

HOUSE BILL NO. 241

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 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

26 detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for
27 the purposes of the administration of criminal justice;

28 2. Such other individuals and agencies that require criminal history record information to
29 implement a state or federal statute or executive order of the President of the United States or Governor
30 that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon
31 such conduct, except that information concerning the arrest of an individual may not be disseminated to a
32 noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest
33 and no disposition of the 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
35 provide services required for the administration of criminal justice pursuant to that agreement which shall
36 specifically authorize access to data, limit the use of data to purposes for which given, and ensure the
37 security and confidentiality of the data;

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

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

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

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

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

58 8. Public or private agencies when authorized or required by federal or state law or interstate
59 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult
60 members of that individual's household, with whom the agency is considering placing a child or from
61 whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary,
62 or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall
63 not be further disseminated to any party other than a federal or state authority or court as may be required
64 to comply with an express requirement of law;

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

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

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

78 12. Administrators and board presidents of and applicants for licensure or registration as a child
79 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'

80 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and
81 volunteers at such facilities, caretakers, and foster and adoptive parent applicants of private child-placing
82 agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data shall
83 not be further disseminated by the facility or agency to any party other than the data subject, the
84 Commissioner of Social Services' representative or a federal or state authority or court as may be required
85 to comply with an express requirement of law for such further dissemination; however, nothing in this
86 subdivision shall be construed to prohibit the Commissioner of Social Services' representative from
87 issuing written certifications regarding the results of a background check that was conducted before July
88 1, 2021, in accordance with subsection J of § 22.1-289.035 or § 22.1-289.039;

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

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

99 ~~14.~~15. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery
100 Law (§ 58.1-4000 et seq.) and casino gaming as set forth in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1,
101 and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth
102 in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

103 ~~15.~~16. Licensed nursing homes, hospitals and home care organizations for the conduct of
104 investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-
105 126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-
106 162.9:1, subject to the limitations set out in subsection E;

107 ~~16-17.~~ Licensed prescribed pediatric extended care centers for the conduct of investigations of
108 applicants for compensated employment and volunteers in licensed prescribed pediatric extended care
109 centers pursuant to § 32.1-162.15:1.17;

110 18. Licensed assisted living facilities and licensed adult day care centers for the conduct of
111 investigations of applicants for compensated employment in licensed assisted living facilities and licensed
112 adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

113 ~~17-19.~~ The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set
114 forth in § 4.1-103.1;

115 ~~18-20.~~ The State Board of Elections and authorized officers and employees thereof and general
116 registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with
117 respect to voter registration, limited to any record of felony convictions;

118 ~~19-21.~~ The Commissioner of Behavioral Health and Developmental Services (the Commissioner)
119 or his designees for individuals who are committed to the custody of or being evaluated by the
120 Commissioner 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,
121 19.2-182.3, 19.2-182.8, and 19.2-182.9 where such information may be beneficial for the purpose of
122 placement, evaluation, treatment, or discharge planning;

123 ~~20-22.~~ Any alcohol safety action program certified by the Commission on the Virginia Alcohol
124 Safety Action Program for (i) interventions with first offenders under § 18.2-251 or (ii) services to
125 offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

126 ~~21-23.~~ Residential facilities for juveniles regulated or operated by the Department of Social
127 Services, the Department of Education, or the Department of Behavioral Health and Developmental
128 Services for the purpose of determining applicants' fitness for employment or for providing volunteer or
129 contractual services;

130 ~~22-24.~~ The Department of Behavioral Health and Developmental Services and facilities operated
131 by the Department for the purpose of determining an individual's fitness for employment pursuant to
132 departmental instructions;

133 ~~23-25.~~ Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or
134 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such
135 records information on behalf of such governing boards or administrators pursuant to a written agreement
136 with the Department of State Police;

137 ~~24-26.~~ Public institutions of higher education and nonprofit private institutions of higher education
138 for the purpose of screening individuals who are offered or accept employment;

139 ~~25-27.~~ Members of a threat assessment team established by a local school board pursuant to §
140 22.1-79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit
141 institution of higher education, for the purpose of assessing or intervening with an individual whose
142 behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose
143 any criminal history record information obtained pursuant to this section or otherwise use any record of
144 an individual beyond the purpose that such disclosure was made to the threat assessment team;

