

HOUSE BILL 1511

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By: **Chair, Health and Government Operations Committee (By Request – Departmental – Health and Mental Hygiene)**

Introduced and read first time: February 27, 2014

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Department of Health and Mental Hygiene – Adult Dependent Care**
3 **Providers – Maryland Background Check Program**

4 FOR the purpose of establishing the Maryland Background Check Program in the
5 Department of Health and Mental Hygiene; providing for the purpose of the
6 Program; requiring a certain adult dependent care provider to obtain a fitness
7 determination from the Program for certain applicants; providing that an
8 applicant may not begin work until the adult dependent care provider has
9 obtained a certain fitness determination; prohibiting an adult dependent care
10 provider from hiring an applicant who has a certain fitness determination;
11 requiring an adult dependent care provider to require certain applicants to
12 submit certain documentation and to submit to a certain preliminary screening
13 and a certain criminal history records check for a certain purpose; requiring an
14 adult dependent care provider to conduct a certain preliminary screening;
15 establishing a process for obtaining a certain criminal history records check;
16 requiring the Program to make a certain fitness determination for certain
17 applicants; requiring the fitness determination to include a review of a certain
18 preliminary screening and certain criminal history records check results;
19 requiring the Program to send certain notices to certain persons in a certain
20 manner; authorizing an adult dependent care provider to hire certain applicants
21 as certain direct access employees under certain circumstances; requiring the
22 Program to send a certain notice to a certain health occupations board in the
23 State if a certain applicant has a certain fitness determination; authorizing
24 certain applicants to request an appeal under certain circumstances; requiring
25 the Program to conduct an administrative review of certain information under
26 certain circumstances; requiring the Program to provide a certain notice to
27 certain persons if a certain determination is made by the Program; requiring
28 the Department to adopt certain regulations establishing certain rehabilitative
29 factors to be considered by the Program during a certain waiver process;
30 providing for the powers and duties of the Department relating to the Program;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 requiring the Department to develop and implement a certain rapback program
2 for a certain purpose; requiring the Program to provide a certain notice to an
3 adult dependent care provider under certain circumstances; requiring the
4 Department to adopt certain regulations relating to the rapback program;
5 requiring a certain adult dependent care provider to require certain employees
6 to submit to a certain criminal history records check on or before a certain date;
7 requiring certain individuals who have access to certain criminal history records
8 check information about certain individuals to submit to a certain criminal
9 history records check; establishing the Maryland Background Check Program
10 Fund; providing for the contents, use, investment of money, and auditing of the
11 Fund; providing that the Fund is a continuing, nonlapsing fund not subject to
12 certain provisions of law; providing that a State agency or certain adult
13 dependent care providers are immune from certain civil and criminal liability
14 under certain circumstances; providing that a certain adult dependent care
15 provider providing a certain reference is presumed to be acting in good faith
16 except under certain circumstances; establishing certain penalties for certain
17 violations of this Act; providing for the construction of this Act; repealing
18 certain obsolete provisions of law relating to adult dependent care programs and
19 criminal history records checks; establishing the Maryland Background Check
20 Advisory Board in the Department; providing for the purpose of the Advisory
21 Board; providing for the composition, staffing, and compensation for the
22 Advisory Board; requiring the Advisory Board to meet a certain number of
23 times each year; defining certain terms; providing for the termination of certain
24 provisions of this Act; and generally relating to the Maryland Background
25 Check Program.

26 BY repealing

27 Article – Health – General

28 Section 19–1901 through 19–1912 and the subtitle “Subtitle 19. Adult
29 Dependent Care Programs – Criminal History Records Checks and
30 Background Checks”

31 Annotated Code of Maryland

32 (2009 Replacement Volume and 2013 Supplement)

33 BY adding to

34 Article – Health – General

35 Section 19–1901 through 19–1912 to be under the new subtitle “Subtitle 19.
36 Adult Dependent Care Providers – Maryland Background Check
37 Program”

38 Annotated Code of Maryland

39 (2009 Replacement Volume and 2013 Supplement)

40 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
41 MARYLAND, That Section(s) 19–1901 through 19–1912 and the subtitle “Subtitle 19.
42 Adult Dependent Care Programs – Criminal History Records Checks and Background
43 Checks” of Article – Health – General of the Annotated Code of Maryland be repealed.

