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HOUSE BILL NO. 2198
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Health and Human Services
on _____)
(Patron Prior to Substitute—Delegate McQuinn)

A BILL to amend and reenact § 19.2-389 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 5 of Title 32.1 an article numbered 7.2, consisting of sections numbered 32.1-162.15:1.1 through 32.1-162.15:1.23, relating to prescribed pediatric extended care centers; licensure; regulation.

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-389 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 5 of Title 32.1 an article numbered 7.2, consisting of sections numbered 32.1-162.15:1.1 through 32.1-162.15:1.23, as follows:

§ 19.2-389. Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, 4, and 6 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except

31 that information concerning the arrest of an individual may not be disseminated to a noncriminal justice
32 agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the
33 charge has been recorded and no active prosecution of the charge is pending;

34 3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide
35 services required for the administration of criminal justice pursuant to that agreement which shall specifically
36 authorize access to data, limit the use of data to purposes for which given, and ensure the security and
37 confidentiality of the data;

38 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant
39 to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of
40 data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

41 5. Agencies of state or federal government that are authorized by state or federal statute or executive order
42 of the President of the United States or Governor to conduct investigations determining employment
43 suitability or eligibility for security clearances allowing access to classified information;

44 6. Individuals and agencies where authorized by court order or court rule;

45 7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned,
46 operated or controlled by any political subdivision, and any public service corporation that operates a public
47 transit system owned by a local government for the conduct of investigations of applicants for employment,
48 permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a
49 duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible
50 with the nature of the employment, permit, or license under consideration;

51 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title
52 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position
53 of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation
54 District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction
55 record would be compatible with the nature of the employment under consideration;

56 8. Public or private agencies when authorized or required by federal or state law or interstate compact to
57 investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of
58 that individual's household, with whom the agency is considering placing a child or from whom the agency is
59 considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis

60 pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further
61 disseminated to any party other than a federal or state authority or court as may be required to comply with an
62 express requirement of law;

63 9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for
64 the conduct of investigations of applicants for employment when such employment involves personal contact
65 with the public or when past criminal conduct of an applicant would be incompatible with the nature of the
66 employment under consideration;

67 10. The appropriate authority for purposes of granting citizenship and for purposes of international travel,
68 including, but not limited to, issuing visas and passports;

69 11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at
70 his cost, except that criminal history record information shall be supplied at no charge to a person who has
71 applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer
72 fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse,
73 Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been
74 offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in §
75 15.2-1713.1;

76 12. Administrators and board presidents of and applicants for licensure or registration as a child welfare
77 agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative
78 pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such
79 facilities, caretakers, and foster and adoptive parent applicants of private child-placing agencies, pursuant to
80 §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data shall not be further
81 disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social
82 Services' representative or a federal or state authority or court as may be required to comply with an express
83 requirement of law for such further dissemination; however, nothing in this subdivision shall be construed to
84 prohibit the Commissioner of Social Services' representative from issuing written certifications regarding the
85 results of a background check that was conducted before July 1, 2021, in accordance with subsection J of §
86 22.1-289.035 or § 22.1-289.039;

87 13. *Administrators and board presidents of and applicants for licensure as a prescribed pediatric*
88 *extended care center for dissemination to the State Health Commissioner's representative pursuant to §§*

89 32.1-162.15:1.5 and 32.1-162.15:1.10 for the conduct of investigations with respect to employees of and
90 volunteers at such centers, pursuant to § 32.1-162.15:1.17, subject to the restriction that the data shall not be
91 further disseminated by the center to any party other than the data subject, the State Health Commissioner's
92 representative, or a federal or state authority or court as may be required to comply with an express
93 requirement of law;

94 14. The Department of Social Services for the purpose of screening individuals as a condition of licensure,
95 employment, volunteering, or providing services on a regular basis in a licensed child welfare agency
96 pursuant to §§ 63.2-1721 and 63.2-1726 or foster or adoptive home approved by a child-placing agency
97 pursuant to § 63.2-901.1;

98 ~~14.~~ 15. The school boards of the Commonwealth for the purpose of screening individuals who are offered
99 or who accept public school employment and those current school board employees for whom a report of
100 arrest has been made pursuant to § 19.2-83.1;

101 ~~15.~~ 16. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law (§
102 58.1-4000 et seq.) and casino gaming as set forth in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1, and the
103 Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article
104 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

105 17. Licensed prescribed pediatric extended care centers for the conduct of investigations of applicants for
106 compensated employment and volunteers in licensed prescribed pediatric extended care centers pursuant to §
107 32.1-162.15:1.17;

108 ~~16.~~ 18. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations
109 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital
110 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the
111 limitations set out in subsection E;

112 ~~17.~~ 19. Licensed assisted living facilities and licensed adult day centers for the conduct of investigations
113 of applicants for compensated employment in licensed assisted living facilities and licensed adult day centers
114 pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

115 ~~18.~~ 20. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth in
116 § 4.1-103.1;

117 ~~19.~~ 21. The State Board of Elections and authorized officers and employees thereof and general registrars

118 appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter
119 registration, limited to any record of felony convictions;

120 ~~20-~~ 22. The Commissioner of Behavioral Health and Developmental Services (the Commissioner) or his
121 designees for individuals who are committed to the custody of or being evaluated by the Commissioner
122 pursuant to §§ 19.2-168.1, 19.2-169.1, 19.2-169.2, 19.2-169.5, 19.2-169.6, 19.2-182.2, 19.2-182.3,
123 19.2-182.8, and 19.2-182.9 where such information may be beneficial for the purpose of placement,
124 evaluation, treatment, or discharge planning;

125 ~~21-~~ 23. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety
126 Action Program for (i) interventions with first offenders under § 18.2-251 or (ii) services to offenders under §
127 18.2-51.4, 18.2-266, or 18.2-266.1;

128 ~~22-~~ 24. Residential facilities for juveniles regulated or operated by the Department of Social Services, the
129 Department of Education, or the Department of Behavioral Health and Developmental Services for the
130 purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