145 ~~26-28.~~ Executive directors of community services boards or the personnel director serving the
146 community services board for the purpose of determining an individual's fitness for employment, approval
147 as a sponsored residential service provider, permission to enter into a shared living arrangement with a
148 person receiving medical assistance services pursuant to a waiver, or permission for any person under
149 contract with the community services board to serve in a direct care position on behalf of the community
150 services board pursuant to §§ 37.2-506, 37.2-506.1, and 37.2-607;

151 ~~27-29.~~ Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose
152 of determining an individual's fitness for employment, approval as a sponsored residential service
153 provider, permission to enter into a shared living arrangement with a person receiving medical assistance
154 services pursuant to a waiver, or permission for any person under contract with the behavioral health
155 authority to serve in a direct care position on behalf of the behavioral health authority pursuant to §§ 37.2-
156 506, 37.2-506.1, and 37.2-607;

157 ~~28-30.~~ The Commissioner of Social Services for the purpose of locating persons who owe child
158 support or who are alleged in a pending paternity proceeding to be a putative father, provided that only
159 the name, address, demographics and social security number of the data subject shall be released;

160 ~~29-31.~~ 31. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et
161 seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for
162 the purpose of determining if any applicant who accepts employment in any direct care position or requests
163 approval as a sponsored residential service provider, permission to enter into a shared living arrangement
164 with a person receiving medical assistance services pursuant to a waiver, or permission for any person
165 under contract with the provider to serve in a direct care position has been convicted of a crime that affects
166 his fitness to have responsibility for the safety and well-being of individuals with mental illness,
167 intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-416.1, 37.2-506, 37.2-506.1, and
168 37.2-607;

169 ~~30-32.~~ 32. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating
170 applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20
171 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

172 ~~31-33.~~ 33. The Chairman of the Senate Committee on the Judiciary or the Chairman of the House
173 Committee for Courts of Justice for the purpose of determining if any person being considered for election
174 to any judgeship has been convicted of a crime;

175 ~~32-34.~~ 34. Heads of state agencies in which positions have been identified as sensitive for the purpose
176 of determining an individual's fitness for employment in positions designated as sensitive under
177 Department of Human Resource Management policies developed pursuant to § 2.2-1201.1;

178 ~~33-35.~~ 35. The Office of the Attorney General, for all criminal justice activities otherwise permitted
179 under subdivision-A 1 and for purposes of performing duties required by the Civil Commitment of
180 Sexually Violent Predators Act (§ 37.2-900 et seq.);

181 ~~34-36.~~ 36. 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 ~~35-37.~~ Any employer of individuals whose employment requires that they enter the homes of
186 others, for the purpose of screening individuals who apply for, are offered, or have accepted such
187 employment;

188 ~~36-38.~~ Public agencies when and as required by federal or state law to investigate (i) applicants as
189 providers of adult foster care and home-based services or (ii) any individual with whom the agency is
190 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,
191 subject to the restriction that the data shall not be further disseminated by the agency to any party other
192 than a federal or state authority or court as may be required to comply with an express requirement of law
193 for such further dissemination, subject to limitations set out in subsection G;

194 ~~37-39.~~ The Department of Medical Assistance Services, or its designee, for the purpose of
195 screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for,
196 are offered, or have accepted a position related to the provision of transportation services to enrollees in
197 the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any
198 other program administered by the Department of Medical Assistance Services;

199 ~~38-40.~~ The State Corporation Commission for the purpose of investigating individuals who are
200 current or proposed members, senior officers, directors, and principals of an applicant or person licensed
201 under Chapter 16 (§ 6.2-1600 et seq.), Chapter 19 (§ 6.2-1900 et seq.), or Chapter 26 (§ 6.2-2600 et seq.)
202 of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in
203 part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16, 19, or
204 26 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information
205 to the applicant or its designee;

206 ~~39-41.~~ The Department of Professional and Occupational Regulation for the purpose of
207 investigating individuals for initial licensure pursuant to § 54.1-2106.1;

208 ~~40-42.~~ The Department for Aging and Rehabilitative Services and the Department for the Blind
209 and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment
210 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11
211 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