1 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
2 read as follows:

3 **Article – Health – General**

4 **SUBTITLE 19. ADULT DEPENDENT CARE PROVIDERS – MARYLAND**
5 **BACKGROUND CHECK PROGRAM.**

6 **19–1901.**

7 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
8 **INDICATED.**

9 **(B) “ADULT DEPENDENT CARE PROVIDER” MEANS A PERSON**
10 **PROVIDING SERVICES TO DEPENDENT ADULTS IN A PRIVATE OR PUBLIC**
11 **SETTING, INCLUDING:**

12 **(1) AN ADULT DAY CARE FACILITY REGULATED UNDER TITLE 14,**
13 **SUBTITLE 2 OR 3 OF THIS ARTICLE;**

14 **(2) AN ASSISTED LIVING PROGRAM FACILITY REGULATED UNDER**
15 **SUBTITLE 18 OF THIS TITLE;**

16 **(3) A GROUP HOME REGULATED UNDER TITLE 10, SUBTITLE 5 OR**
17 **TITLE 7, SUBTITLE 6 OF THIS ARTICLE;**

18 **(4) A HOME HEALTH AGENCY REGULATED UNDER SUBTITLE 4 OF**
19 **THIS TITLE;**

20 **(5) A CONGREGATE HOUSING SERVICES PROGRAM REGULATED**
21 **UNDER TITLE 10, SUBTITLE 2 OF THE HUMAN SERVICES ARTICLE;**

22 **(6) A RESIDENTIAL SERVICE AGENCY AS DEFINED IN § 19–4A–01**
23 **OF THIS TITLE;**

24 **(7) AN ALTERNATIVE LIVING UNIT AS DEFINED IN § 7–101 OF**
25 **THIS ARTICLE;**

26 **(8) A HOSPICE FACILITY REGULATED UNDER SUBTITLE 9 OF THIS**
27 **TITLE;**

28 **(9) A LONG–TERM CARE HOSPITAL;**

29 **(10) A SPECIAL HOSPITAL AS CLASSIFIED UNDER § 19–307 OF THIS**

1 ARTICLE;

2 (11) A RELATED INSTITUTION REGULATED UNDER SUBTITLE 3 OF
3 THIS TITLE; AND

4 (12) AN INDIVIDUAL WHO PROVIDES PERSONAL CARE SERVICES
5 UNDER THE STATE COMMUNITY FIRST CHOICE PROGRAM IN ACCORDANCE
6 WITH § 1915(K) OF THE FEDERAL SOCIAL SECURITY ACT RELATING TO THE
7 MARYLAND MEDICAL ASSISTANCE PROGRAM'S PROVISION OF HOME- AND
8 COMMUNITY-BASED SERVICES.

9 (C) "APPLICANT" MEANS AN INDIVIDUAL WHO HAS APPLIED TO AN
10 ADULT DEPENDENT CARE PROVIDER FOR EMPLOYMENT AS A DIRECT ACCESS
11 EMPLOYEE.

12 (D) "CONVICTION" MEANS:

13 (1) A PLEA OR VERDICT OF GUILTY;

14 (2) A PLEA OF NOLO CONTENDERE;

15 (3) A DISPOSITION OF PROBATION BEFORE JUDGMENT; OR

16 (4) A DISPOSITION OF NOT CRIMINALLY RESPONSIBLE.

17 (E) "CRIMINAL HISTORY RECORDS CHECK" MEANS A CHECK OF
18 CRIMINAL HISTORY RECORD INFORMATION, AS DEFINED IN § 10-201 OF THE
19 CRIMINAL PROCEDURE ARTICLE, BY THE DEPARTMENT OF PUBLIC SAFETY
20 AND CORRECTIONAL SERVICES.

21 (F) (1) "DIRECT ACCESS EMPLOYEE" MEANS AN INDIVIDUAL WHO:

22 (I) IS EMPLOYED BY AN ADULT DEPENDENT CARE
23 PROVIDER; AND

24 (II) HAS OR IS EXPECTED TO HAVE DUTIES THAT INVOLVE:

25 1. ONE-ON-ONE CONTACT WITH OR ACCESS TO A
26 PATIENT OR RESIDENT RECEIVING SERVICES FROM AN ADULT DEPENDENT
27 CARE PROVIDER; OR

1 **2. ACCESS TO THE PROPERTY, PERSONAL**
2 **IDENTIFIABLE INFORMATION, OR FINANCIAL INFORMATION OF A PATIENT OR**
3 **RESIDENT RECEIVING SERVICES FROM AN ADULT DEPENDENT CARE PROVIDER.**

4 **(2) “DIRECT ACCESS EMPLOYEE” DOES NOT INCLUDE:**

5 **(I) UNLESS THE INDIVIDUAL PERFORMS SERVICES**
6 **EQUIVALENT TO A DIRECT ACCESS EMPLOYEE, A VOLUNTEER OR STUDENT**
7 **PROVIDING SERVICES WITHOUT COMPENSATION FOR AN ADULT DEPENDENT**
8 **CARE PROVIDER; OR**

9 **(II) A CONTRACTOR OR AN EMPLOYEE OF A CONTRACTOR**
10 **WHO PROVIDES ONLY REPAIR, DELIVERY, INSTALLATION, OR SIMILAR SERVICES**
11 **FOR AN ADULT DEPENDENT CARE PROVIDER.**

