § 18.2-58, 18.2-89, 18.2-91, 18.2-92, or 18.2-94; any felony violation of § 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, or 18.2-258.2; any felony violation of § 18.2-282 or 18.2-346; or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction.

D. The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the state facility or to the Department. If an 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 state facility or Department shall not be disseminated except as provided in this section.

~~D.~~ E. Those applicants listed in clause (i) of subsection A also shall provide to the state facility or Department a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on them.

~~E.~~ F. The Board may adopt regulations to comply with the provisions of this section. Copies of any information received by the state facility or Department pursuant to this section shall be available to the Department and to the applicable state facility but shall not be disseminated further, except as permitted by state or federal law. The cost of obtaining the criminal history record and the central registry information shall be borne by the applicant, unless the Department or state facility decides to pay the cost.

§ 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

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59 date for employment. "Hire for compensated employment" includes (a) a promotion or transfer from an  
60 adult substance abuse treatment position to any mental health or developmental services direct care  
61 position within the same licensee licensed pursuant to this article or (b) new employment in any mental  
62 health or developmental services direct care position in another office or program of the same licensee  
63 licensed pursuant to this article for which the person has previously worked in an adult substance abuse  
64 treatment position.

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

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

80 1. Hire for compensated employment any person who has been convicted of (i) any offense set forth  
81 in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth  
82 in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the  
83 application date for employment or (b) *if* such person continues on probation or parole or has failed to  
84 pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in  
85 § 19.2-392.02;

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

93 3. Permit to enter into a shared living arrangement with a person receiving medical assistance  
94 services pursuant to a waiver any person who has been convicted of (i) any offense set forth in clause  
95 (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause  
96 (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to entering into a  
97 shared living arrangement or (b) *if* such person continues on probation or parole or has failed to pay  
98 required court costs for such offense set forth in clause (iv) of the definition of barrier crime in  
99 § 19.2-392.02.

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

108 C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment  
109 at adult substance abuse or adult mental health treatment facilities a person who was convicted of any  
110 violation of § 18.2-51.3; a *any* misdemeanor violation of § 18.2-56 or 18.2-56.1 ~~or~~; *any misdemeanor*  
111 *violation of* subsection A of § 18.2-57 *or* 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or  
112 18.2-94; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an  
113 offense pursuant to subsections H1 and H2 of § 18.2-248; or any substantially similar offense under the  
114 laws of another jurisdiction, if the hiring provider determines, based upon a screening assessment, that  
115 the criminal behavior was substantially related to the applicant's substance abuse or mental illness and  
116 that the person has been successfully rehabilitated and is not a risk to individuals receiving services  
117 based on his criminal history background and his substance abuse or mental illness history.

118 D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment  
119 at adult substance abuse treatment facilities a person who has been convicted of not more than one  
120 offense under subsection C of § 18.2-57, or any substantially similar offense under the laws of another

121 jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in  
 122 Virginia, or the equivalent if the person was convicted under the laws of another jurisdiction; (ii) more  
 123 than 10 years have elapsed since the conviction; and (iii) the hiring provider determines, based upon a  
 124 screening assessment, that the criminal behavior was substantially related to the applicant's substance  
 125 abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving  
 126 services based on his criminal history background and his substance abuse history.

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

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

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

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

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

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