212 ~~41.~~43. Bail bondsmen, in accordance with the provisions of § 19.2-120;

213 ~~42.~~44. The State Treasurer for the purpose of determining whether a person receiving
214 compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-
215 195.12;

216 ~~43.~~45. The Department of Education or its agents or designees for the purpose of screening
217 individuals seeking to enter into a contract with the Department of Education or its agents or designees
218 for the provision of child care services for which child care subsidy payments may be provided;

219 ~~44.~~46. The Department of Juvenile Justice to investigate any parent, guardian, or other adult
220 members of a juvenile's household when completing a predispositional or postdispositional report required
221 by § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

222 ~~45.~~47. The State Corporation Commission, for the purpose of screening applicants for insurance
223 licensure under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2;

224 ~~46.~~48. Administrators and board presidents of and applicants for licensure or registration as a
225 child day program or family day system, as such terms are defined in § 22.1-289.02, for dissemination to
226 the Superintendent of Public Instruction's representative pursuant to § 22.1-289.013 for the conduct of
227 investigations with respect to employees of and volunteers at such facilities pursuant to §§ 22.1-289.034
228 through 22.1-289.037, subject to the restriction that the data shall not be further disseminated by the
229 facility or agency to any party other than the data subject, the Superintendent of Public Instruction's
230 representative, or a federal or state authority or court as may be required to comply with an express
231 requirement of law for such further dissemination; however, nothing in this subdivision shall be construed
232 to prohibit the Superintendent of Public Instruction's representative from issuing written certifications
233 regarding the results of prior background checks in accordance with subsection J of § 22.1-289.035 or §
234 22.1-289.039;

235 ~~47.~~49. The National Center for Missing and Exploited Children for the purpose of screening
236 individuals who are offered or accept employment or will be providing volunteer or contractual services
237 with the National Center for Missing and Exploited Children; and

238 ~~48.~~50. Other entities as otherwise provided by law.

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

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

251 B. Use of criminal history record information disseminated to noncriminal justice agencies under
252 this section shall be limited to the purposes for which it was given and may not be disseminated further,
253 except as otherwise provided in subdivision A-46 48.

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

256 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records
257 Exchange prior to dissemination of any criminal history record information on offenses required to be
258 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is
259 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where
260 time is of the essence and the normal response time of the Exchange would exceed the necessary time
261 period. A criminal justice agency to whom a request has been made for the dissemination of criminal
262 history record information that is required to be reported to the Central Criminal Records Exchange may
263 direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of
264 information regarding offenses not required to be reported to the Exchange shall be made by the criminal
265 justice agency maintaining the record as required by § 15.2-1722.

266 E. Criminal history information provided to licensed nursing homes, hospitals and to home care
 267 organizations pursuant to subdivision A-~~15~~16 shall be limited to the convictions on file with the Exchange
 268 for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

269 F. Criminal history information provided to licensed assisted living facilities and licensed adult
 270 day care centers pursuant to subdivision A-~~16~~18 shall be limited to the convictions on file with the
 271 Exchange for any offense specified in § 63.2-1720.

272 G. Criminal history information provided to public agencies pursuant to subdivision A-~~36~~38 shall
 273 be limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the
 274 definition of barrier crime in § 19.2-392.02.

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

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

286 Article 7.2.

287 Prescribed Pediatric Extended Care Center Licensing.

288 **§ 32.1-162.15:1.1. Definitions.**

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

290 "Center" means a prescribed pediatric extended care center.

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

292 **§ 32.1-162.15:1.2. Licensure.**

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

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

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

297 **§ 32.1-162.15:1.3. Application fees; use of fees.**

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

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

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

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

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

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

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

322 **§ 32.1-162.15:1.5. Inspection on receipt of application.**

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

332 **§ 32.1-162.15:1.6. Issuance or refusal of license; notification; provisional and conditional**
333 **licenses.**

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

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

346 pursuant to subsection A, the one-year period shall be extended until a final decision has been rendered
347 on appeal.