12 **(G) “DISCLOSURE STATEMENT” MEANS A SWORN STATEMENT OR**
13 **AFFIRMATION THAT INCLUDES NOTICE OF ANY OF THE FOLLOWING:**

14 **(1) A CRIMINAL CONVICTION;**

15 **(2) CRIMINAL CHARGES PENDING A FINAL DISPOSITION; OR**

16 **(3) AN EMPLOYMENT HISTORY FOR THE PAST 5 YEARS,**
17 **INCLUDING THE NAMES AND ADDRESSES OF EACH EMPLOYER.**

18 **(H) “DISQUALIFYING OFFENSE” MEANS:**

19 **(1) A CONVICTION DESCRIBED IN 42 U.S.C. § 1320A-7(A); OR**

20 **(2) A CONVICTION FOR A CRIME OF VIOLENCE AS DEFINED IN §**
21 **14-101 OF THE CRIMINAL LAW ARTICLE.**

22 **(I) “FAVORABLE FITNESS DETERMINATION” MEANS A DETERMINATION**
23 **MADE BY THE PROGRAM THAN AN INDIVIDUAL IS ELIGIBLE TO WORK AS A**
24 **DIRECT ACCESS EMPLOYEE BECAUSE THE INDIVIDUAL:**

25 **(1) HAS NOT COMMITTED A DISQUALIFYING OFFENSE; OR**

26 **(2) HAS BEEN GRANTED A WAIVER UNDER § 19-1906 OF THIS**
27 **SUBTITLE.**

1 **(J) “FITNESS DETERMINATION” MEANS A DETERMINATION MADE BY**
2 **THE PROGRAM ABOUT AN INDIVIDUAL’S ELIGIBILITY TO WORK AS A DIRECT**
3 **ACCESS EMPLOYEE.**

4 **(K) “LONG-TERM CARE HOSPITAL” MEANS A HOSPITAL THAT MEETS**
5 **THE CRITERIA FOR THE AVERAGE LENGTH OF INPATIENT STAY SET FORTH IN 42**
6 **U.S.C. § 1395 WW(D)(1)(B)(IV).**

7 **(L) “PRINTED STATEMENT” MEANS A DOCUMENT ISSUED BY THE**
8 **CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY IN THE**
9 **DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES IN RESPONSE**
10 **TO AN APPLICATION FOR A NATIONAL AND STATE CRIMINAL HISTORY RECORDS**
11 **CHECK.**

12 **(M) “PROGRAM” MEANS THE MARYLAND BACKGROUND CHECK**
13 **PROGRAM.**

14 **(N) “UNFAVORABLE FITNESS DETERMINATION” MEANS A**
15 **DETERMINATION MADE BY THE PROGRAM THAT AN INDIVIDUAL IS INELIGIBLE**
16 **TO WORK AS A DIRECT ACCESS EMPLOYEE BECAUSE THE INDIVIDUAL HAS**
17 **COMMITTED A DISQUALIFYING OFFENSE.**

18 **19-1902.**

19 **(A) THERE IS A MARYLAND BACKGROUND CHECK PROGRAM IN THE**
20 **DEPARTMENT.**

21 **(B) THE PURPOSE OF THE PROGRAM IS TO DETER PATIENT AND**
22 **RESIDENT ABUSE, NEGLECT, AND MISAPPROPRIATION OF PROPERTY BY DIRECT**
23 **ACCESS EMPLOYEES OF ADULT DEPENDENT CARE PROVIDERS BY REQUIRING**
24 **INDIVIDUALS TO SUBMIT TO STATE AND NATIONAL BACKGROUND CHECKS AND**
25 **CRIMINAL HISTORY RECORDS CHECKS BEFORE QUALIFYING FOR EMPLOYMENT**
26 **AS A DIRECT ACCESS EMPLOYEE WITH AN ADULT DEPENDENT CARE PROVIDER.**

27 **19-1903.**

28 **(A) (1) AN ADULT DEPENDENT CARE PROVIDER SHALL OBTAIN FROM**
29 **THE PROGRAM A FITNESS DETERMINATION FOR EACH APPLICANT THE ADULT**
30 **DEPENDENT CARE PROVIDER WOULD LIKE TO HIRE AS A DIRECT ACCESS**
31 **EMPLOYEE.**

1 **(2) AN APPLICANT MAY NOT BEGIN WORK UNTIL THE ADULT**
2 **DEPENDENT CARE PROVIDER HAS OBTAINED A FAVORABLE FITNESS**
3 **DETERMINATION FOR THE APPLICANT FROM THE PROGRAM.**

