



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: Karin Clark
Virginia Department of Social Services

FROM: Susan P. D. Whyte *SPDW*
Assistant Attorney General

DATE: July 25, 2019

SUBJECT: Comprehensive Repeal and Replace Background Check Regulation; 22VAC40-192

I am in receipt of the attached regulation, which you have asked the Office of the Attorney General to review to determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate the specified regulation and whether the specified regulation comports with applicable state law.

Pursuant to Va. Code § 63.2-217, the State Board is required to promulgate regulations as may be necessary or desirable to carry out the purposes of Title 63.2 of the Code of Virginia. Consequently, it is my opinion that the State Board has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 14 (2018) (amended) and the State Board has not exceeded that authority.

If you have any questions, please feel free to call me at 786-3450.

Attachment

DEPARTMENT OF SOCIAL SERVICES

Comprehensive Repeal and Replace Background Check Regulation

CHAPTER 191

BACKGROUND CHECKS FOR CHILD WELFARE AGENCIES

22VAC40-191-10. Defining words and phrases. (Repealed.)

~~The following words and terms when used in this regulation shall have the following meanings unless the context clearly indicates otherwise:~~

~~"Agent" means a person who is empowered to act on behalf of the applicant that is an association, partnership, limited liability company, business trust, public agency, or corporation in matters relating to a child welfare agency.~~

~~"Applicant" means the person or persons applying for approval as a (i) licensed family day home; (ii) licensed family day system; (iii) licensed child placing agency; (iv) licensed independent foster home; (v) voluntarily registered family day home; (vi) family day home approved by a licensed family day system; (vii) foster and adoptive home approved by a licensed child placing agency; (viii) religious exempt child day center or (ix) licensed child day center. In the case of a sole proprietorship, the applicant is the individual owner. In the case of a partnership, the applicants are all the partners. If the applicant is a corporation, association, or business trust, the applicants are officers. If the applicant is a limited liability company, the applicants are the members or managers. If the applicant is a public agency, the applicant is the person responsible for the overall operation of the public agency.~~

~~"Approved" means having obtained the status of approval through the process required in Minimum Standards for Licensed Family Day Care Systems (22VAC40-120) or Standards for~~

~~Licensed Child-Placing Agencies (22VAC40-131). Approved facilities are family day homes approved by licensed family day systems. Approved foster and adoptive parents include resource, foster, adoptive, treatment foster, and short-term foster parents and families approved by child-placing agencies.~~

~~"Background checks" means a sworn statement or affirmation, a criminal history record report, and a child protective services central registry check.~~

~~"Barrier crime" means a conviction identified at § 63.2-1719 in the Code of Virginia. The convictions, and Code of Virginia references, are: a felony violation of a protective order as set out in § 16.1-253.2, murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.), malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A or B of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.), robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, extortion by threat as set out in § 18.2-59, felony stalking as set out in § 18.2-60.3, a felony violation of a protective order as set out in § 18.2-60.4, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, drive-by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, failure to secure medical attention for an injured child as set out in § 18.2-314, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-~~

~~374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state.~~

~~"Board" means State Board of Social Services.~~

~~"Central registry" means the record of founded complaints of child abuse and neglect maintained by the Department of Social Services.~~

~~"Central registry finding" means the record of founded complaints of child abuse and neglect for an individual.~~

~~"Central Criminal Records Exchange" or "CCRE" means the information system containing conviction data of crimes committed in Virginia. The system is maintained by the Department of State Police.~~

~~"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.~~

~~"Child placing agency" means any person or agency licensed to place children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903 and 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of its authority as such, who serve as or maintain a child placing agency, are not required to be licensed.~~

~~"Child welfare agency" means a child day center, child placing agency, children's residential facility, family day home, family day system, or independent foster home. For purposes of this chapter, the requirements for child welfare agencies also apply to foster or adoptive homes requesting approval or with approval by child placing agencies and family day homes requesting approval or with approval by family day systems.~~

~~"Commissioner" means the Commissioner of the Department of Social Services or his designee.~~

~~"Contract agency" means an entity with which the facility or a parent has an agreement to provide services to a child or children while attending the facility.~~

~~"Contract employee" means a person with whom the facility or a parent has an agreement to provide services to a child or children while attending the facility.~~

~~"Contracting organization" means an agency that has been designated by the Department of Social Services to administer the voluntary registration program for family day homes.~~

~~"Criminal history record check" means the process the Department of State Police uses to generate a criminal record report on a person. The check may be a state check generated solely through the Central Criminal Records Exchange or a check forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information.~~

~~"Criminal history record report" means either the criminal record clearance or the criminal history record issued by the Central Criminal Records Exchange, Department of State Police. The report identifies convictions within the Commonwealth.~~

~~"Department" means the Department of Social Services.~~

~~"Department representative" means an employee of the department who carries out regulatory duties or an agency acting as an authorized agent of the department carrying out~~

~~approval functions. Licensed family day systems have authority to approve family day homes. Licensed child-placing agencies have authority to approve foster and adoptive parents.~~

~~"Disqualifying background" means having an offense, as defined in § 63.2-1719 of the Code of Virginia. For the purpose of this chapter, having been the subject of a founded abuse or neglect complaint as described in "offense" includes records that have been purged from the child abuse and neglect central registry. However, no person is considered to be the subject of a founded complaint of child abuse or neglect until a decision upholding the finding has been rendered by the hearing officer after the administrative hearing, provided the person complies with the requirements for requesting an administrative hearing. No person is considered to be the subject of a founded complaint of child abuse or neglect if the child abuse or neglect finding is overturned by an administrative hearing or a subsequent court decision.~~

~~"Employee" means a person hired by a facility or with whom the facility has an employment agreement. A provider assistant in a family day home is considered an employee in this chapter.~~

~~"Facility" means (i) a licensed family day home; (ii) a licensed family day system; (iii) a licensed child-placing agency; (iv) a licensed independent foster home; (v) a voluntarily registered family day home; (vi) a family day home approved by a licensed family day system; (vii) a licensed child day center; (viii) a religious exempt child day center; and (ix) an applicant seeking a waiver in order to establish one of the above listed entities.~~

~~"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13 years, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home must disclose to the parents or guardians of children in his care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving five through 12 children, exclusive of the provider's own children and any children who~~

~~reside in the home, must be licensed. No family day home shall care for more than four children under the age of two years, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all related to the provider by blood or marriage is not required to be licensed.~~

~~"Family day system" means any person that approves family day homes as members of its system; that refers children to available family day homes in that system; and that, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.~~

~~"Good character and reputation" means that the person (i) maintains business, professional, family, and community relationships that are characterized by honesty, fairness, truthfulness and dependability and (ii) has a history or pattern of behavior that demonstrates that the person is suitable and able to care for, guide, supervise, and protect children.~~

~~"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed there independently of a child-placing agency except (i) a home that receives only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and (ii) a home that receives a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8 of the Code of Virginia.~~

~~"Involved in the day-to-day operations" means:~~

- ~~1. In a supervisory or management position, making daily decisions regarding the operation of the facility;~~
- ~~2. Counted by the facility for purposes of staff-to-children ratios;~~
- ~~3. Providing casework services for a child-placing agency;~~
- ~~4. Employed by a licensed family day system as a home visitor; or~~
- ~~5. Having access to child-related and client-related records or to facility personnel records.~~

~~"Licensed" means having met the requirements of and obtained licensure as a licensed family day-care system, licensed independent foster home, licensed private child-placing agency, or licensed family day home.~~

~~"Living in" means to reside in a place for an extended or permanent period of time.~~

~~"Local agency" means local department of social services.~~

~~"May" means has permission.~~

~~"Must" means the action is a requirement.~~

~~"Must not" means the action is prohibited.~~

~~"National criminal background check" means criminal history record information from the Federal Bureau of Investigation.~~

~~"Offense" means a (i) conviction of a barrier crime, (ii) conviction of any other felony not included in the definition of barrier crime unless five years have elapsed since conviction, (iii) founded complaint of child abuse or neglect within or outside the Commonwealth, or (iv) a conviction of an offense set forth in § 9.1-902 of the Code of Virginia or a finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of the Code of Virginia of an offense set forth in § 9.1-902 that results in the person's~~

~~requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901 of the Code of Virginia, or any similar registry in any other state. Convictions include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.~~

~~"Other felony" means conviction for any felony in the last five years that is not a barrier crime felony.~~

~~"Parent volunteer" means someone supervising, without pay, a group of children that includes the parent volunteer's own child in a program that operates no more than four hours per day, provided that the parent volunteer works under the direct supervision of a person who has received a clearance pursuant to § 63.2-1720 or 63.2-1724 of the Code of Virginia.~~

~~"Registered" means having obtained the status of registration through the process required in Voluntary Registration of Family Day Homes – Requirements for Providers (22VAC40-180).~~

~~"Registered family day home" means any family day home that has met the standards for voluntary registration for such homes and obtained a certificate of registration from the commissioner.~~

~~"Religious exempt center" means an unlicensed child day center operated or conducted under the auspices of a religious institution that has filed with the commissioner a satisfactory annual statement of intent to operate a child day center and other information as specified in § 63.2-1716 of the Code of Virginia and has a letter of exemption from the commissioner.~~

~~"Search of central registry" means the process the Virginia Department of Social Services' Child Protective Services Unit uses to generate a central registry report on a person.~~

~~"Sworn statement or affirmation" means a statement completed by a person attesting to whether he has ever been (i) convicted of or the subject of pending charges of any crime within or outside the Commonwealth or an equivalent offense outside the Commonwealth or (ii) the~~

~~subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. Additionally for family day homes, the provider affirms if he, or any person known to the provider who resides in the home, has a sex offense conviction or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. Any person making a false statement regarding any such offense shall be guilty of a Class 1 misdemeanor pursuant to §§ 63.2-1720 and 63.2-1721 of the Code of Virginia.~~

~~"22VAC" means Title 22 of the Virginia Administrative Code. This is the social services title.~~

~~"Visit" means a stay or sojourn as a guest for no longer than 30 calendar days.~~

~~"Volunteer" means a person who provides services without pay and who is alone with a child or children in performance of his duties.~~

22VAC40-191-20. Describing background checks. (Repealed.)

