REGULATION FOR BACKGROUND CHECKS

FOR

ASSISTED LIVING FACILITIES AND ADULT DAY CARE CENTERS

DEPARTMENT OF SOCIAL SERVICES
COMMONWEALTH OF VIRGINIA

REGULATION FOR BACKGROUND CHECKS
FOR
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REGULATION FOR BACKGROUND CHECKS FOR ASSISTED LIVING FACILITIES AND ADULT DAY CARE CENTERS 22 VAC 40-90

PART I. INTRODUCTION.

22 VAC 40-90-10. Definitions.

The following words and terms when used in conjunction with this chapter shall have the following meanings:

"Applicant for licensure" means the entity applying for approval as a licensed assisted living facility. An applicant may be an individual, association, partnership, limited liability company, corporation or public agency.

"Barrier crimes" means certain crimes that automatically bar individuals convicted of same from employment at a licensed assisted living facility or adult day care center and that automatically bar licensure of applicants convicted of same from assisted living facility licensure. These crimes, as specified by § 63.2-1719 of the Code of Virginia, are murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in subsection A of § 18.2-47; abduction for immoral purposes as set out in § 18.2-48; assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery as set out in § 18.2-58; carjacking as set out in § 18.2-58.1; threats of death or bodily injury as set out in § 18.2-60; felony stalking as set out in § 18.2-60.3; sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289; aggressive use of a machine gun as set out in § 18.2-290; use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300; pandering as set out in § 18.2-355; crimes against nature involving children as set out in § 18.2-361; incest as set out in § 18.2-366; taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1; abuse and neglect of children as set out in § 18.2-371.1; failure to secure medical attention for an injured child as set out in § 18.2-314; obscenity offenses as set out in § 18.2-374.1; possession of child pornography as set out in § 18.2-374.1:1; electronic facilitation of pornography as set out in § 18.2-374.3; abuse and neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state. Applicants for employment convicted of one misdemeanor barrier crime not involving abuse or neglect may be hired if five years have elapsed following the conviction.

22 VAC 40-90-10.

"Central Criminal Records Exchange" means the information system containing conviction data of those crimes committed in Virginia, maintained by the Department of State Police, through which the criminal history record request form is processed.

"Criminal history record request" means the Department of State Police form used to authorize the State Police to generate a criminal history record report on an individual.

"Criminal history record report" means either the criminal record clearance or the criminal history record issued by the Central Criminal Records Exchange, Department of State Police. The criminal al record clearance provides conviction data only related to barrier crimes; the criminal history record discloses all known conviction data.

"Employee" means compensated personnel working at a facility regardless of role, service, age, function or duration of employment at the facility. Employee also includes those individuals hired through a contract to provide services for the facility.

"Facility" means an assisted living facility or adult day care center subject to licensure by the Department of Social Services.

"Sworn statement or affirmation" means a document to be completed, signed, and submitted for licensure or employment. The document discloses the licensure applicant's or employment applicant's criminal convictions and pending criminal charges that occurred within or outside the Commonwealth of Virginia. For applicants for licensure as an assisted living facility, the document also discloses whether or not the applicant has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth of Virginia. This is required as specified in §§ 63.2-1720 and 63.2-1721 of the Code of Virginia.

22 VAC 40-90-20. Legal base and applicability.

A. Sections 63.2-1702 and 63.2-1721 of the Code of Virginia require all applicants for licensure as assisted living facilities to undergo background checks consisting of a sworn statement or affirmation and criminal history record check. If the applicant is an individual, he must undergo a background check. If the applicant is an association, partnership, limited liability company, corporation or public agency, the officers and agents of the applicant must undergo background checks.

22 VAC 40-90-20.

B. Section 63.2-1720 of the Code of Virginia requires all employees of assisted living facilities and adult day care centers, as defined by § 63.2-100 of the Code of Virginia, to obtain a criminal history record report from the Department of State Police.

C. Section 63.2-1720 of the Code of Virginia requires all applicants for employment at assisted living facilities and adult day care centers to provide the hiring facility with a sworn statement or affirmation.

D. No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult day care center without the permission or under the supervision of a person who has received a clearance pursuant to § 63.2-1720 of the Code of Virginia.

PART II.
THE SWORN STATEMENT OR AFFIRMATION.

22 VAC 40-90-30. Sworn statement or affirmation.

A. The applicant for licensure shall complete a sworn statement or affirmation upon application for licensure as an assisted living facility.