4 **(3) AN ADULT DEPENDENT CARE PROVIDER MAY NOT HIRE AN**
5 **APPLICANT AS A DIRECT ACCESS EMPLOYEE IF THE INDIVIDUAL HAS AN**
6 **UNFAVORABLE FITNESS DETERMINATION.**

7 **(B) TO OBTAIN A FITNESS DETERMINATION FOR AN APPLICANT FROM**
8 **THE PROGRAM, AN ADULT DEPENDENT CARE PROVIDER SHALL REQUIRE THE**
9 **APPLICANT TO:**

10 **(1) SUBMIT TO THE ADULT DEPENDENT CARE PROVIDER AT THE**
11 **TIMES REQUIRED BY THE PROGRAM:**

12 **(I) AN APPLICATION INCLUDING THE INFORMATION**
13 **REQUIRED BY THE DEPARTMENT;**

14 **(II) A SIGNED DISCLOSURE STATEMENT;**

15 **(III) WRITTEN AUTHORIZATION TO SEARCH THE**
16 **APPLICANT'S STATE AND NATIONAL CRIMINAL HISTORY RECORDS**
17 **INFORMATION;**

18 **(IV) FINGERPRINTS BY A LIVE SCAN VENDOR, IF REQUIRED;**
19 **AND**

20 **(V) EMPLOYER REFERENCES FROM THE APPLICANT'S MOST**
21 **RECENT EMPLOYER AND ANY OTHER EMPLOYERS FROM THE PAST 5 YEARS; AND**

22 **(2) SUBMIT TO:**

23 **(I) A PRELIMINARY SCREENING UNDER SUBSECTION (C) OF**
24 **THIS SECTION; AND**

25 **(II) A STATE AND NATIONAL CRIMINAL HISTORY RECORDS**
26 **CHECK UNDER § 19-1904 OF THIS SUBTITLE.**

27 **(C) (1) AN ADULT DEPENDENT CARE PROVIDER SHALL CONDUCT A**
28 **PRELIMINARY SCREENING OF AN APPLICANT BY:**

29 **(I) ENTERING THE APPLICANT'S REQUIRED INFORMATION**
30 **INTO THE PROGRAM COMPUTER SYSTEM TO SEARCH:**

1 **1. THE STATE-BASED REGISTRIES FROM THE**
2 **MARYLAND BACKGROUND CHECK SYSTEM; AND**

3 **2. THE REGISTRIES OF ANY OTHER STATE WHERE**
4 **THE APPLICANT RESIDED OR WAS EMPLOYED FOR ANY PERIOD OF TIME; AND**

5 **(II) PAYING THE ADMINISTRATIVE FEE SET BY THE**
6 **DEPARTMENT.**

7 **(2) SUBJECT TO THE PROVISIONS OF SUBSECTION (D) OF THIS**
8 **SECTION, IF AN APPLICANT'S PRELIMINARY SCREENING UNDER PARAGRAPH (1)**
9 **OF THIS SUBSECTION DOES NOT FIND ANY DISQUALIFYING OFFENSES, THE**
10 **ADULT DEPENDENT CARE PROVIDER SHALL REQUIRE THE APPLICANT TO**
11 **SUBMIT TO A STATE AND NATIONAL CRIMINAL HISTORY RECORDS CHECK**
12 **UNDER § 19-1904 OF THIS SUBTITLE.**

13 **(D) IF AN APPLICANT IS LICENSED, CERTIFIED, OR REGISTERED IN A**
14 **HEALTH OCCUPATION IN THE STATE FOR WHICH A STATE OR NATIONAL**
15 **CRIMINAL HISTORY RECORDS CHECK IS REQUIRED AS A PART OF THE INITIAL**
16 **AND RENEWAL LICENSING REQUIREMENTS, THE APPLICANT MAY NOT BE**
17 **REQUIRED TO SUBMIT FINGERPRINTS FOR A STATE AND NATIONAL CRIMINAL**
18 **HISTORY RECORDS CHECK UNDER § 19-1904 OF THIS SUBTITLE.**

19 **19-1904.**

20 **(A) IN THIS SECTION, "CENTRAL REPOSITORY" MEANS THE CRIMINAL**
21 **JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT**
22 **OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.**

23 **(B) AS PART OF AN APPLICATION TO THE CENTRAL REPOSITORY FOR A**
24 **STATE AND NATIONAL CRIMINAL HISTORY RECORDS CHECK, AN ADULT**
25 **DEPENDENT CARE PROVIDER, ON BEHALF OF AN APPLICANT, SHALL SUBMIT TO**
26 **THE CENTRAL REPOSITORY:**

27 **(1) ONE COMPLETE SET OF LEGIBLE FINGERPRINTS TAKEN AT A**
28 **FACILITY APPROVED BY THE DIRECTOR OF THE CENTRAL REPOSITORY AND**
29 **THE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION;**

