

2019 -- H 5203

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO HEALTH AND SAFETY -- DEPARTMENT OF HEALTH -- ADULT DAY  
CARE PROGRAM LICENSURE

Introduced By: Representative Raymond H. Johnston

Date Introduced: January 25, 2019

Referred To: House Health, Education & Welfare

(by request)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 23-1-52 of the General Laws in Chapter 23-1 entitled "Department  
2 of Health" is hereby amended to read as follows:

3 **23-1-52. Adult day care program licensure.**

4 (a) The director is authorized and directed to establish a program for the licensure of  
5 adult day care programs. "Adult day care program" shall mean a comprehensive, nonresidential  
6 program designed to address the biological, psychological, and social needs of adults through  
7 individual plans of care that incorporate, as needed, a variety of health, social, and related support  
8 services in a protective setting. The director is further authorized to promulgate regulations as he  
9 or she deems necessary to implement these provisions: ; provided that, the director shall  
10 promulgate no regulation that discriminates against or gives preference to the number of and/or  
11 the percentage of adult participants receiving adult day care services based upon their age or age  
12 group.

13 (b) Any person seeking employment in any adult day care facility licensed herein and  
14 having routine contact with an adult day care client, or having access to such a client's belongings  
15 or funds, shall undergo a national criminal records check that shall include fingerprints submitted  
16 to the Federal Bureau of Investigation (FBI) by the bureau of criminal identification of the  
17 department of attorney general. The national criminal records check shall be processed prior to,  
18 or within one week of, employment. All persons who, as of September 30, 2014, are already

1 employed by an adult day care facility and all persons who, as of such date, already provide  
2 services under this section shall be exempted from the requirements of this section for purposes  
3 of their current employment only.

4 (1) The director may, by rule, identify those positions requiring national criminal records  
5 checks. The employee, through the employer, shall apply to the bureau of criminal identification  
6 of the department of attorney general for a national criminal records check. Upon the discovery of  
7 any disqualifying information as defined in § 23-1-52(c), and in accordance with rules  
8 promulgated by the director, the bureau of criminal identification of the department of attorney  
9 general shall inform the applicant, in writing, of the nature of the disqualifying information; and,  
10 without disclosing the nature of the disqualifying information, shall notify the employer, in  
11 writing, that disqualifying information has been discovered.

12 (2) An employee against whom disqualifying information has been found may provide a  
13 copy of the national criminal records check to the employer. The employer shall make a judgment  
14 regarding the continued employment of the employee.

15 (3) In those situations in which no disqualifying information has been found, the bureau  
16 of criminal identification of the department of attorney general shall inform the applicant and the  
17 employer, in writing, of this fact.

18 (4) The employer shall maintain on file, subject to inspection by the department of health,  
19 evidence that statewide criminal records checks have been initiated on all employees seeking  
20 employment between January 1, 2008, and September 30, 2014, and the results of the checks. The  
21 employer shall maintain on file, subject to inspection by the department, evidence that national  
22 criminal records checks have been initiated on all employees seeking employment on or after  
23 October 1, 2014, and the results of those checks. Failure to maintain that evidence may be  
24 grounds to revoke the license or registration of the employer.

25 (5) The employee shall be responsible for the cost of conducting the national criminal  
26 records check through the bureau of criminal identification of the department of attorney general.

27 (c) Information produced by a national criminal records check pertaining to conviction  
28 for the following crimes will result in a letter to the employee and employer disqualifying the  
29 applicant from employment: murder, voluntary manslaughter, involuntary manslaughter, first-  
30 degree sexual assault, second-degree sexual assault, third-degree sexual assault, assault on  
31 persons sixty (60) years of age or older, assault with intent to commit specified felonies (murder,  
32 robbery, rape, burglary, or the abominable and detestable crimes against nature), felony assault,  
33 patient abuse, neglect or mistreatment of patients, burglary, first-degree arson, robbery, felony  
34 drug offenses, felony obtaining money under false pretenses, felony embezzlement, abuse,

1 neglect and/or exploitation of adults with severe impairments, exploitation of elders, felony  
2 larceny, or felony banking law violations, or a crime under section 1128(a) of the Social Security  
3 Act (42 U.S.C. § 1320a-7(a)). An employee against whom disqualifying information has been  
4 found may provide a copy of the national criminal records check to the employer who shall make  
5 a judgment regarding the continued employment of the employee. For purposes of this  
6 subsection, "conviction" means, in addition to judgments of conviction entered by a court  
7 subsequent to a finding of guilty or a plea of guilty, those instances where the defendant has  
8 entered a plea of nolo contendere and has received a sentence of probation and those instances  
9 where a defendant has entered into a deferred sentence agreement with the attorney general.

10 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO HEALTH AND SAFETY -- DEPARTMENT OF HEALTH -- ADULT DAY  
CARE PROGRAM LICENSURE

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1           This act would prevent the director of health from promulgating any regulation in the  
2 adult day care program licensure process discriminating against or giving preference to the  
3 number of and/or percentage of adult participants receiving adult day care services based upon  
4 their age or age group.

5           This act would take effect upon passage.

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