348 C. Upon submission of a completed application for renewal of a license, the Commissioner may
349 issue a provisional license to any applicant if the applicant is temporarily unable to comply with all of the
350 licensure requirements. The provisional license may be renewed, but the issuance of a provisional license
351 and any renewals thereof shall be for no longer than six successive months. A copy of the provisional
352 license shall be prominently displayed by the provider at each public entrance of the Center. In addition,
353 the Center shall be required to prominently display next to the posted provisional license a notice that a
354 description of specific violations of licensing standards to be corrected and the deadline for completion of
355 such corrections is available for inspection at the Center and on the Center's website, if applicable.

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

364 **§ 32.1-162.15:1.7. Compliance with Uniform Statewide Building Code.**

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

367 **§ 32.1-162.15:1.8. Inspections and interviews.**

368 A. Applicants for licensure and licensees shall at all times afford the Commissioner or his
369 representatives reasonable opportunity to inspect all of their facilities, books, and records and to interview
370 their agents and employees and any person participating in such Centers or under their custody, control,
371 direction, or supervision. Interviews conducted pursuant to this section with persons participating in a
372 Center operated by or under the custody, control, direction, or supervision of an applicant for licensure or

373 a licensee shall be (i) authorized by the person to be interviewed or his legally authorized representative
374 and (ii) limited to discussion of issues related to the applicant's or licensee's compliance with applicable
375 laws and regulations, including ascertaining if assessments and reassessments of children's cognitive and
376 physical needs are performed as may be required under regulations of the Board.

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

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

383 D. For any Center, the Commissioner may authorize such other announced or unannounced
384 inspections as the Commissioner considers appropriate.

385 **§ 32.1-162.15:1.9. Records and reports.**

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

389 **§ 32.1-162.15:1.10. Background check upon application for licensure; penalty.**

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

394 B. Background checks pursuant to subsection A require:

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

399 2. A criminal history records check through the Central Criminal Records Exchange pursuant to §
400 19.2-389; and

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

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

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

410 E. If any person specified in subsection A required to have a background check (i) has been
411 convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of
412 child abuse or neglect within or outside the Commonwealth, the Commissioner shall not issue a license.
413 For the purposes of this section, convictions for any barrier crime as defined in § 19.2-392.02 shall include
414 prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that
415 would be a felony if committed by an adult within or outside the Commonwealth.

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

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

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

429 **§ 32.1-162.15:1.11. Scope and duration of services; individualized plans of care.**

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

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

435 1. Skilled nursing;

436 2. Physical therapy;

437 3. Respiratory therapy;

438 4. Occupational therapy;

439 5. Speech therapy;

440 6. Education;

441 7. Provision of meals and snacks;

442 8. Transportation; and

443 9. Family education.

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

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

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

450 **§ 32.1-162.15:1.12. Operation and management; staffing.**

451 A. Each Center shall have an administrator who oversees the operation of the Center. Such
452 administrator shall be a physician with a current license, an advanced practice registered nurse, a licensed

453 nursing home administrator, a child day center director, or a registered nurse with at least five years of
454 experience in pediatric medicine.

455 B. Operation of the Center shall include:

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

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

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

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

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

467 6. Documentation of all incidents and accidents;

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

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

471 C. Each Center shall have a medical director who is responsible for basic and supportive services,
472 including medical, pharmaceutical, and nursing services. The medical director shall be responsible for (i)
473 the prevention, reporting, and investigation of abuse; (ii) the delivery of medical and therapeutic services;
474 (iii) the control and delivery of pharmaceutical services; and (iv) infection control and policies for
475 prevention of incidents and accidents. The medical director shall ensure compliance with any policies and
476 procedures developed by the Board.

477 D. Each Center shall employ:

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

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

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

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

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

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

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

493 **§ 32.1-162.15:1.13. Facilities and maintenance; regulations.**

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

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

500 1. The adoption and implementation of policies and procedures that ensure the health and safety
501 of children attending a Center;

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

504 3. Sanitary conditions, including the water supply, sewage disposal, food handling, and general
505 hygiene; and