30 **(2) THE FEE AUTHORIZED UNDER § 10-221 OF THE CRIMINAL**
31 **PROCEDURE ARTICLE FOR ACCESS TO STATE CRIMINAL HISTORY RECORDS;**
32 **AND**

1 **(3) THE PROCESSING FEE REQUIRED BY THE FEDERAL BUREAU**
2 **OF INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY RECORDS CHECK.**

3 **(C) IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE CRIMINAL**
4 **PROCEDURE ARTICLE, THE CENTRAL REPOSITORY SHALL FORWARD THE**
5 **CRIMINAL HISTORY RECORD INFORMATION OF THE APPLICANT TO:**

6 **(1) THE ADULT DEPENDENT CARE PROVIDER; AND**

7 **(2) THE PROGRAM.**

8 **(D) IF AN APPLICANT HAS MADE TWO OR MORE UNSUCCESSFUL**
9 **ATTEMPTS AT SECURING LEGIBLE FINGERPRINTS, THE PROGRAM MAY ACCEPT**
10 **AN ALTERNATE METHOD OF CRIMINAL HISTORY RECORDS CHECK AS**
11 **PERMITTED BY THE DIRECTOR OF THE CENTRAL REPOSITORY AND THE**
12 **DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION.**

13 **(E) INFORMATION OBTAINED FROM THE CENTRAL REPOSITORY UNDER**
14 **THIS SECTION:**

15 **(1) IS CONFIDENTIAL AND MAY NOT BE REDISSEMINATED; AND**

16 **(2) SHALL BE USED ONLY FOR THE PURPOSE AUTHORIZED BY**
17 **THIS SUBTITLE.**

18 **(F) THE SUBJECT OF A CRIMINAL HISTORY RECORDS CHECK UNDER**
19 **THIS SECTION MAY CONTEST THE CONTENTS OF THE PRINTED STATEMENT**
20 **ISSUED BY THE CENTRAL REPOSITORY AS PROVIDED IN § 10-223 OF THE**
21 **CRIMINAL PROCEDURE ARTICLE.**

22 **19-1905.**

23 **(A) THE PROGRAM SHALL MAKE A FITNESS DETERMINATION FOR EACH**
24 **APPLICANT SUBMITTED TO THE PROGRAM BY AN ADULT DEPENDENT CARE**
25 **PROVIDER.**

26 **(B) (1) IN MAKING A FITNESS DETERMINATION FOR AN APPLICANT,**
27 **THE PROGRAM SHALL REVIEW THE RESULTS OF:**

28 **(I) THE PRELIMINARY SCREENING CONDUCTED UNDER §**
29 **19-1903(C) OF THIS SUBTITLE; AND**

1 **(II) THE STATE AND NATIONAL CRIMINAL HISTORY**
2 **RECORDS CHECK CONDUCTED UNDER § 19-1904 OF THIS SUBTITLE.**

3 **(2) THE PROGRAM SHALL SEND A WRITTEN NOTICE TO THE**
4 **APPLICANT AND A NOTICE TO THE ADULT DEPENDENT CARE PROVIDER THAT**
5 **THE APPLICANT HAS RECEIVED:**

6 **(I) A FAVORABLE FITNESS DETERMINATION IF THE REVIEW**
7 **OF THE RESULTS OF THE SEARCHES UNDER PARAGRAPH (1) OF THIS**
8 **SUBSECTION FINDS NO DISQUALIFYING OFFENSES; OR**

9 **(II) AN UNFAVORABLE FITNESS DETERMINATION IF THE**
10 **RESULTS OF A SEARCH INDICATE THAT THE APPLICANT HAS COMMITTED A**
11 **DISQUALIFYING OFFENSE.**

12 **(C) AN ADULT DEPENDENT CARE PROVIDER MAY HIRE AN APPLICANT**
13 **WHO RECEIVES A FAVORABLE FITNESS DETERMINATION AS A DIRECT ACCESS**
14 **EMPLOYEE.**

15 **(D) IF AN APPLICANT RECEIVES AN UNFAVORABLE FITNESS**
16 **DETERMINATION, THE PROGRAM SHALL SEND A WRITTEN NOTICE TO THE**
17 **APPLICANT OF:**

18 **(1) THE FITNESS DETERMINATION BY THE PROGRAM; AND**

19 **(2) THE RIGHT TO APPEAL THE UNFAVORABLE FITNESS**
20 **DETERMINATION UNDER § 19-1906 OF THIS SUBTITLE.**

21 **(E) IF AN APPLICANT IS LICENSED, CERTIFIED, OR REGISTERED IN A**
22 **HEALTH OCCUPATION IN THE STATE AND THE APPLICANT HAS AN**
23 **UNFAVORABLE FITNESS DETERMINATION, THE PROGRAM SHALL SEND A**
24 **NOTICE TO THE APPROPRIATE HEALTH OCCUPATIONS BOARD OF THE**
25 **APPLICANT'S DISQUALIFYING OFFENSE INFORMATION.**