~~A. The background checks covered by this regulation are:~~

- ~~1. Sworn statement or affirmation;~~
- ~~2. Criminal history record check;~~
- ~~3. National criminal background check; and~~
- ~~4. Central registry search.~~

~~B. The provisions for background checks are in §§ 63.2-1704, 63.2-1720, 63.2-1721, 63.2-1722, 63.2-1724, and 63.2-1727 of the Code of Virginia.~~

~~C. Provisions for enforcement of background check regulations and other licensing, registration, and approval standards are in Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia.~~

~~D. The sworn statement or affirmation is a written document in which a person must disclose any criminal conviction and any pending criminal charges within or outside Virginia.~~

~~1. For the purposes of this regulation, conviction includes any juvenile conviction or determination of delinquency if the offense involved would be a felony if committed by an adult within or outside Virginia.~~

~~2. The person must also disclose any instance of being the subject of a founded complaint of child abuse or neglect within or outside Virginia.~~

~~3. The person must use either the model form prepared by the department or use a self-created form that includes all of the information that appears on the model form.~~

~~The department provides the model sworn statement or affirmation form on its website. Requesters are permitted to submit copies of the form. The person who signs the sworn statement or affirmation affirms the truth of the statement.~~

~~E. The criminal history record check is the process of the Department of State Police to generate a criminal record report on a person. The report must be either the criminal record clearance or the criminal history record. The criminal record clearance shows whether the person is guilty of:~~

~~1. A barrier crime, as defined in § 63.2-1719 of the Code of Virginia; and/or~~

~~2. Any other felony not included in the definition of barrier crime unless five years have elapsed since the conviction.~~

~~The criminal history record report shows all convictions.~~

~~F. The person must use the form and process of the Central Criminal Records Exchange (CCRE) of the Department of State Police for this check. The Department of State Police provides original criminal history record check forms to facilities upon receipt of request. The Department of State Police also provides website access to this form for facilities that are noncriminal justice inquiry interface users. The CCRE verifies criminal history record reports.~~

~~G. The national criminal background check is the process of obtaining criminal history record information from the Federal Bureau of Investigation through the Central Criminal Records Exchange.~~

- ~~1. The person must submit to fingerprinting and provide personal descriptive information.~~
- ~~2. The person must use the process of the Central Criminal Records Exchange to request and receive a national criminal background check.~~

~~H. The search of the central registry is a check to determine if the person has ever been the subject of a founded complaint of child abuse or neglect in Virginia.~~

~~I. The person must use the form and process of the department's Office of Background Investigations (OBI). The department provides the central registry request form on its website. Requesters are permitted to submit copies of this form. OBI verifies child protective services central registry check findings.~~

~~The department and registering and approval agencies provide copies of all forms in application packets.~~

~~22VAC40-191-30. Identifying the facilities that are not covered by this regulation. (Repealed.)~~

~~A. Certified preschools or nursery schools operated by accredited private schools that are accredited in accordance with § 63.2-1717 of the Code of Virginia; children's residential facilities; and family day homes that are not required to be licensed, registered, or approved are not covered by this regulation.~~

~~B. Background check requirements for certified preschool or nursery school programs operated by accredited private schools are at § 63.2-1717 of the Code of Virginia.~~

~~C. Background check requirements for children's residential facilities, including child-caring institutions, are in § 63.2-1726 of the Code of Virginia.~~

~~D. Background check requirements for child day centers or family day homes that are not licensed, registered, approved, or exempt from licensure and receive federal, state or local child care funds are at § 63.2-1725 of the Code of Virginia.~~

22VAC40-191-40. Identifying who is covered by this regulation. (Repealed.)

~~A. This regulation applies to:~~

- ~~1. Licensed family day homes;~~
- ~~2. Licensed family day systems;~~
- ~~3. Family day homes approved by family day systems;~~
- ~~4. Licensed child-placing agencies;~~
- ~~5. Licensed independent foster homes;~~
- ~~6. Foster and adoptive homes approved by child-placing agencies;~~
- ~~7. Voluntarily registered family day homes;~~
- ~~8. Religious exempt child day centers; and~~
- ~~9. Licensed child day centers.~~

~~B. Except as provided in 22VAC40-191-50 A, no person with a disqualifying background who has not been granted a waiver according to 22VAC40-191-90 may operate or volunteer or work at a facility governed by this chapter.~~

~~C. Background checks are required at the time of initial application.~~

- ~~1. These background checks are required at the time of initial application for licensure, registration, or approval:~~

Who	What	When
a. Any applicant	Sworn statement or affirmation, search of central registry, and criminal history record check	Upon application for licensure or registration as a child welfare agency
b. Any agent at the time of application who is or will be involved in the day-to-day operations of the child welfare agency or who is or will be alone with, in control of, or supervising one or more of the children	Same	Same
c. Any other adult living in the home of an applicant for licensure or registration as a family day home, or any existing employee or volunteer	Same	Upon application for licensure or registration as a family day home
d. Prospective foster or adoptive parent	Sworn statement or affirmation, search of central registry, search of child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years, and national criminal background check	Prior to approval by child-placing agency
e. Birth parent of a child in a foster care placement (unless the birth parent has revoked an entrustment agreement pursuant to § 63.2-1223 or 63.2-1817 of the Code of Virginia, or a local board or birth parent revokes a placement agreement while legal custody remains with the parent, parents, or guardians pursuant to § 63.2-900 of the Code of Virginia)	Sworn statement or affirmation, search of central registry, search of child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years, and national criminal background check	Prior to placement of a child with birth parent

f. Other adults living in a prospective foster or adoptive home	Sworn statement or affirmation, search of central registry, search of child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years, and national criminal background check	Prior to approval by child-placing agency
g. Operator of family day home requesting approval by family day system	Sworn statement or affirmation, search of central registry, and criminal history record check	Upon request for approval by family day system
h. Any other adult residing in the family day home requesting approval and any employee or volunteer of a family day home	Same	Upon request by operator for approval by family day system

2. ~~These background checks are required at the time of initial application for religious exemption status:~~

Who	What	When
Any person who will be expected to be alone with one or more children enrolled in a religious exempt child day center except a parent volunteer, as defined in this regulation, or a parent or guardian who may be left alone with his or her own child	Documentary evidence of sworn statement or affirmation, search of the central registry, and criminal history record check	With the written request for religious exemption status

D. ~~Background checks are required after the initial licensure, registration, approval, or receipt of religious exemption status.~~

1. ~~These background checks are required after initial licensure, registration, or approval:~~

Who	What	When
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-	a. New person designated as applicant, licensee, registrant, family day home operator approved by a family day system, or agent who is or will be involved in the day-to-day operations of the facility or who is or will be alone with, in control of, or supervising one or more of the children	Sworn statement or affirmation	Whenever an applicant, licensee, approved family day home operator, or registrant changes
		Search of central registry and criminal history record check	Before the end of 30 days after the change
-	b. Any employee of a licensed, registered, and approved facility who is involved in the day-to-day operations or who is alone with, in control of, or supervising one or more children	Sworn statement or affirmation	Prior to first day of employment at the facility
		Search of central registry and criminal history record check	Before 30 days of employment at the facility ends
-	c. Any applicant, licensee, family day home operator approved by a family day system, agent, employee, volunteer, and person living in the family day home who is required to have background checks	Sworn statement or affirmation, search of central registry and criminal history record check	Before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report
-	d. Voluntary registration provider, provider assistant, substitute provider, if any, and any adult residing in the home	Sworn statement or affirmation, search of central registry and criminal history record check	90 days before the date of application for renewal of the current certificate of registration (The application for renewal must be received by the contracting organization no later than 45 days before the expiration of the current certificate of registration.)
-	e. Volunteer at licensed, registered, or approved facility who will be alone with any child in the performance of duties, excluding a parent-volunteer for children attending a licensed, registered, or approved program	Sworn statement or affirmation	Prior to first day of service at the facility
		Search of central registry and criminal history record check	Before 30 days of service at the facility elapses

<p>f. Foster parent approved by a licensed child-placing agency, in an independent foster home, or an adoptive parent approved by a licensed child-placing agency, until the adoption is final</p>	<p>Sworn statement or affirmation, search of central registry, and criminal history record check</p>	<p>Before three years since the dates of the last sworn statement or affirmation, most recent central registry finding, and most recent criminal history record check report or national criminal background check</p>
<p>g. All adult household members residing in the home of the foster parent approved by a licensed child-placing agency, foster parent in an independent foster home, or an adoptive parent approved by a licensed child-placing agency, until the adoption is final</p>	<p>Sworn statement or affirmation, search of central registry, and criminal history record check</p>	<p>Before three years since the dates of the last sworn statement or affirmation, most recent central registry finding, and most recent criminal history record check report or national criminal background check</p>

2. These background checks are required after receipt of the initial religious exemption status letter.

Annually, prior to the expiration date in the current exemption letter, the religious exempt child day center must file with the department documentary evidence that the center is in compliance with the following:

Who	What	When
<p>Prospective employee, volunteer, or any other person who is expected to be alone with one or more children enrolled in the religious exempt child day center except a parent-volunteer, or a parent or guardian who may be left alone with his or her own child</p>	<p>Sworn statement or affirmation</p>	<p>Before employment or commencement of service at the facility</p>
	<p>Search of central registry and criminal history record check, as requested by the individual</p>	<p>Within 30 days of employment or commencement of service</p>

3. Background checks are required for independent contract employees and employees hired by a contract agency.

~~If a licensed, registered, or approved facility uses independent contract employees or contract employees hired by a contract agency who will be involved in the day-to-day operations of the facility or who will be alone with, in control of, or supervising one or more children, the facility must:~~

- ~~a. Obtain background checks according to the above requirements for employees, or view the original required background checks maintained by the contract employee or contract agency;~~
- ~~b. Accept all satisfactory background checks dated less than six months before independent contract employees or contract employees hired by contract agencies begin providing services at facilities;~~
- ~~c. Make copies, and keep them at the licensed, registered, or approved facilities. Staff must write on the copies of the criminal record reports that they are photocopies of originals that facility staff verified; and~~
- ~~d. Provide a sworn statement or affirmation, search of central registry and criminal history record check before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report.~~

~~4. A person 18 years of age and older must have background checks:~~

Who	What	When
a. Person living in: The home of an applicant* or The home of a licensed or registered family day home provider	Sworn statement or affirmation	When person age 18 years or older begins residing in the home or when a person in the home becomes 18 years old

	Search of central registry and criminal history record check, as requested by the individual	Within 30 days of a person 18 years of age or older beginning to reside in the home or a person in the home becoming 18 years old
b. Person living in the home of (i) a foster parent approved by a licensed child-placing agency, (ii) a foster parent in an independent foster home, or (iii) until the adoption is final, an adoptive parent approved by a licensed child-placing agency	Sworn statement or affirmation	When a person age 18 years or older begins residing in the home or when a person in the home becomes 18 years old
	Search of central registry, search of child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years, and national criminal background check	Within 30 days of a person 18 years of age or older beginning to reside in the home or a person in the home becoming 18 years old
*Note: This does not apply to applicants for family day systems, licensed child-placing agencies, child day centers, or to religious exempt child day centers.		