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

507 **§ 32.1-162.15:1.14. Confidentiality of complainant's identity.**

508 Whenever the Department conducts inspections or investigations in response to complaints
509 received from the public, the identity of the complainant and the identity of any child who is the subject
510 of the complaint, or identified therein, shall be confidential and shall not be open to inspection by members
511 of the public. Identities of the complainant and child who is the subject of the complaint shall be revealed
512 only if a court order so requires. Nothing contained herein shall prevent the Department, in its discretion,
513 from disclosing to the Center the nature of the complaint or the identity of the child who is the subject of
514 the complaint. Nothing contained herein shall prevent the Department or its employees from making
515 reports under Chapter 15 (§ 63.2-1501 et seq.) or Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of Title
516 63.2. If the Department intends to rely, in whole or in part, on any statements made by the complainant at
517 any administrative proceeding brought against the Center, the Department shall disclose the identity of
518 the complainant to the Center a reasonable time in advance of such proceeding.

519 **§ 32.1-162.15:1.15. Retaliation or discrimination against complainants.**

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

525 **§ 32.1-162.15:1.16. Retaliation against reports of child or adult abuse or neglect.**

526 No Center may retaliate in any manner against any person who in good faith reports adult or child
527 abuse or neglect pursuant to Chapter 15 (§ 63.2-1501 et seq.) or Article 2 (§ 63.2-1603 et seq.) of Chapter
528 16 of Title 63.2.

529 **§ 32.1-162.15:1.17. Employment for compensation of persons or use of volunteers convicted**
530 **of certain offenses prohibited; background check required; penalty.**

531 A. No Center may hire for compensated employment, continue to employ persons, or permit
532 persons to serve as volunteers who (i) have been convicted of any barrier crime as defined in § 19.2-
533 392.02 or (ii) are the subject of a founded complaint of child abuse or neglect within or outside the
534 Commonwealth. All persons interested in volunteering at a Center and all applicants for employment at a
535 Center shall undergo background checks pursuant to subsection B. For the purposes of this section,
536 convictions for any barrier crime as defined in § 19.2-392.02 shall include prior adult convictions and
537 juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed
538 by an adult within or outside the Commonwealth.

539 B. Background checks pursuant to subsection A require:

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

544 2. A criminal history records check through the Central Criminal Records Exchange pursuant to §
545 19.2-389; and

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

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

550 D. A Center shall obtain (i) an original criminal record clearance with respect to any barrier crime
551 as defined in § 19.2-392.02 or an original criminal history record from the Central Criminal Records
552 Exchange for any compensated employees within 30 days of employment and any volunteer within 30
553 days of commencement of volunteer service and (ii) a copy of the information from the central registry
554 for any compensated employee within 30 days of employment. However, no employee or volunteer may
555 be permitted to work in a position that involves direct contact with a child receiving services until an
556 original criminal record clearance or original criminal history record has been received, unless such person
557 works under the direct supervision of an employee for whom a background check has been completed in

558 accordance with the requirements of this section. If an applicant is denied employment or if a volunteer is
559 denied service because of information from the central registry or convictions appearing on his criminal
560 history record, the Center shall provide a copy of the information obtained from the central registry or the
561 Central Criminal Records Exchange or both to the applicant or volunteer.

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

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

568 **§ 32.1-162.15:1.18. Revocation or denial of renewal based on background checks; failure to**
569 **obtain background check.**

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

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

579 **§ 32.1-162.15:1.19. Offenses; penalty.**

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

582 1. Interferes with any representative of the Commissioner in the discharge of his duties under this
583 article;

584 2. Makes to the Commissioner or any representative of the Commissioner any report or statement,
585 with respect to the operation of any Center, that is known by such person to be false;

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

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

592 **§ 32.1-162.15:1.20. Disciplinary action; civil penalties.**

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

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

598 1. Revoking or refusing to renew a license;

599 2. Suspending or refusing to reinstate a license;

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

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

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

608 6. Assessing monetary penalties of not more than \$1,000 per violation per day, not to exceed
609 \$100,000 for a series of related incidents of noncompliance, upon finding that the Center is substantially
610 out of compliance with the terms of its license and the health and safety of children are at risk; however,

611 no monetary penalty shall be imposed pursuant to this subdivision on any Center operated by an agency
612 of the Commonwealth;

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

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

617 C. Any monetary penalties collected under this section shall be paid in equal portions to the
618 Physician Loan Repayment Program established in § 32.1-122.6:1, the Nurse Loan Repayment Program
619 established in § 32.1-122.6:04, and the Nursing Scholarship and Loan Repayment Fund established in §
620 54.1-3011.2 after deduction of the administrative costs of the Commissioner and the Department in
621 furtherance of this section.