131 ~~23-~~ 25. The Department of Behavioral Health and Developmental Services and facilities operated by the
132 Department for the purpose of determining an individual's fitness for employment pursuant to departmental
133 instructions;

134 ~~24-~~ 26. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or
135 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such
136 records information on behalf of such governing boards or administrators pursuant to a written agreement
137 with the Department of State Police;

138 ~~25-~~ 27. Public institutions of higher education and nonprofit private institutions of higher education for the
139 purpose of screening individuals who are offered or accept employment;

140 ~~26-~~ 28. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4,
141 by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of
142 higher education, for the purpose of assessing or intervening with an individual whose behavior may present
143 a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history
144 record information obtained pursuant to this section or otherwise use any record of an individual beyond the
145 purpose that such disclosure was made to the threat assessment team;

146 ~~27-~~ 29. Executive directors of community services boards or the personnel director serving the community

147 services board for the purpose of determining an individual's fitness for employment, approval as a sponsored
148 residential service provider, permission to enter into a shared living arrangement with a person receiving
149 medical assistance services pursuant to a waiver, or permission for any person under contract with the
150 community services board to serve in a direct care position on behalf of the community services board
151 pursuant to §§ 37.2-506, 37.2-506.1, and 37.2-607;

152 ~~28-~~ 30. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of
153 determining an individual's fitness for employment, approval as a sponsored residential service provider,
154 permission to enter into a shared living arrangement with a person receiving medical assistance services
155 pursuant to a waiver, or permission for any person under contract with the behavioral health authority to
156 serve in a direct care position on behalf of the behavioral health authority pursuant to §§ 37.2-506, 37.2-506.1
157 , and 37.2-607;

158 ~~29-~~ 31. The Commissioner of Social Services for the purpose of locating persons who owe child support
159 or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name,
160 address, demographics and social security number of the data subject shall be released;

161 ~~30-~~ 32. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of
162 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose
163 of determining if any applicant who accepts employment in any direct care position or requests approval as a
164 sponsored residential service provider, permission to enter into a shared living arrangement with a person
165 receiving medical assistance services pursuant to a waiver, or permission for any person under contract with
166 the provider to serve in a direct care position has been convicted of a crime that affects his fitness to have
167 responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or
168 substance abuse pursuant to §§ 37.2-416, 37.2-416.1, 37.2-506, 37.2-506.1, and 37.2-607;

169 ~~31-~~ 33. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants
170 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000
171 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

172 ~~32-~~ 34. The Chairman of the Senate Committee for Courts of Justice or the Chairman of the House
173 Committee for Courts of Justice for the purpose of determining if any person being considered for election to
174 any judgeship has been convicted of a crime;

175 ~~33-~~ 35. Heads of state agencies in which positions have been identified as sensitive for the purpose of

176 determining an individual's fitness for employment in positions designated as sensitive under Department of
177 Human Resource Management policies developed pursuant to § 2.2-1201.1;

178 ~~34.~~ 36. The Office of the Attorney General, for all criminal justice activities otherwise permitted under
179 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent
180 Predators Act (§ 37.2-900 et seq.);

181 ~~35.~~ 37. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,
182 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary
183 companies, for the conduct of investigations of applications for employment or for access to facilities, by
184 contractors, leased laborers, and other visitors;

185 ~~36.~~ 38. Any employer of individuals whose employment requires that they enter the homes of others, for
186 the purpose of screening individuals who apply for, are offered, or have accepted such employment;

187 ~~37.~~ 39. Public agencies when and as required by federal or state law to investigate (i) applicants as
188 providers of adult foster care and home-based services or (ii) any individual with whom the agency is
189 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,
190 subject to the restriction that the data shall not be further disseminated by the agency to any party other than a
191 federal or state authority or court as may be required to comply with an express requirement of law for such
192 further dissemination, subject to limitations set out in subsection G;

193 ~~38.~~ 40. The Department of Medical Assistance Services, or its designee, for the purpose of screening
194 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or
195 have accepted a position related to the provision of transportation services to enrollees in the Medicaid
196 Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program
197 administered by the Department of Medical Assistance Services;

198 ~~39.~~ 41. The State Corporation Commission for the purpose of investigating individuals who are current or
199 proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter
200 16 (§ 6.2-1600 et seq.), Chapter 19 (§ 6.2-1900 et seq.), or Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2.
201 Notwithstanding any other provision of law, if an application is denied based in whole or in part on
202 information obtained from the Central Criminal Records Exchange pursuant to Chapter 16, 19, or 26 of Title
203 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant
204 or its designee;

205 ~~40-~~ 42. The Department of Professional and Occupational Regulation for the purpose of investigating
206 individuals for initial licensure pursuant to § 54.1-2106.1;

207 ~~41-~~ 43. The Department for Aging and Rehabilitative Services and the Department for the Blind and
208 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for
209 the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170
210 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

211 ~~42-~~ 44. Bail bondsmen, in accordance with the provisions of § 19.2-120;

212 ~~43-~~ 45. The State Treasurer for the purpose of determining whether a person receiving compensation for
213 wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

214 ~~44-~~ 46. The Department of Education or its agents or designees for the purpose of screening individuals
215 seeking to enter into a contract with the Department of Education or its agents or designees for the provision
216 of child care services for which child care subsidy payments may be provided;

217 ~~45-~~ 47. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of
218 a juvenile's household when completing a predispositional or postdispositional report required by § 16.1-273
219 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

220 ~~46-~~ 48. The State Corporation Commission, for the purpose of screening applicants for insurance licensure
221 under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2;