26 **19-1906.**

27 **(A) AN APPLICANT MAY REQUEST AN APPEAL OF A FITNESS**
28 **DETERMINATION OR THE DENIAL OF A WAIVER UNDER SUBSECTION (C)(2) OF**
29 **THIS SECTION.**

30 **(B) ON REQUEST OF AN APPLICANT UNDER SUBSECTION (A) OF THIS**
31 **SECTION, THE PROGRAM SHALL CONDUCT AN ADMINISTRATIVE REVIEW OF:**

1 **(1) THE APPLICANT'S RESULTS FROM THE STATE AND NATIONAL**
2 **CRIMINAL HISTORY RECORDS CHECK CONDUCTED UNDER § 19-1904 OF THIS**
3 **SUBTITLE; AND**

4 **(2) ANY OTHER INFORMATION PROVIDED BY THE APPLICANT**
5 **RELEVANT TO THE APPLICANT'S FITNESS DETERMINATION.**

6 **(C) IF, AFTER CONDUCTING AN ADMINISTRATIVE REVIEW UNDER**
7 **SUBSECTION (B) OF THIS SECTION, THE PROGRAM FINDS THAT THE APPLICANT**
8 **HAS:**

9 **(1) NOT COMMITTED A DISQUALIFYING OFFENSE, THE PROGRAM**
10 **SHALL SEND THE APPLICANT AND THE ADULT DEPENDENT CARE PROVIDER**
11 **NOTICE OF THE APPLICANT'S FAVORABLE FITNESS DETERMINATION; OR**

12 **(2) HAS COMMITTED A DISQUALIFYING OFFENSE, THE PROGRAM**
13 **MAY GRANT A WAIVER AFTER CONSIDERATION OF THE REHABILITATIVE**
14 **FACTORS UNDER SUBSECTION (D) OF THIS SECTION.**

15 **(D) THE DEPARTMENT SHALL ADOPT REGULATIONS ESTABLISHING**
16 **REHABILITATIVE FACTORS THAT MUST BE CONSIDERED BY THE PROGRAM**
17 **WHEN DETERMINING WHETHER TO GRANT A WAIVER TO AN APPLICANT WHO**
18 **HAS COMMITTED AN OTHERWISE DISQUALIFYING OFFENSE, INCLUDING:**

19 **(1) THE PASSAGE OF TIME;**

20 **(2) EXTENUATING CIRCUMSTANCES;**

21 **(3) EVIDENCE OF REHABILITATION; AND**

22 **(4) RELEVANCE OF THE PARTICULAR DISQUALIFYING OFFENSE**
23 **TO THE JOB DUTIES OF THE APPLICANT OR DIRECT ACCESS EMPLOYEE.**

24 **19-1907.**

25 **(A) (1) IN ADDITION TO THE POWERS AND DUTIES SET FORTH**
26 **ELSEWHERE IN THIS SUBTITLE, THE DEPARTMENT HAS THE FOLLOWING**
27 **POWERS AND DUTIES RELATING TO THE PROGRAM:**

28 **(I) TO ADOPT RULES AND REGULATIONS TO CARRY OUT**
29 **THIS SUBTITLE;**

1 **(II) TO ESTABLISH AN ADMINISTRATIVE REVIEW PROCESS**
2 **FOR HEARING APPEALS OF AN APPLICANT'S UNFAVORABLE FITNESS**
3 **DETERMINATION OR DENIAL OF A WAIVER;**

4 **(III) TO ESTABLISH STANDARDS FOR THE IMPOSITION OF**
5 **CIVIL AND ADMINISTRATIVE PENALTIES IMPOSED UNDER THIS SUBTITLE;**

6 **(IV) TO ESTABLISH A TIMELINE FOR THE PHASE-IN OF THE**
7 **REQUIREMENTS OF § 19-1908 OF THIS SUBTITLE; AND**

8 **(V) TO SET BY REGULATION REASONABLE FEES FOR ITS**
9 **SERVICES.**

10 **(2) ANY FEES CHARGED AND COLLECTED BY THE DEPARTMENT**
11 **UNDER PARAGRAPH (1)(V) OF THIS SUBSECTION SHALL APPROXIMATE THE**
12 **COST OF MAINTAINING THE OPERATIONS OF THE PROGRAM.**

13 **(B) (1) THE DEPARTMENT SHALL DEVELOP AND IMPLEMENT A**
14 **RAPBACK PROGRAM.**

15 **(2) THE PURPOSE OF THE RAPBACK PROGRAM IS TO IDENTIFY**
16 **DIRECT ACCESS EMPLOYEES WHO HAVE COMMITTED DISQUALIFYING OFFENSES**
17 **AFTER OBTAINING A FAVORABLE FITNESS DETERMINATION UNDER THIS**
18 **SUBTITLE AND TO REDUCE DUPLICATION OF FINGERPRINTING.**