B. The sworn statement or affirmation shall be completed for all applicants for employment. (NOTE: A model form is available from the department upon request and on the department's website.)

C. Any person making a materially false statement on the sworn statement or affirmation shall be guilty of a Class 1 misdemeanor.

D. The sworn statement or affirmation shall be attached and filed with the criminal history record report.

E. The commissioner shall provide a copy of the sworn statement or affirmation to any applicant denied licensure as an assisted living facility because of information on the sworn statement or affirmation.

F. Further dissemination of the sworn statement or affirmation information is prohibited other than to the commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

PART III.
THE CRIMINAL HISTORY RECORD REPORT.

2 VAC 40-90-40. General requirements.

A. The applicant for licensure shall submit a criminal history record report upon application for licensure as an assisted living facility.

B. The criminal history record report shall be obtained on or prior to the 30th day of employment for each employee.

C. Any person required by this chapter to obtain a criminal history record report shall be ineligible for employment if the report contains convictions of the barrier crimes.

D. If a criminal history record is requested, it shall be the responsibility of the licensee to ensure that the employee has not been convicted of any of the barrier crimes.

E. Criminal history record reports shall be kept confidential. Reports on employees shall only be received by the facility administrator, licensee, board president, or their designee.

F. A criminal history record report issued by the State Police shall not be accepted by the facility if the report is dated more than 90 days prior to the date of employment.

G. Any applicant denied licensure as an assisted living facility or employment at an assisted living facility or adult day care center because of convictions appearing on his criminal history record report shall be provided a copy of the report by the licensing authority or the hiring facility.

22 VAC 40-90-50. Validity of criminal history record reports.

A. Facility staff shall accept only the original criminal history record report. Photocopies will not be acceptable.

EXCEPTION: Facilities using temporary agencies for the provision of substitute staff shall request a letter from the agency containing the following information:

1. The name of the substitute staff person;

2. The date of employment; and

22 VAC 40-90-50.

3. A statement verifying that the criminal history record report has been obtained within 30 days of employment, is on file at the temporary agency, and does not contain barrier crimes.

This letter shall have the same maintenance and retention requirements of a criminal history record report.

B. Each criminal history record report shall be verified by the operator of the facility by matching the name, social security number and date of birth to establish that all information pertaining to the individual cleared through the Central Criminal Records Exchange is exactly the same as another form of identification such as a driver's license. If any of the information does not match, a new criminal history record request must be submitted to the Central Criminal Records Exchange with correct information.

C. A criminal history record report remains valid as long as the employee remains in continuous service at the same facility.

D. When an individual terminates employment at one facility and begins work at another facility, the criminal history record report secured for the prior facility shall not be valid for the new facility. A new criminal history record report and sworn statement or affirmation shall be required.

EXCEPTIONS:

1. When an employee transfers to a facility owned and operated by the same entity, with a lapse in service of not more than 30 days, a new criminal history record report shall not be required. The file at the previous facility shall contain a statement in the record of the former employee indicating that the original criminal history record report has been transferred or forwarded to the new location.

2. A criminal history record report for an individual who takes a leave of absence will remain valid as long as the period of separation does not exceed six consecutive months. Once a period of six consecutive months has expired, a new criminal history record report and sworn statement or affirmation are required.

22 VAC 40-90-60. Maintenance of criminal history record reports.

A. The original report shall be maintained at the facility where the person is employed.

B. Criminal history record reports conforming to the requirements for all employed staff shall be maintained in the files of the facility during the time the individual is employed and for one year after termination of work.

EXCEPTION: See 22 VAC 40-90-50 D 1.

C. Criminal history record reports shall be made available by the facility to the licensing representative.

D. When an employee is rotated among several facilities owned or operated by the same entity, the original criminal history record report shall be maintained at the primary place of work or designated facility location. A copy of the criminal history record report shall be on file at the facility where the employee is actively working which has a notation of where the original report is filed.

E. Criminal history record reports shall be maintained in locked files accessible only to the licensee, administrator, board president, or their designee.

F. Further dissemination of the criminal history record report information is prohibited other than to the commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

22 VAC 40-90-70. Issuance of a license.

The commissioner shall not issue a license to an assisted living facility if an applicant for licensure required to have a background check has any offense as defined in § 63.2-1719 of the Code of Virginia.