222 ~~47-~~ 49. Administrators and board presidents of and applicants for licensure or registration as a child day
223 program or family day system, as such terms are defined in § 22.1-289.02, for dissemination to the
224 Superintendent of Public Instruction's representative pursuant to § 22.1-289.013 for the conduct of
225 investigations with respect to employees of and volunteers at such facilities pursuant to §§ 22.1-289.034
226 through 22.1-289.037, subject to the restriction that the data shall not be further disseminated by the facility
227 or agency to any party other than the data subject, the Superintendent of Public Instruction's representative, or
228 a federal or state authority or court as may be required to comply with an express requirement of law for such
229 further dissemination; however, nothing in this subdivision shall be construed to prohibit the Superintendent
230 of Public Instruction's representative from issuing written certifications regarding the results of prior
231 background checks in accordance with subsection J of § 22.1-289.035 or § 22.1-289.039;

232 ~~48-~~ 50. The National Center for Missing and Exploited Children for the purpose of screening individuals
233 who are offered or accept employment or will be providing volunteer or contractual services with the

234 National Center for Missing and Exploited Children;

235 ~~49.~~ 51. The Executive Director or investigators of the Board of Accountancy for the purpose of the
236 enforcement of laws relating to the Board of Accountancy in accordance with § 54.1-4407; and

237 ~~50.~~ 52. Other entities as otherwise provided by law.

238 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested
239 may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange
240 to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on
241 whom a report has been made under the provisions of this chapter.

242 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to
243 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the
244 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy
245 of conviction data covering the person named in the request to the person making the request; however, such
246 person on whom the data is being obtained shall consent in writing, under oath, to the making of such
247 request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as
248 he deems appropriate. In the event no conviction data is maintained on the data subject, the person making
249 the request shall be furnished at his cost a certification to that effect.

250 B. Use of criminal history record information disseminated to noncriminal justice agencies under this
251 section shall be limited to the purposes for which it was given and may not be disseminated further, except as
252 otherwise provided in subdivision A ~~47~~ 49.

253 C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history
254 record information for employment or licensing inquiries except as provided by law.

255 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange
256 prior to dissemination of any criminal history record information on offenses required to be reported to the
257 Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used.
258 Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the
259 essence and the normal response time of the Exchange would exceed the necessary time period. A criminal
260 justice agency to whom a request has been made for the dissemination of criminal history record information
261 that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the
262 Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses

263 not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the
264 record as required by § 15.2-1722.

265 E. Criminal history information provided to licensed nursing homes, hospitals and to home care
266 organizations pursuant to subdivision A ~~46~~ 18 shall be limited to the convictions on file with the Exchange
267 for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

268 F. Criminal history information provided to licensed assisted living facilities and licensed adult day
269 centers pursuant to subdivision A ~~47~~ 19 shall be limited to the convictions on file with the Exchange for any
270 offense specified in § 63.2-1720.

271 G. Criminal history information provided to public agencies pursuant to subdivision A ~~37~~ 39 shall be
272 limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of
273 barrier crime in § 19.2-392.02.

274 H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal
275 Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the
276 Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the
277 request to the employer or prospective employer making the request, provided that the person on whom the
278 data is being obtained has consented in writing to the making of such request and has presented a photo-
279 identification to the employer or prospective employer. In the event no conviction data is maintained on the
280 person named in the request, the requesting employer or prospective employer shall be furnished at his cost a
281 certification to that effect. The criminal history record search shall be conducted on forms provided by the
282 Exchange.

283 I. Nothing in this section shall preclude the dissemination of a person's criminal history record
284 information pursuant to the rules of court for obtaining discovery or for review by the court.

285 *Article 7.2.*

286 *Prescribed Pediatric Extended Care Center Licensing.*

287 **§ 32.1-162.15:1.1. Definitions.**

288 *As used in this article, unless the context requires a different meaning:*

289 *"Center" means a prescribed pediatric extended care center.*

290 *"Parent" means the same as that term is defined in § 22.1-213.1.*

291 **§ 32.1-162.15:1.2. Licensure.**

292 A. No person shall establish or operate a Center without a license issued by the Commissioner pursuant
293 to this article.

294 B. No license issued under this article shall be assignable or transferable.

295 C. The Board shall adopt regulations for the implementation of this article.

296 **§ 32.1-162.15:1.3. Application fees; use of fees.**

297 A. The Board is authorized to adopt regulations and schedules for fees to be charged for processing
298 applications for licenses to operate Centers.

299 B. All fees received under the provisions of this article shall be paid into a special nonreverting fund of
300 the Department and are appropriated to the Department solely for the operation of the Center licensure and
301 inspection program. Any surplus of fees above actual program operating costs maintained in the special
302 nonreverting fund in any state fiscal year shall be applied to the future program operating costs in the
303 following state fiscal year.

304 **§ 32.1-162.15:1.4. Licenses required; issuance, expiration, and renewal; maximum number of**
305 **children; posting of licenses.**

306 A. Every person that establishes or operates a Center shall obtain a license from the Commissioner,
307 which may be renewed annually. Each application for a license shall be made to the Commissioner, in such
308 form as he may prescribe and accompanied by an application fee. It shall contain the name and address of
309 the applicant and, if the applicant is an association, partnership, limited liability company, or corporation,
310 the names and addresses of its officers and agents. The application shall also contain a description of the
311 activities proposed to be engaged in and the facilities and services to be employed, together with other
312 pertinent information as the Board may require by regulation. The application shall also contain information
313 regarding any complaints, enforcement actions, or sanctions against a license to operate a Center, or
314 substantially similar facility, held by the applicant in another state.

315 B. Each license shall indicate the maximum number of children who may be cared for in the Center for
316 which it is issued.

317 C. The license and any other documents required by the Commissioner shall be posted in a conspicuous
318 place on the licensed premises.

319 D. Every person issued a license that has not been suspended or revoked shall renew such license prior to
320 its expiration.