19 **(3) THE DEPARTMENT SHALL REQUIRE AN ADULT DEPENDENT**
20 **CARE PROVIDER TO PERIODICALLY VERIFY THE ELIGIBILITY OF DIRECT ACCESS**
21 **EMPLOYEES FOR CONTINUED EMPLOYMENT WITH THE ADULT DEPENDENT**
22 **CARE PROVIDER.**

23 **(4) IF THE RAPBACK PROGRAM FINDS THAT A DIRECT ACCESS**
24 **EMPLOYEE HAS COMMITTED A DISQUALIFYING OFFENSE, THE PROGRAM SHALL**
25 **SEND A WRITTEN NOTICE TO THE ADULT DEPENDENT CARE PROVIDER THAT**
26 **EMPLOYS THE DIRECT ACCESS EMPLOYEE WITHIN 5 BUSINESS DAYS AFTER**
27 **OBTAINING THE INFORMATION.**

28 **(5) THE DEPARTMENT SHALL ADOPT REGULATIONS TO**
29 **IMPLEMENT THE PROVISIONS OF THIS SUBSECTION.**

30 **19-1908.**

31 **(A) ON OR BEFORE DECEMBER 31, 2019, EACH ADULT DEPENDENT**
32 **CARE PROVIDER SHALL REQUIRE EACH DIRECT ACCESS EMPLOYEE WHOSE**

1 INFORMATION HAS NOT BEEN ENTERED INTO THE PROGRAM'S COMPUTER
2 SYSTEM UNDER § 19-1903(C)(1) OF THIS SUBTITLE TO SUBMIT TO A STATE AND
3 NATIONAL CRIMINAL HISTORY RECORDS CHECK UNDER § 19-1904 OF THIS
4 SUBTITLE AS A CONDITION OF CONTINUED EMPLOYMENT AS A DIRECT ACCESS
5 EMPLOYEE.

6 (B) EACH INDIVIDUAL, INCLUDING AN EMPLOYEE OF THE PROGRAM
7 AND AN ADULT DEPENDENT CARE PROVIDER, WHO HAS ACCESS TO AN
8 APPLICANT'S OR DIRECT ACCESS EMPLOYEE'S STATE AND NATIONAL CRIMINAL
9 HISTORY RECORDS CHECK INFORMATION SHALL SUBMIT TO A STATE AND
10 NATIONAL CRIMINAL HISTORY RECORDS CHECK UNDER § 19-1904 OF THIS
11 SUBTITLE BEFORE THE INDIVIDUAL MAY ACCESS ANOTHER INDIVIDUAL'S
12 STATE AND NATIONAL CRIMINAL HISTORY RECORDS CHECK INFORMATION.

13 19-1909.

14 (A) THERE IS A MARYLAND BACKGROUND CHECK PROGRAM FUND.

15 (B) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY, AND
16 THE STATE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

17 (C) THE FUND CONSISTS OF:

18 (1) REVENUE DISTRIBUTED TO THE FUND FROM FEES CHARGED
19 AND COLLECTED BY THE DEPARTMENT IN ACCORDANCE WITH § 19-1907(A)(2)
20 OF THIS SUBTITLE;

21 (2) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;
22 AND

23 (3) MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE
24 BENEFIT OF THE FUND.

25 (D) (1) THE FUND MAY BE USED ONLY TO COVER THE ACTUAL
26 DOCUMENTED DIRECT AND INDIRECT COSTS OF ADMINISTERING THE
27 PROGRAM.

28 (2) THE FUND IS A CONTINUING, NONLAPSING FUND, NOT
29 SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

30 (E) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE
31 FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

1 **(2) ANY INVESTMENT EARNINGS OF THE FUND SHALL BE**
2 **CREDITED TO THE GENERAL FUND OF THE STATE.**

3 **(3) MONEY IN THE FUND MAY BE EXPENDED ONLY FOR ANY**
4 **LAWFUL PURPOSE AUTHORIZED BY THE PROVISIONS OF THIS SUBTITLE.**

5 **(F) THE LEGISLATIVE AUDITOR SHALL AUDIT THE ACCOUNTS AND**
6 **TRANSACTIONS OF THE FUND AS PROVIDED IN § 2-1220 OF THE STATE**
7 **GOVERNMENT ARTICLE.**

