



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: KARIN CLARK
Virginia Department of Social Services

FROM: Jennifer C. Williamson
Senior Assistant Attorney General

DATE: June 27, 2016

SUBJECT: Final Stage Review of 22 VAC 40-90-40
Continued Employment Provisions for ALF and Adult Day Care

I have reviewed the above-referenced regulation, which amends the regulation to incorporate the requirement regarding continued employment established by Chapter 632 of the 2016 Acts of Assembly, to determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate the specified regulation and whether the specified regulation comports with applicable state law.

Pursuant to Va. Code §§ 63.2-217, the State Board is required to promulgate regulations as may be necessary or desirable to carry out the purposes of § 63.2-1700 *et seq.* Consequently, it is my opinion that the State Board has the authority to promulgate this regulation, which is exempt from the provisions of Article 2 of the Administrative Process Act, and has not exceeded that authority.

If you have any questions, please feel free to call me at 225-3197.



Logged in as

Jennifer C. Williamson

Final Text

Action: Continued Employment Provisions for ALF and Adult Day Care

Stage: Final

6/13/16 10:03 AM

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