321 **§ 32.1-162.15:1.5. Inspection on receipt of application.**

322 *Upon receipt of a completed application for initial licensure, the Commissioner shall cause an inspection*
323 *to be made of the activities, services, and facilities of the applicant and of his character and reputation or, if*
324 *the applicant is an association, partnership, limited liability company, or corporation, the character and*
325 *reputation of its officers and agents, and upon receipt of the initial application, an investigation of the*
326 *applicant's financial responsibility. The financial records of an applicant shall not be subject to inspection if*
327 *the applicant submits an operating budget and at least one credit reference. The character and reputation*
328 *investigation upon application shall include background checks pursuant to § 32.1-162.15:1.10 and include*
329 *consideration of any complaints, enforcement actions, or sanctions against a license to operate a Center, or a*
330 *substantially similar facility, held by the applicant in another state.*

331 **§ 32.1-162.15:1.6. Issuance or refusal of license; notification; provisional and conditional licenses.**

332 *A. Upon completion of the inspection pursuant to § 32.1-162.15:1.5, the Commissioner shall issue a*
333 *license to the applicant if (i) the applicant has made adequate provision for such activities, services, and*
334 *facilities as are reasonably conducive to the welfare of the children over whom he may have custody or*
335 *control; (ii) at the time of initial application, the applicant has submitted an operating budget and at least*
336 *one credit reference; (iii) he is, or the officers and agents of the applicant if it is an association, partnership,*
337 *limited liability company, or corporation are, of good character and reputation; and (iv) the applicant and*
338 *agents comply with the provisions of this article. Otherwise, the license shall be denied. Immediately upon*
339 *taking final action, the Commissioner shall notify the applicant of such action.*

340 *B. When issuance of a license as a Center has been refused by the Commissioner, the applicant shall not*
341 *apply again for such license for a period of one year unless the Commissioner in his sole discretion believes*
342 *that there has been such a change in the conditions on account of which he refused the prior application as to*
343 *justify considering the new application. If an applicant appeals a decision rendered pursuant to subsection A,*
344 *the one-year period shall be extended until a final decision has been rendered on appeal.*

345 *C. Upon submission of a completed application for renewal of a license, the Commissioner may issue a*
346 *provisional license to any applicant if the applicant is temporarily unable to comply with all of the licensure*
347 *requirements. The provisional license may be renewed, but the issuance of a provisional license and any*
348 *renewals thereof shall be for no longer than six successive months. A copy of the provisional license shall be*
349 *prominently displayed by the provider at each public entrance of the Center. In addition, the Center shall be*

350 *required to prominently display next to the posted provisional license a notice that a description of specific*
351 *violations of licensing standards to be corrected and the deadline for completion of such corrections is*
352 *available for inspection at the Center and on the Center's website, if applicable.*

353 *D. At the discretion of the Commissioner, a conditional license may be issued to an applicant to operate a*
354 *new facility in order to permit the applicant to demonstrate compliance with licensure requirements. Such*
355 *conditional license may be renewed, but the issuance of a conditional license and any renewals thereof shall*
356 *be for no longer than six successive months. A copy of the conditional license shall be prominently displayed*
357 *by the provider at each public entrance of the Center. In addition, the Center shall be required to*
358 *prominently display next to the posted conditional license a notice that a description of specific violations of*
359 *licensing standards to be corrected and the deadline for completion of such corrections is available for*
360 *inspection at the Center and on the Center's website, if applicable.*

361 **§ 32.1-162.15:1.7. Compliance with Uniform Statewide Building Code.**

362 *Buildings licensed as Centers shall be classified by and meet the specifications for the proper Use Group*
363 *as required by the Uniform Statewide Building Code (§ 36-97 et seq.).*

364 **§ 32.1-162.15:1.8. Inspections and interviews.**

365 *A. Applicants for licensure and licensees shall at all times afford the Commissioner or his representatives*
366 *reasonable opportunity to inspect all of their facilities, books, and records and to interview their agents and*
367 *employees and any person participating in such Centers or under their custody, control, direction, or*
368 *supervision. Interviews conducted pursuant to this section with persons participating in a Center operated by*
369 *or under the custody, control, direction, or supervision of an applicant for licensure or a licensee shall be (i)*
370 *authorized by the person to be interviewed or his legally authorized representative and (ii) limited to*
371 *discussion of issues related to the applicant's or licensee's compliance with applicable laws and regulations,*
372 *including ascertaining if assessments and reassessments of children's cognitive and physical needs are*
373 *performed as may be required under regulations of the Board.*

374 *B. The Commissioner shall cause each licensed Center to be subject to an unannounced inspection*
375 *periodically, but not less often than biennially, in accordance with the provisions of this article and*
376 *regulations of the Board.*

377 *C. The activities, services, and facilities of each applicant for renewal of his license as a Center may be*
378 *subject to an inspection or examination by the Commissioner to determine if he is in compliance with current*

379 *regulations of the Board.*

380 *D. For any Center, the Commissioner may authorize such other announced or unannounced inspections*
381 *as the Commissioner considers appropriate.*

382 **§ 32.1-162.15:1.9. Records and reports.**

383 *Every Center shall keep such records and make such reports to the Commissioner as the Board may*
384 *require by regulation. The forms to be used in the making of such reports shall be prescribed and furnished*
385 *by the Commissioner.*

386 **§ 32.1-162.15:1.10. Background check upon application for licensure; penalty.**

387 *A. Upon application for licensure as a Center, (i) all applicants and (ii) all agents at the time of*
388 *application who are or will be involved in the day-to-day operations of the Center or who are or will be*
389 *alone with, in control of, or supervising one or more children shall undergo a background check pursuant to*
390 *subsection B.*

391 *B. Background checks pursuant to subsection A require:*

392 *1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the*
393 *subject of any pending criminal charges within or outside the Commonwealth and whether or not the person*
394 *has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;*

395 *2. A criminal history records check through the Central Criminal Records Exchange pursuant to §*
396 *19.2-389; and*

397 *3. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child*
398 *abuse and neglect.*

399 *C. Each person required to have a background check pursuant to subsection A shall submit the*
400 *background check information required in subsection B to the Commissioner's representative prior to*
401 *issuance of a license. The applicant shall provide an original criminal record clearance with respect to any*
402 *barrier crime as defined in § 19.2-392.02 or an original criminal history record from the Central Criminal*
403 *Records Exchange.*