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

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

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

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

633 4. The Commissioner may affirm, modify, or reverse such recommendation and shall issue a final
634 case decision.

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

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

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

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

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

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

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

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

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

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

661 3. Provisions allowing the Commissioner (i) to accept a plan of correction, including a schedule
662 of compliance, from a Center prior to assessing a monetary penalty pursuant to subdivision B 4 or (ii) to
663 reduce or abate the monetary penalty amount if the Center complies with the plan of correction within its
664 terms; and

665 4. Procedures for imposition of disciplinary action consistent with the Administrative Process Act
666 (§ 2.2-4000 et seq.).

667 **§ 32.1-162.15:1.21. Summary suspension; privately operated Centers.**

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

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

680 C. The summary suspension hearing shall be presided over by a hearing officer selected by the
681 Commissioner from a list prepared by the Executive Secretary of the Supreme Court of Virginia and shall
682 be held as soon as practicable, but in no event later than 15 business days following service of the notice
683 of summary suspension; however, the hearing officer may grant a written request for a continuance, not
684 to exceed an additional 10 business days, for good cause shown. Within 10 business days after such
685 hearing, the hearing officer shall provide to the Commissioner written findings and conclusions, together
686 with a recommendation as to whether the license should be summarily suspended.

687 D. Within 10 business days of the receipt of the hearing officer's findings, conclusions, and
688 recommendation, the Commissioner may issue a final order of summary suspension or an order that such
689 summary suspension is not warranted by the facts and circumstances presented. The Commissioner shall
690 adopt the hearing officer's recommended decision unless to do so would be an error of law or Department
691 policy. If the Commissioner rejects the hearing officer's findings, conclusions, or recommendation, the

692 Commissioner shall state with particularity the basis for rejection. In issuing a final order of summary
693 suspension, the Commissioner may choose to suspend the license of the Center or to suspend only certain
694 authority of the Center to operate, including the authority to provide certain services or perform certain
695 functions that the Commissioner determines should be restricted or modified in order to protect the health,
696 safety, or welfare of the children receiving care. A final order of summary suspension shall include notice
697 that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10
698 business days following service of the order. The sole issue before the court shall be whether the
699 Commissioner had reasonable grounds to require the licensee to cease operations during the pendency of
700 the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other
701 proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary
702 suspension.

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

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

710 § 32.1-162.15:1.22. Summary suspension; Centers operated by an agency of the
711 Commonwealth.

712 Whenever the Commissioner issues a summary order of suspension of the license to operate a
713 Center operated by an agency of the Commonwealth:

714 1. Before such summary order of suspension shall take effect, the Commissioner shall issue to the
715 Center a notice of summary order of suspension setting forth (i) the procedures for a hearing and right of
716 review as provided in this section and (ii) the facts and evidence that formed the basis on which the
717 summary order of suspension is sought. Such notice shall be served on the licensee or its designee as soon
718 as practicable thereafter by personal service or certified mail, return receipt requested, to the address of

719 record of the licensee. The notice shall state the time, date, and location of a hearing to determine whether
720 the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance
721 of the notice of the summary order of suspension and shall be convened by the Commissioner or his
722 designee. After such hearing, the Commissioner may issue a final order of summary suspension or may
723 find that such summary suspension is not warranted by the facts and circumstances presented.

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

732 **§ 32.1-162.15:1.23. Right to appeal notice of imposition of disciplinary action; Centers**
733 **operated by agencies of the Commonwealth.**

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

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

741 2. If the Center disputes the Commissioner's decision, the licensee shall request, within 30 days of
742 receiving the Commissioner's decision, that the Commissioner refer the matter to the Secretary of Health
743 and Human Resources. The Secretary shall issue a decision within 60 days of receiving the request for
744 review. The Secretary's decision shall be final and shall not be subject to judicial review.

745 2. That the Board of Health shall promulgate regulations to implement the provisions of this act to
746 be effective within 280 days of its enactment.

747 #