5. A person 14 years of age and older must have a search of the central registry and make the information available for regulatory purposes:

Who	What	When
a. Person living in: An applicant's home, Home of a licensed or registered family day home provider, A foster home approved by a licensed child-placing agency, An independent foster home, or An adoptive home approved by a licensed child-placing agency, until the adoption is final	Child protective services central registry check	Within 30 days of a 14-year-old beginning to reside in the home or a person in the home becoming 14 years old
b. Exception: A person 14 years of age up to 18 years of age who is placed in an approved foster or adoptive home by a child-placing agency is not required to have a search of the central registry.		

~~6. A facility must not accept a required criminal history record report or a central registry finding from an applicant, licensee, registrant, or other person required to obtain background checks that is dated more than 90 days prior to the date of employment, volunteering, residing in the home, or approving a family day home or foster or adoptive home.~~

~~7. Exception: See provisions for contracting agencies in subdivision 3 of this subsection.~~

~~8. The department must not accept a required criminal history record report or a central registry finding from an applicant, licensee, registrant, or person who signs the statement of intent to operate a religious exempt center that is dated more than 90 days prior to date of licensure, registration, approval or exemption, or from the date when the person designated as the applicant or licensee changes.~~

~~9. The background checks remain valid at the facility if no more than 12 consecutive months have passed from when a person (i) began a leave of absence from that facility; (ii) was terminated from employment at that facility; or (iii) was transferred to a facility owned and operated by the same employer or entity, unless there is a criminal conviction or a founded complaint of child abuse and neglect during that period.~~

~~22VAC40-191-50. Explaining requirements for satisfactory background checks.~~

~~(Repealed.)~~

~~A. The department and registering and approving authorities must require documentation of satisfactory background checks for applicants, agents, employees, volunteers, and others living in family day homes and foster and adoptive homes as specified in 22VAC40-191-40.~~

~~1. A satisfactory sworn statement or affirmation is:~~

~~a. A fully completed original that states that the person does not have an offense;~~

~~and~~

~~b. There is no other knowledge that the individual has an unsatisfactory background.~~

~~Criminal convictions include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth. Convictions also include convictions in other states that are equivalent to those specified in this section.~~

~~2. A satisfactory central registry finding is one in which:~~

~~a. A copy of the department's child protective services check form is returned to the requesting agency or state or local Department of Social Services indicating that, as of the date on the reply, the individual whose name was searched is not identified in the central registry as an involved caregiver with a founded disposition of child abuse/neglect; and~~

~~b. There is no other knowledge that the individual has a founded disposition in Virginia or elsewhere.~~

~~3. A satisfactory criminal history record check report is one in which:~~

~~a. An original hard copy or Internet inquiry reply from the Department of State Police is returned to the agency, individual or authorized agent making the request with:~~

~~(1) No convictions indicated; or~~

~~(2) Convictions indicated, but no barrier crimes, offenses, or other felony convictions in the last five years;~~

~~b. A letter is received from the Office of Background Investigations with a finding of "eligible"; and~~

~~c. There is no other knowledge that the individual has an offense in Virginia or elsewhere.~~

~~The facility must have viewed an original criminal history record report maintained by a contract employee or contract agency that is dated less than six months before the independent contract employee or contract employee is hired by a contract agency begins providing services at the facility. (See also 22VAC40-191-90.)~~

~~4. A child-placing agency may approve as an adoptive or foster parent an applicant convicted of not more than one misdemeanor of assault and battery, as defined in § 18.2-57 of the Code of Virginia, not involving abuse, neglect or moral turpitude, or a minor, provided 10 years have elapsed following the conviction.~~

~~5. A child-placing agency may approve as a foster parent an applicant convicted of statutory burglary for breaking and entering a dwelling home or other structure with intent to commit larceny who has had his civil rights restored by the Governor, provided 25 years have elapsed following the conviction.~~

~~6. A child-placing agency must consider the results of background checks on a birth parent prior to placing the child of the birth parent with the birth parent, when the child is in a foster care placement (unless the birth parent has revoked an entrustment agreement pursuant to § 63.2-1223 or 63.2-1817 of the Code of Virginia or a local board or the birth parent revokes a placement agreement with legal custody remaining with the parent, parents, or guardians pursuant to § 63.2-900 of the Code of Virginia).~~

~~7. No petition for adoption shall be granted if an adoptive parent has been convicted of a sexually violent offense or an offense requiring registration pursuant to § 9.1-902 of the Code of Virginia.~~

~~8. A child-placing agency may approve as an adoptive or foster parent an applicant convicted of felony possession of drugs, who has had his civil rights restored by the Governor, provided 10 years have elapsed following the conviction.~~

~~9. A child-placing agency may approve as a kinship foster care parent an applicant convicted of the following offenses, provided that 10 years have elapsed from the date of the conviction and the local board or child-placing agency makes a specific finding that approving the kinship foster care placement would not adversely affect the safety and well-being of the child: (i) a felony conviction for possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, but not including a felony conviction for possession of drugs with the intent to distribute; (ii) a misdemeanor conviction for arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; or (iii) an equivalent offense in another state.~~

~~10. A licensed child day center may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense as defined in § 18.2-57 of the Code of Virginia if 10 years have elapsed following the conviction, unless the person committed such offense while employed in a child day center or the object of the offense was a minor.~~

~~B. Background checks results are not open ended.~~

~~1. When a minor living in a family day home turns 18 years of age, the operator is responsible for making sure that the 18-year-old complies with all background check requirements for adults pursuant to 22VAC40-191-40-D-4.~~

~~2. Operators must submit new background checks as part of the renewal application packages of registered family day homes. With the exception of those facilities that are exempt per § 63.2-1716 of the Code of Virginia, background checks are required every three years for all other persons required to have background checks pursuant to 22VAC40-191-40-D.~~

~~3. If a person leaves a facility and the criminal history record report or central registry check finding is less than 91 days old, the person must be permitted to take the report or reports with him. The facility must keep a copy of any report a person takes and write on it that it is a copy, and that the original of any criminal history record report was verified.~~

~~4. Unless there is a criminal conviction or a founded complaint of child abuse and neglect during that period, a background check remains valid at a facility if no more than 12 consecutive months have passed from when a person:~~

~~a. Began a leave of absence from that facility;~~

~~b. Was terminated from employment at that facility; or~~

~~c. Was transferred to a center owned and operated by the same employer or entity.~~

~~5. The facility, department, or registering or approving authority may require a new background check relevant to this suspicion if there is reason to suspect that a person who has submitted acceptable background checks, as required by this regulation, has an offense in Virginia or elsewhere.~~

~~6. When the facility, department, or registering or approving authority chooses to require a new background check:~~

~~a. The facility, department, or registering or approving authority may allow the person to continue the same relationship with the child welfare agency until the child care provider or licensing, registering, or approval authority receives the new Virginia background check information or equivalent documentation from another state; or~~

~~b. If there is reason to suspect that a person has an offense, the facility, department, or registering or approving authority may require that the person not be alone with children, even if the documentation is not Virginia background check information or equivalent information from another state.~~

~~C. Waivers of some criminal convictions are possible. Refer to 22VAC40-191-90 through 22VAC40-191-130 for an explanation of the waiver.~~

~~**22VAC40-191-60. Explaining consequences of unsatisfactory background checks results.**~~
~~**(Repealed.)**~~

~~A. Applicants are denied licensure, registration or approval when there are unsatisfactory background checks results for:~~

- ~~1. Applicants as a child welfare agency;~~
- ~~2. Agents at the time of application who are or will be involved in the day-to-day operations of the child welfare agency or who are or will be alone with, in control of, or supervising one or more of the children;~~
- ~~3. Any other adult, or any child aged 14 or older, living in the home of an applicant for licensure or registration as a family day home with an unsatisfactory central registry finding;~~
- ~~4. Any other adult, or any child aged 14 or older, living in a foster home, or in the home of adoptive parents, until the adoption is final with an unsatisfactory central registry finding;~~
- ~~5. Prospective foster or adoptive parents approved by child-placing agencies; and~~
- ~~6. Prospective family day home operators and family members seeking approval by family day systems.~~

~~B. An employee or volunteer of a licensed or registered child welfare agency or of a family day home approved by a family day system must not be employed or provide volunteer service until the agency or home has the person's completed sworn statement or affirmation.~~

~~C. An employee or volunteer of a licensed or registered child welfare agency, or of a family day home approved by a family day system, must be denied continued employment or volunteer service if:~~

~~1. The licensed or registered child welfare agency or family day system does not have an original criminal history record report within 30 days of employment or volunteer service; or~~

~~2. The licensed or registered child welfare agency or family day system does not have a central registry finding within 30 days of employment or volunteer service.~~

~~D. No violation will occur and an employee may continue to work, provide service, or live in a licensed, registered, or approved family day home if the facility has documentation that the criminal history record request, or the request for search of the central registry, was submitted within seven calendar days of the person being employed or volunteering, but the report is not returned within 30 calendar days.~~