404 *D. Any person making a materially false statement regarding the sworn statement or affirmation provided*
405 *pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor.*

406 *E. If any person specified in subsection A required to have a background check (i) has been convicted of*
407 *any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or*

408 *neglect within or outside the Commonwealth, the Commissioner shall not issue a license. For the purposes of*
409 *this section, convictions for any barrier crime as defined in § 19.2-392.02 shall include prior adult*
410 *convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony*
411 *if committed by an adult within or outside the Commonwealth.*

412 *F. No person specified in subsection A shall be (i) involved in the day-to-day operations of a Center; (ii)*
413 *alone with, in control of, or supervising one or more children receiving services from a Center; or (iii)*
414 *permitted to work in a position that involves direct contact with a person receiving services without first*
415 *having completed background checks pursuant to subsection B unless such person is directly supervised by*
416 *another person for whom a background check has been completed in accordance with the requirements of*
417 *this section.*

418 *G. If an applicant is denied licensure because of information from the central registry or convictions*
419 *appearing on his criminal history record, the Commissioner shall provide a copy of the information obtained*
420 *from the central registry or the Central Criminal Records Exchange or both to the applicant.*

421 *H. Further dissemination of the background check information is prohibited other than to the*
422 *Commissioner's representative or a federal or state authority or court as may be required to comply with an*
423 *express requirement of law for such further dissemination.*

424 **§ 32.1-162.15:1.11. Scope and duration of services; individualized plans of care.**

425 *A. A Center shall be a nonresidential health care service that provides a link in the continuum of care for*
426 *medically dependent or technologically dependent children.*

427 *B. A Center shall provide services that promote and maintain the health and development of the children*
428 *attending the Center and that assist with the training of the children's parents. Such services shall include:*

429 *1. Skilled nursing;*

430 *2. Physical therapy;*

431 *3. Respiratory therapy;*

432 *4. Occupational therapy;*

433 *5. Speech therapy;*

434 *6. Education;*

435 *7. Provision of meals and snacks;*

436 *8. Transportation; and*

437 9. Family education.

438 C. No Center shall provide services other than those typically provided to medically dependent or
439 technologically dependent children.

440 D. A Center shall develop an individualized plan of care for each child that attends the Center. Such plan
441 shall be developed by the child's attending physician, the Center, any Center staff responsible for the child's
442 care, a parent, and, when appropriate, the child.

443 E. No child shall attend a Center for more than 12 hours within a 24-hour period.

444 **§ 32.1-162.15:1.12. Operation and management; staffing.**

445 A. Each Center shall have an administrator who oversees the operation of the Center. Such administrator
446 shall be a physician with a current license, an advanced practice registered nurse, a licensed nursing home
447 administrator, a child day center director, or a registered nurse with at least five years of experience in
448 pediatric medicine.

449 B. Operation of the Center shall include:

450 1. Coordination of emergency transportation arrangements with the emergency medical services of the
451 locality where the Center is located, including the provision of an adult staff member of the Center who
452 accompanies any child who requires emergency transportation;

453 2. Creation of a documented preventative maintenance program that emphasizes ensuring that all durable
454 medical equipment functions correctly and safely;

455 3. Maintenance of medical records, data, and information related to the children and programs in the
456 Center for inspection by the Commissioner;

457 4. Provision of appropriate and readily available emergency services that include (i) an emergency drug
458 kit and (ii) a crash cart with a defibrillator appropriate for children;

459 5. Creation of a written disaster plan that addresses natural disasters, weather emergencies, bomb
460 threats, emergency drills, manufactured disasters, and financial disasters;

461 6. Documentation of all incidents and accidents;

462 7. A process for reporting to the Commissioner any incidents and accidents that affect the health, safety,
463 or welfare of a child; and

464 8. Coordination and collaboration with other agencies that may serve the child.

465 C. Each Center shall have a medical director who is responsible for basic and supportive services,

466 including medical, pharmaceutical, and nursing services. The medical director shall be responsible for (i) the
467 prevention, reporting, and investigation of abuse; (ii) the delivery of medical and therapeutic services; (iii)
468 the control and delivery of pharmaceutical services; (iv) infection control; and (v) policies for prevention of
469 incidents and accidents. The medical director shall ensure compliance with any policies and procedures
470 developed by the Board.

471 D. Each Center shall employ:

472 1. A supervisor that holds a valid relevant professional license issued by the Board of Medicine, Board of
473 Nursing, Board of Pharmacy, Board of Physical Therapy, or Board of Audiology and Speech-Language
474 Pathology.

475 2. At least one direct care staff member who is qualified as a licensed advanced practice registered nurse,
476 registered nurse, physical therapist, respiratory therapist, occupational therapist, or speech-language
477 pathologist.

478 E. Each Center shall abide by the following applicable staffing ratio:

479 1. For a Center with fewer than 13 children, the Center shall be staffed by two registered nurses and two
480 other staff members.

481 2. For a Center with no less than 13 and no more than 18 children, the Center shall be staffed by two
482 registered nurses, one licensed practical nurse, and three other staff members.

483 3. For a Center with no less than 19 and no more than 24 children, the Center shall be staffed by two
484 registered nurses, two licensed practical nurses, and four other staff members.

485 4. For a Center with more than 24 children, the number of licensed practical nurses and other staff
486 members shall increase by one each for up to six additional children enrolled.

487 **§ 32.1-162.15:1.13. Facilities and maintenance; regulations.**

488 A. The regulations promulgated by the Board to carry out the provisions of this article shall be in
489 substantial conformity to the standards of health, hygiene, sanitation, construction, and safety as established
490 and recognized by medical and health care professionals and by specialists in matters of public health and
491 safety, including the regulations of the Board of Education for child day centers, and as deemed relevant to
492 Centers by the Board.