8 **19-1910.**

9 **(A) A STATE AGENCY OR AN ADULT DEPENDENT CARE PROVIDER THAT**
10 **ACTS IN GOOD FAITH TO OBTAIN OR TAKE ACTIONS BASED ON THE RESULTS OF**
11 **THE NATIONAL OR STATE CRIMINAL HISTORY RECORDS CHECK UNDER THIS**
12 **SUBTITLE SHALL HAVE IMMUNITY FROM CIVIL OR CRIMINAL LIABILITY UNDER §**
13 **5-619 OF THE COURTS ARTICLE.**

14 **(B) AN ADULT DEPENDENT CARE PROVIDER PROVIDING A REFERENCE**
15 **UNDER THIS SUBTITLE SHALL BE PRESUMED TO BE ACTING IN GOOD FAITH**
16 **UNLESS IT IS SHOWN BY CLEAR AND CONVINCING EVIDENCE THAT THE ADULT**
17 **DEPENDENT CARE PROVIDER:**

18 **(1) ACTED WITH ACTUAL MALICE TOWARDS AN EMPLOYEE OR A**
19 **FORMER EMPLOYEE; OR**

20 **(2) INTENTIONALLY OR RECKLESSLY DISCLOSED FALSE**
21 **INFORMATION ABOUT THE EMPLOYEE OR FORMER EMPLOYEE.**

22 **19-1911.**

23 **(A) AN APPLICANT OR A DIRECT ACCESS EMPLOYEE WHO FAILS TO**
24 **DISCLOSE A CONVICTION OR THE EXISTENCE OF PENDING CHARGES FOR A**
25 **DISQUALIFYING OFFENSE ON A DISCLOSURE STATEMENT IS GUILTY OF**
26 **PERJURY AND ON CONVICTION IS SUBJECT TO THE PENALTY PROVIDED UNDER**
27 **TITLE 9, SUBTITLE 1 OF THE CRIMINAL LAW ARTICLE.**

28 **(B) A PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS**
29 **GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT**
30 **EXCEEDING \$1,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.**

1 **(C) THE DEPARTMENT SHALL IMPOSE AN ADMINISTRATIVE PENALTY,**
2 **NOT TO EXCEED \$10,000 FOR EACH VIOLATION, ON AN ADULT DEPENDENT CARE**
3 **PROVIDER WHO VIOLATES THE PROVISIONS OF THIS SUBTITLE.**

4 **19–1912.**

5 **THIS SUBTITLE MAY NOT BE CONSTRUED TO PREVENT AN ADULT**
6 **DEPENDENT CARE PROVIDER FROM REQUIRING ANY PROSPECTIVE EMPLOYEE,**
7 **EMPLOYEE, OR VOLUNTEER NOT SUBJECT TO THE PROVISIONS OF THIS**
8 **SUBTITLE TO SUBMIT TO A BACKGROUND CHECK OR STATE OR NATIONAL**
9 **CRIMINAL HISTORY RECORDS CHECK.**

10 SECTION 3. AND BE IT FURTHER ENACTED, That:

11 (a) There is a Maryland Background Check Advisory Board in the
12 Department of Health and Mental Hygiene.

13 (b) The purpose of the Advisory Board is to:

14 (1) advise the Maryland Background Check Program administrator on
15 the development, operation, and maintenance of the Program; and

16 (2) assist the Department with the development of regulations to
17 implement the provisions of Title 19, Subtitle 19 of the Health – General Article
18 relating to the Program.

19 (c) The Advisory Council is composed of the following members, appointed by
20 the Secretary of Health and Mental Hygiene:

21 (1) two representatives of adult dependent care providers as defined in
22 § 19–1901 of the Health – General Article, as enacted by Section 1 of this Act;

23 (2) two representatives of advocacy groups representing adult
24 dependent care providers;

25 (3) two members who either receive services from or represent an
26 individual who receives services from an adult dependent care provider;

27 (4) two representatives of consumer advocacy groups;

28 (5) two representatives of unions that represent adult dependent care
29 providers or employees of adult dependent care providers;

30 (6) one representative of the Criminal Justice Information System;

31 (7) one representative of the Department of Aging;

- 1 (8) one representative of the Department of Disabilities;
- 2 (9) one representative of the Maryland Medical Assistance Program;
- 3 (10) one member of the State Board of Nursing;
- 4 (11) one member of a health occupations licensing board other than the
5 State Board of Nursing; and
- 6 (12) one attorney who has experience in elder abuse cases.
- 7 (d) The Department of Health and Mental Hygiene shall provide staff for the
8 Advisory Board.
- 9 (e) A member of the Advisory Board may not receive compensation as a
10 member of the Advisory Board and is not entitled to reimbursement for travel
11 expenses.
- 12 (f) The Advisory Board shall meet at least two times each year.

13 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2014. Section 2 of this Act shall remain effective for a period of 2 years and
15 3 months and, at the end of December 31, 2016, with no further action required by the
16 General Assembly, Section 2 of this Act shall be abrogated and of no further force and
17 effect.