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Title 12@ HEALTH

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Agency 5@ DEPARTMENT OF HEALTH

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Chapter 371@ REGULATIONS FOR THE LICENSURE OF NURSING FACILITIES

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Part I@ Definitions and General Information

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Section 12VAC5-371-75@ Criminal records check

12VAC5-371-75 Criminal records check

A.

A nursing facility may not hire for compensated employment a person who has been convicted of a barrier crime, unless: 1. The person has been convicted of a single barrier crime punishable as a misdemeanor; 2. The conviction does not involve abuse or neglect; and 3. Five years have elapsed since the conviction.

1.

The person has been convicted of a single barrier crime punishable as a misdemeanor;

2.

The conviction does not involve abuse or neglect; and

3.

Five years have elapsed since the conviction.

B.

A nursing facility shall: 1. Obtain from an applicant for compensated employment a sworn disclosure; 2. Attach the sworn disclosure to and file it with the criminal record report; and 3. Obtain a criminal record report on applicants for compensated employment from the Virginia Department of State Police no more than 30 calendar days after employment begins.

1.

Obtain from an applicant for compensated employment a sworn disclosure;

2.

Attach the sworn disclosure to and file it with the criminal record report; and

3.

Obtain a criminal record report on applicants for compensated employment from the Virginia Department of State Police no more than 30 calendar days after employment begins.

C.

A nursing facility may not accept: 1. A criminal record report dated more than 90 calendar days prior to the start date of employment; or 2. Duplicates or copies of the original criminal record report, except as provided in subsection D of this section.

1.

A criminal record report dated more than 90 calendar days prior to the start date of employment; or

2.

Duplicates or copies of the original criminal record report, except as provided in subsection D of this section.

D.

If a nursing facility uses a temporary staffing agency for substitute staff, a nursing facility shall obtain a letter from the temporary staffing agency that includes: 1. The name of the substitute staffing person; 2. The date of employment by the temporary staffing agency; and 3. A statement verifying that the criminal record report: a. Has been obtained within 30 calendar days of employment at the temporary staffing agency; b. Is on file at the temporary staffing agency; and c. Does not contain a conviction for a barrier crime, or indicates the substitute staffing person has been convicted of a single barrier crime punishable as a

misdemeanor that does not involve abuse or neglect and five years have elapsed since the conviction.

1.

The name of the substitute staffing person;

2.

The date of employment by the temporary staffing agency; and

3.

A statement verifying that the criminal record report: a. Has been obtained within 30 calendar days of employment at the temporary staffing agency; b. Is on file at the temporary staffing agency; and c. Does not contain a conviction for a barrier crime, or indicates the substitute staffing person has been convicted of a single barrier crime punishable as a misdemeanor that does not involve abuse or neglect and five years have elapsed since the conviction.

a.

Has been obtained within 30 calendar days of employment at the temporary staffing agency;

b.

Is on file at the temporary staffing agency; and

c.

Does not contain a conviction for a barrier crime, or indicates the substitute staffing person has been convicted of a single barrier crime punishable as a misdemeanor that does not involve abuse or neglect and five years have elapsed since the conviction.

E.

A nursing facility may not permit a compensated employee to work in a position that involves direct contact with a patient until an original criminal record report has been received by the nursing facility or temporary staffing agency, unless the employee works under the direct supervision of another compensated employee

for whom a background check has been completed in accordance with subsection B of this section.

F.

A nursing facility shall obtain a new criminal record report and a new sworn disclosure if an individual: 1. Terminates compensated employment at one nursing facility and begins compensated employment at another nursing facility, unless the nursing facilities are owned by the same entity. The employee's file shall contain a statement indicating the original criminal record report has been transferred or forwarded to the new work location; or 2. Takes a leave of absence exceeding six consecutive months.

1.

Terminates compensated employment at one nursing facility and begins compensated employment at another nursing facility, unless the nursing facilities are owned by the same entity. The employee's file shall contain a statement indicating the original criminal record report has been transferred or forwarded to the new work location; or

2.

Takes a leave of absence exceeding six consecutive months.

G.

A nursing facility shall provide a copy of the criminal record report to an applicant denied compensated employment because of convictions appearing on his criminal record report.

H.

A nursing facility shall maintain the confidentiality of criminal record reports and store criminal record reports in locked files accessible only to the administrator or designee.

I.

A nursing facility may not disseminate the criminal record report and sworn disclosure except to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.