493 B. The Board shall adopt regulations for facility standards that prioritize:

494 1. The adoption and implementation of policies and procedures that ensure the health and safety of

495 *children attending a Center;*

496 *2. Maintenance based upon the size of the facility and the number of children as related to plumbing,*
497 *heating, lighting, ventilation, and other applicable building conditions;*

498 *3. Sanitary conditions, including the water supply, sewage disposal, food handling, and general hygiene;*
499 *and*

500 *4. Any operational or transportation concerns specific to children attending a Center.*

501 **§ 32.1-162.15:1.14. Confidentiality of complainant's identity.**

502 *Whenever the Department conducts inspections or investigations in response to complaints received from*
503 *the public, the identity of the complainant and the identity of any child who is the subject of the complaint, or*
504 *identified therein, shall be confidential and shall not be open to inspection by members of the public.*
505 *Identities of the complainant and child who is the subject of the complaint shall be revealed only if a court*
506 *order so requires. Nothing contained herein shall prevent the Department, in its discretion, from disclosing*
507 *to the Center the nature of the complaint or the identity of the child who is the subject of the complaint.*
508 *Nothing contained herein shall prevent the Department or its employees from making reports under Chapter*
509 *15 (§ 63.2-1501 et seq.) or Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of Title 63.2. If the Department*
510 *intends to rely, in whole or in part, on any statements made by the complainant at any administrative*
511 *proceeding brought against the Center, the Department shall disclose the identity of the complainant to the*
512 *Center a reasonable time in advance of such proceeding.*

513 **§ 32.1-162.15:1.15. Retaliation or discrimination against complainants.**

514 *No Center may retaliate or discriminate in any manner against any person who (i) in good faith*
515 *complains or provides information to, or otherwise cooperates with, the Department or any other agency of*
516 *government or any person or entity operating under contract with an agency of government having*
517 *responsibility for protecting the rights of children in Centers; (ii) attempts to assert any right protected by*
518 *state or federal law; or (iii) assists any person in asserting such right.*

519 **§ 32.1-162.15:1.16. Retaliation against reports of child or adult abuse or neglect.**

520 *No Center may retaliate in any manner against any person who in good faith reports adult or child abuse*
521 *or neglect pursuant to Chapter 15 (§ 63.2-1501 et seq.) or Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of*
522 *Title 63.2.*

523 **§ 32.1-162.15:1.17. Employment for compensation of persons or use of volunteers convicted of certain**

524 *offenses prohibited; background check required; penalty.*

525 *A. No Center may hire for compensated employment, continue to employ persons, or permit persons to*
526 *serve as volunteers who (i) have been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) are*
527 *the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. All persons*
528 *interested in volunteering at a Center and all applicants for employment at a Center shall undergo*
529 *background checks pursuant to subsection B. For the purposes of this section, convictions for any barrier*
530 *crime as defined in § 19.2-392.02 shall include prior adult convictions and juvenile convictions or*
531 *adjudications of delinquency based on a crime that would be a felony if committed by an adult within or*
532 *outside the Commonwealth.*

533 *B. Background checks pursuant to subsection A require:*

534 *1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the*
535 *subject of any pending criminal charges within or outside the Commonwealth and whether or not the person*
536 *has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;*

537 *2. A criminal history records check through the Central Criminal Records Exchange pursuant to §*
538 *19.2-389; and*

539 *3. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child*
540 *abuse and neglect.*

541 *C. Any person making a materially false statement regarding the sworn statement or affirmation provided*
542 *pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor.*

543 *D. A Center shall obtain (i) an original criminal record clearance with respect to any barrier crime as*
544 *defined in § 19.2-392.02 or an original criminal history record from the Central Criminal Records Exchange*
545 *for any compensated employees within 30 days of employment and any volunteer within 30 days of*
546 *commencement of volunteer service and (ii) a copy of the information from the central registry for any*
547 *compensated employee within 30 days of employment. However, no employee or volunteer may be permitted*
548 *to work in a position that involves direct contact with a child receiving services until an original criminal*
549 *record clearance or original criminal history record has been received, unless such person works under the*
550 *direct supervision of an employee for whom a background check has been completed in accordance with the*
551 *requirements of this section. If an applicant is denied employment or if a volunteer is denied service because*
552 *of information from the central registry or convictions appearing on his criminal history record, the Center*

553 shall provide a copy of the information obtained from the central registry or the Central Criminal Records
554 Exchange or both to the applicant or volunteer.

555 E. Further dissemination of the background check information is prohibited other than to the
556 Commissioner's representative or a federal or state authority or court as may be required to comply with an
557 express requirement of law for such further dissemination.

558 F. No person who complies in good faith with the provisions of this section shall be liable for any civil
559 damages for any act or omission in the performance of duties under this section unless the act or omission
560 was the result of gross negligence or willful misconduct.

561 **§ 32.1-162.15:1.18. Revocation or denial of renewal based on background checks; failure to obtain**
562 **background check.**

563 A. The Commissioner may revoke or deny renewal of the license of a Center if the Center has knowledge
564 that a person specified in § 32.1-162.15:1.17 required to have a background check (i) has been convicted of
565 any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or
566 neglect within or outside the Commonwealth, and the Center refuses to separate such person from
567 employment or volunteer service.

568 B. Failure to obtain background checks pursuant to § 32.1-162.15:1.17 shall be grounds for denial,
569 revocation, or termination of a license. No violation shall occur if the Center has applied for the background
570 check timely and it has not been obtained due to administrative delay. The provisions of this section shall be
571 enforced by the Department.

572 **§ 32.1-162.15:1.19. Offenses; penalty.**

573 Any person, and each officer and each member of the governing board of any association or corporation
574 that operates a Center, is guilty of a Class 1 misdemeanor if he:

575 1. Interferes with any representative of the Commissioner in the discharge of his duties under this article;
576 2. Makes to the Commissioner or any representative of the Commissioner any report or statement, with
577 respect to the operation of any Center, that is known by such person to be false;

578 3. Operates or engages in the conduct of a Center without first obtaining a license as required by this
579 article or after such license has been revoked or suspended or has expired and not been renewed. No
580 violation shall occur if the Center applied to the Department for renewal prior to the expiration date of the
581 license. Each day's violation of this subdivision shall constitute a separate offense; or

582 4. Operates or engages in the conduct of a Center serving more persons than the maximum stipulated in
583 the license.