~~1. If a requested report was sent within seven calendar days but was not returned within 30 calendar days, the requester must contact within four working days:~~

~~a. The Central Criminal Records Exchange of the Department of State Police; or~~

~~b. The department's Office of Background Investigations.~~

~~2. If the request was not received, the requestor must submit another request within five working days after the contact.~~

~~3. This provision also applies to someone beginning to live in a family day home after licensure, registration or approval is given or a child who becomes 18 years of age. It also applies to a child protective services central registry check for a person who becomes 14 years of age.~~

~~E. If the department or a local agency becomes aware that a person covered by this regulation has a disqualifying background, the department or local agency may release this information to facilities that are covered by this regulation. Those facilities must not further disseminate this information.~~

~~This provision also applies to a new adult beginning to live in a family day home or a child living in a family day home who becomes 18 years of age after licensure, registration or approval is given. It also applies to a child protective services central registry clearance for a person who becomes 14 years of age.~~

~~F. Licensed, registered, or approved facilities must inform compensated employees and volunteers that the facilities are requesting child protective services registry checks and criminal history record reports for them.~~

~~G. A facility may choose to request a national criminal background check, instead of the criminal history record check, for employees and volunteers.~~

~~1. The facility must adhere to Department of State Police requirements for obtaining fingerprints, in accordance with § 19.2-392.02 of the Code of Virginia.~~

~~2. The department, family day system, and child placing agency will accept a national criminal background check result of "qualified" from the Department of State Police.~~

~~3. If the screening result is "disqualified," the facility must obtain a satisfactory criminal history record check from the Central Criminal Record Exchange for the person if:~~

~~a. The facility wishes to employ the person or approve the person as a volunteer;~~

~~b. The entity wishes the department to issue a license or registration; or~~

~~c. The facility wishes a family day system or child placing agency to issue an approval.~~

~~H. The facility may also require a background check from another state per the provisions in subdivision B 5 of 22VAC40-191-50.~~

~~I. A facility that does not comply with this regulation may have its licensure, registration, approval, or religious exempt status revoked or denied.~~

~~J. If a facility has knowledge that a person required to have a background check has an offense, and this person has neither a waiver nor an exception per 22VAC40-191-50 A, and the facility refuses to separate the person from employment, service, or residence in a family day home, then licensure, registration, or approval must be revoked or denied.~~

~~22VAC40-191-70. Keeping background check records. (Repealed.)~~

~~A. A facility must keep background check records at the location where the person is an applicant, agent, employee, contract employee, volunteer, other adult in the home, or is any other adult who is involved in the day-to-day operations of the facility or who is alone with, in control of, or supervising one or more children.~~

~~1. If a facility is among two or more owned by the same entity, the background check reports and findings may be kept at corporate headquarters or at the facility and must be made available to the department representative upon request.~~

~~2. If a facility is not the primary work place for a person, the facility may keep copies on site, if there is:~~

~~a. Documentation of the place where original background check records are kept;
and~~

~~b. Copies of the sworn disclosure statement or affirmation, criminal history record report with a statement that the facility designee has viewed and verified the original, and the child protective services central registry check form must be kept on site.~~

~~B. Contracting organizations and voluntarily registered family day homes certified eligible for registration by contracting organizations must keep background check records.~~

~~1. The contracting organization must keep:~~

~~a. The original criminal history record report and sworn statement or affirmation for the voluntarily registered provider;~~

~~b. The original or a copy of the central registry findings; and~~

~~c. A copy of the criminal history record report and central registry findings for all provider assistants, substitute providers, and central registry findings for persons aged 14 and older residing in the home.~~

~~2. The voluntarily registered family day home provider must keep:~~

~~a. The original criminal history record report and sworn statement of affirmation for any provider assistant, substitute provider, and any adult residing in the home; and~~

~~b. The original or a copy of the central registry finding for any provider assistant, substitute provider or any person aged 14 and older residing in the home; and~~

~~c. Copies of the provider's own background check records.~~

~~C. Family day systems and family day homes approved by family day systems must keep background check records. The requestor identified on the form must keep the original criminal history record check result and the original or copy of the child protective services central registry finding, and the other party keeps copies. The family day system must keep the original sworn disclosure statement or affirmation.~~

~~D. A voluntarily registered family day home must keep all background check information for two years after a person required to provide background check terminates his duties with a facility or no longer resides in the home. All other facilities must keep all background check~~

~~information for one year after a person required to provide background checks terminates his duties with a facility or no longer resides in the home.~~

~~E. The sworn statement or affirmation, criminal history record report, and central registry finding must be kept in locked files.~~

~~F. Applicants and agents, and their designees, are the only facility staff who may have access to these documents. The board president must have access to these documents.~~

~~G. If a person is denied licensure, registration, or approval, or is denied employment or volunteer service because of information on a sworn statement or affirmation, a central registry finding, or criminal history record report, the facility must provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the person.~~

~~H. A facility must also release a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both when the subject of the information requests it.~~

~~I. Further dissemination of the background check information is prohibited other than to the commissioner's representative or a federal or state authority or court in order to comply with an express requirement in the law for that dissemination. (See the provisions at 22VAC40-191-60 E.)~~

22VAC40-191-80. Describing the waiver of criminal conviction. (Repealed.)

~~The waiver of criminal conviction is the department's canceling the consequences of an unsatisfactory criminal history record check only for specific convictions.~~

22VAC40-191-90. Identifying who may apply for a waiver. (Repealed.)

~~A. Any person who wants to operate or to volunteer or work at a facility covered by this regulation, but who is disqualified because of a criminal conviction, or a criminal conviction in~~

~~the background check of any other adult living in a family day home governed by this regulation, may apply in writing to the commissioner of the department for a waiver.~~

~~B. The commissioner may grant a waiver if:~~

~~1. A nonbarrier crime felony conviction occurred less than five years previously and the commissioner determines that the person is of good moral character and reputation and the waiver would not adversely affect the safety and well-being of the children in the person's care; or~~

~~2. Any other adult living in the home of a family day home applicant or provider has been convicted of not more than one misdemeanor offense of assault and battery or assault and battery against a family or household member as set out in §§ 18.2-57 and 18.2-57.2 of the Code of Virginia, provided five years have elapsed following the conviction and the department has conducted a home study that includes, but is not limited to:~~

~~a. An assessment of the safety of the children placed in the home and~~

~~b. A determination that the offender is now a person of good moral character and reputation.~~

~~The other adult must not be an assistant or substitute provider.~~

22VAC40-191-100. Explaining waiver application requirements. (Repealed.)

~~A. The person requests a waiver application package from the licensing office that serves the area where the person with the disqualifying background check lives or wants to operate or volunteer or work at a facility covered by this regulation. The person sends the completed application and a waiver application fee made out to "Treasurer of Virginia" to the licensing office. The commissioner establishes the fee. It is identified in the application package.~~

~~B. Exception: A person wishing to operate a voluntarily registered family day home requests a waiver application from either the contracting organization or the voluntary registration consultant in the Division of Licensing Programs of the department. The person sends the completed application and application fee to the voluntary registration consultant in the Division of Licensing Programs.~~

~~C. The commissioner acknowledges, in writing, receipt of the application and notifies the requester and the sponsor whether the request appears to be complete.~~

~~22VAC40-191-110. Describing the contents of a waiver application. (Repealed.)~~

~~A. The waiver application is a personally prepared application.~~

~~B. The waiver application must be submitted in typewritten form or neatly printed and must include:~~

~~1. A statement that the request was solely and personally prepared by the requester, or other adult living in a family day home, as applicable, and has not been edited or changed by anyone else. Exception: the document may be typed by another person;~~

~~2. A statement that the requester understands that the waiver will be available for inspection by the public and that the facility will provide a copy of the waiver to every parent and guardian if the waiver is granted;~~

~~3. A statement that the requester understands that information in the waiver application package will be made available by the commissioner to any person upon request if the waiver is granted;~~

~~4. Personal and employment information;~~

~~5. If the request is for a family day home, all members of the household and their relationship to the requester;~~

- ~~6. A factual account of the crime of the person with the disqualifying conviction;~~
- ~~7. The current status and history with justice systems of the person with the disqualifying conviction;~~
- ~~8. Other information the person with the disqualifying background wants the commissioner to consider in evaluating the waiver request;~~
- ~~9. An explanation of why the waiver should be granted; and~~
- ~~10. Seven attachments:
 - ~~a. A nonrefundable check, made payable to the "Treasurer of Virginia," for waiver application processing;~~
 - ~~b. For the person with the disqualifying conviction:
 - ~~(1) A "Current Employment and Employment History Form";~~
 - ~~(2) A copy of the current sworn statement or affirmation;~~
 - ~~(3) A copy of the current criminal history record report;~~
 - ~~(4) A copy of all necessary documents verifying the person's statements regarding past and current involvement with adult or juvenile justice systems within or outside the Commonwealth;~~
 - ~~(5) At least four references by disinterested individuals who will vouch for the "good moral character and reputation" of the person with the disqualifying conviction;~~
 - ~~(6) The Sponsoring Agency Statement; and~~
 - ~~(7) A notarized signature page.~~~~~~

~~C. If the waiver application is for another adult living in a family day home, the department conducts a home study to:~~

- ~~1. Assess the safety of children placed in the home; and~~
- ~~2. Determine that the offender is now a person of good moral character and reputation.~~

22VAC40-191-120. Describing the waiver evaluation criteria. (Repealed.)

