

# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES


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INTERIM COMMISSIONER


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### MEMORANDUM

TO: DBHDS Licensed Private Providers  
CSB Executive Directors

FROM: Stacy Pendleton   
Human Resource Manager

Malinda Roberts, Supervisor   
Background Investigations Unit

SUBJECT: Amendments to Criminal Background Checks under Virginia Code §§ 37.2 – 416  
and 37.2 - 506

DATE: July 1, 2016

You may already be aware that Virginia Code §§37.2 – 416 and 37.2 – 506 which requires any community services boards and providers licensed by this Department to conduct criminal history background checks for applicants in direct consumer care positions was amended during the 2016 session of the General Assembly. These amendments became effective on July 1, 2016 and only apply to those DBHDS licensed providers and community services boards that operate sponsored residential programs (SRP); as well as individuals that meet the definition of shared living<sup>1</sup>. For your convenience, I have enclosed copies of both amended code §§ 37.2 – 416 and 37.2 - 506.

Furthermore, the amendment adds the following group of individuals that will require national fingerprint criminal background checks.

- Any applicant for approval as a sponsored residential service provider;
- Any adult living in the home of an applicant for approval as a sponsored residential service provider;
- Any person employed by a sponsored residential service provider to provide services in the home; and
- Any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver.

Also, with this amendment there are two new situations that will require CPS checks, they are:

- For approval as a sponsored residential service provider; and
- For permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver.

<sup>1</sup>"Shared living" means an arrangement in which the Commonwealth's program of medical assistance pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and providing companionship, support, and other limited, basic assistance to a person with intellectual or developmental disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal responsibility.

I anticipate that these changes will have no impact on DBHDS' role in processing the criminal background checks for our licensed providers. The criminal background check procedures remain in effect and will continue to be processed through DBHDS Background Investigations Unit (BIU). BIU is currently working on revising the DBHDS Background Investigations Procedures Manual to include these recent amendments and in the interim; I have enclosed the new attachments (*Attachment 3a – SRP and LIC Disclosure Statement & Attachment 5 – Applicant, SRA and LIC data request*) to be used for SRA requests. In addition, these changes are being added on the website as well as there will be criminal background trainings scheduled for the fall.

I greatly appreciate your continued attention to these important amendments as they reflect our commitment to provide quality services to our consumers. Should you have any questions about the process, please contact me at (804) 786-6384 or Belinda Turner at (804) 887-7393.

/MCR

Enclosures

pc: Cleopatra Booker  
Dawn Traver  
Belinda Turner  
Diane Anthony

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

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

B. Every community services board shall require (i) any applicant who accepts employment in any direct care position with the community services board, (ii) any applicant for approval as a sponsored residential service provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service provider, (iv) any person employed by a sponsored residential service provider to provide services in the home, and (v) any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver to submit to fingerprinting and provide personal descriptive information to be forwarded 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. Except as otherwise provided in subsection C, D, or F, no community services board shall hire for compensated employment, approve as a sponsored residential service provider, or permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver persons who have been convicted of any offense listed in subsection B of § 37.2-314.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the requesting executive director or personnel director of the community services board. If any 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 executive director or personnel director of any community services board shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment at adult substance abuse or adult mental health treatment programs a person who was convicted of a misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56;(ii) reckless handling of a firearm, as set out in § 18.2-56.1;(iii) assault and battery, as set out in subsection A of § 18.2-57;or (iv) assault and battery against a family or household member, as set out in subsection A of § 18.2-57.2;or any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects, as set out in § 18.2-51.3;(b) threat, as set out in § 18.2-60;(c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set out in § 18.2-92;or (d) possession of burglarious tools, as set out in § 18.2-94 ;or any felony violation relating to the distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsection H1 or H2 of § 18.2-248; or an equivalent offense in another state, if the hiring community services board 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, the community services board may hire for compensated employment at adult substance abuse treatment programs a person who has been convicted of not more than one offense of assault and battery of a law-enforcement officer under § 18.2-57, or an equivalent offense in another state, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the offense was committed in another state; (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 hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, 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. 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.

1997, c. 743, § 37.1-197.2; 1998, cc. 130, 680, 882; 1999, c. 685; 2001, c. 784; 2002, c. 712; 2003, c. 468; 2005, c. 716; 2008, cc. 383, 407; 2011, c. 657; 2012, cc. 476, 507; 2016, c. 574.

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

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

B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts employment in any direct care position, (ii) any applicant for approval as a sponsored residential service provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service provider, (iv) any person employed by a sponsored residential service provider to provide services in the home, and (v) any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver to submit to fingerprinting and provide personal descriptive information to be forwarded 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. Except as otherwise provided in subsection C, D, or F, no provider licensed pursuant to this article shall (a) hire for compensated employment persons who have been convicted of any offense listed in subsection B of § 37.2-314;(b) approve an applicant as a sponsored residential service provider if the applicant, any adult residing in the home of the applicant, or any person employed by the applicant has been convicted of an offense listed in subsection B of § 37.2-314;or (c) permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver any person who has been convicted of an offense listed in subsection B of § 37.2-314.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that

no record exists, shall submit a report to the requesting authorized officer or director of a provider licensed pursuant to this article. If any applicant is denied employment because of information appearing on the 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 authorized officer or director of a provider licensed pursuant to this article shall not be disseminated except as provided in this section.

