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HOUSE BILL NO. 1540

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 4, 2020)

(Patron Prior to Substitute—Delegate Collins)

A BILL to amend and reenact §§ 37.2-314, 37.2-416, and 37.2-506 of the Code of Virginia, relating to behavioral health service providers; barrier crimes; exceptions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-314, 37.2-416, and 37.2-506 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 at an adult substance abuse or adult mental health treatment program a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1, 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 misdemeanor violation of § 18.2-282 or 18.2-346; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsection H1 or H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the Department 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. 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

60 treatment position in another office or program licensed pursuant to this article if the person employed
61 prior to July 1, 1999, in a licensed program had no convictions in the five years prior to the application
62 date for employment. "Hire for compensated employment" includes (a) a promotion or transfer from an
63 adult substance abuse treatment position to any mental health or developmental services direct care
64 position within the same licensee licensed pursuant to this article or (b) new employment in any mental
65 health or developmental services direct care position in another office or program of the same licensee
66 licensed pursuant to this article for which the person has previously worked in an adult substance abuse
67 treatment position.

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

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

83 1. Hire for compensated employment any person who has been convicted of (i) any offense set forth
84 in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth
85 in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the
86 application date for employment or (b) *if* such person continues on probation or parole or has failed to
87 pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in
88 § 19.2-392.02;

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

96 3. Permit to enter into a shared living arrangement with a person receiving medical assistance
97 services pursuant to a waiver any person who has been convicted of (i) any offense set forth in clause
98 (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause
99 (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to entering into a
100 shared living arrangement or (b) *if* such person continues on probation or parole or has failed to pay
101 required court costs for such offense set forth in clause (iv) of the definition of barrier crime in
102 § 19.2-392.02.

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

111 C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment
112 at adult substance abuse or adult mental health treatment ~~facilities~~ *programs* a person who was convicted
113 of any violation of § 18.2-51.3; ~~a~~ *any* misdemeanor violation of § 18.2-56 or 18.2-56.1 ~~or~~, subsection A
114 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 misdemeanor~~
115 ~~violation of § 18.2-282 or 18.2-346~~; any offense set forth in clause (iii) of the definition of barrier crime
116 in § 19.2-392.02, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or any
117 substantially similar offense under the laws of another jurisdiction, if the hiring provider determines,
118 based upon a screening assessment, that the criminal behavior was substantially related to the applicant's
119 substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk
120 to individuals receiving services based on his criminal history background and his substance abuse or
121 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.

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 community services board or (ii) new employment in an adult substance abuse or adult mental health treatment position in 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

183 compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment
184 position to any mental health or developmental services direct care position within the same community
185 services board or (b) new employment in any mental health or developmental services direct care
186 position in another office or program of the same community services board for which the person has
187 previously worked in an adult substance abuse treatment position.

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

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

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

219 C. Notwithstanding the provisions of subsection B, the community services board may hire for
220 compensated employment at adult substance abuse or adult mental health treatment programs a person
221 who was convicted of any violation of § 18.2-51.3; *a any* misdemeanor violation of § 18.2-56 or
222 18.2-56.1, subsection A of § 18.2-57, or § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or
223 18.2-94; *any misdemeanor violation of § 18.2-282 or 18.2-346*; any offense set forth in clause (iii) of
224 the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsection H1 or H2 of
225 § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the hiring
226 community services board determines, based upon a screening assessment, that the criminal behavior
227 was substantially related to the applicant's substance abuse or mental illness and that the person has been
228 successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history
229 background and his substance abuse or mental illness history.

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

240 E. The community services board and a screening contractor designated by the Department shall
241 screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants
242 have been rehabilitated successfully and are not a risk to individuals receiving services based on their
243 criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such
244 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.