~~A. The commissioner may delegate all aspects of processing and evaluating waiver requests, provided that responsibility for making the final decision may not be delegated below the level of a division director.~~

~~B. The final decision is based on the following:~~

- ~~1. The content of the waiver application package;~~
- ~~2. The nature of the conviction or convictions and relevance to decision criteria;~~
- ~~3. The extent and pattern of criminal history or child abuse and neglect, including the person's age when the act occurred and how long ago the act occurred; and~~
- ~~4. In the case of prospective foster parents for a licensed child-placing agency, a review of the criminal record requirements of the Safe Families and Adoption Act of 1997 (42 USC § 1305) to determine if this federal law would permit a waiver.~~

~~C. The applicant may be required to provide additional information that is reasonable and necessary to evaluate the application.~~

~~D. The commissioner may interview the applicant or other persons sufficient to verify and evaluate the information in the application package.~~

~~E. The commissioner may grant a waiver if the commissioner determines that:~~

- ~~1. The person is now of good moral character and reputation; and~~
- ~~2. The waiver would not adversely affect the safety and well-being of children in the person's care.~~

~~F. The commissioner will consider a waiver application abandoned, and close the file, when:~~

~~1. More than 60 days have passed since the commissioner advised the requester and the sponsoring agency that the waiver application was incomplete, or since the commissioner requested additional information that was reasonably necessary to evaluate the application; and~~

~~2. The commissioner informs the requester by certified mail that the waiver application would be considered abandoned unless the requester provides the requested information within 15 days.~~

~~G. Waiver decisions are not appealable.~~

22VAC40-191-130. Describing the waiver decision notification process. (Repealed.)

~~A. The commissioner notifies the requester, or other adult if applicable, and the sponsor of his approval or denial in writing by certified mail.~~

~~B. Any approved waiver is for a specific person and a specific facility and must include:~~

~~1. Name of individual;~~

~~2. Name of facility;~~

~~3. Effective dates;~~

~~4. Terms, conditions, and stipulations, if any;~~

~~5. Criminal conviction for which the waiver was granted;~~

~~6. Date of criminal conviction;~~

~~7. Relevant court and location;~~

~~8. Sentence served; and~~

~~9. Signature of commissioner, or designee, and date.~~

22VAC40-191-140. Modifying, revoking, and terminating waivers. (Repealed.)

~~A. The person and the sponsoring agency may request a modification of any of the terms, conditions, or stipulations of a waiver.~~

~~B. The commissioner may revoke a waiver if, after investigation, he determines that:~~

- ~~1. The waiver application contained false, deceptive, or misleading information;~~
- ~~2. The terms, conditions, or stipulations of a waiver have been violated; or~~
- ~~3. New or expanded information becomes known about the person that would change the previous determination made about the person's character, reputation, or suitability to work with or be in proximity to children.~~

~~C. If a waiver is revoked, the commissioner informs the person and the sponsoring agency, in writing by certified mail, of the reasons for the revocation.~~

~~D. A waiver automatically expires when:~~

- ~~1. The person terminates the approved arrangement with the sponsoring facility;~~
- ~~2. Five years have passed from the last date of a conviction for the felony or felonies for which the waiver was granted; or~~
- ~~3. The other adult living in a family day home was the reason for the waiver and the other adult no longer lives in the home.~~

22VAC40-191-150. Explaining the waiver public notification requirements. (Repealed.)

~~A. Notification about waivers is conducted in accordance with agency policy.~~

~~B. The facility must post in a conspicuous place on the premises any waiver granted by the department.~~

~~C. The facility must notify in writing every parent and guardian of the children in its care of any waiver granted for its operators, employees, volunteers, or adult family members living in the home. This notification includes parents and guardians whose child is placed with a foster parent or whose child is to be placed with an adoptive family. This notification also includes parents and guardians who, in the future, enroll children.~~

FORMS (22VAC40-191) (Repealed.)

Criminal History/Sex Offender and Crimes Against Minors Registry Search Form, SP-230
(rev. 12/2012)

Sworn Statement or Affirmation for Child Placing Agencies, 032-05-0974-04-eng (eff.
7/2014)

Central Registry Release of Information Form, 032-02-0151-12-eng (eff. 8/2015)

Sworn Statement or Affirmation for Child Day Programs, 032-05-0160-09-eng (eff. 7/2014)

Sworn Statement or Affirmation for Foster and Adoptive Parents, Adult Household Members,
032-05-0973-04-eng (eff. 7/2014)

CHAPTER 192

BACKGROUND CHECKS FOR CHILD WELFARE AGENCIES

22VAC40-192-10. Definitions.

"Agent" means a person who is empowered to act on behalf of the applicant or licensee for a corporation; partnership; association; limited liability company; local government; state agency, including any department, institution, authority, instrumentality, board, or other administrative agency of the Commonwealth; or other legal or commercial entity that operates or maintains a child welfare agency.

"Applicant" means the person, corporation, partnership, association, limited liability company, local government; state agency, including any department, institution, authority, instrumentality, board, or other administrative agency of the Commonwealth; or other legal or commercial entity that has applied for a license to operate or maintain an assisted living facility, adult day care center, or child welfare agency.

"Approved" means having obtained the status of approval through the process required in Minimum Standards for Licensed Family Day-Care Systems (22VAC40-120) or Standards for Licensed Child-Placing Agencies (22VAC40-131). Approved facilities are family day homes approved by licensed family day systems. Approved foster and adoptive parents include foster, adoptive, treatment foster, and short-term foster parents and families approved by child-placing agencies.

"Background checks" include a combination of elements including: a sworn statement or affirmation, a criminal history record report or a fingerprint based national criminal background check, a Virginia child protective services central registry check, and a check of the child abuse and neglect registry for any state a person has resided in within the past five years.

"Barrier crime" means a violation identified in § 19.2-392.02 of the Code of Virginia. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, convictions for any barrier crime as defined in § 19.2-392.02 shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.

"Board" means State Board of Social Services.

"Central registry" means the record of founded complaints of child abuse and neglect maintained by the Virginia Department of Social Services.

"Central registry finding" means the record of founded complaints of child abuse and neglect for an individual.

"Central Criminal Records Exchange" or "CCRE" means the information system containing conviction data of crimes committed in Virginia. The system is maintained by the Virginia State Police.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Child-placing agency" means (i) any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.2-1819, (ii) a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221, or (iii) an entity that assists parents with the process of delegating parental and legal custodial powers of their children pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20. "Child-placing agency" does not include the persons to whom such parental or legal custodial powers are delegated pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child welfare agency" means a child day center, child-placing agency, children's residential facility, family day home, family day system, or independent foster home. For purposes of this chapter, the requirements for child welfare agencies also apply to foster or adoptive homes requesting approval or with approval by child-placing agencies, family day homes requesting approval or with approval by family day systems, religiously exempt child day centers, and voluntarily registered family day homes.

"Commissioner" means the Commissioner of the Virginia Department of Social Services or his designee.

"Contracting organization" means an agency that has been designated by the Virginia Department of Social Services to administer the voluntary registration program for family day homes.

"Criminal history record check" means the process the Virginia State Police uses to generate a name based criminal record report on a person. The check is a state check generated solely through the Central Criminal Records Exchange.

"Criminal history record report" means the criminal history record issued by the Virginia State Police or the FBI.

"Department" or "DSS" means the Virginia Department of Social Services.

"Department representative" means an employee of the department who carries out regulatory duties or an agency acting as an authorized agent of the department carrying out approval functions.

"Disqualifying background" means having been convicted of any barrier crime, as defined in § 19.2-392.02 of the Code of Virginia or is the subject of a founded complaint of child abuse or neglect within or outside of Virginia.

"Employee" means a person hired by a facility or with whom the facility has an employment agreement. A provider assistant in a family day home is considered an employee in this chapter.

"Facility" means (i) a licensed family day home; (ii) a licensed family day system; (iii) a licensed child-placing agency; (iv) a licensed independent foster home; (v) a voluntarily registered family day home; (vi) a family day home approved by a licensed family day system; (vii) a licensed child day center; (viii) a religious exempt child day center; (ix) an unlicensed child

day program receiving child care subsidy assistance; and (x) an applicant seeking a waiver in order to establish a family day home.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13 years, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation.

"Family day system" means any person that approves family day homes as members of its system; that refers children to available family day homes in that system; and that, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person; (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8; and (iii) a home in which are received only children who are the subject of a properly executed power of attorney pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20.

"Involved in the day-to-day operations" means an agent who is:

1. In a supervisory or management position, making daily decisions regarding the operation of the facility;

2. Counted by the facility for purposes of staff-to-children ratios;

3. Providing casework services for a child-placing agency; or

4. Having access to child-related and client-related records or to facility personnel records.

"Licensed" means having met the requirements of and obtained Virginia Department of Social Services licensure as a child day center, family day system, independent foster home, private child-placing agency, or family day home.

"Living in" means to reside in a place for an extended or permanent period of time.

"National criminal background check" means criminal history record information from the Federal Bureau of Investigation obtained through submission of fingerprints.

"Person who operates or maintains a child welfare agency" includes: an individual; corporation; partnership; association; limited liability company; local government; state agency, including any department, institution, authority, instrumentality, board, or other administrative agency of the Commonwealth; or other legal or commercial entity that operates or maintains a child welfare agency.

"Registered" means having obtained the status of registration through the process required in Voluntary Registration of Family Day Homes - Requirements for Providers (22VAC40-180).

"Registered family day home" means any family day home that has met the standards for voluntary registration for such homes and obtained a certificate of registration from the commissioner.

"Religious exempt center" means an unlicensed child day center operated or conducted under the auspices of a religious institution as specified in § 63.2-1716 of the Code of Virginia and has a letter of exemption from the commissioner.

"Search of central registry" means the process the Virginia Department of Social Services uses to determine if an individual is recorded in the Virginia database as being named an abuser or neglector in a founded child abuse or neglect complaint or report not currently under administrative appeal.

"Subsidy vendor" means a legally operating child care provider who is approved by the department to participate in the Child Care Subsidy Program.

"Sworn statement or affirmation" means a statement completed by a person attesting to whether he has ever been (i) convicted of or the subject of pending charges of any crime within or outside the Commonwealth or an equivalent offense outside the Commonwealth or (ii) the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.

"Volunteer" means a person who provides services without pay.

22VAC40-192-20. Identifying who is covered by this regulation.

A. This regulation applies to:

1. Licensed family day homes;
2. Licensed family day systems;
3. Family day homes approved by family day systems;
4. Licensed child-placing agencies;
5. Licensed independent foster homes;
6. Foster and adoptive homes approved by child-placing agencies;
7. Voluntarily registered family day homes;
8. Religious exempt child day centers;
9. Licensed child day centers; and

10. Unlicensed subsidy vendors.

B. Facilities not covered by this regulation include:

1. Children's residential facilities, including child-caring institutions;

2. Child day programs that are not subsidy vendors, or are exempt from licensure, or are not listed in subsection A; and

3. Family day homes that are not required to be licensed, registered, approved, and do not receive federal, state or local child care funds.