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 a misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56; (ii) reckless handling of a firearm, as set out in § 18.2-56.1; or (iii) assault and battery, as set out in subsection A of § 18.2-57; or any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects, as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set out in § 18.2-92; or (d) possession of burglarious tools, as set out in § 18.2-94; or any felony violation relating to the distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or an equivalent offense in another state, 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 of assault and battery of a law-enforcement officer under § 18.2-57, or an equivalent offense in another state, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the offense was committed in another state; (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 hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, 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.

1999, c. 685, § 37.1-183.3; 2001, cc. 486, 506, 784; 2002, c. 712; 2003, c. 468; 2005, c. 716; 2008, cc. 383, 407; 2011, c. 657; 2012, cc. 476, 507; 2016, c. 574.



**Disclosure Statement  
for  
Sponsored Residential Applicant**

A criminal history background investigation is required by law (§ 37.2-416 (B (ii), (iii), (iv) *Code of Virginia*) on any sponsored residential applicant (SRA), any adult living in the home of a SRA, and/or any person employed by a SRA to provide services in the home. (Please type or print clearly.)

<b>Licensed Provider Name</b>	<b>Provider Number (3 or 4 digit)</b>
<b>SRA's Name (Last, First, Middle)</b>	<b>Social Security Number</b> <input type="checkbox"/> <b>No SSN #</b>
<b>Mailing Address (Street, City, State, Zip)</b>	<b>Phone Number (Area Code + Number)</b>
<p><b>In Virginia or any other location:</b>  <b>Have you ever been or are the subject of a founded complaint of child abuse or neglect?</b>  <input type="checkbox"/> <b>No</b>   <input type="checkbox"/> <b>Yes:</b> If yes, please list all cases and explain.</p>	
<p><b>Have you ever been <u>convicted</u>* of or are you the <u>subject of pending charges</u> for <u>any offense</u>, including moving traffic violations, but excluding offenses committed before your eighteenth birthday which were finally adjudicated in a juvenile court or under a youth offender law?</b>  <input type="checkbox"/> <b>No</b>   <input type="checkbox"/> <b>Yes:</b> If yes, please list all cases and explain.</p>	
<p><i>Convictions include <u>all</u> adult convictions <u>as well as</u> Virginia juvenile adjudication's for the following, Capital Murder, First and Second Degree Murder, Lynching, or Aggravated Malicious Wounding, if you were age fourteen (14) to eighteen (18) when charged.</i></p>	
<p><b>*If convicted of misdemeanor assault &amp; battery, please list date(s) of conviction(s). Were any of these convictions committed while employed in a direct consumer care position?</b>  <input type="checkbox"/> <b>No</b>   <input type="checkbox"/> <b>Yes</b></p>	
<p>I hereby certify that all entries on this disclosure statement are true and complete. I agree and understand that: (1) any falsification of the information provided, regardless of the time of discovery, may result in termination of my services as a SRA, and/or to provide services for a SRA; and (2) the information on this disclosure statement is subject to verification.</p>	
<p>_____  <b>Signature of Sponsored Residential Applicant</b></p>	<p>_____  <b>Date</b></p>

Department of Behavioral Health and Developmental Services

**REQUEST FOR CRIMINAL RECORDS INVESTIGATIONS FOR  
SPONSORED RESIDENTIAL PROGRAMS AFFILIATED WITH DBHDS' LICENSED PROVIDERS**

To be completed by the Provider only.

**INDIVIDUAL DATA**  
(Please print or type)

1. (a) Last Name		(b) First Name		(c) Middle Name	
(d) All other names currently or previously used (Maiden, Former Married, Religious, etc.)					
2. Social Security Number		3. Date of Birth (month, day & year)		4. Gender	5. Race*
6. Height (ft & in)	7. Weight (lbs)	8. Eye Color*	9. Hair Color*	10. Place of Birth (State or Country)	
11. Individual Status (check one)		<input type="checkbox"/> Sponsored Residential Applicant		<input type="checkbox"/> Adult Living in Home	
		<input type="checkbox"/> Sponsored Residential Employee		<input type="checkbox"/> Live In Companion	

\*Use Race, Eye and Hair Color codes on Attachment 7 ~ Enter same on fingerprint card

**PROVIDER DATA**  
(Please print or type)

1. Licensed Provider Name and Address	
2. Provider Number (3 or 4 digit)	
3. Date of Request	4. Contact Person
5. Phone Number	6. Email Address