584 **§ 32.1-162.15:1.20. Disciplinary action; civil penalties.**

585 A. The Commissioner may impose disciplinary action (i) for violation of any of the provisions of this
586 article or any regulation adopted under any provision of this article for which that violation adversely
587 affects, or is an imminent and substantial threat to, the health, safety, or welfare of the person cared for
588 therein or (ii) for permitting, aiding, or abetting the commission of any illegal act in a Center.

589 B. The disciplinary action that the Commissioner may impose includes:

590 1. Revoking or refusing to renew a license;

591 2. Suspending or refusing to reinstate a license;

592 3. Placing a licensee on probation upon finding that the licensee is substantially out of compliance with
593 the terms of its license and that the health and safety of children are at risk;

594 4. Reducing licensed capacity or prohibiting new admissions or enrollments when the Commissioner
595 concludes that the licensee cannot make necessary corrections to achieve compliance with regulations except
596 by a temporary restriction of its scope of service;

597 5. Mandating training for the licensee or licensee's employees or volunteers, with any costs to be borne by
598 the licensee, when the Commissioner concludes that the lack of such training has led directly to violations of
599 regulations;

600 6. Assessing monetary penalties of not more than \$1,000 per violation per day, not to exceed \$100,000 for
601 a series of related incidents of noncompliance, upon finding that the Center is substantially out of compliance
602 with the terms of its license and the health and safety of children are at risk; however, no monetary penalty
603 shall be imposed pursuant to this subdivision on any Center operated by an agency of the Commonwealth;

604 7. Requiring licensees to contact parents, guardians, or other responsible persons in writing regarding
605 health and safety violations; and

606 8. Requiring submission of and compliance with plans of corrective action, with or without actions
607 directed by the Commissioner.

608 C. Any monetary penalties collected under this section shall be paid in equal portions to the Physician
609 Loan Repayment Program established in § 32.1-122.6:1, the Nurse Loan Repayment Program established in
610 § 32.1-122.6:04, and the Nursing Scholarship and Loan Repayment Fund established in § 54.1-3011.2 after

611 *deduction of the administrative costs of the Commissioner and the Department in furtherance of this section.*

612 *D. Except as provided in § 32.1-162.15:1.21, the Commissioner shall take no action to impose*
613 *disciplinary action against a Center that is not operated by an agency of the Commonwealth except after*
614 *reasonable notice and an opportunity to be heard in no fewer than 30 days by the Commissioner's presiding*
615 *officer in accordance with § 2.2-4019. Such disciplinary action may be in addition to any penalty imposed by*
616 *law for the violation.*

617 *1. All requests for an opportunity to be heard following a notice of imposition of disciplinary action shall*
618 *be received in writing within 15 days of the date of receipt of such notice.*

619 *2. All administrative proceedings under this section shall be separate from the regulatory office of the*
620 *Department that conducted the inspection, investigation, examination, or review.*

621 *3. The presiding officer shall provide a recommendation to the Commissioner, including findings of fact,*
622 *conclusions, and appropriate disciplinary action.*

623 *4. The Commissioner may affirm, modify, or reverse such recommendation and shall issue a final case*
624 *decision.*

625 *E. Whenever the Commissioner refuses to issue a license or to renew a license or revokes a license for a*
626 *Center other than a Center operated by an agency of the Commonwealth, the provisions of the Administrative*
627 *Process Act (§ 2.2-4000 et seq.) shall apply.*

628 *F. Except as provided in § 32.1-162.15:1.22, the Commissioner shall take no action to impose*
629 *disciplinary action against a Center operated by an agency of the Commonwealth except after reasonable*
630 *notice and an opportunity to be heard in accordance with § 32.1-162.15:1.23.*

631 *G. An appeal, taken as provided in this section, shall operate to stay any criminal prosecution for*
632 *operation without a license.*

633 *H. A monetary penalty that is not appealed becomes due on the first day after the appeal period expires.*
634 *The license of a Center that has failed to pay a civil penalty due under this section shall not be renewed until*
635 *the civil penalty has been paid in full, with interest, provided that the Commissioner may renew a license*
636 *when an unpaid monetary penalty is the subject of a pending appeal.*

637 *I. If a license is revoked or refused renewal, a new license may be issued by the Commissioner after:*

638 *1. Satisfactory evidence is submitted to him that the conditions upon which the revocation or refusal was*
639 *based have been corrected; and*

640 2. Proper inspection has been made and compliance with all provisions of this article, regulations
641 promulgated pursuant to this article, and applicable state and federal law and regulations hereunder has
642 been obtained.

643 J. The Board shall promulgate regulations to implement the provisions of this section that include:

644 1. Criteria for when the imposition of disciplinary action or initiation of court proceedings as specified in
645 § 32.1-27, or a combination thereof, are appropriate in order to ensure prompt correction of violations
646 involving noncompliance with requirements of any order of the Board or Commissioner or any provision of
647 or regulation promulgated pursuant to this article;

648 2. Criteria for the imposition of disciplinary action based upon the severity, pervasiveness, duration, and
649 degree of risk to the health, safety, or welfare of children;

650 3. Provisions allowing the Commissioner (i) to accept a plan of correction, including a schedule of
651 compliance, from a Center prior to assessing a monetary penalty pursuant to subdivision B 6 or (ii) to reduce
652 or abate the monetary penalty amount if the Center complies with the plan of correction within its terms; and

653 4. Procedures for imposition of disciplinary action consistent with the Administrative Process Act (§
654 2.2-4000 et seq.).