22VAC40-192-30. Describing background checks.

A. The provisions for background checks can be found in §§ 63.2-901.1, 63.2-1704, 63.2-1720, 63.2-1720.1, 63.2-1721, 63.2-1721.1, 63.2-1722, 63.2-1724, 63.2-1725 and 63.2-1727 of the Code of Virginia.

Provisions for enforcement of background check regulations and other licensing, registration, and approval standards are in Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia.

B. The background checks covered by this regulation include:

1. Sworn statement or affirmation;

2. Criminal history record check;

3. National criminal background check;

4. Central registry search; and

5. A search of an equivalent child abuse and neglect registry maintained by another state in which the individual has resided in the previous five years.

C. The sworn statement or affirmation form includes:

1. Any criminal conviction and any pending criminal charges within or outside Virginia;
2. Any juvenile conviction or determination of delinquency if the offense involved would be a felony if committed by an adult within or outside Virginia;
3. Disclosure of any instance of being the subject of a founded complaint of child abuse or neglect within or outside Virginia; and
4. A signature validating the truth of the information on the form.

A model sworn statement form or affirmation is posted on the department website. The model form or a self-created form that includes all of the information that appears on the model form is required.

D. The criminal history record check is the process of the Virginia State Police (State Police) to generate a criminal record report on a person using a name based search. The criminal history record report shows criminal charges and convictions in Virginia.

Employees for licensed child-placing agencies and independent foster homes are required to use the forms and process of the CCRE for the criminal history record check. The State Police provides original criminal history record check forms to facilities upon request. The State Police also provides access to this form for on its public website.

Foster and adoptive parents complete a criminal history record check as a repeat check after the initial national fingerprint based background check.

E. The national criminal background check is the process for obtaining criminal history record information from the Federal Bureau of Investigation through the CCRE.

1. The person submits to fingerprinting and provides personal descriptive information.
2. The person uses the process of the department's Office of Background Investigations (OBI) to request and receive a national criminal background check.

F. Child day programs shall not employ or allow volunteer service until an employee's or volunteer's satisfactory background check results are received.

G. The search of the central registry is a check to determine if the person has ever been the subject of a founded complaint of child abuse or neglect in Virginia.

The person is required to use the form and process of OBI for searches in Virginia. The department provides the central registry request form on its website. OBI verifies child protective services central registry check findings.

H. If an adult required to complete a background check has lived outside Virginia in the past five years, that person or the facility is required to contact the state(s) he or she has lived in and request a search of that state's child abuse and neglect registry. The department provides a link to out of state child abuse and neglect registries on its website. The results of this search, or documentation of the request to search if a state cannot provide results, shall be kept with that person's records as part of the background check.

22VAC40-192-40. Explaining requirements for satisfactory background checks.

A. A satisfactory sworn statement or affirmation is:

1. A fully completed statement that indicates that the person does not have a barrier crime conviction; and

2. There is no other knowledge that the individual has a disqualifying background.

B. A satisfactory criminal history record report is one in which an original copy or internet inquiry reply from the State Police is returned to the agency, individual or authorized agent making the request with:

1. No convictions indicated; or

2. Convictions indicated, but no barrier crime convictions.

C. A satisfactory national criminal history record report is one in which a determination letter from OBI is returned to the agency, individual or authorized agent making the request stating:

1. The individual is eligible for employment; or

2. Employment eligibility of the individual could not be determined. In this situation, the provider makes the eligibility determination based on available information and documents the decision. If the person is determined to be eligible, documentation is required to justify this decision.

D. A satisfactory central registry finding is one in which a determination letter from OBI is returned to the facility, individual or authorized agent making the request indicating that, as of the date on the reply, the individual whose name was searched is not identified in the central registry as an involved caregiver with a founded disposition of child abuse/neglect.

E. No person is considered to be the subject of a founded complaint of child abuse or neglect until a decision upholding the finding has been rendered by a hearing officer after an administrative hearing, provided the person complies with the requirements for requesting an administrative hearing. No person is considered to be the subject of a founded complaint of child abuse or neglect if the child abuse or neglect finding is overturned by an administrative hearing or a subsequent court decision.

F. A satisfactory out of state child abuse and neglect registry finding is one in which a copy of the official child abuse and neglect registry form/response from another state is returned to the requestor indicating that, as of the date on the reply, the individual whose name was searched is not identified in the child abuse and neglect registry as having been convicted of child abuse/neglect.

In cases where another state cannot provide search results, the request to search along with notification from the state can be used as documentation to satisfy the requirement to search.

22VAC40-192-50. Missing or disqualifying background checks.

A. Applicants are denied licensure, registration, approval, or approval as a subsidy vendor to receive federal, state, or local child care funds when there are disqualifying background checks results for:

1. Applicants;
2. Agents at the time of application who are or will be involved in the day-to-day operations of the child welfare agency or who are or will be alone with, in control of, or supervising one or more of the children;
3. Any other adult living in a family day home;
4. Any other adult (except for youth participating in the Fostering Futures program) living in a foster home or in the home of adoptive parents until the adoption is final;
5. Prospective foster or adoptive parents approved by child-placing agencies; and
6. Prospective family day home operators and family members seeking approval by family day systems.

B. A facility that does not comply with this regulation may have its licensure, registration, approval, religious exemption status, or vendor approval to receive federal, state, or local child care funds revoked or denied.

C. If a facility has knowledge that a person required to have a background check has a barrier crime conviction, and this person has neither a waiver nor meets an exception, and the

facility refuses to separate the person from employment, service, or residence in a family day home, then licensure, registration, or approval shall be revoked or denied.

D. Any applicant, agent, employee, volunteer, or household member of a child day program, including a family day home approved by a family day system, who has lived in another state in the past five years, shall be denied continued employment or service if the agency or family day system does not have:

1. Documentation of the request to search an out of state child abuse and neglect registry within 30 days of employment or volunteer service if applicable;

2. Documentation of a follow up request to search an out of state child abuse and neglect registry within 45 days after the initial request to search if no results have been provided; or

3. Documentation of the refusal from other state(s) if no search of an out of state child abuse and neglect registry is provided.

E. An employee or volunteer of a licensed child placing agency shall be denied continued employment or volunteer service if the agency does not have the results of the central registry finding within 30 days of employment or volunteer service.

No violation will occur if the facility has documentation that the request for search of the central registry was submitted within seven calendar days of the person being employed or volunteering, but the report is not returned within 30 calendar days.

1. If a requested report was sent within seven calendar days but was not returned within 30 calendar days, the requester is required to contact the department's Office of Background Investigations within four working days.

2. If the request was not received, the requestor is required to submit another request within five working days after the contact.

F. No violation will occur if the facility has documentation that the request to search the central registry was submitted within 30 days of i) someone beginning to live in a family day home after licensure, registration or approval is given, or ii) a child living in the home turns 18 years of age (i.e. becomes an adult household member).

G. If the department becomes aware that a person covered by this regulation has a disqualifying background, the department may release this information to facilities that are covered by this regulation. Those facilities shall not further disseminate this information.

H. The facility, department, or registering or approving authority may require a new background check relevant to this suspicion if there is reason to suspect that a person who has submitted acceptable background checks, as required by this regulation, has a disqualifying background.

When the facility, department, or registering or approving authority chooses to require a new background check:

1. The facility, department, or registering or approving authority may allow the person to continue in the same relationship with the child welfare agency until the child care provider or licensing, registering, or approval authority receives the new background check information or equivalent documentation from another state; or

2. If there is reason to suspect that a person has a disqualifying background, the facility, department, or registering or approving authority may require that the person not be alone with children, even if the documentation is not background check information or equivalent information from another state.

I. Any individual required to undergo a background check for a child day program who is (i) convicted of any barrier crime defined in § 19.2-392.02 or (ii) found to be the subject of a

founded complaint of child abuse or neglect within or outside of the Commonwealth shall notify the child day program of the conviction or finding.

J. Child day programs shall notify individuals required to undergo a background check of the requirement to notify the provider of a barrier crime conviction of finding of abuse and neglect within or outside the Commonwealth.

22VAC40-192-60. Timing of background checks.

A. Background checks for the following child day programs shall be repeated every five years:

1. Licensed family day systems;
2. Family day homes approved by family day systems;
3. Voluntarily registered family day homes;
4. Religious exempt child day centers;
5. Licensed child day centers; and
6. Unlicensed subsidy vendors.

B. Background checks for licensed child placing agency staff, foster or adoptive parents, and independent foster home parents shall be repeated every three years.

C. New background checks are required for each new job or volunteer opportunity in a child welfare agency. Background checks are required for each employer.

D. A facility cannot not accept any part of a background check that is dated more than 90 days prior to the date of application for licensure, registration, or approval or from the date when the person designated as the applicant, agent, or licensee changes.

E. A facility cannot not accept any part of a background check from an applicant for employment or volunteering or household member that is dated more than 90 days prior to the

date of employment, volunteering, residing in the home, or approving a family day home or foster or adoptive home.

22VAC40-192-70. Access to background check information.

A. A facility shall keep background check records at the location where the person is an applicant, agent, employee, volunteer, or adult household member.

If a child day center is among two or more owned by the same entity, documentation of completed background checks may be kept at corporate headquarters or at the center and shall be made available to the department's representative upon request.

B. A facility shall keep all background check information for two years after a person required to provide background checks terminates his duties with a facility or no longer resides in the home.

C. The sworn statement or affirmation, OBI determination letter or criminal history record report, OBI letter indicating the results of the central registry search, and the request for results or the results of the search of the child abuse and neglect registry from any state a person has lived in the past five years shall be kept in locked files or a secure electronic file.

D. Voluntarily registered family day homes certified eligible for registration by contracting organizations shall keep the sworn statement, OBI determination letter, OBI letter indicating the results of the child protective services central registry search, and the of the results of the search of the child abuse and neglect registry from any state a person has lived in the past five years.

If a state will not provide results of the search of the child abuse and neglect registry; the request for the search and the response from the state shall be kept by the home.

