

REGULATION FOR BACKGROUND CHECKS
FOR
ASSISTED LIVING FACILITIES AND
ADULT DAY CENTERS



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DEPARTMENT OF SOCIAL SERVICES
COMMONWEALTH OF VIRGINIA

**REGULATION FOR BACKGROUND CHECKS
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ADULT DAY CENTERS**

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**PART I
INTRODUCTION**

22VAC40-90-10. 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 center and that automatically bar licensure of applicants convicted of same from assisted living facility licensure. These crimes, as specified by § 19.2-392.02 of the Code of Virginia, are a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any violation of subsection A or B of § 18.2-47; any violation of § 18.2-48, 18.2-49, or 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1, 18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or 18.2-60.1; any felony violation of § 18.2-60.3 or 18.2-60.4; any violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-67.5:1, 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86, 18.2-87, 18.2-87.1, or 18.2-88; any felony violation of § 18.2-279, 18.2-280, 18.2-281, 18.2-282, 18.2-282.1, 18.2-286.1, or 18.2-287.2; any violation of § 18.2-289, 18.2-290, 18.2-300, 18.2-308.4, or 18.2-314; any felony violation of § 18.2-346; any violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any violation of subsection B of § 18.2-361; any violation of § 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-370.4, 18.2-370.5, 18.2-370.6, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379, 18.2-386.1, or 18.2-386.2; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1, 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, or 53.1-203; or any substantially similar offense under the laws of another jurisdiction. A licensed assisted living facility or adult day 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.

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"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 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 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 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.

22VAC40-90-20. 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, the individual 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.

B. Section 63.2-1720 of the Code of Virginia requires all employees of assisted living facilities and adult day 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.

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C. Section 63.2-1720 of the Code of Virginia requires all applicants for employment at assisted living facilities and adult day 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 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**

22VAC40-90-30. 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**

22VAC40-90-40. General requirements.

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

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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 center because of convictions appearing on the applicant's criminal history record report shall be provided a copy of the report by the licensing authority or the hiring facility.

H. A facility shall not continue to employ any person who has a conviction of any of the barrier crimes.

22VAC40-90-50. 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
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.

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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.

22VAC40-90-60. 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 22VAC40-90-50 D 1.

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

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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.

22VAC40-90-70. 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 been convicted of a barrier crime as defined in this chapter.