655 **§ 32.1-162.15:1.21. Summary suspension; privately operated Centers.**

656 A. Pursuant to the procedures set forth in this section and in addition to the authority for other
657 disciplinary actions provided in this title, the Commissioner may issue a notice of summary suspension of the
658 license of any Center in conjunction with any proceeding for revocation, denial, or other action when
659 conditions or practices exist in the Center that pose an immediate and substantial threat to the health, safety,
660 and welfare of the children receiving care and the Commissioner believes the operation of the Center should
661 be suspended during the pendency of such proceeding.

662 B. A notice of summary suspension issued by the Commissioner to a Center shall set forth (i) the summary
663 suspension procedures; (ii) hearing and appeal rights as provided in this section; (iii) facts and evidence that
664 formed the basis for the summary suspension; and (iv) the time, date, and location of a hearing to determine
665 whether the summary suspension is appropriate. Such notice shall be served on the Center or its designee as
666 soon as practicable thereafter by personal service or certified mail, return receipt requested, to the address
667 of record of the Center.

668 C. The summary suspension hearing shall be presided over by a hearing officer selected by the

669 *Commissioner from a list prepared by the Executive Secretary of the Supreme Court of Virginia and shall be*
670 *held as soon as practicable, but in no event later than 15 business days following service of the notice of*
671 *summary suspension; however, the hearing officer may grant a written request for a continuance, not to*
672 *exceed an additional 10 business days, for good cause shown. Within 10 business days after such hearing, the*
673 *hearing officer shall provide to the Commissioner written findings and conclusions, together with a*
674 *recommendation as to whether the license should be summarily suspended.*

675 *D. Within 10 business days of the receipt of the hearing officer's findings, conclusions, and*
676 *recommendation, the Commissioner may issue a final order of summary suspension or an order that such*
677 *summary suspension is not warranted by the facts and circumstances presented. The Commissioner shall*
678 *adopt the hearing officer's recommended decision unless to do so would be an error of law or Department*
679 *policy. If the Commissioner rejects the hearing officer's findings, conclusions, or recommendation, the*
680 *Commissioner shall state with particularity the basis for rejection. In issuing a final order of summary*
681 *suspension, the Commissioner may choose to suspend the license of the Center or to suspend only certain*
682 *authority of the Center to operate, including the authority to provide certain services or perform certain*
683 *functions that the Commissioner determines should be restricted or modified in order to protect the health,*
684 *safety, or welfare of the children receiving care. A final order of summary suspension shall include notice*
685 *that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10*
686 *business days following service of the order. The sole issue before the court shall be whether the*
687 *Commissioner had reasonable grounds to require the licensee to cease operations during the pendency of the*
688 *concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding*
689 *shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.*

690 *E. A copy of any final order of summary suspension shall be prominently displayed by the Center at each*
691 *public entrance of the facility, or in lieu thereof, the Center may display a written statement summarizing the*
692 *terms of the order in a prominent location, printed in a clear and legible size and typeface, and identifying*
693 *the location within the facility where the final order of summary suspension may be reviewed.*

694 *F. The provisions of this subsection shall not apply to any Center operated by an agency of the*
695 *Commonwealth, which shall instead be governed by the provisions of § 32.1-162.15:1.22.*

696 **§ 32.1-162.15:1.22. Summary suspension; Centers operated by an agency of the Commonwealth.**

697 *Whenever the Commissioner issues a summary order of suspension of the license to operate a Center*

698 *operated by an agency of the Commonwealth:*

699 *1. Before such summary order of suspension shall take effect, the Commissioner shall issue to the Center*
700 *a notice of summary order of suspension setting forth (i) the procedures for a hearing and right of review as*
701 *provided in this section and (ii) the facts and evidence that formed the basis on which the summary order of*
702 *suspension is sought. Such notice shall be served on the licensee or its designee as soon as practicable*
703 *thereafter by personal service or certified mail, return receipt requested, to the address of record of the*
704 *licensee. The notice shall state the time, date, and location of a hearing to determine whether the suspension*
705 *is appropriate. Such hearing shall be held no later than three business days after the issuance of the notice of*
706 *the summary order of suspension and shall be convened by the Commissioner or his designee. After such*
707 *hearing, the Commissioner may issue a final order of summary suspension or may find that such summary*
708 *suspension is not warranted by the facts and circumstances presented.*

709 *2. A final order of summary suspension shall include notice that the licensee may request, in writing and*
710 *within three business days after receiving the Commissioner's decision, that the Commissioner refer the*
711 *matter to the Secretary of Health and Human Resources for resolution within three business days of the*
712 *referral. Any determination by the Secretary shall be final and not subject to judicial review. If the final order*
713 *of summary suspension is upheld, it shall take effect immediately, and a copy of the final order of summary*
714 *suspension shall be prominently displayed by the licensee at each public entrance of the Center. Any*
715 *concurrent revocation, denial, or other proceedings shall not be affected by the outcome of any determination*
716 *by the Secretary.*

717 **§ 32.1-162.15:1.23. Right to appeal notice of imposition of disciplinary action; Centers operated by**
718 **agencies of the Commonwealth.**

719 *A Center operated by an agency of the Commonwealth shall have the right to appeal any notice of*
720 *imposition of disciplinary action as follows:*

721 *1. Within 30 days after receiving a notice of imposition of disciplinary action, the licensee shall request in*
722 *writing that the Commissioner review the intended disciplinary action and may submit, together with such*
723 *request, relevant information, documentation, or other pertinent data supporting its appeal. The*
724 *Commissioner shall issue a decision within 60 days after receiving the request and shall have the authority to*
725 *uphold the disciplinary action or take whatever action he deems appropriate to resolve the controversy.*

726 *2. If the Center disputes the Commissioner's decision, the licensee shall request, within 30 days of*

727 *receiving the Commissioner's decision, that the Commissioner refer the matter to the Secretary of Health and*
728 *Human Resources. The Secretary shall issue a decision within 60 days of receiving the request for review.*
729 *The Secretary's decision shall be final and shall not be subject to judicial review.*
730 **2. That the Board of Health shall promulgate regulations to implement the provisions of this act to be**
731 **effective within 280 days of its enactment.**