The contracting organizations shall keep copies of the background check documentation.

E. Family day systems shall keep background check documents for family day homes approved by the system. The family day system shall keep the sworn statement, OBI determination letter, OBI letter indicating the results of the child protective services central registry search, the results of the search of the child abuse and neglect registry from any state a person has lived in the past five years.

If a state will not provide results of the search of the child abuse and neglect registry; the request for the search and the response from the state shall be kept by the system and a copy of the request and response should be kept by the home.

F. Applicants and agents, their designees, and the board president where applicable are the only facility staff who may have access to background check documents.

G. If a person is denied licensure, registration, or approval, or is denied employment or volunteer service because of information on a sworn statement or affirmation, a central registry finding, the results of the search of the child abuse and neglect registry from any state a person has lived in the past five years, or the results of the national criminal history records search or criminal history record report, a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both shall be provided to the person.

H. A facility shall inform every individual required to undergo a background check pursuant to this section that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made of the individual's eligibility to have responsibility for the safety and well-being of children.

I. Further dissemination of the background check information is prohibited other than to the commissioner's representative or a federal or state authority or court in order to comply with an express requirement in the law for that dissemination.

22VAC40-192-80. Requirements for licensed family day homes.

A. Background checks for licensed family day homes include:

1. Sworn statement or affirmation;
2. Results of a search of the Virginia central registry;
3. Results of a search of the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years; and
4. National criminal history record search.

B. Background checks are required at the time of initial application for licensure for:

1. Any applicant;
2. Any agent at the time of application, who is or will be involved in the day-to-day operations of the family day home or who is or will be alone with, in control of, or supervising one or more of the children;
3. Any adult living in the home of an applicant for licensure as a family day home;
4. Any existing employee; or
5. Any existing volunteer who is alone with children.

Background checks cannot be more than 90 days old at the time of initial application for licensure.

C. Background checks are required after initial licensure for:

1. Any new person designated as applicant, licensee, or agent who is or will be involved in the day-to-day operations of the family day home or who is or will be alone with, in control of, or supervising one or more of the children;

2. Any new employee or new volunteer who is alone with, in control of, or supervising one or more children;

3. Any new adult living in the family day home; or

4. Any person living in the family day home that turns 18 years old.

D. Timing of background checks after initial application:

1. The sworn statement, the results of the national criminal history record search, and the results of a search of the central registry shall be received prior to the first day of employment or beginning service as a volunteer.

2. The request for results of a search of the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years is due within 30 days of employment or beginning service as a volunteer. If the results of the request to search the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years have not been returned within 45 days of request, a follow up request shall be sent. A copy of the follow up request shall be kept as part of the record.

3. The sworn statement, the results of a search of central registry, the results of the national criminal history record search, and the request for results of a search of the child abuse and neglect registry by any other state in which the individual has resided in the last five years is due within 30 days of when an adult begins residing in the home or when a person in the home turns 18 years old.

E. Background checks shall be repeated every five years.

22VAC40-192-90. Requirements for licensed family day systems and family day homes approved by family day systems.

A. Background checks include:

1. Sworn statement or affirmation;
2. Results of a search of the Virginia central registry;
3. Results of a search of the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years; and
4. National criminal history record search.

B. Background checks are required at the time of initial application for licensure or upon request for approval by the family day system for:

1. Any applicant;
2. Any agent at the time of application, who is or will be involved in the day-to-day operations of the child welfare agency or who is or will be alone with, in control of, or supervising one or more of the children;
3. Operator of family day home requesting approval by family day system;
4. Any existing employee;
5. Any existing volunteer who is alone with children; or
6. Any adult residing in the family day home requesting approval.

Background checks cannot be more than 90 days old at the time of the initial application.

C. Background checks are required after initial licensure for:

1. Any new applicant, licensee, agent;
2. Any new family day home operator approved by a family day system;

3. Any new employee;

4. Any new volunteer who will be alone with children; or

5. Any new adult or child who has turned 18 years of age living in the family day home.

D. Timing of background checks after initial application:

1. The sworn statement, the results of the national criminal history record search, and the results of a search of the central registry shall be received prior to the first day of employment or beginning service as a volunteer.

2. The request for results of a search of the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years is due within 30 days of employment or beginning service as a volunteer. If the results of the request to search the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years have not been returned within 45 days of request, a follow up request shall be sent. A copy of the follow up request shall be kept as part of the record.

3. The sworn statement, the results of a search of central registry, the results of the national criminal history record search, and the request for results of a search of the child abuse and neglect registry by any other state in which the individual has resided in the last five years is due within 30 days of when an adult begins residing in the home or when a person in the home turns 18 years old.

4. The sworn statement, results of the national criminal history record search, the results of a search of the Virginia Central Registry, and the request for the results of a search of the child abuse and neglect registry for each state the individual has lived in the past five years are due within 30 days of beginning service for an individual that would be considered an applicant or agent under an initial or renewal application.

E. Background checks shall be repeated every five years.

22VAC40-192-100. Requirements for licensed child placing agencies, licensed independent foster homes, and foster and adoptive homes approved by licensed child placing .

A. Licensed Child Placing Agencies and Licensed Independent Foster Homes:

1. Background checks for licensed child placing agencies and independent foster homes include:

- a. Sworn statement or affirmation;
- b. Results of a search of the Virginia central registry; and
- c. Criminal history record check.

2. Background checks are required at the time of initial application for licensure of licensed child placing agencies and independent foster homes for:

- a. Any applicant;
- b. Any agent at the time of application, who is or will be involved in the day-to-day operations of the child placing agencies or independent foster or who is or will be alone with, in control of, or supervising one or more of the children;
- c. Any existing employee or volunteer.

Background checks cannot be more than 90 days old at the time of initial application.

3. Background checks are required after initial licensure for:

- a. Any new applicant or agent;
- b. Any new employee; or
- c. Any new volunteer who will be alone with children.

4. The sworn statement, the results of a search of the Virginia central registry, and the results of the criminal history record search is due within 30 days of employment or service for any new employee, volunteer, applicant or agent.

5. Background checks shall be repeated every three years for licensed child placing agencies and independent foster homes.

B. Foster and adoptive parents and other adults living in the home:

1. Background checks for prospective foster and adoptive parents and other adults living in a prospective foster or adoptive home include:

a. Sworn statement or affirmation;

b. Results of a search of the Virginia central registry;

c. Results of a search of the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years; and

d. National criminal history record search.

2. Background checks are required for prospective foster and adoptive parents and other adults living in a prospective foster or adoption home prior to approval by a licensed child placing agency.

3. After initial approval, background checks are required for any new adult household members or any household member turning 18 years of age residing in the home of the foster parent.

4. The sworn statement, the results of a search of the Virginia central registry, request for results of a search of the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years, and the results of the national criminal history record is due:

a. Upon request for approval by the licensed child placing agency as a foster or adoptive home;

b. Within 30 days of a person 18 years of age or older beginning to reside in the home; or

c. Within 30 days of a person in the home turning 18 years old.

Background checks cannot be more than 90 days old upon the request for approval by the licensed child placing agency.

The results of the background check of an individual participating in the Fostering Futures program shall be used for the sole purpose of determining whether other children should be placed or remain in the same foster home as the individual subject to the background check.

5. Background checks shall be repeated every three years. In the case of adoptive homes, background checks are due every three years until the adoption is final. After the initial background check, repeat criminal checks can be a criminal history record check.

22VAC40-192-110. Requirements for voluntarily registered family day homes.

A. Background checks include:

1. Sworn statement or affirmation;

2. Results of a search of Virginia central registry;

3. Results of a search of the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years; and

4. National criminal history record search.

B. Background checks are required at the time of initial application for registration for:

1. Any applicant;

2. Any agent at the time of application, who is or will be involved in the day-to-day operations of the family day home or who is or will be alone with, in control of, or supervising one or more of the children;

3. Any other adult living in the family home;

4. Any existing employee; or

5. Any existing volunteer who will be alone with children.

Background checks cannot be more than 90 days old at the time of initial application for registration.

C. Background checks are required after initial registration for:

1. Any new voluntary provider assistant or substitute provider;

2. Any new volunteer who will be alone with any child in the performance of duties; or

3. Any new individual who has turned 18 years of age living in the family day home.

D. Timing of background checks after initial application:

1. The sworn statement, the results of the national criminal history record search, and the results of a search of the central registry shall be received prior to the first day of employment or beginning service as a volunteer.

2. The request for results of a search of the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years is due within 30 days of employment or beginning service as a volunteer. If the results of the request to search the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years have not been returned within 45 days of request, a follow up request shall be sent. A copy of the follow up request shall be kept as part of the record.

3. The sworn statement, the results of a search of central registry, the results of the national criminal history record search, and the request for results of a search of the child abuse and neglect registry by any other state in which the individual has resided in the last five years is due within 30 days of when an adult begins residing in the home or when a person in the home turns 18 years old.

E. Background checks shall be repeated every five years.

22VAC40-192-120. Requirements for religious exempt child day centers.

A. Background checks include:

1. Sworn statement or affirmation;

2. Results of a search of the Virginia central registry;

3. Results of a search of the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years; and

4. National criminal history record search.

B. Background checks are required to be submitted at the time of initial submission of the statement of intent for religious exempt status for:

1. All applicants for employment or volunteers who will be alone with children;

2. Employees; and

3. Volunteers who will be alone with children.

Background checks cannot be more than 90 days old at the time of initial submission.

C. Background checks are required after the submission of the statement of intent for religious exempt status for:

1. All new applicants for employment; and

2. All new applicants to serve as volunteers who will be alone with children.

D. Timing of background checks:

1. The sworn statement, the results of a search of the central registry, request for results of a search of the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years, and the results of the national criminal history record is due upon submission of the statement of intent for religious status.

2. The sworn statement, the results of the national criminal history record, and the results of a search of the central registry shall be received prior to the first day of employment or beginning service as a volunteer.

3. The request for results of a search of the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years is due within 30 days of employment or beginning service as a volunteer. If the results of the request to search the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years have not been returned within 45 days of request, a follow up request shall be sent. A copy of the follow up request shall be kept as part of the record.

E. Background checks shall be repeated every five years.

22VAC40-192-130. Requirements for licensed child day centers.

A. Background checks include:

1. Sworn statement or affirmation;

2. Results of a search of the Virginia central registry;

3. Results of a search of the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years; and

4. National criminal history record search.

B. Background checks are required at the time of initial application for licensure for:

1. Any applicant;

2. Any agent at the time of application, who is or will be involved in the day-to-day operations of the child day center or who is or will be alone with, in control of, or supervising one or more of the children;

3. Any other adult living in a child day center;

4. Any existing employee; or

5. Any existing volunteer who is alone with children.

Background checks cannot be more than 90 days old at the time of initial application for licensure.

C. Background checks are required after initial licensure for:

1. Any new person designated as applicant, licensee, or agent who is or will be involved in the day-to-day operations of the facility or who is or will be alone with, in control of, or supervising one or more of the children;

2. Any new employee or new volunteer of a child day center who is alone with, in control of, or supervising one or more children; or

3. Any new adult living in the child day center.

D. Timing of background checks after initial application:

1. The sworn statement, the results of the national criminal history record search, and the results of a search of the central registry shall be received prior to the first day of employment or beginning service as a volunteer.

2. The request for results of a search of the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years is due within 30 days of employment or beginning service as a volunteer. If the results of the request to search the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years have not been returned within 45 days of request, a follow up request shall be sent. A copy of the follow up request shall be kept as part of the record.

3. The sworn statement, the results of a search of central registry, the results of the national criminal history record search, and the request for results of a search of the child abuse and neglect registry by any other state in which the individual has resided in the last five years is due within 30 days of when an adult begins residing in the home or when a person in the home turns 18 years old.

4. The sworn statement, results of the national criminal history record search, the results of a search of the Virginia Central Registry, and the request for the results of a search of the child abuse and neglect registry for each state the individual has lived in the past five years are due within 30 days of beginning service for an individual that would be considered an applicant or agent under an initial or renewal application.

E. Background checks shall be repeated every five years.

22VAC40-192-140. Requirements for unlicensed subsidy vendors.

A. Background checks include:

1. Sworn statement or affirmation;

2. Results of a search of the Virginia central registry;

3. Results of a search of the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years; and

4. National criminal history record search.

B. Background checks are required at the time of initial application to become a subsidy vendor:

1. Any applicant or agent of an applicant to become a subsidy vendor;

2. Any other adult living in a family day home;

3. Any existing employee; or

4. Any volunteer who will be alone with children.

Background checks cannot be more than 90 days old at the time of initial application to become a subsidy vendor.

C. Background checks are required after becoming a subsidy vendor for:

1. Any new employee or new volunteer of a center or family day home who is alone with, in control of, or supervising one or more children; or

2. Any new adult living in the family day home.

D. Timing of background checks after initial application:

1. The sworn statement, the results of the national criminal history record search, and the results of a search of the central registry shall be received prior to the first day of employment or beginning service as a volunteer.

2. The request for results of a search of the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years is due within

30 days of employment or beginning service as a volunteer. If the results of the request to search the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years have not been returned within 45 days of request, a follow up request shall be sent. A copy of the follow up request shall be kept as part of the record.

3. The sworn statement, the results of a search of central registry, the results of the national criminal history record search, and the request for results of a search of the child abuse and neglect registry by any other state in which the individual has resided in the last five years is due within 30 days of when an adult begins residing in the home or when a person in the home turns 18 years old.

E. Background checks shall be repeated every five years.

22VAC40-192-150. Requirements for independent contract employees and employees hired by a contract agency in a child day program.

A. An independent contractor or employee of a contract agency with whom the facility has an agreement to provide services to children who are under the direct supervision of the facility, shall submit background checks as if they are an employee of the facility if the individual will be involved in the day-to-day operations of the facility; counted in ratio; or will be alone with, in control of, or supervising one or more children at a licensed, registered, or approved facility.

B. Background checks in this section include a sworn statement or affirmation; results of a search of the Virginia central registry; results of a search of the child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years; and a national criminal history record search. Background checks results, except results from another state's child abuse and neglect registry, must be received before an individual can begin work and repeated every five years.

22VAC40-192-160. Waiver of criminal conviction.

The waiver of criminal conviction is the department waiving the consequences of a disqualifying criminal history record check only for specific convictions.

A. The commissioner may grant a waiver if the commissioner determines that:

1. The person is of good moral character and reputation; and
2. The waiver would not adversely affect the safety and well-being of children in the person's care.

B. The Commissioner shall not grant a waiver to any person who has been convicted of any barrier crime as defined in § 19.2-392.02. However, the Commissioner may grant a waiver to a family day home licensed or registered by the Department if any other adult living in the home of the applicant or provider has:

1. Been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction;
2. Five years have elapsed following the conviction; and
3. The department has conducted a home study that includes:
 - a. An assessment of the safety of the children placed in the home; and
 - b. A determination that the offender is now a person of good moral character and reputation

C. The other adult shall not be an assistant or substitute provider.

22VAC40-192-170. Explaining waiver application requirements and contents of a waiver.

A. Requesting a waiver application:

1. For licensed homes: A waiver application package can be requested from the licensing office that serves the area where the family day home is located.

2. For voluntarily registered homes: A waiver application can be requested from either the contracting organization or the voluntary registration consultant in the Division of Licensing Programs.

B. Preparation of the application

The person applying for the waiver shall be the person who submits the application. The waiver application shall be submitted in typewritten form or neatly printed and shall include:

1. A statement that the request was solely and personally prepared by the requester, or other adult living in a family day home, as applicable, and has not been edited or changed by anyone else;

2. A statement that the requester understands that the waiver will be available for inspection by the public and that the facility will provide a copy of the waiver to every parent and guardian if the waiver is granted;

3. A statement that the requester understands that information in the waiver application package will be made available by the commissioner to any person upon request if the waiver is granted;

4. Personal and employment information for the person with the disqualifying conviction;

5. All members of the household and their relationship to the requester;

6. A factual account of the crime of the person with the disqualifying conviction;

7. The current status and history with justice systems of the person with the disqualifying conviction;

8. Other information the person with the disqualifying background wants the commissioner to consider in evaluating the waiver request;

9. An explanation of why the waiver should be granted; and

10. Seven attachments:

a. A nonrefundable check, made payable to the "Treasurer of Virginia," for waiver application processing;

b. For the person with the disqualifying conviction:

(1) A "Current Employment and Employment History Form";

(2) A copy of the current sworn statement or affirmation;

(3) A copy of the national criminal history record report which is not more than 90 days old;

(4) A copy of all necessary documents verifying the person's statements regarding past and current involvement with adult or juvenile justice systems within or outside the Commonwealth;

(5) At least four references by disinterested individuals who describe the "good moral character and reputation" of the person with the disqualifying conviction; and

(6) A notarized signature page.

C. Submission of a waiver application:

1. For licensed homes: The person sends the completed application and a waiver application fee made out to "Treasurer of Virginia" to the licensing office.

2. For voluntarily registered homes: The person sends the completed application and a waiver application fee made out to "Treasurer of Virginia" to the voluntary registration consultant in the Division of Licensing Programs.

22VAC40-192-180. Describing the waiver evaluation criteria.

A. Upon receipt of the application the department conducts a home study to:

1. Assess the safety of children placed in the home; and
2. Determine that the offender is now a person of good moral character and reputation.

B. The commissioner may delegate all aspects of processing and evaluating waiver requests, provided that responsibility for making the final decision may not be delegated below the level of a division director.

C. The final decision is based on the following:

1. The content of the waiver application package;
2. The nature of the conviction or convictions and relevance to decision criteria; and
3. The extent and pattern of criminal history, including the person's age when the act occurred and how long ago the act occurred.

D. The applicant may be required to provide additional information that is reasonable and necessary to evaluate the application.

E. The commissioner may interview the applicant or other persons sufficient to verify and evaluate the information in the application package.

F. The commissioner may grant a waiver if the commissioner determines that:

1. The person is now of good moral character and reputation; and
2. The waiver would not adversely affect the safety and well-being of children in the person's care.

G. The commissioner will consider a waiver application abandoned, and close the file, when:

1. More than 60 days have passed since the commissioner advised the requester that the waiver application was incomplete, or since the commissioner requested additional information that was reasonably necessary to evaluate the application; and

2. The commissioner informs the requester by certified mail that the waiver application would be considered abandoned unless the requester provides the requested information within 15 days.

H. Waiver decisions are not appealable.

22VAC40-192-190. Describing the waiver decision notification process.

A. The commissioner notifies the requester, or other adult if applicable, of his approval or denial in writing by certified mail.

B. Any approved waiver is for a specific person and a specific facility and shall include:

1. Name of individual;

2. Name of facility;

3. Effective date;

4. Terms, conditions, and stipulations, if any;

5. Criminal conviction for which the waiver was granted;

6. Date of criminal conviction;

7. Relevant court and location;

8. Sentence served; and

9. Signature of commissioner, or designee, and date.

22VAC40-192-200. Modifying, revoking, and terminating waivers.

A. The person may request a modification of any of the terms, conditions, or stipulations of a waiver.

B. The commissioner may revoke a waiver if, after investigation, he determines that:

1. The waiver application contained false, deceptive, or misleading information;

2. The terms, conditions, or stipulations of a waiver have been violated; or

3. New or expanded information becomes known about the person that would change the previous determination made about the person's character, reputation, or suitability to work with or be in proximity to children.

C. If a waiver is revoked, the commissioner informs the person and the sponsoring agency, in writing by certified mail, of the reasons for the revocation.

D. A waiver automatically expires when the other adult living in a family day home, who is the subject of the waiver, no longer lives in the home.

22VAC40-192-210. Explaining the waiver public notification requirements.

A. Notification about waivers is conducted in accordance with agency policy.

B. The facility shall post in a conspicuous place on the premises any waiver granted by the department.

C. The facility shall notify in writing every parent and guardian of the children in its care of any waiver granted for adult family members living in the home. This notification includes parents and guardians whose child is placed with a foster parent or whose child is to be placed with an adoptive family. This notification also includes parents and guardians who, in the future, enroll children.